

1

Introduction

Suppose justice requires reducing or minimizing certain inequalities, those that arise through no choice or fault of one's own. Or suppose that justice requires providing everyone, particularly the most vulnerable, with guarantees that the most basic goods needed to lead a decent and secure life will be provided. Or suppose a good or just society will reinforce or sustain a sense of community or solidarity among all members of society. Then on all of these views of a just or good society, it seems to follow straightaway that we should support government-financed and -administered health insurance, retirement pensions, and various government programs for the poor and needy. This seems to be the consensus among contemporary political philosophers. The aim of this book is to argue that this consensus is mistaken. According to the principles and values that are central in contemporary political philosophy, welfare-state institutions fail to be justified when compared with viable, more market-based alternatives – specifically, private compulsory insurance and private charities. Private compulsory insurance means the state requires all citizens to purchase insurance, and supplies a safety net, but otherwise leaves insurance to the market. Private charities are voluntary organizations devoted to helping the poor or the unfortunate. I will argue that private compulsory insurance is clearly superior to government-financed and -funded insurance, when judged by the standards prominent in contemporary political philosophy, and that private charities are superior to some government programs for the poor and no worse than others. If the welfare state is composed of government-provided insurance and aid

for the poor, then, taken as a whole, the welfare state is unjustified when compared with market alternatives. If the welfare state is broader than government-provided insurance and aid to the poor, then the argument of this book is that major welfare-state institutions are unjustified when compared with market alternatives.

My arguments in this book are different from most of the debates about the welfare state that have occurred in (close to) the last thirty years in contemporary political philosophy. Many of those debates concern disputes about relatively abstract political values or principles. So, for example, libertarians argue that basic political principles should focus on individual liberty, while egalitarians argue for a principle of equality or fairness. Liberals say that the basic unit of political concern is the individual; communitarians say that it is the community. By contrast, I bypass these debates. In this book, I do not challenge or criticize any basic political principle or value. Instead, I work within them, so to speak, and show that the dominant mainstream views should converge on supporting some market alternatives to the welfare state and not opposing other market alternatives to the welfare state. (Because libertarianism supports market alternatives to the welfare state, another way of putting this is that I show the dominant mainstream, nonlibertarian political principles have institutional implications that are more free market or libertarian than they realize.) This difference explains, in part, my disagreement with the consensus in mainstream contemporary political philosophy in favor of the welfare state. That consensus consists of people who disagree among themselves about which basic political values or principles are true or most plausible but agree that all or almost all of the institutional implications of these principles point to supporting the welfare state.¹ In this book I take no stand on disputes about basic political principles or values but argue that, whatever these principles, the institutional implications of mainstream principles point against the welfare state.

1.1 Justification in Political Philosophy

Another way to mark out the differences between my view that the welfare state is unjustified and the consensus in mainstream political philosophy that it is justified is to show that we have different

¹ Because libertarianism opposes the welfare state, from now on when I say “consensus” or “mainstream” view I exclude libertarianism.

understandings of justification. Justification in political philosophy is largely a matter of presenting the best arguments for certain normative claims when the focus is disagreement about the best or most plausible basic political values or principles. Empirical and social scientific questions about the way institutions work (or don't work) thus come to be seen as separate matters. Of course, because political principles or goals can only be instantiated or achieved by some kind of institutional arrangements, institutional questions are always relevant, but they do not take the foreground on this way of understanding justification in political philosophy. Another way to put this point is that for most political philosophers the object of justification – what gets justified – are principles or values, whereas on the model presented in this book, the object of justification is institutions.

