

# 1

## The Case for Libertarianism: Sovereign Individuals

Tibor R. Machan

What I wish to argue here is that libertarianism, as the development of classical liberalism and the political principles sketched in the American Declaration of Independence, is the best answer to the question, “How ought we to organize our political societies?” Since the Declaration is an announcement, not a detailed treatise, this concise statement of political ideals needs to be fleshed out. The bottom line, though, of the Founders’ idea, as well as of libertarianism, is that individual members of human communities are sovereign, self-ruling or self-governing, agents whose sovereignty any just system of laws must accommodate.<sup>1</sup>

Throughout the world, the thinking about the United States by ordinary folks—or at least in terms of the United States as a political community—still brings to mind the substance expressed in the Declaration. This is that people have been created equal and endowed by their creator—be that God or nature—with unalienable rights, and that the role of government in a just system is to “secure these rights.”

The revolutionary element in the Declaration is that unlike in most official political statements of the past, it deems the individuals constituting society to be the focus of political

#### 4 / Chapter 1

importance—not the monarch, chief, tribe, party, class, or even majority. The reference to unalienability renders the document an especially radical one. It affirms the uncompromising priority, within the context of public-policy decision making, of everyone’s rights—among others, those to life, liberty, and the pursuit of happiness. It also assigns to the just powers of governments the primary function of securing these rights. Thus the Declaration of Independence is *in its essence* a libertarian document—it is concerned with the basic right to individual liberty of all those who are citizens of a political community.<sup>2</sup>

Libertarianism—once referred to as “classical liberalism”—proposes a strictly limited conception of politics, in contrast to that embodied in, for example, monarchies (from absolute types to those limited by the parliament), the welfare state, fascism, or socialism. All such latter systems have top-down structures and hierarchies of importance, in which certain common ends or goals—or as the late Robert Nozick called them, “end states”—are sought for everyone, rather than the bottom-up type envisioned by the American founders, which stresses *procedural* principles by which the society is to be governed. Order, fairness, cultural superiority, and the like are not the goals of “bottom-up” governance; consensual community life is.

It is human individuals, living their lives on terms of their own, who matter most in such a political system. Even the much championed democratic aspect of such a system is strictly limited. The method of democratic decision making is to be circumscribed and restricted so that only those democratic decisions can be construed as just and proper that do not violate individual rights.

As a matter of history, the U.S. Constitution gave some, although by no means full, expression of the ideals stated in the Declaration. There were some major contradictions, including slavery and some other coercive features within the Constitution, supposedly allowed so as to appease some powerful

prospective U.S. citizens for the sake of creating a strong federal union that would be capable of resisting foreign intervention. Still, what has been perceived as particularly novel about the American founders' vision remains a serious political alternative today and still energizes a great many people to seek to emigrate to the United States so they may benefit from the protection of individual human rights promised, albeit somewhat confusedly, in that society.

What specifically are these energizing ideals? What does the claim mean that every adult individual has unalienable rights—rights that cannot be lost so long as one remains a human being—to, among other things, life, liberty, and the pursuit of happiness? That claim translates into a system of political society wherein everyone is authorized to carry on his or her chosen activities and pursue his or her objectives, only if doing so does not violate others' rights—and wherein the government's role is restricted, as already noted, to securing these individual rights. Other valued goals and ends are to be sought without the use of coercive force, even that which government might lend in aid of such pursuits. There is an underlying assumption in the Declaration and in libertarianism that once human beings are forbidden to deploy coercive force in pursuit of their objectives, they will tend to pursue them peacefully, with one another's consent, and that this will produce as good a human community as is achievable among human beings. Indeed, libertarianism stresses the ideal of civil society—meaning a society that eschews dealing with one another by subjugation, oppression, conquest, or similar coercive means, means taken to be standard in the non-human animal world.

It is worth noting here, parenthetically, that among libertarian political philosophers and theorists it is generally understood that there is a decisive difference between *coercion* and *force*—the former is initiated, unjustified, and oppressive, whereas the latter is the application of physical power for various purposes, some of which can be quite justified, such as

self-defense or the defense of someone who has delegated this authority to another, or, of course, various productive ends, such as hauling bricks or moving boulders. Force is akin to violence, which may be justified or not. Thus, being forced to work may be unobjectionable if the source of this force is the necessity to eat.<sup>3</sup> (Not all libertarian thinkers keep strictly to the distinction—some will use the phrase “coercive force” to indicate the difference involved.)

One way to see this is to understand government as having the professional duty to protect the basic rights of the citizenry that has instituted, “hired,” or established it. This is probably fruitfully illustrated by how at a sports event referees are hired to carry out a strictly limited role, namely, to make sure everyone plays by the rules of the game.<sup>4</sup> (Just as referees can come to the aid of injured athletes without their job description being changed to “medics,” so government officials are not barred from occasionally answering to emergencies. The cop on the beat, though a peacekeeper, may now and then give directions to someone who is lost, provided this does not interfere with his essential task.)

Government’s role, like the referee’s, is important, without doubt. The institution has been perceived as important, despite much of the malpractice of various governments over the centuries, because it is reasonably well understood that in human affairs it is necessary and valuable to uphold standards of conduct and have specialists to do so properly, adhering to the complications of due process. This is to say that justice must be secured justly. (For libertarians the debate concerns mostly whether a government, with a monopoly over the lawful use of force within some region, or whether various “defense-insurance”—or justice—agencies, without any such monopoly status, ought to carry out this task.<sup>5</sup> Some libertarian theorists call themselves “anarchists,” some “minarchists.” The former substitute for government what they call defense-insurance agencies, competing legal services or the like, whereas the latter argue for a noncoercive system of law

enforcement that would amount to proper government, via the full—explicit or implicit—consent of the governed, yet that would be a natural monopoly within a given geographical region.)

But politicians and bureaucrats, with the precarious task of securing our rights without violating them as they do so, are not also doctors, dentists, dance instructors, or members of some other profession. Professional referees do some very specific things, primarily to adjudicate disputes over rules—and that is essentially what the libertarian or classical liberal political position proposes. It rests on the idea that once they reach adulthood human beings are sovereign individuals, with no proper authority to govern another without that other's consent to be governed. As Abraham Lincoln put the point, "No man is good enough to govern another man, without that other's consent."<sup>6</sup> Any coercion by one person of another is thus deemed unjustified, and government is employed to protect everyone against such coercion, including itself. (Force used defensively or in retaliation is not, as we have seen, the same as coercion—the use of force in violation of people's rights—although the distinction is not often put in these terms.)

The mainstream political stance, in contrast, tends to be represented by advocates of a more or less expanded welfare state, both those on the Left and on the Right. What mainstream politicians argue over are the expenses—and at times the scope—of a democratically guided coercive welfare state, not whether such a state should exist or is just.

I say "coercive," but this begs the question, since advocates of the welfare state often hold that what is taken from a person, be it assets or labor time, is in fact owed to others by a natural obligation of some sort, that others have a positive right to it. If, for example, Charles Taylor is correct that we belong to our communities, that we are a part of these communities, then the services and resources we are made to contribute are like dues we owe. As Taylor laments, "Theories

which assert the primacy of rights are those which take as the fundamental, or at least a fundamental, principle of their political theory the ascription of certain rights to individuals which deny the same status to a principle of belonging or obligation, that is a principle which states our obligation as men to belong to or sustain society, or a society of a certain type, or to obey authority or an authority of a certain type."<sup>7</sup>

I have argued elsewhere, however, that rights theories in the Lockean tradition do not take rights to have normative primacy. Rights are derived from the requirements of the ethics of individual flourishing within the context of human communities. There is no denial of the essential sociality of human beings, but the Lockean tradition maintains that the individual needs to be at liberty to determine to what sort of community he or she will belong—if only by means of tacit or implicit consent—and that the right kind is one in which his or her sovereignty has primacy. It is only such a community that is fitting—that is, meets the standard of justice—for human beings.

Libertarians, following the political vision of the American founders (who themselves took their cues from the likes of John Locke), believe that people have to take care of their own specific welfare, within and by the voluntary cooperation of their various communities and associations—families, churches, service organizations, companies, clubs, and so on. Only the *general* welfare is to be promoted by government,<sup>8</sup> the securing of our basic rights—just as referees may be said to promote the general welfare of an athletic event by upholding its rules. People, in turn, are capable of doing their job of promoting their specific welfare—pursuing their own happiness—effectively if the government sticks to this refereeing role, namely, running the courts, the police, and the country's defense.

Obviously, there are nuances and complications when one translates these libertarian ideals into practical policy. Still it is fairly clear that libertarian political thinking would contrast sharply with a great deal of the current mainstream thinking

in even the Western world, let alone the rest of the world, concerning the purpose of politics.

Interestingly enough, in the international arena the language of this libertarian classical liberal political position is vibrant now. Ideas such as privatization, globalization, property rights, and the infrastructure of a free market system concern the extension throughout the world of the ideas laid out in the U.S. Declaration of Independence. If the people of all the various societies around the globe want to prosper and improve their lives, they do better by adopting the principles of a free society associated with the American political tradition than those of competing systems. Although in the United States such ideals are not fully embraced or manifest, there remains throughout the world a rhetorical identification of America with the ideals of a fully free, voluntarist society of civil liberties, freedom of thought and worship, free trade, free markets, and capitalism. It is these ideas that are exported in the movement roughly identified as “globalization.”

Also, interestingly, when the foreign policies of the U.S. government are evaluated, libertarian notions tend to appear—such as the critique of preemptive military attack, which rests, at least implicitly, on the idea that unless someone initiates force against a country—or is about to do so—that country is not authorized to take forcible action. In short, the idea that force must be limited to self-defense is quite prominent in such discussions, yet of course many abandon it when it comes to the role they assign to government in domestic affairs (e.g., precautionary government regulations of various professions, which arguably violate the ban on prior restraint, the prohibition of using force on those who have not violated anyone’s rights but merely *might* do so).

Now, what is crucial is why this libertarian alternative is a good idea. It is one thing to say “We’re for it” but another thing to say “We’re for it because it’s right.” In a column in *The New Republic*, the author once recalled having attended an economic conference in Japan and being cornered by a Japanese official

who complained that the Americans are arrogant because they try to implore everybody else to accept their views about markets and economies. Certainly libertarians do this as well.

Of course, nearly all political ideals are championed for all, although in recent times the doctrine of multiculturalism has tended to soften that stance.<sup>9</sup> One way of putting the point is to ask, “Why should what was laid out for Americans work elsewhere or be right for others around the globe? Why can’t different communities have their own different political systems?” Many people say that about Cuba or even North Korea and (before March 2003) Iraq—why should these change into more democratic, individualist societies rather than stick to their more collectivist systems? Maybe within those societies such a system is more suitable. Yet, of course, those societies too are championed by some who would wish the whole world conformed to their visions. So the problem of proposing political ideas across the board, for all human communities, faces not only libertarians. If the implicit notion that liberation is a kind of imperialism made good sense here, one could go on to argue that urging Cuba, Iran, or any other society around the globe to “democratize”—on the American, classical liberal model—would be to practice imperialism, of attempting to impose on others a system that is suited not to them but only to the society imploring them to change. It would smack of empire building, making every society conform to the principles of a dominant one. That is just the complaint some make about American-style Western liberalism as well as its purified version, libertarianism.

Yet, advocating everyone’s basic right to negative liberty—that is, liberty from others’ intrusive or aggressive conduct—and trying to export it peacefully, by persuasion and economic pressures, imposes nothing on anybody (just as a strike by workers does not constitute a coercive imposition on anyone). Yes, an idea and policies consistent with it are being advocated, suggested, and recommended. But no one is being made to do anything. In fact, the situation is quite the oppo-



site. The libertarian proposal for others to follow is akin to advocating the abolition of slavery. Slave owners looked upon the abolitionists with the same attitude: "Why don't you keep your abolitionism to yourself? We like it here, we have our little quaint tradition called slavery, and you shouldn't come in here and impose upon us your ideas of abolition."<sup>10</sup>

That is the same line that Fidel Castro, Kim Jong Il, and their defenders advance (as Saddam Hussein once did) in response to those who advocate greater democracy and individual rights in the countries they rule: "The Americans are imposing upon us this idea of democracy and individualism when they do not want us to force everyone into collective farming and industrialization." It is the same when others object to free market globalization. What that idea comes to is the freeing up of people's commercial and related activities, the removal of state impediments to them. The people who complain most about it are those who believe they should have the power to run economic institutions, in a top-down fashion, just as monarchies ran their mercantilist societies.

