

WHAT DOES WILT CHAMBERLAIN OWE TO SOCIETY?

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ABSTRACT: This article argues that Robert Nozick’s reasoning in his famous example of Wilt Chamberlain (Nozick 1974) is more convincing than is usually assumed. Specifically, the present article addresses two common types of criticism launched against this philosophical contribution and finds them both wanting. First is the argument that Wilt owes society on account of using social infrastructure. Second is the Rawlsian argument that laissez-faire capitalism cannot eliminate the influence of morally arbitrary factors on economic distribution. The first argument faces a web of difficult economic and philosophical puzzles. The second attributes to the redistributive remedies for market inequalities a feature that they do not have: namely, the ability to eliminate morally arbitrary factors from the distribution of goods and opportunities.

The theory of justice developed by Robert Nozick (1974) in *Anarchy, State, and Utopia* is clearly out of favor with the academic world. One reason might be in the general hostility that most academics feel toward radical libertarian ideas. Another explanation might stem from Nozick’s peculiar personality. After publishing this pathbreaking book, which made a sensation in the academic world, Nozick largely abandoned political theory, refusing to elaborate on his book’s theses or to answer any criticisms;

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no one likes to be totally ignored. Moreover, several of Nozick's subsequent pronouncements suggested that he had abandoned or at least significantly softened his radical libertarian theory.¹

One of the main consequences of this development was that John Rawls's redistributive theory of justice came to be an established paradigm of "liberalism," and further debates in political philosophy focused on the controversies between Rawlsian social liberalism and various communitarian challenges to any sort of individualistic liberal theory. Nozickian libertarianism has been almost forgotten, at least in the circles of the most prominent political philosophers.

This article revisits the Nozickian position, arguing that it is much more defensible than the current consensus would allow.² The focal point of the article's analysis is the Wilt Chamberlain example, famously invoked by Nozick (1974, 151–52) as a critique of the idea of governmental redistribution. More precisely, the article explores two of the most prominent criticisms of Nozick's reasoning in this example—the argument that users of the social infrastructure owe society compensation (Fried 1995) and the Rawlsian argument that capitalism distributes resources in a morally arbitrary way (Rawls 1971, 2001). Both of these claims are essentially meant to undercut the reasoning behind the Wilt Chamberlain example.³ This article attempts to show how these arguments could be dealt with from a libertarian point of view.

¹ See especially Nozick (1989, 286–87): "The libertarian position I once propounded now seems to me seriously inadequate, in part because it did not fully knit the humane considerations and joint cooperative activities it left room for more closely into its fabric. It neglected the symbolic importance of an official political concern with issues and problems." Yet later on, he tried to downplay this change, saying that "the rumors of my deviation (or apostasy!) from libertarianism were much exaggerated. I think this book makes clear the extent to which I still am within the general framework of libertarianism, especially the ethics chapter and its section on the 'Core Principle of Ethics.'" See Nozick (2001).

² In the present article, we defend Nozick (1974) against his many (Rawls-inspired) critics. However, Nozick rejects free market anarchism in his book. We do not follow him in this. For critiques of Nozick on that issue, see Barnett (1977); Block (1980, 2002b); Block and Gordon (1986); Childs (1977); Evers (1977); Rothbard (1977); Sanders (1977); and Skoble (2008).

³ Obviously, the first iteration of Rawls's argument, in *A Theory of Justice*, could not explicitly refer to Nozick's example, which would not surface for three years, but our point nevertheless remains because it applies to the Rawlsian *reasoning* and principles behind it.

For this purpose, the article first reviews the Wilt Chamberlain argument and then deals with the “compensation” and “morally arbitrary distribution” objections, against the Wilt Chamberlain example. The article finds that neither objection is valid, and consequently that there is still no rationale for redistribution.

IN THE WORLD OF WILT CHAMBERLAIN

In his book *Anarchy, State, and Utopia*, Robert Nozick offers the famous example of Wilt Chamberlain to argue that the free market cooperation among consenting adults creates a just distribution of wealth and that any government interference with the market process in order to bring about any particular resource distribution pattern must of necessity end in “constant interference with people’s freedom” (Nozick 1974, 151–52).

Nozick assumes an initial “just” distribution of wealth, with every member of society owning his equal share of money, called D1. Furthermore, people are free to trade with their “just” shares as they see fit, to buy, sell, and bequeath. Wilt Chamberlain is a member of this society, and he gets the same “fair” share D1 as everyone else. But then things get more complicated; Chamberlain is a big basketball star playing for a major club. Many people come to the basketball court to watch him. If he did not play, the number of visitors would fall by half or more. Both the the owner of the club (be it government or private business) and Chamberlain understand this. Chamberlain seeks compensation for his popularity in cash. The owner collects payments for Chamberlain’s services at the entrance, placing them in a box marked “Wilt Chamberlain.” Spectators, of course, pay with parts of their D1 shares, because they do not possess anything else.

After a year, Chamberlain will obviously end up with significantly more money than the original D1 share; he will have a new, higher amount, D2, which is \$250,000. Nozick then asks if this transition from D1 to D2 is “unfair.” To conventional believers in “social justice,” this new distribution of wealth looks like an injustice, since it creates a grossly unequal “distribution of wealth”—Wilt has much more money than other hardworking people.⁴ And yet it is

⁴ There are no “poor” in this scenario, at least not at the outset. After these voluntary transactions take place, Chamberlain is “rich” while everyone else who paid to see him play is (equally) poor. Nonfans now constitute the middle class.

not immediately clear what has gone wrong here. Nor is the source of the “injustice” immediately obvious. The new distribution, after all, was created by free people’s voluntary choices.⁵ Apparently, Chamberlain’s new, larger share of wealth was the product of combined with thousands of completely voluntary payments to watch the game. It is hard whom these “capitalist acts between consenting adults” have wronged (Nozick 1974, 163). Nozick’s conclusion is that in order to permanently maintain the initial distributions (or, for that matter, any other fixed or “patterned” distribution) the government needs to prohibit adult individuals from paying Wilt Chamberlain in exchange for watching him play.⁶ In other words, the government must continually restrict people’s freedom and interfere with their spending choices.

