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John Rawls on the Concept of Social Assets and Entitlements: A Defense*

Abstract: In *A Theory of Justice* John Rawls claims that the principles of justice which he proposes "... are equivalent ... to an undertaking to regard the distribution of natural abilities as a collective asset ..." This view has been criticized by a number of writers who argue that it either leads to a violation of important personal freedoms or else commits Rawls to a conception of the person which is incoherent. In this paper, I focus on the version of this critique of Rawls presented by David Gauthier in *Morals by Agreement*, and try to show that it relies on some untenable assumptions. I argue that the Rawlsian discussion of individual assets and entitlements provides a legitimate and credible framework from which to address questions of justice.

In *A Theory of Justice* John Rawls makes the somewhat surprising claim that the two principles of justice which form the essential core of his theory:

"... are equivalent ... to an undertaking to regard the distribution of natural abilities as a collective asset so that the more fortunate are to benefit only in ways that help those who have lost out." (Rawls 1971, 179, see also 101)

What makes this statement remarkable is that Rawls is typically considered to be part of the ongoing liberal program which aims to safeguard individual power and autonomy from unwarranted intrusions by social structures and institutions. In making natural abilities into a collective, social asset he seems to be granting society some fundamental degree of control over what an individual may do with these highly personal elements. Such an arrangement would appear to be inconsistent with at least some fairly obvious interpretations of individual autonomy.

Despite the respect generally accorded to Rawls's work, this part of his program has not enjoyed an enthusiastic response. Writers as ideologically and temperamentally diverse as Robert Nozick, Michael Sandel, G. A. Cohen and David Gauthier have all voiced serious doubts about Rawls's treatment of natural capacities. The confrontation is significant since what is ultimately at stake are some

* In writing this paper I benefited from discussions with Kai Nielsen and Damon Gitelman.

key elements of the Rawlsian distributive program. If the critics are right, large sections of *A Theory of Justice* will have to be revised or abandoned.

Though they differ over what elements they choose to emphasize, all four critics offer variations on two general, interconnected objections to the idea that a person's natural capacities should be regarded as a social asset. First, they argue that this "collectivization" violates one of the basic liberties that Rawls himself endorses and defends as crucial to the concept of justice, namely the "freedom of the person" (Rawls 1971, 61). And second, they argue that the only way Rawls can avoid these worries about personal freedom is to appeal to a conception of what it is to be a person which is essentially incoherent.

In this paper I will argue that these objections are mistaken. To show this, I will use a discussion of some of the criticisms presented by David Gauthier in *Morals by Agreement* to explore what elements are at play in Rawls's position. I have chosen to focus on Gauthier's work since, in addition to being the most recent of the major critiques, it is a highly cogent representative of the views that Rawls has to counter, and it is presented by someone who is sympathetic to Rawls's contractualist approach to social and political philosophy. Where appropriate I will supplement the discussion with references to the other writers mentioned above.

I do not intend to offer a strict exegesis of Rawls in relation to his critics. Instead, I would like to develop a conceptual framework which is compatible with Rawls's position, and which provides the resources necessary for a response to the two general objections to his views.¹

To begin this project it is important to see just how Rawls's distributive program might come to have implications for the basic freedom of the person. Rawls is openly committed to distributive egalitarianism. As is suggested by his first principle of justice, the equal liberty principle, his preferred social distribution would see everyone with an equal share of what he calls the "primary goods". These are, roughly, those things that anyone would want if they wanted anything at all, and include "rights and liberties, opportunities and powers, income and wealth" (Rawls 1971, 92).

But while Rawls is an egalitarian, he also acknowledges that there are real and significant differences between persons which affect their abilities to use the primary goods in productive ways. Instead of making these differences the basis for a differential system of distribution, Rawls wants to use them to create the conditions for an egalitarian distribution. This is the idea behind the "general conception" which informs his principles of justice:

"All social primary goods - liberty and opportunity, income and wealth, and the bases of self-respect - are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of the least favoured." (Rawls 1971, 62)

¹ Although I do not argue it here, I believe that this framework is in keeping with Rawls's more recent writing. See especially Rawls 1980 and 1985.