In many corners of the world, this idea that governments are responsible for everything—governments are supposed to establish religions (like in Iran or to some extent even in Israel), governments are supposed to establish the conditions or culture for the arts, for economics, and so on—is still very prominent. Libertarians hold that the American Revolution (and it was a genuine revolution, unlike the Russian one, which was just a change of rulers), had been genuinely radical because it placed on record, officially, for the first time the idea that it is individual human beings who matter most in society, not the tribe, clan, ethnic group, religious organization, or even the family.

Now, libertarianism is sometimes advanced on the grounds that when people enjoy the conditions of negative liberty, everybody makes the best judgments and the most beneficial consequences all around are realized. Such a consequentialist approach is unwise, since it suggests that free men and women always do the right thing while those who would

regiment them seldom do. No, libertarianism only requires that everyone ought to be treated as somebody whose judgment matters and who is owed such treatment that his or her own judgment can guide his or her life. Only once this freedom to act on one's judgment is secured can we begin to talk about whether one chooses to do the right thing or the wrong thing, whether one decides correctly or incorrectly. Such a discussion is supposed to be conducted in a civilized fashion, through reason and not coercive force.

In a libertarian system no vice squad is sent to break up prostitution, but prostitutes may be implored to stop their degrading professional practices. Once we send in the vice squad we actually deny the prostitutes their humanity, as if they could not make up their own minds. Indeed, by the libertarian's understanding, any introduction of coercive, initiated force in human relationships does violence to people's humanity. This is because human beings are by their basic nature rational animals, whose primary tool of survival and means of flourishing is thought, for which negative liberty is the central prerequisite. So, even such vital objectives as helping the poor, uneducated, or sick must be achieved not by subduing others and conscripting them to take part in the mission but by convincing them to do so.

There are better ways than coercion to solve problems. The whole point of civilization is to imbue a culture, a society, with the method of reasoning, argument, and persuasion rather than coercive force. Force is supposed to be the major means available to other animals, which do not have the capacity to reason. Humans, in contrast, are supposed to be patient enough to wait until they manage to convince other people or learn to live with the fact that they have not managed that task. That is what is made possible in a system in which rights are the foundation of law.

One of the libertarian elements of the United States of America, one that serves as an instructive model of how a generalization of the position would work, is the guarantee of

religious freedom. About 4,200 different religions and denominations range throughout America.<sup>11</sup> Are they at war with each other? They are in a war of words every time one of their members speaks from a pulpit: we are right, our God is right, our scripture is right, and all the other 4,199 sects are wrong. But they do not go to war with each other. They argue. They try to persuade each other.

Why is that possible? One of the reasons is private property rights. They can buy themselves land, build a church, and come together on it; nobody can legally go disturb them there. They have the right to run their own affairs within the confines of what belongs to them. We have that right in a free society, in our backyards, our houses, our yards, our companies, our associations, our clubs, and with our own "stuff." If my stuff really is mine rather than the government's, as some people in our political community believe, then I can assign the use of that stuff either to myself or those to whom I am devoted or some cause I want to support; it is not taken from me by force.

Let me summarize my rather cursorily laid-out points in favor of libertarianism. Human nature consists of everyone's being a rational animal, one whose survival and success depends on initiating the process of thinking about the world, becoming aware, paying attention. In human communities the unique danger that arises is not a matter of the natural obstacles to one's life and success—those one faces in or out of communities. The unique danger is from other persons who would wish to survive and succeed on the basis not of their own efforts or good fortune but of wresting support from other people. So it is sensible, prudent, to establish law and order with the goal of resisting such efforts—criminal undertakings—that impede one's liberty to progress peacefully in life on one's own or with willing others. The right to private property, via property law in developed communities, secures for everyone a sphere of personal jurisdiction so that it can be determined when one is acting within one's own sphere or intrudes on the spheres of others. The job of adjudicating disputes about these

“border crossing” matters falls to the legal authorities or government, and they must rectify matters without themselves violating anyone’s rights. As far as dealing with other societies is concerned, all this implies that no aggression may be used in international relations and that force may be deployed only in retaliation, whatever internal injustices are perpetrated in other societies.

The crux of libertarianism is, then, individual independence in making decisions, including about associations with others. Ideals such as cultural diversity, economic equality, racial harmony, and the like must not trump this basic value.<sup>12</sup>

## Individualism

One source of consternation for many political philosophers and theorists—for example, Karl Marx, C. B. Macpherson, Charles Taylor, Amitai Etzioni, John N. Gray—is the individualist element in classical liberalism and, especially, libertarianism. They have dubbed the version of individualism they associate with these positions “atomistic,” meaning that human beings are taken in these views to be isolated, separate, self-sufficient, independent living beings, along the lines of Robinson Crusoe.

It will be useful, therefore, to put on record at least one libertarian view of individualism that refutes this characterization. Individualism is the view that, put briefly, human beings are identifiable as a distinct species in the natural world and have as at least one of their central attributes the capacity to be unique, rational individuals. Whatever else is central about being a human being, each adult person, unless crucially debilitated, has the capacity to govern his or her life by means of the individually initiated process of thought, of conceptual consciousness.<sup>13</sup>

Furthermore, excelling as such an individual human being is the primary, proper goal of each person’s life. A just political community, in turn, is one that renders it possible for all (or as many as is realistically possible) to pursue this purpose.

As the novelist-philosopher Ayn Rand put the point—following similar observations by Aristotle and Thomas Aquinas—adult persons are “beings of volitional consciousness.” This involves, among other things, the crucial capacity to choose to embark upon—to initiate—a process of (thoughtful) action.

If we are entities of a type that can be a causal agent, an initiator of its own behavior, a crucial basis for individuation arises—that different human beings can and actually do choose to exercise their conscious capacities and direct their ensuing actions differently. Putting it more simply, if we have free will our diverse ways of exercising it can make us each unique. So even if there were nothing else unique about different persons, their free will could introduce an essential individuality into their lives. (This is something with a major impact on the social sciences, on psychology and psychotherapy, and, of course, on ethics and politics.)

Yet different people are also uniquely configured, as it were, as human beings; thus they can face different yet equally vital tasks in their lives. Our fingerprints, voices, shapes, ages, locations, talents, and, most of all, choices are all individuating features, so we are all unique. This is the crux of the individualist thesis. Nonetheless, since we are all such individuals, we constitute one species with a definite nature associated with that species possessed by each member. This may seem paradoxical, that one of the defining attributes of the human (kind of) being is the distinctive potential for individuality, based on both diversity and personal choice.

This position has certain implications that are very close to those usually thought to follow from a somewhat different, often labeled “radical,” individualism. These implications are the existence of the libertarian political ideas and ideals of individual rights to life, liberty, and property. We might call the earlier version of individualism “atomistic” or “quantitative,” the latter “classical.”<sup>14</sup>

Atomistic or radical individualism is distinct. It is usually linked to Thomas Hobbes and his nominalist and moral-subjectivist followers. Its most basic, ontological thesis is that human beings are numerically separate bare particulars (meaning “beings without a nature, without being classifiable as any kind of beings”). Their individuality is quantitative, not qualitative, primarily consisting of their existence as separate entities, not of their capacity and willingness to forge distinctive lives of their own.

A problem that some see with the neo-Hobbesian individualist tradition is that it implies that political norms are ultimately subjective—usually taken to be mere preferences. For Hobbes, to start with, “whatsoever is the object of any man’s appetite or desire, that is it which he for his part calleth good: and the object of his hate and aversion, evil.” So the classical-liberal polity is itself, by the tenets of such individualism, no more than some people’s preference, one that others may not share, and quite legitimately. As some critics have put the point, in terms of the Hobbesian individualist position liberty is just one among many different values people desire. This political tradition has thus been vulnerable to the charge of arbitrariness, of resting simply on preferences that some people—for example, the bourgeoisie, capitalists, or white European males—happen to have.

Even in Hobbes’s time there were other versions afoot, usually linked to Christianity. By the tenets of a Christian version, each person is a unique child of God, thus uniquely important and not to be sacrificed to some purpose of the tribe or state, for example.<sup>15</sup> This, at least, is one path to the conclusion that a just political community must make room for the sovereignty of the individual human being—one’s ultimate and decisive role in what one will do, be it right or wrong. Another path is the secular, neo-Aristotelian view in terms of which while human beings are rationally classifiable as such, one of their essential attributes is that they can and usually choose to be unique. So, in contrast to Marx’s claim that “the

human essence is the true collectivity of man,"<sup>16</sup> the classical individualist holds that "the human essence includes the true individuality of every human being."

In the radical individualist tradition a major libertarian element is the subjectivity of values. Accordingly, free market economists have tended to reject all government regimentation of social affairs, seeing them as driven by subjective preferences that cannot be known to anyone other than those who hold them. Such a view has served to undermine all efforts to impose values on individuals.

The classical individualist position argues that values are objective but also quite often idiosyncratic and they require free choice to give them moral significance. This too prohibits government imposition of values but not for skeptical reasons. Also, it enables one to defend the political value of liberty as more than simply one of many subjective preferences.

As far as free markets are concerned, one main reason they function more successfully than statist alternatives is that in a free market individual aspirations, goals, preferences, values, and such have a major impact on what will be produced. This in turn results in a more prosperous society than one where such individual goals and so forth are trumped by various so-called public-interest considerations that, in fact, are no more than the interest of vocal groups of individuals overriding that of others. Even the famous calculation problem identified by Austrian economists makes more sense if individualism is true. The reason governments cannot allocate or price goods and services properly is that such resources are ultimately (albeit objectively) valuable for individuals, not collectives.<sup>17</sup>

The individualism that underpins much of libertarian political economy has vital implications for public policy. In the law, for example, the position of criminal culpability gains support from it. The rejection of collective guilt—or pride—in social theory also has its support. In environmental public policy it makes clear sense of the ubiquitous phenomena of the tragedy of the commons, suggesting that human beings

must have an individual stake in caring for resources before those resources can be expected to be well cared for. Public officials, since they can only represent a very general public interest—to secure the rights of individuals—have no clear-cut guide to policies of resource preservation and conservation. Individualism also underlies the rejection of the precautionary principle favored by environmentalists, whereby the mere possibility of future problems can be invoked to justify violating individual rights.<sup>18</sup>

Libertarianism is seen by most to rest on some version of individualism, although there are exceptions. Some believe that the betterment of society as a whole is what requires an individualist social and legal policy, even though there is nothing ultimately true about individualism. If, however, it is treated in public policy as if it were true, the results will be advantageous to the entire community. (Karl Marx held a view akin to this, claiming that for at least a stage of humanity's development—namely, capitalism—the illusion of individualism was very useful since it inspired a great deal of productivity.)

Still, it is difficult to see how libertarians can avoid being also individualists. This is especially true of those who stress the need for the protection of basic human rights in the Lockean individualist position.

### **Some Policy Implications**

Libertarianism is, after all, a proposal to practice politics in a certain way, guided by a set of principles, yet it is not a rigid, deductive system of implied public policies. No functionally effective theory can be that, since the future is not fully disclosed to us and we need a system that provides flexibility. Constitutional law is based, roughly, on this insight: certain fundamental principles are accepted and supposed to remain stable and lasting, but the application of them can be novel and



unpredictable. The basic principles are taken to be stable and lasting because they pertain to human community as such, meaning that they rest on certain known features of human nature and its requirements within society. It's akin somewhat to medicine, where medical students learn the general principles of human health but when they go into the field and apply these, much diversity and novelty can be expected.

At this point I wish to present just a few more specific libertarian ideas about political life. These are still rather general ideas, as they must be within the context of a discussion of political philosophy and theory. Also, they are not presented in some order of priority. Yet they will point to more particular issues than can be discussed when fundamental principles are the focus.

### **Government Regulations**

Libertarianism rejects the justice of government regulations of business or any other profession or private activity—gambling, prostitution, drug use, and commerce—on the grounds that unless a person is violating another's rights (or is demonstrably threatening to do so), no one is justified in interfering with what that person is doing. Just as in the American legal system no one may interfere with any citizen speaking his or her mind, worshiping, or publishing written works, so in a free society no one, including the government, is justified in such interference. Such interference is best described by the legal term "prior restraint"—that is, imposing burdens or restrictions on the conduct of someone who has not been convicted of having violated or threatening the violation of someone's rights. It is only rights-violating conduct—involving one person or persons taking over the sovereignty of another—that justifies restraining a person, and the rights involved would have to be negative, not positive, rights, since the latter are actually impositions of servitude on persons. But let us spend a moment on the issue of

negative versus positive rights, a subject to which I will be turning next.

Libertarianism—or those versions of the position that see the function of a legal order as the protection of individual rights—construes citizens as sovereign agents, whose self-governance or self-direction while living in communities is in need of respect and protection. Negative rights are the rights that prohibit uninvited intrusions or interference by some on others. An invited intrusion would be that performed by a surgeon or dentist; an uninvited intrusion would be that of a mugger or similar aggressor, as well as that of an official who has not obtained the consent of the citizens in whose life he or she is intruding. Negative rights are, then, borders that spell out one's sphere of jurisdiction or authority, and what belongs within one's jurisdiction includes one's life and the results of one's productive activities or freely acquired assets.