It is not difficult to see why the proponents of “social justice” have tended to question the Wilt Chamberlain argument: if accepted, it would undercut the moral basis for income redistribution and for the welfare state. One of the most prominent counterarguments against Nozick is the claim that Wilt Chamberlain is not operating in a vacuum, that he uses social infrastructure (roads, the basketball court, the school where he received the training that made him such a good player, and many other such things) built with other people’s money. Therefore, the argument goes, to interfere with the exchange between Wilt Chamberlain and basketball fans by taxing the income Chamberlain gained from that exchange is not unjust, because he became wealthy by using the “social infrastructure,” which he did not create (Fried 1995; Cohen 1995). He is not, as Nozick assumes, “entitled” to whatever money he gets in the market exchange. Rather, Chamberlain has to pay his “debt” to the “society” whose resources and infrastructure he used in

⁵ We rule out any force or fraud. Everyone knew exactly what they were getting when they paid Chamberlain to play. These transactions were mutually beneficial not only in the *ex ante* sense, but also *ex post*.

⁶ One limitation that is sometimes invoked is the fact that many extant distributional shares have been created by plunder, theft, slavery, etc. This is sometimes used as an argument against Nozick’s position. Yet, as we shall see later, it is easy to proclaim some corrective ideal and much more difficult to devise an institutional scheme that will achieve it. It is easy to say that some people may not deserve what they have because somebody got something by plunder or theft at some point along the chain of inheritance. It quite another thing to show how that is to be corrected without creating even greater injustices (rectification by whom, to whom, by how much) and where the evidence can come from. For a libertarian analysis of reparations, see Alston and Block (2007); and Block (2002a).

earning his wealth. As Barbara Fried (1995, 244) says: “We believe that Chamberlain has no right to keep it all, because it was paid for talents he did not earn, in a strict Lockean sense, and which are exploitable only because of the society in which he lives.”

Of course, Wilt Chamberlain is just a paradigm case of anyone who earns more than the proponents of egalitarian justice consider “fair.” In a public lecture given a few years ago, Senator Elizabeth Warren made a very eloquent case for taxing the “rich” disproportionately as payment for their greater use of social infrastructure. She reiterates the same critical points Fried made against Nozick’s Chamberlain:

There is nobody in this country who got rich on his own. Nobody. You built a factory out there? Good for you. But I want to be clear: you moved your goods to market on the roads the rest of us paid for; you hired workers the rest of us paid to educate; you were safe in your factory because of police forces and fire forces that the rest of us paid for. You didn’t have to worry that marauding bands would come and seize everything at your factory, and hire someone to protect against this, because of the work the rest of us did.

Now look, you built a factory and it turned into something terrific, or a great idea? God bless. Keep a big chunk of it. But part of the underlying social contract is you take a chunk of that and pay forward for the next kid who comes along.

Warren’s description of the situation is peculiar in that she constantly links the “wealthy” with the social infrastructure that they use, which is supposedly paid for “by the rest of us,” meaning, one assumes, the less wealthy.⁷ This implies that the “wealthy” do not pay their fair share or contribute much less to the same infrastructure than they should. However, this is not self-evident. First, not only do the “wealthy” pay much more in taxes than the “poor” in absolute terms, but they also underwrite much more percentage-wise. The top 1 percent of the income earners in America pay 23 percent of federal taxes, while earning 16 percent of earnings, whereas the top quintile garners about 53 percent of money income while paying 68 percent of federal taxes (Rohaly 2009, 6). It is not

⁷ Former president Barack Obama said much the same thing: “If you were successful, somebody along the line gave you some help. There was a great teacher somewhere in your life. Somebody helped to create this unbelievable American system that we have that allowed you to thrive. Somebody invested in roads and bridges. If you’ve got a business, you didn’t build that. Somebody else made that happen.” Quoted in Blake (2012).

self-evidently clear why this would not be “enough” or “fair,” or why a maximum marginal tax rate of 50 percent would be more “just” than, say, the current maximum tax rate of 37 percent or, for that matter, a flat tax. What Senator Warren says may well be true, but it requires some independent theoretical justification apart from saying that she would *like* the rich to pay more. It is not enough to assert that because the rich people use social infrastructure, they must surrender some of their earnings, because the poor avail themselves of the same infrastructure, only less productively.⁸

Therefore, it appears that the current distribution of the tax burden is grossly unjust against the “rich,” because they are paying much more percentage-wise than anyone else.⁹ Thus, even if a flat tax rate—proportional taxation—were in place, the wealthiest would still be paying much more in absolute terms than the poor. Why and how this would be “unjust”? Even accepting the assumption that the better off are not entitled to their full profit that they have achieved through exchange and that such people must be taxed more than others percentage-wise, progressive taxation of any kind would not rectify this injustice, the obvious question arises: Why would the poor not pay more because they also use the same infrastructure, only less successfully?¹⁰ Everyone who earns (or does not earn) anything uses the same public goods: all active participants in market exchange use the government roads and rely on government police for their security, among other things. This includes welfare recipients, yet the proponents of “social justice” do not assume that all of them should be taxed to a greater extent. Even on the narrowest grounds, the employees of a large company share the same debt to society as their employers, beyond what they

⁸ In an earlier draft of this essay, we maintained that the rich “equally” utilize roads, bridges, etc. But this is not quite true. However this is calculated, there are many more poor than rich people. Thus, the former wear out the infrastructure more than the latter.

⁹ But why should we be concerned only with percentages? In absolute values, the wealthy pay far more.

¹⁰ The price system is similar to a head tax. Bill Gates pays the same amount for a loaf of bread as does a poor man. That seems just to the present authors. Why should Gates have to pay even the same proportion of his income for a loaf of bread as a person in penury, let alone a higher percentage? That would be discrimination against the wealthy. Even a proportional price system would exactly equate wealth. That is, at the end of the day, the former head of Microsoft would end up with just as much of this foodstuff as anyone else, whatever their income.

are already paying in actual taxes. How is this possible? What is the source of this awkward asymmetry? If anything, the rich use public services *less* than the poor. The former disproportionately live in gated communities, in which case they pay for their own police, making *lower* demand on their public counterparts. They are also more likely to employ private guards, to the same effect. The same holds true for education. The wealthy are far more likely to patronize private purveyors of this good than are the poor.

