

CHAPTER I RAWLSIAN LIBERALISM AND NOZICKEAN LIBERTARIANISM

For if you suffer your people to be ill-educated, and their manners to be corrupted from their infancy, and then punish them for those crimes to which their first education disposed them, what else is to be concluded from this, but that you first make thieves and then punish them?¹

The ideological guidelines of social policy are not only the result of economic change, they are also result of the political philosophy values these policies are meant to promote. The objective of this chapter is to assess two theories that advocate distinct policies. State-run pension schemes find their political philosophy roots in John Rawls' social justice. The privatization of these pension programs follows libertarian premises advanced by Robert Nozick. Due to the current global tendency towards some sort of pension privatization, it is critical to understand the fundamental objectives of the theories behind the two policies, to determine which is a more suitable theoretical guideline for social policy.

In the United States, the creation of the liberal Welfare State² after the Second World War found its justification in John Rawls' liberalism and his understanding of social justice.³ Rawlsian liberalism promotes freedom and liberty for all to exercise their individuality. The manner in which Rawls advances the importance of individuality is through the recognition and respect of the inherent difference between individuals in society; not only because of the

¹ Thomas More, *Utopia* (July 1993 [cited April 23, 2009] Internet Wiretap) ed. Kirk Crady: available from <http://oregonstate.edu/instruct/phl302/texts/more/utopia-I.html>

² There is a considerable difference between the United States liberal Welfare State and social-democratic Welfare States that characterize those of Scandinavian countries. The main difference between these two is that Scandinavian countries have extensive social policy that awards considerable amount of protection against all kinds of contingencies, and provide continuous aid. The liberal welfare state is more limited on the basis of individualism. See Gosta Esping-Andersen, ed., *Why We Need a New Welfare State* (Oxford: Oxford University Press, 2002), 14-16.

³ Will Kymlicka, *Contemporary Political Philosophy: An Introduction* (Oxford: Oxford University Press, 2002), 88. Even though Rawlsian liberalism is not a Welfarist theory, Rawls' theory was connected to liberal welfare states, because he argued for redistributive policies without taking his theory towards a communitarian understanding of social justice. On the contrary, Rawls argued for redistributive policies as a means to acknowledge the political and moral relevance of individuality.

disparities of wealth and natural endowments, but also because of the plans of life they eventually desire and follow.⁴ Liberty and freedom to exercise individuality, requires moral and political equality of all individuals, independent of their difference. In a Rawlsian society, the expectations and life plans of those who are born with scarce resources have equal moral and political relevance as those who are born wealthy and talented. The right to exercise individuality is universal and not selective, therefore it does not give priority to those who have the economic and natural means to do whatever their hearts desire. At the same time, this basic right does not undermine the liberty of the wealthy and talented, as they also have the right to exercise their individuality.

To guarantee this universal right, Rawls advances an understanding of social justice that he refers to as “justice as fairness.”⁵ With this Rawlsian conception, social institutions are required to guarantee the right to exercise individuality, through two principles of justice. The first is the equal right to liberty.⁶ And the second, is the arrangement of social and economic inequalities, to benefit the least advantaged members of society.⁷ Of the two principles, the second embodies the right to exercise individuality through justice as fairness, and at the same time, it is the one that has been extensively contested. Rawlsian justice, in the second principle, requires individuals who are better off to aid those who are worst off.⁸ Even though, it might seem at first glance that the principle requires a Robin-Hoodesque action of taking from the rich and giving to the poor, whereby the rich have to sacrifice their wealth (and by extension their desires) to help the worst off, it is not. Rawls set up the principle so that both talent and effort are rewarded and that wealthy and talented individuals can follow their life plans and their desires, supported by their right to exercise individuality. The better off can

⁴ John Rawls, *A Theory of Justice* (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 1971), 93.

⁵ Rawls, *A Theory of Justice*, 12.

⁶ Rawls, *A Theory of Justice*, 302.

⁷ Rawls, *A Theory of Justice*, 302.

⁸ Rawls, *A Theory of Justice*, 78.

profit more from social cooperation in the theory. However, social institutions that follow justice as fairness, are required to redistribute the fruits of social cooperation so that the least advantaged are also benefited from this endeavor.⁹ This allows the worst off to increase their expectations to exercise their individuality and autonomy. A fair redistribution therefore allows individuals of all social classes to follow their own unique and individual plans of life.

The opposing position to this theory was developed by Robert Nozick, who openly advanced a theory of libertarianism which should not be confused with contemporary liberalism.¹⁰ The basic objective of Nozick is also to promote individuality, however the means to do so differ considerably from those of Rawls. Nozick considers that the recognition of individuality warrants the recognition of the basic right of self-ownership.¹¹ The Nozickean interpretation of self-ownership refers basically to the ownership of the body, and therefore to whatever the body produces. Thus Nozick finds the foundations of his argument against Rawlsian redistribution and any other kind of redistributive mechanism, which he refers to as patterned principles.¹² Redistribution requires that the state take from some in order to give to others. If this is the case, the state is violating individual rights by taking from them part of what their bodies have produced, therefore allowing certain levels of slavery.¹³ The theory, therefore, argues consistently for self-ownership and property rights as a way to eliminate the possibility of slavery, embodied by redistributive mechanisms.

Yet, as I will show in this chapter, Nozick's effort to argue against redistribution as a promoter of forced labor, is insufficient. The main problematic that stems from Nozickean libertarianism is the limited understanding of self-ownership. The conception cancels any possibility for chattel slavery which refers to the ownership of individuals, but does nothing to

⁹ Rawls, *A Theory of Justice*, 54.

¹⁰ See Robert Nozick, *Anarchy, State and Utopia* (United States of America: Basic Books Inc., 1974).

¹¹ Kymlicka, *Contemporary Political Philosophy*, 107.

¹² Nozick, *Anarchy, State and Utopia*, 156.

¹³ Nozick, *Anarchy, State and Utopia*, 169.

eliminate slavery derived from social and economic disadvantages, that limit individuals to pursue their conceptions of the good. In a Nozickean society, therefore, moral irrelevant traits such as circumstances of birth, natural endowments and luck, would *enslave* individuals to a determined fate. In this sense, Nozick allows the slavery of self-determination. If the conception of self-ownership that Nozick advances, is modified to include self-determination, then Nozick's arguments against Rawlsian redistributive mechanisms would be of no use. For the state to promote self-determination as a universal basic right, a Rawlsian redistributive mechanism is necessary. If Nozick allowed self-determination to replace his conception of self-ownership, his theory would necessarily lead to a social arrangement such as that of Rawls. If this is correct, it would seem that Rawlsian liberalism is a much more adequate theoretical guideline to design or reform social policy.