Someone's alleged positive right to health care or to the education of his or her children could only be secured if those who provide health care or education were required to provide it whether they have consented to doing so—or, alternatively, some would be required to perform productive labor the payment for which would be confiscated from them so as to pay the health or education providers. All of this is, as the late Robert Nozick observed, "on a par with forced labor," and so unjustified.<sup>19</sup> The claim that one has positive rights rests, mainly, on the belief that one comes into the world with obligations to other persons (not one's parents, who are due certain benefits for taking on the task of bringing one up). This is well put by August Comte, the father of sociology:

Everything we have belongs then to Humanity . . . Positivism never admits anything but duties, of all to all. For its social point of view cannot tolerate the notion of *right*, constantly based on individualism. We are born loaded with obligations of every kind, to our predecessors, to our successors, to our contemporaries. Later they only grow or accumulate before

we can return any service. On what human foundation then could rest the idea of right, which in reason should imply some previous efficiency? Whatever may be our efforts, the longest life well employed will never enable us to pay back but an imperceptible part of what we have received. And yet it would only be after a complete return that we should be justly authorized to require reciprocity for the new services. All human rights then are as absurd as they are immoral.<sup>20</sup>

The idea is that since we benefit from what others have done over the centuries, we now owe something to the rest of humanity in return for these benefits. But this is to assume that we have agreed to receive the benefits on the terms that require us to pay up in this way. Moreover, it assumes that there are certain select persons, officials of the government, who are authorized to extract that payment. None of this is true. We often gain benefits from others—nice looking or smelling people we walk by, the works of art others have produced, architectural wonders they have created—without its being true that we owe them anything for this. (It is a fair assumption that those who freely produced and created all of this are well rewarded for what they did in a variety of ways, not the least of which is the joy of the process itself.)

So, the attempt to justify government regulation of people's peaceful conduct on the grounds that they owe everyone something—the basis of positive rights—fails. There are other reasons some invoke to support such regulation but those do not hold up either.<sup>21</sup>

### Entitlements via Positive Rights

One of the most powerful ideas opposed to the free society is a notion political philosophers call *positive rights*, which is arguably another all-too-successful linguistic legerdemain, like that which overtook the venerable concept of "liberalism." "Liberalism" once specified a political philosophy favorable

toward individual rights and (negative) freedom. Now, in today's lingo, it means nearly the opposite: an ideology prescribing the systematic violation of liberty for the sake of redistributing wealth and otherwise engineering society. (To be sure, the new liberalism includes a subclause stipulating that people may at least enjoy the sexual, pro-choice, and other noneconomic freedoms distinctive to one's chosen "lifestyle." But even these allowances are more and more falling victim to the logic of this liberalism's command-and-control statism—as when liberals and conservatives team up to urge censorship of sexually explicit fiction.) Just as the new "liberalism" is fake liberalism, so the new "positive rights" are fake rights. In each case, the heart of a valid principle has been gutted.

Natural rights—or, as they have been un-euphoniously dubbed, "negative rights"—pertain to freedom from the unwanted interventions of others. Respect for negative rights requires merely that we abstain from pushing each other around. Positive rights, by contrast, require the opposite. Fealty to positive rights requires that we be provided with goods or services at the expense of other persons, which can only be accomplished by systematic coercion. This idea is also known as the "doctrine of entitlements." That is to say, some people are said to be entitled to that which was earned or will be or could be earned by other people.

"Positive rights" trump freedom.<sup>22</sup> According to the doctrine of positive rights, human beings by nature owe, as a matter of *enforceable obligation*, part or even all of their lives to other persons. Generosity and charity thus cannot be left to individual conscience.

If people have basic positive rights, no one is justified in refusing service to others; one may be conscripted to do so regardless of one's own choices and goals. (The class of procedural positive rights—such as the right to vote, to receive a fair trial—relates to the government's obligations to citizens *once citizens have chosen to establish or institute a government or similar legal agency for purposes of securing their basic rights*. Thus

several critiques of the libertarian idea that basic individual human rights are all negative—are misguided.<sup>23</sup> They argue, essentially, that negative rights come to nothing without the positive right to have them protected which they then dub as more fundamental than the negative rights that are to be protected. What they miss is that such positive rights, like all bona fide positive rights, are derived from the prior exercise of one's [not yet protected] negative right to establish a legal order.)

If positive rights are valid, then “negative rights” cannot be, for the two are mutually contradictory. So the question is: which of these two concepts is the more plausible, when we consider how the issue of rights arise to begin with, in the context of human nature and the requirements of survival and flourishing in a human community?

The rights Locke identified—following several centuries of political and legal thinking by theorists who had begun to identify them more or less precisely—are “negative” insofar as they require only that human beings *abstain or refrain from forcibly intruding on one another*. Their existence means that no one ought to enslave another, coerce another, deprive another of property, and that each of us may properly resist such conduct when others engage in it. Ordinary criminal law implicitly rests on such a theory of individual rights. On a commonsense basis, murder, assault, kidnapping, robbery, burglary, trespassing, and the like are all easily understood as violations of negative rights.

In the Lockean tradition, a conflict of (justified, true) rights cannot exist. There may be disputes about boundary lines, the exact historical record determining the propriety of a rights claim, and similar practical detail. But once the facts of the matter are unambiguously established, so is the specific right of the matter. The justice of that specific claim (to a parcel of land, say) is grounded in more basic, universal rights (to life and freedom), in turn justified by a correct understanding of human nature and what that implies about how we ought to live and organize ourselves in communities.

That an understanding of human nature is even possible is, among some philosophers anyway, a controversial issue. Yet skepticism here, as in other cases, stems from an unrealistic conception of what it takes to know something, to the effect that we must know everything perfectly before we can know anything at all. But if knowing something means to have the clearest, most self-consistent, most reality-grounded and most complete conceptualization possible to date (if not for all time) of what it is we supposedly know, sweeping skepticism is unjustified. We need simply admit that we will if necessary amend our knowledge if later observation and thinking warrants it, and go with what we know now. What we know now is that human beings, uniquely among the animal kingdom, survive by means of their reason (which is simultaneously a faculty of choice and hence of morality), that this moral and rational faculty does not function automatically, and that the social condition required to gain and retain the fruits of its unhindered exercise is *freedom*. If human beings are to survive and flourish in a social context, the human rights to life and liberty must be recognized and protected.

Those who sought to retain some elements of the political outlook which Locke's theory had overthrown—namely, the view that people are subjects of the head of state (do, in fact, belong to the state)—found a way to expropriate and exploit the concept of human rights to advance their reactionary position, just as they expropriated and exploited the concept of liberalism.

So much had the concept of human individual rights been perverted at its root that it came to mean not *liberty from* others but *service from* others. Who needs the right to pursue happiness when one has the right to be *made* happy (even if the thus-extracted "happiness" should render the indentured providers of it miserable).

This was a view of rights that wiped the fact of human moral agency right out of existence. Positive rights, so called, are thus nothing more than mislabeled preferences or values

that people want the government to satisfy or attain for them—of course, by force.<sup>24</sup> They are grounded in nothing that pertains to the fundamental requirements of human nature and human survival. The theorizers of such rights in fact go out of their way to ignore such requirements. Yes, people need bread, as stipulated. But they do not live by bread alone. They are not ants, that can survive on whatever crumbs fate happens to strew in their path. They need the freedom to make the bread and trade the bread.

Also, they need consistent and objective governance. But when the conceptual perversion known as positive rights becomes the guiding principle of a polity, the state cannot govern by anything like the consistent standards that emerge from the theory of negative rights. The alleged positive rights of the citizenry must clash constantly. To the extent one is conscripted to serve another, one can no longer serve one's own purposes—nor, indeed, even the purposes of many others, given the scarcity of the time and skills to which others are supposedly naturally entitled. There is no principle implicit in the doctrine of positive rights which could resolve the conflicts. But positive rights conflict most of all with our basic negative rights to life, liberty, and property.

Guided by such a doctrine, governments cannot merely protect our rights. They must positively pit some rights against other rights. Instead of simply "securing these rights," they must scrounge for some additional standard by which to tell which and whose rights should get protection. Since no such intelligible standard is available, the situation collapses into one of rule not by objective law but by subjective men—men who will decide which rights need protection and which do not, on a shifting "case-by-case basis." Perhaps the ascendant pressure group of the moment will carry the day, or perhaps the latest opinion polls. In practice, the working (Hobbesian?) principle is: "You have a right to whatever you can get away with," the same consideration governing any plain criminal.

The theories defending positive rights are just as incoherent as the practice of them must be. Positive rights have even been defended on the grounds that negative rights—of the very poor, for example—entail these positive ones.<sup>25</sup> Others argue that all rights are in fact positive insofar as they are all meaningless unless they are actively protected, and that the right to the protection of one's right to freedom is a positive right, not a negative one.<sup>26</sup>

Both views suffer fatal flaws. The first generalizes into a principle of law of an understandable but regrettable response to what amounts to a rare moral emergency case—one that becomes more and more rare the longer a society is free and so able to build its prosperity. In some rare cases, an innocent person might indeed be totally helpless and have no choice but to obtain resources by stealing them. Perhaps only filching that piece of fruit will stave off immediate starvation. But extraordinary circumstances cannot generate laws granting a permanent right to steal, not when stealing itself *means* taking by force what by right belongs to others. There is no need for a society to send the occasional Jean Valjean to prison for twenty years; he might well be forgiven the transgression. On the other hand, if the general concern for the plight of such individuals is genuine, there is no reason private charity cannot suffice to meet the need, either. Moreover, for the members of a society to engage in theft as a regular way of life can only undermine the production of wealth that everyone's survival depends upon, including that of the poorest.

Others believe that we already have positive rights to the services of the state and, thus, to the earnings of taxpayers who must pay for these services. But they fail to show that any such right to protection provision can exist *unless* there already exists the more fundamental—and “negative”—right to liberty. To gain protection for something presupposes that one has the right to act for that purpose, including the right to voluntarily combine with others for the purpose of delegating authority, forming the government, and gaining the protection.



The services of government are something people must choose to obtain, by their consent to be governed. They do not have a natural right to them prior to having freely established that institution. Indeed, for this reason the institution of taxation, which fit well those regimes that treat people as subjects who live by permission or the ruling elite or monarch, is anathema to the free society wherein even the funding of the legal order must be secured voluntarily.<sup>27</sup>

A more recent version of the positive rights case for wealth redistribution is the capabilities approach, introduced by Amartya Sen<sup>28</sup> and defended also by Martha Nussbaum.<sup>29</sup> Just as with positive freedom, the right to freedom becomes *the right to be provided by others* with various goods and services, so with the capabilities approach the burden is placed on those who have goods and services—mostly funds that can be subjected to confiscatory taxation—so as to facilitate the development of those lacking them. The idea is defended on grounds, basically, of *need*—or, to use Nussbaum’s terms, a “comprehensive concern with flourishing across all areas of life” which for her, not negligibly, also “is a better way of promoting choice than is the liberal’s narrower concern with spontaneity alone, which sometimes tolerates situations in which individuals are in other ways cut off from the fully human use of their faculties.”<sup>30</sup>

So, in order to enhance flourishing, including significant choice, Nussbaum and others seem to be willing to grant some people—the government—the power to compel other people to provide for those in need to at least whatever will secure for them the materials that satisfies such “comprehensive concern.” The need, of course, does not arise because others have done anything to the needy, thus their enforceable obligation to alleviate it is dubious. At most others ought to extend help as a matter of their generosity.<sup>31</sup>

In Nussbaum and others, however, notice the assumption that since “something ought to be done,” then “government ought to do it.” Unless one assumes there is some semantic equivalence or direct implication between these two claims, a

linking premise is needed. That this fallacious move places others into the position of subservience—even servitude—to those in such need appears to Nussbaum to be unproblematic. In a sense Nussbaum & Co. generalize globally the rationale offered for Good Samaritan laws, even though the latter pertain to emergencies (such as an injured party in need of medical attention after a car crash) and, in any case, are subject to the criticism that no one is to be put in anyone else's service against his or her will.<sup>32</sup>

The bottom line is that in all these cases it is alleged that human beings are entitled to provisions from unwilling others who have them and government officials are very much in the business of securing such entitlements. (Sen's works routinely use titles that include the concept of "freedom" but in the ambiguous sense whereby both negative and positive freedoms [!] are at issue for him and those who sympathize with his capabilities approach.)

