



ROUTLEDGE
HANDBOOKS



The Routledge Handbook of Libertarianism

Edited by Jason Brennan, Bas van der Vossen,
David Schmidtz

THE ROUTLEDGE HANDBOOK OF LIBERTARIANISM

Libertarians often bill their theory as an alternative to both the traditional Left and Right. *The Routledge Handbook of Libertarianism* helps readers fully examine this alternative without preaching it to them, exploring the contours of libertarian (sometimes also called *classical liberal*) thinking on justice, institutions, interpersonal ethics, government, and political economy. The 31 chapters—all written specifically for this volume—are organized into five parts. Part I asks, what should libertarianism learn from other theories of justice, and what should defenders of other theories of justice learn from libertarianism? Part II asks, what are some of the deepest problems facing libertarian theories? Part III asks, what is the right way to think about property rights and the market? Part IV asks, how should we think about the state? Finally, Part V asks, how well (or badly) can libertarianism deal with some of the major policy challenges of our day, such as immigration, trade, religion in politics, and paternalism in a free market? Among the *Handbook's* chapters are those from critics who write about what they believe libertarians get right as well as others from leading libertarian theorists who identify what they think libertarians get wrong. As a whole, the *Handbook* provides a comprehensive, clear-eyed look at what libertarianism has been and could be, and why it matters.

Jason Brennan is the Robert J. and Elizabeth Flanagan Family Chair of Strategy, Economics, Ethics, and Public Policy at the McDonough School of Business, Georgetown University, where he teaches courses in the intersection of politics, philosophy, and economics. He is the author or co-author of seven books, including *Against Democracy* (2016), *Markets without Limits*, with Peter Jaworski (2015), *Compulsory Voting: For and Against* (2014), and *Why Not Capitalism?* (2014).

Bas van der Vossen is an Associate Professor of Philosophy at the Smith Institute of Political Economy and Philosophy, Chapman University. His research focusses on questions of political philosophy, in particular the ethics of international affairs and the Lockean theory of property rights. He is the author, together with Fernando Tesón, of *Debating Humanitarian Intervention* (2017).

David Schmidtz is the Kendrick Professor of Philosophy at the College of Social & Behavior Sciences and the Eller Chair of Service-Dominant Logic at College of Management, the University of Arizona. He is the author, co-author, or co-editor of 14 book publications.

ROUTLEDGE HANDBOOKS IN PHILOSOPHY

Routledge Handbooks in Philosophy are state-of-the-art surveys of emerging, newly refreshed, and important fields in philosophy, providing accessible yet thorough assessments of key problems, themes, thinkers, and recent developments in research.

All chapters for each volume are specially commissioned, and written by leading scholars in the field. Carefully edited and organized, *Routledge Handbooks in Philosophy* provide indispensable reference tools for students and researchers seeking a comprehensive overview of new and exciting topics in philosophy. They are also valuable teaching resources as accompaniments to textbooks, anthologies, and research-orientated publications.

Recently published:

The Routledge Handbook of Philosophy of Imagination

Edited by Amy Kind

The Routledge Handbook of the Stoic Tradition

Edited by John Sellars

The Routledge Handbook of Philosophy of Information

Edited by Luciano Floridi

The Routledge Handbook of the Philosophy of Biodiversity

Edited by Justin Garson, Anya Plutynski, and Sahotra Sarkar

The Routledge Handbook of Philosophy of the Social Mind

Edited by Julian Kiverstein

The Routledge Handbook of Philosophy of Empathy

Edited by Heidi Maibom

The Routledge Handbook of Epistemic Contextualism

Edited by Jonathan Jenkins Ichikawa

The Routledge Handbook of Epistemic Injustice

Edited by Ian James Kidd, José Medina and Gaile Pohlhaus

The Routledge Handbook of Philosophy of Pain

Edited by Jennifer Corns

The Routledge Handbook of Brentano and the Brentano School

Edited by Uriah Kriegel

The Routledge Handbook of Metaethics

Edited by Tristram McPherson and David Plunkett

The Routledge Handbook of Philosophy of Memory

Edited by Sven Bernecker and Kourken Michaelian

The Routledge Handbook of Evolution and Philosophy

Edited by Richard Joyce

The Routledge Handbook of Mechanisms and Mechanical Philosophy

Edited by Stuart Glennan and Phyllis Illari

The Routledge Handbook of Libertarianism

Edited by Jason Brennan, Bas van der Vossen, and David Schmidtz

For a full list of published *Routledge Handbooks in Philosophy*, please visit
<https://www.routledge.com/Routledge-Handbooks-in-Philosophy/book-series/RHP>

THE ROUTLEDGE HANDBOOK OF LIBERTARIANISM

Edited by Jason Brennan, Bas van der Vossen,
and David Schmidtz

First published 2018
by Routledge
711 Third Avenue, New York, NY 10017

and by Routledge
2 Park Square, Milton Park, Abingdon, Oxon, OX14 4RN

Routledge is an imprint of the Taylor & Francis Group, an informa business

© 2018 Taylor & Francis

The right of Jason Brennan, Bas van der Vossen, and David Schmidtz to be identified as the authors of the editorial material, and of the authors for their individual chapters, has been asserted in accordance with sections 77 and 78 of the Copyright, Designs and Patents Act 1988.

All rights reserved. No part of this book may be reprinted or reproduced or utilised in any form or by any electronic, mechanical, or other means, now known or hereafter invented, including photocopying and recording, or in any information storage or retrieval system, without permission in writing from the publishers.

Trademark notice: Product or corporate names may be trademarks or registered trademarks, and are used only for identification and explanation without intent to infringe.

Library of Congress Cataloging-in-Publication Data

A catalog record has been requested for this book

ISBN: 978-1-138-83216-9 (hbk)

ISBN: 978-1-315-70972-7 (ebk)

Typeset in Minion Pro and Frutiger
by Deanta Global Publishing Services, Chennai, India

Visit the eResources page at www.routledge.com/9781138832169

Contents

<i>Biographical Notes</i>	viii
<i>Acknowledgments</i>	xv
<i>Introduction: Respecting and Caring</i>	xvi

PART I: LIBERTARIANISM AND OTHER THEORIES

1. Learning from Libertarianism: Thanks from an Unrepentant Social Democrat <i>Richard W. Miller</i>	3
2. Toward a Non-Lockean Libertarianism <i>Jacob T. Levy</i>	22
3. Hayekian “Classical” Liberalism <i>Gerald Gaus</i>	34
4. Democracy Versus Libertarianism <i>Richard Arneson</i>	53
5. Kant’s Liberalism <i>Chris W. Surprenant</i>	68
6. What’s Wrong with Libertarianism: A Meritocratic Diagnosis <i>Thomas Mulligan</i>	77
7. Liberal Libertarianism <i>Peter J. Boettke and Rosolino A. Candela</i>	92
8. Liberal and Illiberal Libertarianism <i>Samuel Freeman</i>	108

PART II: QUESTIONING LIBERTARIAN PRINCIPLES

- | | | |
|-----|---|-----|
| 9. | Feminism and Libertarian Self-Ownership
<i>Ann E. Cudd</i> | 127 |
| 10. | Self-Love, Social Cooperation, and Justice
<i>Eric Mack</i> | 140 |
| 11. | Libertarianism and Exception Rights
<i>Nicolás Maloberti</i> | 155 |
| 12. | The Sufficiency Proviso
<i>Fabian Wendt</i> | 169 |
| 13. | Liberty: A PPE Approach
<i>Geoffrey Brennan</i> | 184 |
| 14. | The Myths of the Self-Ownership Thesis
<i>Jason Brennan and Bas van der Vossen</i> | 199 |
| 15. | Social Contractarianism
<i>John Thrasher</i> | 212 |

PART III: THE ROLE OF PROPERTY AND THE MARKET

- | | | |
|-----|---|-----|
| 16. | What Can Be for Sale?
<i>Peter Martin Jaworski</i> | 227 |
| 17. | Property Rights: Natural or Conventional?
<i>Anna Stilz</i> | 244 |
| 18. | Is Wealth Redistribution a Rights Violation?
<i>Michael Huemer</i> | 259 |
| 19. | Free Trade: A Principle for All Seasons
<i>Fernando R. Tesón</i> | 272 |
| 20. | Are Economic Liberties Basic Rights?
<i>Jahel Queralt</i> | 283 |

PART IV: WHAT IS THE ROLE OF THE STATE?

- | | | |
|-----|--|-----|
| 21. | Ideal Theory
<i>Christopher Freiman</i> | 301 |
| 22. | Private Governance
<i>Edward Peter Stringham</i> | 312 |
| 23. | Libertarianism and the Welfare State
<i>Matt Zwolinski</i> | 323 |
| 24. | Government Failure and Market Failure
<i>Michael Munger</i> | 342 |
| 25. | Freedom and Knowledge
<i>Ilya Somin</i> | 358 |

PART V: APPLIED LIBERTARIAN ISSUES

26. The Libertarian Case for Open Borders <i>Javier Hidalgo</i>	377
27. Religion and Politics <i>Kevin Vallier</i>	390
28. A Libertarian Approach to Medicine <i>Jessica Flanigan</i>	405
29. Tolerance <i>Ryan Muldoon</i>	417
30. Paternalism and the Limits of Liberty <i>Sarah Conly</i>	427
31. Free Markets and Exploitation <i>Hillel Steiner</i>	436
<i>Index</i>	447

Biographical Notes

Richard Arneson teaches at the University of California, San Diego, where he is a Distinguished Professor and holds the Valtz Family Chair in Philosophy. He writes on moral and political philosophy, with a special focus on theories of distributive justice and on debates between consequentialists and their critics. He also does research on applied ethics topics.

Peter J. Boettke is a university Professor of Economics and Philosophy at George Mason University. He is also a BB&T Professor for the Study of Capitalism and the Director of the F. A. Hayek Program for Advanced Study in Philosophy, Politics, and Economics at the Mercatus Center at George Mason University. He is co-editor-in-chief of *The Review of Austrian Economics*, President-elect of the Southern Economic Association, and President of The Mont Pelerin Society. His most recent publications include *Living Economics: Yesterday, Today, and Tomorrow* and *The Oxford Handbook of Austrian Economics* (co-edited with Christopher J. Coyne). Among his textbooks, *The Economic Way of Thinking* (with Paul Heyne and David Prychitko) is currently in its 13th edition, and *Institutional Economics: Property, Competition, Policy* (with Wolfgang Kasper and Manfred Streit) is in its 2nd edition.

Geoffrey Brennan is a distinguished Research Professor of Philosophy at the University of North Carolina, Chapel Hill, a research Professor of Political Science at Duke University, and a Professor in the Research School of the Social Sciences at Australian National University. An economist by training, Geoffrey Brennan works actively on issues at the intersection of economics, rationality, and political philosophy. In addition to his position here, which brings him to Chapel Hill for one semester each year, Brennan is a Professor at the Research School of Social Sciences at the Australian National University. He is the Director of the Duke–UNC joint program in Philosophy, Politics, and Economics (PPE). Brennan is the author of nine books, including, with James Buchanan, *The Reason of Rules*:

Constitutional Political Economy (1985); with Loren Lomasky, *Democracy and Decision: the Pure Theory of Electoral Preference* (1993); with Alan Hamlin, *Democratic Devices and Desires* (2000); and, most recently, with Philip Pettit, *The Economy of Esteem* (2004). He is also the author of over 100 articles.

Jason Brennan is the Robert J. and Elizabeth Flanagan Family Chair of Strategy, Economics, Ethics, and Public Policy at the McDonough School of Business, Georgetown University, where he teaches courses in the intersection of politics, philosophy, and economics. He is the author or co-author of seven books, including *Against Democracy* (2016), *Markets without Limits*, with Peter Jaworski (2015), *Compulsory Voting: For and Against* (2014), *Why Not Capitalism?* (2014), *Libertarianism* (2012), *The Ethics of Voting* (2011), and *A Brief History of Liberty*, with David Schmidtz (2010). He is currently writing *Global Justice as Global Freedom*, with Bas van der Vossen, under contract with Oxford University Press.

Rosolino A. Candela is a PhD candidate in Economics at George Mason University and a Graduate Research Fellow in the F.A. Hayek Program for Advanced Study in Philosophy, Politics, and Economics at the Mercatus Center at George Mason University. Previously, he was also a visiting PhD student in the Department of Political and Social Sciences at the European University Institute and a Charles G. Koch PhD Fellow at Suffolk University. He has published several book chapters and journal articles in outlets including *Advances in Austrian Economics*, *The Atlantic Economic Journal*, *Man and the Economy*, *The Journal for Private Enterprise*, *The Review of Austrian Economics*, and *Sociologia*.

Sarah Conly is an Associate Professor of Philosophy and Chair of the Philosophy Department at Bowdoin College. She is the author of *One Child: Do We Have a Right to More?* (Oxford University Press, 2015) and *Against Autonomy: Justifying Coercive Paternalism* (Cambridge University Press, 2012), as well as a wide range of articles in applied ethics. Her articles have appeared in *Ethics*, *American Philosophical Quarterly*, *The Journal of Medical Ethics*, and *Philosophical Review*, among others.

Ann E. Cudd is the Dean of Arts and Sciences, and a Professor of Philosophy at Boston University. Previously, Cudd was a distinguished university Professor of Philosophy and Vice Provost and Dean of Undergraduate Studies at the University of Kansas (KU). Cudd's philosophical interests include social and political philosophy, philosophy of economics, philosophy of social science, decision theory, and feminist theory. Her research has long focused on themes of oppression, economic inequality, and gender. Her books include *Analyzing Oppression* (Oxford University Press, 2006); *Capitalism, For and Against: A Philosophical Debate*, co-authored with Nancy Holmstrom (Cambridge University Press, 2011); and four edited volumes on themes ranging from the backlash against feminism to contemporary democracy. She has published over 50 articles and book chapters. Recent work concerns contractarian political philosophy, conceptions of domestic violence in international law, and the injustice of educational inequality.

