

LIBERAL EGALITARIANISM

LIBERAL EGALITARIANISM:
AN EXAMINATION OF THE THEORIES
OF JOHN RAWLS AND RONALD DWORKIN

By

WAYNE EDWARD FENSKE, B.A.

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AUTHOR: Wayne Edward Fenske, B.A. (Calgary)

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ABSTRACT

In this thesis, I will contrast the theories of John Rawls and Ronald Dworkin with a view to showing that Dworkin presents a theory of distributive justice which is superior to Rawls' theory of distributive justice. The reason for this is that Dworkin's theory incorporates considerations of individual choice and responsibility into the assessment of distributive justice to a greater extent than Rawls' theory.

The two theories are contrasted on four points:

- (1) Assessing the relative values of sets of primary goods which differ in character,
- (2) Providing for those with handicaps,
- (3) Allowing for individual initiative,
- (4) Protecting the interests of those who are better-off.

Dworkin's theory, so I argue, is able to provide a more satisfactory account of how a theory of distributive justice should deal with each of these four issues. For this reason, it represents an important advance over Rawls' theory of distributive justice.

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Table Of Contents

Chapter 1: Introduction And Historical Background ... p.1

- 1.1- Introduction
- 1.2- Classical Political Theory
- 1.3- Liberal Political Theory
- 1.4- The Social Contract
- 1.5- Rawls On Utilitarianism
- 1.6- Rawls' Theory
- 1.7- The First Problem
- 1.8- The Second Problem
- 1.9- The Third Problem
- 1.10- The Fourth Problem
- 1.11- Concluding Remarks

Chapter 2: Dworkin On The First Problem p.37

- 2.1- Introduction
- 2.2- Equal Treatment And Treatment As An Equal
- 2.3- Classes And Individuals
- 2.4- Dworkin's Initial Auction
- 2.5- Objections To Dworkin's Auction
- 2.6- Concluding Remarks

Chapter 3: The Second Problem p.58

- 3.1- Introduction
- 3.2- Brute Luck And Option Luck
- 3.3- Insurance And Abstractness
- 3.4- Insurance Against Handicaps
- 3.5- Rawls And Handicaps
- 3.6- Handicaps And Expensive Tastes
- 3.7- Concluding Remarks

Chapter 4: The Third And Fourth Problems p.87

- 4.1- Introduction
- 4.2- Ambition
- 4.3- Endowments And Insurance
- 4.4- Dworkin's Tax Scheme
- 4.5- Problems With Dworkin's Tax Scheme
- 4.6- Dworkin's Theory And The Third Problem
- 4.7- Dworkin's Theory And The Fourth Problem
- 4.8- Rawls On The Fourth Problem
- 4.9- Concluding Remarks

Summary p.103

Chapter 1: Introduction And Historical Background

1.1: Introduction

It is not uncommon to find philosophers whose scholarly interests range over several areas of the discipline. Unfortunately, it is often the case that when a philosopher achieves prominence in one area, his publications in other areas become somewhat neglected. Ronald Dworkin seems to be in this situation. He is primarily known as a philosopher of law but has also made significant contributions in the field of moral philosophy. Yet, his writings on moral philosophy have not received nearly as much attention as his writings on legal philosophy. Sheldon Wein notes that:

As in the case of Jeremy Bentham, Dworkin's legal philosophy has attracted a great deal of scholarly attention from his contemporaries, while his moral philosophy has been ignored.¹

In this thesis, I will concentrate on the moral and political philosophy of Dworkin. In particular, I will concentrate on comparing the political theories of Ronald Dworkin and John Rawls in an attempt to show that Dworkin's theory of distributive justice is superior to Rawls' theory of distributive justice. This will be accomplished by comparing four points where the two theories of distributive justice differ. On each of these four points, Dworkin's

1 Sheldon Wein, "Liberal Egalitarianism", Philosophy Research Archives, March, 1985. p.667.

theory is able to address issues which Rawls' theory cannot. The reason for this is that Dworkin has incorporated considerations of individual choice and responsibility into his theory while Rawls has not. Though further analysis will show that Dworkin's position on these four points is not entirely satisfactory, his theory still represents a significant advance over Rawls' theory of distributive justice because it attempts to deal with these important factors. As G. A. Cohen remarks:

Dworkin has, in effect, performed for egalitarianism the considerable service of incorporating within it the most powerful idea in the arsenal of the anti-egalitarian right: the idea of choice and responsibility.²

In order to accomplish this task, it will be best to sketch out the history of political theory which leads up to the political theory of Dworkin which he calls 'Equality of Resources'. Equality of Resources is a variety of egalitarianism which is distinctly liberal. It incorporates liberal assumptions and can be seen as a reformulation of earlier liberal theories which have been criticized within the liberal tradition. As Will Kymlicka remarks, concerning Rawls and Dworkin:

Rawls' egalitarianism is a reaction against utilitarianism but is also partly a development from utilitarianism's core intuitions, and the same is true of Dworkin's relation to Rawls. Each theory defends its own principles by appealing to the very intuitions that led people to adopt the

² G. A. Cohen, "On The Currency Of Egalitarian Justice" Ethics, July 1989. p.933.

previous theory.³

1.2: Classical Political Theory

Liberal political theory is, in many ways, a direct rejection of the classical political theories which preceded it. Classical political theory holds that there is a given human essence which prescribes the sort of life which men should be living. We should be attempting to live our lives in accordance with our given 'telos' in order to achieve a truly excellent human existence. Ethics, in the classical tradition, is the attempt to delineate the manner of living which embodies the pursuit of true human excellence. As Rawls points out:

Plato and Aristotle, and the Christian tradition as represented by Aquinas and Augustine, fall on the side of the one (rational) good. Indeed, since classical times, the dominant tradition has been that there is but one rational conception of the good.⁴

The paradigm example of this is the blueprint for human excellence which Aristotle advocates in The Nicomachean Ethics. Classical ethics is primarily concerned with providing a positive description of 'the good life' rather than simply formulating a negative set of prohibitions. Classical political theory is theoretically connected with

³ Page 52 of an unpublished manuscript which will appear in Will Kymlicka Contemporary Political Philosophy (Oxford Univ. Press: Oxford, forthcoming)

⁴ John Rawls, "Social Unity And Primary Goods", in Utilitarianism And Beyond eds. Bernard Williams and Amartya Sen (Oxford: Oxford University Press, 1979), p.160.

this positive approach to ethics. The purpose of classical political theory is to formulate the set of political arrangements which will best facilitate the achievement of 'the good life' for those living in the regime. Political philosophy in the classical tradition is the quest for the 'Good Regime'. The purpose of the state is already given and it is the task of the political philosopher to describe the conditions which are most conducive to the achievement of it. There is no place in classical political philosophy for adducing alternative purposes for the state such as simply catering to the desires of the inhabitants, whatever these may happen to be. There is certainly no place for questioning the legitimacy of the state as the sort of institution that men should be living under. The preceeding can be summed as follows: (1) Human beings are naturally suited to live in the context of the state; (2) There is a prescriptive 'good life' which exists independently of human desire; and (3) The purpose of the state is to facilitate the achievement of this predetermined telos for its citizens. These are the three cardinal axioms of classical political theory. Together they put severe constraints on what political philosophy is and on how it should be done.

1.3: Liberal Political Theory

Liberal political philosophy represents a significant departure from classical political philosophy because it rejects all three of these cardinal axioms. It claims that

the existence of the state must be legitimated before it can rightfully exercise coercion over its inhabitants. It also rejects the notion of a prescriptive 'good life' which exists independently of human desire. Corresponding to this, is the rejection of the claim that the purpose of the state is to provide an environment which is conducive to the achievement of such a 'good life'. As Alexander and Schwarzschild point out:

Modern liberal political theories, for all their differences, share a common fundamental principle: the state and its laws must be 'neutral' with respect to the varying conceptions of the Good held by individuals.⁵

Because it rejects these three axioms, liberal political philosophy is concerned with substantially different questions than classical political philosophy. According to liberal theory, the best kind of state is the one which allows each of its inhabitants to pursue their own conception of the good life as freely as possible. The only constraint that liberalism puts upon this freedom is that in pursuing their own version of the good life individuals must not infringe upon the freedom of others to do the same. In the framework of liberal political theory, the solution to the problem of legitimating the existence of the state provides the solution to the problem of determining what the role of the state should be. The state is legitimated in the

5 Larry Alexander & Maimon Schwarzschild, "Liberalism, Neutrality, And Equality Of Resources vs. Equality Of Welfare" Philosophy and Public Affairs 16 (1987), p.85.

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liberal tradition because it serves the interests of the individuals who are living in it. People are to accept the power of the state as legitimate because each of them can see that it is necessary for the state to wield coercive power over them in order for their own individual interests to be furthered. The state is viewed as an instrumental good rather than a natural good. It is the instrument which is necessary in order to ensure that interests will be protected. It is for this reason only that the existence of a central coercive power is deemed acceptable. Communitarian appeals hold no place in the liberal solution to the problem of legitimacy. A person accepts the power of the state not because it helps the community but because it helps her personally. An individualistic rather than a communitarian view of human nature is a conspicuous thread which runs throughout the liberal tradition.

Ronald Dworkin's egalitarian theory falls squarely into the liberal tradition. He views the state as an artificial rather than a natural institution. Its purpose is to further the interests of each of the individuals living under it. This purpose provides the basis for the state's legitimacy as it does in all liberal political theories. Finally, he accepts the liberal tenet that there is no prescriptive telos which men ought to be conforming their lives to. He believes that the best political arrangement is the one which will allow each of the state's inhabitants to pursue

their own version of the good life as freely as possible as long as their doing so does not infringe on the opportunities of others to do the same. In his essay Liberalism, he claims that: "political decisions must be, so far as possible, independent of any particular conception of the good life, or of what gives value to life"⁶.

Determining just what constitutes the interests of the populace as a whole has been a matter of some controversy in the history of the liberal tradition, however. This problem arises because populations are comprised of large numbers of individuals and each of these have their own particular interests. The desires and needs of different individuals sometimes vary quite sharply. It is not immediately obvious what the interests of the population considered en masse actually amount to. But the liberal political theorist must attempt to find some sort of answer to this question because the corporate interest is the only one which the state can attempt to satisfy. It is entirely unrealistic to expect the state to be able to completely fulfill all of the interests of all of the individuals living there. The problem for the liberal theorist is to formulate a mandate for the state which will take into account the disparate and often conflicting interests of many individuals. This formulation must be acceptable to all of the individuals who are living

⁶ Ronald Dworkin, A Matter Of Principle (Harvard Univ. Press: Cambridge, Mass., 1985) p.191.

in the state even though the program of the state will not maximize their own particular interests. The interests of each of the individuals must be sacrificed to some extent in order to arrive at a feasible program that will take the interests of everyone into account. The liberal theorist must find some way of adjudicating among the conflicting interests of individuals in order to arrive at an acceptable formulation of the corporate interests whose fulfillment will constitute the role of the state. It is important to keep in mind that since the notion of a prescriptive 'good life' has been rejected, the liberal cannot regard certain interests as being intrinsically preferable to other interests. To give some interests priority over others simply because they are claimed to be intrinsically preferable is to implicitly slip in the promotion of an intrinsically preferable 'good life' which is characterized by the fulfillment of such interests. If certain interests are to take priority over other interests, some rationale must be provided for this.⁷ In beginning to formulate some sort of compromise, all interests must be considered on par.

1.4: The Social Contract

Liberal theorists have commonly dealt with this problem

⁷ For example, Joseph Raz adduces a liberal theory which contains distinct perfectionist elements so that certain interests do take priority over other interests. But since he provides a rationale for why this should be so his theory is consistent with my claim. See Joseph Raz The Morality Of Freedom (Oxford: Clarendon Press, 1988) pp.313-320.

through the use of a heuristic device known as the social contract. The social contract refers to a hypothetical situation where a group of individuals who have not yet entered into civil society engage in negotiations concerning what the rules for their civil society should be. The result of these negotiations provides the basis for the formulation of a set of laws which everyone must accept as an equitable compromise of the conflicting interests of all those living in the state. The fulfillment and protection of the interests endorsed by those making the social contract constitutes the role of the state. Social contract theory is based on the notion of interpersonal rationality. That is to say, social contract theory is designed to provide a rationale which will be acceptable to a group rather than simply a single person. Arguments which will favour particular persons are ruled out by social contract theory because they will not be accepted by everyone else. Each of the persons engaging in the social contract is rationally trying to further his own interests as far as possible. But in doing this, each must advocate a plan of social policy which will also be acceptable to the other participants. If everyone adduced a plan which only furthered their own particular interests, no consensus would be reached. Thus, even though each of the parties is simply attempting to further his own interests, he must also take the interests of others into account if he expects the policies he

advocates to be accepted by the other parties. In this way, the set of self-interested individuals is able to formulate a set of societal rules which will reflect the results of an interpersonal rationality.

Dworkin's theory represents a sophisticated example of the use of the social contract to determine the role that the state should be playing in the economic affairs of the polity. It borrows key notions from earlier social contract theories but makes important emendations to these earlier theories in order to deal with compelling criticisms which have been made of them. In order to understand the significance of Dworkin's theory, it seems best to present a brief history of liberal political theories which have influenced his formulation.

As Michael Lessnoff points out, the notion of the social contract has been around for some time but it has not continually been in vogue.

Historically, contract theory has known two periods of flourishing, one lasting from the sixteenth to the eighteenth century, the other the contemporary revival.⁸

The main proponents of the earlier social contract tradition are Hobbes, Locke, and Rousseau. The towering figure in the contemporary revival of contract theory is unquestionably John Rawls. Dworkin's theory is one of the contemporary contract theories which have arisen as a result of the work

⁸ Michael Lessnoff, Social Contract (MacMillan: London, 1986) p.9.

of Rawls. Before reviewing Rawls' theory and the criticisms made of it, it is worthwhile to take notice of one aspect of an earlier contract theory which Dworkin makes important use of in formulating his contractarian theory.

