

POLITICAL PHILOSOPHY FOR THE REAL WORLD

Unequivocal Justice

Christopher Freiman



Unequivocal Justice

Unequivocal Justice, with its delightful and engaging prose, is a devastating critique of the dominant arguments and methods in political philosophy. It shows that almost everything Rawls and other left-liberals have said about institutions over the past 50 years is not merely wrong, but incoherent. It should—if philosophers have any intellectual integrity—change the field forever.

—Jason Brennan, Georgetown University, USA

Unequivocal Justice challenges the prevailing view within political philosophy that broadly free market regimes are inconsistent with the basic principles of liberal egalitarian justice. Christopher Freiman argues that the liberal egalitarian rejection of free market regimes rests on a crucial methodological mistake. Liberal egalitarians regularly assume an ideal “public interest” model of political behavior and a nonideal “private interest” model of behavior in the market and civil society. Freiman argues that this inconsistent application of behavioral assumptions biases the analysis and undercuts ideal theoretical treatments of every major liberal egalitarian principle, including political liberty, economic sufficiency, fair opportunity, and social equality. This book reexamines the institutional implications of each of these principles in nonideal conditions, making novel philosophical use of political psychology and public choice economics along the way.

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Political Philosophy for the Real World

Edited by Jason Brennan,
Georgetown University

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First published 2017
by Routledge
711 Third Avenue, New York, NY 10017

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

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

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Library of Congress Cataloging-in-Publication Data

A catalog record for this book has been requested

ISBN: 978-1-138-62822-9 (hbk)

ISBN: 978-1-315-21075-9 (ebk)

Typeset in Sabon
by Apex CoVantage, LLC

To my parents, Karen and Alex, who have given me a lifetime of encouragement and arguments about politics



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Acknowledgments

I'm grateful to many people for their helpful comments on early versions of various chapters and for discussion of my arguments. I owe thanks to Nathan Ballantyne, Jason Brennan, Thomas Christiano, Jerry Gaus, Josh Gert, Keith Hankins, Javier Hidalgo, Adam Lerner, David Schmidtz, John Thrasher, and Kevin Vallier. I also benefited from feedback from audiences at the 2009 and 2010 Central Division and 2010 Pacific Division meetings of the American Philosophical Association, where I presented papers that would become Chapters 6, 4, and 1, respectively. My thanks also go to my commentators, Bekka Williams and Matt Ferkany. I presented a later draft of what would become Chapter 6 at the Arizona Current Research Workshop at the University of Arizona. I'd like to thank David Schmidtz for inviting me, my commentators Harry Brighouse and David Estlund for their invaluable feedback, and the audience for providing pages of useful questions and suggestions. I'm also indebted to my editor at Routledge, Andrew Weckenmann, for his patience and guidance. I'm grateful to the College of William and Mary and my colleagues in the philosophy department for making my job a joy. And I owe my greatest debt to my wife Mary, for her support, enthusiasm, and insight into what makes for interesting philosophical writing.

Portions of several chapters previously appeared in "Ideal Theory," in *The Routledge Handbook of Libertarianism*, Jason Brennan, David Schmidtz, and Bas van der Vossen, eds. New York: Routledge, 2017. Parts of Chapter 1 and 4 were published in "Utilitarianism," in *Arguments for Liberty*, Aaron Ross Powell and Grant Babcock, eds., Washington, D.C.: Cato Institute, 2017. Chapter 3 incorporates material from "Equal Political Liberties," *Pacific Philosophical Quarterly* 93 (2012): 158–174. This article was also generously supported by a grant from the College of William and Mary. Much of Chapter 6 previously appeared in "Priority and Position," *Philosophical Studies* 167 (2014): 341–360.



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Introduction

Bill: In a perfect world, I'd have longer arms so I could shave my back.

Hank: In a perfect world, you'd have no back hair.

—*King of the Hill*

A perfect state is a pointless state.

The point of the state is to mitigate injustice. If Rich would donate his 40% to the poor, the state wouldn't need to tax his income. If Mimi would buy a hybrid instead of a Hummer, the state wouldn't need to cap her emissions. But since virtue alone won't do the job, the state needs to redistribute equitably and regulate efficiently.

This style of argument is familiar. It's implicit in ordinary thought and explicit in political philosophy. But here's the problem: the very reasons why the state is needed are reasons why the state won't work.

Take the public goods argument. People will free ride on a public good like a clean atmosphere because they can benefit from it without contributing to it. Mimi will enjoy more breathable air when others switch to a Prius even if she doesn't drive one herself. So the state is justified as a means of *forcing* people like Mimi to contribute: for instance, by creating laws that penalize pollution.

The trouble is, a state that efficiently provides public goods is itself a public good: Mimi will still breathe easy thanks to clean air laws even if she doesn't bother to pay the cost of voting for candidates that pass those laws. A good vote seems cheap, but the full price is surprisingly steep. To vote well, we need to research candidates, study their platforms, and inspect their legislation's fine print for hidden sellouts to special interests (the Clean Planet Act won't clean the planet if it smuggles in subsidies to Big Coal). We also have to suffer the costs of suppressing our political biases. After all, we could be mistaken about the environmental impact of, say, nuclear power. But it hurts—a lot, it turns out—to admit that we've spent our adult lives voting for the wrong policies and people.

Free riders won't pay the costs of good government for the same reason why they won't pay the costs of clean air: they don't have to. They'll profit from the good votes of others even if they vote badly or not at all. So the

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public goods argument implies that people will free ride on the state meant to solve the free-rider problem; the argument ultimately defeats itself. Injustices in the market and civil society that call for state intervention aren't quarantined there—they'll infect the intervening state too.

Since the injustice that creates a need for the state threatens the justness of the state itself, our theory cannot coherently assume a just state. But *ideal theories* of the state, like John Rawls's, make precisely this assumption. Rawls and others stipulate fair-playing, equality-prizing citizens who work hard to make their democratic state completely just. But people who play fair and prize equality don't need a state to force them to do the right thing—Mimi will *choose* a Prius and Rich will *donate* his fair share. So we see Rawls and other ideal theorists equivocate to relieve the tension: instead of using consistently ideal assumptions, they assume that people are unjust in markets and civil society (giving the state something to do) but just in politics (making the state ideal). This half-hearted idealization is unfair to markets and civil society, absent a good reason for thinking that people are better within politics than without.

The problem of inconsistent idealization undercuts ideal theoretical treatments of every major liberal egalitarian principle, including political liberty, economic sufficiency, fair opportunity, and social equality. So we need to systematically reexamine the institutional implications of each of these principles in *nonideal* conditions.

The shift to nonideal theory should prompt Rawls and other liberal egalitarians to rethink their rejection of a free market, classical liberal state. When doing ideal theory, Rawls assumes away the classical liberal worry that the state itself can be an agent of injustice. But when we undertake nonideal theory, we need to confront the problem of government failure and consider the possibility that a classical liberal regime that assigns the state a comparatively small role can satisfy liberal egalitarian standards of justice.

My argument here complements recent work by John Tomasi (*Free Market Fairness*) and Jason Brennan (*Why Not Capitalism?*), who defend markets in “apples-to-apples” comparisons of institutional types. Tomasi, for instance, suggests that classical liberalism is consistent with a broadly Rawlsian account of social justice. This book suggests the same. However, my argument is in some sense the inverse of Brennan's and Tomasi's: whereas they compare the ideal to the ideal, I compare the imperfect to the imperfect.

Chapter 1 establishes the dilemma at the heart of the book. Addressing the arguments of Rawls and Gregory Kavka, I defend the claim that an ideally just society has no need for a coercive state. Coercion is needed to achieve justice only when society is less than fully just. But when society is less than fully just, we cannot stipulate the ideal justness of the state itself. So we arrive at the dilemma for ideal theories of the state: either (i) society is fully just, in which case there is no need for the state or (ii) society is *not* fully just, in which case we may not stipulate that the state itself is just.

Neither horn of the dilemma entitles the ideal theorist to their stipulation of an ideally just state.

Chapter 2 argues that ideal theorists have sidestepped this dilemma by implicitly violating what Geoffrey Brennan and James Buchanan call “behavioral symmetry”—i.e., applying one’s model of behavior consistently across institutional types. More specifically, Rawls posits unjust behavior in the market and civil society (giving the state a job to do) and fully just behavior in politics (ensuring that the state does its job correctly). I give several arguments why the burden of justification rests with Rawls to give a non-ad hoc reason for violating behavioral symmetry. What’s more, I suggest that Rawls and other liberal egalitarians’ objections to classical liberalism miss the mark precisely because classical liberal arguments typically presuppose behavioral symmetry. I show that the insistence on behavioral symmetry has been a staple of liberal political thought stretching back to Locke, Hume, and Smith. I conclude that the argument Rawls gives in *A Theory of Justice* for rejecting behavioral symmetry is unsuccessful.

Chapter 3 begins the principle-by-principle reassessment of free market regimes. Liberal egalitarians argue that just political regimes ought to redistribute income and regulate electoral competition to ensure that the rich don’t use their resources to capture an unfair share of political power. Rawls rules out both laissez-faire and welfare-state capitalism *a priori* partly because they don’t make room for this sort of redistribution and regulation. I show that in *ideal* conditions of strict compliance with justice, the rich wouldn’t use their resources to capture an unfair share of political power since doing so is unjust, by definition. So ideal capitalism is consistent with equal political liberty for all. In *nonideal* conditions, capitalism can give rise to unjust political inequalities but so can all other regime types. Indeed, added regulation and redistribution may make things worse, as the rich can misappropriate the very government machinery that’s been empowered to regulate political competition. What’s more, the higher tax burden brought about by redistribution perversely incentivizes the rich to capture political power to escape that burden.

Rawls and other liberal egalitarians like Thomas Nagel and Martha Nussbaum argue that distributive justice requires the state to legally guarantee each citizen sufficient material resources. This claim informs Rawls’s rejection of various forms of capitalism—they fail to guarantee an adequate social minimum. Against Rawls, Chapter 4 presses G.A. Cohen’s argument that fully just people would voluntarily contribute what distributive justice asks of them, thereby obviating the need for state-enforced economic guarantees. Alternatively, if we relax our idealizing assumptions, we open the possibility that an expansive tax-and-transfer system will do more harm than good for the poor by perversely incentivizing free riding and rent seeking rather than positive-sum economic production.

Another mainstay of liberal egalitarian thought is that inequalities in people’s natural talents and initial socioeconomic circumstances shouldn’t

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unduly influence their life prospects. Since free market regimes do not include regulatory measures to correct for these inequalities, they fall short of justice. In reply, Chapter 5 argues that if ideally just citizens are assumed to deliberately refrain from exploiting their natural and social advantages, then regulatory correctives aren't needed to achieve fair equality of opportunity. On the other hand, if they do *not* deliberately refrain from exploiting their natural and social advantages, the proper functioning of the regulatory correctives themselves is called into question. Natural and social advantages enable citizens to better advance their interests in markets *and* in politics. If the advantaged freely exploit their political advantages, we should expect them to capture the very regulatory apparatus meant to keep them in check.

Chapter 6 takes up the objection that free market regimes will yield objectionable inequalities in social status. If we uphold behavioral symmetry and assume that citizens will seek status across regime types, the problem of institutional analysis becomes one of determining the regime type that provides the most benign channels for status-seeking behavior. Free market regimes do a comparatively good job of ameliorating status inequalities by routing status-seeking behavior toward positive-sum market activity. General gains in social wealth encourage the formation of new social groups and hierarchies, which diversify and multiply people's opportunities to acquire status.

To round off my analysis of particular policies, I consider Samuel Freeman's argument that libertarianism should not be considered part of the liberal tradition because it rejects the core liberal idea that political power must be used for the public interest. Building on previous chapters, Chapter 7 shows that Freeman's criticism of libertarianism rests on a crucial, implicit equivocation. Freeman uses a "public interest" model of people's motivations when analyzing liberal institutions and a "private interest" model of people's motivations when analyzing libertarian institutions. If, by contrast, we use the public interest model when analyzing libertarian institutions, we see that they are capable of meeting all of Freeman's objections.

In the final chapter, I consider lingering objections and review empirical work that purports to challenge the principle of behavioral symmetry. I conclude that the principle, properly understood, withstands these challenges. As a result, philosophers should abandon ideal theories of the state entirely.

1 Ideal Institutional Theory

We have got onto slippery ice where there is no friction, and so, in a certain sense, the conditions are ideal; but also, just because of that, we are unable to walk. We want to walk: so we need *friction*. Back to the rough ground!

—Ludwig Wittgenstein, *Philosophical Investigations*

Debates over ideal theory are gaining steam in contemporary political philosophy.¹ Rawls, as usual, is at the center. He applies idealizing assumptions both to the problem of specifying the basic principles of justice and to the problem of specifying the institutional regimes that best satisfy these principles.

Rawls has us imagine that individuals select principles of justice in the “original position.” In the original position, the “veil of ignorance” denies individuals access to information about their personal characteristics, such as their natural talents and socioeconomic status, as well as the particular political and socioeconomic circumstances of their society.² Individuals are to choose principles of justice on the assumption that society will fully comply with the chosen principles.³

There has been plenty of debate about what sort of idealization is appropriate when theorizing about principles of justice.⁴ I won’t run down all of the ins and outs, though. Some argue that ideal theorizing is problematically unrealistic.⁵ Others argue that ideal theorizing is unproblematically unrealistic.⁶ Still others attempt to reconcile idealization and plausibility: our theories of justice should be “realistically utopian.”⁷

I set these questions aside because my interest is not theorizing about basic principles of justice. Instead, I want to examine the version of ideal theory that focuses on *institutions*. More specifically, I’ll investigate the idealizing assumption that institutions function under conditions that exhibit “strict compliance” with justice: that is, conditions in which everyone accepts and abides by the principles of justice.⁸ In ideal theory, we “ask what a perfectly just society would be like.”⁹ Nonideal theory, by contrast, assumes that at least sometimes individuals behave unjustly. Nonideal conditions are characterized by partial compliance.¹⁰

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In the later stages of his work, Rawls appealed to the idea of a political regime's "ideal institutional description," that is "the description of how it works when it is working well, that is in accordance with its public aims and principles of design."¹¹ An ideal description of an institution is a largely *a priori* one: it requires us to "abstract from its political sociology, that is, from an account of the political, economic, and social elements that determine its effectiveness in achieving its public aims."¹² The central question for this sort of ideal institutional theory is, "What kind of regime and basic structure would be right and just, could it be effectively and workably maintained?"¹³ In short, Rawls's ideal institutional theory *assumes* that individuals comply with justice and that states work as designed. Crucially, he rules out certain sorts of regime types, such as laissez-faire capitalism and welfare-state capitalism, at the level of ideal theory on the grounds that they aren't designed to aim at the satisfaction of liberal egalitarian principles of justice.

In what follows, I challenge the coherence of Rawls's ideal institutional theory (hereafter simply "ideal theory.") The basic problem for ideal theory is not that it's unrealistic. In that regard, the assumptions of ideal theory in political philosophy seem no more objectionable than idealizing assumptions made in other fields. For example, economic models that assume away transaction costs can be illuminating despite being literally false.¹⁴

The basic problem for ideal theory is that it cannot consistently apply its own assumptions. Assuming away injustice isn't analogous to assuming away transaction costs in economics. Rather, as Jacob Levy has argued, assuming away injustice in political philosophy is analogous to assuming away *scarcity* in economics.¹⁵ The main problem with an economic theory that assumes away scarcity isn't that it's unrealistic (although it is); it's that the very point of economic organization is to ameliorate the effects of scarcity. Questions of efficient economic organization don't arise at all in a world without scarcity. Similarly, the very point of the state is to ameliorate the effects of injustice. As several theorists have noted, questions of justified state coercion don't arise at all in a world without injustice.¹⁶

I realize that this is a controversial and sweeping claim. Indeed, I'll spend much of the book working through arguments for the state one by one. But here's a first pass at why the need for a state doesn't arise in a world without injustice. Consider that the defining feature of a state is its monopoly on (legitimate) coercion. However, if people fully comply with justice as a matter of conscience, they wouldn't need the state to *force* them to act justly. Levy writes, "Taking 'strict compliance' seriously would mean assuming away the crime that justifies the state's control of the means of violence, the limited beneficence that sits at the base of theories of justice in property and in the coercive provision of social welfare, and more generally the failings that make politics and justice unavoidable."¹⁷ We need laws against, say, shoplifting—and not simply polite suggestions—because some people would be tempted to shoplift if not for the threat of punishment. The state's function is essentially remedial. But in a fully just society, there's nothing to remediate. A fully just person doesn't *want* to shoplift.

If this is right, then ideal theory houses an internal inconsistency. On the one hand, we must assume that people are *not* fully just to generate a need for the state in the first place. On the other hand, if people are not fully just, the state itself won't be fully just either (it's an institution run by people, after all.) In short, the assumption that generates a need for the state—that people aren't fully just—at the same time undermines the assumption that the state is fully just. What this means is that the only coherent theory of the state is a *nonideal* one. Or so I will argue.

In what follows, I'll consider four arguments for why fully just people would need the state to realize justice. The role of the state in ideal conditions could be to (i) provide public goods; (ii) guarantee mutual cooperation; (iii) compensate for limited altruism; or (iv) settle (blameless) disagreements. I argue that none of these objections succeed and so the inconsistency within ideal theory remains unresolved.

I'll start with public goods because they underlie what is perhaps the most popular argument for the state. My analysis of the public goods argument—and all subsequent arguments for the state—has two stages. First, I show that we must assume less than full compliance with justice in order to generate a role for the state in the first place. Then I show that a consistent application of the assumption of less than full compliance undermines the assumption that the state will work as intended. The upshot, then, is that there is not a coherent ideal theory of the state.

Public Goods: A Case Study

Standard models predict that public goods will be underprovided because of free riding. Public goods are *non-excludable*, meaning that you cannot be excluded from enjoying them even if you didn't contribute to them. Public goods are also *non-rivalrous*, meaning that my enjoyment of the good doesn't subtract from yours.

Here's an example. A storm threatens to flood the river, a flood that would destroy your town. If the townspeople join together to build a levee with sandbags, the town will be spared. However, your individual contribution won't make or break the effort. The levee is a public good. If it prevents the flood, your house will be saved whether or not you helped stack the sandbags. And the levee will protect the entire town, so protecting your house doesn't detract from the protection afforded to other houses.

It's typically assumed that people won't voluntarily contribute to public goods like the levee. Your individual contribution is inconsequential, and if the levee does somehow get provided, you enjoy its protection whether or not you helped. You get the benefit without paying the costs. So the self-interested choice is to watch Netflix on your couch while your neighbors hurt their backs lugging sandbags around. The problem is, your neighbors have the exact same incentive to stay home—if enough others contribute to the levee, they'll enjoy the benefits whether or not they contributed themselves. Consequently, no one has an incentive to contribute to the levee. As a

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result of this *free-rider problem*, the town will flood even though the flood is bad for everyone.

Rawls endorses this account of the public goods problem:

First of all, there is the free-rider problem. Where the public is large and includes many individuals, there is a temptation for each person to try to avoid doing his share. This is because whatever one man does his action will not significantly affect the amount produced.¹⁸

Rawls's solution is the industry standard: introduce the state to serve as a third-party enforcer of contributions.¹⁹ He says, "The provision of public goods must be arranged for through the political process and not through the market [. . .] Arranging for and financing public goods must be taken over by the state and some binding rule requiring payment must be enforced."²⁰ In the levee case, the town could authorize a 1% sales tax to fund a levee-building public works project. That way, citizens are *forced* to contribute to the levee. They have no grounds for complaint, though, because the tax works to their advantage: better to pay 1% more for bubble gum than to lose your home to a flood. So it looks as if we have a formidable solution to the market's failure to provide the public good.

To make things explicit, Rawls assumes less than full compliance with justice to generate a need for the state in this case. More specifically, he assumes that people will be tempted to free ride and thus be unwilling to contribute to public goods. Now, you might deny that an unwillingness to contribute to public goods counts as a failure to comply with justice. Maybe fully just people won't contribute to the levee because they lack assurance that others will reciprocate. I'll return to this thought in a moment, but let me stress here that the substantive issue is not whether we categorize the temptation to free ride as a failure to comply with justice but whether Rawls consistently applies this assumption to his own solution to the free-rider problem. I'll argue that he does not.

The problem with Rawls's solution is that it's not enough to stipulate *that* the state will somehow efficiently provide public goods—we need to know *how*. After all, the free market enthusiast could just stipulate that the market will *somehow* efficiently provide public goods, but that move clearly won't do. As we've seen, people won't contribute to the levee because they have nothing to gain by contributing. But here's the rub: the exact same analysis applies to the government intervention meant to fix this problem and efficiently provide the levee. People won't contribute to good government because they have nothing to gain by contributing.

Suppose that, in the upcoming election, the mayoral candidates field their policy proposals for flood prevention. To determine which candidate has a good proposal, you'll need to inspect each proposal for its economic cost, feasibility, and environmental impact. To form an educated opinion on those matters, you'll need to brush up on your economics, engineering,

and ecology. You'll also want to research how closely candidates' promises align with their legislative history. For instance, you'll want to read the fine print of the incumbent's legislation to see how often tax revenue actually goes toward its intended purpose rather than pork-barrel projects designed to gain the support of special-interest groups; you'll need to learn whether the firms she hired for public works projects were the best ones for the job rather than the ones that donated the most to her reelection campaign; and so on.

As you can see, the relevant contribution to the public good of good government isn't just voting but rather voting *well*.²¹ You don't contribute to a public good simply by *intending* to contribute to it. For instance, if you intend to contribute to clean air by driving a gas guzzling SUV because you have the false belief that the SUV is environmentally friendly, you haven't actually contributed to the cleanliness of the air. Similarly, if you intend to contribute to the public good of good democratic governance by voting for an unjust or otherwise harmful candidate or policy, you haven't actually contributed to good democratic governance.

Voting *well* is much more expensive than plain old voting. Good voters not only know the candidates, their proposals, and their records, they also know some social science and political philosophy so they can competently judge candidates and their proposals. David Estlund notes a fraction of the work people need to put in to vote well:

A smart decision about whom to vote for would seem to require some information and understanding about the merits of policy proposals, since these will be some of the major reasons to prefer one candidate to another. These merits depend on lots of facts, many of them publicly contested. Should I vote for the Republican candidate for Senate? He supports shifting Social Security funds into private financial markets. How well will they perform? What other effects does this have on Social Security's viability over time? And so on. The merits, of course, also depend on an understanding of moral matters concerning justice, equity, rights, and responsibilities [. . .] In addition, intelligent votes for office holders seem to require information of another kind: information about how a candidate is likely to behave. This, in turn, would seem to require information about the formal and pragmatic powers and constraints of the office in question, some understanding of what the future is likely to bring (partly as judged in light of history), and so on.²²

Estlund focuses on the role of knowledge in voting well. But ignorance isn't the only factor that can undermine well-intentioned votes.²³ Even if you intend to vote for the public interest and you've acquired the relevant information, bias can tilt your support toward unjust policy.

To mention only the most clearly applicable example, people are prone to partisan biases. If your party supports fracking, you might read that

fracking hurts the environment but find yourself doubting the expertise of the author.²⁴ Here the problem isn't a lack of information; it's processing the information in an unbiased way. So even when people take themselves to be voting in the public interest, their biases can warp their conception of the public interest. (I'll say more about bias later.)

Here's the punch line: voting well is a big hassle. But citizens need to do it if they're going to hold the government accountable and ensure that it efficiently provides the public good. So will you roll up your sleeves and get to work? Probably not. Indeed, you won't do so for the very same reason you won't get off the couch to work on the levee in the first place: you have an incentive to free ride. In all likelihood, your individual vote won't tip the scales in favor of the best candidate—that is, your vote will not be decisive.²⁵ And if the best candidate does somehow get elected, you enjoy the benefits whether or not you voted for her. You get the benefit without paying the costs. So you'll take a nap while your neighbors scrutinize the fine print of the Efficient Levee Act.

The problem is that your neighbors have the exact same incentive—if enough others vote for the best candidate, they'll enjoy the benefits whether or not they cast a good vote themselves. So no one has an incentive to cast a good vote. As a result of the free-rider problem, the town won't get good government even though this outcome is bad for everyone. The public goods problem illustrates ideal theory's internal inconsistency: the assumption that generates the need for the state in the first place—in this case, that people free ride—is at odds with the assumption that the state will work.