This approach is natural to socialists who see human beings as essentially species beings. For nonsocialists, however, the defense of positive rights and the capabilities approach may be linked to the American idea—from the Declaration of Independence—that "governments are instituted" so as "to secure . . . rights." Although the rights to be secured were negative ones—to life, liberty, and the pursuit of happiness, among others—it makes sense for those who see government in the role of enabling people rather than protecting their sovereignty to introduce the idea of positive rights. These would then still require being secured by the government, although now by means of a vastly expanded administration involving wealth redistribution as a central function. The balancing between securing negative and positive rights would naturally become a central element of the political processes, issuing in repeated class-warfare-type political activism.

Because it is itself arbitrary and incoherent, the doctrine of positive rights leaves government free to be arbitrary and incoherent. As long as some people are getting resources that were

earned by somebody else, that's all that counts. One day it's aiding AIDS research that tops the to-do list; the next it's fostering the arts by splurging on PBS; the next it's curing everyone of smoking and plundering the tobacco companies. No principles, no logic, no standards of restraint tell us from day to day what one will be free to do and what one will be prohibited from doing; there is no surefire way to know. As under fascism, whatever the leaders say, goes, so long as they continue to genuflect mechanically before the altar of democracy.

If we are to reverse course, and achieve a more consistently free society, we must tear up the counterfeit standard of rights and restore a gold standard—the standard that enables us to actually pursue, and achieve, life, and happiness.

### **Against Mandated Affirmative Action**

Over the last few years the United States has required all government agencies at the federal and state levels—including firms doing business with the state and schools that are state administered—to practice affirmative action. Some claim that the phrase itself refers to a uniquely legal or public policy. It is, they claim, a term of art for this unique practice, not matched by anything apart from what government does.

Actually, the practice itself has always existed and only recently has been dubbed “affirmative action.” It amounts to people's making an energetic, vigilant effort to benefit, in trade or other activities—including admission to schools, promotion to higher ranks in fire or police departments—some special group deemed to be disadvantaged. As such affirmative action is a rather familiar practice in life, albeit not so designated until recent times.

When one hires people or goes to a shop owned or operated by someone from an actually or apparently disadvantaged group—blacks, Hispanics, Italian, Hungarian, or Polish Americans—one is often embarking upon what is the desired behavior sought via affirmative action. Similarly, when one

selects a restaurant because one believes those who own or are employed there need some extra support so as to gain a leg up in the business, one is engaging in affirmative action. The buying of works of art just to encourage artists or patronizing some store in the hope that those who run it will remain in business—even though at the moment one has no particular wish for its services or goods—counts as affirmative action as well.

Consumers and producers have for centuries embarked upon such practices. Some famous black Americans acknowledge this, as did the late Carl Rowan, a black journalist, when he told a group of students on C-Span that his “employer practiced affirmative action” when he got his first job as a reporter from a white publisher. The latter apparently decided to give Mr. Rowan a chance because he was black and he wanted blacks to gain access to journalism. This decision also paid off for the employer, given Mr. Rowan’s excellent performance on the job.

The type of official affirmative action that’s at issue in contemporary debate—for example, in connection with Proposition 209, the California referendum that went into effect a while ago, banning all preferential hiring by state agencies, whatever the motivation—has to do with government orders to select students or contractors on the basis of racial or sexual criteria not relevant for the purpose at hand. It is the government that selects the (groups of) people who are to be proper candidates for affirmative action, usually based on certain sociological and historical facts pertaining to the disadvantage many of the race or sex in question have suffered in the past and the assumed advantage accrued from such disadvantage to the dominant groups, usually Caucasians. By this means the matter of deciding who is to be the beneficiary of affirmative action and whether the practice is a good idea is taken out of the hands of those who have to carry out the policy.

Thus often those required to act affirmatively cannot claim credit for their occasional good judgment in adopting the practice since they carry it out under the threat of punishment. Of course, some might well have done the right thing anyway,

just as some volunteer for service in a war even when conscription is in force. But for others, who act because the practice is mandated by law, any credit for the deed is voided by the bureaucrats, except in so far as having a minor say through the democratic representative process is concerned. Beyond this minimal genuine affirmative action expressed during the vote for a policy or person, many of those implementing affirmative action policies carry on as ordered, leaving it indeterminate as to whether they followed their conscience or merely complied.

When it comes to government's following affirmative action policies, another distinction needs to be kept in mind. A government which is confined to its proper scope of authority is under the fiduciary duty to serve well all those under its jurisdiction. That is the spirit underlying the Fourteenth Amendment to the Constitution—no citizen's due process (i.e., what the citizen is owed) is to be neglected by the government. We ought all to be treated equally well under the law, no one is special. That is what citizenship implies.

When governments engage in affirmative action, this principle is violated.<sup>33</sup> Government conducted affirmative action is procedurally unjust. Governments must relate to people as citizens, period, not as some special group in whom a special interest is taken. That is the only way government can be just—it is why justice is depicted as blind.

Some will argue that sometimes government must provide protection to special groups when their members are the target of injustice. Blacks, therefore, may receive special treatment, as per affirmative action policies, because they are targets of unjust discrimination, something that affirmative action would redress.

However, injustice is never a matter of how groups, but only of how their members, are being treated. Any redress must, therefore, be a matter of rectifying or punishing those who committed the injustice, not members of groups whose other members have been unjust to some persons. Affirmative

action, therefore, administers collective punishment, something that is anathema to a system of justice that must respect and protect individual rights.

Let us return to private affirmative action. Even there it would be valid only in emergency, rare cases, such as those having to do with new arrivals in a country or, more generally, with people who may need a temporary break, as it were. A private company may elect to do this but is always open to criticism if the policy persists, discriminates unjustly, and undermines good business. Publicly held corporations, furthermore, could practice affirmative action only when those who own its stock have instructed management to do so. Since affirmative action, rightly understood, can only have a valid point when the details of a situation are well known—it must, in other words, amount to local policy contingent on special knowledge and circumstances—most publicly held companies would have little justification to practice it. (An exception might be if there is some disaster nearby and the company decides temporarily to lend a hand to its casualties.)

Government-conducted and dictated affirmative action is not only unjust but can become the source of serious resentment to anyone, be they racists or not. The following might help make this clear.

If one who is white were to call a black person a “nigger,” that, however insulting it is, does not justify being beaten up for it. No one should be assaulted for being insulting, period, and that goes for whatever they say.

Now, in the same vein, people’s sovereignty—their freedom, for example, to associate only with those who are willing—should not be usurped by government, even if their judgments and conduct leaves much to be desired. I may choose rotten pals, an unsuitable mate, or the wrong employee, but what I do must remain my choice, not that of others who impose their judgment against my will. (Of course, if I announce that my offer of a service or good is available to all potential purchasers, it can be legally actionable if I then impose

an unannounced standard of selection after the fact. By the standard of the “reasonable person,” it is to be expected that without full disclosure of special criteria, none will be applied.)

In any case, freedom to associate with those who are willing is a hallmark of a free society. This means freedom of association across the board, even in cases where such association is misguided by racial prejudice and where those affected forgo serious benefits as a result, ones they would enjoy were those with the prejudice acting more rationally, decently. The reason is that in associating with others—except where contracts specify otherwise or where one would violate another’s basic and derivative rights—one is making a decision as to how one will live one’s own life, be this judgment good or bad. To make a person devote his or her life—or any portion of it—to a purpose he or she rejects amounts to subjecting the person to involuntary servitude. No free society can tolerate this, even for purposes that can be quite admirable.

Law professor Richard Epstein<sup>34</sup> of the University of Chicago has argued the radical but sound thesis that even the bulk of civil rights legislation of the 1960s cannot be considered of real help to blacks and women in our society. Epstein agrees that such legislation is in violation of a fundamental principle of free societies, namely, freedom of association. Civil rights laws violate the right to freedom of association by forcing people to hire and promote folks they may not want to. By this means the spirit, if not the letter, of a vital and sound principle of the American constitutional system is assaulted. Whatever gains may have been reaped through such legal action are marred severely because of this fundamental flaw that is embodied in securing them. Indeed, all civil rights legislation is wrong that goes beyond striking down racist and sexist policies by government, ones that violate the provision of the Fourteenth Amendment prohibiting “the den[ial] to any person . . . equal protection of the laws”—so that cops and judges and government in general may not deliver services differentially to the citizens they serve.

Mandated affirmative action programs are also an insult to the people who are intended to be helped by it. Certainly blacks and women have suffered in the past from injustices, as have other groups throughout human history. To think that it is now necessary and proper to “even the scales” is wrong from several perspectives, not the least of which is that because the really guilty parties are mostly dead, one can punish only innocent people. This mirrors the practice in Ghana where a young virgin from a family is given to a priest so as to atone for the sins of some elder of that family. It is the height of injustice to punish the innocent just because the guilty are no longer around.

Accordingly, when citizens are restricted regarding who they hire or do business with, their own judgment is superseded by others and they are placed into servitude to others by such a policy. Among other things, this serves to obscure their own wrongdoing. It, furthermore, can seriously obstruct their own appreciation of the wrong they do. Indeed, policies such as mandated affirmative action encourage prejudice to linger, even if underground. For what folks will focus upon is not their own prejudicial conduct, which they might have been prompted to reflect upon by being treated as free, sovereign citizens who are in charge of their own lives, and had they been addressed as capable of changing their own free will of how they behave. Instead, they will focus upon the fact that their sovereignty has been denied, their freedom taken away, and in that regard they have a just complaint.

Affirmative action also gives the racists among us a rationalization for racism, only now their animosity toward a minority has some semblance of justification: if women and blacks support mandated affirmative action, is there not really something wrong with women and blacks? After all, they give backing to tyrannical policies of government.

It is also worth considering that mandated affirmative action may not really help those blacks and women who can use the help. Instead it is the middle-class blacks who appear to



get from this government mandate a boost in their economic or professional lot. The very people who ought to continue to make it on their own and have every chance to do so appear to get the extra, unfair advantage. Those in genuinely bad straits often are not even touched by this facade of assistance.

But while arguably nothing much of substance gets done for most blacks by affirmative action, the policy does everything to boost the self-image of racist Americans. For now they can submerge their racism within a legitimate rage. They can now hate the government for imposing on people plainly unfair, even racist, policies.

What irony! Supporters justify this program on grounds that it supposedly creates a level playing field, one that is needed after many decades of injustice inflicted upon those who are the subject of mandated affirmative action. In fact it appears instead to help exactly those who seem to have no desire for fairness and good sense about matters of gender and racial justice. These very people against whose mentality the programs were supposedly enacted now finally gain public sympathy in its wake. If one were a racist, this would be most welcome.

Another aspect of this policy is that it treats the minorities intended to be benefited as if they were inept at recovering from the damage that past injustice has inflicted upon them. Are blacks and women unable to rise from the ruins of their families? Jews, Hungarians, Poles, and millions of others throughout history had to recover without the benefit of the U.S. Congress, without allegedly remedial public policy in the way of mandated affirmative action. Arguably, this approach is only going to hamper the recovery itself, by instilling in folks the conviction that they are, after all, not quite up to handling problems the way others can. (Jim Sleeper makes this point in his *Liberal Racism*.)<sup>35</sup>

In the social realm it seems progress has been forthcoming, but it is obscured by all the hope invested in government remedies. These days, for example, being racist is not acceptable in the deep South. A while back I heard a hospital worker

in Opelika, Alabama, make a racist remark about a black colleague. When I rebuked him for it—he made the racist comment to me—he said “I am sorry, I am a racist, but I cannot help it.” His response reflected not self-righteousness but a desperate effort to seek some kind of excuse. This presupposes that the man knew very well that his racism is not something acceptable in a decent human being. Yet, I’ll bet that if this guy were to lose a promotion to an African American because of mandated affirmative action, he would feel comfortable about hating them, under the guise of hating big government. How convenient, not having to live squarely with your vile, irrational feelings, having the government help you to disguise them as anger at oppression.

If any group has very good reason for opposing affirmative action mandates by the government, it is American blacks. It is, as Shelby Steele noted on the *PBS News Hour*, a way white liberals can feel good about themselves without actually having to do much of substance.

### **Against the War on Drugs, and for Tolerance**

In an important essay in the now discontinued publication *Heterodoxy* [“Just Say Yes!” September 1996], Peter Collier dismisses the libertarian view on drug abuse by saying that its “strong appeal . . . is that it plays well with the American notion of rugged individualism and don’t tread on me.” After this dismissive, anti-intellectual characterization of the position’s “appeal” (never mind the merits of the arguments behind it), Collier goes on to say that “its defect is that it nowhere acknowledges the enormous destructive power of psychoactive substances and their ability to cause the disintegration of individual personalities, families and communities, and the fact that it is based on the questionable assumption that individuals will act less anti-socially when drugs are legal and guilt free than they do now when they are illegal and stigmatized.”