Samuel Freeman is the Avalon Professor of the Humanities and a Professor of Philosophy and of Law at the University of Pennsylvania. He is the author of *Justice and the Social*

Contract (Oxford, 2006) and of *Rawls* in the Routledge Philosophers series (2007). He edited and contributed to *The Cambridge Companion to Rawls* (2003) and also edited John Rawls's *Collected Papers* (1999) and Rawls's *Lectures on the History of Political Philosophy* (2007). Freeman's book *Liberalism, Economic Justice, and the Difference Principle* (Oxford) is forthcoming in 2017.

Christopher Freiman is an Associate Professor of Philosophy at the College of William & Mary. His research interests include democratic theory, distributive justice, and immigration. Freiman's forthcoming book, *Unequivocal Justice*, criticizes the role of idealization in contemporary political philosophy. His work has appeared in venues such as the *Australasian Journal of Philosophy*, *Philosophical Studies*, *Philosophy and Phenomenological Research*, *The Journal of Ethics and Social Philosophy*, *Politics, Philosophy, and Economics*, and *The Oxford Handbook of Political Philosophy*.

Jessica Flanigan is an Assistant Professor of Leadership Studies and Philosophy, Politics, Economics, and Law at the University of Richmond. She received a PhD from Princeton University. Her research addresses the ethics of paternalism in public health policy, feminist philosophy, and the moral foundations of political authority.

Gerald Gaus is the James E. Rogers Professor of Philosophy at the University of Arizona. He is the author of *The Tyranny of the Ideal*; *The Order of Public Reason*; *On Philosophy, Politics and Economics*; *Contemporary Theories of Liberalism: Public Reason as a Post-Enlightenment Project*; and *Justificatory Liberalism: An Essay on Epistemology and Political Theory*, among other books. Gaus's main area of work is on public reason and the intersection of political philosophy and social science. Gaus has published in a wide array of scholarly journals, including *Ethics*, *Social Philosophy and Policy* and *Episteme*. He is co-editor of *Politics, Philosophy, and Economics*, and he was co-editor of *The Australasian Journal of Philosophy* from 1997 to 2002.

Javier Hidalgo is an Assistant Professor in the Jepson School of Leadership Studies at the University of Richmond. He works primarily in political philosophy and ethics. He has published numerous articles in journals such as *The Journal of Political Philosophy*, *The Journal of Medical Ethics*, and *The Journal of Applied Ethics*.

Michael Huemer is a Professor of Philosophy at the University of Colorado. He is the author of four books: *Approaching Infinity* (2016), *The Problem of Political Authority* (2013), *Ethical Intuitionism* (2005), and *Skepticism and the Veil of Perception* (2001). He is also editor of *Epistemology: Contemporary Readings*. He has published over 60 articles in epistemology, metaethics, metaphysics, political philosophy, and ethics, with papers appearing in *Philosophical Review*, *The Journal of Philosophy*, *Mind*, and *Philosophy and Phenomenological Research*, among others.

Peter Martin Jaworski is an Assistant Teaching Professor of Strategy, Economics, Ethics, and Public Policy at the McDonough School of Business, Georgetown University. He is a Senior Fellow with the Canadian Constitution Foundation and a Director of the Institute for Liberal Studies. He has also been a visiting Research Professor at Brown

University. Jaworski's academic work has been published or is forthcoming in several journals, including *Ethics*, *The Canadian Journal of Law and Jurisprudence*, *The Journal of Business Ethics*, and *Ethical Theory and Moral Practice*. Along with Jason Brennan, Peter is the author of *Markets without Limits: Moral Virtues and Commercial Interests* (2015).

Jacob T. Levy is the Tomlinson Professor of Political Theory and a Professor of Political Science at McGill University, Coordinator of the Research Group on Constitutional Studies and the *Groupe de Recherche Interuniversitaire en Philosophie Politique*, and is the Director of the Yan P. Lin Centre for the Study of Freedom and Global Orders in the Ancient and Modern Worlds. He is the author of *Rationalism, Pluralism, and Freedom* (2014) and *The Multiculturalism of Fear* (2000) as well as numerous articles in *Political Theory*, *American Political Science Review*, *History of Political Thought*, and other leading journals.

Eric Mack is a Professor of Philosophy and the author of *John Locke* (2009). He has published widely in political philosophy and the history of political thought, including in journals such as *Politics, Philosophy, and Economics*, *Social Philosophy and Policy*, *The Monist*, and *Philosophy and Public Affairs*. His primary philosophical interests are in the foundation of moral rights, property rights and distributive justice, and the legitimate scope of coercive institutions. He has related interests in doctrines of negative responsibility, just war theory, anti-positivist conceptions of law, retributivism, philosophical anarchism, and the history of libertarian thought. He has received grants from NEH, the Earhart Foundation, the Center for Social Philosophy and Policy, and the Bradley Foundation.

Nicolás Maloberti is a Fellow at Liberty Fund. His research has mostly focused on political legitimacy and the moral foundations of libertarianism. His articles have appeared in journals such as *The Independent Review*, *The Journal of Value Inquiry*, *Revista de Ciencia Política*, and *Rationality, Markets and Morality*.

Richard W. Miller is the Hutchinson Professor in Ethics and Public Life in the Department of Philosophy, Cornell University. His writings in political philosophy include 平等, 民主, 与国家主权:东西方的和解 (*Equality, Democracy, and National Sovereignty: Reconciling East and West*) (2016); *Globalizing Justice* (2010); *Moral Differences* (1992); *Fact and Method* (1997); *Analyzing Marx* (1984); and recent articles that will lead to *The Ethics of Social Democracy*. He has published widely in journals such as *Philosophical Review*, *Philosophy and Public Affairs*, *The Journal of Ethics*, and *Analysis*.

Ryan Muldoon is an Assistant Professor of Philosophy at the University at Buffalo—SUNY. He is the author of *Social Contract Theory for a Diverse World: Beyond Tolerance*. His primary research investigates how we can turn the challenge of increasing diversity into a resource to be tapped for our mutual benefit.

Thomas Mulligan is a Faculty Fellow at Georgetown University's Institute for the Study of Markets and Ethics and is the author of *Justice and the Meritocratic State*. Before coming to academia, he served in the US Navy and the Central Intelligence Agency.

Michael Munger is the Director of the PPE Program at Duke University. He Chaired Duke's Political Science Department from 2000 to 2010, and he is a past President of the Public Choice Society as well as a past editor of the journal *Public Choice*. He earned a PhD in Economics at Washington University in St. Louis and has previously worked at the US Federal Trade Commission, Dartmouth College, the University of Texas, and the University of North Carolina. Munger's recent books include *Choosing in Groups* (co-authored with Kevin Munger) and *The Thing Itself*, both 2015. His research interests include the study of the morality of exchange and the working of the new "middleman economy." Much of his recent work has been in philosophy, examining the concept of truly voluntary exchange, a concept for which he coined the term *euvoluntary*. His current project is a book entitled *Tomorrow 3.0*.

Jahel Queralt is a Serra Hünter Lecturer at Pompeu Fabra University, Barcelona. Prior to that, she held posts at the Centre for Ethics of the University of Zurich and the Centre for Advanced Studies Justitia Amplificata at the Goethe University of Frankfurt. Her areas of research cover contemporary theories of justice and human rights theory.

Ilya Somin is a Professor of Law at George Mason University. His research focuses on constitutional law, property law, and the study of popular political participation and its implications for constitutional democracy. He is the author of *Democracy and Political Ignorance: Why Smaller Government Is Smarter* (Stanford University Press, revised and expanded second edition, 2016) and *The Grasping Hand: Kelo v. City of New London and the Limits of Eminent Domain* (University of Chicago Press, 2015); co-author of *A Conspiracy Against Obamacare: The Volokh Conspiracy and the Health Care Case* (Palgrave Macmillan, 2013); and co-editor of *Eminent Domain in Comparative Perspective* (Cambridge University Press, forthcoming).

Hillel Steiner is an Emeritus Professor of Political Philosophy at the University of Manchester and a Fellow of the British Academy. He is the author of *An Essay on Rights* (1994) and co-author of *A Debate Over Rights: Philosophical Enquiries* (with Matthew Kramer and Nigel Simmonds, 1998). He is also co-editor of *Freedom and Trade* (with Geraint Parry, 1998); *The Origins of Left-Libertarianism: An Anthology of Historical Writings* and *Left-Libertarianism and Its Critics: The Contemporary Debate* (with Peter Vallentyne, 2000); and *Freedom: A Philosophical Anthology* (with Ian Carter and Matthew Kramer, 2007). His current research concerns the concept of "the just price" and the application of libertarian principles to global and genetic inequalities.

Anna Stilz is an Associate Professor of Politics at Princeton University. Her research focuses on questions of political membership, authority and political obligation, nationalism and self-determination, rights to land and territory, and collective agency. She also has a strong interest in early modern political thought (particularly in the seventeenth and eighteenth centuries). Her first book, *Liberal Loyalty: Freedom, Obligation, and the State* (Princeton University Press, 2009), focused on questions of state authority and citizenship, examining the question of whether we have different, and perhaps more stringent, moral duties to our fellow citizens than we do to people in foreign countries. She has also published articles in *Ethics*, *History of European Ideas*, *International Theory*, *Journal*

of *Political Philosophy, Law and Philosophy, Policy and Society*, and *Philosophy & Public Affairs*. She is currently working on a new book on self-determination and states' rights to control land and territory. She is interested in related questions concerning the status of indigenous peoples, historic injustice, colonialism, and theories of property.

Edward Peter Stringham is the Davis Professor of Economic Organizations and Innovation at Trinity College in Hartford, Connecticut. Stringham is President of the Society for the Development of Austrian Economics, former President of the Association of Private Enterprise Education, editor of the *Journal of Private Enterprise*, editor of two books, and author of more than 60 journal articles, book chapters, and policy studies. His most recent book, *Private Governance: Creating Order in Economic and Social Life*, is published by Oxford University Press.

Chris W. Surprenant is an Associate Professor of Philosophy at the University of New Orleans, where he directs the Alexis de Tocqueville Project in Law, Liberty, and Morality. He is the author of *Kant and the Cultivation of Virtue* (Routledge 2014), editor of *Rethinking Punishment in the Era of Mass Incarceration* (Routledge 2017), and co-editor of *Kant and Education: Interpretations and Commentary* (Routledge 2012) and *Kant and the Scottish Enlightenment* (Routledge 2017).

Fernando R. Tesón is the Tobias Simon Eminent Scholar at Florida State University College of Law. He is known for his scholarship relating political philosophy to international law (in particular his defense of humanitarian intervention), political rhetoric, and global justice. He has authored *Justice at a Distance: Expanding Freedom Globally* (Cambridge University Press, 2015) (with Loren Lomasky); *Rational Choice and Democratic Deliberation* (Cambridge University Press 2006) (with Guido Pincione); *Humanitarian Intervention: An Inquiry into Law and Morality* (3rd edition fully revised and updated, Transnational Publishers 2005); *A Philosophy of International Law* (Westview Press 1998); and dozens of articles in law, philosophy, and international-relations journals and collections of essays.

John Thrasher is an Assistant Professor in Philosophy at Monash University in Melbourne, Australia. He specializes in political philosophy, ethics, and decision/game theory. His research focuses on the relation of individual practical rationality to social rules, as well as the way those rules are organized into systems of norms and institutions. He is especially interested in how recent work in moral psychology and experimental economics can inform our understanding of how to improve our institutions of self-governance. His work has been published in *Philosophical Studies*, *The Journal of Moral Philosophy*, *Political Studies*, *Ethical Theory and Moral Practice*, *The European Journal of Philosophy*, *The Adam Smith Review*, and several edited volumes.

Kevin Vallier is an Associate Professor of Philosophy at Bowling Green State University and serves as Director of BGSU's program in Philosophy, Politics, Economics, and Law (PPEL). Vallier received his PhD from the University of Arizona in 2011. Vallier's areas of interest lie within political philosophy, political economy, normative ethics, and philosophy of religion. Vallier is the author of *Liberal Politics and Public Faith: Beyond*

Separation (Routledge 2014), which addresses the question of the proper role of religion in the life of liberal democracies. Vallier is now writing a book entitled *Must Politics Be War? In Defense of Public Reason Liberalism*, which Oxford University Press will publish in 2017. The book concerns how to establish peaceful social and political relations between persons with deeply divergent worldviews.

Bas van der Vossen is an Assistant Professor of Philosophy at the University of North Carolina, Greensboro. He is currently writing *Debating Humanitarian Intervention*, with Fernando R. Tesón, and *Global Justice as Global Freedom*, with Jason Brennan, both under contract with Oxford University Press. His articles have appeared in the *Journal of Political Philosophy*, *Philosophical Psychology*, *Political Studies*, and *Politics, Philosophy, and Economics*, among others.

Fabian Wendt is a temporary Associate Professor of Philosophy at Bielefeld University, Germany. He has previously been an Assistant Professor at the University of Hamburg, Germany, and a Visiting Scholar at the University of Arizona. His book *Compromise, Peace and Public Justification: Political Morality beyond Justice* was published with Palgrave Macmillan in 2016.