Consider an analogy. Suppose you're in a pitch-black room and you can't see. You want to look around, so you ask a friend for advice. She says, "Go into the room and install a light bulb into the socket." This is unhelpful advice. Why? Because there's a *Catch-22*. Since the room is pitch-black, you can't see anything—including the socket. When you tell her that her solution won't work, she replies, "Well, just *assume* that you can see the socket." This is clearly a bad assumption to make because if you *could* see what's in the room, you wouldn't need the light bulb in the first place. When you assume away the darkness of the room as a constraint on your solution, you thereby obviate the very problem in need of a solution.

Ideal theorists are like this friend. We begin by considering a failure of justice, such as a society's inability to supply public goods. The ideal theorist's advice is to supply a state to supply public goods. But this advice is subject to the same *Catch-22* as your friend's advice about the light bulb. Since people want to free ride, they can't supply public goods—including the state. To respond to this difficulty by simply *assuming* that people will provide public goods like the state obviates the very problem in need of a solution. Ideal theorists can no more assume away noncompliant behavior and the injustices it causes than our light bulb installer can assume away the darkness of the room. David Schmidtz makes a similar point: "There can be such a thing as an ideal solution, but for S to be an ideal solution to problem

P, it must first be a solution to problem P. One thing we cannot set aside as a distracting detail is the actual problem.”²⁶ Call it *self-obviating idealization* when a model of x is idealized such that it assumes away the problem x is intended to solve.

Rawlsian Replies

Maybe I’m wrong that public goods problems arise only in nonideal conditions. You might think that they can arise when people are fully compliant with justice and so a state is needed in ideal conditions after all. The argument could go something like this: even if ideal actors desire to contribute to public goods out of their sense of justice, they are *conditional* cooperators. Rawls argues that just people want to do their part to achieve justice, but only if others do their part too.²⁷ People may be tempted to withhold their contributions to public goods, not because they wish to free ride on the contributions of others, but because they fear that their own contributions will be exploited. So citizens need assurance that others will do their part.

The trouble is, assurance of cooperation is hard to come by when you’re dealing with hundreds of millions of strangers. You can look over your shoulder to check if your roommate is doing her fair share to keep the refrigerator clean, but this solution won’t work as a way of finding out whether someone in Alaska is doing her fair share to keep the planet clean. So we need the state. With a system of enforcement in place, you can contribute and be confident that the state will punish those who don’t do the same. So the need for the state arises even on the assumption of full compliance. I’ll call this the *assurance argument*.

For Rawls, the assurance argument explains not only why the state must provide public goods, but also why the state is needed at all:

The sense of justice leads us to promote just schemes and to do our share in them when we believe that others, or sufficiently many of them, will do theirs. But in normal circumstances a reasonable assurance in this regard can only be given if there is a binding rule effectively enforced. Assuming that the public good is to everyone’s advantage, and one that all would agree to arrange for, the use of coercion is perfectly rational from each man’s point of view. Many of the traditional activities of government, insofar as they can be justified, can be accounted for in this way. The need for the enforcement of rules by the state will still exist even when everyone is moved by the same sense of justice.²⁸

In short, the state is needed to overcome assurance problems in ideal conditions.²⁹

Here’s the problem. As we’ve seen, “the enforcement of rules by the state” is itself a public good. Consequently, the provision of enforcement suffers from the same assurance problem that besets other public goods.

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Let's return to the example of voting to illustrate the point. Voting well is one important way in which people can contribute to the state. But as we've seen, voting well comes with costs. According to Rawls's account, just people will incur these sorts of costs only if they have assurance that others are doing so as well. So people won't vote well unless they have assurance that others are also voting well.

But how do we get assurance that others are contributing their good votes? When I'm in the voting booth deciding whether or not to vote for the best candidate or to goof off and vote for Santa Claus, how do I know that the person next to me isn't goofing off? Rawls's move—appealing to the state as an enforcer—doesn't work because the contributions in question are to the state itself. You cannot appeal to the state as a device for assuring me that others are also voting well because voting well is a *precondition* of the proper functioning of the state.³⁰

Rawls's proposed solution to the assurance problem simply creates another assurance problem. We need a well-functioning state to solve the assurance problem, but we can't get a well-functioning state *because* of the assurance problem.

Next consider the *limited altruism* argument. Rawls writes,

The theory of justice assumes a definite limit on the strength of social and altruistic motivation. It supposes that individuals and groups put forward competing claims, and while they are willing to act justly, they are not prepared to abandon their interests. There is no need to elaborate further that this presumption does not imply that men are selfish in the ordinary sense. Rather a society in which all can achieve their complete good, or in which there are no conflicting demands and the wants of all fit together without coercion into a harmonious plan of activity, is a society in a certain sense beyond justice. It has eliminated the occasions when the appeal to the principles of right and justice is necessary. I am not concerned with this ideal case, however desirable it may be.³¹

We could appeal to our limited altruism to re-tool the public goods argument. You don't have to be "selfish in the ordinary sense" to withhold contributions to public goods. You might decide not to stack sandbags because you know that your individual contribution is inconsequential and so your time is better spent elsewhere. Indeed, you might decide your time is better spent on other private altruistic projects where your contribution *does* make a difference, e.g., planting tomatoes in the community garden. But we cannot expect this kind of uncoordinated pursuit of everyone's conception of the good to coalesce into a "harmonious plan of activity." We still need people stacking sandbags if we don't want the community garden (and the rest of the town) destroyed. And this might require the state to resort to threats of force.

The problem with the limited altruism argument is the same as the problem with the assurance argument. The assumptions that allow us to carve

out a role for the state also prohibit us from assuming that the state works properly. To put the problem in terms of a dilemma: do people with limits on their social and altruistic motivations contribute to public goods or not? If so, then the state isn't needed to provide public goods. If not, people won't contribute to the public good of the state.

Now, you might object that the problem of public goods provision isn't "all or nothing." That is, it's not the case that either *everyone* will contribute their fair share to public goods or *no one* will contribute at all. It's more complicated than that. Along these lines, consider that Rawls sometimes describes ideal conditions as conditions of *nearly* strict compliance with justice in which a *nearly* just regime is attained.³² Perhaps these conditions allow for enough injustice to necessitate the state but too little to undermine it.

I don't think this move works and here's why. "Nearly strict compliance" either collapses into full-fledged ideal theory or full-fledged nonideal theory. To pick a number semi-arbitrarily, suppose that nearly strict compliance means that 98% of the population complies with justice. The ideal theorist faces a now-familiar dilemma: is the lack of compliance from the 2% something that undermines the compliance of the 98% or not?

If we assume that the 98% will contribute to public goods without the contributions of the 2%, then we're comfortably within ideal theory since there's enough voluntary cooperation to provide public goods. For example, we'll still have clean air if only some threshold number of people (fewer than 98%) cooperate. Enough people will be compelled by conscience to drive Teslas, stack sandbags, and so on, such that state intervention isn't needed.³³

On the other hand, maybe the 98% hold out unless they get cooperation from the 2%. So the 98% must coerce the 2% into compliance in order to assure unanimous cooperation. Without assurance of unanimous cooperation, the 98% won't do their part and so the entire cooperative scheme will unravel.

My objection to the assurance argument applies once again. If assurance of *unanimous* compliance is necessary for conditional compliers to cooperate, then the 98% will not cooperate in the formation and operation of the state intended to coerce the 2% into compliance. On the other hand, if 98% compliance is enough to keep the conditional compliers happy, the original rationale for creating the state dissolves.³⁴

Kavka's Argument

Now I'd like to turn to Gregory Kavka's argument for why even morally perfect people would need a state to settle their disagreements.³⁵ At first glance, it looks like Kavka can lend Rawls a helping hand. On closer inspection, though, we can see that my objections to Rawlsian ideal theory stand even if Kavka is right. And I'm also not convinced that Kavka *is* right.

Before getting into the particulars of Kavka's argument, let's get clear on what he's arguing for. His claim is that it's possible for a state to make society more just relative to a condition of anarchy even when that society is populated with morally perfect people. Note, though, that this claim isn't at odds with mine. My claim is only that we may not make the *a priori* stipulation that the state will be perfectly just. (Indeed, we'll see that Kavka doesn't think we can assume the justness of the state, either.)³⁶ But this claim is consistent with Kavka's claim that the state can be an improvement over anarchy given the right conditions. After all, an imperfect state could be better than no state.

Still, I want to explore Kavka's argument. For one, I suspect that some readers will naturally think of Kavka's paper when considering objections to my view (after all, it's titled "Why Even Morally Perfect People Would Need Government") and so it's worth explaining why his arguments leave mine unscathed. What's more, Kavka's argument that the state is needed to resolve conflicts provides further illustration of the idea that the state isn't sealed off from the problems it's tasked with solving. It's subject to the same objection as Rawls's arguments: the assumption that allows Kavka to carve out a role for the state—namely, that morally perfect people will clash with each other—at the same time disallows Kavka from stipulating that the people running the state will do their jobs properly. Instead of resolving conflict, the state will instead become the *object* of conflict as opposing sides try to capture it to advance their own agendas.

According to Kavka, a morally perfect person or an "angel" is someone who (i) has "a consistent, coherent, and reasonably complete moral belief system that contains whatever true (or objectively justified) moral beliefs there are and contains no false (or objectively falsified) moral beliefs"; (ii) always acts on her moral beliefs; and (iii) is otherwise similar to ordinary people.³⁷

So why would angels disagree with each other? First, they might disagree about the facts—e.g., utilitarian angels might disagree about whether drug legalization maximizes social utility. Second, there might be "irresolvable disputes" about which angels "hold differing views without any of them being guilty of any sort of error."³⁸ Kavka offers disagreements over the morality of abortion as an example of this kind of irresolvable dispute. Third, public goods problems and Prisoners' Dilemmas can arise among angels, such that each is better off if they are all coerced by the state.³⁹ The fourth and final source of practical disagreement is motivated belief—that is, "beliefs that are not determined solely by evidence but are instead influenced by motivational states of the agent."⁴⁰ Most significantly, motivated beliefs might cause us to favor moral beliefs that coincide with our self-interest. In sum, people can be morally perfect and yet still come into conflict. The state, an institution with a monopoly on coercion, provides definitive resolutions to these conflicts. So even angels can benefit from a state.

Kavka explores three objections to this claim. The first is the conceptual objection: the correct conception of moral perfection entails the absence

of practical disagreement between angels. Kavka replies that this notion of moral perfection would require not only having complete and correct moral beliefs along with the disposition to act on them, but also perfect reasoning abilities, perfect information, and even the ability to read minds (to achieve coordination).⁴¹ It seems doubtful that lacking information qualifies as a moral imperfection, so we should reject this account.

The next objection, the voluntary settlement objection, alleges that morally perfect people would voluntarily and peacefully resolve whatever practical disputes arise. Perhaps angels possess the moral virtue of *reasonableness*—viz. a “willingness to settle voluntarily practical disagreements by discussion and compromise.”⁴²

In reply, Kavka notes that to guarantee the peaceful and voluntary resolution of all disagreements, angels would have to assign the virtue of reasonableness unconditional priority over all of their other aims. But if some moral aims rank higher than reasonableness (say, ensuring the prohibition of euthanasia), then there will be possible cases of irresolvable disagreement.

Moreover, even if there is a population of angels that value reasonableness above all else—call them “compromisers”—such a condition will be unstable over time. The first part of this argument involves introducing the notion of an “uncompromiser”—someone “who will not settle a first-order dispute except on his own terms.”⁴³ Whenever two uncompromisers disagree, the dispute is unresolvable. However, when an uncompromiser disagrees with a compromiser, the uncompromiser wins.

Kavka argues that a small minority of uncompromisers can invade and overrun a compromising population. He assumes that compromisers will convert to the more successful uncompromising strategy and that new angels will use the more successful uncompromising strategy right off the bat.⁴⁴ In the end, we’re left with nothing but uncompromisers, hopelessly trapped in a Hobbesian war of all against all: “How sad that this decline, from the benign anarchy of compromise to the painful condition of festering disputes, is inevitable.”⁴⁵

Non-governmental actors cannot alleviate this condition. To show why, Kavka explores the possibility of a “guardian” who “compromises with all and only those who have compromised in all their previous disputes, whether with her or with others.”⁴⁶ The presence of guardians would worsen the prospects of uncompromisers, who now face retaliation for exploiting other angels.

Guardians won’t be able to resolve disputes without the use of a state for several reasons.⁴⁷ For one, they face huge information costs—they must keep track of not only their own past interactions but also the past interactions of all those they interact with. They also face an incentive problem—why punish someone for being uncompromising in a past dispute when you have no reason to think she was less likely to be right than the person she disagreed with? Kavka concludes that the guardian argument, “when properly understood, lends support to the view that even angels would need government

to settle disputes, for government itself may be seen as a guardian angel, or accurately, as fulfilling the role of guardians in providing a mechanism that channels a society of angels into a desirable configuration.”⁴⁸ A state, on Kavka’s view, is needed to solve the information and incentive problems that private guardians cannot.

The final objection Kavka considers is the futility objection (attributed to David Gauthier). If disputes among angels can’t be settled voluntarily, the state won’t be able to settle them either. Kavka replies that angels will place at least some value on peacefully settling disagreements with each other. Thus, an angel has reason to accept the compromises enforced by the state because she has assurance that others will accept those compromises as well (or else they’ll be punished).⁴⁹

I’ll briefly register some thoughts about Kavka’s replies to the conceptual objection and the futility objection before turning to my main focus, the voluntary settlement objection. Regarding the conceptual objection, I only want to note that Kavka doesn’t equate moral perfection with full compliance with justice. Instead, moral perfection is more like moral blamelessness and he fields some convincing reasons why morally blameless people won’t comply with the same standard of justice.⁵⁰ So I think the conceptual objection stands a better chance of working against the Rawlsian conception of ideally just people as fully compliant people than Kavka’s conception of morally perfect people as blameless people.⁵¹

As for Kavka’s reply to the futility objection, it looks a lot like Rawls’s assurance argument. Angels will want to compromise only if they have assurance that others are compromising too. But the question remains: how do angels get assurance that others are doing their part in the provision of assurance itself? That is, how do private angels get assurance that the angels running the state are compromising on reasonable terms rather than taking the opportunity to ram through their own private agenda? (More on this below.)

Now for the voluntary settlement objection. Kavka’s claim that the state can solve problems that private actors cannot faces the same basic objection as Rawls’s analysis of the public goods problem: the reasons why the state is needed are equally reasons why the state won’t work as desired. To start, how is the state supposed to fill the role of a guardian—someone who “compromises with all and only those who have compromised in all their previous disputes, whether with her or with others”?⁵² Kavka thinks that private citizens and agencies are ill-equipped to serve as guardians because of (i) the information costs involved in tracking people’s behavior and (ii) the lack of an incentive to settle disputes on reasonable terms. So why think that the state fares better on these fronts?

With respect to information costs, Kavka says, “because of centralization, [government] can reduce the information costs of keeping track of citizens’ relevant past behavior.”⁵³ But *centralization* isn’t exclusive to states—large-scale private organizations are often centralized, too. For Kavka, the

essential feature of a state is its monopoly on coercion, not centralization.⁵⁴ So if centralization rather than coercion is the key to solving information problems, then private sector guardians should be just as capable of getting the job done. Indeed, in the real world, states often rely on information gathered by private sector organizations to keep “track of citizens’ relevant past behavior.”

What about the incentive problem? Do states have a leg up here? Kavka thinks so:

Because of specialization of tasks—in which the responsibilities of (and expectations associated with) their roles provide officials with incentives to settle disputes among citizens on reasonable terms—government can be motivated to create and enforce settlements among disputing angels that, on the whole, resemble those the parties would reach if they were all reasonable compromisers.⁵⁵

Here again, specialization—and the professional responsibilities and expectations that come with it—isn’t unique to the state. Doctors specialize and have clearly defined responsibilities and expectations. Similarly, private school teachers specialize just as much as their public school counterparts and have similar responsibilities and expectations. If specialization of tasks is what motivates government workers to resolve disputes on reasonable terms, it should motivate *private* workers similarly. In that case, angelic anarchy doesn’t need a state.

Kavka could respond that there *is* something unique to the state that enables it to function as a guardian: its monopoly right to coerce. Since the state alone has the power of coercion, it can serve as the definitive, final enforcer of settlements. Kavka argues that the state can “settle disputes among citizens on reasonable terms—government can be motivated to create and enforce settlements among disputing angels that, on the whole, resemble those the parties would reach if they were all reasonable compromisers.”⁵⁶

I have two objections. First, Kavka doesn’t substantiate his claim that the state will settle disputes on *reasonable* terms—that is, terms that reflect a compromise of the disputants’ values. Second, Kavka overlooks the possibility that the creation of a state will incentivize disputes and so increase conflict on net.

Kavka’s own description of angelic behavior gives us reason to doubt that the angelic state will resolve disagreements on reasonable terms. To the contrary, the state’s resolutions will probably reflect the preferences of the *least* reasonable angels rather than the reasonable compromisers. The angelic state suffers from an adverse selection problem: the uncompromisers whom the state must force into compliance are the very people with the strongest incentive to capture state power.

Angels who have the strongest desire to ensure that others comply with their own moral preferences and to not be governed by the moral preferences

of others—in short, unreasonable and uncompromising angels—are going to be willing to pay the highest price for the power to enforce moral preferences. The monopoly right to coerce will be captured by those who are the *most* zealous about not compromising their moral values.⁵⁷

By way of analogy, suppose Homer is thinking about where to take his kids to dinner. He decides to auction off the right to select a restaurant. His son Bart is more or less indifferent about where they go. His daughter Lisa, by contrast, has a very strong preference that she eat at a vegan restaurant *and* that Homer and Bart also eat at a vegan restaurant (so as to spare even more animal suffering). It's clear, then, that Lisa will outbid Bart for the right to select the restaurant. The party that's least willing to compromise on food is the one with the strongest incentive to acquire the right to dictate a restaurant.

Geoffrey Brennan and James Buchanan note that those whose values are most at odds with those of the rest of the society need coercive power the most: "Since the demand for discretionary power is highest for those individuals who desire social outcomes different from outcomes that perhaps most others would choose, political institutions will be populated by individuals whose interests will conflict with those of ordinary citizens."⁵⁸ If Bart is happy to dine at whichever restaurant wins majority support, he doesn't need to buy the right to dictate the restaurant choice. On the other hand, if the uncompromising Lisa knows that Homer and Bart want burgers, she needs that right to ensure that her preference for a vegan place is met.

So Kavka is unduly optimistic that the state will settle conflicts on reasonable terms. This is a problem insofar as we are concerned with justice. We don't simply want disputes to get resolved; we want them resolved *fairly*. Even setting aside the issue of fairness, it's not clear that the angelic state will be able to reduce conflicts at all. Kavka overlooks the possibility that the creation of a state will *incentivize* conflict. When the right to impose a moral agenda is granted to one side and not the other, both sides have reason to try to acquire that right. Even if the pro-euthanasia angels would rather stay at home, the creation of the state means they need to lobby Washington simply to prevent the anti-euthanasia angels from capturing political power and imposing *their* agenda.

The angels' predicament is analogous to a scenario considered by Thomas Schelling.⁵⁹ Suppose an armed burglar breaks into your house and you confront him with a gun in your own hand. You'd both prefer that he leave without anyone firing a shot. But if the burglar thinks that *you* want to shoot, he might shoot first to protect himself. And if you think that burglar wants to shoot, you might shoot first to protect yourself. So even though you'd both like to keep your guns holstered, uncertainty about each other's intentions gives you both reason to shoot. Similarly, both the anti-euthanasia and pro-euthanasia sides might prefer not to sink time and resources into a conflict, but the possibility that the other side will go after state power gives each an incentive to strike first.

Regardless of what the other side does, an angel (particularly an uncompromising angel) should fight for political power. If your opponent isn't working to capture the state for their purposes, you can capture it to advance your own agenda. If your opponent *is* working to capture the state for their purposes, you must respond in kind to avoid losing ground. If you don't jump into the fray, then your values will be steamrolled. The creation of an institution with the power to enforce one's values thus motivates rather than de-motivates conflict—or in Kavka's terms, "festering disputes."⁶⁰

In sum, Kavka finds himself in the same bind as Rawls: the conditions that generate a need for the state—roughly those with vigorous moral disagreements—prohibit us from making the *a priori* stipulation that the state will work. Now, Kavka may concede this point. Unlike Rawls, he doesn't seem to *assume* that the state will be just. He says, "Government has costs as well as benefits: economic costs of operations, danger of misuse of power, rent seeking by officials, and so on. A full justification of government among angels would have to go on to show that their need for government outweighs the costs if the government is properly designed."⁶¹ So Kavka is unable to salvage Rawlsian ideal institutional theory. The dilemma remains: we can theorize for ideal conditions with no grounds for positing a role for the state or nonideal conditions with no grounds for stipulating the justness of the state. Does Rawls have any way out?

Notes

1. Among those who can be seen as working within ideal theoretical assumptions in some form include Nozick 1974; Rawls 1999, 207; Dworkin 2002, 172; Cohen 2008; Estlund 2008, chapter 14; Brennan 2014.
2. Rawls 1999, 118.
3. *Ibid.*
4. The literature on ideal and nonideal theory has expanded dramatically in recent years, so I'll mention only some of the highlights here. Recent discussions of ideal theory include Mills 2005; Sen 2006 and 2009; Farrelly 2007; Cohen 2008; Estlund 2008; Stemplowska 2008; Valentini 2009 and 2012; Simmons 2010; Schmidtz 2011; Miller 2013; Gaus 2016; Levy 2016.
5. See, e.g., Eddy 2008; Phillips 2008; Sen 2009; Schmidtz 2011.
6. See, e.g., Cohen 2008; Estlund 2008, chapter 14.
7. See, e.g., Nagel 1991, chapter 3; Rawls 2001.
8. Rawls 2001, 13.
9. 1999, 9.
10. 2001, 66.
11. *Ibid.*, 137. Although I lack the space to explore it in detail, Rawls sets out a "four-stage" sequence for applying the principles of justice to the problems of institutional design for particular societies. See Rawls 1999, 171ff.
12. 2001, 137.
13. *Ibid.*
14. For similar points, see Valentini 2009, 354; Schmidtz 2011, 777.
15. Levy 2016, 314.
16. In addition to Levy, see Wilkinson 2004; Cohen 2008. See also Brennan 2014, 75 on why an ideal society is an anarchist one. One implication of this view is

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that ideal theories of the state cannot guide action in the right way (because the conditions that permit an ideal state have no need for that state), although that's not the *main* problem facing ideal theory.

17. Levy 2016, 319.
18. 1999, 236.
19. A small sampling of philosophers who appeal to the public goods problem to justify the state includes Mill 1965; Hobbes 1985; Gauthier 1986, 342; Kavka 1986, 246; Hume 2003, III.ii.7; Murphy and Nagel 2004, 6.
20. *Ibid.*
21. You might object that good government can be provided by a largely ignorant electorate because of the "miracle of aggregation." However, for the miracle of aggregation to hold, voters' errors must be random yet evidence suggests they are systematic. See, e.g., Althaus 2003; Caplan 2007.
22. 2008, 260.
23. For an overview of democracy and "rational ignorance," see Somin 2013.
24. For evidence that partisan bias influences our willingness to attribute expertise, see Kahan et al. 2011.
25. On the tiny probability of a single vote being decisive in a large-scale election, see, e.g., Owen and Grofman 1984; Brennan and Lomasky 1993, 56–57; Carling 1995; Shachar and Nalebuff 1999; Mueller 2003, 305. The most sanguine calculation of decisiveness can be found in Edlin et al. 2007 and 2008. They argue that a voter in the U.S. presidential election could have as high as 1 in 6 million chance of casting a decisive vote. As Jason Brennan (2012, 188, n. 8) has pointed out, they use a nonstandard formula for calculating the probability of decisiveness which appears to overstate the probability of casting a decisive vote. In any case, even on the Edlin, Gelman, and Kaplan view, the expected return of a single vote can be substantial only if (i) you live in one of a handful of swing states (ii) vote for a major party candidate (iii) value the potential social, rather than private, benefits of a vote and (iv) have justified beliefs about the expected net social benefit of the victory of your candidate relative to the opposing candidate. Thus, even on the most optimistic account, cases in which voting is (instrumentally) rational will be the exception rather than the rule. I say more about condition 4 in chapter 8.
26. Schmidtz 2011, 777.
27. Rawls 2005, 49.
28. 1999, 236. Along the same lines, Rawls (1999, 505) writes, "granted a reasonable interpretation of human sociability (provided by the account of how a sense of justice is acquired and by the idea of social union), justice as fairness appears to be a sufficiently stable conception. The hazards of the generalized prisoner's dilemma are removed by the match between the right and the good. Of course, under normal conditions public knowledge and confidence are always imperfect. So even in a just society it is reasonable to admit certain constraining arrangements to insure compliance, but their main purpose is to underwrite citizens' trust in one another. These mechanisms will seldom be invoked and will comprise but a minor part of the social scheme."
29. The thought that coercion is needed to solve assurance problems is a common one. See Hobbes 1985, xv and the interpretation given in Rousseau 1984, part II; Hume 2003, Bk. III, Pt. II, Sec. VII.; Skyrms 2004, 4; Kant 2005, 307–308.
30. Think of it like this. You could imagine that public officials deploy armed officers to observe voters and arrest those who vote poorly. Even setting aside the moral objection to this plan, it's clear that it doesn't solve the problem. It merely creates a "who watches the watchers?" situation. How do the public officials get selected? What keeps the armed officers in check? Who sets the standards of good and bad voting? If voters are ultimately responsible for selecting public

officials and setting standards of good voting, we circle back to the original problem—i.e., voters won't vote well because they lack assurance that others will vote well. For a somewhat similar worry about expert democratic deliberation, see Somin 1998.

