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LIBERTARIANS AND LIBERAL WELFARIST' CONCEPTION OF DISTRIBUTIVE JUSTICE

In this paper I argue for the position that the canons of distributive justice as proposed by the Liberal Welfarists and Libertarians are structurally deficient in that they suggest a false dichotomy between two ways of ensuring the justice of the distributive system leading to a greater exercise of the freedom of the people. Liberty and Equality are not necessarily mutually exclusive nor are they individually exhaustive and sufficient. Authentic freedom is ultimately a combination of the values and essential elements of liberty and equality.

The first part of this paper examines the libertarians and Liberal welfarists' conception of distributive justice. Each school of thought believes that its proposition is a better approach to determining the issue of a just distribution system. As we shall discover, there is no consensus among political philosophers about which of these models is adequate. In the second section, I examined John Rawls' specific principles of justice as fairness as presented in his book, *The Theory of Justice*, as well as the reformulation of these principles in a latter work, *Political Liberalism*. Rawls believes that the most reasonable principles of justice are those that would be unanimously agreed upon in an appropriate initial situation that is fair between individuals conceived as free and equal moral persons. So his two principles of justice, and their latter modification in *Political Liberalism*, comprise a conception of justice that is built up

from the hypothesis of a contract situation, i.e., from the more specific features of what he calls the 'Original Position.'¹ In Rawls' later publication (*Political Liberalism*) however, there has been a significant shift in his theory such that he is no longer committed to defending a universal agreement on principles of justice as fairness suitable for cross-cultural application but would allow an overlapping consensus or some sort of comprehensive agreement on what would constitute fair principles of justice between individuals of different philosophical and religious orientations.² What is most significant is that the society be committed to a social order where there is an equal respect for all persons and where the institutions of that society show an equal concern for everyone.

The third section focuses on Robert Nozick's rejection of the Rawlsian liberal Welfarist arguments on the basis of safeguarding the liberty of the tax payers. Nozick contends that we must not use the coercive apparatus of the state to redistribute income and wealth from the rich to the poor. Rather the state should confine itself to the narrow functions of enforcement of contracts and the protection of the individuals against force, theft and fraud. Anything more than this minimal function would constitute a violation of the individual rights. In the fourth section, I examined the influence John Locke's discussion on the property rights of the individual persons had on the debate between the Libertarians and the Liberal Welfarists on the questions of justice. The issue of property rights is a very important strand of the Libertarians argument which derives the right to personal liberty from John Locke's property rights. Locke's discussion puts the right to liberty on par with the right to life.³ In the *Essays on the Law of Nature*, Locke believes that there a rule of morals which derives from the natural law obligating man to choose the good; the most significant constitutive characteristic of the law of nature been its binding force.⁴

¹ J. Rawls, *The Theory of Justice*, London: Oxford University Press 1971, p. 311.

² Idem, *Political Liberalism*, New York: Columbia University Press 1993, p. 4–5.

³ J. Locke, *Two Treatises of Government*, Cambridge: Oxford University Press 1966, p. 282.

⁴ Idem, *Essays on the Law of Nature*, ed. W. von Leydon, Oxford: Oxford University Press 1954, p. 105.

1. LIBERAL WELFARISTS AND LIBERTARIANS CONCEPTIONS OF DISTRIBUTIVE JUSTICE: THE COMPATIBILITY OF LIBERTY AND EQUALITY IN A JUST SOCIETY

At the core of the debate is the question of what would constitute a just distributive system of goods and social services within a society. The basis of the Liberal Welfarists' conception of justice is on the subject of the moral equality of all persons. They argue that property rights must be limited in order to provide equal opportunities and treatment for all people within a state community. This is because differences in status and benefits of life are often the results of unequal opportunities due to underserved social and natural circumstances which are not necessarily the fault of the less disadvantaged in the society. Claims to equality as we have seen are usually interpreted in a negative sense as the justified protest against a state of affairs that allows a level of inequality that cannot be morally justified. John Rawls is of the opinion that conditions of inequalities that exist in the society should be redressed in order to improve the conditions of the less privileged in the society.⁵ On the other hand, the Libertarians would contend that a person's personal liberty can justifiably be restricted only when he consents to it. Any other form of restriction, including taxing income for the purpose of redistribution of wealth is unjust. A most likely Libertarian extension of the Lockean argument would be like the following,

- no one else deserves the fruits of a person's labour;
- it is that individual's own action that produced those fruits;
- therefore, only that individual is entitled to such self-generated holdings.