In one sense, this model of justification is satisfactory. Political philosophy obviously is concerned with fundamental normative questions about the just or good society. A problem arises, however, when political philosophers use normative arguments as reasons for changing institutions, as it is not uncommon for them to do. After all, principles of justice or basic political goals are meant to establish the standards by which we should judge a political order, and if present institutions fail to meet these standards, then criticism of the existing order naturally follows straightaway.² From that criticism the claim that we should act to abolish or alter the institution also seems to follow straightaway. However, it does not. Identifying a very bad or unjust feature of an institution, even an essential feature of that institution, gives one no conclusive or sufficient reason to abolish or reform it, because the reformed or new institution may be no better. A joke illustrates the problem. A Roman Emperor asked to hear the best singers in his kingdom. The finalists were narrowed down to two. The emperor heard the first one, was unimpressed, and promptly announced that the award goes to the other finalist, because the next singer must be better than the first one. Of course, that's wrong: the second one could be no better or worse. The emperor needs to hear both singers to make a proper judgment.³

² Of course, principles can also be used to support institutions, but the points I wish to make here are more obvious when I focus on the principles' critical function.

³ Peter J. Boettke, "James M. Buchanan and the Rebirth of Political Economy," in *Against the Grain: Economic Dissent in the 20th Century*, Steve Pressman and Ric Holts, eds. (Brookfield, VT: Edgar Elgar, 1997), 9–10.

This fallacy – call it the *nirvana fallacy*⁴ – teaches us an important lesson. If political philosophy aims to give us good reasons to change or abolish an institution, it cannot limit itself to normative theory or arguments. Normative arguments by themselves only provide us with reasons to believe that a certain feature of an institution is unjust or seriously defective. Without some social-science arguments that there is some institution that will lack or lessen the injustice or social evil, we have no reason, or at least no particularly weighty reason, to abolish or alter the institution.⁵ The injustice or evil could be a necessary evil. It could be a sad truth about human affairs that we are stuck with that evil or injustice.

Few philosophers explicitly commit the nirvana fallacy, although it does occur.⁶ Most philosophers mention, at least implicitly, some kind of alternative institution that is supposed to lessen or get rid of the injustice or social evil. However, for these arguments to succeed the argument for an institutional alternative must specify what mechanisms or processes are likely to bring about the proposed change. Failure to specify how alternative institutional mechanisms or processes are likely to achieve justice or lessen present-day injustice is, unfortunately, a common problem in political philosophy, particularly in arguments that welfare-state institutions are needed to overcome injustices caused or embodied by markets. For example, John Rawls in *A Theory*

⁴ The term comes from Harold Demsetz, “Information and Efficiency: Another Viewpoint,” *Journal of Law and Economics* 12 (1969): 1–22.

⁵ Someone might argue that X is not an injustice unless there is a feasible institutional alternative that would lack or lessen X. Perhaps that is correct. If it is correct, my point can be restated in one of two ways. Normative political philosophy is incomplete without a claim that some feasible institution will lack or lessen the injustice, or normative political philosophy describes serious institutional defects, describing them as injustices only if some feasible institutional alternative will lack or lessen these defects.

⁶ Ronald Beiner, “What Liberalism Means,” *Social Philosophy and Policy* 13 (Winter 1996): 203, says the following: “A liberal is someone who says that the present social order in contemporary, Western, democratic, individualistic and pluralistic societies is basically okay, apart from a need for improvements in equality of opportunity and more equitable social distribution. A critic of liberalism like myself will say this is nonsense. To this, the liberal will reply: ‘Okay, this isn’t good enough; what’s your alternative?’ It is both necessary and legitimate for me to claim that I don’t need to answer this question. . . . That’s not my job. My job as a theorist is to criticize the prevailing social order.” Thus Beiner claims he can engage in legitimate criticism without specifying any institutional alternatives that will do a better job.

of Justice argues that a society is unjust if market institutions dominate and government's role is limited, because free markets without state correction allow too much of a person's lot in life to be a result of luck, that is, by one's inherited natural abilities and fortuitous social circumstances.⁷ Rawls argues for the difference principle, which says, roughly, that social and economic inequalities are justified only if they work to the greatest advantage of the most unlucky or the least advantaged. But how is the difference principle to be institutionalized? Rawls answers by listing the *aims* of various branches of government.⁸ However, institutions cannot be adequately characterized by their aims. In the real world, political decision makers do not simply have intentions to achieve a just society that they can simply implement. They have agendas and interests of their own. Furthermore, even if the decision makers were extremely committed Rawlsians, they would face informational constraints, such as their ignorance about most of the facts that are relevant for a decision, the difficulties in evaluating the relevant evidence, and our uncertainty about predicting the consequences of various policies.⁹ It may be that trying to instantiate the

⁷ John Rawls, *A Theory of Justice*, 2nd ed. (Cambridge, MA: Harvard University Press), 1999, 62–4.