The argument that somebody (anybody) is paying less in taxes than is socially acceptable is necessarily based on an assumption about the relative productivity of various members of society. When Senator Warren says that the rich should pay more in taxes for disproportionately using social infrastructure, this means that the marginal productivity of the “rich,” in terms of the goods and services they produce for the consumer, is lower than the marginal social cost of their activities in terms of using the infrastructure. The corollary assumption is that the poor deliver a higher marginal product at a lower social cost. In a word, the rich are free riding on the poor.

However, the irony of the situation is that this entire marginal analysis makes sense only if the government allows the entire social infrastructure to be privatized, because only in that case would the free-riding problem be eliminated.¹¹ The rich would have to pay individually for their use of the social infrastructure. There would be no free riding anymore. But there would not be any taxes either, nor government provision of infrastructure, for that matter (Block 2009). One can have either the marginal cost-benefit analysis of using the infrastructure or government-provided social infrastructure. One cannot have both. Once the infrastructure is nationalized and funded by taxpayers instead of by willing private consumers, there is no possibility of calculating any individual action’s costs and benefits, because the product does not have a market price (Rothbard 1956; Robbins 1934; Herbener 1997). The cost-benefit analysis is premised on the idea of using individual actions’ “objective” social cost to determine an optimal or just tax burden, *independent* of market exchange; but if this were possible, market exchange would not

¹¹ For a classical treatment of free riding and public goods see Samuelson (1954). For critiques demonstrating the confused nature of the very concept of public goods, see Hoppe (1996); Barnett and Block (2007); Rothbard (1997b); Schmidtz (1991); and Sechrest (2003).

be necessary at all. Moreover, using market revenue or profit as a proxy for the wealthy's social productivity would be equally unjustified. Why would anyone need a market in any area of economic cooperation to discover the data that are in principle discoverable by a simpler and less costly mechanism (whatever it may be).¹² From the economic point of view of equalizing marginal social costs and benefits, higher taxes are as arbitrary as lower taxes. One has to believe in government's superior capacity over individuals in markets to collect, process, and evaluate information in order to justify such an assumption, but that would imply that central planning is more efficient than the free marketplace. It is, of course, possible to argue that the rich should pay more taxes on some other ethical grounds, but not on the basis that they owe the poor "economic compensation" for using the infrastructure.

Even assuming that it is *theoretically* impossible to ascertain the marginal social cost of using *anything*, including social infrastructure without a market context, progressive taxation and redistribution of wealth as a "remedy" for using social infrastructure is in practice a punishment for a *more successful* use of social infrastructure. The rich have to compensate "society" for their superior use of the same public goods that everyone else is using every day, just less successfully. This constitutes a tax on talent or personal abilities in disguise: what is really being taxed is not the use of public goods per se, but a *superior* use of them—more precisely, the superior use of one's knowledge and capabilities for economic benefit while using public infrastructure. It is assumed that somehow Wilt's spectators have a property right over the part of his income gained through peaceful exchange, but it is not explained why Wilt does not then have a right to parts of *their* incomes, since all of them also used the same "social infrastructure" as he did.

However, this is just the beginning of the problem. Namely, even if we assume, *arguendo*, that the wealthy for some reason do not deserve their full market share, the question arises—does anyone else deserve it? And if so who? The rich should pay compensation for using public goods? If so, compensation to whom? That the rich are not automatically entitled to their gross market income, or even to their total income after proportional taxation, still does not mean that someone else has a right to those funds. What has anyone else

¹² For an excellent analysis of this problem, see Hayek (2002).

done to deserve such largesse? They, too, are “free riders” on society, after all. Who is the “society” to whom a wealthy person should pay the compensation? Who exactly “deserves” Wilt Chamberlain’s “surplus,” and how much of it? And why not less or more than that? The only conclusion that can rightfully be drawn from the preceding analysis is that Chamberlain should be forced under the supervision of the IRS agents to burn or throw in a river a certain amount of wealth that is “unearned,” according to social justice warriors. But it is difficult to see how Chamberlain’s “unearned” surplus could be used to compensate others. Compensate whom, and for what? The Chamberlain example thus ends in the curious notion of wealth destruction as a condition of eliminating social injustice.

But the situation is even more problematic. Why should Wilt Chamberlain be held exclusively responsible for his “undeserved” income? After all, he earned it through voluntary exchange. The people who paid him participated in bringing about whatever “injustice” has been inflicted. They are also “guilty” of this criminal behavior. In fact, *all* are guilty of living off civilization, to which all their parents have contributed.

That the Rawlsians ignore this fact is just one additional example of the contemporary distributive theories’ strange neglect of the rights of the givers, producers, creators, and transferrers, and the exclusive concern with those of the receivers.¹³ The reasoning is always from the recipient’s perspective, and the transactions are always treated as unilateral acts of the “stronger” party. However, a rigorous analysis cannot content itself with this artificial separation; it has to consistently treat a transaction as a transaction, and to apply any remedial injunctions to *both* parties in the transaction producing the alleged injustice. Otherwise, the theory obliterates any difference between theft and voluntary exchange: imagine that Wilt invented a very sophisticated technology that would allow him to consistently steal very small amounts of money from everyone on a daily basis without anyone ever noticing. After some

¹³ This paradox is best explained by Nozick (1974, 168):

Discussions tend to focus on whether people (should) have a right to inherit, rather than on whether people (should) have a right to bequeath or on whether persons who have a right to hold also have a right to choose that others hold in their place. I lack a good explanation of why the usual theories of distributive justice are so recipient oriented; ignoring givers and transferers and their rights is of a piece with ignoring producers and their entitlements.

time, Chamberlain ends up with exactly the same annual income he would have earned playing basketball, \$250,000. What would be the principal differences between the possible “injunctions” in the two cases: an order to return the stolen money in the former case and a 95 percent income tax in the latter case? Would it matter that Chamberlain had stolen the money in one iteration and earned it through voluntary exchange in the other?