It is not too difficult to see that the second premise is a bit controversial and as we will point out later, it is not the sole effort of any one individual that is responsible for the final product which is in the market. However the question which this debate raises is, on what basis can we

⁵ B. Clark, H. Gintis, *Rawlsian Justice and Economic Systems*, 'Philosophy and Public Affairs' 7(1973), p. 71.

defend the moral equality of all persons that advocates for equal opportunities while at the same time not denying the liberty of the individuals? In what sense is equal opportunity different from equalizing incomes? Is liberty compatible with Equality?

Generally the concept of Equality is a highly controversial one. When we speak of things or people as equal we mean that they possess some features or qualities that create a uniformity of some sort between them. Social and political philosophers have often grappled with the sense that is relevant to determining the equality of people. Aristotle gives us a formal principle of justice by requiring that 'equals should be treated equally and unequals should be treated unequally.'⁶ This conception does not give us the material conditions relevant to determining equality between persons. It is on the one hand too inclusive and does not specify what conditions may be morally relevant to the determination of the question of equality. If we say that all humans are equal what exactly are we saying? Are we saying that they are equal because they are human beings who possess a language or some form of rationality or the ability to feel pain or to experience joy? What other criteria are substantive enough to be relevant here? If any of these is taken as a relevant determinant then what about those who have a greater capacity to bear pain or may not have developed a language as a result of some mental disability that they suffer? It is also true that we do not all have the same level of rationality and should those with a different level of rationality be treated differently? These questions reveal the weakness of appealing to any of such criteria to determine the equality of persons. What we need is a substantive criterion that is premised on the moral equality of all human individuals irrespective of the qualities they may or may not possess. So to treat all human individuals as equal would require that we exclude as morally irrelevant such genetic traits such as sex, colour, race or physical abilities and talents, over which we have absolutely no control. Once this has been established then it is easier to see as Anthony Flew would argue, why all human beings should be treated equally.⁷

⁶ Aristotle, *Nicomachean Ethics*, book 1 (trans. D. Ross), Oxford: Oxford University Press 1980; s. 98.

⁷ A. Flew, *Who are the Equals?*, 'Philosophia' 9(1980) no. 2, p. 32.

It is pertinent to point out however that while equal treatment means equal respect and treatment for all persons it does not mean equal outcomes in life. As it has been pointed out, 'One child is born blind, another with sight. One child has parents deeply concerned about his welfare who provide a background of culture and understanding while another has dissolute, improvident parents. Children at birth clearly do not have identical opportunities in relation to abilities or environment.'⁸ While it is conceivable that everyone can start with equal opportunities, it's unrealistic to expect everyone to have similarly equal outcomes for the very simple reason that we have different capabilities and talents. Whereas Equality of opportunity provides a scope for freedom, equalling outcomes is a direct negation of liberty and the initiative to explore and be creative.

So how is the concept of equality compatible with the concept of liberty? Is freedom the same thing as an unfettered liberty to do whatever one desires? One must admit that the concept of Liberty or freedom does not lend itself to easy definition. Freedom is often to be interpreted in a negative sense as the absence of any constraint imposed either by an individual, agency or even the government that prevents the individual from doing whatever we want to do. Some theorists have argued that the negative conception of freedom is a formal one.⁹ While we may be free from any constraints that are directly imposed upon us, there may be some constraints which flow from the social arrangements of living in a society that may inadvertently prevent us from doing whatever we may choose to do. I may be free to drive anywhere I want but I'm constrained from driving on the right hand side of the road when everyone else is driving on the left. I may be free to put on clothes or not to put them on but I am constrained from going out to work naked. I may be free to buy food and eat but due to the material constraint of not having money I am not able to buy it. Isaiah Berlin talks about Negative and Positive freedoms. The Negative sense of freedom incorporates the idea of the absence of constraint while the Positive sense involves the lib-

⁸ M. Friedman, R. Friedman, *Free to Choose*, New York: Basic Books 1980, p. 131.

⁹ D. Irele, *Introduction to Political Philosophy*, Nigeria: Ibadan University Press 1998, p. 120.

erty to be able to act or do something.¹⁰ But are we really free from all constraints especially in a social environment of interconnected human interactions? MacCallum criticizes Berlin's position by arguing that his attempt at differentiating between these two senses of freedom only leads to confusion since each of the freedom can be described in both ways. It is meaningless to talk about freedom if we have not established a priori what it is we are free from or what we are free to do.¹¹

As we have mentioned before, we may be free to eat whatever we want but we are not free to take it from another person without their express permission or paying for it. In other words I may have a right to be free from hunger but this right does not equally confer on me the right to steal it or to forcefully acquire it from another. So what we should really be asking here is this, is there a condition that can rightly justify certain measure of constraints to be imposed on our freedom? Do such measures necessarily constitute a denial of our freedom and so be regarded as unjust? If certain social constraints on our individual liberty can lead to a greater liberty for all, should such liberties not therefore be restricted? Unfortunately concepts of freedom and Equality do not exist in exclusion of other values of human co-existence like justice. Sometimes we discover that the only effective means to promote equality involves some limitation of liberty or freedom and at some other times the consequences of promoting liberty or freedom are detrimental to the establishment of equality. In some sense it might even seem that freedom and equality are incompatible. Liberty and equality, while not necessarily mutually exclusive, often conflict.

