ABSTRACT. John Rawls' Difference Principle, which requires that primary goods—income, wealth, and opportunities—be distributed so as to maximize the primary goods of the least advantaged class, has both a libertarian and a welfarist interpretation. The welfarist interpretation, which fits somewhat more easily with Rawls' method for deriving principles of justice—rational contractors choosing principles behind the veil of ignorance—and with Rawls' contention that there is a natural affirmative duty to aid others and to help establish and maintain just institutions, is the orthodox interpretation. But there is scattered, fragmentary evidence for the libertarian interpretation as well. In this article I examine a recent version of the libertarian interpretation put forward by Jeffrey Reiman and discuss its implications as a standard for justice in cooperative arrangements.

Liberals are divided into two major camps: (1) those who believe that a person has an absolute (or nearly absolute) right to use his body, labor, and talents as he sees fit and not necessarily for the benefit of those whose welfare is lower than his; and (2) those who believe that a person is subject to affirmative duties to employ his body, labor, and talents for the benefit of the less fortunate. The former are the libertarian liberals (libertarians). The latter are the welfare-state liberals (welfarists).

John Rawls' Difference Principle, which requires that primary goods—income, wealth, and opportunities—be distributed so as to maximize the primary goods of the least advantaged class, has both a libertarian and a welfarist interpretation. The welfarist interpretation, which fits more easily with Rawls' method for deriving principles of justice—rational contractors choosing principles behind the veil of ignorance—and with Rawls' contention that there is a natural affirmative duty to aid others and to help establish and maintain just institutions, is the orthodox interpretation. But there is scattered, fragmentary evidence for the libertarian interpretation as well. Rawls' limitation of the jurisdiction of his principles to cooperative arrangements is inconsistent with the strict welfarist interpretation. So, too, are Rawls' occasionally ex-
pressed objections to forced labor. Moreover, because Rawls assumes that his theory is an ideal theory, applicable under conditions where everyone is motivated to comply with his principles of justice, his belief in the necessity of inequalities for motivating increases in production suggests a libertarian interpretation. (A welfarist would assume that the more talented would produce for the benefit of the less talented--that is, so long as both the more and less talented put forth the same effort.)

Jeffrey Reiman has now put forward an interpretation of the Difference Principle which is a variant of the libertarian interpretation. Reiman calls his interpretation "the labor theory of the difference principle."

Reiman begins with those statements by Rawls indicating Rawls' belief that the Difference Principle is a principle of mutual advantage, a principle under which both the more and less talented benefit. If this is the case, says Reiman, then the welfarist interpretation is out. For on the welfarist interpretation, the Difference Principle produces welfare gains to the less advantaged that are not correlated with improvements in the welfare of the more advantaged.

Reiman thus rejects the welfarist interpretation. He begins the case for his variant of the libertarian interpretation by pointing out that distributions of income are equivalent to distributions of claims to other people's labor. The free market represents one libertarian possibility for distributing income, for presumably the free market assures that no one is compelled to labor solely for another's benefit.

Reiman argues for an alternative libertarian principle for distributing income, one consistent with the Difference Principle if interpreted as a principle of mutual advantage. The free market allows everyone to gain through exchange and compels no one to labor or use his talents for another; but it also allows the more advantaged to capture as much of the contractual surplus as they are able. Reiman argues instead for a principle that would essentially allocate all contractual surplus to the less advantaged. In other words, it is unjust according to Reiman for the more advantaged to profit from cooperation with the less advantaged; they may not receive more in exchange than is necessary to render them indifferent as between exchanging and not exchanging.

Now Reiman does not describe his principle as I have described it. Rather, he speaks of equality of the amount of time labored as being the basis of fairness in exchange. But he realizes that a better basis, for which time labored is merely a convenient substitute, is effort expended. And if we unpack the notion of effort expended, so that it includes all of the various sources of disutility involved in production--uncomfortable working conditions, etc.--we arrive at the notion of general disutility associated with production. The amount of income that just offsets that disutility establishes the point of indifference between exchanging one's labor for income (another's labor) and not doing so.