Revisiting *A Theory of Justice*

A key point of disagreement often concerns how to distribute the benefits and burdens that arise from social cooperation.¹⁴ Rawls addresses this dilemma as the fundamental question that underpins his theory. It is clear for him that there must be a distribution of benefits and burdens, of rights and obligations, but his main objective was to find principles of distribution that were socially just and not only economically efficient.¹⁵ The problem of economic efficiency, he identified, is that it might warrant that some individuals be used as means to have higher levels of efficiency in the distribution of benefits and burdens. Rawls does not support this vision primarily because his theory is fundamentally based on his personal understanding of Kant's second maxim of the Categorical Imperative that reads, "[a]ct in such a way that you treat humanity, whether in your own person or in the person of

¹⁴ Nozick, *Anarchy, State and Utopia*, 185.

¹⁵ Rawls, *A Theory of Justice*, 260.

any other, always at the same time as an end and never merely as a means to an end.”¹⁶ In a Rawlsian society, the recognition of individuality is the first step to furthering Kant’s imperative. The reason he stressed his point of individuality so forcibly was that he sought to separate his theory from the then reigning utilitarian ideology.¹⁷ According to Rawls and also Nozick,¹⁸ a theory that seeks for utility of the majorities¹⁹ necessarily excludes the importance of the individual and therefore of individual conceptions of the good, life plans, desires or holdings. Rawls stresses that acknowledging individuality, the rights of the individual and the equal worth of individuals is the first step to treating people as ends in themselves and not merely as means to an end.

How is individuality to be recognized? How are people going to be acknowledged as equally valuable? The manner in which he considers that society recognizes individuality is what made his claims subject to seemingly unending philosophical debate and at the same time gives his theory the originality and importance it continues to have today. Rawls’ answer is that it is necessary to recognize that each person has her own sense of life, or, to use the terminology that has come to characterize the debate, her own “conception of the good” or life plan. And each person should have the opportunity to follow and achieve their conception of the good, whatever it may be. Furthermore, to achieve equality between individuals and to avoid partiality, no conception of the good should be given more relevance (moral or

¹⁶ Immanuel Kant, *Groundwork for the Metaphysics of Morals*, trans. H.J. Paton (New York: Harper and Row Publishers, 1964), 96.

¹⁷ John Rawls, *Political Liberalism* (New York: Columbia University Press, 2005), xiv.

¹⁸ On this specific point, Rawls and Nozick coincided. However, both separated on the way in which individual rights should be understood. Their diversion was so great that two completely opposite theories emerged from them as I will mention later in the chapter.

¹⁹ Samuel Fleischacker, *A Short History of Distributive Justice* (Cambridge, Massachusetts: Harvard University Press, 2004), 104.

political) than any other, the total of conceptions of the good should be given the same importance.²⁰

The twin ideas of realizing that all life plans have equal importance and that everybody should be given an opportunity to follow and achieve them characterizes individuality for Rawls, and lies behind the imperative to treat people as ends and not means. It is evident at this point that the justification remains normative in nature. Yet, for the theory to take a more practical stance, the theory awards a general right. This specific right will award each person a *fair share* of society's resources.²¹ In this sense, Rawls transfers his interpretation of individuality to a specific right. To enable individuals to pursue their life plans, they will require some goods and therefore they need the right to a fair share of society's resources.

What can be gleaned from all of this is that, on this model, when resources are allocated, society is automatically awarding importance to all its members, and not just to a few. It is important to note that Rawls does not envision a theory of pure equality. He writes about a "fair" share, which does not necessarily entail an "equal" share. The novelty of his theory is that it is based on the defense of the rights mentioned above, yet he does not forget that society is constituted by difference not only in conceptions of the good, but also in physical and mental talents, or as Rawls describes them "natural and social contingencies,"²² which define or are the direct effect on the differences of wealth.²³ To give these differences the attention they deserve and to allow them to exist as a base of a capitalist society, Rawls looks to achieve equilibrium between the right to fair shares and difference. He therefore

²⁰ T.M. Scanlon, "Rawls' Theory of Justice," in *Reading Rawls Critical Studies on Rawls': A Theory of Justice*, ed. Norman Daniels (Stanford, California: Stanford University Press, 1989), 170-171.

²¹ Kymlicka, *Introduction to Political Philosophy*, 108.

²² Rawls, *A Theory of Justice*, 72.

²³ Rawls, *A Theory of Justice*, 72.

allows the existence of inequalities under the condition that they do not trump the right to fair shares.

To conceptualize his argument to further Kant's second imperative, Rawls imagined a state of nature where he assumed that individuals separated from their social reality, that were unaware of their position, their wealth, their talents and even their conception of morality could unite to choose principles that would embody the fair equilibrium between the admission of difference and the right to fair shares of society's resources. Following the contractarian tradition,²⁴ Rawls termed his state of nature the Original Position, and the ignorance of certain aspects of the individual's identity as the Veil of Ignorance.²⁵ Individuals under such a position consider themselves as free and equal.²⁶ This allows them to choose *fair* principles of justice to govern over their basic structure, without being biased by the knowledge of who they are or what they own in real society (which could lead them to argue in their own favor), and under the understanding that even if they turn out to be the most unfortunate of all individuals, they might still have a certain number of opportunities. Due to this equal position of individuals in the Original Position, the theory of justice is referred to as 'justice as fairness.'²⁷ The logical result according to Rawls would be the selection of the two principles of justice that would distribute benefits and burdens in a *fair* manner.

First Principle

Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.

Second Principle

Social and economic inequalities are to be arranged so that they are both:

- (a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and
- (b) attached to offices and positions open to all under conditions of fair equality of opportunity.²⁸

²⁴ See Martha Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 2006), 13.

²⁵ Rawls, *A Theory of Justice*, 12.

²⁶ Rawls, *A Theory of Justice*, 12.

²⁷ Rawls, *A Theory of Justice*, 12.

²⁸ Rawls, *A Theory of Justice*, 302.

The first principle embodies equal liberty for all and the second consists of a redistributive mechanism. The second principle of justice--also referred to as the Difference Principle or Maximin--requires that social and economic inequalities be redistributed to the greatest benefit of the least advantaged, following also the idea of fair equality of opportunity.²⁹ Here, Rawls is not only talking about redistributing society's resources, but he is specifying the manner in which they should be awarded. I focus here specifically on segment A embodying the redistributive mechanism, that also embodies social policy.