As a libertarian who has often advocated drug legalization, I know that Mr. Collier has got it wrong.<sup>36</sup> Most libertarians fully acknowledge all of what Mr. Collier claims they do not. Most of them do not predict with any measure of certainty that people “will act less anti-socially when drugs are legal,” etc. What they claim is that people ought to and will be able to act less antisocially and will no longer act criminally as drug users, in light of the decriminalization of drug abuse.

Most of all, libertarians claim that it is morally wrong and bad public policy to punish people who violate no one’s rights and who already punish themselves by abusing drugs. They argue that the mere fact that some vices are far more tempting, far more difficult to resist, than others does not justify the paternalistic actions of the state against those who lack the strength of will and character to resist. They defend legalization on the grounds of principles such as the right to one’s life, one’s liberty of conviction and action, and the right to one’s private property, all of which are relentlessly abrogated by the drug war that Mr. Collier’s statist approach to the problem supports. They add that allowing the state to intrude upon innocent citizens for this reason more or less opens the door for it to intrude for any other—as William Pitt the Younger noted, “Necessity is the plea for every infringement of human freedom. It is the argument of tyrants; it is the creed of slaves” (speech on the India Bill, November 1783).

Libertarians—albeit summoning somewhat different arguments for their conclusion (as it is to be expected from a diverse *and* individualist lot)—not only find the drug war, as well as all the drug, alcohol, and related prohibitions, be it in America or anywhere around the world, not only a sustained, unremitting violation of individual rights but a demoralizing approach to helping people who find it very tough to deal with drugs. They consider it a social calamity when governments posture as Florence Nightingales, thereby displacing the much more promising avenue of rescue via the work potentially available from local communities—families, friends,

professional associations, religious groups, etc., all of which are better positioned to address drug-related problems than is any level of government.

## Conclusion

Libertarianism rests on numerous ideas drawn from various disciplines, and none of those could be fully explored here. The thrust of the position should by now be plain enough: Individuals are responsible to live their lives properly and ethically, and this requires that they be able to choose how to act. Further, within their communities they require a sphere of personal authority or jurisdiction, which is best secured via a well-protected set of basic rights, including the right to private property. Individuals have the right to pursue their happiness by forming special communities, provided all members choose to be part of them and everyone enjoys what the economists so quaintly call “the exit option.” It is the role in their general communities—in the polity—of the legal order or government to secure their rights, and for this the people entrusted with that role must strictly abide by due process, which is to say, eschew the violation of rights as they secure rights themselves.<sup>37</sup>

Some have charged that libertarianism is utopian and for that reason alone a bad idea. Libertarianism is, of course, the consistent, uncompromising development of certain notions we are all familiar with—for example, the barring of physical force from human relations, the requirement that even as we retaliate against or fend off coercive physical force, we need to act with restraint, or that one of the differences between human and other living beings is that the former can, if they act with discipline and perseverance, exclude brute force from their community lives (that is, they can be *civilized*).

As such, libertarianism is demanding, because it has no tolerance for anyone’s, including government’s, coercive meddling for any purposes whatever. Government—which is

to say, certain other people—is not to be our daddy, nanny, or uncle; it is to be our civilized bodyguard.

The reasoning behind these ideas is not simple, but it includes one crucial fact that immediately refutes the claim that libertarianism is utopian. That is that human beings are in fact incapable of being forced to be morally good. It is up to them whether they will, or whether they will fail in that all-important task. We have free will, and we ought to excel at being human individuals, but there is no formula by which that goal can be guaranteed. Indeed, one reason government must be limited is that it wields a very dangerous weapon, namely, physical force, a weapon that may only be used by people who know their limits clearly and well; otherwise those in government, who are just like us, become despotic, tyrannical.

Utopia, in contrast, is a form of society wherein morality is guaranteed, where everyone is going to do what is right and be happy and fulfilled. Shangri-La is a good example, as were Sir Thomas More's *Utopia* and Karl Marx's communism. In those proposed societies the objective is to secure for everyone, by means of political organization and action, perfect fulfillment. (That is why Marx could envision the withering away of government itself, since once utopia has been reached there will be no need for law enforcement—all of us will be law abiding, automatically.)

It is clear from just this brief contrast between libertarianism and utopianism that the two are opposites. No, libertarianism is not dystopian—not, that is, based on the view that social life must turn out terribly. It is entirely noncommittal about how good people will turn out to be, with the one provision: when people are free and their rights are protected, the chances that they will be good and decent are better than if they can dump their mistakes on their fellows with impunity (as they can, for example, in the welfare state that we live in now).

There is no doubt, of course, that libertarianism is demanding. But all standards are demanding—they require of us to do our best, according to certain terms. However, libertarianism

recognizes that doing our realistic best requires freedom and also runs the risk that we will fail. So there can be no guarantees as far as the libertarian is concerned when it comes to how good people will be once they are free. They are, however, more likely to be better than they are when they are oppressed, regimented, and ordered about in their daily lives.

The bulk of the challenges of human life, in all realms, should be tackled without aid of coercive force, something that critics of libertarianism seem to reject. Once the legal order secures everyone's rights—or does as well as possible at this task—it needs to withdraw and leave free men and women to meet the nonpolitical challenges they face. That is the crux of libertarianism.<sup>38</sup>

## Notes

1. There are different routes to libertarian political conclusions, and in this discussion I will be sketching one within the normative natural law and rights tradition, not a consequentialist, utilitarian, or positivist one. It is my view that the widely championed consequentialist approach, which appears to reject principles in favor of expected utilities—so that, for example, a regime of liberty is just because it maximizes value—has serious problems, since the value of consequences cannot be assessed without principles as standards for evaluating them. There is also the non-consequentialist assumption in most versions of consequentialism that the results of policies can be correctly estimated before they occur. Yet that is just what the more principled approach to politics—and libertarianism in particular—contends. For more, see Tibor R. Machan, *The Passion for Liberty* (Lanham, Md.: Rowman & Littlefield, 2003), chap. 3, "Against Utilitarianism: Why Not Violate Rights If It Would Do Good?"

2. For a defense of this, see Tibor R. Machan, ed., *Individual Rights Reconsidered: Are the Truths of the U.S. Declaration of Independence Lasting?* (Stanford Calif.: Hoover Institution, 2001), especially Ronald Hamowy, chap. 1, "The Declaration of Independence." This, of course, is a mere historical fact, not any argument for the stance itself.

3. G. A. Cohen's complaint that disadvantaged workers are forced to work, therefore, is no argument against a capitalist, free market system. Life forces nearly everyone to work. See his "Are Disadvantaged Workers Who

Take Hazardous Jobs Forced to Take Hazardous Jobs?" in *Moral Rights in the Workplace*, ed. Gertrude Ezorsky, 61–80 (Albany: State University of New York Press, 1987). For a discussion of a libertarian view of labor, see Tibor R. Machan, "Rights and Myths at the Workplace," in *Moral Rights in the Workplace*, 45–50, and James E. Chesher, "Employment and Ethics," in *Commerce and Morality*, ed. Tibor R. Machan, 77–93 (Lanham, Md.: Rowman & Littlefield, 1988).

4. For more on this, see Tibor R. Machan, *Generosity: Virtue in Civil Society* (Washington, D.C.: Cato Institute, 1998), chap. 6, "Generosity via Government."

5. For a detailed discussion of this issue, see Tibor R. Machan, "Anarchism and Minarchism, A Rapprochement," *Journal des Economistes et des Etudes Humaines* 14 (December 2002): 569–88. See also Aeon Skoble, *Freedom, Authority, and Social Order* (Chicago: Open Court, 2005).

6. Available at [www.usdreams.com/LincolnW7.html](http://www.usdreams.com/LincolnW7.html).

7. Charles Taylor, *Philosophy and the Human Sciences* (Cambridge, U.K.: Cambridge University Press, 1985), 188. For more on this, see Tibor R. Machan, "Libertarian Justice," in *Social and Political Philosophy: Contemporary Perspectives*, ed. James P. Sterba, 93–114 (London, U.K.: Routledge, 2001). An important element of rights theory is identified in Douglas B. Rasmussen and Douglas J. Den Uyl, *Liberty and Nature* (Chicago, Ill: Open Court, 1990). The authors understand rights to be *meta-norms*, meaning these are principles of the societal *framework* within which action-guiding ethical or moral principles may be followed or neglected. A society with basic Lockean rights is one that secures for everyone the opportunity to be a moral agent.

8. See, for a libertarian interpretation of "general welfare," [www.house.gov/science/taylor\\_4-9.html](http://www.house.gov/science/taylor_4-9.html).

9. I have argued, in "America's Founding Principles and Multiculturalism," chapter 6 of my book *Classical Individualism* (London: Routledge, 1998), that in comparison to other political systems, the relatively libertarian polity of the United States accommodates the requirements of multiculturalism better than do others wherein conformity to common practices is stressed far more than is diversity and, especially, individuality.

10. Libertarians tend, in the main, to oppose wars of liberation or national building, not because it is wrong to help with such efforts abroad but a country's military already has a job, namely, to secure and defend the rights of the citizens there.

11. Available at [www.adherents.com/](http://www.adherents.com/).

12. Equality is, of course, a core value in libertarianism, only it is the equality of respecting the rights of individuals—all of them—rather than the equality of sharing benefits and burdens available in society. This latter type of equality, perhaps better dubbed "fairness," is supported from

various perspectives, but the crucial public policy implication of it concerns regimenting people's lives whenever benefits and burdens are not shared equally. That, as Robert Nozick demonstrated in his famous Wilt Chamberlain case, would require massive inequality of power and be not only intolerably coercive but self-defeating as well. See Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), 161–63.

13. A comparable approach is deployed by Martha Nussbaum, "Human Functioning and Social Justice: In Defense of Aristotelian Essentialism," *Political Theory* 20 (1992): 202–46, albeit with different substantive results for political theory—to wit, a robust welfare state and global wealth redistribution. Nussbaum, along with Amartya Sen, defends the view that human nature can be known from our historical encounters with human beings, but what our knowledge of it suggests is that social justice must involve a mainly egalitarian wealth-redistribution policy so as to enable everyone to flourish. The libertarian insistence on the vital importance of individual moral choice and responsibility is missing from her politics.

14. I draw on David L. Norton, *Personal Destinies, A Philosophy of Ethical Individualism* (Princeton, N.J.: Princeton University Press, 1976), and my own *Classical Individualism: The Supreme Importance of Each Human Being* (London: Routledge, 1998) for this distinction.

15. J. D. P. Bolton, *Glory, Jest and Riddle: A Study of the Growth of Individualism from Homer to Christianity* (New York: Barnes and Noble, 1973).

16. Karl Marx, "Critical Remarks on the Article: 'The King of Prussia and Social Reform,'" in *Selected Writings*, ed. David McClellan (Oxford, U.K.: Oxford University Press, 1977), 126.

17. For more on this, see Ludwig von Mises, *Economic Calculation in the Socialist Commonwealth* (Auburn, Ala.: Ludwig Von Mises Institute, 1990).

18. For more on this, see Tibor R. Machan, *Putting Humans First: Why We Are Nature's Favorite* (Lanham, Md.: Rowman & Littlefield, 2004).

19. Nozick, *Anarchy, State, and Utopia*, 169.

20. August Comte, *The Catechism of Positive Religion* (Clifton, N.J.: Augustus M. Kelley, 1973), 212–13.

21. See Tibor R. Machan and James E. Chesher, *A Primer on Business Ethics* (Lanham, Md.: Rowman & Littlefield, 2003), chap. 16–26; see also Tibor R. Machan, *Private Rights and Public Illusions* (New Brunswick, N.J.: Transaction Books, 1995) and Tibor R. Machan, "Government Regulation vs. the Free Society," *Business and Professional Ethics Journal* 22 (2003): 77–83.

22. Not, of course, in every sense of that term. "Freedom" can mean just what positive rights secure for someone, as made clear in the discussion in note 9. Consider, for example, the following: "No, life is always a struggle for freedom. Whenever I sign a cheque for some idiot company or other, I feel a little like a man in an electric chair or in a hospital bed, streaming with



wires and connections and linkages." James Wood, *The Book against God* (New York: Farrar, Straus and Giroux, 2003), where the first person protagonist consider himself to be free if he can escape the bonds of obligation he himself has incurred and that others, in turn, are made to assume.

23. In recent times the doctrine has been reshaped by such philosophers as Ronald Dworkin, James P. Sterba, Henry Shue, and legal scholars like Stephen Holmes and Cass R. Sunstein. Shue's *Basic Rights* (Princeton, N.J.: Princeton University Press, 1983) goes so far as to argue that no negative rights exist at all, since in any realistic sense rights are meaningless unless given protection, which is a positive service from others. But Shue forgets that the libertarian establishes secondary, derivative positive rights without contradicting himself, via compact and contract. Holmes and Sunstein, who echo Shue twenty-one years later, also fail to appreciate the idea that protecting rights via government and law requires consent. As the Declaration of Independence puts it so succinctly, governments derive "their just powers from the consent of the governed."