Matt Zwolinski is a Professor of Philosophy at the University of San Diego and Director of USD's Center for Ethics, Economics, and Public Policy. He is also a Co-director of USD's Institute for Law and Philosophy and a Fellow at UCSD's Center on Global Justice. He is the author of nearly 30 articles focusing on various theoretical and applied aspects of exploitation, and he is the editor of *Arguing About Political Philosophy* (2nd edition, Routledge, 2014) and *The Politics, Philosophy, and Economics of Exploitation* (Oxford, 2017). With John Tomasi, he is the author of *A Brief History of Libertarianism*, forthcoming with Princeton University Press in 2018.

Acknowledgments

The editors' work on this essay was supported by a grant from the John Templeton Foundation. The opinions expressed here are those of the editors and authors and do not necessarily reflect the views of the John Templeton Foundation. Brennan is grateful for Harry David of HD Editorial Services (<http://www.harrydavid.net>) for his assistance in ensuring that citations conform to Routledge's guidelines. Harry does excellent work, and any errors in this volume were inserted later. Schmitz also is grateful for the support of the Georgetown Institute for the Study of Markets and Ethics at the McDonough School of Business in the fall of 2016. Brennan, van der Vossen, and Schmitz are grateful to Andy Beck at Routledge for suggesting this volume. Most of all, we are thankful to the contributors to this volume, whom we are proud to have worked with, and who produced an exceptional set of essays that exceeded our already high expectations.

Introduction: Respecting and Caring

What is libertarianism? A philosophy book usually starts with definitions. But *libertarianism* refers to a body of related views on politics, justice, and economics. Libertarianism has the integrity of a neighborhood rather than a house. Asking what is libertarianism is more like asking what distinguishes Georgetown from Foggy Bottom than asking how the White House fits together.

There are such things as libertarian conclusions. By contrast, there seems to be no comparable sense in which there are libertarian premises, except insofar as a conclusion can be packaged as a premise. To us, this point—that there are libertarian conclusions but not libertarian premises—seems obvious, but it also seems to be minority view. It seems to be a respected way of passing the time in philosophy to argue that so-called “libertarian premises” can be jiggled and tweaked until they appear to entail non-libertarian conclusions. No one who argues that way, we would conjecture, has seriously claimed to be a libertarian while so arguing. If they did claim to be a libertarian, they would be treated as making a joke or perhaps as not knowing what the word really means.

Each of us has been told more than once that we’re not *real* libertarians. We can’t say we’ve lost any sleep over worrying whether it’s true. Real libertarians, we hear from our non-libertarian academic colleagues, dogmatically assume that people are robust self-owners and then dogmatically take that premise to its logical implications, biting whatever bullets come with it. We can’t say we’re attracted to that kind of philosophy, and we don’t see any of our libertarian colleagues in the academy doing this kind of work. But the fact is that friends and foes of the view want to simplify the view; friends to make it easy to defend, foes to make it easy to attack.

Caveats aside, here’s a workable characterization of libertarianism. Libertarians conclude respect for individual liberty is the central requirement of justice. Libertarians advocate a free and open society of cooperation, tolerance, and mutual respect. They conclude each individual should be granted a wide sphere of personal and economic freedom to decide for herself how she will live. They conclude that healthy relationships and true communities are based on

consent. They conclude each person possesses an inviolability, founded on justice, that forbids others from sacrificing them to achieve greater social stability, economic efficiency, or desirable cultural ends. And they conclude that the strength of this inviolability does not depend on one's social or economic place in society.

Libertarians also typically believe that, in general if not always, granting everyone a wide scope of personal and economic liberty has good consequences, while restrictions on liberty have bad consequences. Libertarians argue that free societies, compared to relatively less-free societies, tend to produce more wealth, happiness, prosperity, peace, good character, scientific knowledge, culture and the arts, and generalized trust. Libertarians do not deny that free societies encounter problems. They accept that markets and civil society sometimes fail. They do tend to be skeptical about the actual empirical tendency of interventionist government to make things better. They worry that the power we give to agents of government for the purpose of saving us will instead be used for whatever purposes that led those agents to seek the power that we gave them.

To a contemporary philosopher or student of philosophy, these sound like different sets of arguments or reasons. They would call the first set *deontological* and the second set *consequentialist*. Deontological arguments for libertarianism try to establish that libertarian institutions are intrinsically just, while consequentialist arguments try to establish that such institutions are useful for generating good outcomes.

Early classical liberals such as Adam Smith or John Locke were not enamored of, and not quite aware of, the deontology-versus-consequentialism distinction. They made both sets of arguments with no apparent worry about any sort of conflict.

By the twentieth century, philosophers came to believe that these ways of thinking were deeply at odds. Not surprisingly, and perhaps as a result, we saw a split in libertarian thought. Libertarian economists and social scientists tended to emphasize the consequences of market. For instance, Milton Friedman and other economists in the Chicago School pushed the idea that markets, and civil society more broadly, work better than most people think. James Buchanan and other economists in the Virginia school emphasized the apparently revolutionary ideas that we should judge government by how it in fact performs rather than how it ought to perform, and that we should not pretend that government agents are angels rather than people. For them, the argument was as follows: Markets fail. So do governments. But, generally if not always, markets fail less badly.

In contrast, libertarian philosophers tended to argue that in order to respect others as members of the moral community and as ends in themselves, we owe them an extensive sphere of personal liberty. They argued that we cannot treat individuals as tools to be exploited and discarded so as to promote the good of others or society as a whole.

In footnotes here and there, the libertarian philosopher Robert Nozick hinted that he thinks it's important that markets work well. Nevertheless, his main style of argument was to say to those on the left, "Your argument for regulating the market applies equally well as an argument for regulating friendship, but you think it only 'works' as an argument for state control of the economy and not state control of friendship. Why? Do you have a principled, non-question-begging reason to distinguish the two?" For whatever reason, Nozick was read as saying that justice demands libertarianism though the sky falls and though it would "starve or humiliate ten percent of [Nozick's] fellow citizens" (Barry 1975, p. 332). For a while, academics interested in Nozick seemed to take the bait;

they thought their job really was to show that the bitter pill was worth swallowing, never mind that Nozick never meant that.

Contemporary libertarian thought has more in common with Adam Smith's classical liberalism than what we see in Murray Rothbard or Nozick. Adam Smith, David Hume, and other early classical liberals saw themselves as philosophers studying the humane sciences, which encompassed and integrated the fields we would now call philosophy, economics, political science, and sociology. Interestingly, the majority of the libertarian scholars we invited to participate in this volume would call themselves specialists in politics, philosophy, and economics or PPE. Adam Smith famously began the *Wealth of Nations* by extolling the division of labor, but contemporary libertarian scholars seem to think that the division of intellectual labor—in particular, dividing the questions of what's just from the question of what works—has gone too far. It is as if we said, "The job of philosophy is to ponder how unfair it is that some people have green lights and some people have red lights. But to really focus on the deep theoretical, conceptual, ideal theory issues, we have to set aside practical problems like how to manage traffic."

Perhaps everyone now agrees that consequences matter. Institutions are more like hammers than they are like people. We value hammers for what they help us to do. If a hammer fails to do its job, or if an institution (such as private property, markets, or democracy) fails to help us live together in peace and prosperity, it's time to look for a better tool. Good institutions are good because of what they help us to do, not because of what they symbolize or who made them.

Still, knowing that we should care about consequences doesn't tell us exactly how to care about them. It's an easy mistake to think that if some outcome is required by justice, it follows, for that reason alone, that it is government's job to make the outcome happen through direct means or to guarantee that it occurs. For instance, if one thinks that a hallmark of a good society is that it produces high culture, one might conclude that government ought to subsidize the arts.

Consider: Karl Marx said the problem with liberal society is that only guarantees "formal liberty." In a spirit of liberal equity, it guarantees to both the homeless person and the billionaire that no one will steal any yachts or mansions they happen to have. But, Marx said, surely what matters in the first place is that people actually have stuff. It's only of secondary importance that they feel secure that their neighbors and their government won't confiscate their stuff. Real freedom is a matter of what workers can *do*, not what others can't do to them.

Marx is onto something. Still, libertarians (or, really, anyone familiar with standard economics) have a response: that "real freedom" is found in commercial society and almost nowhere else. That's not an accident. The resources needed for people to enjoy such freedom need producing. And production happens only when workers and employers alike are secure in their rights.

Contemporary left-liberals sometimes take their cue from Marx. They aren't by any means Marxists, but there's an expressed desire to "fix" classical liberalism so as to insulate it from Marx's critique. Left-liberals sometimes say, following Marx, that what justifies social institutions is that they promote most people's welfare. They then conclude that this implies that government ought to *guarantee* that people achieve a certain level of welfare.

Do we want government to issue legal guarantees that people will achieve a certain level of welfare? We don't answer that question by stressing that human welfare is important. Rather, the answer depends on what actually happens when government issues those guarantees and tries to fulfill them. That depends on how competently, efficiently, and reliably government can fulfill those guarantees compared to all the alternative means of generating the same results. It thus also depends on how people *react* to the guarantees. There is a difference between guaranteeing in the sense of *rendering something inevitable* (as when an economist says that capping the price of gas at \$1/gallon right now would guarantee a shortage) versus guaranteeing as *expressing a firm commitment* to achieve a goal (as when the Bush administration guaranteed no child would be left behind).

In contrast, libertarians and classical liberals infer from general observation that most social goals are best pursued indirectly, in particular, through spontaneous orders (Hayek 1960; Schmidtz and Brennan 2010). A commercial market is a paradigm of a spontaneous order. To produce even a lowly pencil requires mobilizing a massive complex system of actors: foresters, miners, sailors, metallurgists, chemists, gluers, accountants, and more. The market mobilizes the army of people who make the pencil, but not one plays the role of general. The cooperative system that produces pencils is a product of human action but not of human design.

Oddly, one of the best defenders of these ideas was the early John Rawls. Rawls asks us to consider the point of a game, such as baseball. We want the game to be fun and exciting. But it doesn't follow, though we want the game to be fun and exciting, that the umpires or players should "aim" to make the game fun. Umpires on the field are not supposed to judge individual moves or plays on the field with goal of maximizing fun. If they did that, it would mess up the game—the game would not end up being much fun. Part of what produces the fun is the tension and challenge created by having set rules. The rules can be changed or modified for various reasons (for instance, to make the game more fun, safer, quicker, or whatnot), but individual umpires are not supposed to change the rules on the field, and individual plays are not supposed to be refereed with the goal of maximizing fun.

A libertarian might extend the lesson as follows: If you want to make sure everybody has pie, perhaps you should worry less about distributing pie and more about respecting bakers.

That sounds like something a libertarian would say, but in a sense it's just textbook economics. The dominant view in development economics is that the "least advantaged" enjoy a high standard of living only in societies that have experienced sustained economic growth, and that sustained economic growth results from having *good economic and political institutions* (Acemoglu, Johnson, and Robinson 2005; Acemoglu and Robinson 2012; Rodrik, Subramanian, and Trebbi 2004). These institutions include private property, stable government, and open markets.

Societies flourish, in other words, when they treat the people within them as something like self-owners. Libertarians see this as a key part of the argument *for* self-ownership. We see self-ownership as a moral principle but not one that figures as a basic premise in our thinking, let alone a self-evident one. We consider people self-owners because of what the rejection of that idea implies, both for societies as a whole and for the individuals that make them what they are. The big questions are: For each person, who gets control rights over that person, society, or the person herself? Who has the right to say yes and who has

the right to say no? Around the world, we see the following trends: The places that see individuals as ends in themselves and their institutions as tools for supporting individuals are happy, prosperous, and progressive. The places that see their institutions as ends in themselves and their individuals as tools for supporting the institutions are the opposite.

This book explores the contours of libertarian (also sometimes called *classical liberal*) thinking on justice, institutions, interpersonal ethics, government, and political economy. We've invited leading critics to say what they think libertarians get right and leading libertarian theorists to say what they think libertarians get wrong. We've asked scholars to help us rethink what libertarianism has been and could be, and why it matters. Libertarians bill their theory as an alternative to the traditional Left and Right. This volume will help readers explore this alternative without preaching it to them.

Part I asks, what should libertarianism learn from other theories of justice, and what should defenders of other theories of justice learn from libertarianism? Part II asks, what are some of the deepest problems facing libertarian theories? Part III asks, what is the right way to think about property rights and the market? Part IV asks, how should we think about the state? Finally, part V asks, how well (or badly) can libertarianism deal with some of the major policy challenges of our day, such as the questions of immigration and trade, religion in politics, or whether paternalism is justifiable in the face of consumers' irrationality?

BIBLIOGRAPHY

- Acemoglu, D., and Robinson, J. (2012) *Why Nations Fail*. New York: Crown Business.
- Acemoglu, D., Johnson, S., and Robinson, J. (2005) Institutions as a fundamental cause of long run economic growth. In: Aghion, P., and Durlauf, S. N. *Handbook of Economic Growth*, Vol 1A, 386–472. Amsterdam: Elsevier.
- Barry, B. (1975) Review of *Anarchy, State, and Utopia*. *Political Theory* 3: 331–336.
- Hayek, F. A. (1960) *The Constitution of Liberty*. Chicago: University of Chicago Press.
- Rodrik, D., Subramanian, A., and Trebbi, F. (2004) Institutions rule: The primacy of institutions over geography and integration in economic development. *Journal of Economic Growth* 9: 131–165.
- Schmidtz, D., and Brennan, J. (2010) *A Brief History of Liberty*. Oxford: Wiley-Blackwell.



Libertarianism and Other Theories

This page intentionally left blank

Learning from Libertarianism: Thanks from an Unrepentant Social Democrat

Richard W. Miller

Like many, probably most, political philosophers, I support laws that would substantially reduce economic inequalities that capitalism otherwise creates and would not dream of describing myself as a libertarian. Yet I will argue that libertarians have had important lessons to teach the likes of us. These lessons are deep. They ought to transform our typical premises and projects, even though they need not transform us into libertarians.