⁸ *Ibid.*, 244–5. It's worth noting that Rawls, in *Justice as Fairness: A Restatement* (Cambridge, MA: Harvard University Press, 2001), 135–40, claims that the institutions or regime needed to support or sustain his two principles of justice would be a “property owning democracy” (or perhaps “liberal socialism”), not a welfare state. The difference between a property-owning democracy and a welfare state seems to be that the former relies more on a widespread redistribution of assets and wealth rather than income. Because Rawls's remarks seem to suggest that a property-owning democracy maintains social-insurance programs (*ibid.*, 139–40), it seems to me that a property-owning democracy is a welfare state of a certain kind, but in any event, this semantic disagreement is irrelevant for my purposes. The point is that whether we call Rawls's proposed institutions for instantiating or sustaining the difference principle a welfare state or something else, Rawls never shows that his favored institutions will sustain or instantiate the difference principle better than alternative, less interventionist or more market-based institutions. Rawls does concede that although he outlines “a family of policies aimed at securing background justice over time. . . . I make no attempt to show that they will actually do so. This would require an investigation of social theory” (*ibid.*, 135). However, without this social theory an argument that free markets are unjust and ought to be restricted or regulated by government programs has no force.

⁹ For a thorough account of these sorts of epistemic problems, see Gerald Gaus, “Why All Welfare States (Including Laissez-Faire Ones) Are Unreasonable,” *Social Philosophy and Policy* 15 (Summer 1998): 16–19. Ironically, Rawls recognized these kinds of epistemic problems in his discussion of “the burdens of judgment,” which is his attempt to explain the sources of reasonable disagreement. See John Rawls, *Political Liberalism*

difference principle by government produces more inequalities than Rawls believes come about by the result of unfettered markets. Certainly our experience with welfare-state policies in the last half-century indicates that welfare-state programs do backfire and produce something quite different from their intended results.¹⁰

Similar problems infect Ronald Dworkin and Norman Daniels's criticisms of market health insurance (MHI). To simplify greatly (Dworkin and Daniels's views are discussed in Chapter 3), they argue that MHI is unjust because it prevents the poor and the unlucky from attaining adequate access to health care. National health insurance (NHI) is prescribed as the cure, but as Daniels and Dworkin recognize, that typically requires government rationing. They do not discuss how this rationing will improve the situation of those who are supposedly blocked from adequate health care in the market. It may turn out – I argue it does turn out – that the poor and unlucky's access to rationed services (surgery, high-tech equipment, etc.) in NHI is much worse than the affluent's access to such services, in which case that kind of insurance may be more unjust than MHI.

A sound argument for institutional change must avoid jumping between the real and the ideal. An argument that an institution is bad or unjust in some way is presumably about a real institution. Hence, an argument for changing or abolishing that institution must specify a real or realistic alternative.¹¹ It is a mistake to condemn a real institution

(New York: Columbia University Press, 1993), 56–7. However, he never seemed to realize that the burdens of judgments also apply to government agencies and that simply explaining that these agencies intend to carry out Rawlsian justice is a far cry from showing that these agencies will do a better job than if these agencies didn't exist or had a different task.

¹⁰ I do not discuss Rawls's views in later chapters, because he doesn't provide detailed defenses of specific existing welfare-state programs. I mention him here because some defenders of the welfare state take their inspiration from Rawls, e.g., Norman Daniels.