With this in mind, consider the claim that Chamberlain “owes” something to his society due to his higher income but the people with whom he transacted do not. This would appear to be nothing more than a philosophical rationalization of the fact that it is more politically convenient for the government and more psychologically convenient for egalitarians to take money from wealthy people than from the poor. Moreover, rationalization fatally conflates outright theft with voluntary market interactions.

The situation does not get much better if Chamberlain is a less appealing figure, a land speculator instead of a successful, hard-working sports champion.¹⁴ Fried (1995) imagines Chamberlain as a man who bought a piece of land on Manhattan initially worth \$10,000 but whose value increased to \$250,000 due to factors Chamberlain had no control over. Obviously, in this example, Chamberlain is just a rentier who reaped the benefits of exogenous changes in the market data, doing nothing to “deserve” the “surplus value” he obtained.¹⁵ The objection is based on the labor theory of value, which is in itself untenable.¹⁶ But even forgetting this for a moment, a larger question looms: Chamberlain *arguendo*, might not be entitled to the entire sum he earned through land speculation, but does that mean anyone else is?¹⁷ Chamberlain the land speculator did not lift a finger to earn this money, but nobody else did either;

¹⁴ Fried (1995) emphasizes that Nozick chose Wilt Chamberlain to make it more difficult for socialists to reject the taxation argument, since Wilt was an African American sports star who earned his status and wealth by employing his superb basketball skills. In the 1970s, with the memories of the civil rights struggles still fresh, Nozick assumed that any critic would think twice before attacking Chamberlain as a “capitalist exploiter.”

¹⁵ This would be “unearned” income for him.

¹⁶ See Böhm-Bawerk (1975); Menger (2007, 169–74).

¹⁷ From the Nozickian or Lockean point of view, Chamberlain most certainly would deserve this \$240,000 gain.

hence, the same criterion that denies Chamberlain his money also denies it to everyone else.¹⁸ To whom should Chamberlain's surplus be redistributed and why? Further, if earning money by land speculation is illegitimate, is *losing* money by land speculation also illegitimate—namely, what if Chamberlain buys a \$250,000 house in a wealthy neighborhood and that after ten years the house has lost 80 percent of its value because of increased crime and violence in the area. Do the taxpayers now have to compensate Chamberlain for his speculative loss? If “unearned” profit requires compensation *of* the others, would not then the “unearned” loss require compensation *by* the others? Is this not on the verge of justifying the 2008 Wall Street bailouts on the grounds of “social justice”?¹⁹

Narrowing who has to pay (the circle of “Wilt Chamberlains”) down to the actual owners of the capital or the firms involved does not improve matters. Consider a simple example, a big firm such as Walmart, which serves millions of customers every day and uses an enormous amount of public infrastructure (the roads to transport the merchandise by truck, the public water supply, police protection, and so on). Should Walmart's owners pay more than they do, and why? The problem is that it is not clear who actually uses the government roads to transport Walmart's merchandise. The owners certainly profit from the roads, but so do Walmart's workers, managers, suppliers, and customers.²⁰ Which of these many different people should “compensate” the citizens not employed by or contracting with Walmart for the firm's supposed overuse of public roads, and why? The firm is a nexus of contracts in which various groups and categories of people participate (Alchian and Demsetz 1972; Fama 1980; Jensen and Meckling 1976). When a truck driver employed by Walmart utilizes the road to transport the company's cheap products from

¹⁸ Au contraire, Chamberlain risked his hard-earned \$10,000. Is there to be no compensation for risk bearing in the “just” society? This viewpoint originates with Henry George (1879), who favored a 100 percent tax on all land. For a critique of such Georgism, see Rothbard (1997a, 1997c).

¹⁹ We are actually beyond the verge. This conclusion follows ineluctably from the scenario we've presented.

²⁰ We say this under correction. On these vehicular thoroughfares some 35,000 people die every year, in the US. For the case that we would all of us be better off if streets and highways were privatized and not given to us for “free” (taxation!), see Block (2009).

New York to Chicago, who exactly is responsible for the use of social infrastructure and in what proportion?

Walmart's business activity earns a certain gross monetary income. Walmart distributes this revenue first among its employees for salaries and expenses, and then among its suppliers and creditors, the latter including the government. Only after the costs are covered and the bills paid do the owners and shareholders divide among themselves the residual income, or "profit." What is the basis for the belief that any additional sum needed to "compensate society" for the firm's frequent use of public roads, should be diverted from this residual income alone, rather than from the wages, the management compensation packages, the prices paid to the suppliers, or maybe from the money that consumers save by shopping in the cheap store? If anything, it appears that the profit is the least justified target of additional taxation, since it is residual income, which is not guaranteed in advance; the wage earners, suppliers, creditors—all of them are paid in advance or are ahead of the owner-shareholders in line to receive the money in the case of bankruptcy. Those who earn profit risk the most and are last in line to receive the benefits. Why should they and only they be punished by additional taxes? After all, it is the truck driver who is directly using the roads. He is not forced at gunpoint to drive the vehicle but has voluntarily accepted this job in order to earn a salary. And everything is done in order for the customer to be supplied with this cheap merchandise.

The problem is that there is no obvious and uncontroversial way of identifying the "debtor" to society in this situation. A corporation or a firm is not a person in the philosophical sense. It is a collection of individuals, all of whom are already paying a mix of federal, state, and local taxes. It is not at all clear why only one group should pay this additional charge for using social infrastructure, rather than by any of the other groups involved. This conclusion requires a completely separate argument that is never given. As in many similar cases, the proponents of "taxing the rich" substitute a certain vague anticapitalist sentiment for a rigorous theoretical argument.

It is now time to question whether the rich or anyone else, for that matter, should pay compensation for using public goods. This article maintains, to the contrary, that people ought to be forced to pay only for goods and services they are contractually obligated to

pay for. If some people offer you something for free, and you take them up on this, they may not then properly demand that you pay for any such benefit.