The nature and scope of these lessons is obscured by difficulties in categorizing the typical outlook of those with much to learn. “Egalitarian” is sometimes used to evoke our most pervasive common feature. But like all labels in political philosophy, including “libertarian,” “egalitarian” threatens to be either parodic or soporific. Few philosophers who would accept the label are levellers with a goal of economic equality, yet the treatment of people as equals is not a distinctive philosophical stance. Deepening the problem of characterizing the two sides in the productive exchange, most philosophers who would not dream of calling themselves “libertarian” think, nonetheless, that protection of the most important liberties is the most important political goal. They do not accord all freedoms this special status, especially in the economic realm, but this limitation does not distinguish them from most self-described libertarians. Few self-described libertarians are defenders of freedom from all interference with self-advancement that does not itself interfere. For example, few complain of taxation to fund fire departments and the construction and maintenance of highways.

The best way to make clear the importance of learning from libertarianism is to make the target of instruction political as well as philosophical. Most philosophers who would not dream of calling themselves libertarian seek to provide moral foundations that could sustain a familiar political program whose least misleading label is probably “social democracy.” After briefly describing this program in what are, I hope, boringly familiar terms, I will describe important lessons that philosophical social democrats should learn from libertarians. Libertarians have demolished the foundations in fairness

for social democracy that philosophical social democrats have tried to construct. They have rightly emphasized the inherent value of forms of commercial self-advancement that philosophical social democrats have typically regarded as, at most, instrumentally important. Libertarians have correctly insisted that economic justice has no pattern. While all of these lessons can be absorbed by social democrats, the infusion makes a difference to their goals of economic justice; it does not just evoke new arguments for old prescriptions.

Granted, if all these lessons can be absorbed by social democracy, that is a reason for libertarians to consider becoming social democrats, or, in any case, to base opposition to social democracy on empirical criticisms of efficacy, not moral characterizations of what constitutes oppression. For libertarianism has distinctive problems of its own. The outcome of social democrats' learning from libertarianism might, then, be reconciliation, in which each side has reason to be grateful to the other.

SOCIAL DEMOCRATS AND LIBERTARIANS

The audience for the libertarian lessons that I will describe are philosophers who share (and share with many millions of nonphilosophers) a political perspective with the following elements, which often lead to the complaint, "There is too much economic inequality in my country." While these philosophers are not opposed to a market-based economy, they support political measures to improve people's lives that would substantially reduce economic inequalities that capitalist enterprise would otherwise create. While the improvement that they seek includes help for those who are poor, they think that many others, who are not poor, should also be helped to meet a variety of needs through measures that reduce the income of the best-off in their societies. For example, along with anti-poverty programs and assurance to the poor of care for severe illness, they want government to provide extensive access to educational and cultural resources and assurance to all of adequate care for illness in general. They want policies for taxation and growth that give strong preference to the income of those who are not rich over those who are. They believe that these measures would be enacted if their fellow citizens were well-informed and fulfilled their political duties.

People with this shared political perspective identify themselves through a variety of labels. In the United States, they call themselves "liberals" or "progressives." Elsewhere, they may call themselves "social democrats" or "socialists." Since "liberal" evokes a very different outlook outside of North America, "progressive" claims a presumptuous title to the way forward, and "socialist" evokes obsolete critiques of capitalism, "social democrat" is the least misleading name.

Social democrats seek to use the state to help some people by means that require taking from others. The help that they seek ranges far and wide among sources of wellbeing. This use of the state is morally wrong unless it is impartial; it is wrong to force people to contribute to an endeavor in which they count for less than others. So, on philosophical reflection, the general goal of social democrats, in matters of domestic economic justice, ought to be, at least to a first approximation, the impartial promotion of the wellbeing of members of their society. Taking the failure of utilitarianism as a lesson already learned from powerful critics including John Rawls in their camp and Robert Nozick among

libertarians, philosophical social democrats should regard the endeavor of impartial political promotion of wellbeing as appropriately monitored by some version of Rawls' device of "the original position." A variant of the original position of representatives that Rawls came to favor after *A Theory of Justice*¹ is well-suited to this task: A system of laws and policies that shapes people's lives throughout a society is relevantly impartial if one would choose it if one sought to advance the wellbeing of someone for whom one is responsible, among those who will be affected, but did not know who this is.

Of course, the general aspiration to laws that impartially promote wellbeing might not be effectively pursued by the social democratic political program. Its uses of the state might be pervasively self-defeating. This dependence on empirical facts is nothing to be ashamed of. To the contrary: only fanatics base political programs on moral principles alone. At the same time, in the division of labor that advances principled political argument, the philosophers whom I have just described have the distinctive task of finding sound moral foundations for social democracy, moral principles that yield social democracy when combined with empirically warranted claims about efficacy. So, they should be on the lookout for productive challenges from partisans of moral principles different from their own.

The challenges whose productivity I will celebrate come from libertarians. Who are they? In answering this question, one can take advantage of the universal opinion that Robert Nozick was a libertarian when he wrote *Anarchy, State and Utopia*. At the start of his book, he summarized his stance as the view that any state that goes beyond "the narrow functions of protection against force, theft, fraud, enforcement of contracts, and so on ... will violate persons' rights not to be forced to do certain things, and is unjustified" (1974: ix). Unfortunately, "and so on" is vague, and the measurement of functions as "narrow" depends on shifting terms of political and philosophical combat. Many of those who regard themselves as libertarians and who look to *Anarchy, State and Utopia* as a central source of insight would locate in that "so on" governmental endeavors, coping with public goods problems, externalities and other obstacles to self-advancement, which include tax-funded fire protection, construction and maintenance of highways, elementary education, and the imposition of patent-protection and limits to liability for unpaid debts. The distinctive feature of the activities that they support, shared with those that Nozick names, is that these general endeavors advance the self-chosen projects of some and have expected net lifetime costs for no one on account of their expected benefits. (The absence of net costs for anyone, despite the imposition of some costs, is also the feature to which Nozick himself appeals in justifying the state that he countenances in the face of anarchist objections.) The crucial contrast with the general aspiration of social democracy is the "noteworthy implication" that Nozick immediately presents: "the state may not use its coercive apparatus for the purpose of getting some citizens to aid others." Someone who accepts this much breadth to Nozick's "and so on" will have a corresponding understanding of economic entitlement: holdings that result from noncoercive work, nonfraudulent exchange and voluntary transfer ought not to be interfered with in ways that can be expected to impose net costs on some who advance themselves through those processes.

Someone who endorses these views of just political coercion and morally protected self-advancement, for reasons that do not depend on empirical beliefs about further beneficent consequences, should be regarded as a libertarian. Since nothing is gained by

stringent definitions of affiliation (least of all from someone who would not dream of affiliating), I will also include those who regard these views as much closer to the truth than current rival perspectives and derive insight from them to criticize those perspectives.

LESSON 1: THE LIMITS OF FAIRNESS

Few philosophical social democrats think that there is a general duty to choose as one would from a standpoint of impartial concern for everyone. Yet they have a political program based on impartial political concern, and they ask fellow citizens to join them as a matter of moral duty. What could be the grounds for this moral appeal? The reasons that they give have been reasons of fairness, presented or prefigured by Rawls in *A Theory of Justice*, where he labeled his theory “justice as fairness.” Libertarians’ criticisms of those reasons, presented or prefigured by Nozick in *Anarchy, State and Utopia*, have created cracks in these foundations for social democracy that have not been repaired.

It might seem that the requirement of impartiality in what a government does is all that is needed to sustain a requirement that political choice express impartial concern. But that quick inference would show a misunderstanding of the limits to the proper functions of government at the core of libertarianism. Within its proper sphere, government should be impartial. But what is this proper sphere? The issue is whether people have a duty to support the extension of political coercion beyond endeavors that improve the lives of some, with no significant risk of imposing net lifetime costs on others, into the endeavor of impartial political provision of help that does impose a significant risk of net lifetime costs on some. A rationale is needed for this further step, a rationale that a cluster of considerations that stand behind the label “justice as fairness” seeks to provide.

One rationale, suggested by several passages in *A Theory of Justice*, is that those who benefit from undeserved advantages, such as birth in a favorable situation, must ignore those benefits when they consider whether laws conforming to proposed distributive standards would treat them justly.² But it does not seem that people do something wrong in making good use of undeserved advantages so long as those advantages are not wrongly obtained. Why, then, should they ignore these benefits in considering whether laws treat them justly?³

Another rationale is suggested by Rawls’ claim that reliance on the original position reconciles the imposition of a basic structure with the autonomy of those on whom it is imposed, so that “society ... comes as close as a society can to being a voluntary scheme” (1999a: 12). Developing this theme, those who have joined Rawls in refusing to extrapolate his account of justice beyond national borders have emphasized the special moral challenge posed by political coercion. (See, for example, Miller 1998; Blake 2002; Nagel 2005.) The corresponding rationale would be that political coercion is unjust unless it has an adequate justification to those subject to it; the justification must be based on a standard for judging the total system of laws that each would choose as best promoting his or her interests as a whole in the course of his or her life if ignorant of the special features of those interests. But the need for impartiality in laws that can be justified to all citizens despite their coerciveness does not obviously require a general commitment to use government to impartially advance every citizen’s interests as a whole. Laws protecting against theft, fraud, murder, and rape should be financed and administered

impartially. But why should those on whom the laws are imposed take on further projects of redistribution?⁴

Another rationale appeals to everyone's profound dependence on a shared system of social cooperation. Since each would have hardly anything in the absence of a shared cooperative scheme, the right framework (the argument goes) must distribute benefits in a way that each would choose in seeking to advance his or her life prospects as a whole without knowing his or her actual advantages under the current scheme. (See, for example, Rawls 1999a: 4, 88.) However, the profound extent to which each of us depends on others' initiatives in production and exchange (including the contributions of the long dead) would seem to be appropriately acknowledged through participation in production and exchange, helping to continue progress without insisting on impartial distribution (as Schmidtz forcefully argues in 2006: 90–3). People invest their own energy, initiative, and ingenuity and take their own risks in making use of the facilities they share in order to advance their legitimate goals. If the facilities are fully and fairly paid for, why do the more successful users have an obligation – indeed, an enforceable obligation – to give up gains to help those with less?

The difficulties that I have described also make it difficult to justify other proposed foundations in fairness, such as the imperative to minimize burdens of inferior brute luck (see, for example, Arneson 1989; Cohen 1989) or Ronald Dworkin's conception of the sovereign virtue of economic equality (Dworkin 2000). A philosophical social democrat might hope that these cracks in the standard foundations in fairness of social democracy will be patched up. But this project of repair has not gotten very far in the course of four decades. Alternatively, she might concede that there is no duty of fairness to support the impartial political promotion of wellbeing. Indeed, she might concede that not everyone has a duty to support this endeavor (a concession that I will recommend). These concessions will transform the standard moral foundations for social democracy but will not, by themselves, force abandonment of the program as one conscientious political choice. However, if that political program is wrong, if it is unjustly oppressive, the social democrat must abandon it. Libertarians think that social democrats are unwitting oppressors because of their intrusions on property rights. Here too, they have much to teach, even if the intended lesson is too harsh.

LESSON 2: PROTECTING SELF-RELIANCE

Libertarians insist that it is wrong to take what someone has acquired through noncoercive, nondeceptive activities in order to help others even when the resulting holdings are morally preferable apart from their history. Social democrats should accept that such taking can be wrong. The mere fact that Friday's taking yams and dried fish from Crusoe's hut would lead to a better set of holdings (say, because Friday has a young child to take care of) does not make the taking all right. Granted, the fact that taking benefits of free enterprise to help others is sometimes wrong does not entail that it is always wrong. That extreme claim has always been a burden for libertarianism. If Friday Junior is drowning, and Crusoe refuses to let Friday toss a life preserver that he uses to ornament his hut toward the drowning child, since the waves might carry it off, it does not seem that Friday does wrong in taking and tossing. But social democrats cannot exclusively rely on convictions about such extreme cases. The program they support takes from some to

help others to avoid deprivations that are not dire, such as merely uncomfortable illness and lack of affordable access to advanced education. If this were not so, they would be ordinary conservatives, not social democrats.

In general, because of the breadth of the needs it serves, political reliance on impartial concern evokes the specter of an intrusive Nanny State using the threat of forcible confinement to take from some to help others without proper regard for property rights. A partisan of social democracy has to absorb the libertarian lesson that property rights matter apart from beneficial effects on holdings without introducing constraints that rule out social democracy. This need is the second major challenge from which philosophical social democrats must learn. Nozick says as much in a footnote to his most celebrated example, the fable of Wilt Chamberlain, where he notes that “here and elsewhere ..., a theory which incorporates elements of pure procedural justice might find what I say acceptable, *if kept in its proper place*” (1974: 162) but challenges theorists who would regulate the social consequences of free enterprise to justify their mixture of protections for free enterprise and constraints on its social outcome.

In fact, respect for property rights is essential to, not in tension with, impartial concern for persons. A Nanny State that takes greater material need to be enough to dictate transfers to those in greater need is negligent, not tender-hearted, blithely ignoring the need for self-reliance.

If I am concerned for someone, if I want her life to go well, I must be concerned that she form worthwhile goals, including long-term goals, expressing what she cares about in life, and that she pursue them through her own efforts, with sufficient success that these personal goals give point and value to her choices. This object of concern is what I mean by the need for self-reliance. Indifference as to whether people are helped to get ahead by handouts or by their own efforts shows contempt for them, not concern.