Dworkin proposes an expanded use of the term 'property'. This idea was first adduced by John Locke in The Second Treatise Of Government. Prior to Locke, property was seen to be the collection of objects which a person or persons had a claim of ownership over. Locke extended this 'outside' notion of property by claiming that property refers not only to those objects outside of the person possessing a claim of ownership, but also to that person himself. As Locke put it:

Though the earth, and all inferior creatures be common to all men, yet every man has a property in his own person. This no body has any right to but himself.⁹

Locke goes on to use this notion of having property in one's own person as the basis for the right to acquire property outside of one's person. Dworkin does not use the notion of having property in one's body in this way. The importance of having property in one's body for Dworkin is that he uses this extended notion of property in order to assess the total amount of resources that one has. If two people had an identical set of assets but one of them had a failed kidney while the other was perfectly healthy, then the healthy

9 John Locke, Two Treatises Of Government (Cambridge Univ. Press: New York, 1965) p.328.

person would have more resources than the person with the failed kidney. Without this extended use of what constitutes the property of an individual, the two would have an equal amount of resources. Dworkin uses this extended notion of property in assessing whether or not two individuals have an equal amount of resources while Rawls does not. This is one important amendment he makes to the contractarian theory adduced by Rawls. Dworkin offers a more extensive set of criteria for assessing whether or not two individuals are to be regarded as being in possession of an equal set of resources. Having elaborated upon this one important idea which Dworkin borrows from an early contract theorist, we can now go on to elaborate the contractarian theory of John Rawls. Dworkin's theory is able to deal with problems which have been identified in Rawls' formulation.

1.5: Rawls On Utilitarianism

As Rawls states in the preface to A Theory Of Justice, the main goal of his theory is to present

an alternative systematic account of justice that is superior, or so I argue, to the dominant utilitarianism of the tradition.¹⁰

According to the utilitarian tradition, the best political arrangement is the one which will result in the greatest aggregate utility for the regime. The maximization of utility takes precedence over the preservation of the rights

¹⁰ John Rawls, A Theory Of Justice (Belknap Press: Cambridge, Mass., 1979) p.vii.

of individuals. As Rawls points out concerning the utilitarian position:

There is no reason in principle why the greater gains of some should not compensate for the lesser losses of others; or more importantly, why the violation of the liberty of a few might not be made right by the greater good shared by many.¹¹

This is one of the major problems with trying to base a political theory entirely on considerations of utility. It leaves open the possibility of inflicting great hardship upon certain individuals in order to achieve a greater sum total of utility for the entire society. The utilitarian position can lead to regimes which are clearly unjust.

For example, it has sometimes been held that under some conditions the utility principle (in either form) justifies, if not slavery or serfdom, at any rate serious infractions of liberty for the sake of greater social benefits.¹²

Utilitarianism was the prominent doctrine in liberal political theory during the hiatus between the early contract theorists and the contemporary revival of contractarianism initiated by Rawls. Applied to individuals, utilitarianism calls for each individual to maximize her own personal utility. As Rawls points out, utilitarian reasoning can be applied to societies in the same way that it is applied to individuals:

Since the principle for an individual is to advance as far as possible his own welfare, his own system of desires, the principle for society

11 Rawls, TJ, p.26.

12 Rawls, TJ, p.156.

is to advance as far as possible the welfare of the group, to realize to the greatest extent the comprehensive system of desire arrived at from the desires of its members.¹³

Such reasoning allows utilitarian theory to provide a purpose for the state.

Society must allocate its means of satisfaction whatever these are, rights and duties, opportunities and privileges, and various forms of wealth, so as to achieve this maximum if it can.¹⁴

But such a purpose opens the door for abuse. One of the major problems with utilitarianism is that it may not allow for the guaranteed protection of individual human rights. Whenever the overriding of a right will increase the total aggregate utility of the regime, utilitarianism calls for the overriding of that right. Rawls' project is an attempt to protect individual rights which will also allow for the maximization of utility to a point that will not infringe upon basic human rights. To be sure, a number of prominent moral philosophers such as Hare¹⁵ and Sumner¹⁶ claim that Rawls' project is entirely unfounded. They claim that more sophisticated forms of utilitarianism can be devised which ensure the protection of individual human rights. Their claim is that a lower rate of aggregate utility would result

13 Rawls, TJ, pp.23,24.

14 Rawls, TJ, p.26.

15 R. M. Hare. Moral Thinking (Oxford Univ. Press: Oxford, 1986)

16 L.W. Sumner The Moral Foundation Of Rights (Oxford Univ. Press: Oxford, 1987)

from the insecurity experienced by individuals living in a situation where their rights could potentially be sacrificed for the sake of the community at any time. But dealing with such objections to Rawls does not fall within the scope of this thesis. The theorists influenced by Rawls share the opinion that a contractarian approach is the best way of dealing with the problem of providing a rationale for the protection of individual rights while attempting to delineate the corporate interests of the state. Ronald Dworkin is one of these theorists. Having provided a brief description of the utilitarian theory that Rawls intends to replace, we can go on to describe the replacement he adduces.

1.6: Rawls' Theory

Rawls begins his version of the social contract theory by situating the group of participants in a hypothetical situation called 'the original position'. Rawls describes the original position as follows:

Among the essential features of this situation is that no one knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like. I shall even assume that the parties do not know their conception of the good or their special psychological propensities. The principles of justice are chosen behind a veil of ignorance.¹⁷

Shrouded by this veil of ignorance, the persons in the original position would only choose principles that would be

17 Rawls, TJ, p.12.

fair to all people. The veil of ignorance ensures that "no one is able to design principles to favour his own particular condition"¹⁸. The original position is not entirely characterized by the veil of ignorance, however.

For the most part I shall suppose that the parties possess all general information. No general facts are closed to them. ... Even though the parties are deprived of information about their particular ends, they have enough knowledge to rank the alternatives. They know that in general they must try to protect their liberties, widen their opportunities, and enlarge their means for promoting their aims whatever these are.¹⁹

With this combination of knowledge of general truths and ignorance of specific truths, the persons in the original position will be able to agree on the fairest principles for distributing the goods of the society. Since none of the parties is aware of his own conception of the good, the decisions made in the original position will embody the liberal tenet that the state should not attempt to promote any preordained conception of the good life.

The notion of justice that Rawls claims the people in the original position will advocate are neatly encapsulated in the form of two principles which are serially ranked. These two principles are as follows:

First: each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.

Second: social and economic inequalities are to be arranged so that they are

18 Rawls, TJ, p.12.

19 Rawls, TJ, pp.142,143.

both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all.²⁰

The second principle contains two ambiguous phrases: 'everyone's advantage' and 'open to all'. Each of these phrases can be interpreted in two ways. 'Open to all' can refer to 'equality as careers open to talents' or to 'equality as equality of fair opportunity'. 'Everyone's advantage' can refer to a 'principle of efficiency' or to a 'difference principle'. This allows the second principle to be interpreted in four different ways. Rawls advocates interpreting the second principle in such a way that 'open to all' refers to 'equality as equality of fair opportunity' while 'everyone's advantage' refers to the enactment of the 'difference principle'. Rawls calls this interpretation 'Democratic Equality'. When 'open to all' refers to 'equality as equality of fair opportunity', people must all have a chance at the desirable occupations. They must not be barred in advance from any opportunity of engaging in them.

It expresses the conviction that if some places were not open on a basis fair to all, those kept out would be right in feeling unjustly treated even though they benefited from the greater efforts of those who were allowed to hold them.²¹

In order to explain Rawls' interpretation of 'everyone's advantage', it will be best to first explain the 'principle of efficiency' in order to explain the 'difference

20 Rawls, TJ, p.60.

21 Rawls, TJ, p.84.

principle'. The principle of efficiency is equivalent to the economic notion of Pareto Optimality. This refers to a situation where:

it is impossible to change it so as to make some persons (at least one) better off without at the same time making other persons (at least one) worse off.²²

There can often be a considerable number of distributional schemes that satisfy the principle of efficiency.

The principle of efficiency does not by itself select one particular distribution of commodities as the efficient one. To select among the efficient distributions some other principle, a principle of justice, say, is necessary.²³

The difference principle is just such a principle of justice. The difference principle allows one to select the most just arrangement from the array of situations that satisfy the principle of efficiency. "Thus, justice is defined so that it is consistent with efficiency"²⁴. Stated simply, the difference principle demands that:

unless there is a distribution that makes both persons better off (limiting ourselves to the two person case for simplicity) an equal distribution is to be preferred.²⁵

It is clear that this principle forbids any of the problem situations that are often used to criticize utilitarianism. Inequalities in society are only justified when the worst-

22 Rawls, TJ, p.68.

23 Rawls, TJ, p.68.

24 Rawls, TJ, p.79.

25 Rawls, TJ, p.76.

off benefit from such an inequality.

The implementation of these two principles constitutes the just society for Rawls. In Rawls' system, equality is seen as a value, but it is not the only value. Utility is also a value. The inequalities allowed by the difference principle are acceptable because they increase the expected utility of everyone. Making utility a subordinate value to equality obviates the unacceptable scenarios which might follow from the pure utilitarian position.

The principles of justice apply to the basic structure of the social system and to the determination of life prospects. What the principle of utility asks is precisely a sacrifice of these prospects. We are to accept the greater advantages of others as a sufficient reason for lower expectations over the whole course of our life. This is surely an extreme demand.²⁶

The ideal society for Rawls is the one which will maintain the pattern of distribution of the primary goods of society which is called for by the two principles of justice. Rawls' theory signalled an important change in the direction of liberal theory. The rationale behind his theory is not the impersonal utility calculus; it constitutes a return to the contractarian approach.

At this point, it seems best to explain how Dworkin's theory relates to Rawls' overall theory. Rawls presents a comprehensive theory of social justice, of which distributive justice is one aspect. As his lexical ordering

26 Rawls, TJ, p.178.

of the two principles of justice indicates, questions of distributive justice are to be subordinated to issues concerning basic liberties. But the fact that questions of distributive justice are not the primary focus of Rawls' theory does not mean that they are unimportant. Given the extensive scope of Rawls' theory and its unrivalled salience in contemporary political theory, centering in on one aspect of his theory is by no means a trivial endeavor. This is especially true if this secondary aspect of his larger theory constitutes its most controversial element. The fact that the primary focus of Rawls' theory has remained relatively immune to criticism is an accolade in its favor. As Will Kymlicka points out:

The assumption that civil and political rights should have priority is widely shared in our society. As a result, the disputes between Rawls and his critics have tended to be on other issues. The idea that people should have their basic liberties protected is the least contentious part of his theory.²⁷

There is no reason in principle why one cannot limit his criticism of Rawls to particular aspects of his theory. Such criticisms of Rawls can be regarded as focussed debates which occur within the context of a substantial amount of shared agreement. The following claim made by Rawls shows that he would allow such a focussed criticism of his theory.

As their formulation suggests, these principles presuppose that the social structure can be divided into two more or less distinct parts, the

27 Kymlicka, p.7.

first principle applying to the one, the second to the other.²⁸

As mentioned at the outset, in this thesis I will attempt to show that Dworkin's theory offers a more elaborate account of distributive justice than the one contained in Rawls' theory. The focus will be upon this one aspect of Rawls' larger theory.

Before going on to present the four problems with Rawls' theory of distributive justice, it seems appropriate to discuss one further issue concerning the nature of his theory of justice. Rawls makes it clear that his theory of justice is an abstract one which applies to the basic structures of society. As he puts it:

For us, the primary subject of justice is the basic structure of society, or more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation.²⁹

A possible objection to the criticisms of Rawls' theory of distributive justice presented in this thesis is that they are too specific and do not apply to his theory which is pitched on a more abstract level. Certain passages in A Theory Of Justice suggest that this may be so. One such passage reads as follows:

Neither principle applies to distributions of particular goods to particular individuals who may be identified by their proper names. The situation

28 Rawls, TJ, p.61.

29 Rawls, TJ, p.7.

where someone is considering how to allocate certain commodities to needy persons who are known to him is not within the scope of the principles. They are meant to regulate basic institutional arrangements.³⁰

But closer examination of this passage will reveal that the criticisms of Rawls contained in this thesis are quite appropriate. The counterexamples offered in this thesis are an attempt to describe typical sorts of cases by referring to concrete examples. They demonstrate how Rawls' principles fall short of what our intuitions call for when they are applied to concrete situations. In the above passage, Rawls is saying that his theory cannot be directly applied to actual cases. This is not the same as the claim that it cannot be applied to specific abstract scenarios. Indeed, his wide reflective equilibrium approach strives to achieve a consonance between a theoretical framework of general principles and intuitions concerning specific abstract cases. Rawls clearly describes the type of counterexamples which his theory is open to. He tells us that:

It is the arrangement of the basic structure which is to be judged, and judged from a general point of view. Unless we are prepared to criticize it from the standpoint of a relevant representative man, in some particular position, we have no complaint against it.³¹

The criticisms of Rawls presented in this thesis all refer to relevant representative people in particular positions.

30 Rawls, TJ, p.64.

31 Rawls, TJ, p.88.

They refer to typical scenarios which can be generalized. They do not refer to isolated anomalies. These are precisely the kind of counterexamples Rawls openly invites.

In a further passage, Rawls describes the sort of distributional problem his theory is not designed to address.

The conception of the two principles does not interpret the primary problem of distributive justice as one of allocative justice.³²

In order to understand what Rawls means by 'allocative justice' here, we must be aware of the context of this sentence. In this chapter, he is trying to convince the reader that it is best to treat "the question of distributive shares as a matter of pure procedural justice"³³. After elaborating on the notion of pure procedural justice, he tells us that:

The great practical advantage of pure procedural justice is that it is no longer necessary in meeting the demands of justice to keep track of the endless variety of circumstances and the changing relative positions of particular persons.³⁴

An allocative conception of justice is faced with this problem, however. Rawls is contending that pure procedural justice is superior to allocative justice because it is not faced with this practical problem. With this broader context

32 Rawls, TJ, p.88.

33 Rawls, TJ, pp. 84,85.

34 Rawls, TJ, p.87.

in mind, let us now reconsider Rawls' comment along with the sentences immediately preceding and following it.