¹⁰ I. Berlin, *Two Concepts of Liberty*, in: *Four Essays on Liberty*, Oxford: Oxford University Press 1983, p. 12.

¹¹ G. MacCallum, *Negative and Positive Freedom*, in: *Philosophy, Politics and Society*, 4th series, ed. P. Laslett, Oxford: Basil Blackwell 1972, p. 46.

2. JOHN RAWLS' CONCEPTION OF THE PRINCIPLES OF JUSTICE

In his book *A Theory of Justice*, Rawls argues for a theory of social justice that accounts for the distribution of goods and services in the society. Against the three entitlements principles of Robert Nozick, Rawls is convinced that the most reasonable principles of justice are those that would be unanimously agreed upon in an appropriate initial situation that is fair between all the deliberating individuals conceived as free and equal moral persons. His own two principles of Justice comprise a theory of justice that is built up from the hypothesis of a contract situation which he called the 'Original Position.' These are,

- the Greatest liberty principle, and it states that each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others;
- the Difference and fair Opportunity Principles which states that social and economic inequalities are to be arranged so that they are both, (a) reasonably expected to be to everyone's advantage and (b) attached to positions and offices open to all.¹²

The individuals in the original position are expected to reason from the perspective of self-interest, with a consideration of the possibility of how they are likely to fair if their society were to be organized on the basis of the principles which were to be chosen. It maybe argued that since these individuals also possess an extra ordinarily general knowledge of human psychology, economics and social relations, they are not likely to be in agreement in the choice of the principles of justice since each one would be influenced by their personal interests.¹³ Rawls had anticipated the objection that some individuals are good at taking risks and some may be prepared to gamble with their own interest and so are likely to choose such differing principles as may favour them in particular. He therefore infuses a measure of checks and balance into the Original

¹² J. Rawls, *The Theory of Justice*, p. 62, see also p. 302.

¹³ M. Fisk, *History and Reason in Rawls' Morals*, in: *Reading Rawls*, ed. N. Daniels, New York: Basic Books 1970, p. 68.

position which he calls the 'Veil of Ignorance.' The Veil of Ignorance is meant to temporarily deprive the deliberating individuals (while they remain in the Original position) of information about themselves, their specific conditions, and their social circumstances. Rawls believes that what individuals would do in an appropriate initial contractual situation where everyone is equal would be more reflective of what humans are by nature rather than what they have become by circumstances.

In *Political Liberalism*, Rawls modifies his position significantly in response to his critics who argued that his conception of justice is not different from any other comprehensive theory especially in its failure to distinguish between a moral theory dealing with the problem of justice and a political conception that has to do with political stability.¹⁴ Rawls would argue that it is possible for persons with divergent political and religious and moral views to reach some kind of overlapping consensus on the account of justice that is most in conformity with their own views and this would not be a contradictory position to hold.¹⁵ In buttressing his argument Rawls points out that the political conception of justice incorporates in itself features premised on the notions that Society is a fair system of cooperation, constituted of a free and equal citizenry and the fact that a well ordered society is one governed by a political conception of justice. These ideas he argues are latent in the public political culture borne out of the necessity of living together in a democratic setting.¹⁶ In order to reflect the shift in his political conception of justice, Rawls also modifies the formulation of his principles of justice to read,

- each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal basic liberties, and only those liberties, are to be guaranteed their fair value;
- social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions and offices open to all under

¹⁴ R. Martin, *Rawls's New Theory of Justice*, 'Chicago-Kent Law Review' 69(1994), p. 747.

¹⁵ J. Rawls, *Political Liberalism*, p. 11–12.