Reiman's actual argument begins with a hypothetical society comprised of two groups, one with higher than average productive talents, the A's, the other with lower than average productive talents, the B's. A baseline situation of equality exists when A and B exchange goods
that represent for each the same amount of labor time \( t \) (Reiman’s shorthand for effort and other disutilities involved in production).

\[ \text{It will be rational for } B \text{ to contribute } t + n \text{ hours of labor to } A \text{ where the result is to increase } B' \text{'s share by } m \text{ (a quantity of goods not labor, } A' \text{'s labor for } B \text{ is still } t), \] where \( m \) is the surplus over \( B' \text{'s share when he and } A \text{ contributed } t \text{, plus what } B \text{ could produce for himself with } n \text{. Presumably, this could happen where giving } B' \text{'s } t + n \text{ to } A \text{ worked as an incentive to bring out } A' \text{'s greater talents by } m \text{. We can say that it would be rational whenever the increment of } n \text{ hours to } A \text{ is sufficient to encourage him to devote his talents to the cooperative venture in a way that results in an increment to } B \text{ of } m \text{ goods.} \]

Reiman then shows that among the set of rational solutions that involve unequal exchanges of labor \( (t > t)\),

\[ \ldots \text{we can say that the difference principle permits inequalities, exchanges for } t \text{ for } t + n \text{ hours of labor [an instance of } > 1], \text{ where } n \text{ is the smallest increment that will produce the largest } m \text{ for the worst-off person in the distribution.} \]

Reiman points out that limiting \( A \) to his indifference curve and giving \( B \) all the exchange surplus, unlike the result in a free market where \( A \) may capture whatever portion of the surplus he can, does not represent confiscation of \( A' \text{'s body, labor, or talents.} \]

If, on the market, \( A \text{ can get more than } 16 \text{ hours of labor from } B \text{ without conferring additional benefits on } B \), then this must reflect \( A' \text{'s favorable market position, due to } B' \text{'s need or } A' \text{'s greater talent, facts which may be arbitrary from the standpoint of justice. This is what the difference principle prohibits.} \]

The Difference Principle on this interpretation is a principle of mutual advantage. The more advantaged do not labor solely to benefit the less advantaged. They labor only for compensation sufficient to offset the negative utility of production, the amount that is the minimum they would accept were there no contractual surplus for them to capture. And the less advantaged are clearly benefited relative to a free market exchange.

Reiman, I believe, has put forward a tenable version of libertarian liberalism, an alternative to the orthodox free market version. The libertarian's fundamental objection to appropriation of others' bodies, labor, and talents need not necessarily be translated into unregulated distribution of contractual surplus. In other words, if the Difference Principle is limited to contractual surplus, it is a principle that even a libertarian like Nozick would find difficulty attacking from the premise of nonappropriation of others.

As an interpretation of Rawls, however, this version of the Difference Principle, while it fits with Rawls' anti-forced-labor sentiments and with his statements that the Difference Principle deals with mutually ad-
vantageous relations, appears inconsistent with the general thrust of the Rawlsian project.

To begin with, Rawls' "rational contractors" in their "original position" would be concerned with special needs and handicaps that would affect the utilities of consumption as well as with the personal qualities that affect the utilities of production. Reiman's libertarian Difference Principle deals only with the utilities of production. Equality of disutility of production represented by an exchange of goods between A and B would be small comfort to any B who, because of special needs, requires three times the amount of goods that A requires in order to attain equal utility in consumption. Surely the rational contractors would be concerned with the total utility picture, which includes the positive utility of consumption as well as the negative utility of production, whereas the libertarian would be concerned only with the latter (so as to avoid appropriation). Thus, it seems unlikely the rational contractors in the original position would choose a libertarian Difference Principle. (Reiman, however, believes that Rawls' first principle of justice--the maximum equal liberty principle--which is lexically prior to the Difference Principle, embodies the libertarian constraint against forced labor. I find that interpretation of the first principle much less clearly correct than Reiman. And as I said, I do not think the rational contractors would choose such an interpretation.)