If one is to analyze this part of the principle, it becomes evident that Rawls is asserting an innate inequality that ranges from the social to the economic. These inequalities can be construed as the differences between individuals regarding social and natural primary goods.³⁰ Social primary goods are income and wealth, powers and opportunities, rights and liberties and the basis of self respect.³¹ Natural goods are those endowments that entail health, intelligence, vigor and so on.³² The first kind of goods determine economic position and all the possibilities they bring with them. The second kind determine the abilities individuals are born with that may be used to enhance their economic possibilities. The combination of both will give individuals different expectations and furthermore different opportunities to follow their conceptions of the good or their life plans. These goods were somehow unevenly distributed between individuals,³³ ergo the inequalities Rawls refers to in the first part of the principle.

Whom may we hold accountable for this uneven distribution of primary goods? Unfortunately, there is no specific political or divine entity to which we can apportion the

²⁹ Rawls, *A Theory of Justice*, 83.

³⁰ Rawls, *A Theory of Justice*, 92-93.

³¹ Rawls, *A Theory of Justice*, 62. To see a much more defined classification of social primary goods see John Rawls, *Justice as Fairness: A Restatement* (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 2001).

³² Rawls, *A Theory of Justice*, 62.

³³ Rawls, *A Theory of Justice*, 74.

blame of being so unequal, and therefore demand a redistribution that might be more equal. Rawls assumes that whoever distributed primary goods for the first time did not follow any rules. That is, they (whoever the entity responsible for the first distribution is) did not distribute according to some specific pattern, merit, accomplishment or virtue. It follows that whatever individuals got from this initial distribution, they do not really “deserve.” The initial position of members of society, being birth, is determined by what Rawls terms a “natural lottery”³⁴ that distributes in a morally irrelevant fashion.³⁵ Consequently it is possible to find extreme divergence between “haves” and “have nots.” One might be able to find individual A with huge amounts of social primary goods and also natural primary goods (the most advantaged), at the same time and within the same society without going out of our way, there might be an individual B who might have very few social goods and limited natural ones³⁶ (the least advantaged). Intuitively, one can assume that given that the combining mixture of both kinds of goods derives in the opportunities these individuals will have in achieving their life plans, individual A will have all the opportunities to develop her conceptions of the good (whatever these may be), and individual B is out of luck and will have to do with what she has, even though this might mean considerable limitations during her life. Individual B might not even have the opportunities to develop her conceptions of the good.

These individuals might live under a noncooperative scheme where the least advantaged do not cooperate in any way with the most advantaged; each would fend for themselves and would eventually have gains depending on their skill, their property and their luck, and none of them would be able to improve their wealth by cooperating with the other.

³⁴ Rawls, *A Theory of Justice*, 74.

³⁵ Rawls, *A Theory of Justice*, 74.

³⁶ Or at least few natural goods or talents that are highly valued in any given society. One might be excellent at, say, spoon-bending, but this is of little help unless one's society values the performance of that talent more than, for example, the dramatic performances of Johnny Depp!

They would each continue having the same opportunities to develop their conceptions of the good. However, if they considered that their gains would improve by cooperation they would certainly enter into a cooperative scheme.³⁷ Under these circumstances the least as well as the most advantaged would have to share some things, such as rights and duties, but at the same time they would gain more than they would in a noncooperative scheme. In such a system, the least advantaged might have more chances to develop their life plans. However, some principles have to operate in this society, in order to distribute the gains of cooperation in a fair manner, avoiding the possible gobbling of all by some to the others' detriment. Rawls' justice as fairness provides these principles.

Here is where the second part of Rawls' principle enacts, ruling that these undeserved inequalities should be "arranged so that they are...to the greatest benefit of the least advantaged."³⁸ The idea of this part of the principle is that the individuals who won in the natural lottery have more possibilities of gaining more with their primary goods. Given that these goods are, after all, undeserved, it would be more fair if the benefits they gain from their natural circumstances and social cooperation are redistributed to benefit not only themselves but also the least advantaged. Rawls illustrates this with a pragmatic example,

[c]onsider the distribution of income among social classes...Now those starting out as members of the entrepreneurial class in property-owning democracy, say, have a better prospect than those who begin in the class of unskilled laborers... Supposedly, given the rider in the second principle concerning open positions, and the principle of liberty generally, the greater expectations allowed to entrepreneurs encourages them to do things which raise the long-term prospects of laboring class. Their better prospects act as incentives so that the economic process is more efficient, innovation proceeds at a faster pace, and so on. Eventually the resulting material benefits spread throughout the system and to the least advantaged.³⁹

In this excerpt of *A Theory of Justice*, the example Rawls awards for the Difference Principle considers that the most advantaged (in this case the entrepreneurial class) after gaining more from their well-off circumstances and social cooperation (e.g. employing the least advantaged

³⁷ Nozick, *Anarchy, State and Utopia*, 193.

³⁸ Rawls, *A Theory of Justice*, 302.

³⁹ Rawls, *A Theory of Justice*, 78.

for certain low paid jobs) will encourage them to do more in society, be this invest more, start new businesses and so on in such a way that the economy grows. According to the principle, the benefits of this growth should not only stay with those who invested, its benefits should also filter down to the least advantaged.

One example that might explain this is if by starting new businesses, the need for labor force makes the most advantaged employ the least advantaged. Or, if the most advantaged earn more capital in their businesses, they will raise the salary of the employed least advantaged. The Difference Principle does not necessarily entail taxing the rich and giving to the poor. So for the Principle to work, it has to be implemented by institutions that will oversee that it is carried out. This avoids the gobbling up of benefits by the most advantaged who would be using the least advantaged as cheap labor and as a means to their end of gaining more—not a very Kantian situation. Let us imagine a most advantaged individual, John, and a least advantaged individual, Peter. John was born with great business talents and with a considerable amount of capital awarded by his parents. John eventually starts a manufacturing industry that has a moderate amount of success. Institutions in his country benefit greatly people like himself, by implementing laws that make it easier for them to start and develop their businesses. In addition to these laws, John also put in long hours in the administrative part of the business and his manufactured goods were increasing their quality. All of these elements combined, transformed John's industry into an extremely popular company, thus making him a millionaire.

Even though one might be tempted to think that John is a clear example of individual success, this is not entirely accurate. John did invest hard work into his manufacturing industry, but he did not physically manufacture the goods. When the quality of the goods rose, this was due to the abilities and hard work of John's employees, who are the ones who actually do the manufacturing. Peter was one of John's employees. He has been working

there since the company started operating, in the manufacturing sector, and his salary has not increased during this entire period. If both individuals worked hard, why would it be fair that John can now think of opening new companies, and traveling all around the world, while Peter remains in exactly the same position? If John does not increase the expectations of those who have helped him rise, then he is treating his employees merely as means to his personal ends, and not at the same time as ends in themselves.