Of course, acquiring what one has in the right way is not the whole story of wellbeing. Concern for people is also a desire that they have access to a variety of successes in living, for example, the enjoyment, development, and expression of personal affection and friendship; inquiry whose complexity, content, and demands suits their curiosity, interests, temperament, and capacity for learning; meaningful work and reciprocation for others’ contributions in cooperation; the fulfillment of responsibilities that grow with growing capacities; the enjoyment of beauty; having fun. These and other aspects of living well have independent value, sometimes overriding self-reliance. If someone resolves never to go to a publicly subsidized museum because of the loss of self-reliance, he has turned an important aspect of wellbeing into an obsession. A similar qualification about balance applies to any dimension of wellbeing. Just as the obsessive independent impoverishes his life by rejecting all help, the good-for-nothing who only cares about having fun without seeking to achieve anything, the lazy aesthete who relishes high culture without caring about doing anything in return for what she relishes, and the workaholic who can only engage with his work lead lives that are worse because they are ill-balanced.

For most of us, these judgments of what lives are better or worse are among our most secure convictions. Of course, diverse sets of emphases are good, and no one combination is perfect, because of tensions among the dimensions of wellbeing (accomplishment and having fun, for example). Appreciation of the diversity of both dimensions of wellbeing and of emphases among them in well-balanced lives will inform the choices of representatives in the original position of impartial concern.

Because self-reliance is an important need, the political expression of impartial concern favors a system of property rights. People only have access to lives shaped by their self-reliant pursuit of goals through which they express their temperaments and interests if they have a secure expectation that resources they could acquire through a broad range of activities that do not intrude on others' self-advancement will be available to them to pursue those goals, including goals involving long-term plans. Without this protection, they must be overly dependent on others to advance their interests, devote themselves to defensive maneuvers, or confine themselves to a limited range of activities that may not reflect their temperaments, interests, and talents.

The property rights expressing due concern for self-reliance will not protect the retention of all results of noncoercive production and voluntary nonfraudulent exchange from all taxation to help others. Anyone can pursue a suitably wide range of suitably self-expressive worthwhile goals despite knowledge that some portion of the gains from work and contract will be taken for use in public causes. Still, outside of isolated and extreme emergencies, taking the results of free enterprise must be done through laws, not freelance taking, with its tendency to destroy long-term plans, dictate self-defense, and replace aspiration with rational anxiety. When laws are the basis for taking from some to help others, this must be justifiable as an impartial way of advancing needs other than self-reliance that are sufficiently serious that wellbeing is promoted despite the reduction of self-reliance. Moreover, there must be strong reluctance to suddenly, sharply increase the legally required transfers, since uncertainty concerning such incursion makes it hard to pursue long-term plans.

Impartial political concern is, similarly, supportive of, not in tension with, other rights and liberties, including those that both libertarians and social democrats seek to protect. For example, if one cannot openly express what one thinks or feels or must do so in the face of publicly endorsed contempt, this stifling and exclusion profoundly worsen one's life. No one who properly values her life would put protection of these aspects of her life in jeopardy for mere material gains; so a representative in the relevant original position would not make this gamble, either. The protection would be especially stringent and absolute in spheres that are central to a self-directed life, such as religion and intimate relations among consenting adults.

Despite its similarity to Rawls' reliance on morally justified "fundamental interests" in his later years, this moral foundation for social democracy is not "political-liberal," since it relies on assessments of ways of living as worthwhile and appropriately balanced. These assessments are part of impartial concern for persons. Perhaps they are not needed for justice as fairness, but that foundation for social democracy seems best abandoned in the face of libertarian attacks. This does not mean that people should steer others toward better ways of life through criminal penalties or should support the public branding of ways of life as inferior just because the rating is correct. These activities typically worsen lives by thwarting important needs for self-development and inclusion. But due concern for these needs does not paralyze other concerns. For example, support for education that depends on valuing insightful enjoyment of cultural achievements or a preference for improving opportunities over increasing transfer payments can justifiably, to some extent, marginalize people who do not care about culture or contribution, weakening inclusion in order to avoid sufficiently serious nonfulfillment of other important needs. While this perfectionism will not be welcomed by libertarians, philosophical social

democrats should be grateful to them for revealing its presence in the moral foundation with the greatest promise of surviving libertarian criticisms.

In exorcising the specter of the Nanny State, I have sketched an argument that the politics of impartial concern wrongs no one and supports appropriate restrictions of what a government may do to its citizens. But the fact that impartial political concern for people's wellbeing is morally legitimate, in this sense, does not entail that a morally conscientious citizen has a duty to support it. Other choices (perhaps including the minimal state or protection of civil and political liberties supplemented by a low safety net) could be morally permissible on her part, even if the different dictates of impartial concern are a morally permissible choice, as well. "Justice as fairness" might have filled this gap through appeal to a duty to treat others fairly. But the first lesson from libertarianism, the critique of "justice as fairness," stands in the way of this appeal. Haunted by the apparent failure of the foundations in fairness, social democrats have to ask whether they can continue, in good faith, to invite people to join their movement as a matter of moral duty. Perhaps self-interest is their only positive appeal.

This conclusion would not merely be disheartening in itself. It would cast in doubt the claim that the goals and demands of social democracy would be the outcome of impartial political concern. If social democracy achieves majority support, as its democratic aspiration requires, the minority who do not share the dominant interests would be excluded from significant political argument, a harm of exclusion that worsens their lives. For those in the dominant coalition of interests, political life would have less value because it strives for the imposition of laws on people with no reason to actively support them. While there is nothing incoherent in an appeal to shared interests among some that is qualified by a commitment to political impartiality toward all, this is, in practice, an unstable combination, encouraging pork-barrel politics in which competing interest groups strive for favoritism. From the perspective of impartial concern, such costs in the coarsening of political life could be justified by dramatic gains in liberation from poverty. But the broader aspirations of social democracy, extending well beyond relief from poverty, are seriously threatened if they would entail these costs.

Taking the defeat of justice as fairness to heart, social democrats can still base their movement on a moral appeal. Even though impartial beneficence is not a general dictate of morality, one ought to be concerned for others. A general principle of concern along the following lines would express appreciation of the equal moral worth of all: Everyone's underlying concern for others ought to be sufficiently great that greater concern would impose a significant risk of worsening his or her life, if he or she fulfilled all further responsibilities; but apart from special relationships or interactions, it does not have to be more demanding than this. By "a significant risk of worsening one's life," I mean a nontrivial chance that one's life as a whole will be worse than it would otherwise be. What is jeopardized is one's ability to pursue enjoyably and well-worthwhile goals with which one intelligently identifies and from which one cannot readily detach. Neither the goal of concern nor the proviso about nonworsening requires prevention or avoidance of every loss that might otherwise be encountered, regardless of scale. Ordinary rain on an ordinary picnic does not produce a worse life than a sunny stretch. (Those who disagree on the grounds that the rain makes a picnicker's life worse, but not significantly, should understand all relevant sentences in this essay as implicitly including their adverb.)⁵

Suppose that social democrats are right in their indispensable empirical claim that their program will, impartially, advance wellbeing. (Since self-reliance is an aspect of wellbeing and inadequately justified coercion reduces wellbeing, their program must, then, substantially improve on self-help and private charity.) Suppose, too, as I have argued, that such a political endeavor of social democracy does not wrong anyone by intruding on her rights to be left alone. Then, a moderate principle of concern such as I have sketched creates a duty to support social democracy among those who satisfy the nonworsening clause.

These will include people who have sufficient expected benefits from social democracy that they should expect no net lifetime costs from this political program when they compare lifetime expectations under political programs compatible with their commitment to political impartiality. In addition, there are many well-off people, with considerable resources for self-help, who can expect net lifetime costs but not costs that make their lives worse. Going to less wonderful restaurants, drinking less wonderful wines, and buying fewer antiques makes a way of living less expensive, but it does not follow that it makes a life worse. Granted, wellbeing requires commitment to specific goals, expressing and shaping one's identity and guiding one's choices, in attachments whose disruption can worsen one's life. Social democrats can and should reduce this disruption among those attached to worthwhile expensive goals through gradualism, which the proper valuing of self-reliance in any case requires. Further reducing the extent of such disruption, they can and should support policies that channel gains from increased productivity to those with more significant unmet needs, avoiding the production of new attachments to expensive goals through use of these gains by the best off.

At least in developed countries, this circle of shared concern and duty would include the vast majority, if social democracy impartially promotes wellbeing. Since those in the minority whose lives would be worsened are not wronged (or so I have argued), they should yield without resentment to a vast social democratic majority who are pursuing a legitimate political goal in response to relevant reasons and compelling moral demands. Indeed, it would be rational for someone in such a minority to embrace social democracy as a personal commitment, sufficiently important to him that the sacrifices its success entails do *not* worsen his life. In this way, he would overcome pointless political loneliness, converting reluctant sacrifices into sources of pride.

There may be countries in which the majority have no duty of concern to support social democracy because of a significant risk that their lives will be worsened. (These might be people living on the coast of a country with an impoverished inland province.) Still, if social democracy has the moral legitimacy for which I have argued, someone in this majority has a duty of concern to support measures that promote wellbeing beyond what self-help and private charity accomplish, to some extent—an extent that does not impose a significant risk of worsening her life. So, if social democracy accurately expresses impartial political concern for wellbeing, an appeal to moral duty can still sustain democratic movement in the direction of social democracy, partly implementing impartial political concern for wellbeing. Combined with economic progress, which makes it easier to meet needs through self-help and reduces the impact on wellbeing of paying a given amount in taxes, this movement will eventually widen the circle of duty-bound support for social democracy to include the vast majority.

Like the establishment of fundamental respect for property rights, this response to libertarian criticisms is not simply a means of fending off those criticisms. Philosophical social democrats have tended to dismiss significant economic losses to the more advantaged as being of no moral significance when they are necessary for improving the life prospects of the least advantaged. But if the effort to ground social democracy in a duty of fairness is abandoned in favor of a duty of concern, acknowledgment of the proviso about non-self-worsening makes significant losses of the best-off morally important, regardless of gains to the worst-off. This concession is a major lesson from libertarianism, even if its consequences are less prohibitive than libertarians suppose.

LESSON 3: VALUE (NONEXPLOITIVE) CAPITALISM

Social democrats are not Marxists. They believe that some form of capitalism is preferable to any feasible form of noncapitalism. In particular, they think that some form of capitalism is preferable to state socialism, which does a worse job of delivering goods to those who need them and is a bad basis for democracy. In all of this, philosophical social democrats agree with libertarians. But the terms in which capitalism is endorsed tend to be very different, and not just because different forms of capitalism are approved. Philosophical social democrats rarely celebrate commerce, including the buying and selling of labor, as an inherently valuable human relationship. While appreciating that Marx's proposal for replacing capitalism failed, they are often receptive to his writings as a source of moral insight. In particular, they are often receptive to the assessment of the buying and selling of labor under capitalism as exploitive in typical cases, not just in the cases of extreme misery and drudgery that are atypical in advanced capitalist economies. For their part, libertarians regard capitalist commerce as a relationship that merits protection apart from its special capacity to deliver the goods and sustain democracy. They celebrate capitalism as an economic way of life.

I believe that merely instrumental endorsement of capitalist commerce (which can seem tinged with old-fashioned aristocrats' disdain for those in trade) is inadequate. Social democrats should endorse capitalist commerce as a valuable relationship of mutual help, to the extent to which what each party gains reflects the desirability of what each party offers. In addition to properly valuing a form of success that people are rightly proud of, learning this lesson from libertarianism helps to extract a grain of truth from the critique of capitalist exploitation. In contrast to gains from commerce as mutual help, gains from unequal bargaining power are nothing to be proud of. Yet they are a typical (though not universal) feature of the buying and selling of labor. The contrast between the value of the one form of activity and the lack of value of the other should play a role in political choice. In this way, learning a lesson from libertarianism helps in learning a lesson from Marxism, a lesson that yields criticisms of actual capitalism that are stalwartly bourgeois.

As usual in the moral scrutiny of economic relationships, *The Wealth of Nations* is a good place to begin. In his celebration of the virtues of "the propensity to truck, barter, and exchange one thing for another," Adam Smith notes that it answers to everyone's need at all times "in civilized society ... of the cooperation and assistance of great multitudes" (2000 [1776]: book I, ch.2, 14). Commerce is a way to gain help from a great many people by offering help, transcending the necessarily narrow circle of genuine friendship without

seeking strangers' benevolent attention to one's needs. "Give me that which I want, and you shall have this that you want," which Smith describes as "the meaning of every such offer" (*ibid.*) is not a token of love or friendship. But it expresses a valuable relationship of economic interdependence, in which people sustain reciprocity while minding their own business, rather than cluttering their lives with constant inquiries into others' needs and constant efforts to gain others' benevolent attention.

The realization that commerce, including the purchase of labor, can be a valuable form of mutual aid is quite compatible with another thought, implicit in Smith's discussion of actual wage bargains, that gaining from commerce can lack inherent value and increase the burdens of others' deficiencies to the extent to which it derives from others' inferior bargaining power. By "inferior bargaining power," I mean lesser ability than another with whom one engages in selling or buying to use this process to advance one's interests, lesser ability that is not due to the other's degree of interest in what one offers. To the extent that someone gains from superior bargaining power, his benefit from exchange with another does not depend on how much he helps her achieve her goals but on her lesser capability as an exchanger to convert help to him to help by him.

In his discussion of labor markets, Smith argues that "masters" are typically superior to "workmen" in this way, on account of greater time pressure on workmen to reach an agreement and lesser competitive pressure on masters (2000 [1776]: book I, ch. 8, 76). Indeed, his praise of economic regimes is largely based on their tendency to reduce these advantages, without eliminating them, by creating strong incentives to expand employment. While he sometimes notes the impact of measures that do not burden workers now, such as legal prohibitions of strikes, his basic argument is plausible today.