31. 1999, 248.
32. See, e.g., 2001, 13.
33. Maybe you think that the state should intervene to force the remaining 2% into compliance to produce the maximum satisfaction of the standards of justice. But it's unlikely that creating a state to force the 2% into compliance will produce the maximum satisfaction of the standards of justice. Since the contribution of the 2% isn't needed to provide the public good, the resources that the 98% would need to spend forcing the 2% into compliance could be better spent on projects that do have an impact on the justness of the society. Alternatively, maybe you think that reciprocity requires the 98% to force the 2% to do their part; otherwise the 98% are doing more than their fair share. The problem with this proposal is that the 98% would still be doing more than their fair share—they'll be contributing to the clean air *and* the state (with their votes) whereas the 2% will only be contributing to the clean air.
34. Of course, we could probably fine-tune the mix of compliers and noncompliers such that there is enough compliance to create a need for the state but not enough to totally undermine the state itself. Indeed, I suspect this is often our situation in the real world. But we'd need a principled reason for picking *this* particular mix. Otherwise, we'd end up with nothing more than an ad hoc theoretical novelty. That our figure matches what our empirical evidence tells us is actually the case would be a principled reason, but then we've given up on a *priori* ideal institutional analysis.
35. Kavka 1996.
36. *Ibid.*, 58.
37. *Ibid.*, 42.
38. *Ibid.*, 44.
39. *Ibid.*, 45.
40. *Ibid.*, 46.
41. *Ibid.*, 49.
42. *Ibid.*, 49.
43. *Ibid.*, 51.
44. *Ibid.*
45. *Ibid.*, 52.
46. *Ibid.*, 53.
47. Kavka (1996, 52) suggests a reply to his own position. Perhaps some people will be "avengers"—viz. they will compromise except in interactions with those who have been uncompromising with them in the past. Avengers will be able to cooperate with compromisers. Moreover, avengers make life harder for uncompromisers, to whom they do not yield. Kavka admits that a population of avenging angels could be stable given certain conditions. But it may also *fail* to ward off uncompromising angels, thus leaving open room for the state to improve matters.
48. *Ibid.*, 55.
49. *Ibid.*, 56.
50. Levy (2016, 322) makes a similar observation.
51. For an argument for why "pluralist angels" might not need the state, see Cave 1996.
52. 1996, 53.
53. *Ibid.*, 55.
54. *Ibid.*, 42.

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55. Ibid., 55.
56. Ibid., 55.
57. Geoffrey Brennan and James Buchanan (2008, 10.4.53) write: "Suppose that a monopoly right is to be auctioned; whom will we predict to be the highest bidder? Surely we can presume that the person who intends to exploit the monopoly power most fully, the one for whom the expected profit is highest, will be among the highest bidders for the franchise. In the same way, positions of political power will tend to attract those persons who place higher values on the possession of such power. These persons will tend to be the highest bidders in the allocation of political offices [. . .]. Is there not the overwhelming presumption that offices will be secured by those who value power most highly and who seek to use such power of discretion in the furtherance of their personal projects, be these moral or otherwise?"
58. 2008, 10.4.53.
59. 1980, 207.
60. 1996, 52.
61. Ibid., 58.

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24 *Ideal Institutional Theory*

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2 Is the State Special?

In vain you tell me that Artificial Government is good, but that I fall out only with the Abuse. The Thing! the Thing itself is the Abuse! Observe, my Lord, I pray you, that grand Error upon which all artificial legislative Power is founded. It was observed, that Men had ungovernable Passions, which made it necessary to guard against the Violence they might offer to each other. They appointed Governors over them for this Reason; but a worse and more perplexing Difficulty arises, how to be defended against the Governors?

—Edmund Burke, *A Vindication of Natural Society*

I'm not alone in questioning Rawls's claim that a fully just society needs a state.¹ For instance, G.A. Cohen says, "If the right principles are, as Marx thought, the ones that are right for real, everyday, material life, and if they are practiced in everyday life [. . .] then the state can wither away."² It's only when people *don't* practice the right principles that the state must force them to do the right thing. But when unprincipled people are running the state, the state itself won't be principled either.

Cohen notices that Rawls tries to wriggle out of this bind and save his ideal theory by assuming that people act unjustly in the market and civil society—thereby creating a role for the state—but justly in politics—thereby ensuring the justness of the state itself. (I should note that policy analyst Will Wilkinson scooped Cohen on this point by several years.)³ Cohen rejects this bifurcation:

There is not, then, on the one hand, as there is in Rawlsian perception, an economic structure that is organized to achieve a certain form of justice and, on the other, a set of individual economic choices that need show no respect for that justice [. . .]. Pile up your earthly goods on the mundane plane of civil society but be a saint in the heaven of politics.⁴

Note: this Jekyll-and-Hyde personality split (Cohen calls it an "apparent contradiction") isn't incidental, but rather an implication of the very nature of Rawls's ideal theory.⁵ As Wilkinson writes, "If our sense of justice can become so well coached that we will all voluntarily comply with the principles, then what's the point of state coercion? [. . .] The reason that we need

coercion at all is because there will be some non-compliance. But then we should expect some non-compliance by those granted the power to coerce.”⁶ In short, you need people to be sinners in the market and civil society to give the state a job to do but you need them to be saints in politics to ensure that the state does its job *right*. To put the point a bit more technically: Rawls’s ideal theory assumes partial compliance with justice to generate a need for the state and then assumes *full* compliance to stipulate the ideality of the state. As both Wilkinson and Cohen notice, Rawls’s flip-flopping idealization lets him sidestep the objections of those who argue that selfish political behavior results in government failure.⁷ If people are political saints, there’s nothing to worry about.

Behavioral Symmetry

Can Rawls’s halfway idealization be justified? At first glance at least, it looks like an ad hoc move that lets him have his cake and eat it too. Take public goods again. Rawls introduces a claim about people’s behavior—i.e., they’ll free ride—to explain why public goods are undersupplied and thus why the state is needed to solve the public goods problem. But we’ve seen that free riding affects the state itself because free riders won’t contribute to good democratic government. So Rawls must assume (at least implicitly) that citizens will forgo the temptation to free ride in politics and thus be active and informed democratic participants.⁸ Now, though, he owes us an explanation: what happened to the behavioral assumption that he himself introduced? Where did the tendency to free ride go? Giving a principled answer to this question is Rawls’s burden.

Geoffrey Brennan and James Buchanan make a similar point in their discussion of what they call *behavioral symmetry*.⁹ Behavioral symmetry involves consistently applying your behavioral models across different institutions. Brennan and Buchanan recognize that we might sometimes have compelling reasons to depart from the principle of behavioral symmetry; they insist only that the burden of justification rests with those who depart.¹⁰ The customer at Target and the voter at the ballot box are quite literally the same person. So why give her different personalities when she’s shopping for soup and when she’s shopping for senators? Maybe she *does* have different motivations in different institutional contexts, but we’d need a good reason for thinking so. I’ll spend most of this chapter trying to convince you that if Rawls wants to reject behavioral symmetry, he faces the burden of justification. Then I’ll argue that his attempt to meet that burden fails.

Here’s another reason to uphold the principle of behavioral symmetry. If we’re making all-else-equal comparisons of institutional types, then we need to make sure that all else is really equal, including our behavioral model. As Brennan and Buchanan put it,

On the basis of elementary methodological principle it would seem that the *same* model of human behavior should be applied across different

institutions or different sets of rules. The initial burden of proof must surely rest with anyone who proposes to introduce differing behavioral assumptions in different institutional settings. If, for example, different models of human behavior were used in economic (market) and political contexts, there would be no way of isolating the effects of changing the institutions from the effects of changing the behavioral assumptions. Hence, to insist that the basic behavioral model remain invariant over institutions is to do no more than apply the *ceteris paribus* device in focusing on the question at issue.¹¹

When comparing vegan and omnivorous diets, don't compare vegan smokers to omnivorous non-smokers. To paraphrase Brennan and Buchanan, we want to isolate the effects of changing diets from the effects of changing smoking habits.

Similarly, we shouldn't compare the justness of markets and states when the market actors are like Monty Burns and the state actors are like Ned Flanders. Instead, we should see how different institutions change the outcomes produced by the same sorts of people. To borrow more from Brennan, it's natural that political economists "should seek to appraise political processes using the same analytical techniques, the same assumptions about human motivation, the same general intellectual apparatus as they use in the analysis of markets. *To do otherwise is to run the risk of introducing bias into the politics/market comparison.*"¹² Perfect states beat imperfect markets, but that doesn't establish the superiority of state solutions any more than finding that omnivorous non-smokers have lower rates of cancer than vegan smokers establishes the superiority of an omnivorous diet. We should compare like-to-like, which means comparing different institutional types on the assumption that they're run by the same sorts of people following the same sorts of principles.

As Brennan notes, we have to be on guard against a tendency to regard the state as a kind of *deus ex machina*—a semi-miraculous and benevolent intervention into the socioeconomic system that itself comes from outside of the socioeconomic system:

Any normative theory of the state should attempt to answer questions about what government should do. And it is natural, perhaps, that any deficiency observed in the social order should be an occasion for the remark that 'government should do something about it'. But this line is to cast government as *deus ex machina* in normative argument—and neither the *deus* nor the *ex machina* elements sit comfortably with the economic approach. [. . .] The public goods account of the role of government makes appeal to a 'benevolent despot' model of government that is hopelessly at odds with assumptions made elsewhere in economics about human motivations and social institutions.¹³

On Brennan's view, the state isn't special. It's an institution run by human beings just like any other institution.¹⁴ Crucially, the state is *fallible* just like

any other institution—including those institutions that the state is enlisted to correct.

Here's a final argument for behavioral symmetry if you're still unmoved. Consider how unprincipled it looks when the Rawlsian asymmetry is reversed.¹⁵ Suppose Twin Rawls, like our Rawls, argues that a just society prioritizes the liberties of its citizens above all else, makes its poorest citizens as rich as possible, supplies public goods, and so on. As for the institutions needed to create a just society, Twin Rawls gives himself some wiggle room; he suggests either minimal state libertarianism or no-state free market anarchism could do the job.

Twin Rawls thinks that justice requires free markets and small (if any) government because of the way he models people's behavior and motivations. In politics, people are out for themselves; in the market and civil society, they care about the good of all. For instance, Twin Rawls is skeptical about the prospects for good democratic governance because he assumes that people won't contribute to public goods. Why waste time and effort researching officials and policy when you have nothing to gain by casting an informed vote? But if the electorate isn't watching Washington carefully, special interests and politicians will run wild. Big Oil will lobby relentlessly, trading campaign contributions for lax regulation and bureaucratic barriers designed to stymie cleaner competitors.

Twin Rawls enlists the private sector to correct for government failure. Consumers in a just society will buy solar panels and thrift store flannels since the state won't legislate effectively for environmental conservation. Opportunistic politicians won't push through taxes that benefit the have-nots at the expense of the haves, so CEOs in a just society will slash their own salaries to keep prices low and wages high. They donate any remaining surplus income to effective charities that distribute cash grants to society's poorest citizens. Twin Rawls thus concludes that justice is best served by the state staying out of the market's way.

I take it that Twin Rawls's violation of behavioral symmetry cries out for a defense. But Rawls also violates behavioral symmetry, just in reverse. So if Twin Rawls shoulders the burden of justifying his switch-hitting, so too does Rawls.

Behavioral Symmetry in the Liberal Tradition

It's not just that Rawls needs to tend to the principle of behavioral symmetry for the sake of his own theoretical health. He also needs to justify his rejection of symmetry if he wants his objections to other theories to hit the mark. More specifically, Rawls's objections to classical liberal regimes assume that people are fully compliant with justice in their political life and thus that political intervention always works as intended. But his classical liberal opponents deny this assumption on the grounds that it violates the principle of behavioral symmetry. If people are no better in politics than

anywhere else, then governments can fail just as markets can. And if governments fail, we have reason to scale back their role. To simply assume away government failure as Rawls does flirts with question begging.

Think of it like this. Suppose Milton Friedman and Rawls disagree about the right shoes to wear:

Friedman: "John, we should wear boots today."

Rawls: "Milton, stop being so cautious—let's put on flip-flops."

Friedman: "We'll freeze! I think it's snowing outside."

Rawls: "Well, let's just *assume* it's warm and sunny, in which case heavy boots are a bad idea."

Clearly Rawls earns a hollow victory here; merely *stipulating* the snow away fails to take Friedman's concern seriously.

Similarly, merely stipulating government failure away doesn't take the political concerns of people like Friedman seriously. But as Jason Brennan points out, this is precisely what Rawls does.¹⁶ Rawls acknowledges that "much conservative thought" has focused on "criticizing the ineffectiveness of the welfare state and its tendencies toward waste and corruption."¹⁷ But then he says he's going to leave this problem aside for now to ask instead "what kind of regime and basic structure would be right and just, could it be effectively and workably maintained?"¹⁸ Rawls's move here is like saying that he knows that Friedman is concerned about the snow, but he's going to leave that concern aside and instead ask what sort of footwear would be best when it's warm and sunny outside. To engage with Friedman's defense of wearing boots, Rawls needs a principled reason for disregarding Friedman's worry about the snow. Similarly, to seriously engage with his classical liberal critics, Rawls needs a principled reason for disallowing government failure while at the same time allowing market failure. In short, he needs a principled reason to violate the principle of behavioral symmetry.

It's worth noting that the endorsement of behavioral symmetry isn't just a quirk of a handful of 20th century free market economists. On the contrary, Rawls's rejection of symmetry makes him somewhat of an anomaly in the history of liberalism. If I'm right, Rawls is at cross-purposes with much of the liberal tradition—which is yet another reason why he faces a burden of justification. So bear with me for a brief history of behavioral symmetry.

We can start with Hobbes, who stresses that people who occupy political roles are only human and so have the same motivational profiles as everyone else:

Whosoever beareth the person of the people, or is one of that assembly that bears it, beareth also his own natural person. And though he be careful in his politic person to procure the common interest, yet he is more, or no less, careful to procure the private good of himself, his family, kindred and friends; and for the most part, if the public interest

chance to cross the private, he prefers the private: for the passions of men are commonly more potent than their reason. From whence it follows that where the public and private interest are most closely united, there is the public most advanced.¹⁹

If people are characteristically self-interested outside of politics, we should assume they are characteristically self-interested *inside* of politics, too. This assumption means that Hobbes's institutional analysis may not, like Rawls's, stipulate that political actors will pursue the public interest. Instead, he has to find ways to unite the public and private interest.

Hobbes's classical liberal critic John Locke also makes use of behavioral symmetry in his argument for a limited state. If we're skeptical of people's ability to properly resolve conflicts in a state of nature where others may hold them accountable for mistakes, we should be even more skeptical of a ruler's ability to properly resolve conflicts given that he is *unaccountable*. After all, Locke writes,

absolute monarchs are but men; and if government is to be the remedy of those evils, which necessarily follow from men's being judges in their own cases, and the state of nature is therefore not to be endured, I desire to know what kind of government that is, and how much better it is than the state of nature, where one man, commanding a multitude, has the liberty to be judge in his own case, and may do to all his subjects whatever he pleases, without the least liberty to any one to question or controul those who execute his pleasure and in whatsoever he doth, whether led by reason, mistake or passion, must be submitted to. Much better it is in the state of nature, wherein men are not bound to submit to the unjust will of another. And if he that judges, judges amiss in his own, or any other case, he is answerable for it to the rest of mankind.²⁰

It's bad enough when people judge badly in a state of anarchy—but when a person with near absolute power judges badly, you're *really* in trouble.

Here Locke stakes out a position that appears repeatedly in the classical liberal tradition: the goal of institutional design is to constrain vice, not empower virtue. An absolute monarch has plenty of power to do good, but the cost of granting him that power is enabling him to do bad. It might be better to play it safe and distribute a little power to a lot of people rather than a lot of power to one person. As F.A. Hayek puts it, the concern of classical liberals like Adam Smith “was not so much with what man might occasionally achieve when he was at his best but that he should have as little opportunity as possible to do harm when he was at his worst.”²¹

Speaking of Smith, he too emphasized the need to regard political authorities as no wiser or more prudent than private citizens. If anything, “kings and ministers” are less careful in their economic decisions than “private

people.”²² When private citizens spend unwisely, they pay the price—literally. On the other hand, kings and ministers face less accountability because they’re spending other people’s money. The lower the cost of mistakes, the weaker the incentive to avoid them.

Smith’s focus on incentives plays a big role in his famous criticism of the “man of system.” In Smith’s view, the man of system

is often so enamoured with the supposed beauty of his own ideal plan of government, that he cannot suffer the smallest deviation from any part of it. He goes on to establish it completely and in all its parts, without any regard either to the great interests, or to the strong prejudices which may oppose it. He seems to imagine that he can arrange the different members of a great society with as much ease as the hand arranges the different pieces upon a chess-board. He does not consider that the pieces upon the chess-board have no other principle of motion besides that which the hand impresses upon them; but that, in the great chess-board of human society, every single piece has a principle of motion of its own, altogether different from that which the legislature might chuse to impress upon it.²³

Smith would no doubt find fault with Rawls’s stipulation that people fully comply with justice. This stipulation effectively amounts to treating politics like a game of chess in which the theorist can move the players in any direction she’d like. For Smith, by contrast, politics is less like chess and more like, say, the Hunger Games. Each “piece” has a will of its own. When the players cooperate, it’s because doing so serves their ends. In this kind of game, you cannot impose “a principle of motion” on the players. Instead, you have to set up the rules in a way that induces the players to do what you’d like them to do.²⁴

Smith’s friend, David Hume, takes a similar approach. He advises us to design political institutions that promote the public interest without banking on people *caring* about the public interest. Here’s Hume:

Political writers have established it as a maxim, that, in contriving any system of government, and fixing the several checks and controuls of the constitution, every man ought to be supposed a *knave*, and to have no other end, in all his actions, than private interest. By this interest we must govern him, and, by means of it, make him, notwithstanding his insatiable avarice and ambition, co-operate to public good. Without this, say they, we shall in vain boast of the advantages of any constitution, and shall find, in the end, that we have no security for our liberties or possessions, except the good-will of our rulers; that is, we shall have no security at all.²⁵

Hume cautions us against designing our constitution on the assumption that people are public-spirited in politics. To do otherwise, Hume says, will leave

us with only the security we can pry from the altruism of politicians—which is to say, little to none.

Turning to real-world political practice for a moment, notice that James Madison's work in *Federalist* No. 51 incorporates the Humean insight (perhaps not coincidentally).²⁶ If people were angels, we wouldn't need the state. But people *aren't* angels, so don't design a state on the assumption that they are. Instead, "ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place [. . .]. This policy of supplying, by opposite and rival interests, the defect of better motives, might be traced through the whole system of human affairs, private as well as public."²⁷ Hobbes's original concern lives on: how do we get political actors to serve the public interest by means of their private interests?

The significance of behavioral symmetry resurfaced in 20th-century defenses of capitalism against socialist challenges. In the early stages of the debate, economist Frank Knight characterized socialists as believing that the state "conceived in the abstract as a benevolent and all-powerful agency—essentially as God rather than realistically as politicians—could order economic affairs rightly without generating new evils or incurring serious social costs."²⁸ Knight conceded that socialism would beat capitalism if the socialist state were run by "by a special race of men, or by angels or Gods," but so what?²⁹ Socialist states *aren't* run by angels and "there are very cogent reasons for believing that with men at all as they are—and with governments as they will be, if staffed by such men—neither socialism nor anarchism in any approximation to the ideal pattern is a practical possibility."³⁰

In the same spirit, Milton Friedman (one of Knight's students) argued that much of the initial attraction of central planning was due to "a comparison between the existing state of affairs, with all its injustices and defects, and a hypothetical state of affairs as it might be. The actual was compared with the ideal."³¹ Milton's son, David Friedman, makes a similar point: "An ideal socialist society is superior to a capitalist society. Socialism does better with perfect people than capitalism does with imperfect people [. . .]. And it is better to wear a bikini with the sun shining than a raincoat when it is raining. That is no argument against carrying an umbrella."³²

More recently, Jason Brennan has pointed out that G.A. Cohen's moral defense of socialism rests on what he calls "the Cohen fallacy"—that is, "the fallacy of concluding that if an idealized version of system X is better than a realistic, flawed version of system Y, this proves that X is inherently superior to Y."³³ For instance, when Cohen criticizes a camping trip run on capitalist principles, he describes a typical camper as a "shmuck;" but when Cohen praises a camping trip run on socialist principles, the typical camper conveniently acts like a mensch.³⁴ (Brennan also points out that Rawls is guilty of the same fallacy.³⁵) Brennan concludes, "If we want to compare political systems, we need to compare them under the same conditions."³⁶

Nowhere is behavioral symmetry more prominent than in public choice economics, which explicitly makes symmetry one of its foundational

assumptions. Anthony Downs is probably responsible for getting the ball rolling in earnest.³⁷ He found it curious that economists took people to be utility-maximizers—*except* when they worked for the state. Economists' (implicit) assumptions about political actors were "inconsistent with the axioms that explain how all other economic agents in society operate."³⁸ They regarded the state "as outside the system being analyzed."³⁹ Many "treat government as a machine that carries out the will of the people rather than an institution run by men."⁴⁰

Downs speculated that this asymmetry arose because economists' approach to markets was descriptive—i.e., to show what markets actually do—whereas their approach to politics was normative—i.e., to show what states *should* do.⁴¹ But Downs thought this enterprise was useless since "there is little point in advising governments to [maximize social welfare], or forming recommendations of action based on the supposition that they might, unless there is some reason to believe that they will. Otherwise, the economists' advice may very well be as useless as telling a profit-maximizing monopolist to sell his product at marginal cost so as to benefit society."⁴² Downs makes his point in terms of practicality—why tell government agents to act against their interests when we know they won't?—but I think he gestures at deeper theoretical insight about idealization. As long as we're permitting ourselves to *stipulate* that people will act for the common good, why not cut out the government middle man and just have market actors work for the benefit of society in the first place?

Lastly, I'd be remiss if I didn't note the founding fathers of public choice: Gordon Tullock and the aforementioned James Buchanan (who would win the Nobel Prize).⁴³ Buchanan vigorously rejects the common assumption of a "bifurcated man" who was selfless in politics but selfish everywhere else.⁴⁴ Although rare, a number of contemporary political philosophers have drawn on the insights of public choice economists. Geoffrey Brennan,⁴⁵ Loren Lomasky,⁴⁶ Daniel Shapiro,⁴⁷ Mark Pennington,⁴⁸ Gerald Gaus,⁴⁹ John Tomasi,⁵⁰ and Jason Brennan⁵¹ have all stressed the need to compare market institutions and political institutions under the same sorts of conditions rather than comparing the imperfect to the perfect.⁵²

It's not a coincidence that theorists who share a commitment to behavioral symmetry tend to share a commitment to the same sorts of policy recommendations. The problem of designing political institutions on the assumption of behavioral symmetry is very different than the problem of designing political institutions on the assumption of behavioral *asymmetry*. If you think people are saintly in politics and sinful in markets, you'll want a bigger role for politics relative to markets than those who think people are roughly the same across the board.

I contend that, more than anything else, the disagreement over behavioral symmetry divides classical and modern liberals. Tomasi, for instance, makes the compelling case that classical and modern liberals aren't all that different when it comes to their views on social justice.⁵³ Both believe that just

political institutions will prioritize the economic welfare of their poorest citizens. They differ in their views on which institutions are the best means to that end.