Rawls' fear that this would eventually happen promoted the creation of the second principle of justice. Furthermore, he subjected social institutions to his principles of justice, to guarantee their application. There are several ways in which social institutions can modify the results of the previous example, so that Peter is also benefited by the second principle of justice. Institutions might create specific labor laws that do now allow John to continuously pay the same wages to his employees, without a periodical increase. If John is being benefited by his undeserved talents, by market laws of the country, and finally by the work of his employees; then Peter should also be benefited.

Another solution is to tax John's earnings, so that institutions can build more public schools, provide training and healthcare and other such services for individuals like Peter. Peter would then be able to increase his expectations by using these free-of-charge services. The money he would save would allow Peter to use it in furthering other plans.

This particular case of John and Peter exemplifies the need of social institutions to oversee the correct application of the Second Principle of Justice. Without these institutions, the inevitable result is comparable to the results of the Ronald Reagan administration and his implementation of supply-side economics theory in the United States. Reagan assured that by lowering taxation to the rich, these would invest more and the economy would eventually grow, benefiting also the least advantaged. But as different economists have argued,

institutions did not oversee the less fortunate being benefited, and finally the benefits of economic growth stayed within the rich.⁴⁰

Institutions that materialize the Second Principle of Justice allow the most advantaged individual to receive greater benefits due to their undeserved primary goods and to the social cooperation scheme, only if the least advantaged are maximally benefited. This procedure is redistributive in nature.

One way of making sure that the Maximin is carried out is through progressive taxation, to be redistributed later on in employment or health or education policies directed toward the least advantaged. This would require the most advantaged to give a percentage of their earnings to institutions that would subsequently transform them into benefits for the less fortunate. Such a procedure would permit the less fortunate to have more resources to follow and achieve their conceptions of the good, and so institutions and society would be awarding importance to those who are worse off by giving them a fair opportunity to accomplish their conceptions of the good. Treating people in society in this manner complies with Kant's imperative.

Rawls' justification of the second principle of justice, and of justice as fairness in general, was not sufficient for libertarians including Robert Nozick. Nozick considered that redistributive mechanisms treated individuals merely as means to an end, and not also as ends in themselves. By taking part of what John has earned, the state is 'using' John to provide services for other individuals. This, according to Nozick, is similar to forced labor,⁴¹ the only way to truly treat people as ends in themselves and not means was to advocate libertarianism. To most of us, the road from redistributive policies to forced labor seems quite long perhaps, but this is not the case for libertarians. It is a matter of talking of two similar issues but with

⁴⁰ See Robert Heilbroner and Aaron Singer, *The Economic Transformation of America: 1600 to Present* (New York: Harcourt Brace College Publishers, 1998).

⁴¹ Nozick, *Anarchy, State and Utopia*, 169.

different names. Libertarians, including Nozick, founded their arguments by advocating freedom and extensive liberty as the most important elements in society. Rawls would not disagree with such a point. However, freedom according to libertarians is embodied by self-ownership and extensive property rights,⁴² and not necessarily on the moral and political equality of individuals. This main distinction is what has generally placed these two theories in opposition. However, the reason why freedom based on self-ownership would necessarily contradict redistribution as an acceptable notion to fulfill Kant's imperative is not clear.

Nozick's Conception of Self-Ownership and the Sanction of Slavery

Even though Rawlsian liberalism and Nozickean libertarianism have been considered to be opposite theories. Their philosophical groundwork is quite similar, as they both found the grounds of their theories in Kant's second imperative: to treat individuals as ends and not means to an end. Given that both theories have the same philosophical groundwork, then what is it that makes them so different?

The theoretical divergence is, it seems, based on the interpretation of Kant's imperative, and furthermore on conceptual interpretations that run in quite different directions. Like Michael Otsuka, my intention here is to trace these divergent conceptualizations. Yet while Otsuka is right in claiming that "the conflict between libertarian self-ownership and equality is largely an illusion,"⁴³ he considers that egalitarians must understand more of Nozick's theory. Perhaps this is true, in an ideal world, but if it is, then it would seem that the opposite argument would also hold: that is, libertarians are perhaps not grasping as much of the Rawlsian position as they should to make their arguments more persuasive. It is this kind of perspective that is at play when we look at Nozick's

⁴² Mark A. Michael, "Redistributive Taxation, Self-Ownership and the Fruit of Labor," *Journal of Applied Philosophy* 14, no. 2 (1997): 137.

⁴³ Michael Otsuka, "Self-Ownership and Equality: A Lockean Reconciliation," *Philosophy and Public Affairs* 27, no. 1 (Winter 1998): 65.

understanding of liberty as self-ownership which, I hope to show now, is conceptually limited. And further, it is my contention that if he were to broaden and deepen his view of this concept then he would have to agree with Rawls or accept levels of slavery that would necessarily corrupt his firm stance on extensive liberty. To see why requires a brief foray into the basic criticisms of Rawls presented in Nozick's *Anarchy, State and Utopia*.

One of the main criticisms that Nozick provides for Rawlsian social justice, is that instead of upholding Kant's imperative, Rawls deliberately allows the use of people merely as means for the ends of others.⁴⁴ As was mentioned in the first section, Rawls considers that the recognition of individual conceptions of the good or life plans is the appropriate manner for members of society to embody their freedom. Nozick does not agree; his position is that it is freedom through the recognition of *self-ownership*⁴⁵ that awards individuality its rightful importance. Even though the acceptance of the Nozickean position apparently contradicts Rawls, this is not necessarily so. The problem that separates self-ownership from following individual conceptions of the good is that self-ownership as understood by Nozick is an incomplete formulation of property of the self. If his conception were more elaborate and comprehensive, he would necessarily coincide with Rawls.

Nozick argues that the Rawlsian interpretation of individuality is incorrect because it takes from some individuals part of what they have produced and earned in order to give to others.⁴⁶ This Robin-Hoodesque action is not to be commended in a Nozickean society since it strips individuals of their freedom. Redistribution deprives individuals from part of their property which was produced by their own bodies. If the state takes from person A one third of her production or earnings, then she cannot do with that third whatever she likes. She cannot be completely free to use her entire gains as she wants. Therefore she is not

⁴⁴ Nozick, *Anarchy, State and Utopia*, 32.

⁴⁵ Kymlicka, *Contemporary Political Philosophy*, 107.