¹¹ I say "real or realistic" because there may be no alternative in existence anywhere in the world. However, provided the alternative is realistic, i.e., could work as advertised without assuming substantial changes in human nature, and is similar to how real institutions work (or at least is not terribly dissimilar), using a nonexistent alternative to compare with an existing one is acceptable. In such cases, however, one is intellectually obligated to refute any arguments that such institutions could not exist and/or to explain why such alternatives are not now in existence. So, e.g., I argue in Chapter 3 that MHI is superior to government-provided versions of these insurances. This argument requires me to explain why existing private health insurance is not genuine MHI.

by some ideal without showing that there are institutional processes that have at least a decent chance of instantiating that ideal in the real world.¹² Of course, there is nothing wrong with evaluating an ideal in terms of another ideal, but that is irrelevant for the topic at hand here because welfare-state institutions are obviously real institutions.

This suggests the following argument for institutional change:

1. Institution X manifests or produces injustice or social evil E.
2. Institution Y has processes or mechanisms that make it likely that it will lack E or manifest or produce less of E than X does.
3. If an institution produces or manifests more injustice or evil than a feasible alternative, it ought to be altered or abolished.
4. Therefore, we should abolish or alter X and bring about Y.

This still isn't quite right, because even if Y produces or manifests less of E, the change from X to Y might produce or manifest such side effects or so much injustice that it would be wrong to change X and try to bring about Y.¹³ In any event, the preceding argument gives a rough idea of how I will show that the welfare state is not justified. I will argue that core welfare-state institutions, when compared with

¹² In some cases, it is so obvious that the institutional alternative will eliminate the injustice or social evil that we don't bother to specify the former. Consider, e.g., such horrible injustices as slavery and genocide. If the evil or injustice simply consists of people being enslaved or murdered because of their ethnicity, race, class, etc., then the institutional alternative that eliminates these evils is simply the cessation of slavery and genocide. We don't have to specify anything further, because simply abolishing the institution eliminates the injustice or evil, and even if other injustices or evils come about as a side effect of that abolition, we tend to think that this is irrelevant because simply eliminating that injustice or social evil was our aim, and abolishing the institution eliminated the injustice or social evil. It may be that obvious cases like this mislead some thinkers into believing that identifying an institution as manifesting or containing an injustice or social evil is sufficient to support an argument for its alteration or abolition. However, in most cases the injustice or social evil of a certain institution doesn't just consist in the existence of the institution, but in some further feature the institution manifests or brings about, and so simply ceasing to have that institution doesn't show that an alternative institution will manifest or produce less injustice or social evil. Notice, also, that for those who think the evil of slavery consists not just in the existence of slavery but what it brings about (e.g., a gross diminution of welfare or well-being) then specifying an institutional alternative does become essential. That is why those who oppose slavery on the utilitarian grounds that it reduces human welfare have a more complicated argument for its abolition than those who think human enslavement is simply a gross injustice.

¹³ I call this the *transition problem* in Chapter 8.

real market alternatives, produce or manifest more injustice or social harms, or, to put it positively, market institutions are more just or better than present welfare-state institutions. I will call this kind of argument *comparative institutional evaluation* or *comparative evaluation*.

1.2 Internal Versus External Arguments

My use of comparative evaluations will also avoid external arguments and use internal arguments. To illustrate that distinction, consider a debate between an egalitarian defender of the welfare state and a libertarian critic. The egalitarian might defend the welfare state on the grounds that it produces less of certain inequalities than market institutions, and the libertarian might object that those inequalities are not unjust or that there are more important values or principles than reducing certain inequalities, such as protecting individual rights or maximizing individual liberty. Notice that in this type of argument the libertarian does *not* contest the view that the welfare state will produce less of certain inequalities than market institutions – or to put it another way she seems to accept, at least for the sake of the argument, that market institutions produce more of certain inequalities than the welfare state – and instead rejects the egalitarian view of justice and argues that libertarian values are more important than egalitarian ones. In this example, the libertarian is making what I call an external argument, because she argues from a normative standpoint outside of the egalitarian's view. Similarly, if the libertarian defended free-market capitalism on the grounds that it maximized individual liberty and the egalitarian did not contest that claim but argued that there are more important values than individual liberty, then the egalitarian would be making an external argument. Most political philosophers today use external arguments. The use of external arguments explains why much of political philosophy places social-science considerations in the background. After all, if political philosophers disagree about whether or not markets are superior to welfare-state institutions (or to certain welfare-state institutions) because they disagree about which principles of justice or political values are the most plausible and important, then it is unsurprising that they will tend to ignore the question of whether the institutions work the way that their opponents assume that they do.