In line with this general conception, the second principle of justice, the difference principle, specifies that a person may obtain more of some or all of the primary goods than she would have received on a strictly egalitarian distribution if and only if this arrangement is also to the benefit of those people who are least well off. Continued application of this principle over time may be supposed to bring about a nearly equal distribution of the primary goods for everyone by steadily improving the situation of all those people who are originally or subsequently at a disadvantage. At the same time, the principle supplies incentives so that equality will be achieved at an attractively high level of primary goods (Rawls 1971, 101f.).

Gauthier is not particularly impressed by Rawls's commitment to equality. The general tenor of his critique is indicated by the following:

"It is clear that Rawls would require persons to bargain from a position of equality, not only with respect to initial rights to goods, but also with initial rights to personal powers and capacities. Those who were more capable or more fortunate than their fellows must not only refrain from taking advantage of others, ... , but they must give advantages to others as a condition of benefitting themselves. For Rawls morality demands the giving of free rides; no other interpretation can be put on the insistence that talents be treated as a common asset." (Gauthier 1986, 220)

Implicit in this statement is the idea that the difference principle exerts unacceptable pressure on personal freedom. What seems to irritate Gauthier (and Nozick) is that someone is getting something for nothing. The least well off receive benefits not because they have done or contributed anything, but simply because they happen to occupy a particular social position. Conversely, those who are more talented or more fortunate are made to incur costs for the 'correction' of a situation for which they are not (necessarily) responsible. Nozick goes so far as to suggest that this arrangement amounts to a kind of forced labour or redistributive slavery imposed on those who happen to be well off (Nozick 1974, 169).

Before one can turn these worries about costs and benefits into the charge that the difference principle violates the basic freedom of the person, one has to make a number of fairly strong antecedent claims. Above all, one has to say that the primary goods themselves are created and maintained by the natural talents and abilities of the individuals who make up society, and that one is able to identify, distinguish and measure the different contributions that each person makes. Given the list of primary goods supplied by Rawls, it is virtually impossible to make sense of this claim when the goods under scrutiny are things like the rights to free speech or to freedom from arbitrary search and seizure, which require universal, undifferentiated participation, if they are to exist meaningfully at all. Where Gauthier's line does seem to gain some purchase is on the category of goods which comprises income and wealth.

Even in economic systems dominated by fiscal and monetary transactions, income and wealth are inextricably bound up with the production of goods and the supply of services. A service is simply the exercise of a particular skill or talent, and a product is the result of the exercise of another type of skill or ability. To that extent, any interference with a person's relationship to wealth or income can be expected to have some effect on the exercise of a person's capacities.

It should be noted that virtually no one is willing to advocate the completely unrestricted production and disposal of goods and services (Gauthier certainly would not), since there is a fundamental need to introduce some provision forbidding harm to others. The charge against Rawls is thus going to have to be that the difference principle imposes some specific, illegitimate restriction on income and wealth which violates a person's basic freedom.

At this point one needs to clarify just what is involved in the concept of the freedom of the person. And given that a connection has to be made to income and wealth, it will be useful to interpret this concept in terms of ownership rights. In particular one can make use of the idea that G. A. Cohen has called "self-ownership": each person is the exclusive owner of his or her body, and of all the mental and physical capacities that are associated with it (Cohen 1986, 109ff.). This way of speaking allows one to discuss personal freedom in the relatively logical and familiar vocabulary of property rights. One can then ascertain whether the difference principle constrains the basic freedom of the person by asking whether or not it interferes with a person's *possession* or *exercise* of self-ownership rights.²

Cohen, for one, thinks that there is some interference:

"Rawls and Dworkin are commonly accounted liberals, but here they must be called something else, such as social democrats, for they are not liberals in the traditional sense just defined since they deny self-ownership in one important way. They say that because it is a matter of brute luck that people have the talents they do, their talents do not, morally speaking, belong to them, but are, properly regarded, resources over which society as a whole may legitimately dispose." (Cohen 1986, 114f.)