I think Tomasi is right about this. And I think he's also right that classical liberals and modern liberals diverge in their policy preferences in part because feasibility worries feature more prominently in classical liberal theorizing.⁵⁴ But I submit that the pivotal point of disagreement isn't "realism" versus "idealism," but rather symmetry versus asymmetry. A *thoroughgoing* idealism about people's commitment to justice doesn't lead to a redistributive and regulatory state, but rather a withering away of the state. (This is why I believe that Tomasi's turn to an ideal theoretical classical liberal state moves in the wrong direction.) It's only when people are saints in the state but not the market and civil society that you want the former to extensively regulate the latter. So the issue isn't whether modern liberals think that people are better than classical liberals think they are. The issue is whether people are better in politics than they are elsewhere. In short, the issue is behavioral symmetry.

Rawls's Argument for Asymmetry

Given how much weight the assumption of behavioral *asymmetry* carries in Rawls's institutional analysis, he does surprisingly little to buttress it. From what I can tell, he offers one explicit argument against behavioral symmetry. Self-interested economic behavior—but not self-interested political behavior—can be effectively shepherded to produce just outcomes. For this reason, a fully just society can tolerate economic but not political self-interest.

By way of fuller elaboration, Rawls asks why his social theory needs to make moralized assumptions at all given that other fields such as economics can do without them.⁵⁵ He replies that we can model economic actors as profit-seekers because the constraints imposed by a competitive market channel profit-seeking behavior toward mutually advantageous outcomes. By contrast, there aren't analogous constraints in the political realm. And when there's no mechanism in place that "succeeds in setting up an invisible hand that can be relied upon to guide the process to a just outcome, a public sense of justice is to some degree necessary."⁵⁶

In brief, Rawls sets out to study the fully just society from the start. But he wants to work with the least extravagant assumptions about people's moral motivations that are consistent with a fully just society. So if there are areas of life where institutions can channel self-interest toward justice, then he allows it. Where they can't, he doesn't. Since democratic institutions don't channel self-interest toward the common good in the way market institutions do, we cannot allow political actors the same moral slack that we allow economic actors.⁵⁷

Rawls's argument doesn't succeed in justifying behavioral asymmetry. The constraints of a competitive market that typically succeed in guiding

self-interest toward the public interest via the invisible hand are conspicuously absent in some cases. This is the very problem of market *failure* and it plays a large role in many arguments for the state—including Rawls's. We've seen Rawls argue that the market won't produce public goods because of the free-rider problem. But if we're permitted to attribute a sense of justice to people when we cannot count on their self-interest harmonizing with the public interest, we should be permitted to attribute a sense of justice to market actors when they're trying to provide public goods (say, when they are deliberating about whether to buy a low emission vehicle). The result, then, is that the market won't fail to provide public goods and so the state isn't needed to provide them.

So, Rawls's *a priori* argument against behavioral symmetry doesn't work. Of course, other arguments might fare better. For instance, you could make the flatly empirical case that, as a contingent matter of fact, people happen to be more public-spirited in politics than elsewhere. I suspect that this is the most promising move for opponents of symmetry to make and I'll spend the last chapter reviewing it.

Take note, though: when you make this move, you leave ideal theory behind. Remember that an ideal description of an institution requires us to "abstract from its political sociology, that is, from an account of the political, economic, and social elements that determine its effectiveness in achieving its public aims."⁵⁸ Once we start doing empirical dirty work and examine how voters, politicians, and bureaucrats actually behave in a given real-world state, we're no longer abstracting from political sociology. We're doing *nonideal* theory. Ultimately, I think that's exactly what *should* be done—just not in this book. My aim isn't to build up a nonideal theory but rather to criticize ideal theory.

In what follows, I'll go through Rawls's analysis principle by principle, starting with the institutional requirements of political equality. In each case, I show that Rawls carves out a need for his favored institutions by considering the problems that arise for his disfavored institutions under nonideal conditions. Then, in his explanation of how his favored institutions will solve these problems, he switches over to ideal conditions.⁵⁹ Since Rawls lacks a good reason for shuffling back and forth in this way, we should reject all of his ideal institutional theory. Rawlsian institutional analysis needs a reboot.

When we undertake consistently nonideal theorizing, classical liberal states look stronger than Rawls and other egalitarian liberals think. But I'll issue a warning up front: it's not my intention to conclusively establish the liberal bona fides of free market regimes. That would require the extensive empirical inquiry that I already mentioned I wasn't going to do. Rather, my aim is to argue that, by Rawls's own lights, a central concern of free market theorists—namely, government failure—needs to be taken more seriously. Rawls's assumptions do not permit him to rule out the possibility of government failure *a priori*. So Rawls and Rawlsians should consider putting free market regimes back on the menu of competing liberal institutional types.

Notes

1. See Wilkinson 2004; Cohen 2008, 1; Brennan 2014, 75; Levy 2016.
2. 2008, 1.
3. Wilkinson 2004. Jason Brennan (2014, 60–62) also points out Rawls’s inconsistent idealization.
4. 2008, 2.
5. On the “apparent contradiction” language, see Cohen 2008, 2.
6. 2004. Wilkinson suggests that Rawls may be able to escape this problem—although not entirely satisfactorily—by positing *slightly* less than full compliance, thus generating a need for the state to coerce the remaining noncompliers and thus solidify citizens’ trust in each other. Wilkinson seems to worry that this move is ad hoc. My worry, though, is the one expressed in the previous chapter: the trust argument fails on its own terms since the state itself is not exempt from the trust problem.
7. Wilkinson, *ibid*; Cohen 2008, 2.
8. See, e.g., 2001, 144.
9. Brennan and Buchanan 2008, chapter 4, section 2.
10. *Ibid.*, 10.4.10.
11. 2008, 10.4.6 (*italics* in the original).
12. Brennan 2007, 142 (*my italics*).
13. *Ibid.*, 141.
14. To guard against thinking of the state as a *Deus Ex Machina*, economist Michael Munger (2014) suggests that whenever you recommend that the State do something, you should first “go back and look at your statement. Everywhere you said ‘the State,’ delete that phrase and replace it with ‘politicians I actually know, running in electoral systems with voters and interest groups that actually exist.’”
15. For a similar exercise, see Brennan 2014.
16. *Ibid.*, 62.
17. 2001, 137.
18. *Ibid.*
19. 1985, chapter 18.
20. Locke 1988, chapter 2, section 13.
21. 1980, 12.
22. Smith 2003, 2.3.36.
23. Smith 1982, 6.2.42.
24. Schmidtz (2011, 778) writes, “Compliance is an endogenous variable; the extent of compliance is not externally determined but is instead a function of the principles chosen. When we choose a principle, and any particular way of trying to put it into practice, we choose a compliance problem at the same time. We cannot set aside compliance as something to address later, because our task of choosing a principle we can live with is a task of choosing a compliance problem we can live with.”
25. Hume 1963, 1.6.1.
26. See Adair 1957, 354.
27. Madison 2003, 319.
28. Knight 1982a, 159.
29. Knight 1982b, 209.
30. *Ibid.*
31. Friedman 2002, 196.
32. Friedman 1995, 134.
33. 2014, 60.
34. Cohen 2009, 7.
35. 2014, 60–62.

36. Ibid., 60.
37. Downs 1957. See also Demsetz 1969.
38. 1957, 288.
39. Ibid., 282.
40. Ibid., 288.
41. Ibid., 284.
42. Ibid., 284.
43. See, e.g., Buchanan and Tullock 1999.
44. See, e.g., Buchanan 1962, 23.
45. Brennan and Lomasky 1997, 8.
46. Ibid.
47. Shapiro 2007, 6.
48. Pennington forthcoming.
49. Gaus 2008, chapter 6.
50. Tomasi 2012, 204ff.
51. Brennan 2014.
52. See also my discussion of political equality in Freiman 2012.
53. Tomasi 2012.
54. Ibid., 207. A similar idea is explored in Pinker 2002, chapter 16; Sowell 2002.
55. Rawls 1999, 431ff.
56. Ibid., 432.
57. Rawls says, “The democratic political process is at best regulated rivalry; it does not even in theory have the desirable properties that price theory ascribes to truly competitive markets.” 1999, 199.
58. 2001, 137.
59. Brennan (2014, 62) puts the point similarly.

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3 Political Liberty

Don't let the fox guard the chicken coop.

—James Buchanan, summarizing his contribution to economics

No liberal democracy gives the rich more votes than the poor. But sometimes it's hard to tell from the results. Shell lobbies for subsidies while billionaire sugar producers swap political contributions for economic protections. The distribution of political power is equal in name only. So how can we get the real thing?

Ironically enough, *Monopoly* gives us a clue. The U.S. government has no regulations to equalize the distribution of Monopoly money. Still, I'd wager that it's roughly equal across households (it's probably no more than \$15,140 on average). The reason is simple: people have little *incentive* to hoard Monopoly money. Monopoly money isn't concentrated in the hands of the rich because a surplus of the stuff wouldn't do them much good.

This is a trivial example but it makes a nontrivial point. Sometimes laws and regulations designed to ensure an outcome aren't needed to get that outcome. So maybe we can get equality of political power without legislating or regulating for it. The solution might be to make a surplus of the stuff worth less. If so, laws and regulations designed to ensure political equality can backfire by making control of the democratic process worth *more*.

Rawls and other liberal egalitarians propose two main methods of safeguarding the state from domination by the rich: (i) equalize the distribution of money generally and (ii) equalize the money that makes its way into politics with electoral regulation. These proposals are intuitive enough: equalize people's means of getting political power and we equalize their chances of getting political power. The problem is, empowering the state to regulate the economy and elections is like adding a moon roof and heated steering wheel to a base model Hyundai—luxury features make would-be buyers *more* willing to buy.

Rawls and others overlook this problem because they theorize for ideal conditions. Remember, Rawls evaluates each regime type according to its “ideal institutional description,” meaning “the description of how it works

when it is working well, that is, in accordance with its public aims and principles of design.”¹ So long as a state’s laws and regulations *aim* at political equality, Rawls assumes they’ll achieve political equality. In ideal conditions, people fully comply with justice and fully just lawmakers and regulators won’t sell out to Big Oil and Big Sugar.

So far, so good. But what about Shell and the sugar billionaires themselves? If people in ideal conditions are fully just, why are these companies buying unjust subsidies and protections in the first place? If everyone is just, the rich won’t look to parlay their surplus wealth into surplus political power. An ideally just society has no need for economic and electoral regulation. It would achieve political equality through conscience, not cops.

Here we see ideal theory’s internal inconsistency. The idealizing assumption that entitles Rawls to stipulate the success of his policies (namely, that society is fully compliant with justice) also undercuts the *need* for those policies. Rawls illicitly sidesteps this problem of self-obviating idealization by idealizing halfway. He first models a less than fully just society to generate the need for economic and electoral regulations but then assumes away any injustice when modeling the regulations themselves.² More specifically, he assumes rent-seeking and regulatory capture to generate the need for state intervention and then assumes them away to guarantee that the intervention *works*. This asymmetry is not incidental but rather required by the nature of his ideal theory: the very injustice that generates the need for political intervention (the means and motivation of the rich to buy political power) threatens the success of the political intervention itself. The only way to ground both (i) the need for regulation and (ii) the stipulation of the regulation’s success is to equivocate in precisely the way that Rawls does.

So, to restore consistency, Rawls needs to resolve a dilemma. Either (i) the rich *aren’t* buying up state power, in which case equalization isn’t necessary or (ii) the rich *are* buying up state power, in which case they can subvert equalization by buying up the state power unleashed to do the equalizing. Neither option justifies an *a priori* demand for equalization—that is, one that “abstracts from [a state’s] political sociology, that is, from an account of the political, economic, and social elements that determine its effectiveness in achieving its public aims.”

This result matters because Rawls wants to rule out all forms of capitalism *a priori* in part because they don’t equalize enough to achieve the fair value of the political liberties. He says that “laissez-faire capitalism (the system of natural liberty) secures only formal equality and rejects both the fair value of the equal political liberties and fair equality of opportunity.”³ Welfare-state capitalism fares better, but not by much: “Welfare-state capitalism also rejects the fair value of the political liberties, and while it has some concern for equality of opportunity, the policies necessary to achieve that are not followed. It permits very large inequalities in the ownership of real property (productive assets and natural resources) so that the control of

the economy and much of political life rests in few hands.”⁴ But, if I’m right, Rawls is not entitled to make these sweeping *a priori* claims about the institutional requirements of liberal egalitarian justice. Rawls and others cannot set aside empirical analysis by claiming that they are abstracting away from nonideal problems because those nonideal problems are what gives political intervention its point.

Political Equality

First things first. Why political *equality*? Political philosophers usually don’t insist on economic equality.⁵ So what makes political inequality objectionable?

The standard answer is that political power is a *positional good*: the absolute value of your share of political power depends on how much you have relative to others.⁶ My one vote is worth less as a means to deciding the outcome of the presidential election if my neighbor has two votes. So inequalities in political power cannot bring about mutual gains in political power.

By contrast, economic inequalities can bring about mutual gains in economic welfare. Thanks to comparative advantage and the division of labor, my neighbor’s greater productivity can work to my benefit. He might be a more prolific gardener than me, but I can always trade some of my tomatoes for some of his carrots, leaving us both better off (if not equally so).

So, in a Rawlsian spirit, it could be rational for the *relatively* poor to accept economic inequalities that work to their *absolute* economic advantage. But this possibility is foreclosed in the case of political power. Those who are made relatively poor in political power by political inequalities are thereby made *absolutely* poor in political power. With respect to positional goods like political power, Harry Brighouse and Adam Swift write, “There is no way that inequality could tend to improve the position of the worse off—with regard to the value of the good in question—for the only way to give more to some is to give less to others. Insofar as goods are positional, relative amount determines absolute value.”⁷ Gains in one person’s political position necessarily produce losses in another’s—and this feature of political power explains why it should be distributed equally.

The upshot is that even if we care only about people’s absolute condition, we have reason to prefer political equality because there are no Pareto-superior departures from political equality. Thus, we arrive at what Rawls dubs “the requirement of securing the fair value of the political liberties.”⁸ It should be the case that “citizens similarly gifted and motivated have roughly an equal chance of influencing the government’s policy and of attaining positions of authority irrespective of their economic and social class.”⁹ Inevitably inequalities in political power will arise; the aim is to ensure that the inequalities emerge from a level playing field. The probability that one’s input will affect the outcome of the political process should not be affected by irrelevant factors such as one’s income and wealth. By analogy, we want

to ensure equality in starting gates for a race so that similarly gifted and motivated runners have an equal chance of winning.

To clarify, political opportunities and advantages include not only one's chances of holding political office, but also one's effectiveness in advancing one's political interests, through formal routes like lobbying or even informally, such as in everyday political conversation. In Rawls's words, we want to ensure "an equal chance of influencing the government's policy."¹⁰ What matters is political influence, broadly construed.

So now let's turn to why political equality requires that we equalize the influence of money on politics. Political power is positional because it is a fixed-sum good: the added influence that one person gains over the community results in another person's loss of influence. For example, if we increase the number of seats in parliament, we necessarily decrease the power of existing seats—or if they wield power over a previously ungoverned issue, they do so at the expense of power wielded by citizens themselves.

Because the sum of political power is fixed, individuals' relative position in the distribution of the *means* of acquiring political power is what determines their ability to acquire political power. By analogy, having a faster car than the other drivers is what enables you to win the race. You can be absolutely slow and win; you can be absolutely fast and lose. If we ratchet up the horsepower of the car next to yours, we necessarily lower the value of *your* car as a means to winning the race.

Similarly, if we distribute an extra ballot to Lucky we lessen the value of everyone else's vote as a means to influencing the electoral outcome. And this argument is not restricted to *direct* means, like votes. It generalizes to indirect means of affecting electoral outcomes as well, like money. If my neighbor has twice as much money that she in turn uses to persuade other voters to support her favored political outcome, she diminishes *my* ability to affect political outcomes. So the considerations that cause us to care about an equal distribution of the direct means of affecting electoral outcomes like votes should also cause us to care about an equal distribution of the *indirect* means of affecting electoral outcomes like money.

I take it that this is roughly what Rawls has in mind when he says that "the limited space of the public political forum, so to speak, allows the usefulness of the political liberties to be far more subject to citizens' social position and economic means than the usefulness of other basic liberties."¹¹ Rawls's guarantee of political equality ensures "fair and equal access to the political process as a public facility" and he notes that "this public facility has limited space, as it were. [. . .] [T]hose with greater means can combine together and exclude those who have less."¹² In brief, Rawls worries that "social and economic inequalities in background institutions are ordinarily so large that those with greater wealth and position usually control political life and enact legislation and social policies that advance their interests."¹³ Here Rawls appears concerned both with *rent-seeking* (the extraction of an economic gain through legal or political manipulation rather than productive

contribution) and *regulatory capture* (a situation in which a government regulatory agency serves the commercial or special interests of the industry it is designed to regulate rather than the public interest).¹⁴

To make good on the guarantee of equal access to the political process, Rawls and other political philosophers have proposed two basic institutional reforms. The first is to reduce background economic inequalities and thus reduce inequalities in the means of acquiring unequal political power. The second is to directly target the use of money in politics by regulating campaign finance, lobbying, and so on.

Redistribution

The redistribution strategy is favored by an array of theorists, including Rawls, T. M. Scanlon, Thomas Nagel, Brian Barry, and Harry Brighouse and Adam Swift.¹⁵ Few would deny that equalizing votes helps equalize political power. The same reasoning suggests that equalizing income and wealth would help, too.

The problem with economic equalization is that it targets people's means of capturing political power to the exclusion of their incentives. This is an important omission; individuals need means *and* incentives to capture political power. Economic inequalities are not necessary for political inequalities: even in conditions of strict material equality, some people may prefer to spend their shares on political power and others will not, which will lead to inequalities in the value of political liberties. Nor are they sufficient: those with greater economic means could simply choose not to use them to acquire greater political power. The distribution of political power might resemble the distribution of toothbrushes, for example—toothbrushes are more or less evenly distributed, even though wealth is not, presumably because the wealthy don't care to stockpile toothbrushes.

What's more, economic equalization carries an overlooked risk of backfire. It increases the rich's *incentives* to capture political power precisely in virtue of trying to decrease their means. In short: the greater the rich's tax burden, the greater their incentive to capture political power to escape that burden.

Let's spell this argument out. First, notice that the problem of capturing an unfair amount of political power is a problem of *nonideal* theory by definition. Ideal conditions are characterized by strict compliance with justice: people don't defect from fair, mutually agreeable terms of cooperation.¹⁶ In ideal conditions, people are *reasonable*, meaning that, among other things, they have "the desire to engage in fair cooperation as such."¹⁷ Reasonable people aren't maximizers of self-interest; they like to cooperate with others willing to do the same.

Here's the problem: the possibility of people capturing more than their fair share of political power arises only when we assume that people are *not* fully just or reasonable. If we assume ideal conditions, we have to assume

that the rich won't leverage their wealth to control public political life for private gain.¹⁸ If they did, the conditions would thereby fail to qualify as ideal. Ideally just citizens won't buy political power for their selfish purposes any more than ideally just baseball players would bribe the umpire to cheat their way out of competing on a level playing field. Since an ideal society can achieve political equality without economic equality, Rawls shouldn't fault an ideal capitalist society for tolerating economic *inequality*.

The only way for Rawls to get his objection to capitalism off the ground is to assume nonideal conditions. And that's what he does, at least implicitly. Remember, his assumption is "that those with greater wealth and position usually control political life and enact legislation and social policies that advance their interests."¹⁹ Here Rawls is describing *unreasonable* people—people who subvert just, mutually agreeable institutions for private gain. As Jason Brennan writes, Rawls's analysis of his disfavored regimes points to the possibility that "they might encourage people of great wealth to buy government power for their own ends. But, by Rawls's ground rules, we're supposed to be doing ideal theory, and imagining that people have a perfect sense of justice. And if people had a perfect sense of justice, they would not buy government power for their own selfish ends, since by hypothesis this is unjust."²⁰

So, the question to ask is *not*, "What institutions minimize the odds of *reasonable* people capturing political power for private gain?" but, rather, "What institutions minimize the odds of *unreasonable* people capturing political power for private gain?" At a minimum, we cannot declare *a priori* that redistributive and regulatory institutions do the job. Indeed, there's good reason to think that they'll make things worse.

For the sake of simplicity, let's settle on increasing marginal rates of taxation as the specific means of economic equalization to consider. At increasing levels of taxation, capture will become increasingly cheaper than compliance. To simplify: when political authorities are empowered to tax an individual n dollars, power over political authorities is, all else equal, worth n dollars to that individual. When political authorities are empowered to tax $2n$ dollars instead of n dollars, power over political authorities doubles in value. Spending $1.5n$ dollars on capture is cost-effective for individuals taxed $2n$ dollars, but not n dollars. Increasing marginal rates of taxation increase the opportunity cost of *not* capturing political power for private gain.

To make things concrete, suppose some one-percenters are thinking about hiring a million-dollar team of lobbyists to carve out a tax loophole. Whether they do so depends on the level of tax savings they can expect from the loophole. The higher the tax, the higher the value of a tax loophole. They won't pay a million dollars for a loophole that saves them only half a million. But they will if the loophole saves them *two* million. Taxes raise the price of political compliance by their very design. The whole point of taxing the rich is to make it costlier for them to get richer. But this strategy actually raises the opportunity costs of compliance and is therefore counterproductive. We want to make noncompliance *less* profitable, not more so.²¹

Here's an analogy. Imagine that iterated interactions have given rise to a tit-for-tat norm among bartenders and bar patrons at a local bar. Some patrons started giving the bartender generous tips; the bartender started giving them free drinks. This arrangement leaves both parties better off. The patrons still pay a price for their drinks in the form of their tips, but presumably that cost is less than the drinks' full price. The bartender gets paid directly in cash. But the bar's owner is worse off because she can't collect on these illicit exchanges.

Thus, the owner wants to stem this practice and discourage people from circumventing the bar's official policies. What should she do? Well, for starters, she shouldn't *raise* drink prices. This move would exacerbate the problem by increasing the likelihood that patrons will offer tips to escape paying the full price of drinks. Price increases make what are effectively bribes to bartenders more valuable because they enable patrons to avoid greater costs. If the price of drinks doubles, for example, the cost of cooperation with the bar's rules (paying in full) doubles as well.

The lower the prices, the lower the probability that the benefit of circumventing the rules will exceed the cost. A rationally selfish patron won't tip a bartender seven dollars to avoid paying for a five-dollar drink. But if the drink's price is raised to, say, ten dollars, she will happily fork over the seven-dollar tip. Patrons have greater incentive to "capture" bartenders when the bartenders are empowered to impose greater costs. Likewise, citizens have greater incentive to capture political power when political authorities are empowered to impose greater costs.

To sum up, the basic idea here isn't exactly earth shattering: the costlier the activity, the less of it there will be. All else being equal, if the price of a movie ticket increases, fewer people will see movies. For the same reason, if the price of compliance increases, fewer people will comply.

To frame my argument differently, consider an analogy to carbon emissions. Because the value of political power is positional, when individuals capture more for themselves, they necessarily leave less for others. Similarly, when individuals pollute the air, they damage the health of others. Both activities generate negative externalities.

How, then, do we secure social benefits like clean air? The conventional strategy is to increase the costs of defection from the mutually advantageous cooperative scheme. For example, to make polluting a less attractive option to would-be polluters, states tax carbon emissions. But rather than penalize defection, economic equalization does the *reverse*: it actually penalizes *cooperation*. In the case of carbon emissions, the taxes attach to defectors; in the case of political power, the taxes attach to cooperators. The new costs will be borne by those who choose *not* to defect from the political regime in order to obtain special privileges or exemptions.²²

Equalizing taxation increases incentives to capture political power for another reason: the substitution effect. As the price of one good rises, individuals will, *ceteris paribus*, switch some of their consumption out of that good

and into others. As the price of butter rises, people will eat more margarine. For the same reason, making it less profitable to pursue economic gains incentivizes unreasonable people to swap the pursuit of economic gains for the pursuit of political gains.²³ Raising taxes on labor and investment decreases the marginal utility of labor and investment, which in turn increases the instrumental value of political activity relative to market activity. Again, this effect is not an accident: the very point of taxing the rich is to make it costlier for them to get richer. But this effect increases the odds that the interests of the unreasonable rich will be better served by political power than market power.