A modern version of Smith's argument might begin with such facts as these. Apart from managers, professionals, and highly skilled workers, most of those who work or seek work in every capitalist economy have few reserves of liquid financial assets, not enough to live on for a substantial period of time. Labor market studies consistently report that in normal circumstances, "vacancy rates are low, that there are typically many applicants for vacancies, and that average vacancy durations are very short (particularly in comparison with the duration of spells of unemployment)" (Manning 2003: 271). The market entry that could create countervailing competitive pressure on the employers' side is pervasively limited by insiders' advantages such as innovations based on proprietary information (often protected by patents), established reputations (often based on brand names), a secure network of suppliers and distributors, economies of scale, and risks of entering a market when investments in production facilities can only be liquidated at a substantial loss in case of failure.

Suppose that a case can be made for the modern prevalence of the sort of inequality of bargaining power that Smith discerned in typical labor markets in Britain in his time.⁶ What would be the moral consequence? While deriving benefit from another's inferior bargaining power is nothing to be proud of, neither does it seem wrong, as such, even when the role of superior bargaining power is clear. A snow-plow operator who cruises highways in a newly settled tract in Alaska, extracting higher fees on account of the absence of competition and the urgency of stranded motorists' needs for a tow, will do wrong if he charges very burdensome fees for uncostly rescues or leaves people in misery if they cannot afford his normal charge. But these are wrongs of callousness. If he avoids them, his mere profit from superior bargaining power does not seem wrong.⁷

Still, the contrast between gaining from superior bargaining power and the mutual self-advancement that Smith celebrates makes a moral difference. It makes a moral difference in the assessment of laws. Suppose that a law has been passed through appropriate procedures and that it takes due care to avoid unpredictable disruption. Someone's protest, "But this will make it harder for me to get ahead by providing others with what they want," deserves consideration as a relevant complaint. In contrast, someone's protest, "But this will make it harder for me to benefit from others' inferior bargaining power" seems absurdly inappropriate, like the complaint against a law requiring labels that identify ingredients: "This will make it harder for me to benefit from people's ignorance."

If the Smithian claim about typical workers' inferior bargaining power is right, then Smith's implicit distinction between two forms of commerce can help to justify laws protecting labor-union organizing and strengthening labor unions' power. While these laws impede noncoercive, nonfraudulent self-advancement by employers, what would be impeded is benefitting from bargaining superiority, an activity with no inherent value that increases the burdens of deficiencies rather than helping to relieve them. Similarly, arguments for a tax-and-transfer policy will be stronger if it transfers gains from superior bargaining power. For example, if the disproportionate economic gains of the top 1 percent in the United States in recent decades and the vastly disproportionate gains of the top tenth of 1 percent are due to bargaining advantages (such as collusion with like-minded boards of directors at the very top), the case for redistribution is strengthened, just as critics of the New Gilded Age suppose. This devaluing of gains from bargaining superiority moves far beyond criticisms of "corporate welfare" that libertarians press. But like the libertarian criticisms, it depends on a contrast with thoroughly capitalist commercial activities deserving respect, respect that is not as deep as it should be among many philosophical social democrats.

LESSON 4: JUSTICE HAS NO PATTERN

Most philosophical social democrats agree with libertarians that utilitarianism is wrong and that justice is not a maximizing project. Most of this majority seems to think that economic justice is, instead, shaped in its major features by a distributive principle, that is, a determinate general principle regulating differences in benefits from economic activity throughout any society as a whole. Reflecting this assumption, they often use "distributive justice" as an equivalent of "economic justice." Their major internal controversies concern the right pattern for the crucial distribution and the nature of what the pattern regulates. In contrast, libertarians deny that economic justice has any distributive pattern.

The question of what the distributive pattern ought to be has been a source of endless controversy among philosophical social democrats. Large gaps in their focal text, *A Theory of Justice*, were signs of troubles to come. There, distributive justice is regulated by two principles, to be realized so far as a prior principle of civil and political liberty allows. The first principle of economic justice, which has absolute priority over the second, requires fair equality of opportunity, which, Rawls writes, demands that "In all sectors of society there should be roughly equal prospects of culture and achievement for everyone similarly motivated and endowed" (1999a: 63). The permissible range of this roughness is not further specified, and the priority is asserted without significant justification.

The second principle, regulating “in the first approximation ... the distribution of income and wealth” (53), is introduced as requiring an equal distribution unless inequality is to everyone’s advantage. But this principle, the difference principle (the center of attention despite its secondary standing), turns out to be an injunction to “maximize the welfare of the worst off representative” individual, going up the ladder in maximization so far as maximization in the lower rungs allows (72). While much depends on how the worst-off representative individual is specified, Rawls only offers two tentative alternative specifications, confessing, “Any procedure [for setting a reasonable social minimum] is bound to be somewhat *ad hoc*” (84).

This reticent open-mindedness was a great virtue of Rawls, entirely appropriate in the pioneering endeavors of a great book. But in the decades since, his sketch has not become an adequate pattern. Improving opportunities afforded by education and early environment has special importance in the impartial promotion of wellbeing because of the importance of self-reliance. But strict priority for a principle of equal opportunity seems inappropriate. The commitment of labor time, skills, and facilities to education can divert too much from other forms of provision and sources of self-advancement and can create skills too far in excess of employment opportunities. At the same time, the proper valuing of relations among family, neighbors, and friends limits the governmental shaping of childhood environments. Concerning the question of “how to specify and weight the opportunity principle,” Rawls himself eventually acknowledged, “I do not know what is best here and simply register my uncertainty” (2001: 163).

If they turn to the difference principle as a source of guidance, social democrats have to make a principled choice among different worst-off groups whose average wellbeing is identified with the lot of the worst-off representative individual—and there is no principled choice. If this is a small group burdened by a combination of stringent disadvantages, these disadvantages (say, of upbringing, neighborhood, and social networks) may be sufficiently resistant to the improvement of lifetime income and wealth that enacting laws and policies that maximize income and wealth among the worst off is a project that would be rejected from an impartial point of view. People in the rest of society may have too much to lose. Maximizing the income and wealth typical of a larger group, say, those with no more than unskilled workers, would not be as difficult. But perhaps not enough would be done, from the standpoint of impartial concern, for those in a smaller worst-off group.

Rawls’ principles are not the only proposed distributive pattern. But the newer patterns have problems of their own. One tendency, to the left of Rawls, proposes that an extreme version of equality of opportunity is the central principle of distributive justice, a principle requiring maximization of access to advantage of those with inferior brute luck (see, for example, Cohen 1989). The apparent injunction to transfer cheering resources from cheerful people to somewhat grumpy people and the apparent approval of neglect of those who suffer from bad choices for which they are responsible strike many philosophical social democrats as defects in this pattern. Many worry that the elimination by political means of inferiority in brute luck (including the brute luck of early upbringing) could be excessively intrusive. To cope with such liabilities, first-person prerogatives are typically allowed, deprivation resulting from freely chosen options is accepted as a reason to help, and a possible need to restrict luck equalization in the name of liberty is admitted.⁸ But nothing is done to show that the favored pattern of equality is of central importance once these and other considerations are given their proper scope.

In search of a more plausible pattern, some (for example, Anderson 1999: 321–6) propose that equality of status is the hallmark of economic justice. But this seems to entail that working people and their children need not be helped by government programs to have access to culture, interesting leisure, lessened physical discomfort, and work lives suiting their temperaments and aptitudes if deficiencies do not lead to condescension by the better off or expectations of servile deference. This thought is ill-suited to social democracy. Of course, the grit of those who work hard and do not earn much merits admiration, not condescension, but the currency of such appreciation would not make worries about how little they earn, how hard they work, and the difficulties of advancement for themselves and for their children irrelevant to political choice.

The continuing search for the pattern that shapes economic justice is due, in part, to the attempt to base social democracy on fairness. In Nozick's quip (1974: 198), those rationales often treat benefits due to the exercise of traits that no one deserves or the use of legal frameworks and technological legacies on which all are utterly dependent as if they were manna from heaven, of which everyone should get an equal share unless she has good reasons to accept an unequal arrangement because it gives her more absolutely. If social democrats should abandon justice as fairness in the face of libertarian criticisms, as I have proposed, they lack those reasons to continue their troubled search for the pattern of distributive justice.

Instead, they can absorb the libertarian lesson that justice has no pattern. In the practice of ordinary principled political argument, such patterns play no role. In this practice, social democrats argue that the projects of government help that they support, including but going well beyond help to the poor, promote the general welfare. Philosophical social democrats can explicate this goal as one of impartial concern, to be monitored by asking what one would choose if one sought to promote the wellbeing of a member of society one represented but did not know who he or she was. To this extent, they benefit from Rawls' legacy. But the choice of political measures as informed and rational ways of implementing impartial concern in current circumstances does not require the application of a determinate comprehensive distributive principle dictating the right choice in all circumstances when combined with empirical facts. In this respect, as in others, the lesson that philosophical social democrats should gratefully learn from the insights of libertarians is to be more like ordinary social democrats.

INSTRUCTION AND ILLUSION FROM PUBLIC CHOICE THEORY

Even if social democrats are right to argue that private enterprise and private charity are seriously deficient in meeting needs, there are systematic liabilities of the resort to government. Although such reasons for caution have often been described in work by social scientists who are social democrats, they are welcomed with special warmth by libertarians. In particular, they urge attention to liabilities exposed by the theory of public choice, the study of general mechanisms by which people's interests and resources tend to shape political outcomes, in which Mancur Olson and James Buchanan are seminal figures. These are valuable warnings against one-sided attention to the deficiencies of private choice, warnings that ought to inform political judgment.

Olson emphasizes the interaction of the costs and benefits to individuals of their own political initiatives with the effective political activity of groups in which their interests are shared. If a collective that would benefit from political influence is large and the impact of a policy choice on each member is not large, then, all else being equal, a typical member will not let political engagement distract her from private endeavors, since she will make hardly any difference in a process lacking major impact on her life. So, there is a tendency, all else being equal, for small groups with especially strong interests to be more effective, even when their success limits the impartial promotion of wellbeing in society as a whole. While this all-else-being-equal tendency is the central theme of *The Logic of Collective Action* (1965), Olson notes countervailing factors, as well. To some extent, the tendency can be countered by the leadership of large, politically active formal organizations, such as large labor unions or federations of unions, that favor members in the provision of special benefits, creating a special incentive to contribute to a strong collective (16, 43, 51, 68–9, 73, 140). Further countering the tendency favoring small special-interest groups, organizations and movements can be sustained by individuals' sense of "personal moral worth" derived from participation rather than their estimate of the difference they make (160; see also Buchanan 2000 [1975]: 138). Leaderships of political parties are a further counter, strongly motivated by the desire to be elected to public office on the basis of a platform with suitably broad support (Olson 1965: 165; see also Buchanan 2000: 198).

Buchanan emphasizes the impact of the self-interest of members of the electorate on votes determining legislation. If the rule is "majority wins," then trading of support for legislation among groups with distinct interests or their representatives may, over time, produce total expenditure that is excessive from the standpoint of most or even all. On the other hand, this "log rolling" can produce a better fit with impartial concern than its absence, since the trades reflect intensity of interest.⁹

Attention to the mechanisms that public choice theorists describe should and does inform social democrats' preferences among laws and strategies. For example, realism about public choice and special interests gives social democrats special reasons to integrate mandates to tax and spend in an overall budget whose fiscal burdens are transparent and readily debated; to favor broadly based labor organizations in which the breadth of membership gives the leadership cause for concern for the impact of political measures on the economy as a whole (see Olson 1982: 48, 90); and to prefer relatively simple regulations aimed at problems with extensive serious impact to microregulations that engage the intense attention and energy of small interest groups.

The mechanisms producing all-else-being-equal tendencies that public choice theorists describe must be distinguished from their guesses about the actual long-term course of politics, which often seem quaint in retrospect. In 1965 (162–5), Olson proposed that political parties will have weak organizational resources and limited financial resources, except for municipal political machines. In 1975, Buchanan asserted a continual powerful general tendency of politicians to support expansion of the fiscal budget's role in the economy and the government's role in society (2000: 199). In 1982 (40–1), Olson proposed that organizations and collusions for collective action that are strong—paradigmatically, labor unions—will remain strong indefinitely in the absence of new legal constraints or destructive disorder. Such guesses about the net impact of incentives and resources could support the rejection of social democratic advocacy from the

standpoint of impartial concern. Without them, public choice theorists simply free social democrats from chains of naïve optimism.

A realistic appraisal of the role of people's interests and resources in the democratic political process does not just improve the efficacy of social democracy, it also strengthens the case for a social democratic political movement. There is always a significant political party or coalition of parties with great strength depending on appeals to citizens' desire to cut taxes and reduce government spending to help meet needs. This strength is ensured by many people's tendency to pay more attention to the immediate gain to their net income from tax cuts than to long-term consequences, their generalization from particular failures or excesses of government to typical incompetence (which the leaders of those parties have a vital interest in encouraging), and their reluctance to consider their own dependence on government benefits. Those with great wealth and income have disproportionate capacities to make political contributions and contribute to lobbying and advertisements influencing public opinion, while their potential losses from social democracy tend to encourage opposition to taxing-and-spending and regulation intended to help those worse off. Those at the commanding heights of the private economy, with special interests in reducing their tax and regulatory burdens, have reasons and resources for detailed attention to public policy making, while policy makers, whatever their political affiliations, must rely on them for advice and have reasons to fear the economic consequences of their distrust. If capitalism, along with its many benefits, leaves many serious needs unmet that could in principle be met without morally significant loss (a claim that public choice theory does not reject), then, on a realistic appraisal of mechanisms of public choice, a social democratic political movement is a beneficial countervailing force.