Gauthier presumably would agree. But here one needs to do some expository work before one can express, explain and evaluate the elements implicated in this claim. There is certainly something unattractive and counterintuitive about the idea that I might have to share ownership of my talents and abilities. If I have to share something so basic to my concept of who I am, then it becomes unclear who *I* am, and what if anything I can do and decide for myself.

However, the issue is not clear cut, since Rawls does not require individuals to transfer their talents or capacities to those who are least well off. The difference principle explicitly leaves the possession of these capacities untouched. Instead it offers incentives to those who are well situated in order to induce them

² Andrew Kernohan adopts a similar approach in his 1990.

to use their capacities productively. At the same time, it *does* stipulate the conditions under which people are allowed to receive remuneration for the exercise of their capacities. This leaves open the possibility that these conditions interfere in some way with the exercise of a person's capacities.

If one pursues this possibility, it becomes clear that the conditions do not affect what people may do, but rather what they can expect in return for what they do. The disagreement between Rawls and his critics turns on which side possesses the more adequate concept of distributive entitlement. To decide this question, one needs to consider Rawls's discussion of the relation between distributive entitlements and justice, and then contrast it with the alternative proposed by Gauthier.

Rawls argues that entitlements are determined, first and foremost, in a social setting:

"In justice as fairness society is interpreted as a cooperative venture for mutual advantage. The basic structure is a public system of rules defining a scheme of activities that leads men to act together so as to produce a greater sum of benefits and assigns to each certain recognized claims to a share of the proceeds. What a person does depends on what the public rules say he will be entitled to, and what a person is entitled to depends on what he does. The distribution which results is arrived at by knowing the claims determined by what persons undertake to do in the light of these legitimate expectations." (Rawls 1971, 84)

All questions of what a person is entitled to receive in exchange for the exercise of his or her capacities will be determined by the terms of the social contract which governs human interaction. This provides the groundwork necessary to make the difference principle part of the social rules: it simply has to be chosen by the parties to the contract.

Rawls is certainly aware that the implications of this arrangement are not going to be to everyone's taste. He argues that:

"There is a natural inclination to object that those better situated deserve their greater advantages whether or not they are to the benefit of others. At this point it is necessary to be clear about the notion of desert. It is perfectly true that given a just system of cooperation as a scheme of public rules and the expectations set up by it, those who, with the prospect of improving their condition, have done what the system announces it will reward are entitled to their advantages. It is in this sense that the more fortunate have a claim to their better situation; their claims are legitimate expectations established by social institutions, and the community is obligated to meet them. But this sense of desert presupposes the existence of the cooperative scheme; it is irrelevant to the question whether in the first place the scheme is to be designed in accordance with the difference principle or some other criterion." (Rawls 1971, 103)

The concept of desert threatens the primacy of the social determination of entitlements, since it suggests that there is some independent standard to which social entitlements should conform. But Rawls argues that the concept of desert reduces to a variant of social entitlement. As Michael Sandel notes, commenting on the same passage, the reason for this reduction is that "...while I am entitled to my fair share under the rules, I am not entitled that *these* rules, rewarding *these* attributes, be in force rather than some others" (Sandel 1982, 72). The moral standing of desert turns out to be something of an illusion, created by imagining that the relevant social rules are somehow fixed and independent.

Rawls supplements his argument with the following:

"It seems to be one of the fixed points of our considered judgements that no one deserves his place in the distribution of native endowments, any more than one deserves one's initial starting place in society." (Rawls 1971, 104)

Since this distribution is "arbitrary from a moral point of view" (Rawls 1971, 72), the fact that certain *talents and abilities* are productive does not necessarily mean that the person who happens to possess them is automatically entitled to all the benefits that they generate. That kind of arrangement would require, on Rawls's view, a social agreement to accept that particular distributive practice. Alternatively, one would have to produce some argument to show that a people do in fact have some independent moral title to their endowments.