¹⁶ *Ibidem*, p. 13–14.

conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least advantaged members of society.¹⁷

In Political Liberalism we notice that Rawls replaces 'equal right' with 'equal claim' conjoined with the further modification of 'a fully adequate scheme of equal basic rights and liberties' in place of its initial formulation of 'a system of basic liberties.' As some critics contend, Rawls has not only failed to explain how these changes affect his conception of justice but also by claiming that only the political liberties should be given their fair value, he forces himself into having to admit that certain basic rights and liberties are of a greater value than others. There's absolutely no grounds for making such value claim as Rawls does here.¹⁸ It is pertinent to point here, that while Rawls' shift from the initial formulation of the principles of justice are significant, and he is no longer committed to a very streamlined and attenuated contract situation which leaves no room for disagreement or bargaining, it is not clear if the deliberating individuals would all reach an overlapping consensus as Rawls would want us to believe. Human nature and rationality he argues would lead the deliberators to choose such principles that will not only be reasonable but comprehensive enough without been contradictory to their own views. One wonders if Rawls is describing real human nature as a given or he is simply legislating a hypothetical supposition into reality in order to justify his recent postulation of justice as an overlapping political consensus.

The problem with the Rawlsian conception of justice as fairness whether in matters of distributive justice or political consensus is that the deliberating individuals are put into an imagined social structure that is hardly reflective of real human nature. With so much checks and balances built into the Original position as initially formulated or in its modification which includes the fact of a reasonable pluralism admitting of an overlapping consensus, one wonders if it really does reflect and capture what is relevant to Justice in such a way that the values of freedom and equality will be preserved and fostered in the development of social structures. What about the concerns of a few dissenting opinions

¹⁷ Ibidem, p. 5–6.

¹⁸ R. Martin, *Rawls's New Theory*, p. 745–747.

no matter how small they may be that may be swallowed up under a supposed consensus? Our Reflective sense of Justice Rawls contends is the ultimate judge in the Original position. It is not difficult to see here that he is suggesting a coherence theory as a justification for the principles i.e., the principles will be justified when the moral data (the considered moral judgment against which the proposed principles are to be checked) are held in common by a number of individuals,¹⁹ or as he points out in Political liberalism, the overlapping consensus is comprehensive enough and not in conflict with our own views. Rawls more than anyone else should realize that no coherence argument can be conclusive as none of our moral judgments, not even those fixed points which we are prepared to embrace can be considered incorrigible. Ethical pluralists may even agree that humans should live a morally upright and ethical life, and at the same time question the existence of an objectively specified good life and right ethical choices no matter how seemingly comprehensive it is.²⁰

3. ROBERT NOZICK'S ENTITLEMENT THEORY AND HIS REFUTATION OF LIBERAL WELFAREISM

In his book, *Anarchy State and Utopia*, Robert Nozick argues that it is just for people to retain whatever property they have acquired, if and when such holdings are in accordance with his three historical principles of entitlements namely,

- the Acquisition Principle,
- the Principle of Transfer, and
- the Rectification Principle.

According to the acquisition principle, if the initial state of affairs was just and an individual Mr. A, has justly acquired a property, he has a right to own that property in accordance with this first principle and no

¹⁹ J. Rawls, *The Theory of Justice*, p. 580; see also: idem, *Political Liberalism*, 22–29.

²⁰ R. Bernstein, *The Restructuring of Social and Political Theory*, London: Methuen and co. 1976, p. 142.

one has the right to force or compel him to use his property in any other way than he chooses himself. However if he chooses to transfer that property to another person, he can do so in accordance with the second principle of transfer which does not only allow him in justice to do this but equally confers on the person (say Mr. B) to whom the property is transferred the right to legitimately own the property. Since no form of injustice has been involved in the initial acquisition and transfer, Mr. B does no one injustice by taken possession of the property that has been transferred to him. In the same way no one not even the government should deny him the liberty of using this property as he chooses. The third principle of rectification deals with historical cases of injustices where it is discovered that an individual has not legitimately acquired his property in accordance with the first or second principle of entitlement. In such cases a faithful application of the third principle of rectification would be seen to be fair and just. It is only under such historical consideration where an injustice has been perpetrated that a government would have the right to correct the initial unjust state of affairs.²¹

The problem with this requirement however is how far can one reasonably go in history to decide the injustices of an acquisition which may have been perpetrated many years ago? What about situations of doubt where the relevant documents may not have been kept or may have been lost to the incidences of wars or natural disasters? Are there a specific number of years that may mitigate or prevent the application of this third principle? What about the injustice that may be done to the new owner of the property who may or may not have been responsible for the injustices of a hundred years before he was born? If this rule were to be strictly applied would it not make children of the future generations pay endlessly for the sins of their ancestors? How would one even determine in monetary value the weight of the injustices which the many years of colonialism and slavery visited upon the continent of Africa? What kind of restitution would now be required to satisfy the beneficiaries today? The complexity of such human relationships and historical facts will immediately reveal the weakness of such proposition as Nozick's.