Although there is nothing wrong with external arguments, and they are appropriate for philosophical concerns with fundamental issues, they have an important disadvantage – they tend not to produce any resolution of the disagreement. Even though disagreement about principles can be and often is reasonable, it is hard to convince one’s opponents that their fundamental principles in political philosophy are mistaken. My aim in this book is to convince defenders of the welfare state that they are mistaken; therefore I will eschew external arguments and use internal arguments. I will argue that the principles that defenders of the welfare state take to support welfare-state institutions do not do so because these institutions do not work the way egalitarians and other defenders of the welfare state think that they do, because egalitarians and other defenders of the welfare state have misunderstood the implications of their principles, or both.¹⁴

Internal arguments of this kind may seem insincere. If one does not accept the opponent’s principles or values, isn’t it wrong to argue on the basis of that principle or value for a certain conclusion?¹⁵ However, if a principle or value one does not accept yields a conclusion that *also* follows from a principle or value one does hold, there is nothing wrong with an internal argument. One is simply arguing that you and your opponent converge on a certain conclusion, though you begin from different premises. Furthermore, if one can show that this conclusion

¹⁴ One might wonder why I make the distinction between internal and external arguments, rather than relying on the familiar logical terms of validity and soundness. After all, it might be said, an external argument is simply another name for an argument that is valid (conclusion follows from premises) but unsound (at least one premise is false), and an internal argument is simply another name for an argument that is invalid (the conclusion doesn’t follow from the premises). However, the familiar logical terms aren’t illuminating for the purposes of the book for a couple of reasons. First, they don’t reveal that the premises are political principles or values and the conclusions concern institutions. Second, they don’t reveal a point I go on to make in the text, that if all or almost all reasonable principles or values in political philosophy converge on supporting certain institutions, then that institution has far more solid support than if it were merely supported by one principle.

¹⁵ I say internal arguments *of this kind* raise the issue of insincerity because other internal arguments would not. Consider two people who share a common premise or perspective but think that different conclusions follow from that premise or perspective. In that case, while the argument is an internal one – one is arguing from within one’s opponent’s perspective and not taking issue with it – because one shares a common ground with one’s opponent, no one could reasonably maintain that one is being insincere. The issue of insincerity arises when one argues from within a perspective that one does not genuinely accept.

follows from *any* (or virtually any) reasonable premises or principles, then one will have provided far more solid support for the conclusion than if the conclusion followed only from one premise or principle – for even if some of the principles supporting the conclusion turn out to be false or implausible, there will be some true or plausible principles from which one can derive the conclusion. When applying this point to the institutional question of the welfare state versus market alternatives, support for the latter becomes quite strong if it is compatible with or entailed by most plausible normative principles or perspectives in political philosophy. If market alternatives to welfare-state institutions are supported by most or all plausible normative principles in political philosophy, then the debate will, or should, no longer be the welfare state versus those alternatives but what form of market institutions are the best.

My aim here is to shift the debate in just that way. I will provide internal arguments that the welfare state must be rejected in favor of market alternatives. The principles and goals that I will use to compare welfare-state programs with market alternatives are mainstream in contemporary political philosophy, specifically those principles and goals that are used to argue that welfare states are just or are part of the good society. (As I shall explain in Chapter 2, these principles or perspectives are egalitarianism, positive rights theory, communitarianism, and a requirement of liberalism I call *epistemic accessibility*.) Thus, this book aims to marry two kinds of literature that are often treated separately: normative arguments of political philosophers, and social-science analysis of institutions.

1.3 Clarifying the Institutional Alternatives

My arguments require that we be very clear about the nature of, and the differences between, welfare-state institutions and market alternatives. This is a bit tricky because definitions of the welfare state tend to be contentious.

1.3.1 Social Insurance and Means-tested Benefits

Government-financed and -administered insurance programs are often labeled as social insurance. They are insurance in the sense