24. For a full exposition of the positive rights doctrine as developed by theorists of the political left, see Tom Campbell, *The Left and Rights* (London and Boston: Routledge, 1983).

25. See, Sterba, note 7 above.

26. See, e.g., Shue, note 23 above.

27. For a more detailed discussion of this issue, including viable alternatives to taxation, see Tibor R. Machan, "Dissolving the Problem of Public Goods: Financing Government without Coercive Measures," 28, in *The Libertarian Reader*, ed. T. R. Machan (Lanham, Md.: Rowman & Littlefield, 1982).

28. Amartya Sen, "Markets and Freedoms: Achievements and Limitations of the Market Mechanism in Promoting Individual Freedoms," *Oxford Economic Papers* 45 (1995): 519–41. See, on the recently launched capabilities approach project, the explanation provided at: [www.fas.harvard.edu/~freedoms/capability\\_defined.html](http://www.fas.harvard.edu/~freedoms/capability_defined.html).

29. Nussbaum, "Human Functioning." A similar conception of human rights to welfare or empowerment is defended by Alan Gewirth, *Reason and Morality* (Chicago: University of Chicago Press, 1978). For libertarian critiques of Gewirth's political views, see Eric Mack, "Deontology, Negative Causation, and the Duty to Rescue," and Douglas J. Den Uyl and Tibor R. Machan, "Gewirth and the Supportive State," in *Gewirth's Ethical Rationalism*, ed. Ed Regis, Jr. (Chicago: University of Chicago Press, 1984).

30. Nussbaum, "Human Functioning," 225–26. Another contemporary theorist who advances an argument along similar lines is Jürgen Habermas, *The Inclusion of the Other: Studies in Political Theory*, eds. Ciaran Cronin and Pablo De Greif (Cambridge, Mass.: MIT Press, 1998), whose conception of a just society based on discursive democracy involves various prerequisites

that will enable the citizenry to be able to take part in the discussion of public policy. Of course, the discussion then focuses on incidentals, since the important issue of whether such provisions must be made is already settled before the discussion gets under way. For more on this, see Tibor R. Machan, "Individualism and Political Dialogue," in *Classical Individualism* (London: Routledge, 1998), chap. 13.

31. See Machan, *Generosity, Virtue*.

32. One standard justification for Good Samaritan laws is that they apply to professionals, such as doctors, who have gone on record offering their services to those in dire medical need, that the law merely spells out the occasion when that offer must be delivered. Still, even this rationale has problems, as shown in Mack, "Deontologism."

33. That is one reason the California law enacted by Proposition 209 makes good sense, though its substance should never have required a referendum.

34. Richard Epstein, *Forbidden Grounds* (Cambridge, Mass.: Harvard University Press, 1992).

35. Jim Sleeper, *Liberal Racism* (New York: Viking, 1997).

36. See, for example, Tibor R. Machan and Mark Thornton, "The Re-Legalization of Drugs," *Freeman* 41, no. 4 (April 1991): 153–55.

37. This is not the whole story or the whole problem with critics of the libertarian stance. In any case, those who wish to explore the various libertarian approaches to the problem of drug abuse—including the failed policies of the federal and local governments on this problem—can begin by checking the bibliography of (and reading) Mark Thornton's essay, "The Repeal of Prohibition," in *Liberty for the 21st Century*, eds. T. R. Machan and D. B. Rasmussen (Lanham, Md.: Rowman & Littlefield, 1995).

38. For a somewhat longer outline of libertarianism, see Tibor R. Machan, *The Liberty Option* (London: Imprint Academic, 2003). For a good selection of varied libertarian ideas, see Tibor R. Machan, ed., *The Libertarian Alternative* (Chicago: Nelson-Hall, 1974); Machan, *The Libertarian Reader*; and David Boaz, ed. *The Libertarian Reader* (New York: Free Press, 1997).

## 2

# The Errors of Libertarianism

Craig Duncan

As a political philosophy, libertarianism has a certain seductive allure. Who among us, after all, enjoys paying taxes or likes having his or her actions constrained by laws? Our aversion to these things makes it tempting to think, like libertarians, that taxes and laws either should not exist or should exist only in forms radically reduced from their present levels. Despite its somewhat seductive allure at the abstract level, however, we have good reason to reject libertarianism. In arguing against it, I will make four major objections to it: the “Unanchored Property Objection,” the “Inadequate Defense of Dignity Objection,” the “Dilemma of Consent Objection,” and the “Insufficiency of Charity Objection.” To these objections I now turn.<sup>1</sup>

### 1. The Unanchored Property Objection

Interestingly, Professor Machan’s libertarianism and my democratic liberalism (which I defend in chapter 4) share something in common at the level of foundations: they both purport to be grounded in respect for human beings’ distinctive capacity for choice. Despite sharing a common foundation at the

most abstract level, however, Machan and I differ very significantly in our concrete interpretations of the moral ideal of respect for the human capacity of choice. For instance, according to Machan this ideal entails that individuals have an absolute moral property right to all the money or goods they receive via market exchanges, whereas on my view the ideal instead entails that legal rights to property should be defined in a way that ensures all individuals have fair access to a life of dignity. Exploring this difference will reveal a large gap in the argument for libertarian property rights.

According to Machan, taxation is a form of theft (p. 26). This claim of Machan's has to be understood with care, however. As the law stands, you do not have legal title to all the pre-tax money that others pay to you in form of wages, salaries, sales, etc. You only have legal title to your after-tax earnings. Thus libertarians like Machan must concede there is no illegal crime of stealing involved with taxation. Instead, Machan must argue that taxation is the *moral equivalent* of stealing. Hence he must argue that people have a moral right to keep and control all their earnings—that is to say, a right that exists independently of any government-created laws or other conventions, much like the human rights not to be murdered, tortured, enslaved, and so on.

Several fatal problems beset this view of moral rights to property. An analogy will help make these flaws vivid. Suppose Annie is an antiques dealer who sells her wares from a small stall housed in a large building containing an antiques market, with many other dealers selling their wares at similar stalls. The building's owner, suppose, charges vendors a percentage of their sales intake—say, 20 percent—as payment for the opportunity to sell from one of the building's stalls. If Annie's earnings in sales for a given month were \$2,400, then although that amount of money is in her possession, it is not hers, if by "hers" is meant legal ownership; \$480 of those dollars in fact legally belong to the building's owner. The owner is not stealing her money when he demands this sum from

her. Suppose that Annie recognizes this but goes on to protest that the antique mall owner's commission charge violates her moral right to keep all of her sales earnings. The obvious reply to Annie's charge is that but for the market owner's initiative and effort—in constructing the building and the stalls, in maintaining it, in securing it, in advertising its existence, and so on—Annie would not have had the opportunity to acquire any sales earnings in the first place. This makes it churlish at best and exploitative at worst for her to insist that she has a moral right to every penny of her sales.

Something similar is true of government taxes; after all, the existence of our economic opportunity is highly dependent on the government's activities of enforcing contracts, protecting legal property rights, keeping the peace, maintaining the national defense, printing currency, insuring bank deposits, preventing monopolies, fighting inflation, negotiating trade agreements, maintaining transportation infrastructure, and so on.<sup>2</sup> As in the case of Annie the antiques vendor, then, to insist that one has a moral right to all of one's income earnings is to ignore the efforts of one's fellow citizens who work in government or who as taxpayers contribute to the support of the government.<sup>3</sup> "Sure, without my fellow citizens' work I wouldn't have been able to earn the money I did," the libertarian seems to say, "but that doesn't mean I owe my fellow citizens anything for their work." The exploitative nature of this is obvious; this surely means that in fact one has no moral right to *all* of one's pre-tax earnings. A moral right to commit the moral wrong of exploiting one's fellow citizens would, after all, be a strange moral right indeed.<sup>4</sup>

Importantly, this skeptical conclusion certainly does not mean that taxation is always immune to moral criticism. There can be schemes of taxation that are tilted too heavily against low-income earners, or schemes that are tilted too heavily against high-income earners, so that the taxes levied are justifiably judged unfair. The guiding ideal in judging this question of fairness is one of *reciprocity*: there should be at least

some rough balance between the benefits one gains and the burdens one shoulders in contributing to society. (For more details on this ideal of reciprocity, see my essay in chapter 4.) This potential sort of moral criticism of tax schemes, however, is off limits to libertarians like Machan, for according to him it is wrong for ideals of fairness to shape laws and public policy; laws and public policy must be confined purely to defending individuals' rights. (In the following section, I will in fact argue that individuals have rights to fair treatment, but in this section I will not pursue this line of thought.) Hence Machan's need to object (implausibly) to taxes on the grounds that they violate an absolute moral property right to all of one's pre-tax earnings, rather than on grounds of fairness.

There is another important objection to Machan's claim that one has a moral property right to every penny of one's pre-tax earnings. This is that Machan's claim does not follow from the foundation he provides for it. In fact Machan devotes scant attention to the task of justifying property rights—much less attention than this task warrants, given the importance of property rights to libertarianism. What argument there is apparently comes with the following sentence: "The right to private property, via property law in developed communities, secures for everyone a sphere of personal jurisdiction so it can be determined when one is acting within one's own sphere or intrudes on the spheres of others" (p. 13; cf. p. 38).

The problem is that legal property rights of the sort we already have in the United States—rights that legally allow for taxation—suffice to define adequately each individual's sphere of personal jurisdiction. One does not need rights to every penny of one's pre-tax earnings in order simply to define these spheres. How many of us, after all, currently have our lives blighted by uncertainty as to whether the actions we take with our possessions are legal or illegal?<sup>5</sup>

I presume Machan's actual thought is that maximal property rights are necessary to create a maximal sphere of personal jurisdiction—a maximal sphere of *liberty*, in a word. It is

fallacious, however, to think that maximal property rights lead to maximal liberty, even when the liberty in question is negative liberty. To see this, consider that if, say, Susan owns a field, then although *she* has negative liberty to use the field, as a result of her ownership *other people* lack the negative liberty to use this field except by her permission; unauthorized users of it will find themselves on the wrong side of the law.<sup>6</sup> This can all be quite proper; I agree that there should indeed be some sort of legal property rights to personal belongings available to citizens. My point is just that libertarian property rights are not straightforwardly entailed by the value of negative liberty. This fact is easiest to appreciate if one imagines that the libertarians' wishes are granted and everything that can be privatized is, so that all roads are privately owned toll roads, all parks are privately owned admission-charging parks, all libraries are run like Blockbuster Video stores, and so on. In such a scenario, a poor person who could not afford road tolls, admission charges, and the like, might have no negative liberty to go anywhere whatsoever.

There is yet another well-known problem facing any account of a moral right to property, commonly known as the problem of "initial acquisition." Machan's proposed moral right to property is, after all, a right to keep whatever items come one's way through voluntary exchanges. But what are these voluntary exchanges? They are voluntary exchanges of *property*, of course. Thus the moral value of voluntary exchange presupposes the existence of property rights of some form; one cannot derive such rights from this moral value alone. Consider an example: I give you fifty dollars, say, in voluntary exchange for your jacket. In order for this to be a permissible exchange, I must already own the fifty dollars, and you must already own the jacket. Also, of course I acquired my fifty dollars and you acquired your jacket via earlier voluntary exchanges of things we previously owned, and so forth and so on back into time. But how did the whole process get going? There must have once been a point where some unowned

resource—a parcel of land, say—came to be owned by someone, in an act of initial acquisition. But how should this acquisition have happened ideally? Through some process of “finders keepers,” or something else? Machan does not say.

I conclude, then, that Machan has supplied no foundation in which to anchor the incredibly strong moral rights to property that lie at the heart of his libertarianism.<sup>7</sup>

## 2. The Inadequate Defense of Dignity Objection

We have seen that both Machan’s libertarianism and my democratic liberalism purport to be grounded in an ideal of respect for the distinctive human capacity for choice—that is, an ideal of respect for the distinctive dignity of humans. We have already seen, however, one important difference of interpretation regarding this idea, a difference concerning property rights. In this section I will examine another difference in interpretation, one concerning the legitimate uses of force in defense of others’ dignity.