AN INVITATION

The lessons that social democrats should learn from libertarians can have an impact on libertarians as well. Those lessons strengthen the case for leaving libertarianism and joining social democracy.

Many libertarians carry a burden: consequences of their general commitments that they find hard to accept. If libertarianism is right, then Friday does wrong to gently yet firmly wrest the life preserver from selfish Crusoe's hands, and a government does wrong to impose any tax to finance any medical care for the destitute that does not serve the interests of billionaires. The minimal state's coercive protection of free enterprise extends both to the protection of wealth in the presence of dire need and to the enforcement of contracts by which people escape from dire need by selling themselves into slavery for life. The minimal state enforces clauses in deeds conveying property on the condition that it not be sold to Jews. Employers must be free not to hire African-Americans and restaurant owners must be free not to serve them, no matter how stringent the reduction of options by these racist associational preferences. If a selfish scientist using her own funds and brainpower finds a cure for cancer and holds out for 20 trillion dollars in compensation, the threat to the global economy must not be evaded by invading her hard drive to take the formula while presenting her with 50 billion instead (see Nozick 1974: 181).

Suppose that someone, initially a libertarian, finds these consequences hard to accept. She might, on the one hand, back away from full-fledged libertarianism by accepting that

in these cases, the protection of the use of fruits of free enterprise by some is overridden by the seriousness of the competing needs of others. But then, she will be hard-pressed to find a principled reason to reject the distinctive goals of social democracy as inappropriate objectives for the use of state power. Lack of access to the productive exercise of one's talents in ways that suit one's temperament and interests, to insightful appreciation of cultural achievements, to achievable relief from persistent discomfort, to the enjoyable exercise of one's curiosity or one's love of nature; lack of an alternative to both drudgery and impoverished unemployment; lack of a realistic expectation of finding work in which one is not bossed around; and insecurity that interferes with long-term plans and current enjoyment are also deprivations. Once the extreme prohibitions of full-fledged libertarianism are rejected, it is hard to see why the burdens of being taxed or regulated by social democracy would not be justified as means of relieving those deprivations in a regime of impartial political concern.

Alternatively, the libertarian could stand fast on the ground that adequate side-constraints against coercion can only be based on the blanket prohibitions of libertarianism, despite a residue of unmet needs that she regrets. But, according to the argument that I previously sketched, impartial political concern is supportive of, not in tension with, the rights that are secure convictions of most who find it hard to accept the consequences of libertarianism noted at the start of this section. Through a commitment to impartial political concern, someone who is repelled by those consequences can preserve what is most plausible in her initial commitment to libertarianism, avoid those consequences, and avoid *ad hoc* distinctions.

She should, nonetheless, resist philosophical social democrats' appeals to fairness and distributive patterns and their inadequate appreciation of the moral significance of capitalist self-advancement. Here, the lessons from libertarianism are crucial. This resistance can and should be met by the reconstruction of the moral foundations of social democracy that learns from her resistance.

The additional, necessary empirical defense of social democracy as an informed expression of impartial concern, a project that would stretch beyond the limits of this essay, would, combined with the arguments of this essay, offer a basis for accepting an invitation to join social democracy. This should be a grateful invitation to join a non-libertarian movement whose moral basis is enriched by the challenge of libertarianism.

NOTES

1. See Rawls (1993: 24; 2001: 24; 1999b: 30–31).
2. See, for example, Rawls (1999a: 82, 86, 122). All passages to which I will refer occur in the original 1971 edition, as well.
3. See Nozick (1974: 215–25) for a classic elaboration of this challenge, and, for related doubts, extending to desert itself, Lomasky (1987) and Schmidtz (2002).
4. In the justification of state coercion in Part I of *Anarchy, State and Utopia*, Nozick's arguments about protection and compensation do not require more-than-libertarian political goals. Without endorsing Nozick's specific justifications of state coercion or his libertarianism, Arneson (2005) notes implausible features of the extrapolation of a special duty to uphold distributive justice from the enforcement of laws.
5. In a world as needy as ours, a principle of concern such as I have put forward is much less demanding than Peter Singer's requirement (e.g., in 1972: 235, 241) always to forgo purchase of a luxury or frill when there is the opportunity to use the money instead to prevent something very bad from happening.

Nearly all of us identify with worthwhile goals, giving point and value to our choices, that require the occasional purchase of a luxury or frill. Dressing in a way that expresses one's aesthetic judgment and engages in the fun of mutual aesthetic recognition is an obvious example. I have argued elsewhere (2004; 2010: ch.1) that my more moderate requirement expresses an appreciation of the equal moral worth of everyone and can account for the duties to rescue to which Singer appeals. Since stronger demands for beneficence will, if politically relevant, stray even farther from libertarianism than I recommend, I will not pursue this argument here.

6. This case would have Alfred Marshall as another distinguished procapitalist precursor and could include work of the most incisive critic of the economic failures of state socialism, Janos Kornai. See, for example, Marshall (1920: 567–72) and Kornai (2014: 88–105).
7. This is a variant of an example in Wertheimer (1996: 208, 218–9).
8. Such concessions are a recurrent theme in Cohen (2008), the most extensive defense of luck egalitarianism as correcting deficient egalitarianism in Rawls.
9. See Buchanan and Tullock (1962: ch.10). Buchanan would not approve of the assessment of the political process by social democracy's criterion of impartial concern. He thinks that a society's rules must not be subject to rational rejection by anyone advancing his interests through free enterprise and using advantages that do not depend on interference with the free enterprise of others. This assumed criterion shapes Buchanan's choice of what models and consequences to explore (ibid. 6). But it is an assumption for which he presents no significant justification, not a conclusion from his derivations of consequences of his models.

FURTHER READING

- Nozick, R. (1974) *Anarchy, State and Utopia*, New York: Basic Books.
 Rawls, J. (1999 [original edition: 1971]) *A Theory of Justice*, Cambridge: Harvard University Press.
 Smith, A. (2000 [1776]) *The Wealth of Nations*, New York: Modern Library.

REFERENCES

- Anderson, E. (1999) "What Is the Point of Equality?" *Ethics* 109: 287–337.
 Arneson, R. (1989) "Equality and Equal Opportunity for Welfare," *Philosophical Studies* 56: 77–93.
 Arneson, R. (2005) "Do Patriotic Ties Limit Global Justice Duties?" *Journal of Ethics* 9: 127–50.
 Blake, M. (2002) "Distributive Justice, Coercion and Autonomy," *Philosophy & Public Affairs* 30: 257–96.
 Buchanan, J. (2000 [1975]) *The Limits of Liberty*, Indianapolis, IN: Liberty Fund.
 Buchanan, J., and G. Tullock. (1962) *The Calculus of Consent*, Ann Arbor, MI: University of Michigan Press.
 Cohen, G. A. (1989) "On the Currency of Egalitarian Justice," *Ethics* 99: 906–44.
 Cohen, G. A. (2008) *Rescuing Justice and Equality*, Cambridge, MA: Harvard University Press.
 Kornai, J. (2014) *Dynamism, Rivalry and the Surplus Economy*, Oxford, UK: Oxford University Press.
 Lomasky, L. (1987) *Persons, Rights and the Moral Community*, Oxford, UK: Oxford University Press.
 Manning, A. (2003) *Monopsony in Motion*, Princeton, NJ: Princeton University Press.
 Marshall, A. (1920) *Principles of Economics*, London: MacMillan.
 Miller, R. (1998) "Cosmopolitan Respect and Patriotic Concern," *Philosophy & Public Affairs* 27: 202–24.
 Miller, R. (2004) "Beneficence, Duty and Distance," *Philosophy & Public Affairs* 32: 357–83.
 Miller, R. (2010) *Globalizing Justice*, Oxford, UK: Oxford University Press.
 Nagel, T. (2005) "The Problem of Global Justice," *Philosophy & Public Affairs* 33: 113–47.
 Nozick, R. (1974) *Anarchy, State and Utopia*, New York: Basic Books.
 Olson, M. (1965) *The Logic of Collective Action*, Cambridge, MA: Harvard University Press.
 Olson, M. (1982) *The Rise and Decline of Nations*, New Haven, CT: Yale University Press.
 Rawls, J. (1993) *Political Liberalism*, New York: Columbia University Press.
 Rawls, J. (1999a [1971]) *A Theory of Justice*, Cambridge, MA: Harvard University Press.
 Rawls, J. (1999b) *The Law of Peoples*, Cambridge, MA: Harvard University Press.
 Rawls, J. (2001) *Justice as Fairness*, Cambridge, MA: Harvard University Press.

- Schmidtz, D. (2002) "How to Deserve," *Political Theory* 30: 774–99.
- Schmidtz, D. (2006) *Elements of Justice*, Cambridge, UK: Cambridge University Press.
- Singer, P. (1971) "Famine, Affluence and Morality," *Philosophy & Public Affairs* 1: 229–43.
- Smith, A. (2000 [1776]) *The Wealth of Nations*, New York: Modern Library.
- Wertheimer, A. (1996) *Exploitation*, Princeton, NJ: Princeton University Press.

Toward a Non-Lockean Libertarianism

Jacob T. Levy

LOCKE'S LIBERTARIAN LEGACY

Libertarian thought and antecedent forms of classical liberalism have often accorded centrality to a cluster of ideas derived from John Locke (1689): that individual rights in general and property rights in particular are moral or “natural,” finding their justification and authority outside or prior to their recognition by political or legal actors; that political, coercive government derives its legitimacy from the (often tacit or imputed) consent of the governed; that such consent is given (if at all) for the purpose of the protection of those prior rights; and thus political governing bodies may therefore not violate individual rights without losing their legitimacy.

Lockean rights, and the impermissibility of their violation, were of course central to the canonical statement of libertarianism in academic political philosophy, Robert Nozick's *Anarchy, State, and Utopia*, although Nozick offered an alternative to contractarian theories of legitimacy. But Nozick has hardly been alone in seeing libertarian theory as founded on Lockean premises or in attempting to build a more complete and satisfactory theory on such premises. James Buchanan's (1975) effort to deploy social contract theory as a way to build a libertarian political philosophy “between anarchy and leviathan” treats Locke's own effort as unsuccessful but, it seems to me, offers an attempt to succeed at Locke's enterprise (not at Hobbes, Rousseau's, or Kant's, for example). Richard Epstein (1985) has sought to repair and rehabilitate Lockean theory as the cornerstone for property rights and a libertarian theory of the limits of state action. Jan Narveson (1988) explicitly sought to join Nozick's neo-Lockean theory of property rights to David Gauthier's adaptation of social contract theory in order to build a libertarianism with proper foundations. Randy Barnett (2000) puts the Lockean consent-contract theory along with natural-rights theory at the center of his justification of the authority of the constitutionally limited state. The economist Murray Rothbard, whose popularized systematic libertarian doctrine has been highly influential outside the academy, was

a theorist of self-ownership and of natural property rights grounded in a labor theory of acquisition. He was clear that his doctrine built on, while radicalizing, Locke, calling the *Second Treatise* “one of the first systematic elaborations of libertarian, individualistic, natural-rights theory” and calling attention to “the similarity between Locke’s view and the theory set forth below” in his book *The Ethics of Liberty* (1982: 20).¹

Outside the academy, the Lockean combination has featured prominently in American liberal individualistic rights theory from the Declaration of Independence and Thomas Paine’s *Rights of Man* onward. The strand of rights theory that developed into anarchism, including Henry David Thoreau and Lysander Spooner in the nineteenth century through to Rothbard and his followers in the twentieth, often accepted the structure of these Lockean positions while denying that consent has ever actually been given or that coercive government is compatible with the non-violation of rights, thus concluding that government is illegitimate. Indeed, the idea that there is something distinctively friendly to libertarian thought in American intellectual and political culture is hard to distinguish from the idea that there is something especially Lockean about that culture. While Louis Hartz’s (1955) claim that American political thought was hopelessly mired in a Lockean liberal-individualistic consensus has by now been soundly rejected by decades of scholarship noting the importance of civic republican (Bailyn 1968; Wood 1969; Pocock 1995) and ascriptively nationalistic traditions, it is still generally accepted that there was a crucial Lockean liberal component to the political thought of the American Revolution and Founding (Zuckert 1996; Kramnick 1990), and that it has been an important source for American individualism, rights theory, and anti-statism in the centuries since.

The priority given to Lockean rights and consent theory in American liberalism, and its libertarian variant, is anomalous in some important ways compared with the classical liberal tradition elsewhere. In Britain, the Lockean ideas that did so much to legitimize the Glorious Revolution became gradually less central to Whig proto-liberal thought over the course of the eighteenth century. This was of course in part because the decades of Whig ascendancy in government discouraged Whig interest in revolutionary principles. To those who thought of the House of Commons as the manifestation of the people’s consent, its security and eventual primacy after 1688 meant that “consent” ceased to be a concept with any critical purchase; it could no longer ground limits on state power. None of the leading classical liberals of the eighteenth-century European Enlightenment—Montesquieu, Smith, and Hume among them—subscribed to any variant of social contract theory. Hume (1985 [1748]) mocked the lingering attachment to Lockeanism among unphilosophical Whigs. Adam Smith (1982 [1763]: 402) flatly denied that political obligation was grounded in Lockean consent—“this is not the case”—and drily noted that the doctrine was “peculiar to Great Britain” yet legitimate governments cover the world, ruling many who have no thought of having consented.

But Whig political thought in America had branched off from that in Britain. Without the push factors of political and religious turmoil that had characterized political life in the 1600s, migration from England to America slowed considerably in the 1700s, encouraging a political divergence. There were other reasons as well. American colonies really had been founded at discrete moments in recent historical time, with original charters, some of them compacts among original colonists. Moreover, the equation of pre-colonization America with the state of nature resonated, even beyond the ideological cover it provided for the expropriation of Indian lands (Tully 1993).