On the assumption of behavioral symmetry, this kind of perverse incentive will be a non-incidental effect of political intervention. People's behavioral profiles remain constant across different institutions, but their desires are *channeled* differently because different institutions create different payoffs. Suppose my coffee shop raises the price of a café mocha. This price hike doesn't extinguish my thirst for a sugar-cafeine cocktail—it just re-routes me toward Mountain Dew. Suppose the state raises the price of economic power. This price hike doesn't extinguish unreasonable people's thirst for private gain—it just re-routes them toward political power.

The problem with economic equalization is that institutions should try to make it *cheaper* for unreasonable people to refrain from pursuing political power—but economic equalization makes that option costlier. By analogy, if the state aims to limit Mountain Dew overconsumption, it would be counterproductive to hike taxes on café mochas. Doing so raises the cost of a substitute good for Mountain Dew and thus indirectly incentivizes Mountain Dew consumption. Similarly, if the state aims to limit the “overconsumption” of political power, it is counterproductive to raise the price of a key substitute good for political power—viz. economic power. Doing so indirectly incentivizes the very consumption of political power that we were trying to avoid.

An important objection remains: if we equalize income, then the rich will lack the resources to differentially influence the political process. In reply, I'll first note that advocates of economic equalization typically don't advocate for the *total* elimination of economic inequalities. Partial equalization will still leave economic inequalities that the rich can convert into political inequalities.

But maybe this result shows us that we have some (defeasible) reason to fully equalize wealth and income. Here my earlier worries about idealization re-enter the picture. We can either stipulate the success of the equalization or we do not. If we *stipulate* their success, we are thrust into ideal theory: individuals are assumed to strictly comply with the demands of justice. But now economic equalization is unnecessary because fully just people don't use their unequal economic advantages to acquire unequal political influence. If we do not stipulate the success of economic equalization, we leave open the possibility that they will fail for the reason given above—namely that the unreasonable rich will undermine equalization.

Regulation

There's something peculiar about trying to stop people from buying up political power by taxing their wealth and income. As far as I can tell, states do not try to stop the purchase of any other illicit commodity by making their citizens too poor to buy it.²⁴ When states try to stop citizens from buying chemical weapons or methamphetamine, they restrict their access to the chemical weapon or methamphetamine markets in particular. Don't swat flies with a sledgehammer.

Along these lines, consider a second strategy for combatting wealth-based political inequality: regulate the ways in which money can enter politics. Rawls and other philosophers recommend regulations to ensure open political competition.²⁵ He proposes measures to regulate electoral procedures,²⁶ limit private contributions to politicians or perhaps to altogether replace private contributions with public financing, and so on.²⁷

Here's the problem. The reason why electoral regulation is needed is also a reason why it won't work. The regulation is needed because the rich dominate the democratic process; the regulation won't work because, well, the rich dominate the democratic process. Rawls's resolution of this inconsistency involves violating behavioral symmetry. He assumes that the rich selfishly hijack the state to motivate the problem of political inequality but (implicitly) drops this assumption when sketching his solution. Indeed, we can see this equivocation within a single passage:

Political power rapidly accumulates and becomes unequal; and *making use of the coercive apparatus of the state and its law, those who gain the advantage can often assure themselves of a favored position*. Thus inequities in the economic and social system may soon undermine whatever political equality might have existed under fortunate historical conditions. Universal suffrage is an insufficient counterpoise; for when parties and elections are financed not by public funds but by private contributions, the political forum is so constrained by the wishes of dominant interests that the basic measures needed to establish just constitutional rule are seldom properly presented. These questions, however, belong to political sociology. I mention them here as a way of emphasizing that our discussion is part of the theory of justice and must not be mistaken for a theory of the political system. *We are in the way of describing an ideal arrangement*, comparison with which defines a standard for judging actual institutions, and indicates what must be maintained to justify departures from it.²⁸

On the one hand, Rawls says that his proposed electoral regulations are part of "an ideal arrangement."²⁹ On the other hand, he says that these regulations are needed because the rich tend to make "use of the coercive apparatus of the state and its law" to "assure themselves of a favored position."³⁰

But *ideally* the rich won't make use of the coercive apparatus of the state to assure themselves of a favored position. That's a nonideal problem.

So Rawls has a dilemma. Either (i) the rich *aren't* hijacking the state, in which case electoral regulation isn't necessary or (ii) the rich *are* hijacking the state, in which case they may hijack the electoral regulation itself. Neither option entitles Rawls to assert, *a priori*, that justice requires electoral regulation.

Let's spell out the second option further. The factor that makes regulation necessary to achieve political equality in the first place is the disproportionate political power of wealthy, concentrated interests. But this is also the very factor that militates *against* regulation's ability to achieve political equality. As Norman Daniels puts the point, the problem is that "the 'regulating' becomes the task of those needing regulating."³¹ Those needing regulating are special interests and the legislators who cater to them for the sake of competitive electoral advantages. Yet, as Daniels says, these are precisely the groups that exercise control—*de facto* or *de jure*—over the "regulatory" framework and thus have the means and motive to undermine egalitarian regulatory reforms.

To illustrate, let's look back at the tax loophole case. Suppose the 312 richest Americans want a 312-million-dollar tax loophole: one million dollars each. Should the loophole be opened, each of the 312 million American citizens will see their public benefits decrease by one dollar. So the cost of the loophole to each individual citizen is roughly one dollar while the benefit of the loophole to each of the 312 richest is roughly one million dollars. Will the loophole pass?

Given nonideal assumptions, we have reason to think the answer is "yes." For one, no individual citizen has an incentive to effectively oppose the passage of the loophole. The cost of the time spent reading the tax code, researching each candidate's views on the code, and then voting accordingly is significantly greater than the benefit of the one dollar multiplied by the surpassingly low chances of one vote affecting the electoral outcome. By contrast, the benefits to those in the upper bracket are much more concentrated.³² Because each of the very richest taxpayers has a significantly greater incentive to invest time and resources in efforts to promote the loophole than each member of the general public has to prevent the loophole, we should expect the loophole to pass, all things equal.

So part of the reason for the subversion of progressive policies is simply the logic of collective action.³³ The benefits are more concentrated than the costs, and so each member of the richer class has more incentive, relative to members of the poorer class, to contribute to the collective good of lobbying on behalf of the group's interests. (It's also easier for them to monitor intra-group free riding and to minimize the transaction costs of organizing in the first place.)

But why shouldn't we think that the effects of lobbying will ultimately even out and thus not favor the rich? After all, the poorest 312 Americans

can lobby for benefits just as the richest 312 can. The difference is that the poorest 312 generally have less spare time and disposable income than the richest 312, which worsens their ability to lobby effectively.³⁴ The assumption that the rich have superior organizational ability is one that Rawls himself explicitly makes to explain why substantive political inequality arises from system of formal political equality: “it is necessary to prevent those with greater property and wealth, and the greater skills of organization which accompany them, from controlling the electoral process to their advantage.”³⁵ Here Rawls touches on a key point: privileged groups will have wealth and time to advance their political interests that less privileged groups do not.³⁶ For instance, the rich can more easily absorb the costs of lobbyists to advance their political interests. All things being equal, the rich will outcompete the poor for politically conferred benefits.

Now we’re in a position to see the problem facing the regulatory strategy for reducing political inequality. Suppose Senator Fairbanks proposes electoral regulation to lessen wealth’s political influence. She doesn’t want the rich to buy state power and (e.g.) the tax loopholes that come with it. Fair enough. But shouldn’t we expect wealthy concentrated interests to smuggle a loophole into this electoral regulation just as they smuggled the original loophole into the tax code?

The very same dynamics that eased the passage of the tax loophole will also ease the passage of the loophole in the regulation intended to limit the power of the rich to lobby for tax loopholes. In particular, the loophole’s costs are dispersed across hundreds of millions of citizens but its benefits are concentrated among a tiny pool of billionaires.³⁷ The opportunity cost to each citizen of combing through the fine print of legislation and casting a vote for an anti-loophole candidate is greater than the expected benefit. By contrast, the benefit of the loophole to each of the ultra-rich is significantly higher because it is concentrated among far fewer beneficiaries. Thus, each billionaire has far more incentive to fight for the loophole than everyone else has to fight against it. And of course the billionaires have organizational advantages. So we should expect the loophole to pass.

Indeed, it’s possible that electoral regulation will be not only unproductive but *counterproductive*. Adding the power to regulate elections makes political power a more attractive prize because it increases the instrumental value of that power. On the assumption of noncompliance (again, the very assumption needed to motivate the problem that regulation is designed to solve), special interest groups and legislators will use electoral reform as an opportunity to increase the barriers to political entry to shrink the number of competitors for scarce political resources.³⁸ Most notably, they can increase the costs of electoral participation by increasing the complexity of electoral regulation. Mancur Olson notes that complex regulation favors the rich over the poor: “[T]here can be an unending process of loophole discoveries and closures with the complexity and cost of regulation continually increasing. The more elaborate the regulation, the greater the need for

specialists to deal with these regulations, such as lawyers, accountants, or other consultants on this or that aspect of governmental relations.”³⁹ Just as complex tax codes favor those with the means to obtain professional tax assistance, complex electoral regulations favor those with the means to hire the necessary regulatory help.

Relatively poor citizens and groups are at a disadvantage with respect to advocating for their political interests because they are less likely to have the resources needed to comply with electoral regulations. The potential costs of compliance failures can be high enough that groups lacking the resources to hire the lawyers and accountants needed to comply have a strong incentive to simply abandon their efforts.⁴⁰ By contrast, wealthier groups do possess the resources that make it cost-effective to play the political game. For this reason, electoral regulation might actually *decrease* the effective political power of the relatively poor.

Complex electoral regulation would thus produce the opposite of its intended effect, which is to remove barriers to entry into electoral markets that prevent some from influencing the political process due to economic disadvantages. These policies would *increase* barriers to entry, exacerbating economically based inequalities in political opportunity. Think of regulatory capture in the marketplace: big firms *like* regulation because they can afford to comply whereas their smaller competitors may not.

Here’s the takeaway: the privileged can manipulate ostensibly egalitarian reforms intended to neutralize privilege to advance their own interests at the expense of those worse off. In nonideal conditions, the very considerations that recommend political reform as a check on concentrated socioeconomic power threaten to turn political reform into an *instrument* of that power. What’s more, our understanding of the logic of collective action furnishes reason to think that this tendency is systematic—a by-product of the political system’s incentives—rather than an anomaly. Thus, the very factors that speak in favor of the regulation of the political process also militate directly against the regulation’s success. As Daniels puts it, “Formal, procedural guarantees are never sufficient to make sure small groups or classes cannot gain significant advantages in political liberty and power.”⁴¹

The broader point is this. Political philosophers shouldn’t treat the state as a *deus ex machina* that’s exempt from the problems it’s introduced to solve. States need electoral reform because special interests are the *de facto* writers of the laws. But if special interests are writing the laws, then writing *new* laws isn’t a promising solution to the problem of special interests.

To be clear: my claim is *not* that the preceding account correctly describes how political actors act. Rather, my claim is that Rawls’s institutional analysis does not consistently apply its own assumptions and, what’s more, that a consistent application of those assumptions would result in self-defeat. If we worry about the tendency of the unreasonable rich to capture the apparatus of the state, we must follow through on the implications of this

tendency for proposals to use the apparatus of the state to achieve political equality.

What I hope to have shown is that Rawls and other political philosophers cannot rule out either laissez-faire or welfare-state capitalism as incompatible with a principle of substantive political equality *a priori*. In ideal conditions, the rich aren't using their wealth to control political life. In nonideal conditions, we cannot dismiss the possibility that the rich will use their wealth to subvert measures designed to loosen their grip on the state's machinery.

So why does Rawls favor the direct regulatory strategy to reduce political inequalities? Here's one reason: in ideal theory, "we assume that if a regime does not aim at certain political values, and has no arrangements intended to provide for them, then those values will not be realized."⁴² So unless we have a "Political Equality Act," we won't have political equality.

But we shouldn't follow Rawls in assuming that we must aim at a value to achieve it. Remember the *Monopoly* money case. No one aims at equalizing the nationwide distribution of *Monopoly* money; still, its distribution is more or less equal. The explanation has to do with the incentive—or lack thereof—to get more. There's little to be gained from grabbing more than your fair share, so people don't do any grabbing.

Similarly, the less to be gained from seizing political power, the less people will look to seize political power. A state that has less power to tax income or regulate elections is a state that's less attractive to prospective buyers. Many will understandably balk at this idea. After all, we can reduce the likelihood that unscrupulous people will steal Ferraris by stripping them down to oversized bikes. But this measure carries an obvious cost—you gut the utility of Ferraris. Similarly, stripping down the state to cheapen political power guts the utility of political power, by design. This is a cost because we need a fully loaded state to achieve ends of social justice like economic sufficiency and fair opportunity.

But we might not want the state to be a Ferrari. If we expect lots of accidents from Ferrari drivers, we *should* slow them down. Crashing a bike is less harmful than crashing a Ferrari. The same is true of the state: if we expect it to be driven by those who will steer it in the wrong direction—as Rawls apparently does—we should look for safer means of achieving our socioeconomic ends. Sometimes less is more.

Notes

1. 2001, 137.
2. Another way of making the point: Rawls assumes partial compliance with justice when modeling regimes without his favored regulations (viz. the system of natural liberty and welfare-state capitalism) but full compliance with justice when analyzing regimes *with* the regulations (viz. property-owning democracy and liberal socialism). Brennan (2014, 61–62) similarly recognizes this inconsistency.
3. 2001, 137.

4. *Ibid.*, 137.
5. Rawls famously permits mutually beneficial economic inequalities. (See Rawls 2001, 151 for a discussion of the difference between economic and political inequality.) Even egalitarians like Larry Temkin (1993) and G.A. Cohen (2008) are willing to tolerate economic inequalities that benefit the poor as “benevolent injustices” that can be justified all things considered.
6. For an explicit characterization of political power as a positional good, see Brighouse and Swift 2006, 476. See also Rawls 2001, 150; Rawls 2005, 358.
7. 2006, 475. Elsewhere Brighouse argues that maximin reasoning will lead to an endorsement of political equality. Brighouse 1997, 165.
8. 2001, 46.
9. *Ibid.*
10. *Ibid.*, 46.
11. *Ibid.*, 150.
12. *Ibid.* See also Rawls 2005, 358; Brighouse and Swift 2006.
13. 2001, 148.
14. For seminal discussions of rent-seeking and regulatory capture respectively, see Tullock 1967; Stigler 1971.
15. See Nagel 1991, 69 and 2003, 106–107; Scanlon 2003, 205; Barry 2005, 144; Rawls 2005, 328 and 1999, 245; Brighouse and Swift 2006.
16. Rawls 2001, 13.
17. *Ibid.*, 51.
18. Rawls claims, “It is beyond the scope of a philosophical doctrine to consider in any detail the kinds of arrangements required to insure the fair value of the equal political liberties.” 2005, 327. However, Rawls evidently believes that it is within the scope of a philosophical doctrine to determine what regime types are required to insure the fair value of the equal political liberties. I contend that even determining what regimes best secure the fair value of the equal political liberties is beyond the scope of a philosophical doctrine (assuming the doctrine abstracts from empirical social science).
19. *Ibid.*, 148.
20. Brennan 2014, 62.
21. It is possible, perhaps even probable, that most people will not defect even under nonideal conditions. Our attention should center on those who would not defect except for the extra costs imposed by the tax increase. It is reasonable to assume that most individuals value conditional cooperation as such, though not infinitely so.
22. Of course, noncompliance can take forms other than capture. Perhaps the most notable alternative form of defection is straightforward evasion. However, the possibility of evasion does not in itself weigh in favor of equalizing measures. The claim that concern for the fair value of citizens’ political liberties favors equalizing measures presupposes the efficacy of these measures and thus assumes that citizens *won’t* evade them. If citizens successfully evade the equalizing measures, then those measures will fail to actually equalize citizens’ material means, leaving the economic inequalities available for conversion into political inequalities. The taxes will fail to achieve their purpose in such a case.
23. For a similar worry, see Walzer 1983, 15.
24. On this point, see Schmidtz 2006, 117.
25. See, e.g., Sunstein 1993; Strauss 1994; Dworkin 2002, 355ff; Joshua Cohen 2009; Satz 2010, 103. Rawls is careful to note the complexities and uncertainties of this problem. 2005, 362.
26. Rawls 2005, 359–363.
27. On this latter point, see Rawls 1999, 198. See also Rawls 2001, 149.

28. 1999, 199. My italics.
29. Ibid.
30. Ibid., 198 hints that the rich might unintentionally acquire unfair shares of political power simply because their voice is more likely to prevail in politics. Fair enough—but electoral regulations are themselves outcomes of the political process, so he should be equally worried that the interests of the rich will naturally prevail in shaping electoral regulations, too.
31. Daniels 1975, 258.
32. Indeed, the fewer hands within which wealth is concentrated, the smaller the costs of organizing the wealthy relative to the poor and middle class.
33. For the seminal statement, see Olson 1965.
34. Olson 1982a, 109.
35. Rawls 2005, 360.
36. Olson 1982a, 109.
37. Maybe there's sufficiently powerful public activism to close the electoral regulation loophole. But if we can bank on that, how did the *tax* loophole open in the first place? (Remember the tax loophole is the reason the electoral regulation was proposed at all.) If anti-loophole activism can block electoral regulation loopholes, it can block tax code loopholes.
38. They can employ a variety of means to this end. Incumbents can advantage themselves by imposing vote thresholds as preconditions for ballot access or access to public funding (which might be the exclusive funding pool). Similarly, they can impose funding limits that exploit incumbents' advantages in name and issue recognition to the detriment of lesser-known challengers.
39. 1982, 70.
40. To take one real-world example among many, groups in Washington state are subject to "grassroots lobbying" regulation if their monthly expenditures exceed \$500—but can be fined up to \$10,000 for each regulation violation. For this information and more on grassroots lobbying regulation, see Milyo 2010.
41. Daniels 1975, 258.
42. Ibid.

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4 Economic Sufficiency

The capitalist achievement does not typically consist in providing more silk stockings for queens but in bringing them within the reach of factory girls in return for steadily decreasing amounts of effort. [. . .] The capitalist process, not by coincidence but by virtue of its mechanism, progressively raises the standard of life of the masses.

—Joseph Schumpeter, *Capitalism, Socialism, and Democracy*

Rawls and other liberal egalitarians argue that justice requires states to guarantee all citizens sufficient resources. Capitalist regimes are unjust partly because they lack this guarantee. Laissez-faire capitalism, for instance, “aims for economic efficiency and growth constrained only by a rather low social minimum.”¹ In accordance with his conception of an ideal institutional description, Rawls assumes that (i) if a state does not directly aim at (that is, guarantee) the provision of sufficient resources for all, then it will not achieve the provision of sufficient resources for all and (ii) if a state *does* directly aim at (that is, guarantee) the provision of sufficient resources for all, then it *will* achieve that aim.²

The dilemma facing Rawls’s *a priori* demand for robust economic guarantees is similar to the dilemma facing his *a priori* demand for electoral regulation. If people are fully committed to distributive justice, there’s no need for tax-and-transfer programs like economic guarantees. Instead, they’ll ensure that everyone enjoys sufficient resources via non-coercive means like philanthropy or ethical consumption and investment. On the other hand, if people are *not* fully committed to distributive justice, we cannot assume the success of economic guarantees. These guarantees create perverse incentives for unreasonable citizens to act in ways that subvert the guarantees: (e.g.) by substituting leisure for labor or misappropriating the machinery of redistribution for rent-seeking purposes. In consequence, robust economic guarantees may hurt more than they help.

If I’m right, the assumption that underlies Rawls’s claim that robust economic guarantees are needed simultaneously undercuts his stipulation that the guarantees will *work*. So, Rawls and other liberal egalitarians may not

rule out even laissez-faire capitalism *a priori* as incompatible with distributive justice for lacking robust economic guarantees. Indeed, I close out this chapter by suggesting that Rawls and classical liberal defenders of capitalism are largely talking past each other on the matter of poverty alleviation: the latter almost exclusively model *nonideal* institutions for which perverse incentives and unintended consequences loom large.

DistributiveJustice.org

To restate the first horn of the dilemma: if people are fully committed to distributive justice, there's no need for tax-and-transfer programs like economic guarantees. To motivate this claim, take an example adapted from Robert Nozick.³ Imagine an organization—call it DistributiveJustice.org—that sends rich people an email that enables them to directly transfer a fair share from their paycheck to an anonymous poor recipient. The system is voluntary but, since we're in ideal conditions, everyone supports the redistribution. So: why *wouldn't* an ideally just person voluntarily transfer her fair share?

Here are some possibilities. She might be troubled by the public goods problem, thinking that her contribution is inconsequential. But Nozick explains that this reply won't do, since "each person's contribution will be having a separate effect."⁴ The rich person's money is transferred directly to a *particular* poor person, so her contribution makes a difference.

Maybe there's an assurance problem facing DistributiveJustice.org. Rawls thinks that ideally just people are conditional cooperators, so the ideally just citizen might withhold her donation without assurance that others will donate too.⁵ But the assurance problem doesn't clinch the case for coercive enforcement. Conditional cooperators can sign an assurance contract; that is, they pledge to donate only when a threshold number of donations are pledged—at which point the pledged donations are triggered.⁶ If insufficient donations are pledged, then none of the pledged donations are made. Because ideally just people *prefer* to cooperate so long as others reciprocate, they could solve the assurance problem with this sort of contract.⁷ Think of it as "crowdfunded" distributive justice.

The system is also free of any onerous informational demands.⁸ It doesn't ask individuals to determine for themselves how much they should chip in anymore than the IRS does. Just take your ideal tax code (e.g., the income brackets that determine how much each should give and receive) and make one little tweak: make contributions voluntary. So crowdfunded distributive justice maintains the "institutional division of labor" Rawls prizes.⁹ DistributiveJustice.org does the job of calculating the demands of distributive justice, freeing up individual citizens to spend their time elsewhere. The question is not whether institutions devoted to distributive justice are needed but whether a monopolistic *coercive* institution is needed. The demandingness objection hasn't shown that it is.

Do the transfers yoke givers with unreasonable *psychological* burdens? Thomas Nagel's objection to Nozick's case stresses its "excessive demands on the will, which can be more irksome than automatic demands on the purse."¹⁰ G.A. Cohen rightly replies that Nagel confuses coerciveness and automaticity.¹¹ People can send the philanthropic organization their checking account information and authorize an automatic ongoing withdrawal. This process isn't excessively demanding. It's true that donors must authorize donations in the first place, but voters must authorize the state to redistribute in the first place too. As Cohen asks, "Why should casting such a vote be easier, as Nagel must think it is, than signing a relevant banker's order?"¹²

The best explanation for why coercive taxation is needed is probably the simplest: at some margin, reasonable people care more about advancing their personal projects than advancing distributive justice further. So, the state must *force* them to transfer a sufficient amount.

As we saw earlier, this is roughly Rawls's explanation for why coercion is needed even among the just:

The theory of justice assumes a definite limit on the strength of social and altruistic motivation. It supposes that individuals and groups put forward competing claims, and while they are willing to act justly, they are not prepared to abandon their interests. There is no need to elaborate further that this presumption does not imply that men are selfish in the ordinary sense. Rather a society in which all can achieve their complete good, or in which there are no conflicting demands and the wants of all fit together without coercion into a harmonious plan of activity, is a society in a certain sense beyond justice.¹³

To reiterate Rawls's point, we needn't assume that people are "selfish in the ordinary sense;" rather, they have interests and projects of their own that compete with the demands of justice. Taxes are needed to collect a fair share from, e.g., "effective altruists" who'd rather send money to GiveDirectly.org than the IRS or parents who'd prefer to lavish their children with a new iPad than pay more taxes.

What's more, Rawls's insistence on our "limited altruism" is part of his justification for his favored tax structure. Rawls permits economic inequalities as a means of coaxing more production from the rich because he's worried about the substitution effect caused by excessive taxation.¹⁴ As taxes on market activity rise, the opportunity cost of non-market activity declines, causing people to drop out of market activity on the margin. This is why the Rawlsian state taxes with a fairly light touch.

Cohen, of course, takes Rawls to task for tolerating the "self-seeking motivation of the talented" and argues that justice demands "an ethos, a structure of response lodged in the motivations that inform everyday life."¹⁵ Under this industrial-strength idealization whereby people eat, sleep, and breathe egalitarian justice, taxation is unnecessary—as Cohen states.¹⁶ People will

happily authorize DistributiveJustice.org to withdraw a fair share from their checking account each month. But supposing with Rawls that they *won't*, we need the stick of coercive taxation to motivate sufficient contributions.