According to libertarianism, force can be legitimately used in only a few types of situations.<sup>8</sup> The kernel of truth in libertarianism’s hostility to force is that there is indeed a strong moral presumption against force, inasmuch as subjecting others to force bypasses their valuable capacity for choice. On Machan’s extreme interpretation of this truth, we can apparently override this presumption and permissibly use force only in two cases: when the person subjected to force has himself or herself earlier authorized the use of force (by consenting to a legally binding contract, say) and when the person himself or herself fails to respect another person’s dignity by intentionally using physical force to interfere with the other person’s choices, as is the case with murder, assault, and theft. By contrast, my theory allows the use of force in additional cases. This is so because a person can fail to respect another’s dignity in more ways than just the single way of intentionally using physical force to interfere with the other’s choices.



These other ways are possible because there is after all such a thing as *economic power* over others.<sup>9</sup> The power to hire a person (or not) is obviously a significant form of power. Additionally, being fired from one's job can be a serious disruption to one's life. A failure to be promoted as expected can also seriously disrupt one's plans. Thus people with the ability to hire, fire, and promote other people (or not) have a significant sort of power. This is inevitable, so long as firings and refusals to hire or promote people are possible, as they should be in some fashion. But as with political power (the abuse of which libertarians are so fond of noting) this private economic power can be abused: on a societal level, economic discrimination against minorities can be used to maintain a castelike system of social stratification; on an individual level, employees can (among other things) be threatened with job loss or lack of promotion unless they dispense sexual favors, perform unreasonably dangerous tasks, work an insane number of hours, or do other humiliating things they would never do but for their employer's power over them.

Fortunately, the state's power can be used to make these private forms of power more accountable, by (among other things) enabling some form of sexual harassment suits; enabling the formation of employee organizations (e.g., unions); and by passing anti-discrimination laws, health and safety laws, minimum-wage laws, and mandatory overtime-pay laws. The abuses of economic power listed above are abuses in virtue of being acts of exploitation, which we can define as taking unfair advantage of a person's vulnerabilities. More specifically, exploitative exchanges are not appropriately reciprocal; in them, one party is treated more as an instrument for another's private gain, rather than as a person in his or her own right. In this way the exploited party's dignity as a person is insulted. The same is true of unfair treatment generally—the recipient of unfair treatment is not treated as a person whose worth is equal to others. Unfairness is a threat to dignity.

In short, there are other serious sorts of threats to human dignity beyond the threat of intentional, forcible, physical

interferences with other people's choices. If the importance of dignity grounds rights against *this* threat to one's dignity, as libertarians believe, then surely it also grounds rights against other threats to dignity. Such rights include a right to fair access to economic opportunity, a right to fair access to personal security (for one's body and property), a right to fair access to political influence, and a right to fair access to criminal justice (that is, a right to a fair trial).

We should now ask whether these rights are "positive rights," as Machan understands them. A simple answer of yes or no is not possible here; these "fairness rights" are like Machan's idea of positive rights in some respects, and unlike them in others. Fairness rights are like Machan's idea of positive rights in that their observance will require positive efforts from others, rather than merely the sort of forbearance shown in refraining from murder, assault, and theft. This is so because (as I say in chapter 4) like most other good things in life, fairness is not free of charge. Fairness does not spontaneously occur, like the beauty of a sunset. Fair access to political influence will require the funding of voting booths, ballot printing, tallying machines and workers to operate them; a right to fair trial will require the funding of highly trained judges, stenographers, and public defenders for indigent defendants, not to mention courthouses, law books, and the like. Fair access to economic opportunity will require some system of publicly funded education so that ignorance does not radically reduce the opportunities open to children of poor or negligent parents. Fair access to personal security will require some public protective system of police, prisons, and armed forces. The rather horrifying alternative of private protective associations (private, for-profit police forces, which one hires on one's behalf) would at best lead to a situation in which the wealthy have superb protection and the poor have meager protection or none at all—a security analogue of the current health care situation in the United States.<sup>10</sup>

Thus fairness rights are like Machan's idea of positive rights in that their observance costs something. However, they

are unlike Machan's idea of positive rights in other regards. First, they are not a "right to be made happy," as Machan says (p. 24). Instead they are *access* rights. A right to a fair trial, for instance, does not guarantee you will be found innocent. A right to fair access to economic opportunity does not guarantee you will be happy; you must make yourself happy by working to make use of your opportunities. A right to a fair vote does not guarantee your favorite candidate will win—and so on. Second, fairness rights are not necessarily rights against everyone in the world. Instead they are first and foremost rights against the institutions that possess power over you; that is, they are rights to fair treatment at the hands of these institutions, and thus they are rights against all those participants who have the power to shape these institutions. For example, the right to fair access to economic opportunity is most fundamentally a right against your government, insofar as its laws create and sustain the economic system that prevails in your country. Inasmuch as our government is a democracy, moreover, the right to fair access to economic opportunity is a right against your fellow citizens, who have power to influence the government. Note, however, that correlative with this right there is also a duty. As an economic participant, we might say, you have a moral right that the economic system into which you were born ensure you fair access to economic opportunity, but as a citizen you have a moral duty to do your fair share of the work needed to support a fair economic system. Thus these are not rights to get anything for free.<sup>11</sup>

In short, Machan's objections that positive rights are rights to be made happy, or to get something for free, do not work against the fairness rights that I have defended. One other objection Machan makes is that positive rights conflict with negative rights. "If positive rights are valid," he says on page 23, "then 'negative rights' cannot be, for the two are mutually contradictory." This is mysterious. The rights to a fair trial, to fair access to economic opportunity, and so on, certainly do not

stand in contradiction to one's negative rights against murder, assault, censorship, religious persecution, and so on. A state can define and protect all these rights simultaneously. To be sure, inasmuch as respecting positive rights requires economic contributions from many people, positive rights do conflict with one alleged negative right, namely, a property right to all of one's pre-tax earnings. As I have argued in section 1, however, it is implausible to suppose that this alleged negative right exists.

Finally, it is likely that Machan would make yet another objection, namely, that it is a mistake to see these rights (as I do) as fundamental, pre-legal rights. Instead, says Machan (p. 22), these rights, when they exist, are established contractually, by citizens consenting to a government. If by this he means that the rights to a fair trial, to an equal vote, etc., exist only in the case where citizens have created a government that legally recognizes these rights, then I disagree. Fairness rights exist whenever relations of power exist. Since government is a power-wielding institution, we can and should judge its laws by asking whether they respect citizens' fairness rights. The problem with Machan's alternative, consent-based view will be explored in the next section.

### 3. The Dilemma of Consent Objection

Machan places himself in a tradition dating back to John Locke by insisting that in order to be legitimate a government must obtain the consent—even if only the tacit consent—of all the citizens under its authority.<sup>12</sup> Unfortunately Machan's failure to provide much detail regarding the nature of tacit consent leaves his position open to several important objections. First, what counts as tacit consent to a government's authority? Does mere residence in a country suffice, as Locke believed?<sup>13</sup> If this is Machan's view, it is unconvincing. As the eighteenth-century philosopher David Hume pointed out in criticism of Locke, the burdens of exiting one's society and set-

ting in a new one are high enough to make exit an intolerable or nonexistent option for most people. There is the cost of moving to and resettling in a foreign country, in addition to the burdens of adjusting to a new culture and possibly a new language.<sup>14</sup> One may have moral duties (e.g., caring for elderly parents) that tie one to a specific locale. Finally, and most decisively, one simply may not be able to find another country that will legally let one in. For the majority of people, then, remaining in the society of their birth is not a choice in any significant sense, and thus their residence cannot plausibly be construed as an act of tacit consent to society's authority.

Even if Machan were somehow able successfully to rebut this objection, it is not clear to me that a "residence = tacit consent" claim genuinely supports his position. For, of course, Machan wants to limit sharply government's authority, but an undemanding account of tacit consent threatens to legitimate all manner of activities that he regards as illegitimate. For example, the Swedish government, with its heavily regulated economy and its high levels of redistributive taxation, is antithetical in most ways to libertarianism. But if simply remaining in Sweden counts as tacitly consenting to the government there, then Machan must concede there is nothing illegitimate about Sweden's decidedly non-libertarian government.

Alternatively, Machan can opt for a more demanding version of tacit consent. There are problems, however, with this option. If residence does not suffice for tacit consent, there will surely be individuals living within a country's borders who do not consent to the government there. Maybe they want no government at all, or a more socialist government, a more libertarian government, a more religious government, or whatever. Will such individuals be permitted to stay in society but be exempt from its laws? This would destroy the rule of law. Instead, will such individuals be told to secede and convert what land they own into their own sovereign nation? This will not do either. A choice of "either consent or secede," like the choice of "consent or move abroad," is an empty one for most

people; rejecting the unrealistic option of secession hardly suffices for tacit consent. Moreover, even when someone *is* willing to convert his land into a separate nation, it is foolish to permit this. Swiss cheese-style secession is undoubtedly a recipe for eventual societal breakdown and its attendant dangers.

Hence, making government's authority contingent on all of its citizens' consent runs into problems no matter how one understands consent. The best response to this dilemma is simply to concede that political society, owing to its territorial nature, is unlike other associations to which one might belong; one is simply born into it, rather than voluntarily deciding to join. It would be nice if it were otherwise, but realistically we must concede it is not. From this observation, one can proceed in two directions: like anarchists, one can claim that all governments are thereby illegitimate; alternatively, one can argue that the benefits of (some forms of) government are so substantial that government is legitimate, despite the fact that not all citizens consent to it. The second direction is surely the right one.

This has important implications for the fairness rights discussed in the previous section. Since society and its laws cannot be founded on the consent of all of its members, we have to settle for the next best thing to a consensual society, by creating a society (a democracy) the basic structure of which has the consent of the majority of its members and *deserves* the consent of all of its members. That is to say, we should create a society the basic structure of which we can reasonably ask all others to accept, even though we can predict that some unreasonable citizens will not in fact accept it. (For further discussion of this idea, see chapter 4, section 3). Since we cannot reasonably expect citizens to accept institutions that treat them in fundamentally unfair ways, this means that when governments exist at all, they must create laws that respect citizens' fairness rights.

Of course, this will hardly settle the matter as far as Machan is concerned. "Even if Duncan is right that there exist fairness rights," he might say, "it is up to citizens voluntarily to protect them, by voluntarily funding a legal system that gives

citizens a fair trial, by voluntarily funding an education system that gives citizens a fair start in life, and so on.” Indeed, on Machan’s extreme view, even his own favored libertarian rights to security of person and property can legitimately be protected only by a police force that is funded in a voluntary fashion, rather than by tax revenues. So we must ask: Why not leave the funding of rights-protecting institutions to charity, rather than taxes? This is the subject of the following section.

#### 4. The Insufficiency of Charity Objection

According to Machan, all taxation is “on par with forced labor” (p. 20, quoting Robert Nozick), on a par with conscription (pp. 12, 25, and 31), or on a par with indentured servitude (pp. 24, 28, 33). A government escapes these evils only by renouncing taxation altogether and opting for a voluntary system of funding. This view, however, suffers from several severe flaws. For starters, note the numerous and obvious disanalogies between taxation and forced labor, which make any serious assimilation of the two little more than overheated rhetoric. Under a scheme of taxation, and unlike a scheme of forced labor, you get to choose what sort of career you will pursue and where you will live. You can choose whether you value material goods more than leisure time, or vice versa, and choose between more demanding and less demanding jobs accordingly. Indeed, if you are ultra-wealthy, you may not have to work at all, for you may instead live off of investment income. It surely shows a serious lack of proportion to think of some multimillionaire—who may well at this moment be sipping scotch on the deck of his yacht in the ocean waters near his second home—as anything like an indentured servant.

Putting aside Machan’s overheated rhetoric, one can also object to his view on grounds of realism. This objection has two aspects. First, the current behavior of many citizens shows that it is foolish to believe that leaving things to charity

will generate sufficient funds to protect citizens' rights to security and fairness. Many individuals and corporations currently exploit each loophole in existing tax law, setting up tax shelters, moving their domicile abroad, and so on.<sup>15</sup> What reason do we have to think that repealing all tax laws will suddenly lead these individuals, via some unprecedented conversion to civic-mindedness, to make sufficient contributions to the maintenance of government institutions? Second, it is not only the tax avoidance of current individuals that gives cause for alarm; one should also be alarmed by the behavior of many individuals in real-life economies of the past, which in a great many ways were nearer to the *laissez-faire* ideal than our own. For instance, two centuries ago, at the start of the Industrial Revolution, and onward until the appearance of the welfare state in the twentieth century, laws regulating workplace safety, working hours, etc., were either nonexistent or minimal at best and barely enforced. Many rich landowners and industrialists then showed themselves to be serenely indifferent to the plight of their fellow citizens, living in conspicuous luxury while masses of people suffered.