The fact that Rawls chooses to frame this discussion in terms of desert has created some confusion about his position. Desert is a relatively strong, morally loaded term, which suggests that people have a positive right to something and not merely a negative right forbidding other people to interfere with what they possess. But a critic of the social entitlement view does not have to reach for the concept of desert. Gauthier, for example, argues that:

"We may agree with Rawls that no one deserves her natural capacities. Being the person one is, is not a matter of desert. But what follows from this? One's natural capacities determine what one gets, given one's circumstances in a condition of solitude. One's natural capacities are what one brings to society, to market and co-operative interaction. Why should they not determine or contribute to determining what one gets in society? How could a principle determine impartially how persons are to benefit in interaction except by taking into account how they would or could benefit apart from this interaction?" (Gauthier 1986, 220)

On this view, the fact that people do not deserve their natural capacities is irrelevant to the question of what they are entitled to. Gauthier wants to argue that people simply have certain pre-social characteristics which constitute their pre-social endowment of talents and abilities. This pre-social endowment determines each person's pre-social entitlement, since it determines what they could produce or otherwise gain access to in terms of benefits, in a condition of isolation. And the pre-social endowment is carried over into social interaction where

it continues to act as the foundation for a person's social entitlement. Rawls's difference principle ignores or denies the existence of a pre-social entitlement that flows from a person's pre-social endowment. Gauthier's view is that because the difference principle makes it possible to seize and redistribute within society the distributive share that a person would have been entitled to in a pre-social situation, it violates that person's basic freedom.

To Gauthier, Rawls's treatment of entitlement as a purely social construct suggests that he rejects not only the notion of a pre-social entitlement but the notion of a pre-social endowment as well. This would appear to commit Rawls to a conception of the person which takes natural capacities to be social products, at least to the extent that these characteristics make their appearance only in a social setting. To Gauthier it seems that Rawls avoids violating the freedom of the person only because he is working with a very thin conception of what it means to be a person. If my natural talents and abilities are social 'accidents', then they are not really an essential part of *me*. So if the difference principle uses my talents to benefit other people, it is not really using *me* at all. And so it cannot violate my basic freedom. But if this analysis were correct, then there would not be much of me left over. Since my natural endowment includes things like my physical body and all of its mental and physical properties, it seems appropriate to conclude, as Nozick does that:

"Whether any coherent conception of the person remains when the question is so pressed is an open question. Why we, thick with particular traits, should be cheered that (only) the thus purified men within us are not regarded as means is also unclear." (Nozick 1974, 228)

Gauthier also picks out what he thinks is wrong with this particular approach to the concept of the person considered in relation to a just distribution of primary goods:

"In supposing that the just distribution of benefits and costs in social interaction is not to be related to the characteristics of the particular individuals who make up society, Rawls violates the integrity of human beings as they are and as they conceive themselves. In seeking to treat persons as pure beings freed from the arbitrariness of their individuating characteristics, Rawls succeeds in treating persons only as social instruments. In denying to each person a right to his individual assets, Rawls is led to collectivize these assets. In his argument morality is divorced from the standpoint of the individual actor." (Gauthier 1986, 254)

Accordingly Rawls faces a dilemma. Either he declares that individuals are simply social instruments, and so have no basic right to their natural capacities, or else he has to accept that his choice of distributive program will violate the basic freedom of the person. Both alternatives would be unpalatable for Rawls.

In "Rawls and the Collective Ownership of Natural Abilities" Andrew Kernohan has proposed a simple yet promising way to disarm the dilemma. He eschews any discussion of pre-social endowments or entitlements and focuses in

on the fact that, in spite of deeper disagreements, what separates the two sides is really a simple matter of what income people are allowed to receive. Kernohan argues that:

"...Rawls's egalitarian distribution of thing-ownership is inconsistent with a libertarian notion of self-ownership on just one point: people's unrestricted income right to all the benefits of the use of their talents. The unrestricted income right is not the whole of self-ownership; it is not even the most important part. ... Further it is not even that the income right is taken away; it is only reduced from its size in an unregulated market to accord with the difference principle." (Kernohan 1990, 27)

By separating the notion of income rights or entitlements from the essential core of personal freedom, Kernohan allows the difference principle to sidestep the bulk of Gauthier's criticisms. If in fact personal freedom consists of a hierarchy of elements, then it is conceivable that a person's income right might be legitimately imposed upon for the sake of some more important consideration.