The Distortionary Costs of Guarantees

Rawls avoids obviating the need for state-enforced taxation by rejecting Cohen-style idealization. Under less stringent idealization, taxation has a role to play—but the role comes at a steep price. This brings us to the second horn of the dilemma: if Rawls does *not* model people as fully committed to distributive justice in the way Cohen does, he cannot stipulate that robust economic guarantees will work. His own assumptions about limited altruism, the substitution effect, and the elasticity of the labor supply preclude him from ruling out the possibility that guaranteeing citizens sufficient resources will *lower* their odds of receiving sufficient resources.

A simple example will begin to suggest why. Imagine a two-person, two-commodity economy. Baker bakes bread; Buddy churns butter. Let's say that consuming one loaf of bread and one stick of butter each week is sufficient for each to get his fill. And suppose that a workweek for both Baker and Buddy yields two loaves of bread and two sticks of butter, respectively.

Economic sufficiency for both parties can be met here without a guarantee. Baker has an economic incentive to bake two loaves of bread each week. He will consume one loaf himself and trade the other to Buddy for a stick of butter. Similarly, Buddy has an economic incentive to churn two sticks of butter each week. He will consume one stick himself and trade the other to Baker for a loaf of bread. At the week's end, both Baker and Buddy have enough without a guarantee that they will have enough. Although no individual here deliberately aims at ensuring sufficiency for the other and no guarantee is enforced, economic sufficiency is nevertheless achieved. To put the point in Smithian terms, although each Baker and Buddy "intends only his own gain," each is "led by an invisible hand to promote an end which was no part of his intention."¹⁷

Now let's revise the example so that Baker and Buddy are guaranteed sufficient bread and butter for the week. This system of entitlements can decrease the likelihood of their receiving sufficient bread and butter by decreasing the supply of bread and butter.¹⁸ Consider two ways a guarantee can decrease production. First, the guarantee disincentivizes labor by decreasing the expected costs of leisure. Before the guarantee, the only way for Baker to receive butter was to bake bread to trade with Buddy. Now that Baker is guaranteed a stick of butter each week, however, he elects not to bake a second loaf of bread for exchange. He expects to get his butter regardless of whether he bakes bread—after all, his butter is guaranteed. Baker thus calculates the marginal utility of non-market activity to exceed the marginal utility of labor. He concludes that his time is better spent in pursuits other than baking.

It's important to note that we need not assume that Baker is unmotivated to work for a living or simply prefers to free ride on the work of others. The worry here need not be that, in Rawls's terms, Baker is "selfish in the ordinary sense" (although he could be), but simply that he is responsive to opportunity costs. When Baker possesses the material means needed to satisfy his conception of the good, it's reasonable to suppose that the value he places on alternative, non-market uses of his time will increase relative to laboring for additional material means.

Buddy's production is curtailed for another reason: the guarantee disincentivizes labor by directly decreasing its expected utility. Without the guarantee, Buddy would receive bread in exchange for his second stick of butter. Now Buddy's second stick of butter is transferred to Baker to make good on the guarantee. So, Buddy chooses not to churn any surplus butter because he does not expect to benefit from the additional labor.¹⁹

As the example suggests, issuing legal guarantees of sufficiency can decrease the labor supply in at least two ways. First, such guarantees decrease the marginal utility of labor for individuals at or below the threshold of sufficiency by decoupling their receipt of sufficient resources from their labor (Baker bakes fewer loaves because he receives enough butter regardless of how much bread he bakes). Second, the guarantees decrease the marginal utility of labor for individuals above the threshold by externalizing the benefits of their labor (Buddy churns fewer sticks of butter because surplus sticks are transferred to Baker).

In the second scenario, neither Baker nor Buddy receives sufficient bread and butter. Neither achieves economic sufficiency even though a guarantee of sufficiency is in place; indeed, neither achieves sufficiency *because* a guarantee of sufficiency is in place. The lost loaf of bread and stick of butter are the *distortionary cost* of the guarantee: the entitlement did not simply transfer bread and butter—it decreased the supply of bread and butter. Institutionalizing an entitlement to some resource can therefore make it less likely that people receive it. Redistribution need not simply transfer resources. As Rawls himself stresses, redistribution can reduce the total amount of resources available because it reduces the incentives for labor and capital investment.

How Much Is Enough?

So far I've offered a general worry about guarantees: they decrease the expected utility of labor for individuals both above and below the guaranteed threshold. The notion that increased rates of taxation decrease the labor supply is a familiar one, not just from economics but from Rawls himself. Now for a more specific and less appreciated point: this effect is *uniquely* problematic with respect to liberal egalitarian guarantees. As we'll see, the sufficiency threshold favored by Rawls and other liberal egalitarians is the point at which people have little need or desire to acquire more. But when

people have “enough” income or resources in this sense, the marginal utility of *additional* labor income—and therefore the marginal utility of additional labor—falls off a cliff.

To start, we have to figure out what counts as “enough” income (where “income” is understood to mean whatever resources are included in the guarantee). Rawls is clear that to have enough is to have more than the minimum needed to keep your heart beating. For this reason, he admonishes the “system of natural liberty,” as it ensures only “a rather low social minimum.”²⁰

Rawls has a point: classical liberals and libertarians are stingy with the guarantees. Take Locke. He says, “Charity gives every Man a Title to so much out of another’s Plenty, as will keep him from Extream want, where he has no means to subsist otherwise.”²¹ So, citizens are entitled only to what they need to avoid “extreme want.” Adam Smith and David Hume have similar views.²² For a more recent case in the same spirit, F.A. Hayek endorses “a uniform minimum for all instances of proved need, so that no member of the community need be in want of food or shelter.”²³ Here again, the aim is to prevent people from starving or freezing.

But Rawls and other modern liberals think that states should do more. For Rawls, justice requires “a guarantee of sufficient all-purpose means (primary goods) for citizens to make intelligent and effective use of their freedoms.”²⁴ Thomas Nagel proposes that society “guarantee everyone medical care, education, decent housing, unemployment insurance, child care allowances, retirement benefits, and even a minimum income.”²⁵ Elizabeth Anderson’s conception of democratic equality “guarantees a set of capabilities necessary to functioning as a free and equal citizen.”²⁶

Competing foundations for liberal egalitarian justice offer competing justifications for these sorts of guarantees. Some, such as Robert Goodin’s, are utilitarian.²⁷ Other rationales are more explicitly “sufficientarian;” that is, they regard raising individuals to some particular threshold of resources, welfare, or capabilities as morally important in itself. Offering arguments in this spirit are Roger Crisp, who advocates “entitlements to welfare-enhancing goods” up to the point at which individuals “can live a life which is sufficiently good,”²⁸ and Martha Nussbaum, who recommends “equal entitlement to the wherewithal of good lives.”²⁹

Indeed, one feature of modern liberalism that distinguishes it from classical liberalism is precisely its claim that justice requires institutions to guarantee citizens’ *substantive* freedom of self-determination—to ensure they possess the material resources needed to effectively choose and pursue their life plans and conceptions of the good.³⁰ Rawls notes that the guaranteed means will be “essential for advancing [citizens’] determinate (permissible) conceptions of the good.”³¹ Samuel Freeman writes that an adequate “social minimum—one that goes well beyond what is needed to meet basic human needs—is a requirement of ‘basic justice.’”³²

So, liberal egalitarians agree that the notion of sufficiency involved in the guarantee of sufficiency is expansive. It is associated variously with “not just

mere human life, but *good life*,”³³ commanding a bundle of resources that extends “well beyond what is needed to meet basic human needs,”³⁴ and “car[ing] very little, if anything, for what [one] might gain above the minimum stipend.”³⁵ These descriptions spotlight a critical feature of the liberal egalitarian specification of sufficiency. We should expect further income to matter significantly less to individuals once they have enough to live a good life, command resources well beyond what is required to meet their needs, or rest content with the resources they’re guaranteed. And this is not a mere accident: it’s an indication that the threshold has been properly located. If additional income mattered just as much to individuals above the threshold as below it, it would be unclear what justifies offering individuals entitlements to *that* threshold rather than some other threshold. It is plausible to suppose that once one has reached the point at which one “has enough,” subsequent gains begin to matter considerably less than antecedent gains. Indeed, empirical evidence confirms that material gains are additive until a certain point beyond which the contribution further gains make to individuals’ happiness tails off appreciably.³⁶

To put the preceding point more precisely, a plausible and satisfactory sufficiency threshold will approximate the point of diminishing returns to income. Indeed, Rawls makes the case for an expansive social minimum (in this case, the difference principle) by explicitly invoking the idea that someone choosing principles of justice “cares very little, if anything, for what he might gain above the minimum stipend,”³⁷ But notice: if people care very little, if anything, for acquiring more than what’s guaranteed by the minimum stipend, then they have very little, if any, incentive to work when the stipend is in place. Yet this feature of the sufficiency threshold is precisely what militates against proposals to *guarantee* sufficiency. In short, the consideration makes a given threshold a good specification of sufficiency—namely, that is approximates the point of diminishing marginal returns—also makes it a bad location for a guarantee.

Note that Rawls is not alone in appealing to diminishing marginal returns to justify wealth and income redistribution. Nagel, for instance, also appeals to the diminishing marginal utility of income to justify the transfers.³⁸ Nussbaum even suggests that beyond a certain point, there are *negative* returns to income.³⁹ It is important to emphasize that my argument applies even to those views that do not *equate* “the wherewithal of good lives” (and so on) with a certain level of subjective well-being. One need not use an entirely subjective account of interests to set the sufficiency threshold; rather the argument assumes only that there is some significant connection between having enough and regarding oneself as having enough.⁴⁰ What matters is the effect sufficient income has on individuals’ motivations. There are two main ways to establish such a connection: show that contentment with one’s income is (i) partly constitutive of having enough or (ii) indicative of having enough.

Take the claim that being happy with one’s income is partly constitutive of having enough. Here I would say that a theory that implies that contentment

with income is irrelevant to determinations of what counts as having enough income is *prima facie* implausible. In particular, ignoring how well one's life is going by one's own lights does not comport well with a liberal view of justice like Rawls's, according to which states purport to be justified in terms of citizen's own evaluative judgments.

As for (ii), evidence shows that self-reported well-being correlates strongly with non-self-reported metrics of welfare.⁴¹ One proposed explanation for this phenomenon is that income acquired by individuals' beneath certain income levels enables them to meet previously unmet basic needs and therefore substantially advances their subjective well-being.⁴² Thus, a plausible objective sufficiency threshold will tend to coincide (perhaps roughly) with the point of diminishing returns to income even if that coincidence is not intended. Yet even if the overlap between an objective account of sufficiency and the point of diminishing (subjective) returns to income is unintended, the effect of a sufficiency guarantee on incentives is the same and thus the argument goes through.

The preceding explains why my argument generalizes to guarantees of sufficiency specified in terms of goods other than cash. Perhaps in addition to or instead of cash, we seek to guarantee people sufficient health care, education, leisure, housing, food, and so on. Presumably we will select both the content of the bundle of goods to be guaranteed as well as the amount in which they are guaranteed because we conclude that these particular goods in *this* particular amount (no more, no less) are sufficient to enable one to realize one's conception of the good, live a flourishing human life, exercise one's freedoms, and so on. But here again, once one has the resources one needs to realize one's conception of the good, live a flourishing human life, and so on, the marginal utility of additional resources can be expected to decline sharply.

The takeaway is this: classical liberals may have good reason for setting the social minimum lower than Rawls and other modern liberals—and the reason needn't have anything to do with a disagreement about the basic principles of justice. The higher the minimum, the higher the chances of incentivizing workers and investors to scale back their efforts.

Incentives and Information

To summarize where we stand: a concern for sufficiency pulls us in two different directions. The considerations about diminishing returns to income that help motivate the specification of the sufficiency threshold also de-motivate guarantees of income at that threshold. The threshold is precisely where to expect the distortionary costs of a guarantee to become especially severe. Therefore a guarantee to this point can be expected to significantly decrease the labor supply and thereby decrease the supply of resources available to satisfy the sufficiency condition.

To ameliorate the problem, perhaps we should take up the suggestion of making guarantees of sufficiency conditional upon work. While some

theorists advocate an unconditional guarantee, others do not.⁴³ Rawls, for example, favors a system of transfers that supplement workers' income up to the appropriate threshold level.⁴⁴

First, notice that work conditions are needed only in circumstances in which the substitution of leisure for labor is a live possibility. If we could merely assume away free riding, then it would be superfluous to mandate that recipients of the guaranteed stipend perform work.

Next, note that work conditions can lessen distortionary costs, but not eliminate them. For instance, conditional guarantees will still tend to deplete the labor supply in virtue of diminishing the utility of labor beyond that needed to satisfy the work condition.

Conditional guarantees decrease productivity in another way: they distort the informational functions of wages. To fix ideas, let's consider Freeman's suggestion that a suitable social minimum will conditionally guarantee every adult an annual income of around \$36,500.⁴⁵ Under this proposal there will be an incentive for employers to set all sub-\$36,500 wages at the lowest level allowed by law: it will make no economic difference to prospective workers whether they take a job that pays \$36,500 or a job that pays the minimum wage.⁴⁶

The problem is that a wage is a price, and as such, it plays an indispensable role in conveying economic information.⁴⁷ Different wages for different types of work provide information about the supply of different types of work relative to demand. A rise in the demand for a certain kind of labor will increase the wage in the relevant industry relative to others. Thus, wages function as signals indicating how labor can be best put to use as well as inducement to supply labor to meet demand. Conditional guarantees reduce incentives to develop human capital—to incur the opportunity costs attendant on acquiring the skills necessary to perform higher paying jobs. Moreover, they also make it more difficult for workers to know what skills to cultivate—to know what the most highly valued uses of their labor *are*. Thus, by effectively setting all wages at or below the guaranteed minimum at a uniform level, conditional guarantees will lead to a fairly drastic misallocation of labor. Here again, the higher the guaranteed level, the greater the expected misallocation of labor. (And of course, the higher the taxes, which in turn exacerbates the perverse incentives for taxpayers.)

Growth and Poverty

One might concede that while we cannot, strictly speaking, rule out *a priori* the possibility that legal guarantees of sufficiency will hurt more than they help, it is simply implausible to think that a concern for sufficiency will oppose redistribution, even granting that the bucket we use to transfer income is leaky. I win on a technicality, but that's all.

In this section, I argue that we cannot reasonably dismiss the possibility that redistribution will hurt rather than help the poor. The reason, in brief, is its adverse effect on economic growth.

As a softening-up point, let me explain why we shouldn't trust our arm-chair intuitions about the significance of *seemingly* insignificant changes in the growth rate. Consider the pervasiveness of *exponential growth bias*, that is, our "tendency to linearize exponential functions when assessing them intuitively."⁴⁸ We're bad, to put it mildly, at intuitively calculating exponential growth. Take the following case:

I give you a large piece of paper, and I ask you to fold it over once, and then take that folded paper and fold it over again, and then again, and again, until you have refolded the original paper 50 times. How tall do you think the final stack is going to be? In answer to that question, most people will fold the sheet in their mind's eye, and guess that the pile would be as thick as a phone book or, if they're really courageous, they'll say that it would be as tall as a refrigerator. But the real answer is that the height of the stack would approximate the distance to the sun.⁴⁹

Fold a piece of paper 50 times and the resulting stack will reach the sun. If, like me, you find that hard to believe, then you should be open to the possibility that our intuitions about the effects of exponential growth are untrustworthy.

There is also experimental evidence to corroborate the claim that we systematically and substantially underestimate compounding economic growth.⁵⁰ When asked, "What is the overall rise in national income within the next 25 years if the economy grows with an annual rate of 5%?" over 92% of participants underestimated the answer.⁵¹ The average estimate was 82.76% but the correct one is 238.64%.⁵²

The point is this. Even if small changes in the tax-and-transfer rate produce small changes in the growth rate, we cannot assume that the effect of small changes in the growth rate will themselves be small. Our intuitions about compounding growth aren't reliable. We have to crunch some numbers.

So let's do that. According to economist Tyler Cowen, "If a country grows at a rate of 5% per annum, it takes just over 80 years for it to go from a per capita income of \$500 to a per capita income of \$25,000. At a growth rate of 1%, that same improvement takes 393 years."⁵³ For a more detailed look, consider a particular individual named Abe. Abe is living in poverty; he earns \$11,170 per year. Abe starts working at 18 and retires at 68. Let's compare the differences in Abe's lifetime income if the economy grows at 2% per year over his career versus his lifetime income if the economy grows at 4.5% per year over his career.

At 2% growth, Abe's lifetime income will be \$944,751.91. At 4.5% growth, it will be \$1,993,878.83. So if the economy grows an extra 2.5% per year over his career, Abe will earn an extra \$1,049,126.92 in terms of inflation adjusted real purchasing power. Overall, then, he will earn more than double what he would earn in his lifetime at 2% growth. Moreover, in his final year of work, Abe will be earning \$96,549.81 per year with 4.5%

growth compared to only \$29,475.53 with 2% growth. And these figures assume that Abe stays in the same job and never gets a pay raise from his employers: the added income is due entirely to the increased efficiency with which the overall economy creates new goods and services.

Liberals like Rawls value future people too, and the longer the time horizon, the greater the benefits of a high growth rate. Rawls's theory of just savings makes his neglect of growth even stranger. He says that we should choose a principle of savings on the assumption that all past generations follow it.⁵⁴ But given how small gains in the growth rate produce titanic gains in real income when compounded over time, it's curious that Rawls didn't emphasize long-term capital accumulation to a greater extent. Indeed, he even says that "the appropriate expectation in applying the difference principle is that of the long-term prospects of the least favored extending over future generations."⁵⁵

So, suppose Abe's replacement takes over his job at his wage rate after he retires at 68 and works for 50 years herself.⁵⁶ With 2% growth, their total combined lifetime income will be slightly under three and a half million dollars. With 4.5% growth, their total combined lifetime income will be over 20 million dollars. In her final year of work, Abe's replacement will be earning slightly over \$79,000 per year with 2% growth compared to over \$872,000 with 4.5% growth. The numbers are simply staggering.

One explanation for why Rawls deemphasizes growth is because he believes that there is no duty to save once "once just institutions are firmly established and all the basic liberties effectively realized."⁵⁷ But presumably we aren't yet at that stage given that (e.g.) many people lack sufficient resources, so the issue of growth's role in distributive justice remains relevant. And there's little reason to rule out growth *a priori* as an anti-poverty strategy. As economist Steven Levitt says, "How rich you are depends on two things: how much money you have, and how much the stuff you want to buy costs."⁵⁸ Redistribution tends to target the former; growth, the latter.

It is important to stress that growth benefits the poor not due to a "trickle down" effect; rather, productivity gains lower the cost of goods available for purchase.⁵⁹ Growth increases the real income of the poor by decreasing the real price of goods—the same amount of work buys more (and better) goods over time. Here are some examples. In 1950, it took 16 minutes of work at a typical wage to buy a half-gallon of milk; a half century later, it dropped to seven minutes.⁶⁰ During that period, the work-time cost of a dozen staple foods that make for three meals a day plunged from 3.5 to 1.6 hours.⁶¹ And take the microwaves we use to cook that food. In 1984, 12.5% of households in poverty owned microwaves.⁶² In 2011, 93.4% did.⁶³ How about storing the food? The average earner in 1975 needed to work 65.7 hours for a refrigerator; in 2012, they needed to work only 20.4 hours.⁶⁴ What about cleaning the dishes? The work-time cost of a dishwasher has dropped from 48.6 hours in 1975 to 12.2 in 2012.⁶⁵ A similar trend holds for many

other goods.⁶⁶ (And that's not to mention the profusion of *new* products like Netflix or the iPhone.)

Curiously, Rawls recognizes that market-friendly theorists eschew redistribution precisely because they worry about its adverse effects on efficiency and growth and yet he does little to engage with the possibility that growth does a better job of enriching the poor than redistribution. Indeed, the principle of charity obliges us to take growth seriously and consider market-friendly theorists' strategy for lessening poverty on those theorists' own terms. Paradigmatically, Adam Smith stressed growth's benefits for the poor:

It is the great multiplication of the productions of all the different arts, in consequence of the division of labour, which occasions, in a well-governed society, *that universal opulence which extends itself to the lowest ranks of the people*. Every workman has a great quantity of his own work to dispose of beyond what he himself has occasion for; and every other workman being exactly in the same situation, he is enabled to exchange a great quantity of his own goods for a great quantity, or, what comes to the same thing, for the price of a great quantity of theirs. He supplies them abundantly with what they have occasion for, and they accommodate him as amply with what he has occasion for, and a general plenty diffuses itself through all the different ranks of the society.⁶⁷

We can also count contemporary classical liberal and libertarian philosophers like David Schmidtz, John Tomasi, Michael Huemer, and Jason Brennan among those who argue that growth is good for the poor.⁶⁸

Growth and Redistribution

Another theme of classical liberal views of political economy is that tax-and-transfer schemes such as those required for robust economic guarantees tend to slow growth. The supply of labor and capital decreases under increasing rates of taxation. The less people work and the less they invest, the slower the economy will grow. The fewer hours people work, the fewer goods and services provided, and the slower the rate of entrepreneurial, scientific, and technological innovation.⁶⁹

Huemer notes that the worry here is not simply that high taxes reduce incentives to work and invest:

A related, more subtle argument begins from the observation that high-income people tend to invest a much larger proportion of their income than low-income people do. Therefore, redistribution of wealth from high- to low-income persons will reduce a society's total investment rate in favor of near-term consumption. This will reduce a society's rate of economic growth. Changes in the growth rate have exponentially larger total impacts as one compounds them over longer periods of time.⁷⁰

As Schmitz argues, production becomes a higher valued use of resources than consumption as income rises precisely *because* of the diminishing marginal utility of wealth. Thus, transfers that equalize resources tend to decrease production. Interestingly, Rawls himself alludes to a similar point when he notes that the burden of saving is lower for wealthier societies.⁷¹

To illustrate, Schmitz imagines that Rich and Poor “have identical and smoothly declining marginal utility functions.”⁷² Corn is the only good to be distributed; Rich has two units of corn, Poor has none. One unit of corn is enough to eat; two units are too much—trying to eat two units of corn will make one sick. Without corn, Rich and Poor would have to eat something terrible—something they certainly would not eat in the presence of adequate corn. So, consuming one unit has high marginal utility; consuming a second unit has significantly less marginal utility. Given one unit of corn, Poor will consume it—consumption is its most highly valued use. Rich’s appetite, however, is satisfied, given that he has already consumed a unit. In consequence, he will put the corn to a different use. Schmitz explains:

Poor eats the corn, whereas Rich, already having eaten enough, has nothing better to do with his surplus than to plant it [. . .]. Precisely because of diminishing marginal utility, production becomes a higher valued use as income rises. If a community does not have significant numbers of people out that far on their utility curves, such that they have nothing better to do with marginal units than plant them, then the community is facing economic stagnation at best.⁷³

Joe Rich has a higher marginal propensity to save precisely *because* of the diminishing marginal utility of wealth consumption. Thus, transferring resources from those above sufficiency to make good on the guarantee may decrease capital investment, which can slow economic growth, which can, in turn, decrease the number of people with sufficient resources over the long term.

What’s more, redistribution incentivizes lobbying for the benefits of redistribution. In his seminal study, economist William Baumol distinguishes between productive and unproductive entrepreneurship.⁷⁴ Productive entrepreneurship aims at socially useful ends like innovation and efficiency. Unproductive entrepreneurship aims at socially harmful ends like rent seeking. Baumol argues that when growth slows, a general decline in entrepreneurship is not to blame but rather a reallocation of entrepreneurial resources from productive to unproductive uses.