If it is asked in the abstract whether one distribution of a given stock of things to definite individuals with known desires and preferences is better than another, then there is simply no answer to this question. The conception of the two principles does not interpret the primary problem of distributive justice as one of allocative justice. By contrast the allocative conception of justice seems naturally to apply when a given collection of goods is to be divided among definite individuals with known desires and needs.³⁵

This passage makes it clear that allocative justice is concerned with the practical problem of distributing actual goods to actual people. Rawls does not attempt to deal with this real-life problem. He is concerned with formulating general principles. As has been discussed earlier, the counterexamples to Rawls' difference principle are not concerned with the problem of allocative justice either. Rather than presenting actual cases, they present abstract representative cases which can be generalized. Having argued that the criticisms of Rawls' theory presented in this thesis are appropriate, we can go on to consider them in turn.

1.7: The First Problem

Admittedly, the preceding section constitutes a rather brief summary of Rawls' very rich and extensive theory of justice. But it is sufficient to enable us to understand the

35 Rawls, TJ, p.88.

four criticisms of Rawls' theory which Dworkin's theory is able to deal with. The first problem with Rawls' theory of distributive justice is that his assessment of just allotments is carried out in generic terms. As long as those in the worst-off position receive the maximum amount of primary goods that they can receive, the distribution is just. Rawls describes primary goods as follows:

Now primary goods, as I have already remarked, are things which it is supposed a rational man wants whatever else he wants. Regardless of what an individual's rational plans are in detail, it is assumed there are various things which he would prefer more of rather than less.³⁶

Later on, he makes additional comments concerning the role of primary goods in his theory:

Now the assumption is that though men's rational plans do have different final ends, they nevertheless all require for their execution certain primary goods, natural and social.³⁷

It is possible to construe Rawls here as claiming that there is a particular set of primary goods which would be desired by all people regardless of their life plans. But, such a claim would be manifestly false. Though there will be overlaps, it is very unlikely that there will be any goods at all which are desired by everyone. People will desire different sets of primary goods according to their varied life plans and there will be no common element which is a part of all of these sets. His claim must be that any life

36 Rawls, TJ, p.92.

37 Rawls TJ, p.93.

plan requires some amount of primary goods, though the actual primary goods chosen will vary from person to person. But this presents a problem for him. Since the sets of primary goods possessed by individuals will be varied, Rawls must have some means of assessing the relative values of different primary goods in order to determine which parties have the least amount of primary goods. These are the parties whose allotments should be maximized. Since the sets of primary goods are not uniform in nature, it is not a matter of simply assessing the amounts possessed by different individuals. He must be able to assess the relative values of different goods and then apply this assessment to the varying amounts of different primary goods possessed by particular individuals. His theory lacks such a mechanism. As Arneson points out:

According to Rawls, there are several such primary social goods, so to determine people's primary social good shares an index is needed, but in none of his writings does he make any proposal as to how to construct such an index. Pending a proposal for constructing such a primary social goods index, we lack a Rawlsian solution to the measurement problem.³⁸

It would not do to give all of those in the worst-off position the same set of goods. This would solve the incommensurability of goods problem, but would create another problem. It would open the possibility of two people

38 Richard J. Arneson, "Liberalism, Distributive Subjectivism, And Equal Opportunity For Welfare", Philosophy And Public Affairs Spring 1990. pp.192,193.



receiving the same generic allotment where one is much more satisfied than the other because the generic allotment suits his preferences much better. This would be unfair to the unsatisfied person. In order to be free to pursue their own version of the good life, people must be free to opt for the sorts of goods they find valuable. Yet, we must be able to measure the value of such varied sets to determine whether the distribution is just or not. Further, the values attributed to different goods must in no way presuppose any particular version of the good life. Rawls' theory offers no way out of this dilemma. This is the first major problem with Rawls' contractarian theory. The abstract nature of his discussion of primary goods blurs the fact that this dilemma arises when people choose sets of primary goods which vary widely in character. Dworkin addresses this dilemma in his theory by providing a mechanism which allows individuals to determine the character of the goods they receive and also ensures that these sets of goods are of equal value.

1.8: The Second Problem

A second problem with Rawls' theory is that it does not take account of the fact that people may suffer from various handicaps and disabilities so that they are clearly in a disadvantaged position vis-a-vis a person possessing the same amount of holdings who does not have such handicaps. As Alexander and Schwarzschild point out:

Rawls' primary goods arbitrarily leave out of consideration abnormal needs and handicaps (and



abnormal positive endowments as well), so that two persons have received equal and otherwise just shares if, say, their wealth is equal, even if one of them is ill or handicapped and requires great wealth to function as well as the other, or one of them had to expend much greater effort or undergo much greater hardship or risk to produce the equal share of wealth.³⁹

According to the criteria Rawls offers, as long as each of the parties receives equal amounts of 'primary goods' the distribution is to be considered equal. "The primary social goods, to give them in broad categories are rights and liberties, opportunities and powers, income and wealth"⁴⁰.

If one is to be concerned with providing each of the members of a society with a sufficient portion of the society's goods so that each person is equally free to pursue her own version of the good life, it seems intuitively problematic not to take account of the fact that certain people will be faced with handicaps such that merely allowing them to have the same amount of primary goods as completely healthy people will not allow them anywhere near as much opportunity to pursue their own version of the good life as those who do not have to spend a significant portion of their allotment of the primary goods simply to cope with their handicap. It does not seem just that the possession of a particular handicap constitutes sufficient grounds for curtailing one's opportunity to pursue her own version of

39 Alexander & Schwarzschild, p.89.

40 Rawls, TJ, p.92.



the good life in a society which is committed to distributing the community's resources in such a way that all should have an equal chance to pursue their own version of the good life. It is hardly plausible to claim that meeting the special needs of a handicap in some way presupposes a particular conception of the good life. Since the goal of the society is to provide the conditions which will allow each person to pursue his own version of the good life as freely as possible, some rationale must be provided for those possessing handicaps being offered a lesser chance to pursue their own version of the good life than those not possessing handicaps. It seems difficult to imagine that such a rationale could be provided. The most promising solution to this problem would be to extend the criteria for distributing primary goods so that handicaps could be taken into account. If a person's handicaps were taken into account in determining his share of the primary goods, he would not be penalized in his opportunity to pursue his own version of the good life simply on the basis of possessing a handicap. To be sure, some handicaps are so severe that no increase in one's allotment of primary goods would be sufficient to allow her to be as free to pursue her own version of the good life as completely healthy people are. But not all handicaps are so severe, and at least the situation would be made more just by allowing persons with certain handicaps to have a certain amount of additional

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primary goods to compensate for this. This is the second major problem with Rawls' theory. It is unable to take account of handicaps in determining what constitutes a just distribution of the primary goods. Dworkin's theory addresses this problem by attempting to formulate a basis for redressing certain handicaps with additional allotments of primary goods.

1.9: The Third Problem

A third problem with Rawls' contractarian theory comes from Robert Nozick in his book Anarchy, State, And Utopia. According to Nozick, Rawls' theory is based on a 'current time-slice principle of justice'.

According to a current time-slice principle, all that needs to be looked at, in judging the justice of a distribution, is who ends up with what; in comparing any two distributions one need only look at the matrix presenting the distributions.⁴¹

He also refers to current time-slice principles of justice as end-state principles of justice. It is not important to consider the history leading up to a particular distribution in order to decide whether that distribution is just or not. This way of assessing the justice of distributions seems to be problematic. As Nozick points out: "We think it relevant to ask whether someone did something so that he deserved to be punished, deserved to have a lower share"⁴². We also

41 Robert Nozick, Anarchy, State, And Utopia (Basic Books: New York, 1974) p.154.

42 Nozick, p.154.

think it relevant to ask whether one person worked harder or saved more scrupulously than another person in order to determine whether it is just that she should have a higher share at a later time. Rawls' theory does not allow any room for such considerations in determining the justice of shares. Rather, it simply calls for the maintenance of distributive shares in accordance with his end-state principles of justice. Such a distributive scheme can be described as a patterned one.

Let us call a principle of distribution patterned if it specifies that a distribution is to vary along with some natural dimension, weighted sum of natural dimensions, or lexicographic ordering of natural dimensions.⁴³

A principle of entitlement does not fit into a patterned distributional system because it is based on the past actions of persons rather than their present characteristics. According to Nozick, the problem with a patterned distributive principle is that it cannot accommodate the notion of entitlement due to past action in its distributional assessment. It only takes the present characteristics of the recipients into account. Nozick demonstrates a major problem with end-state theories of justice with an argument centering around a famous American basketball player, Wilt Chamberlain. The scenario begins with the wealth in the society distributed according to the pattern of a particular end-state theory of justice. Wilt

43 Nozick, p.156.

then makes the offer that anyone in the society can give him a small portion of her distributive share in return for being able to watch him play basketball if she so desires. Since a large number of people desire to do this, Wilt receives a large number of small payments and becomes very wealthy. In this situation, the end-state pattern of distribution has become significantly altered. Wilt now has a much greater share in proportion to the rest than he did at the beginning of the scenario. The only way to restore the pattern would be to take a certain portion of Wilt's holdings, which he has justly acquired, and redistribute it throughout the society.

The general point illustrated by the Wilt Chamberlain example ... is that no end-state principle or distributional patterned principle of justice can be continuously realized without continuous interference with people's lives.⁴⁴

The end-state principle's inability to take account of the historical element involved in the acquisition of holdings leads to intuitively unjust redistributions in order to maintain the pattern. It is unable to provide any criterion for distinguishing between just and unjust redistributions. Any deviation from the prescribed pattern must be rectified regardless of how it came about. An unpleasant dilemma is faced by any end-state theory such as the one advocated by Rawls.

Either you ban the morally unobjectionable

44 Nozick, p.163.

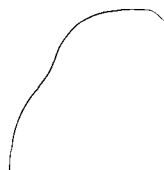
transactions which may lead from just distributions or, if you choose not to ban such transactions, you face the task of having to continually redistribute money to bring the distribution back to the just pattern. ... Why continue to seize what people have obtained by morally unobjectionable means? Simply so that you can do it all over again? Simply to save your theory?⁴⁵

This is the third major problem with Rawls' contractarian theory. Dworkin's theory is not open to such an objection because it includes criteria for determining the amount of holdings that a person may justly possess at a particular time. It allows for the notion of entitlement due to past actions.

1.10: The Fourth Problem

A fourth problem with Rawls' theory is that a consistent application of the difference principle calls for certain redistributions which are intuitively unjust. According to the difference principle, resources must be redistributed whenever this will be to the benefit of those in the worst-off position. The loss incurred by those who are not in the worst-off position has no bearing on the question of whether or not the redistribution is just. If it improves the lot of those in the worst-off position, the redistribution must be carried out regardless of how much it hurts those who are better-off. Even if a redistribution greatly disadvantages those who are better-off in order to marginally improve the position of those who are worst-off,

45 Wein, p.102.



the difference principle still calls for such a redistribution. Such a policy seems unfair to those in the better-off position. Consideration of their interests plays no part in determining what is just. The better-off could lose large portions of their holdings at any time as long as that would improve the position of the worst-off. The precarious position that the better-off are left in does not seem fair.

A further related problem can be illustrated by the following example. Imagine a community where the majority of the inhabitants are hardworking and generally responsible. A small minority of the population is lazy and, as a result of this, form the class of those in the worst-off position. As well as being lazy, these people are immature and often have drunken parties where they smash up their own property just for the fun of it. But since the community is committed to distributing the resources according to the difference principle, once the party is over they can always demand a redistribution in order to improve their considerably worsened worst-off position. It seems clearly unjust to satisfy their demands, but this is what the difference principle would call for. The above considerations show that a consistent application of Rawls' difference principle leads to unjust policies. It does not provide adequate protection for the better-off. An injustice is being done to them. But Rawls' theory is committed to such policies since

the 'injustice' is being done to those who are better-off and their situation is not relevant in the determination of what is just.

1.11: Concluding Remarks

This concludes the description of the historical background which led to the formulation of Dworkin's 'Equality of Resources' theory. This theory falls into the liberal rather than the classical tradition. It attempts to provide a basis for the state being a legitimate institution as well as a description of the function of the state given the presupposition that human beings have no predetermined end. The solution to these problems is approached through the heuristic device known as the social contract. Social contract theory has had two periods of flourishing in the liberal tradition, the latter of which was initiated by John Rawls in a reaction against the perceived dangers of a pure utilitarian theory. There are four major problems with Rawls' theory, however. First, it does not allow for intercomparisons of the values of various allotments to be made. Secondly, it discriminates against persons with handicaps. Thirdly, it does not allow for the notion of entitlement due to past actions. Fourthly, it treats the better-off in a way which seems unjust. Each of these four problems makes Rawls' theory become intuitively unappealing. As I shall argue, Dworkin's 'Equality of Resources' theory is a more cogent liberal social contract theory because it

is able to overcome these four criticisms of Rawls' theory of distributive justice. For this reason it constitutes a significant advance in liberal political theory.

Chapter 2: Dworkin On The First Problem

2.1: Introduction

Having described Rawls' theory of distributive justice and presented four problems with his theory, I will now consider the theory of distributive justice presented by Ronald Dworkin. This discussion will consist of a description of Dworkin's theory as well as an elaboration of the differences between the two theories which enable Dworkin's theory to deal with problems which Rawls' theory is unable to deal with. This second chapter will discuss the first problem encountered by Rawls' theory. It will elaborate on the auction mechanism Dworkin uses in order to allow individuals to determine the character of the goods they receive which also allows for comparisons of value between these varied sets of goods. It will also elaborate on the distinction Dworkin makes between 'equal treatment' and 'treatment as an equal'. The fact that Dworkin's theory attempts to treat people as equals rather than simply providing them with equal treatment is an important difference between his theory and Rawls' theory.