²¹ R. Nozick, *Anarchy, State, and Utopia*, New York: Basic Books 1974, p. 148–153.

Nozick illustrates his point with the example of Wilt Chamberlain (a basketball super star) who is made a lot richer than he was initially by individuals who freely chose to go and watch him play basketball. Now if about a million people were excited enough to watch him play and thus decide to contribute 25 cents of a 1 dollar gate takings to a box marked with his name, then he would end up been \$250,000 richer. Note that Wilt Chamberlain did not defraud anyone to get his money since each of the individual who paid to watch him was entitled to the control of their resources in the first place. Nozick would argue that this second distribution is not unjust just because Wilt Chamberlain ends up being much richer than the initial distribution matrix. He admits however that in a situation of voluntary transfer of money, gifts, resources etc., there will be inequality but the distribution matrix is still just if it satisfies the principles of justice in transfer.²² His argument can be expressed in a syllogistic manner,

- a distribution is just if it arises from another just distribution by legitimate means;
- wilt Chamberlains wealth arose from a just distribution system of justice in transfer
- therefore he is entitled to his wealth and cannot be forced to give it away by way of taxation for the benefit of those in need.

It would seem that what one needs in order to defeat Nozick's argument is a denial of the necessary entitlement to the wealth one acquires as a result of the principle of transfer. As Cohen would argue if we can show that the spectators who pay to watch Wilt Chamberlain do not only get the satisfaction of watching him play but are also able to calculate the disadvantage they put themselves in relation to him, and the full consequences of their transfers then we can say that they acted in all rationality.²³ However to the extent that they do not think through the overall consequences of their actions, the option of watching him play may appeal to them as rational enough but would they have agreed to the transaction if they knew? It would seem that what we are looking

²² Ibidem, p. 163.

²³ G.A. Cohen, *Robert Nozick and Wilt Chamberlain: How Patterns preserve Liberty*, in: *Justice and Economic Distribution*, ed. J. Arthur, W.H. Shaw, New Jersey: Prentice Hall Inc. 1978, p. 261.

for is a suitable platform of justice that both ensures fair play and more so safeguards the right and liberty of the individual. We must however be prepared to admit that even if we were to find a way of levelling the income differentials (which he expressly forbids) the final outcome will always result in inequalities. What is most significant to Nozick is that the distributive mode satisfies the provisions of any of these three principles, even when the final outcome ends up in a state of gross inequality, it is still just and fair.

Let us note however as Nozick pointed out that the entitlement theory of just holdings is to provide principles governing the entitlement and holdings of individuals, that do not require any examination into the substantive fairness of the distribution, i.e., the quantity and kind of goods held by every person. A key assumption of the entitlement principle is that an individual is entitled to everything which he legitimately acquires by way of the historical entitlement principles. From the point of view of an entitlement theory, redistribution is a serious matter indeed; it simply constitutes an infringement on the liberty of the taxpayers. The libertarians like Nozick find very objectionable any deliberate attempt to try to redress the state of inequality that may have been the outcome of the faithful application of the entitlement principles of justice because such provisions will necessarily involve the redistribution of income through taxation and this would not only constitute an infringement on the liberty of the tax payers but also a violation of their individual rights. It would be improper for the state to be involved in creating property rights in the guise of operating any principle of distributive justice.²⁴ This position as we shall see in the next section is heavily dependent on John Locke's proposition that every man has a property in his own person.

²⁴ H. Steiner, *Liberty and Equality*, 'Political Studies' 29(1981) no. 4, p. 32.

4. THE INFLUENCE OF JOHN LOCKE ON THE DEBATE BETWEEN THE LIBERAL WEFARISTS AND LIBERTARIANS

John Locke may be considered as one of the earliest liberals whose works had a lot of influence on this debate. Any attempt to critic his proposal has to take into consideration the fact that there are two quite distinct positions that emerge from his works. His natural law position derived from the collection of essays from the 1660s entitled, 'essays on the law of Nature' and the hedonistic position which is premised on the consideration of sanction been the reinforcement obliging persons to be morally upright.²⁵ The traditional Christian Natural law theory contends that unlike other animals who are led by mere instincts the human individuals possess some natural inclinations which primary purpose is to direct us to the realization of our proper end. Being rational creatures, we are naturally inclined by the aid of our reason towards good acts.²⁶ Arguing from this traditional point of view, Locke also believes there is a rule of morals which obliges us to act in accord with our nature. It is natural because God's will, the ultimate basis of the law, gives us the ability by nature to use our reason to know this. It would seem to follow that one of the most salient characteristic of Natural law is in its ability to be known. Knowing it involves knowing its obligating force as the decree of a divine being superior and exterior to man.²⁷ In other words Natural law has the characteristics of (a) its divine origin, i.e. God being the law giver, (b) mediated to man, its recipient by means of the light of nature and (c) its obligating force to sanction with punishment or rewards.²⁸ To live according to the dictates of the natural law is therefore another way of saying that we are living according to our nature. But is this really the

²⁵ J.B. Schneewind, *Locke's Moral Philosophy*, in: ed. V. Chappell, *The Cambridge Companion to Locke*, Cambridge: Cambridge University Press 1994, p. 200.