COMPENSATION: RAWLS'S "FAIR EQUALITY OF OPPORTUNITY"

Probably the most cited theoretical counterideal to Nozick's Wilt Chamberlain example is John Rawls's theory of the "fair equality of opportunity" developed in *A Theory of Justice* and reiterated in *Justice as Fairness* (Rawls 1971, 2001). And yet, as shall be shown, this theory leads to some very awkward moral consequences, especially for anyone who, like Rawls, claims to be continuing in the Kantian tradition and thus rejecting utilitarianism.²¹

Contrary to the social infrastructure arguments, Rawls insists on an entirely different reason to reject libertarianism: the morally arbitrary circumstances of individual's lives. In other words, he relies on the distributional consequences of market cooperation that are based not only on merit or effort, but also on superior talent, knowledge, education, or even work habits. Rawls claims that those natural differences, if left to operate freely and determine distributive shares, would lead to unjust economic differences. Government intervention is needed to rectify the consequences of these differences. Wilt Chamberlain here would not "owe anything to society" because of his use of social infrastructure, but simply because God has given him a natural talent for basketball and the work habits and will to endure the hardships of a professional sports career. Other children, less fortunate and less endowed with those laudable qualities, should be compensated for this injustice that Chamberlain in effect has perpetrated upon them. Argues Rawls:

The existing distribution of income and wealth... is the cumulative effect of prior distributions of natural assets—that is, natural talents and abilities—as these have been developed or left unrealized, and their use favored or disfavored over time by social circumstances and such chances and contingencies as accident and good fortune. Intuitively, the most obvious injustice of the system of natural liberty is that it permits distributive shares to be improperly influenced by these factors so arbitrary from a moral point of view. (Rawls 1971, 72)

²¹ For other libertarian critiques of Rawls and Rawlsian thought, see Evers (1978); Gordon (2000, 2001, 2014); Hoppe (2007); Pavel (2002); Wortham (2012).

However, the natural talents that shape distributive shares “improperly” are not the end of the story. Not only talents, but also individual moral character and likelihood that a person would try hard to develop his talents are exogenously given and “undeserved.” Chamberlain would have to compensate the less successful not only for his superior talents but also for his excellent character and work ethics, which allowed him to become such a great player. Dixit Rawls (1971, 104):

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. The assertion that a man deserves the superior character that enables him to make the effort to cultivate his abilities is equally problematic: for his character depends in large part upon fortunate family and social circumstances for which he can claim no credit. The notion of desert seems not to apply to these cases. Thus the more advantaged representative man cannot say that he deserves and therefore has a right to a scheme of cooperation in which he is permitted to acquire benefits in ways that do not contribute to the welfare of others.

Apparently, Chamberlain would have to “compensate” not only less talented persons, but also the equally talented but *lazy* ones: those who did not have a strong enough character or the motivation to try hard and make the effort necessary to become as successful as he is.²²

Rawls also tries to address Nozick’s objection that redistributing a portion of Chamberlain’s income would introduce a permanent element of government interference with individual lives:

Citizens understand that when they take part in social cooperation, their property and wealth, and their share of what they help to produce, are subject to the taxes, say, which background institutions are known to impose. Moreover, the difference principle (as well as the first principle

²² We are, of course, *not* claiming here that Rawls advocates the principle of “compensation” in any operational sense (for instance, in the way that Kaldor-Hicks compensation works); Rawls advocates compensation only in a normative sense. Nobody is literally paying money to anyone else for their superior natural talents. We are talking of “compensation” in a theoretical sense of rearranging the scheme of natural distribution of results so as to eliminate undeserved advantages and disadvantages. Naturally more endowed persons would be paying some “compensation” to the less endowed only in the sense of being forced or freely choosing to live in a regime in which they cannot reap the full benefits of their natural advantages and in which the less endowed can enjoy greater benefits than in the system of natural liberty.

and the first part of the second principle) respect legitimate expectations based on the publicly recognized rules and the entitlements earned by the individuals. (Rawls 2001, 52)

This is a plausible defense of the conventional practices of redistribution in a welfare state. It may follow directly from Rawls's deliberation from the "original position," from which he arrives at his two principles of justice. However, this logic does not work as a justification for rearranging "equality of opportunity" more fairly! To prove that it does, it would have to be shown that it is possible to create an institutional system—a specific and detailed corpus of taxes, regulations, and redistributive programs affecting every single individual in a precise way—that would not only *reduce* inequalities, but also arrange them in a way that abolishes the supposedly arbitrary factors influencing the previous distributional pattern. It is not self-evidently true that welfare states' conventional modes of taxation or redistribution would achieve this. Rawls seems to think that it is enough to say that on the one hand,

- a) Distribution of resources in the system of natural liberty is generally based on differences in talents and circumstances, which are not justified from a moral point of view, and on the other hand,
- b) Some policies of redistributive taxation, including inheritance, social security, and income taxes, together with social welfare programs *change* the distribution from the one that would have prevailed under natural liberty; *hence*,
- c) The redistributive welfare state *abolishes* the morally arbitrary factors in the distribution of resources.

But the problem is that this "hence" is a non sequitur; namely, *c* does *not* follow logically from *a* and *b*.

We can better understand this point with an example. The most basic precondition Rawls often invokes for individuals to suffer/benefit from wealth redistribution is to allow everyone a reasonable education (Rawls 1971, 101; 2011, 125–26). But if the morally arbitrary factors shaping distributive outcomes are taken as the main problem, then it is not clear how this particular redistribution is to be effected or why redistributing resources to the worst-off group would be preferable to any other redistribution, including to the wealthiest. Every single distributive outcome is influenced to a lesser or greater degree by some morally arbitrary factors. For example,

a representative poor family's lack of the necessary resources to send their children to *any* university shapes the children's future distributive shares in the society in a morally arbitrary way. It does so by preventing them from earning degrees, which would likely garner for them higher incomes. However, the same holds true for an upper-middle-class family that has enough funds only to send their child to a mediocre state university, whereas their child could have gone to Harvard. The middle-income family's child will end up with a degree that gives him much worse prospects in life and likely a lower distributive share than a Harvard degree would have. Hence, his life and his distributive shares will also be very much affected (adversely) by morally arbitrary factors. Moreover, in the exactly same way that the poor family's child is disadvantaged as compared to him, the middle-income child will be disadvantaged as compared to some higher-income family's child with the same abilities who did attend Harvard. Why would only the poorest child's outcome be illegitimate?²³ Which redistribution scheme among these three groups would make these arbitrary distribution factors go away? Who should pay whom in order to attain just outcomes?