Much of the impetus for eighteenth-century social thought in Europe was provided by the rise of modern commercial society and the accompanying (so it was thought) increased politeness of manners. The English settler colonies in North America, while thoroughly enmeshed in Atlantic trade networks, were, in the language of the day, rude by comparison—not advanced in manufacturing, finance, dense local commerce, or politesse. Montesquieu and the thinkers of the Scottish Enlightenment also sought to understand “police”: the vast array of everyday policymaking and administration that the British and French states were increasingly occupied with in their governance of large populations with complicated economies. To the American colonists, Locke’s basically juridical account of government continued to seem sufficient. And, of course, Locke provided crucial intellectual support for the Revolution when it came, in a way that had lasting influence.

In the remainder of this essay, I will offer reasons why this pervasive Lockeanism is a problem for (both academic and popular) libertarianism. These are something much less than a refutation; the various configurations and adaptations of Lockean ideas in various versions of libertarian and classical liberal thought overlap but are far from identical, and it would be implausible that they could all be disproven in one fell swoop. And some of these adaptations of Lockean ideas are very sophisticated and rich accounts of political philosophy; I don’t believe that such accounts tend to be susceptible to simple disproofs. Rather, I mean to offer broad reasons for worry about the dominance of these Lockean accounts and suggestions as to more promising directions for classical liberal theory to develop in. I do not suppose that these abbreviated arguments will persuade committed Lockians, but I hope that they will open the door to other possibilities.

DISAGREEMENT, DEMOCRACY, AND REALISM

The first set of worries takes inspiration from the turn to what has been called *realism* in political theory (Williams 2005; Galston 2010) and closely allied attempts to take seriously disagreement about rights and justice as a basic feature of political life (Waldron 2000) and the crucial need for partisan contestation as a feature of democratic life (Rosenblum 2008). In overlapping ways, these theories have suggested the need to distinguish more sharply than is done in traditional rights theory and justice theory between one’s normative theory of the better policies for a political society to pursue and one’s normative theory of the range of policies that may legitimately be pursued by a political society characterized by deep and enduring disagreement over questions of rights. As Williams put it in an influential formulation, some have thought that only subordinating politics to morality was compatible with having serious normative views about right and wrong in political life. Against that “political moralism,” he offers a “political realism.” Realism’s distinctive treatment of disagreement

does not mean that we throw our political convictions away: we have no reason to end up with none, or with someone else’s. Nor does it mean that we stare at our convictions with ironical amazement, as Rorty suggests. But we do treat them as political convictions which determine political positions, which means, for one thing, that we acknowledge that they have obscure causes and effects. It also means that we take certain kinds of view of our allies and opponents. Even if we were utopian

monarchs, we would have to take into account others' disagreement as a mere fact. As democrats, we have to do more than that. But remembering the points about the historical conditions, we should not think that what we have to do is simply to argue with those who disagree: treating them as *opponents* can, oddly enough, show more respect for them as political actors than treating them simply as arguers—whether as arguers who are simply mistaken, or as fellow seekers after truth. A very important reason for thinking in terms of the political is that a political decision—the conclusion of a political deliberation which brings all sorts of considerations, considerations of principle along with others, to one focus of decision—is that such a decision does not in itself announce that the other party was morally wrong or, indeed, wrong at all. What it immediately announces is that *they have lost*.

(2005:13, italics in original)

Lockean premises make it very difficult to treat libertarian conclusions as positions to be advocated for *within* ongoing political life. This is a charge that has been made against other liberal theories of justice as well (Walzer 1981; Honig 1993), but Lockean views seem especially vulnerable to it (Bellamy 2007: 147–8). The Lockean variant of libertarianism doesn't only offer a substantive theory of justice that stands apart from democratic political outcomes. It also seems to pose a stark choice: a political system that fully respects individual rights in a way that makes libertarianism politically triumphant from the outset; or a political system that is illegitimate, making contestation within it illegitimate as well. In its most austere versions, rights-based libertarianism treats very nearly all political decisions as either obligatory—the provision of affirmative protection for rights of life, limb, liberty, and property—or prohibited, because they rely on coercively extracted resources to support any activity *other* than morally mandatory rights protection and so violate rights. And since state legitimacy rests on the hypothetical agreement to *protect* rights of life, limb, liberty, and property, a state that violates them undermines its own legitimacy. What Williams terms the “Basic Legitimation Demand” is collapsed entirely into the moral category of preferred political outcomes.

Some critics (Mulholland 2012) have charged that bourgeois liberalism sociologically inclines toward authoritarianism; the imperative to protect property rights and to defend existing social orders against socialist threats has repeatedly inclined liberals further away from democracy than their principles would seem to dictate. This extends into a long-term diagnosis, a worry that Benjamin Constant (1819) expressed: that those who value the secure enjoyment of modern individual liberty will be all too willing to believe Caesarist or Bonapartist promises to maintain public order rather than take the risk of defending their values in competitive politics. This sociological worry is not quite the same thing as the anti-political temptations of liberal political philosophy described in the previous paragraph (Constant was hardly faced with a French middle class filled with Lockeans), but they overlap at the point of a desire to insulate questions of property ownership and economic policy from politics.

Now, Locke himself knew that ongoing politics couldn't really be a matter of doing nothing but enforcing pre-political rights. Depending on how one reads the *Second Treatise*, it can appear that such rights are supreme; or that the majoritarian elected legislature engaged in lawmaking is supreme; or that the prerogative-wielding executive able to act outside the law is supreme; or some combination of these, chasing each other around

in an intellectual circle. His account of the legislature's juridical and interpretive task of assessing and specifying who has what rights does *not* suggest that the legislature thereby violates them. The executive's task of promoting the common good and public safety, even when it requires acting outside and against the law, likewise does not constitute a violation of rights. Rather, both legislative and executive action are the stuff of legitimate government to which the founding contractors consented or would have consented. This suggests that Locke envisions a great deal of normal politics that he does not detail.

That does not mean, however, that there is a simple mistake or misreading involved in libertarian uses of Locke as the foundation for a kind of liberal rights theory that is hard to reconcile with ongoing political disagreement and contestation. In his version of social contract theory, the decisive step is the formation of *a people*. Some subset of humanity unanimously agrees to do so, and that unified *people* is henceforth normatively fundamental. It chooses a government, and if the government exceeds its legitimate bounds, that unified people regains the authority to remove it and institute another. It is worth noting that Locke never envisions the people as being dissolved; there is no return to the initial state of nature of disunited individuals.

That image of peoplehood is, at least, proto-nationalistic. Locke never clearly tells us why or how *this* portion of humanity comes together as a people and knows that it is distinct from *that*, leaving a logical gap that would eventually be filled by Rousseau's explicit nationalism. Locke's offhand reference to when "the several communities settled the bounds of their distinct territories" (1988 [1689]: 299) cannot do the work; the "communities" must already exist as bounded peoples. Instead, he seems to take for granted that something "a people" is something like "England"—a community that could be governed by a modern state. And for his theory to cohere, that "people" must not only be unanimous at its founding but remain so morally and politically unified that it is capable of acting corporately in a spontaneous way. That can't help but be in tension with the reality of ongoing political disagreement. The generation of American intellectuals and politicians who had been most influenced by Locke at the time of the Revolution was deeply hostile to the emergence of organized ongoing political parties. The assertion that one speaks on behalf of an organic unified "people" remains a feature of the populist anti-statism that is sometimes conflated with libertarianism in American political culture. And the symbolic affirmation of contract and consent theory in official American life have much the same tone, from "we the people" to the "one nation, under God, indivisible" named in a ritual of supposed consent giving.

However we think of this impulse—organicist, nationalist, holistic, anti-political—it is a temptation faced by many political views. In many countries in the twentieth century, there was a hard and self-conscious process of learning among both social democrats and conservatives that stable decent constitutional democracy depended on both groups abandoning the idea that they were the one true voice of the one undifferentiated people. We now know what the American founders did not: There is *no* democratic government in a large society without organized partisan contestation. The belief in some organic pre-political unity is thus a barrier to enjoying the goods of constitutional democracy, giving rise to the urge to characterize dissent as treason, divergent views as (e.g.) "un-American."

Both intellectually sophisticated and American populist variants of libertarian liberalism have been slow to learn this, and I think that their background Lockeanism

has something to do with the reason why. They have been slow to accept *losing*, to accept seeing policies enacted that are disagreeable on one's best account of liberty without giving in to an account of the existing state as an illegitimate band of armed thugs with which one is in a constant condition of undeclared war. There is something of course perverse about political movements that never win and yet, amidst all their theories and ideas of various levels of sophistication, find no way to understand losing. There is something well beyond perverse about responding to losing by insisting on the need for extraordinary victories: "Since we cannot win in ordinary politics, we must enact constitutions and constitutional rules that forbid any policy outcomes but ours"—as if constitutions are made outside of political life, as if the super-majority required for constitutional enactment or amendment is easier to come by than the plurality required to win some elections. These are, I think, among the perversities of a libertarianism founded on Locke and the Lockean social contract.

Relatedly: Contract or consent theory in general and Lockeanism in particular conflates questions of legitimacy, purpose, function, and origin in thinking about the state to the detriment of clear thought about any of them. States did not arise out of decisions to be governed and certainly not from all-at-once decisions. The variation across time and space in whether people are governed by states—say, the variation between early modern Europeans and either medieval Europeans or most non-Europeans prior to imperial colonization—has nothing to do with this kind of an act of will. Stateness ebbs and flows as a characteristic of social organization for reasons having to do with wealth and productive power, changes in financial, military, and organizational technology, and even local geography (e.g., mountainous regions resist stateness; Scott 2009).

Recognizing this should be attractive to libertarians for at least two reasons. One is that they are receptive to such social explanations in other domains, rejecting decisionism as a way to account of the origins of markets, industrial capitalism, law, language, and other complex phenomena. Libertarian social theory has been deeply influenced by the idea of "spontaneous order" associated most famously with the Scottish Enlightenment and with F. A. Hayek (about whom more will be said below). Such theories provide the intellectual resources with which to resist the common temptation to think that complex social phenomena must have been created and authorized by a decision-making state. The rejection of decisionism as a mode of *explanation* also allows its rejection as a mode of *legitimation*. The spontaneous order theorist needs no historical or hypothetical contract with which to explain the emergence of, say, property, and so also understands the mistake in asking whether those who created it had the right to do so. The asymmetry involved in continuing to treat the state itself in Lockean terms while understanding other social phenomena with Smithian tools is, to say the least, anomalous.

LIBERTY AND LEGITIMACY

Second and more important, that conflation among legitimacy, purpose, function, and origin encourages (and depends on) an unhealthy identification of the ruled person with the rules and rulers set over them. The contractarian thought "rule, in order to be morally permissible, must be done with the consent of the ruled and therefore in a sense cease to be rule at all" is logically compatible with the thought "and no rule is legitimate,"

which many libertarian anarchists have embraced. But when states do not vanish in a puff of logic upon their illegitimacy being demonstrated, a very different thought becomes almost irresistible to humans, social creatures that they are, deriving comfort from the existence of stable rules and structures. It is that we have consented to the rules set over us, and that there is therefore no loss of freedom in them. The ultimate function of social contract theory in the world, in the face of persistent political rule and of the natural human urge to make peace with it, is as Rousseau saw it:

Man is born free, and everywhere he is in chains. One believes himself the others' master, and yet is more a slave there. How did this change come about? I do not know. *What can make it legitimate?* I believe I can solve this question.

(1997 [1762]: 41, italics added)

These lines have become so familiar as to become almost invisible, but there is something remarkable about them. Rousseau does not even mention the possibility of *breaking* the chains, which is presumably what those who value freedom should want. His task is instead to make it—the fact that man is everywhere in chains—*legitimate*. That paradoxical accomplishment is precisely what social contract theory offers, and Rousseau's famously paradoxical ways of putting the solution—such as “forced to be free” 1997[1762]: 54—are already implicit in Locke's account.

Social contracts offer answers to the questions “what authorizes a state to rule?” and “what grounds the obligation to obey states?” Given the rarity of voluntary and explicit consent and given that states rule everyone in a territory, voluntary and explicit consent can't suffice to provide those answers. Social contract as a doctrine of legitimation thus inevitably, one way or another, imputes consent to those who haven't given it. In its insistence that no one may be governed against his or her will, it ends by insisting to those governed that they have really willed it.

Contractarianism therefore forces us to choose between a fundamental illegitimacy of political rule—a contract once broken is *no contract at all*—and a generalized imputation of consent such that rule doesn't burden our liberty. If this is the choice, the contest is one that libertarianism, or liberal theories of freedom generally, cannot win. Of course it has not won in the intervening centuries. Instead, one fiction or another—a state's supposed identity with a nation that chooses it, or its supposed creation by popularly enacted constitutionalism, or its supposed organization by democratic elections—is generally used to impute generalized consent and to make dissent, disagreement, or resistance to laws appear illegitimate.

I mentioned above the difficulty in treating Lockean libertarianism as a position within ongoing political life. We now see why more clearly. The contractarian syllogism that concludes with “we have all consented to every law” tends to foreclose complaints against laws on grounds of freedom, and such complaints must form part of the core of a libertarian politics. The alternative “we have consented to *no* law, and thus are in a moral state of war with the state” is at least individualistic and free from the imputation of choices that haven't been made, but is difficult to sustain and impossible to reconcile with ordinary political life among fellow citizens who disagree. One way or another, the Lockean has great difficulty saying: “these laws violate my best understanding of liberty, and I have not consented to them; but such is the stuff of losing in politics, and I owe my fellow citizens with whom I disagree as well as the institutions of constitu-