²⁶ J. Locke, *Essays on the Law*, p. 97.

²⁷ Ibidem, p. 105.

²⁸ Idem, *Questions Concerning the Law of Nature*, ed. R. Horwitz, J. Strauss Clay, D. Clay, Ithaca: Cornell University Press 1992, p 98–100.

case and is it in any way a reflection of the way real human individuals acting freely in a competing environment are likely to behave?

In response to the objection that such a natural law does not exist and even if it did exist, people will still disagree as to its content, since not everyone will be able to apprehend and comprehend it, Locke argues, 'I admit that all people are by nature endowed with reason and I say that natural law can be known by reason, but from this it does not necessarily follow that it is known to any, and everyone.'²⁹ Locke points out that this ignorance of the natural law may be attributable to one or more of many reasons, i.e., the improper use of the light of reason or the unwillingness to use it thereby choosing to remain in darkness, the bad formation of children to develop right consciences to choose good from bad, natural defects resulting in mental disabilities or the violence of passions and the lack of discipline that leads us to prefer the pleasures rather than what is dictated by reason.³⁰ To avoid the complications arising from this position, Locke was forced to admit that at the end of the day not everyone should be consulted in determining the outcome of a case but only those who are more rational and perceptive than the rest.³¹ But it is not always the case that a rational and knowledgeable person is a good person who is not driven by selfish motives. I believe the question would always come down to the consideration of human nature.

Let me consider one of the classical cases of a boat of travellers that capsized and somehow a few persons managed to swim to a previously un-owned island. His simple prescription requires that an individual has a right to a previously un-owned property to which he applies labour. Natural justice Locke contends requires that a person has a right to what he produces and to the full product of his labour (whether he is a baker, tailor, farmer sailor, teacher etc.,) provided of course that there is enough, and as good enough left in common for others.³² There are obvious difficulties with Locke's proposal here. First and foremost it introduces the question of human nature and seems to take for granted that human nature is essentially good and not selfish and that every hu-

²⁹ Ibidem, p. 115.

³⁰ Ibidem, p. 115–116.

³¹ Ibidem.

³² D. Irele, *Introduction to Political*, p. 47.

man individual would expectedly be thinking of the well-being of others as they are busy providing for their own well-being. Locke expects this to be the case because individuals are reasonable enough to act according to the natural reason which is operational in that environment such that everyone who consults that natural reason will be able judge wisely and correctly.³³

Locke gives us a descriptive account of human nature that is already premised on grounds of moral responsibility and reasonableness. On the assumption that the men in his state of nature are equal and have equal right to life, liberty and property, men are expected to act reasonably because the laws are so self-evident and discoverable by reflection on the nature of man. Locke's formulation of the natural law is vague and we are not told in what they consist and how it is possible that everyone just simply knows them given our nature as human beings. This is begging the question and it is obvious that in his desire to provide his defense of individual rights, he is prepared to make a moral prescription that is not empirically verifiable. As Dipo Irele would point out, Locke by his analysis of human nature has introduced a moral dimension which is supposedly grounded on the reasonability of man.³⁴ In other words, everyone who consults the natural reason should be able to judge correctly, what is the right course of action. But this is hardly the case in real human historical situations where the gap between the rich and the poor is ever so widened not because of the lack of available resources but more because of the tendency of certain individuals to appropriate more to themselves at the expense of others and thereby denying them the opportunity to fully exercise their right to property.

Let us consider the notion that the application of labour to a previously un-owned property is the determinant of ownership of property and the significance of the statement 'as good enough.' Following Locke's classical example let us suppose that when these group of friends land on this Island, one of them (Mr. Jones) immediately runs ashore and lays claim to an enormous piece of land with juicy fruit trees without previously trying to ascertain how much of the property there is available

³³ *Western Liberalism: A History in Documents from Locke to Groce*, ed. E.K. Bramsted, K.J. Melhuish, London: Longmans 1978, p. 121.