MORALLY ARBITRARY DIFFERENCES

Moreover, it is even possible that leveling out arbitrary factors would require redistribution from the poorer family to the

²³ This is another instance of the same problem of unexplained egalitarian bias that Nozick initially noticed in Rawls's justification of the difference principle and which has never been addressed; namely, this is Rawls's unjustified and dogmatic assumption that worse-off groups are automatically entitled to a special treatment and special privileges that are denied to the better-off groups:

Rawls would have us imagine the worse-endowed persons say something like the following: "Look, better endowed, you gain by cooperating with us. If you want our cooperation you'll have to accept reasonable terms. We suggest these terms: We'll cooperate with you only if we get as much as possible. That is the terms of our cooperation should give us that maximal share such that, if it was tried to give us more we'd end up with less." How generous these proposed terms are might be seen by imagining that the better endowed make the almost symmetrical proposal: "Look, worse endowed: you gain by cooperating with us. If you want our cooperation you would have to accept reasonable terms. We propose these terms: we'll cooperate with you so long as we get as much as possible. That is, the terms of our cooperation should give us the maximal share such as that, if it was tried to give us more, we'd end up with less." If these terms seem outrageous, as they are, why don't the terms proposed by those worse endowed seem the same? (Nozick 1974, 195).

Why, indeed?

wealthier one, rather than the other way around, as it is usually assumed. Maybe the marginal psychic income that a wealthier family derives from having their child go to Harvard is higher than the marginal psychic income the poor family derives from their progeny attending *any* university. If so, in what sense is the contrary redistribution toward the poorer family “just”? And who knows if this is the case or not? Rawlsians maintain that if Mr. A inherits \$2 million, that would shape his distributive share in a morally arbitrary way. An inheritance tax is needed in order to eliminate this unfair advantage. But how high should this tax be in order to remove the moral arbitrariness? Five percent? Ten percent? Twenty percent? Maybe 50 percent?²⁴ And why that particular rate, rather than some lower or higher one? At which inheritance tax rate do the morally arbitrary factors of distribution cease to “improperly influence” the distributive shares? Or maybe there should be different rates for different individuals, depending upon their other characteristics, such as work habits, intelligence, education, sport talents. If so, how will these rates be determined? How should intelligence and work habits be weighted in determining the final rate (60–40, 30–70, 50–50)? And if a person is a Buddhist, should he be entitled to a subsidy or an additional tax?

These dilemmas are possible to solve only if we assume the possibility of interpersonal utility comparison, based on what is usually called cardinal utility. Criticism of the concept of interpersonal utility comparison is often invoked against utilitarianism. Rawls rejects that philosophy as well, citing among other considerations the impossibility of cardinal measurement of utility. However, the same arguments undermining cardinal utility equally apply to Rawls’s views. The utilitarian case for redistribution is based on the doctrine of the diminishing marginal utility of material wealth. This means that an additional unit of income becomes less and less valuable as income increases. This means that redistributing resources toward poorer people *increases* overall social welfare. All his criticisms of utilitarianism notwithstanding, Rawls accepts this reasoning by arguing that we can neutralize the effects of natural endowments via tax and spending policies. He does not so much believe in the diminishing marginal utility of income as in the equal marginal utility of income redistribution across persons, or more

²⁴ Buchanan (1983) favors a 100 percent inheritance tax. For a critique, see Block (2012).

precisely, that a given unit of redistributed income causes equal increment in psychic income across persons. In order to establish such a rectifying policy, all the morally arbitrary distribution factors must be able to be reduced to a common denominator. This means a unitary measurement scale for interpersonal comparisons must be established to measure whether the tax and spending policies succeeded in bringing about the desired state of a “fair equality of opportunity.”

Lionel Robbins’s canonical refutation of the doctrine of cardinal utility equally applies to Rawls as well:

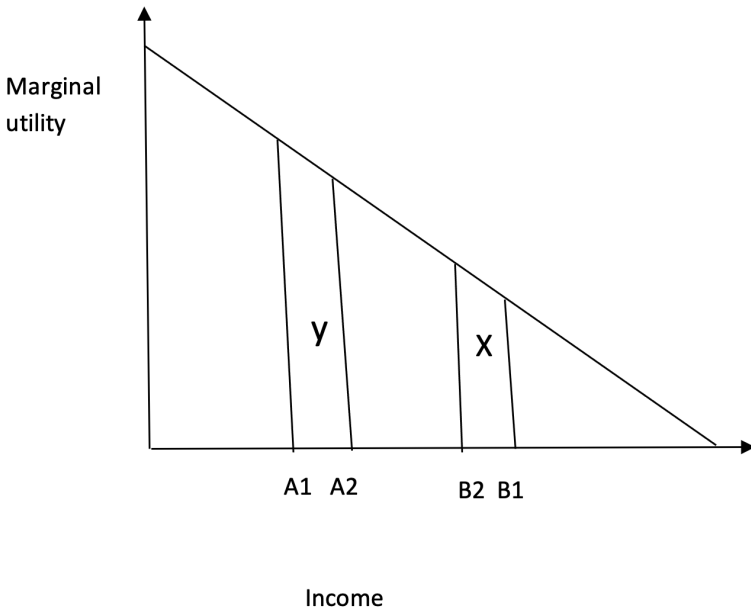
Suppose that we differed about the satisfaction derived by A from an income of \$1000 and the satisfaction derived by B from an income twice that magnitude. Asking them would provide no solution. Supposing they [*sic*] differed A might urge that he had more satisfaction than B at the margin. While B might urge that, on the contrary, he had more satisfaction than A. We do not need to be slavish behaviourists to realise that here is no scientific evidence. *There is no means of testing the magnitude of A’s satisfaction as compared to B’s.* If we tested the state or their bloodstreams, that would be a test of blood, not satisfaction. Introspection does not enable A to discover what is going on in B’s mind, nor B to discover what is going on in A’s. There is no way of comparing the satisfactions of different people. (Robbins 1934, 123–24, italics in the original)

It cannot be denied that there are units of height, weight, speed, mass, temperature, etc. However, there are no measures of happiness. It is only a bit of nonsense to say that a pencil affords two utils, that a rubber band affords one, and that therefore the former yields twice as much happiness as the latter. It is nonsense on the proverbial stilts to employ these concepts interpersonally. Then, we would say that A obtains one util from the rubber band, B two from the pencil, and that therefore the latter derives twice as much happiness from his possession as does the former from his. And yet this is precisely what interpersonal utility comparisons of income imply. Yes, ordinally, it is proper to say that A values the pencil more than the rubber band. We see him in the act of giving up the latter to obtain the former. But once we enter the quicksand realm of cardinality, all bets are off.