Unfortunately, this maneuvering will not work. As Kernohan acknowledges, the possession and exercise of one's natural capacities is surely the core of self-ownership (Kernohan 1990, 22). And while the difference principle does not affect the possession or exercise of these capacities directly, it does limit what a person can expect to gain in exchange for the exercise of his or her endowment. Given some fairly uncontroversial psychological thesis to the effect that the exercise of one's talents is influenced or directed by the expectation that one has of reward or remuneration, it follows that the difference principle will manipulate the exercise of a person's talents by affecting his or her expectations. In this way the income right seems to be directly connected to the most important aspects of self-ownership and cannot easily be dismissed as inconsequential.

This point gains a certain urgency from the fact that the difference principle appears to presuppose the requisite kind of psychological thesis. In offering incentives to those who are well endowed, the principle seeks to encourage them to employ their productive capacities. By playing to their expectations it induces them to produce a surplus of the primary goods which it then distributes to the least advantaged. The question is whether the fact that the incentives are smaller than the surplus violates the basic freedom of the producers.

In order to accommodate this psychological thesis and answer Rawls's critics one has to tackle the element which generates the dilemma facing Rawls. The identification of a pre-social endowment as an essential component of what it is to be the person that I am is what leads to the worries about the basic freedom of the person and the related conception of the person. I intend to argue that it is impossible to identify any meaningful pre-social endowment, and that consequently Rawls is right to argue that all entitlements are socially determined. At the same time, I want to argue that rejection of a pre-social endowment does not commit Rawls to an incoherent conception of the person. In fact, I will try to show that the appeal to a pre-social endowment as central to the conception of a

person is itself untenable, and that Rawls can and should argue that human beings become *persons* only in a social setting.

Interestingly, Michael Sandel sketches a similar project in *Liberalism and the Limits of Justice*. While he endorses the criticisms of Rawls that I have attributed to Gauthier, he proposes a way in which Rawls might respond to the charge concerning personal freedom. He calls it the "second defense":

"On this second defense, Rawls might deny that the difference principle uses me as a means to others' ends, not by claiming that my *assets* rather than *person* are being used but instead by questioning the sense in which those who share in 'my' talents are properly described as 'others' ... [T]he second [defense] qualifies the distinction between the self and others by allowing that, in certain moral circumstances, the relevant description of the self may embrace more than a single empirically-individuated human being. The second defense ties the notion of common assets to the possibility of a common subject of possession. It appeals, in short, to an inter-subjective conception of the self." (Sandel 1982, 79f.)

This passage amounts to a summary of the communitarian ideas that Sandel wants to propose as the appropriate basis for the development of social theory. His view is that the community plays a constitutive role in making each human being into the person he or she turns out to be. This is a strong claim which has its defenders and detractors. If one accepts Sandel's view, one is able to argue that since the community is at least partly responsible for my being the person that I am, having the talents and abilities that I have, it may well be entitled to distribute at least some of what I produce. In particular since the concept of "self-ownership" is going to include elements that I share with other people or that I have derived from the community, it is not obvious why I should be entitled to retain all that I produce using those elements.

There are, however, two problems with this 'second defense' proposal. First, it is the general thesis of *Liberalism and the Limits of Justice* that the interpersonal conception of subjectivity is not available to Rawls since it clashes with the general theoretical and methodological orientation of *A Theory of Justice*. I think Sandel is simply mistaken on this point. And second, one may wonder whether the communitarian view does not socialize assets in such a way that other people are given a right to direct control over what a person may do. This would be an obvious violation of personal freedom.