2.2: Equal Treatment And Treatment As An Equal

Dworkin presents his theory of distributive justice in a set of two long articles which appeared in consecutive

issues of Philosophy And Public Affairs⁴⁶ . The title of the set is 'What Is Equality?'. The first article is entitled 'Part 1: Equality Of Welfare'. The second article is entitled 'Part 2: Equality Of Resources'. In these articles, Dworkin argues for a particular version of liberal egalitarianism which he calls 'Equality Of Resources'. In order to better understand Dworkin's Equality Of Resources theory, it will be worthwhile to take note of some of the comments which Dworkin has made on the relationship between equality and liberalism in some of his earlier writings. One significant claim he makes is that equality rather than freedom is the fundamental value of liberalism. As he remarks near the beginning of his essay 'Liberalism', "A certain conception of equality, which I shall call the liberal conception of equality, is the nerve of liberalism"⁴⁷. He goes on to argue that any liberal conception of equality "supposes that political decisions must be, so far as possible, independent of any conception of the good life, or of what gives value to life"⁴⁸. To give people equal assistance in the struggle to realize a preordained good life would be to part with the cardinal

46 Ronald Dworkin, "What Is Equality? Part 1: Equality Of Welfare" Philosophy And Public Affairs 10 (1981) pp.185-246. & "What Is Equality? Part 2: Equality Of Resources" Philosophy And Public Affairs 10 (1981) pp.283-345.

47 Ronald Dworkin, A Matter Of Principle (Harvard Univ. Press: Cambridge, Mass., 1985) p.183.

48 Dworkin, MP, p.191.

liberal commitment that the state should not promote any particular version of the good life above others. There are, however, two possible ways of construing 'equality' which are consonant with this liberal presupposition, however. The first of these is 'equality as equal treatment'. A person has been given equal treatment when she receives "the same distribution of goods or opportunities which anyone else has or is given"⁴⁹. The second of these is 'equality as treatment as an equal'. Treatment as an equal refers "not to an equal distribution of some good or opportunity, but the right to equal concern and respect in the political decision about how these goods and opportunities are to be distributed"⁵⁰. The crucial difference between these two conceptions of equality is that treatment as an equal takes the personal circumstances of those under consideration into account while equal treatment does not. To illustrate this difference, Dworkin offers the following example:

If I have two children, and one is dying from a disease that is making the other uncomfortable, I do not show equal concern if I flip a coin to decide which should have the remaining dose of a drug.⁵¹

Yet, this is what equal treatment would call for. "This example shows that the right to treatment as an equal is

49 Ronald Dworkin, Taking Rights Seriously (Harvard Univ. Press: Cambridge, Mass., 1977) p.273.

50 Dworkin, TRS, p.273.

51 Dworkin, TRS, p.227.

fundamental and the right to equal treatment derivative"⁵². That is to say, in practical policy making, it will be preferable to give people equal treatment because ceteris paribus this will result in their being treated as equals. But in extenuating circumstances, such as the case above, equal treatment will not result in the parties being treated as equals. The intuitive unacceptability of such cases shows that when equal treatment and treatment as an equal come into conflict, equal treatment must be abandoned in order to achieve treatment as an equal. According to Dworkin, treatment as an equal is the fundamental conception of equality in the liberal tradition which can often but not always be achieved through the policy of equal treatment.

When someone must make a significant personal sacrifice in order that others can have their lives improved marginally, that person's interests are given much less weight than the interests of the others. This occurs when people are called upon to accept equal treatment which will result in their being significantly disadvantaged vis-a-vis others. To treat people as equals the state must "impose no sacrifice or constraint on any citizen in virtue of an argument that the citizen could not accept without abandoning his sense of equal worth"⁵³. The dying son would have to do this in order to accept that the uncomfortable son should have an equal

52 Dworkin, TRS, p.227.

53 Dworkin, MP, p.205.



claim to the use of the drug. He would have to agree that his personal circumstances have no bearing in the determination of who should be allowed to use the remaining dose. For Dworkin, then, any plausible form of liberalism must be based on equality; the type of equality it must be based on is treatment as an equal.

In developing his Equality Of Resources theory, Dworkin is interested in arriving at a distribution of resources which will result in all the parties being treated as equals rather than simply receiving equal treatment. This is an important contrast to Rawls' theory which can only allow for equal treatment since the personal situations of the parties are categorically ruled out by the veil of ignorance.

2.3: Classes And Individuals

According to Dworkin, a crucial difference between Rawls' theory of justice and his is that Rawls formulates his theory of justice in terms of classes while Dworkin formulates his theory of justice in terms of individuals. Speaking of justice in terms of individuals allows for the introduction of personal characteristics which allows for the notion of treatment as an equal rather than simply the notion of equal treatment. Considering the difficulties of selecting those in the worst-off position, Rawls says: "one takes the position of certain representative individuals and considers how the social system looks to them"⁵⁴. At this

54 Rawls, p.95.

point, the question of how many representative individuals are necessary to make an assessment arises. Rawls claims that:

this is not crucial because the difference principle selects one representative for a special role. The serious difficulty is how to define the least fortunate group.... The expectation of the lowest representative man is defined as the average taken over this whole class.⁵⁵

In this approach, justice is a matter which applies to classes rather than to individuals. The just society will treat the worst-off class in an appropriate manner. As Dworkin points out, Rawls:

assumes that the difference principle ties justice to a class, not as a matter of second-best practical accommodation to some deeper version of equality which is in principle more individualized, but because the choice in the Original Position, which what justice even at bottom is, would for practical reasons be framed in class terms from the start.⁵⁶

In Rawls' theory, the representative person only represents the other members of the class in one respect; the amount of primary goods possessed. The worst-off class is defined as those possessing the least amount of primary goods. Rawls describes his position on this point more clearly in his article 'Social Unity And Primary Goods'. Here he tells us that:

The least advantaged are defined as those who have

55 Rawls, p.98.

56 Ronald Dworkin, What Is Equality? Part 2: Equality Of Resources Philosophy And Public Affairs, Fall 1981. p.341.

the lowest index of primary goods ... Individuals actually born into this group have some likelihood of improving their situation and of belonging to the more favored; but whatever this likelihood is, it is irrelevant, since the least advantaged are by definition, those who are born into and remain in that group throughout their life.⁵⁷

The bifurcation of society into two distinct groups is clear in this passage. Individual differences amongst those in the worst-off class or in the better-off class are categorically ruled out because all questions of distributive justice are decided in terms of a single criterion; the amount of primary goods possessed by the worst-off. When intercomparisons are made on the basis of a single criterion, this results in the bifurcation of society into two groups: those who satisfy the criterion and those who don't. By introducing additional criteria into his assessment of distributive justice, Dworkin allows for more individualized comparisons. Different people may fail to satisfy one or more of the criteria and thus be eligible for compensation for a number of different reasons. The introduction of these additional criteria allows for a more fine-grained analysis of distributive justice. As Dworkin points out:

The difference principle is tuned to only one of the dimensions of equality that equality of resources recognizes. The former supposes that equality in primary goods, without regard to differences in ambition, taste, and occupation, or to differences in consumption, let alone differences in physical condition or handicap, is

57 Rawls, SUPG, p.163.



basic to true equality.⁵⁸

When this class-based notion of equality is applied to individual scenarios its inadequacies become obvious. It can only advocate equal treatment when our intuitions call for treatment as an equal. Our intuitions call for additional distributive criteria besides the amount of primary goods possessed.

Consider the second major objection to Rawls' theory. The way that Rawls' theory treats those who are handicapped is problematic because it only offers them equal treatment. If equal treatment were an acceptable notion of equality, such cases would not be problematic. The fact that they are problematic shows that the notion of equality as equal treatment that Rawls is working with is not an acceptable notion of equality. The manner in which Rawls sets out his theory makes it difficult to notice this problem, however. The contractors in the original position are described in such an abstract manner that providing them with equal treatment will result in their being treated as equals. Within the context of his theory, the notion of equality that Rawls is working with does not present any obvious problems. Problems only arise when the distributional scheme which his theory calls for is applied to real life cases where there are significant personal differences in the form of handicaps and disabilities. In these cases, the

58 Dworkin, ER, p.343.

difference between equal treatment and treatment as an equal becomes obvious. The notion of equality that Rawls is working with can be seen to be inadequate in a way which it cannot when his theory is only considered in the abstract terms in which he lays it out. Bringing this problem to light allows for a powerful external criticism to be made of Rawls' theory of justice. By refusing to allow the personal differences of the contractors to be taken into account in determining what constitutes a just distribution, Rawls has limited himself to speaking about fairness only in terms of equal treatment. The notion of treatment as an equal only becomes distinguishable from the notion of equal treatment when such differences are taken into account. Treatment as an equal is a richer notion than equal treatment. It specifies when equal treatment is appropriate and when it is not. It advocates equal treatment *ceteris paribus* but calls for the abandonment of equal treatment under extenuating circumstances. Cutting off the possibility of utilizing this notion of equality constitutes a significant flaw in Rawls' theory. It will always be open to embarrassing counterexamples when it is applied to practical situations where there is an appreciable difference between equal treatment and treatment as an equal. Dworkin's theory is not open to such counterexamples because its goal is to arrive at the distribution of resources which is consonant with the ideal of equality as treatment as an equal.

2.4: Dworkin's Initial Auction

Having described the type of equality that Dworkin attempts to embody in his theory of distributive justice, we can go on to examine how Dworkin's theory is able to deal with the problems found in Rawls' theory by maintaining the ideal of equality as treatment as an equal. The first problem with Rawls' theory is that it is unable to provide a description of an initial resource allocation which would treat all of the contractors as equals. Dworkin is able to do this by allowing the contractors to be aware of their personal preferences in the initial contracting situation. It is significant to notice, however, that Dworkin gives something up by allowing his contractors to be aware of their personal preferences. The veil of ignorance played two important roles in Rawls' theory. First, it ensured that the contractors would not violate the liberal tenet that the state should not promote any particular version of the good life. Since none of the parties in the original position was aware of her own conception of the good life, no particular version of the good life would be favored. Secondly, the veil of ignorance ensured that none of the parties would adduce principles which favored them personally. Since Dworkin's theory does not have the participants ignorant of their preferences, he must ensure that the economic distribution that they choose will still be fair and will not favour any particular conception of the good life.

Dworkin accomplishes these two tasks by imagining a situation where

a number of shipwreck survivors are washed up on a desert island which has abundant resources and no native population, and any likely rescue is many years away.⁵⁹

The survivors are faced with the task of deciding how to distribute the resources on the island in an equitable manner. As an initial strategy, Dworkin proposes that any acceptable distribution must pass the 'envy test'. According to the envy test:

No division of resources is an equal division if, once the division is complete, any immigrant would prefer someone else's resources to his own bundle.⁶⁰

Though this strategy seems initially plausible, it will not guarantee a satisfactory distribution. The reason for this is that such a strategy only entails equal treatment rather than treatment as an equal. It does not allow for the preferences of each of the individual recipients to be taken into account. If an elected official divided the bundles of resources in such a way that no one would envy anyone else's bundle over their own, individuals still might not be satisfied with the way the official divided the bundles and would have preferred a different bundle which would have been of equal value to any of the available bundles. They would envy the fact that others were more satisfied with

59 Dworkin, ER, p.285.

60 Dworkin, ER, p.285.

their bundles though they would not envy other's bundles over their own. It is unlikely that an arbitrator could divide the total resources in such a way that everyone would be satisfied with her choice of division. But there is a way that the divider could take account of personal preferences and thus treat everyone as an equal in her choice of division. "The divider needs some form of auction or other market procedure in order to respond to these problems"⁶¹. By allowing each of the individuals to have an equal amount of purchasing power and auctioning off all of the available goods, a distribution would result which both passed the envy test and resulted in a division of goods which everyone would be satisfied with. Each person had the opportunity to bid for those goods which they preferred.

The actual set of bundles has the merit that each person played, through his purchases against an initially equal stock of counters, an equal role in determining the set of bundles actually chosen.⁶²

The auction situation which Dworkin describes allows the personal preferences of the contractors to play a part in determining what constitutes the most just distribution of goods and also achieves the two aims which Rawls achieves through his veil of ignorance. First, the bidders do not violate the liberal tenet that the state should not promote any particular version of the good life in its program of

61 Dworkin, ER, p.286.

62 Dworkin, ER, 287.

economic distribution. Each of them is allowed to bid for that set of goods which he feels would be most conducive to the achievement of his personal preferences. Since each of the parties is only able to determine the character of his own bundle, an individual expressing her own preferences does not hamper the ability of others to choose their own preferences. Awareness of one's own preferences only presents a problem when the group is attempting to jointly arrive at a generic principle of distribution which will apply to each person. By abandoning the goal of determining a just generic principle of distribution the problem of having the personal preferences of the contractors play a role in determining the character of a just distribution will not result in any particular version of the good life being imposed on anyone. Each is still free to choose the set of goods which she believes best suits her own version of the good life. Secondly, the possibility that the contractors may attempt to tailor the principles of distribution to suit their own preferences is also dealt with. This possibility, again, only becomes a problem when the contractors are engaged in a joint project of determining a generic set of distributional criteria. Since no one has any input in determining the character of the sets of goods which will go to others, the fact that each is attempting to satisfy his own preferences does not present a problem because his input only affects the nature of his own

set. Allowing each of the parties to pursue her own interests in this constrained way will not result in any detriment to any of the other parties. The fact that each of the parties has an equal amount of purchasing power assures that no one will be able to further his own interests more than anyone else. In this manner, Dworkin is able to allow the contractors to be aware of their personal preferences and also satisfy the two aims of Rawls' veil of ignorance.