Below is a diminishing marginal utility curve showing that the marginal addition of income yields less and less cardinal utility. Based on this curve, yes, taking \$1,000 from the rich man and giving it to the poor one indeed enhances total utility. The wealthy

man's income is reduced from \$100,000 to \$99,000 (from B1 to B2), while the impoverished man's income rises by \$1,000, from \$9,000 to \$10,000 (from A1 to A2). In figure 1, area X, the utility loss for the rich man (area X), is indeed smaller than the utility gain for the impoverished person (area Y). "Total utility" for the two of them is thus shown to increase based on this transfer. And we can pinpoint the gain exactly: the difference between area Y and X. Of course, this entire exercise is built on a foundation of quicksand, since it is fallacious to draw this diagram in the first place.

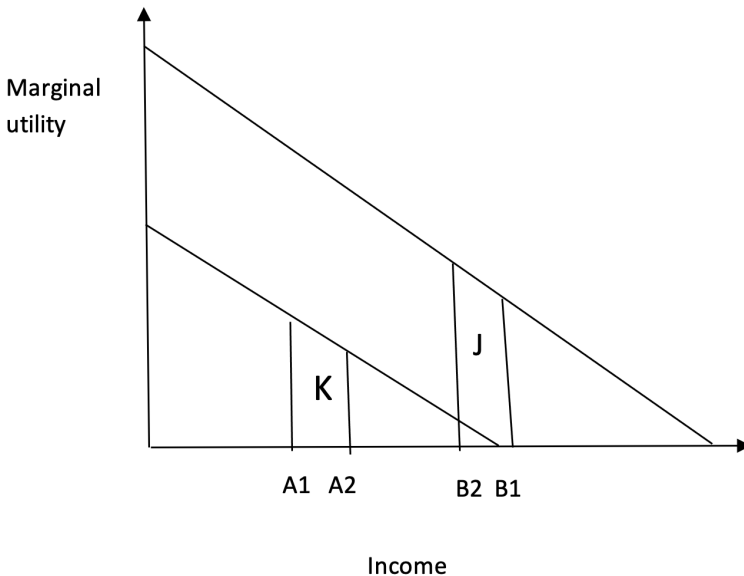
FIGURE 1: DIMINISHING MARGINAL UTILITY OF INCOME



But we need not confine ourselves to attacking this idea at its very root. It can be accepted, *arguendo*, that utility can be measured in the cardinal sense and that marginal utility and income are inversely related: marginal utility decreases with rising income. However, one more assumption must be added to the mix, if this concoction is to produce the results desired by the interventionist egalitarians: both the rich and the poor man must be on the same diminishing marginal utility curve of money or at least proximate curves. But this need not be the case by any means. Consider figure 2, which differs from figure 1 only in that it has not one

but two diminishing marginal utility curves, the upper one for the rich man, the lower one for the poor man. The former attains more cardinal utils at every level of income. Now, when \$1,000 is transferred from the rich to the poor person (whose initial incomes are again \$100,000 and \$9,000), the former loses area J, while the latter only receives area K, which is smaller than area J. In this case, the income transfer from rich to poor results in a *loss* of total utility. But this is only a *reductio ad absurdum*. The entire intellectual apparatus is invalid.²⁵

FIGURE 2: DIMINISHING MARGINAL UTILITY OF INCOMES



N. Gregory Mankiw and Matthew Weinzierl (2010) provide another brilliant *reductio ad absurdum* of this entire line of argument. They argue that the standard utilitarian framework demands that a tax on height be levied, since taller people are statistically very likely to earn more than shorter people. They calculate that in the United States, people taller than six feet who earn \$50,000 should pay about \$4,500 per year under this new tax, if the standard utilitarian criteria of wealth maximization are to

²⁵ For more on this, see Rothbard (1997b).

be satisfied. However, the same kind of transfer is implied in the Rawlsian concept of a fair level of equality of opportunity. Height is obviously just one of a person's morally arbitrary physical features, and since we know 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, 89), then a tax on height is logically required in the Rawlsian framework. But since Rawls rejects the utilitarian calculus, it is not clear, even conceptually, how the height tax is to be apportioned. However, if Rawls is serious about his concept of equality, this tax simply has to be apportioned somehow.

Rawls's government faces a task of staggering proportions. He has burdened it with an impossible mandate of disentangling the intricate and infinitely complex web of factors that influence every single economic outcome and hence every single distributional share in the economy.²⁶ His "fair equality of opportunity" requires that government continually evaluate millions of always changing data points, about individuals' talents, knowledge, preferences, inclinations, as well as social conditions and handicaps. His state must then use its tax, spending, and regulatory policies to achieve the outcomes consistent with this knowledge, which is a priori impossible to attain. And once it puts in place a system to effectuate this impossible knowledge, the data will have already changed, making the arrangement obsolete and the resulting distribution of primary goods already unjust, according to Rawls's own lights! The final consequence of this concept of fair equality of opportunity is that government must be put in control of the entire social and economic life and given an absolute right to plan individual lives if we want this ideal to even make any sense. In addition, government would have to possess unlimited knowledge and capacity for processing the information). As F.A. Hayek notes:

To achieve this [fair equality of opportunity] government would have to control the whole physical and human environment of all persons,

²⁶ One may object that Rawls wants to eliminate only the improper influences of natural differences on distributional shares, not all such differences. But that does not help much, because it begs the question: what are "improper" influences? How to distinguish them from the "proper" ones? Since Rawls never provides any explanation of this difference, we are then forced to reject the distinction between "proper" and "improper" influences of natural abilities as both theoretically and practically irrelevant.