The second problem with the libertarian interpretation of the Difference Principle is reflected in the following passages at the conclusion of Reiman's article, where Reiman addresses both the issue of the preceding paragraph--the inattention of his libertarian Difference Principle to needs--and the fact that the libertarian Difference Principle still allows the productively better endowed to benefit from this morally arbitrary circumstance, since they get to keep all their pre-exchange gains. Speaking of the latter issue first, Reiman says:

If the difference principle justifies this accommodation [allowing the better endowed to keep pre-exchange gains] when it is necessary to maximize the share of the worst off, it follows that it is no longer justified when no longer necessary. In short, if history brought us to a point at which either people were so enlightened as to no longer need inequalities as incentives for more productive labor, or if production were so efficiently organized that what everyone would do in exchange for an equal share were enough to maximize the share of the worst off, inequalities would no longer be necessary to maximize that share and thus no longer be allowed under the difference principle. What would remain as the standard of just distribution would be the baseline of equal exchanges of labor time, Marx's socialist principle. It follows that, under the difference principle, the question of whether justice requires capitalism or socialism is answered by determining if the conditions obtain in which incentives are no longer necessary to maximize the share of the worst off.

In other words, if A (the better endowed) is prepared to give B (the worse endowed) an equal share of the product of t hours of A's labor (one Mercedes-Benz) in exchange for an equal share of the product of t hours of B's labor (one Toyota), the result is more just than that al-
allowed by the libertarian Difference Principle \((t \text{ hours from } A \text{ in exchange for } t + n \text{ from } B)\).

Turning to the former issue of needs, Reiman continues:

Much the same can be said of the question of whether justice requires socialism or communism. Marx's communist principle is a more perfect principle of equality than his socialist principle. That is, the socialist principle countenances inequalities that the communist principle does not. Since the difference principle requires reducing inequalities down to that point necessary to maximize the share of the worst off, it leads from capitalism to socialism when capitalist inequalities are no longer necessary, and it leads from socialism to communism, when socialist inequalities are no longer necessary. This is hard to see because the socialist principle appears to be a perfectly egalitarian principle, while the communist principle no longer requires equal shares at all. . . .

But this overlooks the nature of the defects in the socialist principle, that the communist principle is meant to avoid. . . .[T]hese defects are the inequalities that result from measuring naturally unequal (that is differently endowed) people by an equal standard. And, interestingly enough, these are the same sort of defects that led from the capitalist to the socialist principle, namely rewarding people more because of their greater natural endowments, or as Marx has it, allowing these to function as "natural privileges." The communist principle avoids these defects because it makes each person his own standard: each person's productive contribution is measured against his own abilities, and his share in consumption is measured against his own needs. Thus, though what each contributes and receives is a different amount, all have their unique abilities taxed and their unique needs equally satisfied. Compared to this, the socialist principle is still a principle that allows inequalities. 21

In short, Reiman realizes that Rawls' rational contractors would adopt communism, not libertarianism or even socialism, at least as a principle for an ideal world where all persons are motivated to act justly. But Rawls assumes that the world in which his principles are the correct principles of justice is such an ideal world! If so, then Reiman faces a difficult task explaining why the rational contractors would choose a libertarian Difference Principle over communism.

There is one possibility for reconciling communism as an ideal with a libertarian Difference Principle. If one assumes that justice sometimes rules out B's compelling A to do that which justice requires A to do, one can then posit communism as A's duty but libertarianism as a moral constraint on B's compelling A to perform A's duty. Of course, in an ideal world, where all are justly motivated, the constraint on B is never necessary because A is never derelict. Communism is voluntary and thus consistent with libertarianism. For a nonideal world, however, it is difficult to see why the rational contractors would opt for the libertarian constraint and simultaneously choose both communism and libertarianism as principles of justice.
ENDNOTES


3 Rawls, supra note 1, at 4, 15, 103, 126. See also Alexander, supra note 2, at 824.

4 E.g., Rawls, supra note 1, at 272.

5 Ibid., at 8.

6 See Alexander, supra note 2, at 825.


8 Ibid., at 133-59.

9 Ibid., at 134-35 (quoting Rawls, supra note 1, at 102, 104).

10 Ibid., at 135-36.

11 Ibid., at 138-41.

12 Ibid., at 135.

13 Ibid., at 148, 150-51.

14 Ibid., at 143.

15 Ibid.

16 Ibid., at 145.

17 Ibid., at 148.

18 Ibid., at 149-50.

19 Ibid., at 156n.22.

20 Ibid., at 156.

21 Ibid., 157-59.