I will argue that a relatively weak and innocuous version of the claim that society plays a constitutive role in defining personal identity is both compatible with the conception of entitlement presented in *A Theory of Justice* and capable of providing an adequate response to Gauthier's criticisms. To show this I will focus on the role that a society plays in determining the *expression* and *value* of a person's endowment, and then investigate the connections between this determinative function and questions of distribution.

One factor that tends to cloud the issue is the use by both Rawls and his critics of the term "natural" to describe talents, abilities, capacities and endowments. This term is doubly misleading. First, it suggests that the longstanding debate about whether nature or nurture is the actual basis of human characteristics has been resolved, and that one can speak, uncontroversially, of certain features as being wholly natural. Second, it suggests that a person's 'natural' characteristics, those which he or she would ostensibly possess even in a situation where social interaction is non-existent, are the irreducible basis of a person's actual identity.

Both of these suggestions are implausible. It is doubtful whether it is possible to identify any personal endowment that has been completely stripped of all social accretions, since one would have to remove not only the person's social situation, but also all of those capacities and characteristics that were developed in response to the social setting or that were acquired through social interaction. Then, even if it were in principle possible to identify the appropriate kind of endowment, there is no reason to suppose that it would provide any meaningful characterization of a real, socially situated person. As Gauthier himself points out in his discussion of Rawls, the character that I acquire in society and through socialization is essential to my concept of who I am (Gauthier 1986, 254).

A complicating factor that needs to be acknowledged is that Gauthier need not depend on the possibility of getting direct access to a person's natural endowment. It would be enough if the actual capacities that people have were simply continuous with their pre-social endowments. One could then identify the pre-social endowment indirectly through the medium of actual, socially situated capacities.

But this suggestion loses its appeal if one considers seriously the ways in which social contexts are literally indispensable features of the endowment that a socially situated person possesses. To make this point one can begin by admitting that there are some talents which seem more 'natural' and primordial than others. For example, a strong back seems more fundamental and inherently valuable than an aptitude for accounting and tax law. The latter clearly depends on the existence of a fairly sophisticated social structure. The former, it seems, would retain its value even in the absence of all society.

But this apparent difference is illusory. While it is true that a strong back will have a value both within and outside a social setting, that value will be quite different in the two cases. And, more important still, the value will be determined in quite different ways. For an isolated individual, the value of a strong back will be just whatever use its possessor assigns to it or can find for it. In a social setting, the value will depend on what kind of applications that society can find for a strong back. It is quite easy to imagine a highly mechanized society in which that particular physical trait has virtually no productive value and perhaps retains only a certain aesthetic value. What the owner of any given productive capacity can expect in return for the exercise of that capacity will depend on the social setting (or lack thereof) in which he or she is located.

To support this conclusion one can refer to two examples. First, assume that it is possible to identify a person's pre-social endowment, and that mine allows me to be an excellent farmer. Now consider two scenarios. In the first, I find myself on a stretch of fertile land, located in a temperate climatic zone. Given my endowment I can expect to do reasonably well here, so long as I apply myself. In the second scenario, I find myself well north of the arctic circle. Here I should not expect to do as well as someone who is eminently skilled at hunting and fishing. What this shows is that at a minimum the value of my endowment depends on the environmental context in which I find myself. And this will be so even if one assumes, unrealistically, that one happens to be a good farmer (or hunter or whatever) because of purely pre-social factors.

In the second example, social factors become part of the environmental context. Few people would deny that Wayne Gretzky is the greatest player in the history of ice hockey. It follows that his 'natural' endowment must be ideally suited to the game. But had he been born and raised in Madagascar rather than in Canada, it would be reasonable to assume that he would never have attained his current standing. This is not to say that he would necessarily have lacked the requisite physique, hand-eye coordination and other 'natural' aptitudes required to play hockey. It is just that given the social (and climatic) setting of Madagascar, one has every reason to believe that the bundle of skills and physical attributes which he actually possesses would have been forced into some other configuration. How one's endowment becomes actualized, what expression it actually comes to have, depends on the social opportunities that are available.