and have to endeavor to provide at least equivalent chances for each; and the more government succeeded in these endeavors, the stronger would become the legitimate demand that, on the same principle, any still remaining handicaps must be removed—or compensated for by putting extra burden on the still relatively favoured. This would have to go on until government literally controlled every circumstance that could affect any person's well-being. (Hayek 1976, 85)

There are few facts about human beings that are morally nonarbitrary, strictly speaking. Perhaps work habit and moral character would come closest, but we saw that Rawls eliminated them by fiat as well. If not only people's social status and wealth, but equally their height, intelligence, physical strength, moral character, and work ethic are morally arbitrary and undeserved and cannot be profited from unconditionally, is a person's very existence, a person's very life, morally deserved? All people originated from a highly arbitrary process in which just one out of tens of millions of spermatozooids fertilized their mothers' eggs. What is peculiarly nonarbitrary and morally undeserved is the mere fact of being born in this form, as a product of this blind, arbitrary biological process, rather than some other, perhaps much nicer person. If individuals owe other people some material resources on account of their moral character or height, why do they not owe them something on the basis of their very existence? If they do, then Rawls's intended recipients of "compensation" for their inferior skills or character would not be entitled to it, because the very concept is implicitly based on the idea that all people deserve their existence. Why would the existing less fortunate be more worthy of compensation than the unborn?²⁷ Hence, this concept cannot be justified in the Rawlsian framework; a completely independent theory for the differential treatment of human existence, as opposed to individuals' particular qualities and characteristics, has to be provided. If nothing is morally deserved, then everything is morally deserved.

There is one other *reductio ad absurdum* that may be applied to the Rawlsian edifice. Not only does Rawls not apply his principle to the unborn, , but he does not even bring it to bear on people in

²⁷ Or the dead, especially those who passed away before "their time," for example to accident or disease. Should they not be compensated, perhaps even more so than the living poor? Of course, the deceased cannot receive any benefits; they are beyond that. But should they not be able to bequeath these "justified" payments to their heirs? Oh, wait, we forgot. That, too would be "unjust."

other countries. Rawls is an American. This is one of the richest countries on the planet. Surely, if he were serious about his own code, Rawls would employ it around the world. If the poor in the US deserve to mulct money from rich Americans, then the much more poverty-stricken in the third world merit compulsory income transfers even more so, not only from wealthy inhabitants of this country, but from those of poorer countries as well. Why does Rawls not extend his difference principle around the globe? Could it be that it would be less saleable among academics and cognoscenti, who would realize this would lead to a large dent in their own pocketbooks?

Therefore, it is clear that merely redistributing the resources from the wealthier to the poorer people does not eliminate the morally arbitrary factors of redistribution. On the contrary, redistribution only replaces one set of morally arbitrary limitations with another set of morally arbitrary limitations. Even accepting the theoretical notion that morally arbitrary factors should be eliminated from the distribution of income and benefits, it is far from clear why Rawls's difference principle or any other such standard would achieve this. It is equally (im)plausible to assume that a redistribution from the poor to the rich would achieve the same effect.

It is now possible to more strictly apply the Rawlsian argument to the case of Wilt Chamberlain. If Chamberlain does not deserve his superior natural talents and the benefits he derives from them, does this mean that somebody else deserves them instead? The problem with Rawls is that he not only denies Chamberlain ownership over himself, but also *grants* that ownership *to other people*. To add insult to injury, Rawls characterizes that as a rectification of the moral arbitrariness of the natural distribution of talents and capabilities! When people say that Chamberlain is not allowed to earn \$250,000 because his talents are morally arbitrary, they are actually saying that *other people should* be allowed to "earn" parts of that \$250,000 on account of their *lack* of talent. What Rawls is saying is not so much that people's talents do not entitle them to the proceeds of employing them, but that people's *lack* of talent or work habits *does* entitle them to the products of other people's own employments of *their* talents and work habits. Rawls is not arguing in effect, as it was done in the previous section, that Chamberlain should be forced to burn his "unearned surplus," but that a part of his money should be forcibly taken from him and given to *other* people

because redistribution to effectuate “fair equality of opportunity” would miraculously eliminate the morally arbitrary factors from the scheme of distribution of goods and benefits. This central proposition, this blatant case of non sequitur, is simply dogmatically assumed and never proven in Rawls’s writings. It is never even recognized as needing a defense.

Nothing written in this section is meant as a general argument against Rawls’s difference principle, fair equality of opportunity, or any other egalitarian principle. It only opposes the notion that switching from laissez-faire to some kind of redistributive state removes the moral arbitrariness of distributional outcomes. No, this “moral arbitrariness” of distribution in Rawls’s sense is present in the laissez-faire as well as in the redistributive state.

CONCLUSION

The model of Wilt Chamberlain proposed by Nozick (1974) offers a powerful defense of voluntary cooperation. As such, it has been a target of wide-ranging criticism by the people who attempt to justify government interventionism on moral grounds. This paper examined two such prominent counterarguments: the argument that the wealthy must compensate the less fortunate for the use of social infrastructure and the Rawlsian argument that superior personal traits lead to an unjust distribution of wealth. Neither of them is successful. The argument that Chamberlain should be legally required to compensate the rest of society for using social infrastructure is wanting because of a cluster of logical problems, including its inability to yield a sensible entitlement theory, its use of arbitrary assumptions about the other persons owning Chamberlain’s wealth, as well as the impossibility of logically and economically defining the concept of the “debtor” to society” in this context.

Rawls’s famous argument that natural endowments and economic inheritance are unjust and require a remedial government action also cannot refute Nozick’s Wilt Chamberlain example. This is because of somewhat analogous considerations, particularly the inability to make the concept of rectifying the morally arbitrary determinants of distributive shares consistent with a whole host of other established economic and political principles that even Rawls accepts. In this argument too there are insurmountable epistemological obstacles to even conceptualizing the notion of just rectification for the unjust effects of morally arbitrary factors.

Today, almost forty years after the publication of *Anarchy, State, and Utopia*, Wilt Chamberlain stands vindicated, because the most influential counterarguments are incapable of establishing the claim that he owes anything to society on account of his superior personal qualities and talents or his participation in the economy.

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