³⁴ D. Irele, *Introduction to Political*, p. 45.

for himself and others. His companions remain on board the boat long enough to celebrate and reach some kind of overlapping consensus on how they are to divide the property among themselves and at the same time respect the views of each person. By the time they reach a decision and finally disembark, they discover that there is only a little portion of the property left to be shared because their friend had already acquired the choicest part of the property. What this means is that while Mr. Jones has the natural right to property which he can exercise, his friends have the natural right to property which they cannot exercise because there is little or no property left. Their overlapping consensus will amount to nothing if an individual is selfish enough to think of his own interest over and above the interest of others. Will this not affect the freedom of the people who do not have any property over which to exercise their right? What good is it to have a right that one cannot exercise or a consensus that no one respects?

On Locke's proviso, Mr. Jones would be unjust because he has not left equally as good enough property for his friends. But suppose it is the application of labour to a previously un-owned property that gives an individual the property right to the property, and Mr. Jones had already the acumen to apply some form of labour in demarcating his property, would he be expected to share his portion with his colleagues? If he refuses to share with them, would he be regarded as unjust? If the historical determination of this new state of affairs is found to have been unjust would a redistribution of the property in question not be in order? But if he were to refuse to allow anyone redistribute his property and was to ask why he should agree to this option. Are we not supposed then to provide a justifiable ground why he should at least consider this option? This is where the argument from the moral equality of all persons or Locke's natural right would have to be invoked. And if the aim is to give the others equal opportunity to exercise their rights and thereby ensuring the freedom of all, how does this action of redistribution infringe on the right and liberty of Mr. Jones? Supposing Mr. Jones, not been able to provide all the labour necessary to lay claim to the piece of property, had in the process employed the services of some other persons in demarcating his property, would they not then be entitled to some form of compensation thereof? What about all the other disenfranchised colleagues who had

aided in paddling the boat to the deserted island? Are they not entitled to some form of compensation equally as good? What is the just and fair pattern of distribution that must be adopted to ensure that everyone is treated with fairness and justice?³⁵

How are we to determine in the case of the first individual who sets his foot on the previously un-owned Lockean Island that he had left as good enough resources for his companions or for the common good? What is the measure of what is good enough? Isn't that in itself subject to each person's subjective interpretation depending on what they hold as valuable in life? When is the appropriation of a previously un-owned property enough in the case of the fortunate first individual? What percentage is actually enough for the common good as against the freedom of the individuals to acquire more and more properties for themselves? What is the modality to be employed in reaching this decision? Is an initial census of all the competing individuals necessary to a prior determination of the available resources before anyone can even apply labour which qualifies them to own that previously un-owned property? Who or what body of persons are to constitute the adjudicating authority in this case and how are such persons to be chosen? Let us imagine the case of the tailor or farmer who lays claim to the value accruing from his final product in the market. No one would argue with the point of view that before the tailor or farmer puts his final product in the market stall, there were a lot of others, albeit silent workers in the production processes, who ultimately made the production of the final product possible i.e., the farmer who planted the cotton, the environmental conditions, the labourers who tended the fields and protected it from poachers, the transporter who got the cotton to the weavers, the labour involved in the weaving process, the producers of the sewing machines and other essential materials, tie and dye etc. Were all these different levels of individuals adequately compensated? Shouldn't they all share in the final value accruing from the sale of the cloth or farm produce as in the case of the farmer?

The significance of the issues raised here is to show that if the constitutive elements of the Natural law are such that enjoin us by nature to

³⁵ K. Nielsen, *Equality and Liberty*, New York: Rowan and Allanheld 1985, p. 71.

gravitate towards the good acts, then it is reasonable to presume that the issues that have led us to a state of affairs where some are so impoverished because of the actions of others would not even arise at all. Many cases of injustices across many spectrum of social interactions would be history but this is not the case and as we have tried to show, it is not the singular unaided effort of one single individual (no matter how responsible in the Lockean sense) that is responsible for any final product. It is more appropriate to say that it is the cooperative effort of a society that resulted in the final product in the market. If this is the case, then what exactly is justice especially in terms of a distribution system that exists in a society that is described as just and fair? The question which we must now ask is, in what sense does justice demand equality in the distribution of goods and services such that everyone has equal opportunities? The issue therefore is what kind of differences are we to consider as morally relevant to treating people differently? The possession of some common and often universal human characteristics such as the ability to speak a language, use tools, the capacity to feel pains etc., could be qualities to be considered as these may give rise to the moral claim that people should be treated equally. If a distributive system is said to be unfair or unjust because it allows for inequality among morally equal persons, it seems then that what we need is a principle that says it is morally unjust to favour some persons over others. It is not just enough to appeal to the characteristic composition of the Natural law especially when people don't feel the binding force in the same way and the possibility exist that not everyone can grasp and comprehend it as Locke later admitted. The purpose for asking this question is to seek to establish an appropriate standard of Substantive equality such that it is a demand of morality that people be treated in the same way. Such criteria could then serve as a proper starting point for determining particular cases whether or not the cause of justice has been served.