And suffer they did. In a study of Great Britain, for instance, the economic historian Roderick Floud reports that as late as 1914 "much more than half of the population lived at or close to levels at which their health was affected by the lack of food, warmth, or housing."<sup>16</sup> For many people—an estimated 30 percent of the population in London, for example—these health effects were serious enough to render them unable to work a normal day as adults. For those who could work, life was hard. In 1856, for instance, the average work week was sixty-five hours(!)—twelve hours a day Monday through Friday, and a half-day on Saturday. Many workers worked longer hours than these. Work, moreover, was often dangerous, with many miners dying prematurely from black lung, potters dying from lead poisoning, needle-grinders suffering from "grinder's asthma," match-factory workers becoming disfigured by phosphorous-caused "phossy-jaw," and



so on.<sup>17</sup> It would be foolish to jeopardize the tremendous gains that have been made since the start of the Industrial Revolution by returning to a laissez-faire economic system and trusting in the charity of the well-off.

This cautionary point draws further strength from an awareness of what social scientists and philosophers call “collective action problems.” Consider, for instance, the safety of factories in a libertarian regime with no workplace safety laws. Suppose you are a charitably disposed factory owner who wants to make his or her factory safe. The problem is that safety devices often cost a significant amount of money, and safe procedures may be slower at producing goods. Hence your goods will be more expensive to produce, and you will be unable to sell them as cheaply as your competitor, Joe Sleazo, who cares nothing for the safety of his workers except insofar as this affects his profit margins.<sup>18</sup> Thus you will likely lose sales to Joe Sleazo, forcing you eventually to choose between cutting your factory’s safety standards or going out of business. In this way, then, even if you are charitably disposed to your workers, the structure of the unregulated economy may force you to lower your standards. This is the “race to the bottom,” and in addition to being true of workplace safety, it is true of many other business policies. As a factory owner you may wish to pay your workers a decent wage, give them decent working hours, avoid polluting the environment, and so on, but if Joe Sleazo pays his workers subsistence wages, works them ragged, and pollutes, then decent behavior on your part may make your enterprise uncompetitive and put you out of business. What a society needs to avoid this pernicious downward spiral is a change of the rules of the game, in the form of workplace safety regulations, minimum wages laws, overtime regulations, anti-pollution laws, and so on.

Moreover, there are other collective action problems, beyond the “race to the bottom,” to which libertarianism is exposed. Consider for instance Machan’s insistence that all government institutions be funded by voluntary contributions

rather than taxes. Problems arise for this proposal even if we restrict our attention to the institutions Machan himself approves of, namely, the legal system, police forces, and the armed forces. This is because these institutions are, in the language of economists, “public goods”—that is, goods the existence of which requires the contributions of many people but the benefits of which can be enjoyed by all people, even non-contributors.<sup>19</sup> If I live within the borders of the United States, for instance, I will be protected against foreign attack like every other resident, whether or not I pay money to support the armed forces. I will also benefit from the deterrence of crime created by the police force and legal system, whether or not I pay to support these institutions.

This fact creates the incentive to become a “free-rider”: “If I will acquire the benefit whether I contribute or not,” some people will reason, “then why contribute?” This incentive to free-ride is problematic for at least two reasons. First of all, if enough people reason in this fashion, there will be insufficient funds to supply the good. The good’s existence, then, is made vulnerable or is ruled out entirely. Secondly, even if there are enough scrupulous contributors (as compared with free-riders) to fund the good, these scrupulous contributors are being exploited by the free-riders. This is bad enough in itself, but it may well have an additional bad consequence: rather than be exploited by their fellow citizens, after all, many initially civic-minded individuals may cease their own contributions in disgust—better to be a non-contributor than a sucker, they may reason—thereby further threatening the good’s existence. The solution to these two problems is to make contributions compulsory, that is, to pay for the goods by taxes; this will protect the public good against the threat that free-riding poses to its existence, and it will protect contributors against exploitation. If citizens are entitled to use the law to defend their dignity against threats to their person and property, surely they can use the law to defend their dignity against threats of exploitation.

Machan trivializes this line of thought by citing examples of trivial goods. We benefit, Machan notes, from “nice looking or smelling people we walk by,” (p. 21) but we owe them no money for this benefit. This is right, but the good of a nice-smelling person does not require many individuals’ contributions for its provision, and more importantly, as goods go it is hardly in the same league (to put it mildly) as the good of protection against foreign invasion, murder, theft, and so on. This good of protection is of fundamental importance, as any reasonable person can recognize. The same is true of other goods of fundamental importance, such as provisions to ensure that trials are fair, votes are equally counted, access to economic opportunity is fair, and so on.

## Conclusion

I have focused on four errors committed by libertarians such as Machan. First, they defend an extreme account of moral rights to property but do not anchor these rights in an adequate moral foundation. Second, despite their focus on the importance of negative liberty to human dignity, they are blind to the existence of threats to human dignity beyond intentional uses of physical force, namely, threats posed by private economic power and by social arrangements that give some people unfair access to essential goods like economic opportunity, personal security, political influence, and criminal justice. Third, it is unpersuasive to claim that rights to fair access to these goods exist only when all citizens consent to a government that recognizes such rights in its laws; if governments, to be legitimate, really needed the consent of *all* their citizens, then no feasible government would be legitimate. Fourth, it is inadequate to leave the funding of rights-protecting institutions to charity. History suggests this is unwise, and in any case people who contribute to the support of such institutions are entitled to protect themselves against exploitation by free-riders.

There are other problems with libertarianism besides these four. But these problems are enough to refute libertarianism's claim to our allegiance.

## Notes

1. In this critique I will focus on the fundamental claims of libertarianism, rather than its policy implications regarding affirmative action, drug legalization, and so on. The issue of affirmative action in particular is indeed a complex one. For important defenses of it, see Ronald Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (Cambridge, Mass.: Harvard University Press, 2000), chaps. 11 and 12; and Elizabeth S. Anderson, "Integration, Affirmative Action, and Strict Scrutiny," *NYU Law Review* 77 (2002): 1195–271.

2. This is an oft-made point in the literature against libertarianism. For some references, see Fried "Left-Libertarianism: A Review Essay," *Philosophy and Public Affairs* 32 (2004), note 49. See also section 4 of chapter 6 of this book for quotations from "founding fathers" who make this very point.

3. One important disanalogy between the vendor case and the case of taxation is the fact that vendors *choose* to join the antique market on the owners' terms, whereas most citizens are *born* into the state. I will explore the implications of this important fact in section 3 below, "The Dilemma of Consent Objection."

4. This truth can be easily obscured by the terms used in sentences like, "The government taxes your earnings." For one might ask: If, as this sentence says, the earnings in questions are yours, does this not mean that you own them, and thus that government taxes do in fact confiscate money you own? The answer to this question, however, is no. Possessives like "your," "my," "his," "her," etc., do not always signify ownership. When you speak of "my mother," "my country," "my shadow," "my first kiss," and so on, you do not mean that you *own* your mother, your country, your shadow, or your first kiss (whatever that would come to!). At a general level, the phrase "your *x*" merely indicates that you stand in a relation to *x* that not everyone else in your audience stands in; this leaves it open as to whether the relation in question is one of ownership or some other relation. Legally speaking, then, the sentence "your pre-tax earnings are \$*x*" just means that you stand in a particular relation to \$*x*, namely, that this number is the amount that will be entered into the tax equations that determine how much money you legally own.

5. Moreover, where there *is* uncertainty due to a vaguely worded property law, one solution is to rewrite the law. Eliminating rather than rewriting a vague law is like treating a case of dandruff with decapitation.

6. This point is extensively explored in G. A. Cohen, *Self-Ownership, Freedom, and Equality* (Cambridge, U.K.: Cambridge University Press, 1995), chap. 2.

7. For a survey of philosophical issues related to property rights, see Lawrence Becker, *Property: Philosophic Foundations* (Boston: Routledge and K. Paul, 1977). For a critical evaluation of Robert Nozick's well-known libertarian discussion of initial acquisition (building on John Locke's theory), see Cohen, *Self-Ownership, Freedom, and Equality*, chap. 3. Indeed, the gap in argument surrounding the problem of initial acquisition has permitted the rise of "left-libertarians"—thinkers who are absolutists about owning one's own labor but who are egalitarians about the ownership of external natural resources. See Fried, "Left Libertarianism" for a recent survey of left-libertarian literature.

8. Libertarians' recognition of only a few *types* of legitimate force, however, does not mean that the *number of instances* that the libertarian state must use armed force will likewise be few, however. I wonder whether a libertarian state will need frequently to deploy anti-riot police squads to keep the unemployed and impoverished from rioting, for instance. Machan might reply that libertarianism, by permitting material inequalities that create incentives for entrepreneurs to innovate, would generate the economic growth needed to solve these problems (see for instance his claim on page 17 linking a free market with "a more prosperous society"). The relationship between material inequality and economic growth is a complex relationship, however, and one that is much debated among economists. If anything, the empirical evidence suggests a negative correlation between inequality and economic growth, due in part to the wasted human potential among the poor and uneducated. For further discussion, see Andrew Glyn and David Miliband, eds., *Paying for Inequality: The Economic Costs of Social Injustice* (London: Rivers Orem, 1994); Klaus Deininger and Lyn Squire, "Economic Growth and Income Inequality: Reexamining the Links" (1997), [www.worldbank.org/fandd/english/0397/articles/0140397.htm](http://www.worldbank.org/fandd/english/0397/articles/0140397.htm); and the references in note 12 of Alan B. Krueger, "Inequality, Too Much of a Good Thing," unpublished manuscript available online at [www.irs.princeton.edu/pubs/pdfs/inequality4.pdf](http://www.irs.princeton.edu/pubs/pdfs/inequality4.pdf).

9. Though insofar as a person's economic power depends upon the state's physical enforcement of his or her property rights, it is debatable just how separate economic power is from physical power.

10. Machan, by labeling the doctrine of positive rights "arbitrary and incoherent" (p. 28), must think that these judgments of fairness are arbitrary and incoherent. But what is the ground for this assertion? That people disagree about fairness? This ignores the broad consensus that exists regarding many forms of unfairness—cheating, racial discrimination, childhood poverty, etc. Moreover, people disagree about the limits and content of *negative rights*, too; Machan cannot think that this makes the doctrine of negative rights arbitrary and incoherent.

11. The only exceptions concern those who are necessarily dependents: children, and people who owing to profound disability are incapable of participating in the economy. For them, fair access to the means of subsistence is a right to be provided with means necessary for a decent life. (Note the misplaced emphasis involved in Machan's complaint [p. 20] that no parent has a right "to the education of his or her children." On the contrary, it is not the parents who have the right to have their children educated; it is first and foremost the children who have the right to an education.) Children, of course, will upon reaching maturity assume the correlative duty of this right, namely, a duty to support a system that gives children a fair start in life. The profoundly disabled will not. This is one case where the fairness rights I am defending take an asymmetric form—that is, are not counterbalanced with a correlative duty. I cannot see that this is an objection, however; the plight of the profoundly disabled is hardly an enviable one. As such, a complaint that the profoundly disabled are exploiting their fellow citizens does not ring true.

12. Arguably, though, Locke waffles on the issue of whether the consent of all or of just the majority is needed. See for instance John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge, U.K.: Cambridge University Press, 1960), 362, para. 140. For a non-libertarian interpretation of Locke generally, see A. John Simmons, *The Lockean Theory of Rights* (Princeton, N.J.: Princeton University Press, 1992), especially chap. 6.

13. John Locke, *Two Treatises of Government*, 348, para. 119.

14. David Hume, "Of the Original Contract," in *Modern Political Thought: Readings from Machiavelli to Nietzsche*, ed. David Wootton (Indianapolis, Minn.: Hackett, 1996), 387–96.

15. In 2002, for instance, American multinational companies reported a record \$149 billion in profits in tax-haven countries (i.e., countries with low or no corporate taxes). "Taxing Global Profits," *New York Times*, September 17, 2004.

16. Roderick Floud, *The People and the British Economy: 1830–1914* (New York: Oxford University Press, 1997), 23. Quoted in Emmet Barcalow, *Justice, Equality, and Rights* (Belmont, Calif.: Wadsworth/Thomson Learning, 2004), 216.

17. Floud, *The People and the British Economy*, 23, 31, 78.

18. I borrow the character of Joe Sleazo from Richard B. Freeman and Kimberly Ann Elliott, *Can Labor Standards Improve under Globalization?* (Washington, D.C.: Institute for International Economics, 2003), 37. This is an example of the collective action problem known as the "Prisoner's Dilemma." For further discussion of this and other collective action problems, see Jon Elster, *Nuts and Bolts for the Social Sciences* (Cambridge, U.K.: Cambridge University Press, 1989).

19. For further discussion of public goods, see Joseph Stiglitz, *Economics* (New York: W. W. Norton, 1993), 180–82, and John Rawls, *A Theory of Justice*, rev. ed. (Cambridge, Mass.: Harvard University Press), 234–42.