Social opportunities include at least two distinct features that affect the concept of personal entitlements. The first of these is what I will call 'social demand'. A convenient way to set the stage here is to use the vehicle of the free market, which Gauthier advocates as an appropriate mechanism for the distribution of goods, wages and services within a society (Gauthier 1986, see ch. IV, 83-112, esp. 89-92). In the market the value or price of a thing is set by the coincidence of the supply of and demand for that thing. So Gretzky gets a large salary for playing hockey because there is much demand for and little supply of his kind of talent. Demand here is a social factor which is made up of the combined preferences of the members of a particular society. Furthermore, demand for any type of talent or capacity will vary from society to society for any number of cultural or geographic reasons. If there is little or no demand for some particular ability, then it is unrealistic to expect that the exercise of that talent will yield any income entitlement. So, for example, Gretzky does well financially in the US and Canada, but would do less well in Italy where hockey is less popular. And, for a variety of reasons, he would do considerably worse in places like Burma or Egypt.

Social demand thus creates external pressures which shape a person's entitlements. If one assumes, as Gauthier appears to do, that there is some pre-social entitlement that corresponds to a person's pre-social endowment, then a shift in

the social demand for any given talent will lead to a violation of at least some person's basic freedom. When the automobile replaced the horse, large numbers of blacksmiths were thrown out of work: social demand rendered their endowments worthless. If Gauthier is right then this kind of loss of freedom is an inevitable feature of social life. But this would make the decision to enter or remain in society problematic since it raises questions of fundamental justice.

The second feature of social opportunities that affects personal entitlements is more intimate than the first; I will call it "social formation". Given a change of social setting less drastic than a shift to Madagascar, what reason is there to believe that Gretzsky would *necessarily* have retained his physical assets? The world is full of individuals who showed promise at an early age, but later succumbed to lethargy, too much food or drink, or some other debilitating affliction of the will. Gretzsky's hockey success is a happy confluence of many elements. A partial list would have to include things like family background, support and encouragement from family, friends, and others, coaching, access to social institutions (such as the game of hockey itself, and the facilities in which it can be played), an affluent society which allows sport to become a profession, and so on.³ A more complete list would be very long indeed.⁴

This should not be taken to mean that Gretzsky's talent simply reduces to a number of social factors. There is certainly something that he and no one else can do. The happy confluence of elements needs to intersect with his own unique personal constitution, which must be able to support and actualize the possibility that exists. A combination of social and uniquely personal factors is the prerequisite for the phenomenon that is Gretzsky's success. On this account, each person is possessed of some quantity of innate personal characteristics which could combine in any of a potentially huge, though not completely unlimited, number of arrangements and constellations. A 'natural' endowment simply has no definite form until it finds expression in a specific social context. Gauthier is thus partly mistaken when he says that a natural endowment is what people bring to society; it would be more accurate to say that it is what people find or discover when they engage in social interaction.

But this seems to lead back to the situation in which Rawls is forced to say that a person's distinguishing characteristics are social accidents. And Gauthier objects to this since it makes it seem that:

"Each person, considered apart from his particular place and time, is a mere potentiality, and it is only as a potentiality, and so only in so far as it does not differentiate him from other persons, that his individuality may

³ See Rawls 1971, 104 for a similar idea.

⁴ Feminist theorists such as Annette Baier and Lorraine Code have argued that the fact of basic human helplessness during infancy, and the need for human care that it necessitates, means that the effects of human socialization are implicated in all aspects of a person's biography. For a much more sophisticated treatment of this claim see Baier 1987 and Code 1987.

be taken into account in the principle of just interaction." (Gauthier 1986, 250)

If the social rules determine a just distribution using the supposed fact that each person is a mere potentiality until engaged in social interaction, then what reason is there to suppose that this distribution will respect the person I actually am?

This question seems to pose a serious challenge to Rawls's distributive program. But it also poses a problem for Gauthier. His own scheme, which treats an individual's pre-social endowment as the essential feature in determining distributive shares also fails to respect the actual person. After all, the actual person has acquired characteristics either in or through social interactions which are both essential to that person's self-concept and capable of generating entitlements to distributive shares. A theory which underestimates the importance of social entitlements thus risks violating the actual person's basic freedom. Of course, if my previous argument is correct, and the idea of a pre-social endowment is effectively unavailable, then Gauthier's distributive program cannot even get started.