⁴⁶ Nozick, *Anarchy, State and Utopia*, 169.

completely free, she is being used as a slave.⁴⁷ This argument assumes that individual A has a) property over her body and b) property rights over her production that allow her to have the freedom to do with it whatever she likes. These two statements are intimately related, according to Nozick, since property rights are derived from self-ownership. Therefore, that which embodies individuality in a Nozickean society is self-ownership.⁴⁸

Nozick asserts that self-ownership refers to the property right we all have over our bodies, and therefore to everything our bodies produce.⁴⁹ This conception of self-ownership seems at first glance acceptable. However, if one goes deeper, it becomes evident that such an understanding entails too little self-ownership.⁵⁰ Nozick follows the Lockean precept of ownership, “every man has a property in his own ‘person’. This nobody has any right to but himself. The ‘labor’ of his body and the ‘work’ of his hands, we may say, are properly his.”⁵¹ Nozick’s purpose in following Locke’s advocacy of property over the body was to leave no room for the possibility of slavery.⁵² One can assume from Nozick’s fidelity to Locke that his main idea was that the “self” is constituted by the body, a body which works and produces and which is eventually a holding or a property. If this is so, then the body can be compared to a machine. Following this understanding, then it is possible that redistributive policies might undermine self-ownership by deliberately taking from the body/machine its rightful production. If the machine is programmed to produce X number of goods, and the state takes one third of that production, then the machine has to be forced to work extra hours to compensate that third that was taken from it. Seen like this, redistribution is definitely

⁴⁷ Nozick, *Anarchy, State and Utopia*, 169.

⁴⁸ Kymlicka, *Contemporary Political Philosophy*, 107.

⁴⁹ Kymlicka, *Contemporary Political Philosophy*, 110.

⁵⁰ It is important to note that the concept of Self-Ownership has been amply debated by authors including G.A. Cohen, Robert Nozick, David Gauthier and Joseph Raz. However, I will not enter the debate on the existence or determinacy of the term, I will only focus on the limitations of Nozick’s conception.

⁵¹ John Locke, “An Essay Concerning the True Original, Extent and End of Civil Government,” *Social Contract Essays by Locke, Hume and Rousseau* (Oxford, Oxford University Press, 1974), 17.

⁵² Michael, “Redistributive Taxation,” 137-138.

comparable to forced labor. Therefore, Nozick's objective was achieved; he did not leave room to allow the institution of slavery, but only at a certain level, that of chattel slavery.⁵³

Nozick's "self-ownership" considers our bodies as our property, as well as the goods it produces. Yet, if self-ownership is considered to be more than property over a body, then there are other levels of slavery that Nozick does not consider. To understand these levels it is first important to determine the limitations of the Nozickean conception of self-ownership as identified by several authors⁵⁴ who denied self-ownership to be related only to the body. The general argument is that Nozick did not construe self-ownership to be also about the mind, about forcing individuals to think in a certain manner. If this is in any way possible, the idea of self-ownership cannot be limited to the notion of the work of our bodies, which is related mostly to negative libertarianism,⁵⁵ in which it is acceptable to be free from slavery even though captive of the mind. If one follows this kind of argument, then it is possible to assume that the term self-ownership should necessarily include freedom of thought, property over the ideas, wishes, thoughts, tendencies and whatever else our mind produces.⁵⁶ Self-ownership cannot be only about the fruits of labor as Mark A. Michael calls them,⁵⁷ we can add that it has to include necessarily the fruits of our mind.⁵⁸

Considering the mind as a quintessential part of self-ownership entails not merely owning our thoughts, but also the freedom to think whichever way we like. It follows that our life plans, our conceptions of the good (being a product of the mind) have an important place

⁵³ Kymlicka, *Contemporary Political Philosophy*, 108.

⁵⁴ Otsuka, "Self-Ownership and Equality." Kymlicka, *Contemporary Political Philosophy*, 122-123.

⁵⁵ John Gray, "Hayek on Liberty, Rights and Justice," *Ethics* 92, no. 1 (October 1981): 75.

⁵⁶ Kymlicka, *Contemporary Political Philosophy*, 122-123.

⁵⁷ Michael, "Redistributive Taxation," 137.

⁵⁸ At this point my attempt is not to determine whether the "self" is constituted by the mind, the spirit or if it is constructed by the person itself. My mere intention is to distinguish between body and mind probably overstepping in matters of philosophy of the mind. Although my argument does not consist in proving the existence of the mind, it is to state that there are more than one level of enslavement. Cohen does not believe in the existence of the self as being different from the person, that is probably the reason he tends to agree with Nozick in some parts of his argument against redistribution. However, to simply assume the existence of the mind can lead to the possibility of other kinds of enslavement different from that of a chattel slave. See G.A. Cohen, *Self-Ownership, Freedom and Equality* (New York: Cambridge University Press, 1995), 211.

in the notion of self-ownership.⁵⁹ And since the mind is the single entity that dictates to the body what to do, the liberty to think any way we like has to be related unavoidably with the liberty to act upon those thoughts, to realize our plans of life, our conceptions of the good, or at least to follow them. As Kymlicka correctly points out, self-ownership in its substantive understanding is really self-determination⁶⁰—a concept, he might have added, that is not far removed from the autonomy of Rawlsian justice as fairness.

It is not useful to own only our bodies if we cannot act according to what our mind chooses, or vice versa. It is not advantageous to be free to think but not to act. For self-ownership to really embody liberty, it has to be comprehensively understood as Kymlicka points out: as self-determination, the union of body and mind and the action of bodies following the choices of the mind. That which unites these two faces of self-ownership is choice. The ability to choose between what is to be our plan of life, what and how we are going to use our bodies and our talents⁶¹ is a fundamental element of democratic societies, and the ultimate expression of freedom and liberty. However, not all individuals have the possibility to act upon their choices. This is a reality Nozick cannot deny. There are poor and there are rich, talented and untalented in society. This clear reality is not relevant in Nozick's theory, since he only speaks of self-ownership: property over the body. He does not permit the existence of chattel slavery; however he does allow the inability to act upon individual choices. In this sense, Nozick can be considered a negative libertarian.

Freedom is conceived as an interpersonal relationship rather than an intrapersonal relationship; it designates some aspects to the relations men have with one another, rather than any sort of rational self-direction...A man may order his life rationally even when he is subject to serve coercive restraint, and the antithesis of individual liberty is servitude to another rather than the inability to govern oneself.⁶²

⁵⁹ It is important to note at this point that the discussion of self-ownership might foster debates about the conscious and the unconscious as well as ideas of the self. However, I do not further these concepts since they are not fundamental for my objectives in this chapter.

⁶⁰ Kymlicka, *Contemporary Political Philosophy*, 123.

⁶¹ Kymlicka, *Contemporary Political Philosophy*, 123.

⁶² Gray, "Hayek on Liberty," 75.

If only a part of society can have self-determination, it would certainly mean that there are levels of slavery at play and that liberty is only achievable by some. Nozick's freedom might then be construed as a "benefit" or "luxury" of a particular segment of society, and he would permit slavery of the rest of society. This is clearly opposed to Nozick's argument of extensive liberty, and even though it is certain that Nozick was not trying to advocate some sort of enslavement by giving a limited understanding of self-ownership, he did not award a solution to avoid this problematic.