This is an important advance over Rawls' theory because the ability to speak of the personal preferences of those in the initial contracting position allows Dworkin to describe a scheme of distribution which treats each of the parties as an equal. The allocation of goods that each receives has been determined by his own choices in the sense that the actual set one ends up with is determined by the choices he has made. It is necessary for him to voluntarily bid the highest price in order to possess any particular good. If another person has expressed her interest in possessing a particular good by raising the price of that good, it is his prerogative to pay a higher price for that good or else forgo the opportunity to possess that good because he has decided that it is not worth the higher price to him. Each individual's personal preferences will determine what a particular good is worth to him and these will determine whether or not he is willing to purchase that good given the value that others place upon it given their personal

preferences and the general availability of that good. Describing the ideal distributional scheme in terms of individual preference allotments allows Dworkin to highlight an additional consideration which cannot be brought to light when the ideal distributional scheme consists of an abstract generic prescription. The abstract generic prescription does not allow us to assess the relative values corresponding to the fulfillment of particular preferences while the individual preference allotment scheme does. As Dworkin points out:

The auction proposes what the envy test in fact assumes, that the true measure of the social resources devoted to the life of one person is fixed by asking how important, in fact, that resource is for others. It insists that the cost, measured in that way, figure in each person's sense of what is rightly his and in each person's judgement of what life he should lead, given that command of justice.⁶³

We live in a world of scarce goods. The only just way of deciding what amount of a scarce good a particular person is entitled to, if all have an equal claim to the social goods, is by considering the value that others place on that good. When a person appropriates a certain amount of a desired good, she does so at the expense of others who would like to appropriate more of that good but must settle for less in order that she can appropriate her share. In Dworkin's Equality of Resources distributional scheme

63 Dworkin, ER, p.289.

people decide what sort of lives to pursue against a background of information about the actual cost their choices impose on other people and hence the total stock of resources that may fairly be used by them.⁶⁴

The allotment of goods that a person is entitled to cannot be determined in an entirely a priori manner. The context that a person is in plays an important part in determining what will constitute a just allotment of goods for him given his personal preferences. The two external elements that will alter the character of a person's just allotment are the actual preferences of other people who have the same claim to an equal share of the available goods and the nature of the actual set of available goods. If other people have to curtail their preference satisfaction in order that someone else can have his preferences satisfied fully, these people are not being treated as equals. A just distributional scheme will treat people as equals by giving each a share that will frustrate the preferences of others to an equal degree. Treatment as an equal can be measured in terms of how much the satisfaction of our preferences cost others.

In this way, Dworkin is able to describe a means of allocating the available social goods which treats each of the contractors as an equal that does not violate any of the liberal tenets. People are free to tailor their own bundles of goods to suit their own preferences rather than simply be

64 Dworkin, ER, p.288.

satisfied with the set chosen by some rational representative man. No one can complain that the allocations chosen happen to reflect the preferences of others more than his own. No one can complain that she hasn't been treated as an equal in the selection of individual resource allocations. No one can complain that someone else has a preferable bundle. Dworkin's auction system of resource allocation is thus able to deal with the first problem with Rawls' theory. It is able to treat people as equals in the determination of individual resource allotments rather than simply giving them equal treatment.

2.5: Objections To Dworkin's Auction Scenario

One possible objection to Dworkin's auction scenario might be that others could drive up the prices of certain goods by engaging in bidding wars so that the price finally paid by the person who wanted the good would be unfairly high. The other bidders involved did not really want the good in question. They simply wanted to see how high they could drive up the price. This problem seems unlikely to occur in the auction scenario that Dworkin describes, however. In this situation, all of the bidders share an equal amount of bidding power so that attempting to outbid one of the parties could result in a significant loss for the person attempting to drive up the price. If the person he is bidding against decides to not continue bidding, the person attempting to drive up the price will end up with a

good he does not really want and will lose a portion of his buying power that could have been used to bid for things he did really want. Such bidding wars would only be a problem where there is a disparity in the amount of bidding power available to the various participants in the auction. In that situation, those with greater bidding power could drive up the prices for those with less bidding power because getting stuck with a good that one did not really want would not represent a significant personal loss to one with greater bidding power. In Dworkin's auction scenario, those who attempted to drive up prices by bidding for things they didn't really want would incur the risk of ending up with such goods since it would be impossible to predict when the other parties would stop bidding. Each time this occurred the gambler would end up with less bidding power vis-a-vis the others but would not increase his actual stock of desired goods. If his rationality did not tell him to stop making such bids, his influence in the auction would quickly be nullified because his bidding power would be decreasing much more rapidly than that of others.

The problem of persons attempting to drive up prices is not limited to the individual case, however. The possibility also exists for groups of people to make corporate bids which will drive up the prices for individual bidders. Since the loss incurred is distributed over several parties, the loss experienced by each of the members of the bidding group

would be small enough to present a danger to the individual they are bidding against. Alexander and Schwarzschild describe such a possibility:

Suppose what A,B, and C value most is hurting D. They know that D craves coconuts, which they themselves dislike. D is willing to bid 98 of his 100 clamshells on coconuts. A,B, and C, however, pool their bids of 33 clamshells each for the coconuts, and their 99-clamshell bid is sufficient to deprive D of what he fervently desires. If A,B, and C can so deprive D of the coconuts, has D been treated equally in the division of resources merely because he began with the same number of clamshells?⁶⁵

Dworkin is able to handle such a problem in a manner which is not ad hoc since he has argued in his earlier writings that such a scenario would be unjust. He argues that political decisions ought to be based on personal preferences and not on external preferences. As he points out:

People's overall preference for one policy rather than another may be seen to include, on further analysis, both preferences that are personal, because they state a preference for the assignment of one set of goods or opportunities to him and preferences that are external, because they state a preference for one assignment of goods or opportunities to others.⁶⁶

The inclusion of external preferences in a theory of distribution is anti-liberal because it allows people to impose their preferences of how others should be living upon these others. In order to improve his auction theory,

65 Alexander and Schwarzschild, pp. 92,93.

66 Dworkin, TRS, p.275.

Dworkin would have to modify it so that bidders are only allowed to express their personal preferences. This could be facilitated by structuring the bidding so that bids are made anonymously. The rest of the bidders would be unaware of who made a particular bid. They would only be aware of how high the bid had been raised. A further constraint would be that bids must be tendered on an individual basis. The introduction of these two modifications would ensure that each individual's choice of goods is only hampered to the degree that it conflicts with the personal preferences of the other individuals participating in the auction. Each individual is being treated as an equal in the auction with his personal choices being hampered only to the degree it is necessary in order to ensure that others are also being treated as equals.

A further objection might be directed towards his use of the market as a means for determining the value of goods. It could be claimed that a market situation influences the desires of individuals in such a way that they are not choosing those things which they really desire. Rather, they are choosing those things which they have been conditioned to desire. But this would be to misunderstand Dworkin's use of the market mechanism. He is not advocating a free market beyond using it as a means to establish the relative value of goods. Using the market as a measuring mechanism does not entail slipping in capitalist assumptions about the merits

of the market system. Even Kai Nielsen admits that: "We need a market system to efficiently allocate consumer durables, but that is all we need a market for"⁶⁷. Though he may, it is not necessary for Dworkin to assign any function to the market beyond the minimal one assented to by Nielsen. To be sure, the auction would have to be free of misleading or enticing advertising which could cause people to make bids which they might later regret. As long as these conditions are satisfied, Dworkin's use of the market as a measuring device is unobjectionable.

2.6: Concluding Remarks

This chapter has described the distinction made by Dworkin between equal treatment and treatment as an equal. The difference between Dworkin's theory and Rawls' theory on each of the four points is that Dworkin's theory calls for treatment as an equal while Rawls' theory only calls for equal treatment. Dworkin's auction scenario has been described in order to show how his theory is able to deal with the first problem in Rawls' theory. By allowing for individual variation of choice, it treats people as equals in the allocation of initial resource allotments. A number of shortcomings with Dworkin's description of the auction have been pointed out and emendations to his initial description have been recommended.

67 Kai Nielsen, Equality And Liberty (Rowman and Allenhead: Totowa, New Jersey, 1985) p.296.

Chapter 3: The Second Problem

3.1: Introduction

Having discussed the first problem with Rawls' theory of distributive justice, we can go on to consider the remaining three problems. This chapter will concentrate on the second problem, though it will contain some discussion of how Dworkin deals with the third problem since he deals with these problems in a parallel manner. The related third problem as well as the fourth problem will be taken up in the next chapter. The second problem is to provide for those with handicaps in a way that will treat them as equals rather than simply giving them equal treatment. The third problem is how to deal with situations where someone has acquired above average wealth and it seems unjust to take this away from him in order to maintain equality. Dworkin deals with these problems by extending the notion of what constitutes an equal resource allotment. The second problem is dealt with by considering bodily capacities as part of one's resource allotment. The third problem is dealt with by considering resource allotments over time rather than simply at distinct points in time. As Dworkin points out in beginning to discuss the justice of allowing resource allotments to vary over time:

We have already decided that people should pay the price of the life they have decided to lead,

measured in what others give up in order that they can do so. That was the point of the auction as a device to establish initial equality of resources.⁶⁸

A key term in this last passage is the word 'decided'. Others are not obliged to provide us with assistance simply because we have decided to live the kind of life which places more demand on the aggregate resources than the choices they have made. But this does not rule out the possibility of our having a claim to additional resources if we have not decided to place ourselves in a situation where more resources are required to satisfy our preferences than are required by other people. In the first instance, one chose to put himself in a situation where additional resources are required to satisfy his preferences; in the second instance, one did not choose to put herself in such a situation. If a person has decided to put himself in a situation where he comes to envy the situations of others, treatment as an equal does not require us to supplement the treatment he has already received. But if a person has not decided to put herself into a situation where she comes to envy the situations of others, treatment as an equal does require us to supplement the treatment she has already received. The element of personal responsibility provides the criterion for deciding when treatment as an equal requires supplementation of resources and when it does not.

68 Dworkin, ER, p.294.

Dworkin thus provides two means for claiming that although the present resource holdings of two people are unequal their total resource allocations are still equal. He also provides a responsibility criterion which will determine when treatment as an equal calls for a deviation from equal treatment.

3.2: Brute Luck And Option Luck

In order to articulate the difference between these two types of situations, Dworkin makes a distinction between two types of luck. He calls these 'option luck' and 'brute luck'.

Option luck is a matter of how deliberate and calculated gambles turn out - whether someone gains or loses through accepting an isolated risk he or she could have anticipated and might have declined. Brute luck is a matter of how risks fall out that are not in that sense deliberate gambles.⁶⁹

Inequalities which arise after the initial auction are justified if they arose as a result of option luck but are not justified if they arose as a result of brute luck. These two terms generally apply where the disparity in future resources is a result of someone experiencing some kind of loss. The issue is whether or not it is just for the state to take measures which will result in the increase of that person's allotment. Whether or not the person is responsible for incurring the loss is the crucial factor in deciding whether or not they should be compensated for their loss.

69 Dworkin, ER, p.293.

The converse of this situation occurs when a disparity of resources is the result of someone experiencing some kind of gain. The issue here is whether or not it is just for the state to take measures which will result in confiscation of the increase of that person's resources. Again, Dworkin makes two distinctions concerning the cause of the disparity in resources. The gain may be due to ambition or endowment. If it is due to ambition, the gain came as a result of the person choosing to act in a certain way when she could have acted otherwise. If it is due to endowment, the cause of the gain is not a result of any deliberate choice made on the part of the agent. Concerning these two criteria, Dworkin maintains that:

On the one hand we must, on pain of violating equality, allow the distribution of resources at any particular moment to be (as we might say) ambition-sensitive. ... on the other hand, we must not allow the distribution of resources at any moment to be endowment-sensitive.⁷⁰

In both the loss and gain situations, it is the reason for the disparity which will determine whether or not it is just. Disparities which are a result of the personal choices of the agent are just and do not call for rectification by the state. Disparities which are not a result of the personal choices of the agent call for rectification by the state. In order to supplement his theory beyond the stage of the initial auction, Dworkin needs to devise some means for

70 Dworkin, ER, p.311.

redressing disparities which are not a result of personal choice while allowing disparities which are a result of personal choice.

3.3: Insurance And Abstractness

He deals with the parallel problems of disparity due to loss and disparity due to gain in a similar manner. The initial auction is supplemented with the opportunity to bid for certain types of insurance as well as for material goods. In bidding for this insurance, the contractors are not aware of their actual handicaps or of the value society places on their particular talents. In this way a partial veil of ignorance is introduced. But this partial veil of ignorance does not vitiate his initial claim that a just distribution must reflect individual preferences since individuals will not prefer to have handicaps or abilities which society does not value.

A possible objection to Dworkin at this point would be that he is introducing the same sort of abstractness in his description of the initial contractors as Rawls does. If this abstractness constitutes a shortcoming in Rawls' theory, it is necessary to explain why the abstractness that Dworkin introduces does not also constitute a shortcoming for his theory. The explanation of this is that the framework of Dworkin's theory is importantly different from the framework of Rawls' theory. Abstractness of the initial contractors does not present a problem in the context of

Dworkin's theory, but it does in the context of Rawls' theory.

A crucial difference between Dworkin's theory of social justice and Rawls' theory of social justice centers on the nature of the group of people whose condition is relevant to determining whether or not a distribution is just. In Dworkin's theory, the conditions of all people are relevant to determining whether or not a particular distribution is just. All parties must be treated as equals in order for a distribution to be just. In Rawls' theory, only the conditions of a select group of people are relevant. These are the people in the worst-off position. Being a member of the group in the worst-off position is determined by the amount of primary goods possessed. As Rawls notes:

On this conception of social justice, then, expectations are defined as the index of primary goods that a representative man can reasonably look forward to. ... It is worth noting that this interpretation of expectations represents, in effect, an agreement to compare mens' situations solely by reference to things which it is assumed they all prefer more of.⁷¹

As long as those in the worst-off position are receiving the maximum amount of primary goods, the distribution is just. The abstractness of the participants in the original position is a problem for Rawls because it only calls for his morally relevant group of people to receive equal treatment. The distributive scheme advocated by the abstract

71 Rawls, p.95.

individuals in the original position becomes unjust when applied to real individuals because it falls short of treatment as an equal when applied to such individuals. The distributive scheme advocated by Dworkin's somewhat abstract individuals does not become unjust when applied to real cases because the abstractness is used as a device to determine what treatment as an equal calls for in real cases. The principles of redistribution chosen by his abstract contractors are applied to all people. The problem is not the abstractness of the contractors per se. The problem is when the abstractness produces principles of distributive justice which only call for equal treatment instead of treatment as an equal. This occurs in Rawls' theory but not in Dworkin's.