A redistributive state increases the relative payoffs of unproductive entrepreneurship for two reasons. First, it creates new opportunities for entrepreneurs to acquire economic gains through the capture of redistributed resources rather than market activity. In brief, people are encouraged to invest resources into political lobbying and away from innovation and

production, a result that slows growth. As Olson puts it: “An increase in the payoffs to lobbying and cartel activity, as compared with the payoffs from production, means more resources are devoted to politics and cartel activity and fewer resources are devoted to production.”⁷⁵ Tomasi makes a similar point, writing, “Strong private economic liberties reduce the ability of politicians to manipulate the market. Such liberties thus force businesses to compete with one another to provide the best goods at the lowest prices to consumers, rather than competing with one another by manipulating the political process.”⁷⁶

Second, redistribution directly decreases the payoffs of productive entrepreneurship. Increases in marginal tax rates decrease the marginal utility of pursuing economic gains relative to political gains because of the substitution effect. We should expect taxes that increase the costs of pursuing economic gains to incentivize people to substitute the pursuit of political gains for the pursuit of economic gains. Increasing rates of taxation decrease the marginal utility of labor, making political manipulation an increasingly cost effective means of advancing one’s interests compared to economic activity. Notice that the preceding considerations that disfavor redistribution relative to growth are ones that we should expect to feature prominently in nonideal conditions in which people are willing to serve their personal projects at the expense of the public interest—that is, the very conditions in which questions of redistribution become relevant at all.

Along these lines, consider an advantage of the growth strategy: it works within our limited altruism. The effectiveness of redistribution wanes if people respond by working less as taxes rise or investing in rent-seeking instead of production. Economic growth, by contrast, does more with less. Consider the billionaire who will derive little satisfaction from a third infinity pool, thanks to the diminishing marginal utility of wealth. Her interests are better served by investing the money she would have spent on the pool in a new coolant technology that will enable the production of slightly cheaper air conditioning units. She needn’t make comfortable air more affordable out of an egalitarian ethos but out of a concern for her own bottom line. By working to seize market share by selling goods at a lower price, she benefits the poor without *intending* to benefit to the poor.

The Invisible Hand

To reiterate my aim: my argument is *not* that a guarantee of sufficiency will, as a matter of fact, worsen the prospects for economic sufficiency. Determining the specific conditions under which guarantees of sufficiency will deplete the supply of labor and capital to the point of self-defeat is an empirical question.⁷⁷ But that’s precisely the point. I’m making an argument about the limits of *a priori*, ideal theoretical institutional analysis. The behavioral assumption that Rawls makes to generate a role for a robust tax-and-transfer system simultaneously precludes Rawls from stipulating that the system will work.

Perhaps it *will* work, but he may not stipulate it. So, at a minimum, Rawls cannot assume away the possibility that regimes with higher taxes and higher minimums will do *worse* than capitalist regimes at supplying everyone with sufficient resources. We cannot rule out even laissez-faire capitalism *a priori*.

If we recognize that classical liberals like Smith, Hume, and Hayek work almost exclusively in *nonideal* theory, we might better understand why they endorse a low guaranteed minimum. Smith, Hume, and Hayek do not theorize on the assumption that citizens have a strong desire to act justly. To the contrary, their primary concern is promoting the public interest without relying on people being motivated by the public interest. Smith, for instance, famously says that although an economic actor “intends only his own gain,” he can be “led by an invisible hand to promote an end which was no part of his intention.”⁷⁸ And just as self-interest can produce beneficial unintended consequences, classical liberals stress that altruistic motivations (e.g., the motivation to guarantee everyone sufficient resources) can produce harmful unintended consequences.⁷⁹

While classical liberal economic analysis is concerned with policies’ unintended consequences, Rawls’s ideal theoretical analysis rules out this concern by stipulation. Rawls assumes that an institution will work in “accordance with its public aims and principles of design.”⁸⁰ In ideal theory, “we assume that if a regime does not aim at certain political values, and has no arrangements intended to provide for them, then those values will not be realized.”⁸¹ So Rawls is working with very different background assumptions than classical liberals. And, as I’ve argued, these different background assumptions may lead to different institutional recommendations for achieving the same principles of justice.

Notes

1. Rawls 2001, 137.
2. *Ibid.*
3. 1974, 265.
4. *Ibid.*, 268.
5. 2005, 86.
6. Nozick (1974, 268) offers this suggestion.
7. Perhaps you’re worried that no conditional cooperator will initiate the assurance contract for fear of their work being unreciprocated. I have two replies. First, the same problem faces the initiation and administration of the state tasked with coercive redistribution. Second, economist Alex Tabarrok’s “dominant” assurance contracts solve the problem. The idea, roughly, is that the initiator will earn a profit if the threshold is reached but will pay each signor if the threshold is not reached. This arrangement both compensates the initiator for the initial risk and incentivizes people to sign. See Tabarrok 1998.
8. See Williams 1998 for a similar worry about informational demands.
9. Rawls 2005, 269.
10. 1975, 146.
11. 2001, 171.
12. *Ibid.*

13. 1999, 249.
14. In this vein, Rawls (1999, 131) writes, "One might think that ideally individuals should want to serve one another. But since the parties are assumed to be mutually disinterested, their acceptance of these economic and institutional inequalities is only the recognition of the relations of opposition in which men stand in the circumstances of justice."
15. 2008, 123. Cohen presses the point that, in his view, that justice requires citizens to exhibit "some self-restraint in everyday life, for example, when they face high taxation that tempts them to withdraw labor." *Ibid.*, 175.
16. *Ibid.*, 221.
17. Smith 2003, 5.2.9.
18. For relevant discussion, see Schmidtz 1997.
19. Buddy's motives, like Baker's, might be entirely benign. He may be happy to contribute his fair share but is worried that Baker will free ride and not reciprocate with his own contribution. Even if Baker in fact has no such intention of free riding, Buddy may not know this and thus be motivated to scale back his contribution so as to avoid having it exploited. As Rawls himself stresses, an assurance problem can derail cooperation among even well-intentioned actors. This problem is likely more pervasive in real-world economic conditions than the conditions within which Baker and Buddy find themselves. As the number of individuals participating in the economy expands, so does the uncertainty about their willingness to reciprocate, given the increasing difficulty in discerning everyone else's intentions.
20. 2001, 137.
21. Locke 1988, IV.42.
22. Smith 2003 1.8; on Hume's apparent support for a social minimum, see Hume 2005, 3.2.
23. Hayek 2011, 424.
24. Rawls 2005, xli.
25. Nagel 1991, 87.
26. Anderson 1999, 327.
27. Goodin 1995, chapter 14.
28. Crisp 2003, 757, fn. 28 and 762.
29. Nussbaum 2006, 191.
30. Samuel Freeman (2001, 117) writes, "All citizens, as a matter of right and justice, are to have an adequate share of material means so that they are suitably *independent*, capable of governing and controlling their lives and taking advantage of their basic liberties and fair opportunities. Without sufficient income and wealth, one's liberties and opportunities are worth little" (*italics in the original*).
31. 2005, 187.
32. Freeman 2007, 235.
33. Nussbaum 2006, 181 (*italics in the original*).
34. Freeman 2007, 235.
35. Rawls 1999, 134.
36. See, e.g., Veenhoven 1991, 10; Di Tella and MacCulloch 2010; Kahneman and Deaton 2010. One proposed explanation for this phenomenon is that income acquired by individuals' beneath certain income levels enables them to meet previously unmet basic needs and that people adapt to additional income beyond the threshold. See Di Tella and MacCulloch 2010.
37. Rawls 1999, 134. See also Rawls 2001, 98.
38. Nagel 1991, 65.
39. Nussbaum 1990, 210–211. Nussbaum notes that some goods, e.g., education, may enhance functioning beyond the threshold. *Ibid.*, 229.

40. As Nussbaum (2006, 73) writes, "Satisfaction is one thing that is important; but it is surely not the only thing."
41. See Sandvik et al. 1993.
42. See, e.g., Veenhoven 1991, 10; Di Tella and MacCulloch 2010.
43. For a defense of the view that a guarantee of sufficiency should not be conditioned, see Anderson 1999, 326–327.
44. Rawls 1999, 243, 252. Freeman (2007, 230) also suggests that Rawls advocates a social minimum that is at least partly work conditional.
45. Freeman 2007, 230.
46. Freeman considers this possibility but sets it aside as a problem for nonideal theory (2007, 232).
47. On the idea that market signals are an indispensable form of economic information, see Hayek 1945; Nagel 1991, 122.
48. Stango and Zinman 2009, 2807.
49. Gladwell 2002, 11.
50. Christandl and Fetschenhauer 2009.
51. *Ibid.*, 384.
52. *Ibid.*
53. Cowen 2002, 45.
54. 1999, 255.
55. *Ibid.*, 252.
56. We can justifiably assume that Abe's replacement starts her first year earning at the same rate as Abe's final year because we are assuming that Abe never received a raise or a promotion—in this example, his higher end-of-career wages are due entirely to economic growth.
57. 1999, 255.
58. Levitt 2008.
59. See, e.g., Horwitz 2015. Some economists argue that the increases in *mean* household income that we've seen in the United States over the past 30 years are largely due to increases at the upper end of the distribution. See, e.g., Congressional Budget Office 2011. Other analyses, once adjusted for differences in workforce participation and household type, suggest that the *median* income for most household types rose by around 44% to 62% from 1976 to 2006. See Fitzgerald 2008. Lastly, the relevant issue for the purpose of determining the best institutional arrangement for reducing poverty is not how the poor compare to the rich but how rich the poor are under one institutional arrangement relative to the alternatives.
60. Cox and Alm 1997, 4.
61. *Ibid.*
62. United States Census Bureau Data reported in Cox and Alm 1995, 22.
63. United States Census Bureau 2011.
64. U.S. Cost of Material Goods 2016.
65. *Ibid.*
66. More specifically, we see a decline in the work-time cost of these goods—viz. the amount of time someone earning an average wage must work to purchase these goods. See Cox and Alm 1997. For a more recent survey of a range of goods, see Horwitz 2015.
67. Smith 2003, 1.1, *my italics*.
68. See Schmidtz 2006; Brennan 2007; Tomasi 2012; Huemer 2013.
69. See Cowen 2002.
70. 2013, 151.
71. 1999, 255.
72. Schmidtz 2000, 266.

73. Ibid., 268.
74. Baumol 1990.
75. Olson 1982b, 69.
76. 2012, 137.
77. For instance, some argue that a redistributive state is good for growth. See, e.g., Lindert 2004.
78. Smith 2003, 5.2.9.
79. See, e.g., Hayek 1976.
80. 2001, 137.
81. Ibid.

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5 Fair Opportunity

When buying and selling are controlled by legislation, the first things to be bought and sold are legislators.

—P. J. O'Rourke

A popular account of the evolution of fair opportunity goes something like this. We start with the rigidities of feudal aristocracy. People's life prospects are more or less locked in at birth. Born a serf, die a serf.

Then a classical liberal principle starts gaining ground. Norman Daniels writes,

As capitalist democracies developed, the feudal idea that birth into a social class should determine opportunity became more and more unacceptable. A first approximation to a better principle governing opportunity calls for “careers open to talents.” When careers are “open to talents,” we judge people for jobs and offices according to the actual talents and skills they display, not irrelevant traits such as their class background, race, gender, sexual orientation, or family connections.¹

On this view, all should be permitted to compete for jobs and positions regardless of social class, race, gender, and so on. So we arrive at a principle of *formal* equality of opportunity.

But open competition in a free market doesn't take equality far enough. Children born into the Walton and Bush families will still have better opportunities than children born into, say, the Freiman family. It's not because baby Walton *earned* her inheritance—she just got lucky. And thanks to her lucky break, she's more likely to win a spot at Harvard and have connections at Goldman Sachs. To give the ideal of equal opportunity some teeth, the state needs to even out the effects of people's socioeconomic backgrounds. Your parent's checking account shouldn't dictate your chances of landing a good job.

Some egalitarians go even further. Just as you don't have a say in your parent's wealth, you don't have a say in your natural talents and how marketable they happen to be. No matter how much blood, sweat, and tears I shed while practicing my jump shot, no one will part with a dime to watch

me play basketball. My natural talents better suit me for the chalkboard than the hardwood. LeBron James, on the other hand, checks in at 6'8" and 260 pounds. As a result, he earns tens of millions of dollars while I earn . . . less than that. But why, egalitarians ask, should LeBron rake in so much more money than me simply because he was dealt a better genetic hand? Even if I possess *sufficient* resources, the inequality remains an injustice. Differences in wealth and income should reflect only differences in people's labor choices. At this end of the spectrum, we see G.A. Cohen make a bare-knuckled egalitarian proposal for "equal pay for every hour worked."²

At the risk of being theoretically crude, I'm going to lump these different conceptions of fair opportunity together under the label "luck egalitarian" or, to be even more concise, "egalitarian." (As you'll see, the fine-grained distinctions between egalitarian views aren't relevant for my arguments.) Granting, for argument's sake, that an egalitarian principle of fair opportunity is correct, a question remains open: what regime type best satisfies this principle?

There's a near consensus on the right answer to this question—among both defenders and detractors of egalitarianism. Here's Rawls with a representative statement: "Free market arrangements must be set within a framework of political and legal institutions which regulates the overall trends of economic events and preserves the social conditions necessary for fair equality of opportunity."³ Later Rawls seems to double down on his skepticism about private ownership of productive property and free markets, arguing that a commitment to fair opportunity takes capitalism off the table altogether.⁴ He isn't alone.⁵

It's striking that even defenders of free markets don't want to defend them on egalitarian grounds. For instance, John Tomasi defends markets as instruments of social justice—but for humanitarian or prioritarian reasons.⁶ Markets ease poverty but not inequality. The claim that the free market could be a viable *egalitarian* option has, as far as I can tell, gone undefended. So here goes.

The Conundrum

Before I get into the nuts and bolts of my argument, notice that there's something strange about the consensus that free market capitalism will do worse by egalitarian standards than either heavily regulated capitalism or outright socialism. It's strange because philosophers across the political spectrum—philosophers who hardly agree on anything—agree that the regulative and redistributive state tends to be captured by the rich at the expense of the poor. Libertarians, liberals, and Marxists converge on this point.

I'll have representatives of each position speak for themselves. Here's the libertarian Nozick:

It has often been noticed, both by proponents of *laissez-faire* capitalism and by radicals, that the poor in the United States are not net

beneficiaries of the total of government programs and interventions in the economy. Much of government regulation of industry was originated and is geared to protect the position of established firms against competition, and many programs most greatly benefit the middle class.⁷

The left liberal Rawls worries that the greater power of the rich to pursue their political interests “allows a few, in virtue of their control over the machinery of state, to enact a system of law and property that ensures their dominant position the economy as a whole.”⁸

Lastly, we have Allen Wood, articulating a Marxist position, who writes that the large existing inequalities in life prospects have arisen not from a free market

but from a market characterized by monopolies and oligopolies, collusion, bought political influence and cronyism [. . .]. This system of inequality is not merely self-perpetuating but self-reinforcing. Political institutions are largely in the hands of those who benefit most from the inequality, and they are constantly being used to widen, intensify and multiply the disparities between the privileged and the disadvantaged.⁹

Marx and Engels themselves say, “The executive of the modern state is nothing but a committee for managing the common affairs of the whole bourgeoisie.”¹⁰

So the left and the right agree that the state tends to be a tool of the rich used to advance their own interests. There are plenty of reasons for this tendency, some of which I’ll explore later. For now, though, notice the conundrum. If the rich have the state in their back pocket, shouldn’t we expect expanded state intervention in the market to balloon, rather than shrink, the gap between rich and poor?

The conflict between simultaneously viewing the state as a tool for the selfish rich and as a check on the selfish rich is evident in a single paragraph from Rawls. He says that a

reason for controlling economic and social inequalities is to prevent one part of society from dominating the rest. When those two kinds of inequalities are large, they tend to support political inequality. As Mill said, the bases of political power are (educated) intelligence, property, and the power of combination, by which he meant the power to cooperate in pursuing one’s political interests. This power allows a few, in virtue of their control over the machinery of state, to enact a system of law and property that ensures their dominant position the economy as a whole.¹¹

Let’s work through this paragraph backwards. Rawls says that the economic and organizational power of the rich enables them to acquire

“control over the machinery of state, to enact a system of law and property that ensures their dominant position the economy as a whole.” In brief, the rich control the state for their own benefit. But a few sentences earlier, he charges the state with “controlling economic and social inequalities.” The problem is clear: how can the state control the rich if the rich control the state?

Here’s a snapshot of my argument. The egalitarian call for regulation and redistribution assumes that citizens, particularly the rich, will exploit natural and social contingencies to their advantage—otherwise, there’d be no unfair inequalities to regulate and redistribute. But the egalitarian argument has a gap. The very assumption that underlies the problem in need of a solution undercuts the egalitarian’s solution: if the advantaged will exploit natural and social contingencies to their benefit, we should expect them to exploit these contingencies to their *political* benefit. On this assumption, though, empowering the state to regulate the market is pouring gasoline on a fire. The rich can use the state to tighten their grip on their advantages and thus make unfair inequalities worse.

One workaround is to just stipulate that the advantaged won’t exploit their advantages when doing so disrupts fair equality of opportunity, in which case the egalitarian could assume the proper functioning of the egalitarian state. But this would be a case of self-obviating idealization: if the advantaged self-regulate their pursuit of their interests to avoid disrupting fair equality of opportunity, there’d be no need for the state to intervene. Fair opportunity would be realized via private choices in the market and civil society. So, once again, we see political philosophers violating behavioral symmetry: they assume that the fortunate exploit their good fortune in markets to generate problems for the state to solve but then (implicitly) assume that the fortunate do *not* exploit their good fortune in politics to guarantee the effectiveness of the state solution.

Once again, my aim isn’t to settle the question of whether a free market regime best satisfies egalitarian principles of justice but rather to criticize egalitarians’ *methodology* in evaluating regime types. We must consistently apply our assumptions: if we criticize markets on the ground that they can be pervaded by luck-based inequalities, we must follow through on the implications of luck-based inequalities for the government empowered to regulate those markets. Only when we compare regime types on the same terms can we undertake a fair assessment of their merits as instruments of egalitarian justice.

The Egalitarian Objection to the Market

As mentioned above, I’ll use *egalitarianism* to denote what has come to be known as *luck egalitarianism*—that is, the view according to which a just distribution minimizes (certain kinds of) luck-based inequalities in life prospects compared to the alternative available distributions, all else equal.¹² I

add “all else equal” because many egalitarians claim that there’s reason to value goods other than equality.¹³

For our purposes, it doesn’t matter how, exactly, we specify “life prospects”: (e.g.) opportunities for wealth and income, Rawlsian primary goods, subjective well-being, capabilities, etc. And it’s worth stressing that egalitarians find only certain kinds of luck troublesome. Traditionally “brute luck” is defined in contrast to “option luck.” Ronald Dworkin differentiates between option luck and brute luck as follows: “Option luck is a matter of how deliberate and calculated gambles turn out—whether someone gains or loses through accepting an isolated risk he or she should have anticipated and might have declined.”¹⁴ Brute luck is “a matter of how risks fall out that are not in that sense deliberate gambles.”¹⁵ Core cases of inequalities in life prospects due to brute luck include inequalities caused by genetic makeup and initial socioeconomic advantage. (Hereafter, I will simply use “luck” in the place of “brute luck” for the sake of brevity.) Egalitarians generally care about minimizing the effects of brute luck, not option luck.

I should note that luck egalitarianism has found itself on the defensive in recent years. Some philosophers argue that a commitment to equality should cause us to focus on eliminating relationships of domination or oppression rather than eliminating brute luck inequalities.¹⁶ I don’t have the space to dig into this debate, but I suspect that at least some of my worries about the state functioning as a force for inequality are problems for “democratic egalitarianism” as well.

Notice that a robust principle of equal opportunity does not, in itself, specify which economic regime is just. It is *conceptually* possible for (e.g.) free market capitalism, welfare-state capitalism, liberal socialism, property-owning democracy, and command-and-control socialism to satisfy an egalitarian criterion of fair opportunity. That said, egalitarians are nearly unanimous in thinking that free market economies won’t do the job.

Let’s start with Rawls. He criticizes the “system of natural liberty”—roughly a free market regime that prohibits discrimination—on the grounds that it secures only *formal* equality of opportunity.¹⁷ That is, it requires merely that “positions are open to those able and willing to strive.”¹⁸ The system of natural liberty does not correct for the initial unequal distribution of natural talent and socioeconomic advantages; it “permits distributive shares to be improperly influenced by these factors so arbitrary from a moral point of view.”¹⁹ He insists on a principle of fair equality of opportunity that equalizes the effects of luck on the distribution of opportunities. An alternative to the system of natural liberty is needed

to mitigate the influence of social contingencies and natural fortune on distributive shares. To accomplish this end it is necessary to impose further basic structural conditions on the social system. Free market arrangements must be set within a framework of political

and legal institutions which regulates the overall trends of economic events and preserves the social conditions necessary for fair equality of opportunity.²⁰

Rawls's legal and political framework includes provisions to prevent "excessive accumulations of property and wealth" and to furnish equal educational opportunities for all.²¹

In his later writings, Rawls seems to doubt that *any* version of capitalism can meet egalitarian standards. He says, "Laissez-faire capitalism (the system of natural liberty) secures only formal equality and rejects both the fair value of the equal political liberties and fair equality of opportunity."²² He thinks that welfare-state capitalism is an improvement but still falls short: "while it has some concern for equality of opportunity, the policies necessary to achieve that are not followed. It permits very large inequalities in the ownership of real property (productive assets and natural resources) so that the control of the economy and much of political life rests in few hands."²³

Ronald Dworkin says that a core liberal principle "requires that people not have different amounts of wealth just because they have different inherent capacities to produce what others want, or are differently favored by chance."²⁴ He interprets this principle as implying support for egalitarian redistribution of market proceeds: "Market allocations must be corrected in order to bring some people closer to the share of resources they would have had but for these various differences of initial advantage, luck and inherent capacity."²⁵

Next up is Bruce Ackerman's egalitarianism. Ackerman insists that

genetic disadvantages are taken into account as we talk about the just design of other fundamental power structures that define our worldly situation—notably those regulating our respective educations, transactional facilities, and initial material endowments. If, considered as a whole, the entire power system aims to ameliorate your illegitimate genetic advantages, we shall have at least achieved a rough kind of dialogic justice.²⁶

Ackerman contends that a commitment to minimizing luck-based inequalities implies support for egalitarian redistribution of wealth and income. Once you see that "talent is never a sufficient condition for economic success," Ackerman says, "you will be obliged to recognize that you cannot explain why you are entitled to a full market reward for your labors; and so cannot justifiably protest when some of these rewards are taxed away by a political community that insists upon the dialogic legitimation of your power."²⁷

Serena Olsaretti defends a desert-based version of egalitarianism. She says, "The defensible principle of desert is one which does not make the magnitude of people's unequal deserts depend on unchosen, and unequally

distributed, factors.”²⁸ Since factors like natural talents and family circumstances are unchosen and unequally distributed, the magnitude of people’s unequal deserts shouldn’t depend on them. Open competition in a free market doesn’t correct for these kinds of luck-based inequalities. Thus, markets do not distribute benefits according to desert and are thereby unjust:

Desert as a principle of justice, then, rather than justifying the distributional consequences of free market choices, requires precisely the elimination, or at least the minimization, of the differential brute luck that characterizes the free market [. . .]. The adoption of desert as a principle of justice seems to result in a much more demanding requirement, as far as its implications for the regulation of the market are concerned, than a commitment to voluntariness as a legitimating condition for the imposition of obligations, even when this is suitably revised so as to square up with a defensible account of voluntariness and force.²⁹

Justice requires a regulated market, not a market left to its own devices.

G.A. Cohen goes so far as to reject capitalism outright. He says that capitalism is inconsistent with fair equality of opportunity because it “systematically induces unequal starting places in society.”³⁰ A commitment to fair equality of opportunity, then, favors socialism.³¹ Cohen sees “the market as at best a mere brute luck machine.”³²

This wasn’t an exhaustive survey of egalitarians, but you get the picture: the market creates unfair inequalities and the state corrects them. The next section challenges this idea.