I am quite certain that Nozick did not believe that with such a limited conception of self-ownership he would actually be advocating levels of slavery. His ultimate purpose was to find a coherent argument against Rawls, yet in doing so he took too much for granted. As Kant noted, the problem with the conception of property of the self is that it might lead to the understanding of the body as a purchasable item or group of items.⁶³ Without the requisite explanation of self-ownership, Nozick falls into this conceptual hole and while he might understand much more of the term, he fails to make this evident in his theory. He assumed self-determination would be obvious as it is clear in the rest of his theory where he works under the assumption that each person would be able to do whatever they liked with their bodies and property. But self-determination is far from being obvious. Given these circumstances and this inference from Nozick, there is no reason to suppose that Nozick would accept at this point Rawlsian thinking. Even though it is clear his conception of self-ownership is limited and leads to unwanted results even for Nozick, he always believed in self-determination as a logical consequence. In this sense, Nozick does coincide with Rawls, giving importance to self-determination which is step number two of the argument. They both might agree that it is a necessary element of liberty and freedom although they go about it in

⁶³ Cohen, *Self-Ownership, Freedom and Equality*, 211.

different ways, and Nozick's concepts do not actually allow him to achieve such an objective. However, their theories grow further apart in step three: the actual right awarded to members of society to embody individualism.

In this step, Rawls considers that the appropriate right is a right to a fair share of society's resources. Nozick, on the other hand, asserts that the adequate rights are extensive property rights. Considering that Nozick takes self-determination as granted or given (even though the serious limits in his theory), then this step of the argument would not change. This is the third step where Rawls and Nozick differ, but where Nozick lays the path that leads to Rawls.

Rectification Principle: The Unavoidable Road to Rawls

If one follows Nozick's understanding of self-ownership, then it is necessary to accept that whatever the body produces is also part of our property in Lockean fashion. When Nozick asserts extensive property rights over goods manufactured by our bodies, I find it difficult to believe that Nozick would be only referring to the actual products of the body such as hair, sweat, urine, saliva, and so on. He goes much further, he is actually talking about external useful things produced by the individual that automatically require tools and goods belonging not to the body, but to the external world. Here, Nozick enters a debate where his position is that the world at the beginning of time was unowned and individuals started appropriating it.⁶⁴ He follows Locke a second time and states that the first acquisitions are legitimate as long as the appropriation does not harm the rest.⁶⁵ Joining self-ownership and the idea of acquisition allows for the awarding of property rights. If I work my land and I produce, no state or individual can take away from me all or part of what I have produced. Therefore, my property rights also extend to decide what I wish to do with the goods I

⁶⁴ John Exdell, "Distributive Justice: Nozick on Property Rights," *Ethics* 87, no. 2 (January 1977): 143.

⁶⁵ This argument is called the Lockean Proviso. Nozick, *Anarchy, State and Utopia*, 178-182.

produced. I can leave them be, or I can exchange them in a free-market economy.⁶⁶ To give legitimacy to these transfers and acquisitions of property and to protect the property rights, Nozick designed the Entitlement Theory.

As its name states, the Entitlement Theory considers only *entitlement rights* over property. Nozick does this on purpose since his theory tries to avoid any kind of debate about desert. What people might deserve or not is irrelevant. The only thing that matters in Nozick's theory is whether people are *entitled* to something or not.⁶⁷ The use of desert as an important part of a distributive theory has long been denied,⁶⁸ Nozick would not use desert as part of his theory. However, the dismissal of desert by utilitarians, libertarians and egalitarians was a strong argument for Nozick to criticize Rawls. Nozick argues that Rawls draws upon desert in his Second Principle of Justice.⁶⁹ This is not precise. Rawls does not draw his theory or his Difference Principle from desert; he acknowledges that the results of the natural lottery are, indeed, *undeserved*.⁷⁰ In this sense, Rawls is actually referring to the negative connotation of desert, and he is doing it in a general way: to decide who deserves what is to select some from the group.⁷¹ However Rawls is far from doing this, his assertion is that *nobody*, not one person, deserves their starting place in society, he is not selecting from a group or distinguishing some from others. In this sense Rawls is not relying on desert, he is simply stating what he construes as a universal feature of *all* members of society. His theory is fundamentally based on the assumption that all individuals have equal moral worth, as is

⁶⁶ Kymlicka, *Contemporary Political Philosophy*, 110.

⁶⁷ Nozick, *Anarchy, State and Utopia*, 224.

⁶⁸ Alistair M. Macleod, "Distributive Justice and Desert," *Journal of Social Philosophy* 36, no. 4 (Winter 2005): 421.

⁶⁹ Nozick, *Anarchy, State and Utopia*, 226.

⁷⁰ Rawls, *A Theory of Justice*, 103.

⁷¹ Macleod, "Distributive Justice and Desert," 421.

stated in the Original Position. Justice as fairness would not be effective if, in the Original Position, some had more moral worth than others.⁷²

Since not one person deserves their place in society and everybody is equally valuable in moral terms, the difference Rawls makes is based on natural and social primary goods. The quintessential right Rawls' theory advocates is the right of everyone to have the chance to follow their conceptions of the good, whether they deserve it or not. Macleod is accurate to state then that the word "desert" actually has varied connotations or "sub uses."⁷³ If Rawls actually founded his theory on desert, then the Difference Principle would not award goods to a least advantaged person who was mean or a liar. Rawls did not intend to give to some what they "deserve" judging by their moral worth. If it were the case that Rawls actually based the Difference Principle on desert judged by moral worth, then society's resources would not be redistributed to someone who was mean or had no honor, or simply did not live by principles. Rawls simply states that people are born into certain circumstances with natural and social goods which nobody gave or transferred to them, or they did not do anything to earn them. This does not imply that Rawls is favoring any kind of meritocracy; it is just a statement on the beginnings of life. After individuals are born, no part of *A Theory of Justice* implies what people deserve; it determines what individuals are entitled to under the Second Principle of Justice.⁷⁴ This should interest Nozick since the position and the talents that all individuals have when they are born were not transferred or acquired according to the Entitlement Theory, it just happened. Yet Nozick leaves aside any considerations of the "starting place," since it has severe implications in his theory.

The Entitlement Theory is comprised by two main principles and one subordinate to the malfunctioning of either of the two first ones. The first principle is Justice in Acquisition,

⁷² Rawls, *A Theory of Justice*, 312.

⁷³ Macleod, "Distributive Justice and Desert," 421.