It is crucial to notice that Rawls' maximin theory of distributive justice makes use of an external standard in order to measure the position of individuals. In assessing the justice of a distribution, no information about personal circumstances is necessary beyond information concerning the amount of primary goods possessed. In the abstract, this is plausible, but when we are assessing the justice of an allotment received by a handicapped person in comparison to that of a healthy person, it seems implausible to suppose that the amount of external goods possessed by each is the only relevant factor for determining whether or not the distribution is just. The abstractness of the contractors in

the original position is a problem for Rawls because it masks this difficulty.

The abstractness of Dworkin's contractors does not present this same difficulty. The principles of redress which are formulated by his abstract contractors are designed to provide individuals with greater or lesser allotments according to the particular circumstances of each. Dworkin's theory uses abstract contractors to provide principles of distributive justice which are meant to take account of individual differences in real cases. Rawls' theory uses abstract contractors to provide principles of justice which are not meant to take account of individual differences in real cases. The framework of Dworkin's theory allows him to consider the initial contractors in an abstract way without this abstractness presenting a problem for his theory. His theory utilizes a combination of abstractness and concreteness in order to arrive at a set of principles which will specify a just distributive scheme. The contractors are aware of their personal preferences but are only allowed to use this information to determine the character of their own particular allotments. They are ignorant of their handicaps and the worth of their particular endowments in order that they can specify generic principles of redress which are fair and can be applied to individual cases. Dworkin's theory allows for the recognition of individual preferences in those areas where

individual preferences are likely to differ. At the same time, it calls for generic principles of redress in those areas where individual preferences are not going to differ. Individuals are going to differ in what constitutes the most desirable set of goods for them. Individuals are not going to differ in their desire not to be handicapped or in their desire to have their particular talents valued by the society they are in. Dworkin's use of abstractness is legitimate because it widens the scope of moral assessment available to his theory. It allows for the inclusion of additional factors besides the amount of goods presently possessed to figure in the moral assessment of a particular distribution. The wider array of distributive principles can then be applied to all people. Rawls' use of abstractness is illegitimate because it narrows the scope of moral assessment available to his theory. It does not allow for any factors besides the amount of primary goods presently possessed to figure in the moral assessment of a particular distribution. Having shown that describing his initial contractors in a somewhat abstract manner does not constitute a problem for Dworkin's theory, we can go on to examine the use he makes of such abstractness in the formulation of insurance plans.

3.4: Insurance Against Handicaps

Dworkin describes the insurance plan which deals with handicaps as follows. He claims that:

the idea of a market in insurance provides a counterfactual guide through which equality of resources might face the problem of handicaps in the real world.⁷²

If everyone in the initial auction faced equal odds of incurring handicaps afterwards, we could estimate the amount of insurance that the average individual would purchase against this possibility. The amount of this insurance premium could then be levied on the population through some compulsory process such as taxation and distributed to those who turn out to have handicaps.

Those who develop handicaps will then have more resources at their command than others, but the extent of their extra resources will be fixed by the market decisions that people will supposedly have made if circumstances had been more equal than they are.⁷³

In this way, the amount of compensation would be determined by the importance the population places on having a handicap, which is determined by the amount of insurance they would be willing to purchase against such a contingency.

The hypothetical insurance market provides a test for determining the extent to which handicaps should be compensated but does not provide a clear rationale for why they should be compensated for. The rationale for why they should be provided for is given with Dworkin's extended notion of resources where the possession of a handicap by a

72 Dworkin, ER, p.297..

73 Dworkin, ER, p.298.

person results in her possessing a lower total amount of resources. As Dworkin claims:

People's powers are indeed resources, because they are used, together with material resources, in making something valuable out of one's life. Physical powers are resources for that purpose in a way that aspects of one's personality, like one's conception of what is valuable in life are not. ⁷⁴

Being able to conduct your life with a minimal amount of physical and mental capacity does not presuppose any particular conception of the good life. Any plausible version of the good life would include at least these minimal criteria.

Someone who is born with a serious handicap faces his life with what we concede to be fewer resources, just on that account, than others do. This justifies compensation, under a scheme devoted to equality of resources. ⁷⁵

With his extended notion of resource allotments which includes bodily capacities, Dworkin is able to provide a justification for allowing those with handicaps to have additional resources. With his hypothetical insurance market, he is able to provide a litmus for determining the degree of compensation which should be extended according to the value others place on being protected from such contingencies.

In this way, Dworkin's theory is able to accommodate the second criticism of Rawls' theory. He provides a basis

74 Dworkin, ER, p.300.

75 Dworkin, ER, p.302.

for why the handicapped should be compensated for as well as a standard for determining the degree to which they should be compensated. If the handicapped were able to determine the rate at which they should be compensated this might prove to be so high that fulfilling it would be unfair to the unhandicapped. Conversely, if the unhandicapped were able to determine the rate, it might prove to be so low that it would be unfair to the handicapped. The hypothetical insurance market allows the just rate of compensation to be determined by how much freedom from handicaps is valued by the community. The additional resources allocated to handicapped individuals reflect the fact that they are being treated as equals by receiving more than equal treatment in view of the fact that they are handicapped.⁷⁶

76 It should be noted that certain handicaps will be much more detrimental to some people than to others. For instance, the loss of a finger would constitute a much greater loss for a concert pianist than it would for a construction worker. A slight decrease in the ability to concentrate would mean little to the average person but would be devastating to a theoretical physicist. It does not seem fair that the concert pianist or the physicist should only receive the same compensation for their loss as the average person. Dworkin's theory can accommodate such an objection by classifying such losses as losses of talent. In a sense, they still have their talents after they are handicapped, but in an important sense they do not. They are no longer able to employ that talent to the degree that they once could. The point of including talents in his theory of distributive justice is that they are directly related to earning ability. When the concert pianist loses a finger or the physicist her ability to concentrate, the loss can be characterized as a loss of earning ability. Neither is able to pursue the occupation they once did because of the handicap. This is why the loss is especially detrimental for them. A higher rate of compensation would be due as a result of a loss of talent. The manner in which Dworkin's theory

It should be noted, however, that Dworkin's theory only calls for compensation for those losses which are a result of brute luck. Losses which are a result of option luck are not eligible for compensation. This is in accord with the intuition that society should not have to compensate people for losses which come about as a result of their own free choice. In such situations "we can say that the possibility of loss was part of the life they chose - that it was the fair price of the possibility of gain"⁷⁷. It is also in accord with the liberal tenet that people should be free to live the way that they choose as long as such a choice does not infringe on the opportunities of others to do the same. If society was obliged to compensate for losses due to option luck, then it would have the right to prohibit those actions which might lead to option luck losses. Such a policy would constrain the choice of lifestyles available. It would lead to paternalistic policies on the part of the state. It would discriminate against those who would have ended up gaining by taking risks they were willing to take. Distinguishing between brute luck and option luck provides Dworkin with a basis for compensating those who acquire handicaps or experience other tragedies while allowing people to take risks which may result in losses if they so

compensates for losses in talent is discussed in the next chapter.

77 Dworkin, ER, p.294.

choose. This enables him to deal with the second criticism of Rawls' theory.

3.5: Rawls And Handicaps

At this point, it is worth considering whether or not the problem of handicaps can be dealt with within the confines of Rawls' theory. Brian Barry in The Liberal Theory Of Justice invites us to consider the possibility that Rawls can take account of the problem of handicaps by having the people in the original position incorporate a system of redressing handicaps into the principles of justice that they advocate. He clearly admits that Rawls' theory as stated in A Theory Of Justice does pose a problem for those with handicaps. He notes that:

For Rawls, a pound is a pound. Whether some people need more pounds to get to the same place as others is irrelevant. The result of this dogma is to prevent anyone from being able to claim that because of special handicaps or disadvantages he needs more income than others to achieve the same (or less) satisfaction. Thus we rule out special allowances for the blind or otherwise handicapped, or to the sick and infirm, or to pregnant women, designed to offset the special expenses associated with these conditions.⁷⁸

Recognizing this problem, Barry proposes to make an emendation to Rawls' theory which will deal with these situations. Such situations are taken into account by modifying the terms in which the principles of justice are defined. Barry tells us that:

78 Brian Barry, The Liberal Theory Of Justice (Oxford Univ. Press: Oxford, 1973) p.56.

I don't see any reason why the parties in Rawls' original position should choose to define their principles in terms of primary goods. ... Anyone in the original position would surely insist that any society at that economic level or a higher one should have a publically organized system for dealing with special needs.⁷⁹

According to Barry, by allowing other criteria besides amount of primary goods possessed to determine the character of a just distribution, Rawls' theory can accommodate the problem of handicaps.

But this simple solution will not do. Making this change in Rawls' theory seems plausible at first glance, but it hardly constitutes a minor modification. It undermines one of the features which Rawls takes to be a significant element of his theory as stated. He claims that theories like utilitarianism run into difficulties because they are faced with the problem of making interpersonal comparisons. Any theory which takes the personal circumstances of individuals into account will be faced with this problem. As Rawls claims:

As long as we can identify the least advantaged representative man, only ordinal judgements of well-being are required from then on. ... If positions can be ranked as better or worse, the lowest can be found. The further difficulties of cardinal measurement do not arise since no other interpersonal comparisons are necessary.⁸⁰

For Rawls, one of the attractive features of his theory is that it rules out complicated interpersonal comparisons in

79 Barry, pp. 56,57..

80 Rawls, TJ, p.91.

making determinations of distributive justice. The amount of primary goods possessed, which is an external, objective aspect of the individual case, is the only factor which needs to be compared. This makes the comparison of various situations much easier. According to Rawls:

The difference principle, then, asks less of our judgements of welfare. We never have to calculate a sum of advantages involving a cardinal measure.⁸¹

The elegance of Rawls' system is based on the fact that it only has one criterion for determining one's place in the distributive scheme: the amount of primary goods possessed. This allows for a simple ordinal ranking which is based on the amount of primary goods possessed. Those with the least amount of primary goods are at the bottom of the order. Determining whether or not a system is just is a simple and objective matter. A just system will raise the bottom of the order to the highest point. Allowing for interpersonal comparisons concerned with disadvantages and handicaps vitiates the simple system which Rawls is advocating. The value one's life loses in virtue of the fact that she has a handicap is now placed alongside the value of the goods she possesses. She will receive more goods in order to compensate for her handicap. But determining the amount of additional goods she is to receive involves just the sort of cardinal measurement that Rawls is determined to avoid. The

81 Rawls, p.92.

quality of her life must be compared in a cardinal manner with others not possessing such a handicap in order to determine the extent of compensation she is eligible for. Rawls could not accept the emendation proposed by Barry because it would call for the kind of interpersonal comparisons he is eager to avoid. It would call for him to abandon one of the aspects of his theory which he claims makes it more attractive than other theories of distributive justice. Having shown that Rawls' theory cannot deal with the problem of handicaps because its very structure disallows such considerations, we can go on to consider an internal criticism of Dworkin's treatment of the problem of undeserved disadvantages.

3.6: Handicaps And Expensive Tastes

Two recent articles are sympathetic to Dworkin's approach to dealing with the problem of handicaps but claim that the principles of his theory also call for another undeserved disadvantage to be compensated for. The disadvantage in question is the problem of having expensive tastes. G.A. Cohen argues that the underlying rationale behind Dworkin's argument for redressing physical handicaps calls for him to compensate for expensive tastes. Since having expensive tastes is not unlike having handicaps, expensive tastes should also be compensated for. This is discussed in his article 'On The Currency Of Egalitarian Justice'. The pertinent section is subtitled 'Relocating

Dworkin's Cut'. According to Cohen:

anyone who, like Dworkin, is strongly drawn to the insurance test should consider accepting the choice/luck cut and giving up the attempt to defend the different cut of preferences/resources.⁸²

According to Dworkin's preferences/resources cut, if one possesses preferences which are difficult to fulfil, it is not the obligation of society to subsidize this person for his expensive tastes. On the other hand, if one has a lack of resources because his capacities are diminished through handicaps or lack of talents society should subsidize him. In both situations it is more difficult for the person to fulfil his preferences, but only in the second is compensation called for. According to Cohen's choice/luck cut, the possibility is also opened for subsidizing expensive tastes. The claim is not that all expensive tastes should be compensated for but only expensive tastes of a certain sort. Cohen says that: "I distinguish among expensive tastes according to whether or not the bearer can reasonably be held responsible for them"⁸³. In order to make this point clear, we must distinguish between two types of expensive tastes. The first kind would be expensive tastes which were known to be expensive before they were developed. The second kind would be expensive tastes which became expensive after they were developed. It would not be at all

82 Cohen, p.931.

83 Cohen, p.923.

feasible to subsidize the first kind of expensive tastes. Anyone could claim that although she knew the taste was expensive, she couldn't resist fulfilling it. But the second kind of expensive tastes are open for subsidy according to the principles of Dworkin's theory in the opinions of both Cohen and the co-authors Alexander and Schwarzschild. The reason for this is that it is not the person's fault that the tastes she once had later became expensive. The agent in question would be responsible for having the expensive taste but would not be responsible for its becoming expensive. It would be brute bad luck that the taste became more expensive. Cohen claims that:

Insofar as we find Dworkin's cut plausible, it is because we are apt to suppose that it separates presence and absence of choice. Choice is in the background, doing a good deal of unacknowledged work.⁸⁴

Since the agent did not choose to have the taste become more expensive, Dworkin's principles call for her to be compensated for this undeserved misfortune. The insurance scheme could be extended to include insurance against moderate tastes becoming expensive. As Alexander and Schwarzschild claim concerning D, an individual whose tastes have become more expensive:

D and every other one of Dworkin's hypothetical immigrants would surely wish to insure against tastes becoming more expensive, just as they would wish to insure against a life-saving medicine's becoming expensive, or a talent's ceasing to be in

84 Cohen, pp.927,928.

demand.⁸⁵

This is not just a simple emendation to Dworkin's theory, however. Their criticism goes on to claim that once Dworkin makes this admission he will be forced to abandon his ideal of equality of resources and embrace some form of equality of welfare. The loss experienced by having a taste become more expensive is a welfare rather than a resource loss. But he has to make this admission since handicaps, lack of talents, and tastes which become expensive all represent undeserved curtailments of resource availability. As Alexander and Schwarzschild claim:

Insurance against expensive tastes thus follows from insurance against handicaps, despite Dworkin's denial. And insurance against handicaps is necessary, as Dworkin recognizes, if equality of resources is to be a plausible political ideal. Yet insurance against expensive tastes reduces equality of resources to equality of welfare.⁸⁶

Cohen states the problem as follows:

Egalitarians have good reason not to minister to deliberately cultivated expensive tastes, and equality of welfare must, therefore, be rejected. But we should not embrace equality of resources instead, since that doctrine wrongly refuses compensation for involuntary expensive tastes, and it does not refuse compensation for voluntary ones for the right reason.⁸⁷

Though these authors are not in agreement concerning which theory Dworkin should adopt, they both agree that Dworkin's

85 Alexander and Schwarzschild, p.100.

86 Alexander and Schwarzschild, pp.102,103.

87 Cohen, p.923.

theory as stated calls for subsidizing involuntary expensive tastes and thus the rejection of equality of resources as a distributive ideal. Arneson concurs. In a passage which specifically refers to these two articles, he makes the following comments:

I wish to note and endorse a conclusion reached by several of his critics: Dworkin's attempt to jettison welfare as the concern of distributive justice and replace it with resources is a failure.⁸⁸

This criticism of Dworkin's theory certainly needs to be attended to. If it cannot be dealt with, Dworkin must admit that his theory is internally inconsistent. Equality of resources will turn out to be an unacceptable distributive ideal. The principles which follow from it will show that considerations of welfare must also be included in an acceptable distributive ideal. But Dworkin can deal with this criticism if he can show that there is a relevant difference between an undeserved expensive taste and the undeserved disadvantages his theory is committed to compensating for. It seems that this can be done. The crucial difference between handicaps and unvalued talents, on the one hand, and undeserved expensive tastes, on the other hand, is that the former constitute a distinct lack of access to resources while the latter does not. If a particular item becomes more expensive, no one loses any

88 Richard J. Arneson, Liberalism, Distributive Subjectivism, And Equal Opportunity For Welfare Philosophy And Public Affairs, Spring 1990. p.193.

resources on that account. All that has happened is that the society has placed greater value upon a particular commodity so that it is now worth more in comparison to other commodities. With the price change, everyone is free to adjust their spending practices accordingly. Those who continue to consume the item which has become more expensive must find it worth the greater price to them. They have the prerogative to forgo the expensive taste if they decide that it would be better to spend their money on other less expensive things. Their command of resources is not lessened in comparison to anyone else the way it would be if a particular talent they had was no longer in demand or they acquired a handicap. In the case of an unwanted talent, one's earning ability would be lessened and his command of resources would be lessened. In the case of a handicap, the handicapped person lacks certain bodily resources which everyone else has and which everyone wants to have. Being handicapped or lacking talents which are valuable would be a problem for anyone regardless of the particular resources she desires. Conversely, the situation of undeserved expensive tastes is a problem for a person only because he has the particular preferences that he has. It is not his fault that the taste became more expensive but he is free to give up the expensive taste or keep it at its higher price whereas the handicapped person is not free to give up her handicaps. Nor is the possessor of unvaluable talents free

to make them valuable. Undeserved expensive tastes are a problem for the agent because she chooses to continue to let them be a problem. This relevant disanalogy allows Dworkin to claim that he does not have to advocate that undeserved expensive tastes be compensated for in order to remain consistent with his theory. Equality of resources is only committed to compensating those people who experience a direct loss in resources as a result of factors which are not their fault. Having a taste become expensive is certainly a problem but it is not the sort of problem equality of resources is committed to redress.

It should be noted that such a defense of Dworkin's theory is only compelling if it is indeed true that people are able to give up expensive consuming habits once they become expensive. It may be the case that certain consuming habits become so engrained in individuals that they are simply unable to give them up. If this is the case, then the preceding defense against subsidizing expensive tastes will not work for such cases. Another line of argument is open to Dworkin, however, which does not require the presupposition that people can give up expensive tastes voluntarily in order to show that one can consistently advocate subsidizing handicaps but not expensive tastes. This defense can be illustrated by considering an argument presented by Arneson.

Arneson attempts to argue for the subsidization of expensive tastes by characterizing handicaps as involuntary

expensive preferences. He describes the situation of a person named Jones with bad vision as follows:

In these circumstances, Jones has an involuntary expensive preference for normal vision and true equality requires that he be given extra resources to compensate for the extra expense of correcting his vision.⁸⁹

Assuming that this characterization is acceptable, he goes on to argue for the subsidization of any expensive tastes. He calls this position distributive subjectivism. He states that:

In a nutshell, the case for distributive subjectivism involves a generalization from this particular example involving physical handicap to all other expensive preferences that individuals are not plausibly regarded as bearing any personal responsibility for.⁹⁰

This generalization is unacceptable, however, because it rests on an implicit equivocation involving the notion of expensive tastes. If we agree to characterize handicaps as expensive tastes, then there are two distinct varieties of expensive tastes.

ET(1): Tastes which are only expensive to certain people because of their circumstances.

ET(2): Tastes which are expensive to anyone regardless of their circumstances.

Applying this distinction to his example, a preference for normal vision is not an expensive taste for most people. For

89 Arneson, p.187.

90 Arneson, p.187.

most people, normal vision is free. On the other hand, a preference for Dom Perignon is an expensive taste for everyone. A preference for Dom Perignon is expensive for everyone while a preference for normal eyesight is not. The rationale for subsidizing the poorly sighted is that their particular circumstances make the fulfillment of that preference more expensive for them than for others. The rationale for subsidizing ET(1) provides no basis for subsidizing ET(2). The issue here is not one of voluntariness. It is the fact that Jones is disadvantaged because he has to pay more to satisfy a particular preference than anyone else. He is faced with a lack of bodily resources. This is the disadvantage being subsidized. We are attempting to bring Jones up to the level where he can satisfy that preference at the same cost as everyone else. Such a disadvantage does not arise in ET(2) situations. For this reason, one can consistently advocate a policy of subsidizing handicaps but not expensive tastes.

Further, there are three important reasons why Dworkin would not want to include compensation for expensive tastes in his theory. The first is that by compensating for expensive tastes, the state would be promoting particular versions of the good life above others. Those life plans which included the expensive tastes would be receiving more government aid than those life plans which did not include the expensive tastes. Rather than remaining neutral on the

promotion of particular versions of the good life, the state would be promoting particular versions of the good life above others.

The second reason is that promoting such a policy would be inconsistent with the rationale behind the initial auction. In the initial auction, James has a number of preferences which, to his dismay, are also shared by many other people. Because of this, the prices of the particular resources James would have liked to have had turn out to be substantially more expensive than he initially anticipated. So, he must adjust his preferences and decide which resources he wants and which resources he is willing to do without given the current prices. It would not be acceptable for James to complain that it was not his fault that the resources he wanted turned out to be so much more expensive than he thought they would be. This would miss the whole point of the auction. Everyone could complain that their tastes were more expensive than they thought they would be and demand compensation. If it is permissible for people to demand compensation for prices rising after the auction, then it would also be permissible for them to complain at the auction about prices being higher than they anticipated. In both cases, tastes turn out to be more expensive through no fault of the owner.

The third reason is that there is an important temporal problem associated with compensating for undeserved

expensive tastes. Imagine a particular taste which becomes increasingly expensive over time. Jane begins to cultivate this taste at t_1 , when the price is \$100. Bob begins to cultivate the taste at t_2 , when the price is \$150. Diane begins to cultivate the taste at t_3 , when the price is \$200. At t_4 , the price has risen to \$250. The insurance plan for expensive tastes would call for each of them to receive a different rate of subsidy depending on the price at the time that the taste was originally cultivated. It seems odd to claim that a person has a right to a higher rate of compensation simply because she has cultivated a particular taste longer than others. Such a plan would severely hamper one's ability to change tastes as life progresses. If one changed his consuming habits, he would have to forgo the right to purchase a particular item at the price it was at when he first started consuming it and would have to start paying the current price for a different item while others would be paying lower prices depending on how long they had been consuming the item. Distributive justice does not seem to call for such a system. The implications of compensating for undeserved expensive tastes become even more counter-intuitive when we consider the converse situation: undeserved cheaper tastes. If a person deserves to be subsidized when a taste becomes more expensive, she also deserves to be penalized when a taste becomes less expensive. The first situation is an undeserved

disadvantage; the second situation is an undeserved advantage. In order to deal with this situation, an additional tax would have to be levied on items whose prices fall so that the consumers of such items would not gain an undeserved advantage. This time, imagine a particular taste becoming increasingly less expensive over time. Again, there are a number of individuals who begin to cultivate the taste at different points in time. Those people who began to consume the item at the earliest point would be obliged to pay the highest price for that item while others could obtain the item for increasingly lower prices depending on the time they began to cultivate the taste in question. This seems manifestly unjust. Yet, it follows from the policy of compensating for undeserved expensive tastes.

The above considerations show that Dworkin is correct in refusing to compensate for undeserved expensive tastes. They are importantly different from handicaps and unvalued talents because they are only a problem for those people whose choices have made them a problem. His theory does not necessitate such compensation and there are good reasons for rejecting such compensation. A program of compensating for expensive tastes leads to a number of counter-intuitive results. Since he is not forced to provide compensation for expensive tastes, and there are good reasons for not doing so, his theory does not have to bring in the welfare considerations which Cohen and Alexander and Schwarzschild

claim he must.

3.7: Concluding Remarks

This chapter has discussed the manner in which Dworkin's theory is able to deal with the second problem in Rawls' theory. By considering handicaps as resource deficiencies, Dworkin is able to provide a rationale for giving additional resources to those with handicaps. The initial auction is supplemented by an insurance market in order to determine an appropriate rate of compensation for such handicaps. We have also looked at the possibility of supplementing Rawls' theory by adding a proviso to deal with handicaps but have seen that such a strategy would not be consonant with the overall structure of his theory. Finally, we have looked at recent criticisms of Dworkin's theory which claim that a policy of compensating for handicaps also calls for compensating for undeserved expensive tastes. These criticisms have been found to be unconvincing.

Chapter 4: The Third And Fourth Problems

4.1: Introduction

Having described how Dworkin's theory is able to deal with the problem of undeserved disadvantages, we can go on to discuss the third and fourth criticisms of Rawls' theory. Both of these criticisms concern the problem of deserved advantages. I will start with the third problem.

4.2: Ambition

As mentioned earlier, the solution to the third problem is similar to Dworkin's solution to the second problem. He begins by arguing that disparities in wealth which are due to ambition are acceptable in his Equality of Resources theory. These disparities are made acceptable by applying the notion of equality to overall lives rather than simply assessing the size of resource bundles at distinct points in time. He extends the notion of equality so that it is an historical one rather than a non-historical one which only applies to distinct points in time and ignores the events which led up to these distinct points in time. The situation of a person named Adrian who is willing to work much harder than others and for this reason is able to accumulate a bundle of resources that others come to envy is considered. In order to assess whether or not it is just that Adrian has a preferable bundle of resources at a later time, it is not

enough to simply apply the envy test to the end result of his actions. The envy test must be extended. There is no injustice in Adrian possessing a larger bundle of resources "so long as no one envies the total package of work plus consumption that he chooses. So long as no one envies, that is, his life as a whole"⁹¹. This is consonant with Dworkin's earlier claim that a person has received an equal share when the cost to society of her receiving that share is equal to the cost to society for the shares of others. Concerning Adrian:

If he earns enough by working hard, or by working at work that no one else wants to do, to satisfy all his expensive tastes, then his choice for his own life costs the community no more than if his tastes were simple and his industry less.⁹²

Those with less have no basis to criticize Adrian because his greater present bundle of resources did not cost society any more than their smaller present bundles. No one had to bear any additional cost in order for Adrian to possess a larger bundle, so he owes reparations to no one.

If a person, by dint of superior effort or talent, uses his equal share to create more than another, he is entitled to profit thereby, because his gain is not made at the expense of someone who does less with his share.⁹³

Others could have chosen to live the kind of life that Adrian did with the result that they could have possessed a

91 Dworkin, ER, p.306.

92 Dworkin, ER, p.306.

93 Dworkin, ER, p.307.

larger bundle of resources at a later time as well. If they chose to live a more leisurely life instead, they have no basis to claim that Adrian's surplus should be distributed amongst them. The result of this would be that Adrian would envy their lives. He would have forgone the additional leisure they experienced only to end up with the same bundle of resources in the end. The envy test is now extended so that:

it requires that no one envy the bundle of occupation and resources at the disposal of anyone else over time, though someone may envy another's bundle at any particular time.⁹⁴

This allows people to be free to accumulate greater amounts of resources and to be immune from the claim that they are now obliged to give up some of their resources because they have reached an enviable position in terms of their present wealth. As Dworkin points out:

Our theory does not suppose that an equal division of resources is appropriate at one moment in someone's life but not at any other. It argues only that resources available to him at any moment must be a function of those available or consumed at other moments, so that the explanation of why someone has less money now may be that he has consumed expensive leisure earlier.⁹⁵

This is consonant with the liberal tenet that people should be free to live the kind of lives they choose as long as they don't impinge on the liberty of others in doing so. If someone chooses to subsist on a nominal amount of resources

94 Dworkin, ER, p.306.

95 Dworkin, ER, pp.310-311.

in order to spend a greater part of her life involved in leisure activities while someone else chooses to work hard in order to be able to accumulate a greater amount of resources, each is free to do so. In terms of their overall lives they have been treated as equals. Each of them could have chosen the lifestyle of the other if that was the sort of life they wanted. Taking account of individual differences in ambition allows Dworkin both to condone individual differences in present wealth and maintain that each member of society should be treated as an equal. Egalitarian justice does not require that each member of society possess a resource bundle of equal value at all times, according to Dworkin.