To conclude I would like to consider one further argument in support of Rawls's view that a person's natural endowment is simply that person's social endowment. Both Gauthier and Rawls agree that society is to be viewed "as a cooperative venture for mutual advantage" (Rawls 1971, 84; Gauthier 1986, 10, 353f.).

In its least controversial interpretation this means simply that people are better off living in society than they would be in isolation. Expressed more narrowly in terms of the production of primary goods, the cooperative and/or coordinated productive activity that social interaction makes possible leads to a higher total production of those goods than could be had if each person worked in strict isolation. Social interaction thus creates a social surplus.

The problem that faces the social theorist is just how this surplus should be distributed. To recapitulate Gauthier's position, he wants a distribution that reflects the contribution that each person makes in terms of natural productive capacities. His view is that these capacities create the surplus. As a result each person must receive at least as much as he or she would have produced working in isolation and, further, each person must receive whatever he or she has contributed to the social surplus. Failure to respect these conditions would lead to a violation of personal freedom in the ways outlined above.

But the question is whether one can identify both what a person would produce working in isolation, and what that person contributes to the social surplus. I have already argued that it is meaningless to talk of what a person might have or do in strict isolation from society, since one would have to ignore those characteristics acquired through socialization. The result would be an entity that bore little or no resemblance to the actual person. But even if one were to allow an individual to retain characteristics acquired through social interaction, a num-

ber of problems would remain. One cannot know what I, a socialized individual, would produce in isolation unless one were to actually sequester me and observe what I do over a period of time, given some specific environmental conditions. Even then the choice of appropriate experimental conditions and time period would be controversial. The identification of a pre-social entitlement disappears in this thicket of practical and conceptual difficulties.

The issue of identifying a person's contribution to the social surplus is equally murky. The salient feature of this surplus is that it is *social*, and brings together the efforts of many people. Consider the following case: a group of four people produce one hundred chairs per day. A fifth person comes along and by employing a variety of managerial techniques she manages to increase production to two hundred chairs per day. It is tempting to say that her contribution to the production process is simply the extra one hundred chairs and that she is entitled to receive whatever those chairs are worth. But this is surely not right. The fifth person did not create the extra one hundred chairs by herself, even though they would not have existed without her contribution of skills. This is a point which Gauthier himself acknowledges in his sophisticated treatment of bargaining theory. The combination of various contributions produces all of the chairs, and Gauthier suggests that the distribution of income is going to have to be determined by social negotiations.⁵ What this shows is that it is not possible to identify a person's contribution to the social surplus, though it may be possible for people to agree on what it should come to.

If these and the preceding arguments are correct then Gauthier's critique of the Rawls's distributive program collapses. His claim that the difference principle either violates the basic freedom of the person or else relies on an incoherent conception of the person depends on his being able to identify a pre-social endowment which serves as the foundation for a pre-social entitlement. If it is effectively impossible or meaningless to identify the pre-social endowment, then the pre-social entitlement disappears as well. And then it is no longer possible to argue that the social entitlements determined by the difference principle impinge on the legitimate entitlements of individual persons. All endowments and entitlements will be socially determined.

It should be noted that the arguments presented here do not constitute a complete vindication of the difference principle. For it to be complete, one would have to show that this principle would actually be chosen by people who are situated in the conditions specified by Rawls. And furthermore one would have to show that these conditions are appropriate to the theoretical task. Nevertheless, by showing that it is not possible for people to have access to either pre-social entitlements or endowments, one has provided a partial description of what kind of considerations are not available to act as a basis for determining distributive shares or the validity of distributive programs. If one is going to pursue the

⁵ Gauthier 1986, ch. V, 113-156. See esp. 153f. for examples similar to those presented here. See also Gauthier 1988.

social contract approach to justice and social theory, then one is going to have to acknowledge the conceptual background which makes the difference principle possible.

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