⁷⁴ Rawls, *A Theory of Justice*, 311.

which refers mainly to the legitimacy of newly acquired goods that were previously unowned.⁷⁵ The second is Justice in Transfer, which refers to the legitimate manner in which owned goods can be transferred to others.⁷⁶ These two principles try to settle entitlement over property. Their application will derive in a just distribution of goods. Any transfer outside of these two topics is considered, by Nozick, wholly unjust and subject to rectification, for which he presents the principle of Rectification of Injustice in Holdings, where past injustices must be rectified.⁷⁷

For this theory to work, Nozick feels that a historical perspective must be included.⁷⁸ The main argument is that to determine entitlement over property, it is imperative to guarantee that every transfer of the property since its first acquisition is legitimate. This will allow the possibility to rectify any injustice that might have occurred in between transfers.⁷⁹

To determine the legitimacy of the first-ever acquisition, Nozick considers that the Lockean proviso is the adequate theory to follow, where the fundamental idea is that individuals can appropriate unowned things or land only if they leave enough and in equal conditions for others.⁸⁰ Authors, including G.A. Cohen have greatly disputed such an assumption since it rests on the idea that the world came to being without being owned, and there exists the possibility that the world was jointly owned by the human race.⁸¹

The second principle determines the manner in which already appropriated goods can be transferred. Nozick states that legitimate transfers are those done through voluntary exchange in a free market economy or in the form of gift.⁸² Finally, the third principle of

⁷⁵ Nozick, *Anarchy, State and Utopia*, 150.

⁷⁶ Nozick, *Anarchy, State and Utopia*, 150.

⁷⁷ Nozick, *Anarchy, State and Utopia*, 152.

⁷⁸ Nozick, *Anarchy, State and Utopia*, 153.

⁷⁹ Nozick, *Anarchy, State and Utopia*, 153.

⁸⁰ Nozick, *Anarchy, State and Utopia*, 175.

⁸¹ See Cohen, *Self-Ownership, Freedom and Equality*.

⁸² Nozick, *Anarchy, State and Utopia*, 150.

rectification, says that if there is an injustice in any of the two first, then a rectification must be done using historical information about the illegitimate transfers.⁸³

Nozick considers that a historical perspective is better than what he calls end-result principles which are only interested in the present distribution of property without giving any consideration on the legitimacy of the already appropriated goods.⁸⁴ This historical perspective has been severely contested since it would require too much historical information that is simply out of reach for present institutions, as Kymlicka rightfully points out.⁸⁵ However accurate this argument against The Entitlement Theory is, it does not consider that Nozick's theory is impractical also because of its foundations. Nozick based his idea of extensive property rights on his limited idea of self-ownership, and from these principles he designed the Entitlement Theory. If one is to follow Nozick literally, it becomes evident that the theory misuses certain concepts such as self-ownership and this allows the theory to intervene in certain areas where, if applied, it would be catastrophic for the libertarian utopia. To prove this I will subject the Entitlement Theory to a thought experiment which I will call the *Genetic Test*.

Nozick designs the Entitlement Theory to identify the legitimacy of property and to uphold property rights, who is entitled to what, and the manner the entitled property might be transferred. Nozick seems to refer only to property that is material, external to the self, excluding the possibility of the person as subject to the Entitlement Theory. However, his attempt to exclude the self from the Entitlement Theory was not totally effective. He had already founded his entire theory on his understanding of self-ownership as I mentioned in the previous section. His basic idea is that if I own myself, I also own the work of my body, then I am entitled to what I produce, and no state or individual has the right to take all or part

⁸³ Nozick, *Anarchy, State and Utopia*, 152.

⁸⁴ Nozick, *Anarchy, State and Utopia*, 153.

⁸⁵ Kymlicka, *Contemporary Political Philosophy*, 112.

of what I produce, without severely violating my rights.⁸⁶ There is a direct relationship between self-ownership and property rights. If Locke is followed, as Nozick certainly does, then “[e]very man has a property in his own ‘person’. This nobody has any right to but himself. The ‘labor’ of his body and the ‘work’ of his hands, we may say, are properly his.”⁸⁷ Thus the self or the person or the body can be understood, in Nozick’s theory, as a property or a holding which can be subjected to the Entitlement Theory. Even though this idea may be far-fetched, Kant considered that this might be one of the problems of the conception of property of the self and the consequences of such an interpretation become clear with the *Genetic Test*.

In a relaxed and unexaggerated interpretation of the Entitlement Theory, the first principle, Justice in Acquisition, would subject individuals to a historical investigation of their talents, not only of their external property. Institutions would have to research if the individual in question received her talents through a legitimate transfer. The second principle, Justice in Transfer, would decide whether a transfer is legitimate. If talents are the features subjected to the Entitlement Theory, then the legitimacy of transfers would be determined by marriages or unions. If two people are married by their own free will, they are not forced to marry, so this could be considered a legitimate way to transfer their talents. Genetic institutions would have to be built in order to implement such historical investigations. Eventually, it would become evident that a great number of talents have been passed on through an impressive number of illegitimate transfers: marriages by force which automatically invalidates the right of certain individuals to use their talents. For example, let us imagine Edward and Elinor. Edward was born gifted, he has an extensive running ability, which he inherited from his father. Genetic institutions start investigating Edward’s family

⁸⁶ Exdell, “Distributive Justice,” 144.

⁸⁷ Locke, “An Essay Concerning the End of Civil Government,” 17.

tree and realize that somewhere in between, there was a forced marriage. Edwards's great-great grandfather who happened to have the running ability, wanted to marry Elizabeth, but was forced by his parents to marry Jane.⁸⁸ From this marriage came the line that connects to Edward. In addition, the genetic institution found out that Jane, after the disappointment, was forced to marry Harry. From this marriage comes the family line that connects to Elinor. Unfortunately, Harry had the diabetes gene, and has therefore passed it on to Elinor, who—by the way—was not born with many natural endowments, since her family line was not richly endowed.