CONCLUSION

In this paper we have critically examined the Liberal welfarists and libertarians arguments on the question of distributive justice. As we have mentioned earlier Nozick contends that the entitlement theory of just holdings is to provide principles governing the entitlement and holdings of individuals that do not require any examination into the substantive fairness of the distribution, i.e., the quantity and kind of goods held by every person. On the other hand the liberal welfarists like Rawls believe that any authentic principle of justice must necessarily give expression to the moral equality of all persons. This is because the inequality that exists in the society cannot be justified given that people do not often have equal opportunities in the resources needed to live a better life. To this regard, he advocates for a distribution system that will help to reduce the level of inequalities that exist in the society. And in the case of a pluralism of opinions which cut across religious, philosophical or moral divide, he believes that an overlapping consensus is possible; comprehensive enough so as not to be in conflict with one's own views.

What is obvious from these various applications of the concepts of justice is the question of the compatibility of equality and liberty in a just society. As our analysis here has shown, we discover that sometimes the only effective means to promoting equality requires some limitation of liberty and that at some other times, the consequences of promoting liberty are detrimental to ensuring equality of persons. This seeming incompatibility between the concepts of equality and liberty reveal the controversy in the arguments and different positions held by the liberal welfarists and libertarians on the conceptions of justice. As we have tried to argue, liberty and equality are not necessarily mutually exclusive and both can be ensured within reasonable limitations in the pursuit of justice. One pertinent issue which such arguments raise is that in the area of distributive justice there will always be an obvious difficulty in an attempt to use formal conception of justice to establish principles of substantive justice. Any attempt to answer the question of the justice of any system of distribution will have to first address the distinction between these two senses of formal and substantive justices.

My rejection of Rawls application of the difference principle flows from the understanding that a faithful and consistent application of such principle would on the long run undermine the liberty of those it was meant to protect if we cannot be sure that they will not just take advantage of the welfare provisions and refuse to contribute their quota to the growth and development of society. Even in Political Liberalism, we note that achieving a political consensus is not always the solution to matters of deeply rooted injustices because one always has to consider the divergent opinions of the small but nonetheless significant minority. In contra-distinction to the Liberal Welfarists' position, I also noted that the Libertarians hold a theory of rights which is grounded on personal liberty. This position seems to support the argument that since every person is the owner of himself, he also equally possesses the right to act in accordance with his or her own choices provided that he does not prevent others from doing the same. The implication that follows such reasoning is that an individual is also entitled to everything he legitimately acquires by way of the historical principles of entitlement.

I again reject this proposal on two points. First that the appeal to human nature and its supposed reasonableness in choosing the good as well as the constitutive characteristic of the Natural law do not in essence ensure the kind of justice that is sort for in human affairs. Human nature is not always so streamlined and predictable, as to fit the Lockean proviso. On the other hand the basis upon which the Libertarians argument is premised, is a wrong application and interpretation of the Lockean argument which runs as follows,

- no one deserves the fruits of a person's labour;
- it is that person's action which produced the fruits of his labour;
- therefore that person is entitled to such self-generated holdings.

As we have tried to show there is a problem with the second premise since it is not a single's person's action in isolation that produced the fruits of his labour. The point may be emphasized however that it is the ownership of private property that creates a class differentiation between the haves and the have-not. As it has been pointed out, private property is a great source, indeed a powerful engine of economic development and growth. It can also be the source of the great disparity of wealth thus resulting in levels of inequalities. A proper management of the question

of the ownership of private property can increase the abilities of the individuals to exercise their freedom which is a very important value. The intrinsic importance of human freedom as the preeminent objective of development can never be overemphasized. Where it is present, social solidarity increases and this is an important element in economic growth as it is evidenced in many industrialized nations of the world. On the other hand where it is denied, it is only a matter of time before the populace would rise up in revolt against the persons and structures that deny them this right. This is true of all the countries in the Middle East that have suffered under dictatorial regimes for so many years. The present wave of revolutions across the Arab world is a natural and long overdue response to the just yearnings of a people for freedom.

It is therefore my thesis in this paper that none of the canons of distributive justice as proposed by the liberal welfarists and libertarians standing by themselves will give an adequate theory of justice. I believe what we need is a principle of justice that takes account of both the entitlement principles and the principles of distribution according to needs.

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