4.3: Endowment And Insurance

Having provided a basis for allowing differences in wealth due to differences in ambition, Dworkin goes on to point out that differences in ambition are not the only reason for present disparities in wealth. Disparities in wealth can also be attributed to people possessing certain qualities or talents which are part of their natural makeup. In these situations, endowment is the explanation for the disparities. Such cases do not pass the envy test because others would have wanted to pursue the careers of specially endowed people if they had the opportunity to do so. Faced with this problem Dworkin attempts

to develop a scheme of redistribution ... that will neutralize the effects of differential

talents, yet preserve the consequences of one person choosing an occupation, in response to his sense of what he wants to do with his life, that is more expensive for the community than the choice another makes.⁹⁶

The dividing line between these two, as in the case of handicaps, is whether or not the person is responsible for the fact that she is more or less valuable to the community over her life. Dworkin deals with the problem of endowments in a similar manner to the problem of handicaps. He imagines a hypothetical insurance market which will provide an index for how a scheme of taxation could redress the inequalities due to endowment differences. He claims that "though skills are different from handicaps, the difference can be understood as one of degree"⁹⁷. Each refer to innate differences which make individuals more or less able to pursue the kinds of lives they want to pursue.

Since the talents that one has in a large part determine the kind of life that he is going to consider valuable, Dworkin does not advocate that the contractors are ignorant of their talents in the initial auction situation. What he does advocate is that they will be ignorant of the relative value that society will place on the particular talents which each possess. Each contractor is ignorant of the advantages or disadvantages his endowments would give him in terms of his earning power. This assumption is not

96 Dworkin, ER, p.313.

97 Dworkin, ER, p.314.

unreasonable since talents have no intrinsic link to earning power. Rather, the earning power of a particular talent is determined by the desires of the community for the fruits of that talent and the community's technological ability to replicate or utilize that talent. Insurance could then be purchased against the possibility that the native talents one possesses are of little use to the community so that she would be at a disadvantage in terms of earning power because of her endowments.

Premiums will vary with the amount of coverage chosen, must be the same for everyone at any particular coverage level, and will be paid, not out of the policy holder's initial stock of resources but rather from future earnings after the auction at fixed periods.⁹⁸

At this point, one might object that everyone would simply purchase coverage at the highest level. But Dworkin tailors the insurance scheme so that this will not occur. Higher levels of coverage will be charged progressively higher premiums. If one buys the highest level coverage, the premium will be so high that the actual income after premium payment will not be appreciably higher than average. On top of this, there is the small chance that the person will have the talents necessary to earn at the highest level, in which case he will not even receive the payment of the premium.

Considerations of marginal utility would, if anything, condemn rather than support any immigrant's bet that he would not have the skills necessary to earn the highest income. For that bet

98 Dworkin, ER, p.317.

pits the almost certain prospect of a tiny and probably unnoticeable welfare gain against the tiny chance of an enormous welfare loss on financially disadvantageous terms.⁹⁹

Due to this possibility, the rational person would be inclined to buy insurance at the average level. At this level, the premium would be much lower and the chance of cashing in on it much higher. As in the case of handicap insurance, insurance for lack of talents provides a test which will enable us to determine what talents are worth to people as indicated by the amount of insurance the average person will purchase against the possibility of lacking them.

4.4: Dworkin's Tax Scheme

Dworkin then attempts to apply the results of the hypothetical insurance market to the design of a plausible tax scheme. The major problem with trying to apply this theoretical scheme practically is that it is very difficult, if not impossible, to determine what percentage of an above average earner's income is due to ambition and what percentage is due to endowment. Attempting to discern this in individual cases would prove costly and would infringe on the privacy of above average earners. In view of these practical difficulties, Dworkin proposes a compromise.

We might decide, for these and other reasons, that a scheme that tied redistribution to actual earnings rather than ability to earn, for example, was a better second-best approximation to the

99 Dworkin, ER, p.320.

ideal of mimicking the insurance market than any other scheme we could develop.¹⁰⁰

In doing this, Dworkin does not abandon his ideal that higher earnings due to endowment should not be allowed in an egalitarian society while higher earnings due to ambition should be. He simply admits that there are practical difficulties with applying this ideal and advocates an alternative scheme whose justification is that it is the closest feasible approximation to the ideal. In this second-best approximation, we would have "a premium fixed as an increasing percentage of the income the policy owner turns out to earn"¹⁰¹. It could be argued that in practical terms this would not be greatly unfair to those with a lot of ambition and only an average amount of endowment. Though their income would be above average, it would not be greatly above average so the graduated tax would not tax their additional income too greatly. They would still be able to enjoy the fruits of their greater ambition to a large extent. Those with incomes greatly above average would have their total incomes taxed at a much higher rate. Such people could hardly claim that their greater incomes are principally due to greater ambition. So the tax would reflect the fact that a great extent of their unusually large incomes can be attributed to endowment.

100 Dworkin, ER, p.326.

101 Dworkin, ER, p.324.

4.5: Problems With Dworkin's Tax Scheme

One major problem with Dworkin's progressive tax scheme based on income is that it completely disregards the distinction between above average incomes which are a result of greater ambition and those which are a result of greater endowment. The amount of tax which is levied is based solely on amount of income earned. His second-best compromise is generally unproblematic when it is applied to the highest incomes where it is not implausible to claim that such a large income is largely the result of greater endowment. But as we consider the above average incomes which are closer to average, the possibility that they are largely due to greater ambition becomes an increasingly important consideration. In such cases, it is easy to imagine two people earning the same income whose ambition-endowment ratios differ dramatically. Arlene is blessed with a great amount of natural intelligence and good looks which make it very easy for her to earn an income which places her in the sixtieth percentile income bracket. She does not find her job demanding and admits that she does not work nearly as hard as most people. George, on the other hand, has below average intelligence and very plain physical characteristics. He also earns an income in the sixtieth percentile bracket although this requires him to work long hours completing tasks which he finds very demanding. Clearly, George's above average income is largely due to

ambition while Arlene's above average income is largely due to endowment. Yet, Dworkin's second-best tax scheme calls for them both to be taxed at the same rate. Such an arrangement is patently unjust according to his ambition-endowment distinction. This type of ambition-endowment discrepancy will be common in above average incomes which are not greatly above average. In terms of numbers, the greatest amount of above average income earners will be those who earn incomes which are not extremely high. Dworkin's tax scheme does not allow him to accomplish the goal of allowing people to be rewarded for greater ambition but not for greater endowment in this vast range of cases.

A further problem with Dworkin's tax scheme is that it contradicts the distinction he wishes to hold between brute luck and option luck. He claims that if people experience gains or losses by voluntarily taking risks, society should not penalize the winners or subsidize the losers. In the case of those who experience losses by undertaking risky ventures "the possibility of loss was part of the life they chose - it was the fair price of the possibility of gain"¹⁰². Conversely, those who experience gains by undertaking risky ventures have already paid the price for such a gain because the risky venture could have resulted in a loss which would not be compensated for. People should be free to live the kind of lives they choose and bear the

102 Dworkin ER, p.294.

consequences of such life choices, according to Dworkin's theory. As he puts it:

If winners were made to share their winnings with losers, then no one would gamble, as individuals, and the kind of life preferred by both those who in the end win and those who lose would be unavailable.¹⁰³

Yet, this is precisely what happens when Dworkin's tax scheme is applied. Those who have above average incomes as a result of good option luck will be taxed according to the amount of their income while those who have below average incomes as a result of bad option luck will be subsidized according to the amount of their income. His tax system which is based solely on income realized cuts off the possibility of taking risks and being allowed to keep the results of their being successful. For these reasons, we can see that the tax scheme Dworkin proposes falls short of his goal of allowing disparities when they are deserved and not allowing disparities when they are not deserved. Though his tax scheme fails, Dworkin's approach to the third problem does give us a glimpse at the sort of distributive ideal egalitarians should be striving for. As Will Kymlicka notes, concerning Dworkin's claim that inequalities should be permitted when they are due to ambition but not when they are due to endowment:

There may be a more appropriate apparatus for implementing these ideas than the mixture of auctions, insurance schemes, and taxes that

103 Dworkin, ER, p.294.

Dworkin employs. But if we accept these fundamental premises, Dworkin has helped us clarify their consequences for distributive justice.¹⁰⁴

4.6: Dworkin's Theory And The Third Problem

Even with his second-best approximation, Dworkin has the means to deal with Nozick's Wilt Chamberlain example. Dworkin does not have an end-state theory of distributive justice but an historical theory which allows for disparities in resource bundles if they came about in an acceptable manner. Wilt Chamberlain's case would not be such an example. Such a great increase in wealth could hardly be attributed purely to ambition. As Dworkin points out:

Since our argument justified the conclusion that premiums in the hypothetical insurance market would lie at progressive rates, based on income realized, Chamberlain would be required to contribute more than anyone else both absolutely and as a percentage of his income.¹⁰⁵

The basis for taxing Chamberlain at such a high rate is that the salient reason for his high income is endowment rather than ambition. He does not merit this high income any more than handicapped people merit their disabilities. To give Chamberlain equal treatment would be to allow him to accumulate much more wealth than others though his ambition would not be noticeably higher than others. This would not treat others as equals. Dworkin's theory provides a basis for claiming that taxing Chamberlain's high earnings at a

104 Kymlicka, pp.50,51.

105 Dworkin, ER, p.337.

high rate is not unfair. The ambition-endowment distinction enables him to claim that Chamberlain has not merited his wealth and is thus liable for high taxation. The rationale for this is not that it is necessary in order to return to the desired end-state. It is that the disparity did not come about in an historically acceptable manner. In this way, Dworkin deals with the third problem with Rawls' theory. He constructs an historical rather than end-state theory of distributive justice which only allows for disparities in present wealth which are consistent with treating all parties as equals.

4.7: Dworkin's Theory And The Fourth Problem

The final problem that Dworkin is able to avoid is the situation called for by Rawls' difference principle where the better-off must forgo substantial losses in order that the worst-off can realize small gains. This is not a problem for Dworkin's theory because he does not define justice in terms of the worst-off class. His theory

aims to provide a description (or rather a set of devices) for aiming at equality of resources person by person, and the considerations of each person's history that affect what he should have, in the name of equality, do not include his membership in any economic or social class.¹⁰⁶

Considerations of redistribution must take account of how a particular redistribution would affect all of those involved; not only those on the receiving end of the

106 Dworkin, ER, p.340.

redistribution. Both losers and gainers must be treated as equals.

A government that allows a much greater loss to fall on one citizen, in order to avert a much smaller loss to a second, would not be treating the former as an equal, because, since equality in itself requires no further special attention to the second, that government must have more concern with his fate than it has for the fate of others.¹⁰⁷

Since Dworkin's theory considers the positions of all parties in order to determine what constitutes a just distribution, it would not call for the problematic redistribution that Rawls' theory calls for. In this way , the fourth problem with Rawls' theory is dealt with.

4.8: Rawls On The Fourth Problem

It should be noted that Rawls acknowledges that this fourth objection is a problem for his theory. As he points out:

It seems extraordinary that the justice of increasing the expectations of the better placed by a billion dollars, say, should turn on whether the prospects of the least favored increase or decrease by a penny.¹⁰⁸

His answer to this problem is that although it is theoretically possible, it is so unlikely to arise that we needn't be concerned with such a possibility. He claims that:

The possibilities which the objection envisages cannot arise in real cases; the feasible set is so

107 Dworkin, ER, p.342.

108 Rawls, p.157.

restricted that they are excluded.¹⁰⁹

In a sense, this is a reasonable response to the objection, but it is problematic given what Rawls has said earlier. One of the main purposes of his theory is to provide an alternative to utilitarianism which will not allow for the suffering of a few to be justified by the benefits this will bring to many. Concerning this point, he admits that:

It simply happens that under most conditions, at least in a reasonably advanced stage of civilization, the greatest sum of advantages is not attained in this way.¹¹⁰

The utilitarian could thus claim that although the scapegoat situation is theoretically possible, it is so unlikely to happen that it does not present a problem for her theory. If Rawls is willing to allow the utilitarian to defend her theory in this way, then his theory does not constitute the significant advance over utilitarianism that he claims it does. If Rawls is unwilling to allow the utilitarian to defend her theory in this way, he is hardly in a position to present the same sort of defense for his theory when it runs into an analogous problem. For this reason, the defense Rawls presents is unacceptable.

4.9: Concluding Remarks

This chapter has examined Dworkin's theory in order to see whether it can deal with the third and fourth problems

109 Rawls, p.158.

110 Rawls, p.26.

with Rawls' theory. Dworkin attempts to allow for resource inequalities which are due to ambition and disallow resource inequalities which are due to endowment. He attempts to neutralize inequalities due to endowment with a hypothetical insurance scheme. The results of the insurance scheme are applied through a graduated taxation program which he sees as a second-best approximation. Though this second-best approximation has serious difficulties, it does allow his theory to deal with the third problem. It provides a rationale for the justice of applying a graduated tax to those with greatly above average incomes. Dworkin's theory is able to deal with the fourth problem with Rawls' theory because it considers the circumstances of all people to be relevant in determining whether or not a distribution is just rather than only those of the worst-off.

Summary

In conclusion, this thesis has reviewed Dworkin's theory of distributive justice with a view to showing how it attempts to deal with four problems found in Rawls' theory. It is able to deal with such problems because it is an historical theory of distributive justice which applies to individuals and is able to take account of individual differences whereas Rawls' theory is an end-state theory of distributive justice which applies to classes and is unable to take account of individual differences. The crucial principle in Dworkin's theory is whether or not the individual is responsible for the advantaged or disadvantaged situation he is in. Treatment as an equal calls for redress in situations where the individual is not responsible for her situation of advantage or disadvantage. Without such distinctions a theory can only speak of distributive justice in terms of equal treatment which is a major shortcoming of Rawls' theory. It calls for equal treatment in cases where our intuitions call for treatment as an equal.

The first problem is dealt with by allowing individuals to select their own sets of primary goods. These individual selections are tapered by the desires of others who are also selecting goods for themselves. The second problem is dealt

with by considering individuals with handicaps as having less resources on the account. The third problem is dealt with by considering resource allotments to be weighed over a lifetime rather than at distinct moments in time. The fourth problem is dealt with by considering how a redistribution will affect each of the parties involved.

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