According to the Entitlement Theory, there was an injustice in the second principle and therefore there has to be a rectification following the Rectification Principle. It is not possible to strip Edward of his running talent, nor Elinor of her diabetes gene. How could Elinor be compensated? Edward might be forced to stop using his running talent since he obtained it from illegitimate transfers. But this does not compensate Elinor. Maybe Nozick would advocate a sole redistribution of goods, but this would not entirely compensate Elinor, if she had been born with the talent, she might have been able to use it for several years and increase her wealth. It is maybe possible to implement a constant redistribution of income and wealth where part of Edwards's gains are taken by the state in order to redistribute to Elinor. Let us now suppose that all the least advantaged people in society have been born in illegitimate family lines (which is possible), can it not be that all these individuals are entitled to be rectified by society, and that the adequate compensation is redistribution? This possibility is so great that even Nozick considers it at some point,

lacking much historical information, and assuming (1) that victims of injustice generally do worse than they otherwise would and (2) that those from the least well-off group in the society have the highest probabilities of being the (descendants of) victims of the most serious injustice who are owed compensation by those who benefited from the

⁸⁸ It is important to note that all the individuals mentioned in this example had the right to engage in relationships as Nozick clearly states is a necessary requisite. Nozick, *Anarchy, State and Utopia*, 264.

injustices...then a rough rule of thumb for rectifying injustices might seem to be the following: organize society so as to maximize the position of whatever group ends up least well-off in the society.⁸⁹

Nozick only states this as a possibility of correction, when actually his entire theory leads precisely to the need of redistributive policies. And even though the example might be an improbable one, forced marriages do happen and are even considered by Nozick as a violation of voluntary exchange since it represents the disruptions of the right of two adult individuals who have not been limited in their freedom due to some social punishment.⁹⁰ The idea of forced marriages brings to light, not only the disruption of voluntary exchange, but the existence of social circumstances, of undeserved social circumstances that require compensation and that further require a state that has the possibilities and the means to compensate adequately. On this specific point, Nozick does not provide an idea of a state that might have the possibilities to compensate adequately. On the contrary, he argues against any state larger than what he calls the minimal state which only has the authority of protection against coercion, fraud and that allows the natural and peaceful flow of the free market.⁹¹

CONCLUSIONS

The two theories presented in this chapter reflect the philosophical background of distinct social policies. The analysis of the theories can award a substantial enlightening of the values and objectives, these policies are meant to promote. It is also important to note that these values are the results of policies based on such theories.

Even though there were some important conceptual problems found in Nozick's libertarianism, I do not intend to say that Rawls is correct in everything he states in *A Theory of Justice*. However, it is clear after strong consideration of Nozick's *Anarchy, State and Utopia*, that the disparity of Nozick and Rawls in the basic philosophical arguments is rooted

⁸⁹ Nozick, *Anarchy, State and Utopia*, 231.

⁹⁰ Nozick, *Anarchy, State and Utopia*, 264.

⁹¹ Nozick, *Anarchy, State and Utopia*, 26.

in the limitations of Nozick's conception of property of the self. The consequent divergences arise from Nozick's assumptions, where he only assumes that self-determination or, to be more explicit, the right of individuals to do with their talents, bodies and property whatever they decide, is a logical consequence of extensive property rights. However, this is a very strong and might I say, exaggerated supposition. If Rawls is correct, then individuals are in need of certain social and natural primary goods to achieve personal plans of life or conceptions of the good. However, Nozick's theory does not shed any light on how individuals can get a hold of resources that are not transferred to them through the *Entitlement Theory* and the free-market. As a result it is not clear how the least advantaged are going to be able to have at least the opportunity of following their life plans.

To assure every individual of having the opportunity to follow their conceptions of the good, Rawls determines such an assurance as a right, it is an end in itself that is achieved through the distribution of society's resources. Nozick only considers the right to self-determination as a consequence, not as an objective. This point is made even clearer with Nozick's preference for a state that does not have the authority or the powers to do much for the least advantaged. On the contrary, he advocates for a minimal state that can only protect property rights and oversee the peaceful and correct functioning of the free-market without intervening in it.⁹² In this sense, only those individuals in society that have the resources to have self-determination are going to have the right to actually choose and decide over their lives. The consequential right of self-determination is not a general right, as the one advocated by Rawls or as the Nozickean right of self-ownership. When Nozick states that individuals are born with rights that nobody or no state can trample,⁹³ he is not referring to the right of self-determination. One can assume then, that the right to self-determination

⁹² Kymlicka, *Contemporary Political Philosophy*, 103.

⁹³ Nozick, *Anarchy, State and Utopia*, ix.

arises only or can be purchased with resources that are not available to all, only to some. It seems that Nozick considers that the right of self-determination is only *de jure*, but not *de facto*. Stephen Holmes and Cass R. Sunstein give a clear example of rights such as these when they mention the right to have an abortion. In this case, women in the United States have the right to have an abortion practiced by a physician in their first months of pregnancy thanks to the Roe vs. Wade case.⁹⁴ However, this does not mean that all women are going to be able to practice such a right due to the fact that abortions cost money that some women may not have. Even if they would like to have the abortion, and they have the *de jure* right to have it, they cannot have it because they do not have the means to pay for it. The right to choose to have an abortion is only practical when women have money.⁹⁵ Even though the right to have an abortion is a much more specific right than that of self-determination, it helps to unveil the problematic of taking self-determination only as a consequence and not as an objective.

The liberty that Nozick advocates has more implications than he would want. Liberty to sell, bequeath and receive does not liberate individuals in a complete sense. Oppression can be understood in many ways that do not include a coercive state. Poverty, debt, and few or zero opportunities to achieve goals can also be understood as oppression, especially by the individuals who live such circumstances. Nevertheless, Nozick does not provide any kind of solution to these problems of oppression and slavery and he argues against distributive policies that might award some kind of aid. Nozick therefore fails in awarding a convincing argument against redistribution or patterned principles.

⁹⁴ W. Lasser, ed., "Roe v.s Wade," in *Perspectives on American Government* (Lexington and Toronto: Heath, 1996).

⁹⁵ See Stephen Holmes and Cass R. Sunstein, *The Right of Costs: Why Liberty Depends on Taxes* (New York: W.W. Norton and Company, 1999), 35.

This result necessarily renders libertarianism as inadequate to be considered a guideline for social policy, especially pension policy. The problems identified in the theory would necessarily transfer to the policy, and its practical effects would, in turn, be the embodiment of the problems of the theory. Nozick's theory is inadvertently selective in nature. It universally provides the right of self-ownership. Yet the intention of self-ownership is merely selective to those who have the ability to do whatever they like. In this sense, Rawlsian social justice is a much more adequate theory for social policy that is meant to be universal and not selective on the basis of morally irrelevant traits.

It is important to note that even though Nozick did limit certain concepts that eventually allowed his theory to pave the way to a Rawlsian solution, he did, in fact find some important faults in Rawls' theory. Nozick considered that the Original Position and the Veil of Ignorance were not good enough arguments to justify Rawls' principles of Justice.⁹⁶ One of the most interesting and accurate reasons to question the justification given by Rawls is that he did not include non-productive individuals in the Original Position.⁹⁷ What about certain individuals with handicaps or other problems? As Nozick correctly judges, Rawls did not include them, and therefore his contractarian justification seems to be incomplete. One can assume, then, that Rawls did not give as comprehensive or adequate an account of the parameters to identify the least advantaged as he could have done –which will be the subject of the next chapter.

⁹⁶ Nozick, *Anarchy, State and Utopia*, 201.

⁹⁷ Nozick, *Anarchy, State and Utopia*, 190.