The Egalitarian’s Dilemma

Here’s a dilemma for egalitarians. Do ideally just citizens, in Rawls’s terms, voluntarily abstain “from the exploitation of the contingencies of nature and social circumstance” to preserve equal opportunity or not?³³ If they do, then the redistributive and regulatory state isn’t needed. If they don’t, then the redistributive and regulatory state cannot be assumed to work. (Note: I’m not addressing the question of whether people *should* voluntarily abstain from exploiting their good luck in their private choices.)³⁴

Let’s suppose that the fortunate do voluntarily abstain from exploiting their good fortune. On this view, ideally just citizens wouldn’t need the stick of taxation and regulation to sustain egalitarian distributions; the carrot of doing the right thing would be incentive enough.³⁵ As Cohen writes, those who have internalized “a social *ethos* that inspires uncoerced equality-supporting choices” will neutralize the effects of social contingencies and natural fortune on the distribution of opportunities and life prospects through their private choices.³⁶ Thus, “in a truly just society, with full compliance, taxation on behalf of equality would not need to be coerced.”³⁷ Microsoft will choose to pay its COO and its window washers the same hourly wage (if

you think egalitarianism needs to take it that far; scale back the example as you see fit) and fancy private prep schools will choose to admit students on a need-blind basis. As Jason Brennan notes, in ideal conditions, egalitarian criticisms of capitalism disappear. An ideal capitalist “would never exploit anyone, because she is too nice . . . [and she] would never allow objectionable inequalities or a lack of opportunity because she and others like her would just choose to give the deserving poor what they need.”³⁸

I’ve already addressed concerns about an institutional division of labor but it’s worth repeating: people can voluntarily pursue justice in their private choices without trying to do everything by themselves. Centralized agencies still have a role to play. They may help private actors and organizations figure out fair wage rates, hiring practices, admissions policies, and so on. The point is that ideally just people would *willingly* submit to the recommendations of these organizations or, for instance, the machinery of a Carens market.³⁹ If they want to maintain a particular distributive pattern, they can take up G.A. Cohen’s suggestion and “form a Pattern Maintenance Association and appoint experts to watch over and correct the pattern.”⁴⁰ When the PMA’s collection agent knocks on their door, ideally just people hand over the money because it’s the right thing to do, not because they’ll go to prison if they don’t.

So if we assume that citizens have an “egalitarian ethos,” state intervention isn’t needed to satisfy a demanding principle of equal opportunity. Citizens will use their privately owned property justly. In this society, to borrow Rawls’s words, “persons express their respect for one another” in a particular way, namely “by abstaining from the exploitation of the contingencies of nature and social circumstance.”⁴¹ Those with more marketable talents and favorable social circumstances voluntarily relinquish some of the fruits of these advantages out of a moral commitment to equal opportunity.

So to give the state a job to do, egalitarians must assume that the lucky *will* exploit their luck. The Waltons aren’t going to donate their heirs’ would-be inheritance to underfunded schools. LeBron James isn’t going to split his Nike endorsement check with hard-working philosophers. So the regulatory and redistributive state must step in to correct unfair market inequalities.

By now, you can probably see where I’m headed with this. The behavioral assumption egalitarians invoke to carve out a role for the regulatory and redistributive state at the same time undercuts their right to stipulate that such a state will do its job correctly. If the lucky exploit their luck, then we may not rule out the possibility that they will exploit their luck to gain *political* advantages. If the lucky expropriate the redistributive and regulatory functions of the state, they’ll *widen* inequalities.

Interestingly, Rawls himself considers that a regime’s pursuit of fair equality of opportunity might be self-undermining, but sets this possibility aside as inconsistent with his ideal theoretical assumptions:

We can describe a basic structure professedly designed to realize fair equality of opportunity, but the social interests it generates may make

that realization impossible. A regime's ideal description abstracts from its political sociology, that is, from an account of the political, economic, and social elements that determine its effectiveness in achieving its public aims. However, it seems safe to assume that if a regime does not try to realize certain political values, it will not in fact do so.⁴²

Rawls acknowledges that the pursuit of fair equality of opportunity might produce self-defeating unintended consequences. Yet he dismisses this possibility on the grounds that it's relevant only to nonideal theory and he's doing ideal theory. However, Rawls may not dismiss this possibility: the assumption that permits him to stipulate the ideal functioning of egalitarian political arrangements—namely, that the fortunate don't exploit their good fortune—also renders the egalitarian political arrangements unnecessary.

Luck and Politics

Why might authorizing state intervention into the market make inequalities worse? I'll focus on what I call the *consolidation problem*: economic power and political power tend to concentrate in the same hands. This section explores the first cause of the problem: many luck factors that serve people well in the market also serve them well in politics. The next section explores the second: economic inequalities can themselves be translated into political inequalities.

I'll work with a broad understanding of “political power” or “political advantages”—roughly, your effectiveness in advancing your political preferences. Political power of course includes formal political power, e.g., the kind that the president of the United States possesses. But it also includes things like your ability to lobby on behalf of your favored policy, your ability to persuade people to vote for your favorite candidate at cocktail parties, and so on.

Many of the luck-based traits that position people for success in markets also position them to succeed in politics. Before looking at these in detail, let me start by noting that we shouldn't see the convergence of market and political power as a mere coincidence. And it's not only because money made on the market helps you start a congressional campaign (although it does—more on that in a moment). Rather, this convergence seems like a predictable consequence of the similarities between democracies and economic markets. Democracy itself is a competition. Indeed, it's a competition that has a lot in common with a market. As Gordon Tullock puts it,

Just as a businessperson designs, let us say, the latest automobile so as to attract customers, the politician selects policies with the idea that the customer, who is the voter, will reward the politician in the next election [. . .]. Stated in different language, politicians as businesspeople pursue

policies that they think the people want because they hope the people will reward them with votes.⁴³

Republicans and Democrats compete for votes no less than Pepsi and Coca-Cola compete for dollars. At first glance, intelligence, creativity, energy, persuasiveness, education, and connections to established networks look like qualities that help people win both competitions.

Let's look at some of these traits in more detail. Rawls says that the rich are in a better position to acquire "the bases of political power," viz. "(educated) intelligence, property, and the power of combination, by which [Mill] meant the power to cooperate in pursuing one's political interests."⁴⁴ Educated intelligence involves two luck-influenced factors: education and intelligence. I'll stick to education for now. Receiving favorable educational opportunities is an advantage in politics just as it is in economics. Consider a few examples. Getting an elite education at an early age helps give children a leg up on college admissions and thus future economic and political opportunities. Elite university attendance (the odds of which are improved if one's *parents* attended an elite university) is an important factor in one's lifetime income and one's political prospects. (Just think of how many of major party presidential candidates have gone to Harvard or Yale.)

One reason why education is valuable in the market and in politics is likely due to a signaling factor. A degree from Harvard confers prestige on its possessor. Moreover, the education itself can be valuable in acquiring the skills needed to succeed in business and politics. And going to an elite law or business school means you're more likely to plug into elite network, which will affect the success of advocacy and lobbying efforts. Consider the CEO whose Stanford education gives her connections in the business world and in Washington or the Ivy Leaguer who is more likely to be hired by a lobbying firm or hold elected office.

Informal education matters too. Wealthier children are also more likely to be taught the sort of social skills that are crucial to political success. Annette Lareau reports that parenting approaches tend to vary with socioeconomic status, resulting in the "transmission of differential advantages to children."⁴⁵ She writes, "The commitment among working-class and poor to provide comfort, food, water, shelter, and other basic support requires ongoing effort, given economic challenges and the formidable demands of child rearing. But it stops short of the deliberate cultivation of children and their leisure activities that occurs in middle-class families."⁴⁶ Things are different in wealthier households. In addition to other advantages,

middle-class children also learned (by imitation and direct training) how to make the rules work in their favor. Here, the enormous stress on reasoning and negotiation in the home also has a potential advantage for future institutional interactions [. . .]. Even in fourth grade, middle-class

children appeared to be acting on their own behalf to gain advantages [. . .]. The working-class and poor children, by contrast, showed an emerging *sense of constraint* in their interactions in institutional settings. They were less likely to try to customize interactions to suit their own preferences.⁴⁷

Knowing “how to make the rules work in their favor” is an advantage for people applying to jobs and running companies just as it is an advantage for politicians, bureaucrats, and lobbyists. And skills of communication, negotiation, and self-assertiveness will advantage middle-class children in their attempts to advocate on behalf of their political interests.

What about “natural” talents? Rawls identifies intelligence as one of his bases of political power. Communication and rhetorical skill matter too. The person whose ability to persuade enables her to get rich selling cars, swaying investors, or acing job interviews is also better positioned to gain votes, raise campaign funds, swing opponents at cocktail parties, and convince officials that her industry needs a tax break. As Michael Walzer puts it, “Democracy puts a premium on speech, persuasion, rhetorical skill [. . .]. A perfectly democratic decision is likely to come closest to the wishes of those citizens who are politically most skillful. Democratic politics is a monopoly of politicians.”⁴⁸

Certain personality traits likely affect political success. Having an extraverted personality is undoubtedly a benefit when interacting regularly with strangers and crowds. The same is true of what psychologists call “agreeableness”—the willingness and ability to get along well with others.⁴⁹ Again, these traits help possessors not only to win elected office but also to successfully lobby (formally and informally) for their political preferences.

Looks affect political influence as well. For instance, better-looking people are perceived as more knowledgeable and persuasive in political discussion.⁵⁰ All else equal, the more attractive you are, the more likely you are to sway people to your side at a cocktail party.

Biases play a role in political success just as they play a role in economic success. Racial and gender bias affect labor market outcomes, but evidence suggests that these considerations can affect political outcomes too.⁵¹

So much for the first cause of the consolidation problem, namely that the bases of economic power tend to overlap with the bases of political power.⁵² Here’s another cause: economic power is itself a means to political power. Those who get rich in the market are well placed to make their voices heard by the state.

Consider two of Rawls’s bases of political power: property and the power of combination. I won’t spend much time reviewing the reasons why those with more wealth have more political power since you’re already familiar with them. Most obviously, the rich can better afford the cost of lobbyists, lawyers, and campaign contributions. They’re more

likely to be connected to those with political power. And here's an overlooked political disadvantage of poverty: lack of leisure time. Individuals who work longer hours and have less disposable income are less able to organize political protests, go door-to-door for candidates, and so on. What's more, wealth often leads to fame and visibility, which amplifies the political voice of the rich.

Regarding the "power of combination," the rich can better afford the transaction costs involved in political organization. And when there are comparatively few rich citizens (think of the 1% versus the 99%), they can organize themselves at a comparatively low cost. In sum, as Rawls himself notes, in the modern democratic state "those with greater wealth and position usually control political life and enact legislation and social policies that advance their interests."⁵³

Political Inequality as an Unfair Inequality

Why does it matter if political advantages and economic advantages tend to concentrate in the same hands? Why is this a problem for the principle of equal opportunity? I see two reasons. First, political power is itself an important good. This means that luck-based political inequalities themselves violate the principle of equal opportunity.

Second, political inequality is instrumental in the creation and preservation of economic inequalities. Political inequality and economic inequality create a feedback loop: economic inequality can give rise to political inequality, which in turn further increases economic inequalities. In brief: (i) luck-based political inequalities are themselves unjust and (ii) they can be converted into further unfair economic inequalities.

This section fleshes out the idea that luck-based political inequalities are themselves unjust. To begin, notice that not all luck-based inequalities trouble egalitarians. I'm sure that the world's supply of lint is unequally distributed due to differences in luck. This luck-based inequality is not an injustice, though, because lint makes no difference to people's life prospects. Effective political power, by contrast, does matter.

Many egalitarians stress the value of political power and the need to distribute it equally. Although he explicitly brackets off equality of political power from equality of other resources, Dworkin recognizes that "someone who has power to influence public decisions about the quality of the air he or she breathes, for example, is richer than someone who does not. So an overall theory of equality must find a means of integrating private resources and political power."⁵⁴ Rawls argues that

the political liberties have intrinsic political value in at least two ways: first, in playing a significant or even predominant role in the lives of many citizens engaged in one way or another in political life; and, second, they

are, when honored, one of the social bases of citizens' self-respect and in this way, among others, a primary good.⁵⁵

Rawls, like Dworkin, highlights the role of political power in enabling citizens to influence the direction of their society.

Rawls also emphasizes how your share of political power can impact your self-respect. He says that the political liberties "are, when honored, one of the social bases of citizens' self-respect and in this way, among others, a primary good."⁵⁶ Since the ability to effectively influence and participate in the political process is a primary good—that is, a good that people have reason to value regardless of what else they value—justice requires that all have a fair opportunity to acquire political power.⁵⁷

Political Power as an Instrumental Good

The concentration of political and economic power in the same hands is a problem for a second reason: the economically advantaged can consolidate and expand their economic advantages through political means. The worry is that the proposed political arrangements will not neutralize the effects of luck but rather *compound* them. In Wood's words, the "system of inequality is not merely self-perpetuating but self-reinforcing. Political institutions are largely in the hands of those who benefit most from the inequality, and they are constantly being used to widen, intensify and multiply the disparities between the privileged and the disadvantaged."⁵⁸ The result, then, would be *less* opportunity for the disadvantaged to challenge strongholds of privilege.

Mancur Olson stresses that expanding the redistributive and regulatory functions of the state doesn't extinguish self-interest or the importance of social and natural advantages—it just re-routes them:

What we loosely call intelligence, or aptitude for education, will probably be favored as much as or more than before because the articulate and educated have a comparative advantage in regulation, politics, and complex understandings. [. . .] The competition is not any gentler because it takes a different form [. . .]. The weaker groups still suffer. The poor and the unemployed have no selective incentives to enable them to organize, whereas small groups of great firms or wealthy individuals can organize with relative ease. Thus life is not any gentler because of special-interest groups, but it is less productive, especially in the long run.⁵⁹

In what follows, I'll spell out Olson's point with the help of examples of redistribution and regulation that work to the advantage of the rich at the expense of the poor. These examples are meant only to serve as illustrations of how we might expect redistribution and regulation to take shape when we assume that the fortunate exploit their good fortune. It's worth

noting, too, that I'm not helping myself to anything that Rawls himself hasn't put on the table. I'm taking Rawls's assumption that well-funded and well-organized groups will defeat less advantaged groups in the competition for state-conferred privileges and running with it.

Since these examples are simply illustrative, it's not my aim to establish that it is actually the case that redistribution and regulation exacerbate rather than alleviate inequalities in life prospects. Extensive empirical work is needed to assess that claim. Surely there is some progressive regulation and redistribution in the real world. My argument is that the expansion of inequalities on net due to redistribution and regulation is, at the very least, a *live possibility* in conditions where the fortunate exploit their good fortune. Since these are the very conditions in which redistribution and regulation are called for in the first place, Rawls is not entitled to rule out the possibility that his favored policies will widen, rather than shrink, unfair inequalities in opportunity.

To begin, consider straightforward wealth and income transfers. There are two main reasons why transfers would not decrease inequality and can even increase them: the rich are more capable than the poor of (i) lessening their relative share of the tax burden and (ii) channeling the transfers in their direction. Simply put, the rich are better positioned than the poor to control both the inputs and the outputs of the redistributive process.

Regarding the inputs, the rich are more likely to win deductions, credits, exemptions, etc.—i.e., loopholes—for themselves than the poor. I have covered this argument already, so I won't press it here.⁶⁰ Second, the rich are better equipped than the poor to funnel transfers toward themselves. Consider another illustration of the gap between the egalitarian *ideal* of redistribution and the inegalitarian results we may get if the advantaged exploit their luck. Rawls favors a form of progressive wage subsidies. He envisions a branch of government that supplements wages with transfers, thereby raising wages to a suitable threshold.⁶¹ But when the rich decide to flex their political muscle, subsidies can flow to wealthy individual and corporate interests. Take agricultural subsidies. From 1995–2014, U.S. farm subsidies totaled over \$322 billion.⁶² During that time, the top 1% of recipients received 25% of the payments, the top 5% received 57%, and the top 10% received 75%.⁶³ In 2013, subsidies went to at least four *billionaires*.⁶⁴ Even the average American farm household is richer than the average American household. In 2014, the total income of an average American farm household was \$134,164 compared to \$75,738 for the average American household.⁶⁵

Egalitarians also propose *regulating* the economy for the sake of equality, not simply redistributing income. The regulation can take various forms, such as breaking up monopoly power, preventing collusion, price fixing, and so on. But regulation has the potential to exacerbate rather than alleviate inequalities due to the phenomenon of regulatory capture: economic regulation can serve the interests of the industry it's regulating rather than the interests of the public on behalf of whom it's regulating.

Consider the “revolving door” problem.⁶⁶ Due to a combination of factors like their technical expertise and interest in the industry, regulatory agents often have connections with the industries they regulate. Sometimes regulators have been previously employed in the industry they regulate; sometimes they expect to be employed in that industry in the future (e.g., the cozy relationship between Wall Street and financial regulators). Either possibility can lead to a regulatory bias toward industry interests and opposed to the public interest.

This bias will often go unchecked due to the logic of collective action mentioned earlier. The benefits of biased regulation are concentrated among a few of the regulators and the regulated; the costs are dispersed among the whole of the citizenry, giving citizens little incentive to take action. Furthermore, industry interests are better equipped than average citizens to lobby government agencies for favorable regulation because they can afford the necessary lobbyists and lawyers. As Douglass North puts the point, “Institutions are not necessarily or even usually created to be socially efficient; rather they, or at least the formal rules, are created to serve the interests of those with the bargaining power to create new rules.”⁶⁷ And rich corporate interests tend to have more bargaining power than poorer, more dispersed interests.

It’s also worth noting that complex regulatory and tax codes favor big businesses because they are better able to absorb the high compliance costs (by, e.g., hiring lawyers to do it for them). Indeed, evidence suggests that small firms (under 20 employees) actually face higher regulatory compliance costs in absolute terms than larger firms in the United States.⁶⁸ So small business owners may not have a fair opportunity to compete with bigger and older firms.

The upshot is this: when the fortunate exploit their good fortune, we should expect to see regulation that favors big business against consumers and smaller competitors. The wealthy, well-connected members of industry will tend to exert a far greater influence on the regulation of their industry than the less prosperous, less organized populace. Instead of new competitors having a fair shot at challenging strongholds of privilege, the privileged can use the political and legal framework charged with regulating the economy to further entrench their advantages. In what follows, I’ll review some examples of laws and regulations that are plausibly shaped by wealthy, concentrated interests to the detriment of poorer, dispersed interests.

Occupational Licensing

Decades ago, George Stigler noted the potential for occupational licensing to work against the public interest: “The licensing of occupations is a possible use of the political process to improve the economic circumstances of a group. The license is an effective barrier to entry because occupational practice without the license is a criminal offense.”⁶⁹ It costs time and money to acquire government approval to (e.g.) sell caskets, thread eyebrows, give

massages, arrange flowers professionally, work as an interior decorator, or shampoo hair (note, though, that my own daily self-shampooing remains dangerously unregulated).⁷⁰ An artificially restricted supply of medallions means that would-be New York taxi drivers may have to pay significant costs to buy the right to work.⁷¹ Restrictions on the activities of nurses and dental hygienists create work for wealthier doctors and dentists, even though the former may be competent to perform the work (e.g., routine teeth cleaning without a dentist's supervision).⁷²

Wealthier, more established, and better-connected groups stand to benefit from occupational licensing requirements that reduce competition. Disadvantaged groups, by contrast, can be harmed by licensing in at least two ways. First, by artificially raising the prices of (e.g.) flower arrangements, licensing can hurt the poor as consumers because their dollars don't stretch as far as they otherwise would. Second, by raising barriers to entry, licensing can hurt the poor as producers by making it harder for them to work in certain industries. The opportunity gap between rich and poor is smaller when the state doesn't grant taxi drivers a monopoly. With Lyft as an option, you just need a Kia and an iPhone to earn a living driving a car.

Housing

Regulatory restrictions on new construction can reduce the supply of housing, resulting in artificially high prices.⁷³ The housing wealth of existing owners rises, but the stock of inexpensive housing falls. This exacerbates the inequality between rich and poor. And that's not all: rising property prices cut into the poor's labor mobility when housing isn't affordable in regions where work is available.⁷⁴ They can also lessen economic mobility across generations by preventing poorer parents from moving to better school districts and thus improving their children's education.⁷⁵

Trade Regulations

Tariffs and import quotas are good for domestic producers because they limit their foreign competition. But they are bad for consumers because they make goods more expensive than they need to be. They're particularly harmful when applied to basic goods like food, which make up a disproportionately large part of the budgets of the poor.⁷⁶

Education

What we'd want from a regime of equal opportunity is an educational policy that puts the interests of children, particularly poor children, first. But that might not be the result we get when groups with organizational advantages—the power of combination—look to capitalize on those advantages. Well-organized teachers' unions can capture local school boards, the

result of which is educational policy that advances their (concentrated) professional interests rather than the (dispersed) interests of children in their district—children who lack a corresponding organization to represent and advocate for them.⁷⁷

Risk Regulation

Regulation may increase the cost of childcare, harming poorer families. Requirements on features like child-to-staff ratios can benefit children at the margin but nevertheless drive up prices significantly. Rich families may find that these restrictions are worth it, but for poorer families with smaller budgets, these marginal improvements are less likely to be worth the opportunity cost.⁷⁸ Indeed, evidence suggests a larger pattern of regulations suiting the risk preferences of wealthier families.⁷⁹

Intellectual Property

Elizabeth Anderson points to intellectual property protections as an example of how politicians cater to the rich at the expense of the poor. Discussing the work of Larry Bartels, she notes that

the preferences of low-income constituents have no influence at all on senators' votes, while the preferences of middle-income constituents have middling influence, and the views of high-income constituents had great influence. ([Bartels's] findings apply to Democratic as well as Republican senators.) How does catering to the preferences of the well-off harm the worse-off? In some cases, the state grants or extends monopoly privileges to the better off. Consider the extension of copyright terms, dramatic consolidation of broadcasting ownership, and huge giveaways of public spectrum to existing broadcasters due to IP and communications laws passed in the 1990s.⁸⁰

It's plausible that intellectual property protection is socially beneficial when it incentivizes production. But it can also go too far when it prevents competitors from entering the marketplace and selling a version of the good at a lower price. For instance, the state may, in effect, grant pharmaceutical companies monopolies over particular drugs via the patent system. This is good for wealthy drug manufacturers but bad for the rest of us.

Consumer Protection

Regulation designed to protect consumers from unsafe or predatory market practices have an ostensibly egalitarian rationale, but can end up disadvantaging poorer consumers. Lengthy and expensive drug approval processes, for example, box out comparatively small manufacturers and can keep

beneficial drugs off the market because their expected sales proceeds are lower than the expected costs of seeking regulatory approval.⁸¹

Here's the point: when the rich and connected capture state power, regulation redistributes economic opportunity away from those who cannot afford to pay the costs of the regulation toward those who can. This isn't a recipe for shrinking the opportunity gap between rich and poor.

The Least Bad Option

At a minimum, the previous sections falsify the claim that regulated markets *necessarily* better satisfy egalitarian principles of justice than unregulated markets. One might object that this claim is obviously too strong and thus “straw mans” the luck egalitarian position. But egalitarians themselves seem to make this claim. To minimize the influence of luck on life prospects, Rawls says “it is *necessary* to impose further basic structural conditions on the social system. Free market arrangements *must* be set within a framework of political and legal institutions which regulates the overall trends of economic events.”⁸² Along the same lines, he later says that “welfare-state capitalism also rejects the fair value of the political liberties, and while it has some concern for equality of opportunity, the policies *necessary* to achieve that are not followed.”⁸³ Dworkin says that “market allocations *must* be corrected” to achieve egalitarian justice.⁸⁴ Olsaretti says that an egalitarian principle of desert implies a “*requirement*” to regulate the market.⁸⁵ These claims are false.

We must also be cautious when considering *a priori* assertions that regulatory and redistributive regimes are more likely to satisfy egalitarian justice than the available alternatives. Dworkin writes that “in spite of the complexity of that ideal [of equality], it may sometimes be apparent that a society falls far short of any plausible interpretation of its requirements [. . .]. Equality of resources would require more rather than less redistribution than we now offer.”⁸⁶ My arguments show that it is *not* apparent that minimizing inequalities requires more rather than less redistribution. Indeed, the consolidation problem suggests that redistribution and regulation will systematically tend toward inequalitarian results: those in the best position to control these policies—the most fortunate—are precisely those meant to be controlled by the policies.

Egalitarians might object that they are not in favor of *inegalitarian* transfers and regulations of the sort canvassed above, so my arguments are off-target. Dworkin, for instance, is careful to clarify that his support for redistribution “does not mean, of course, that we should continue past liberal programs, however inefficient these have proved to be.”⁸⁷ So perhaps the egalitarian can respond by saying, “I’m not talking about a state characterized by corporate welfare, regulatory capture, and occupational licensing; rather, I’m talking about a state characterized by estate taxes, well-designed subsidies for poorer school districts, oversight to ensure unbiased hiring practices, and so on.”

The problem with this objection is that defenders of free market capitalism can respond in kind. In reply to egalitarians' initial criticisms of the market, they could just as easily say, "Your objections are off base because I'm talking about a market in which elite private prep schools admit students from all socioeconomic backgrounds and Mark Zuckerberg accepts a massive pay cut to fund a salary bump for Facebook's cafeteria staff. I don't want cut-throat *crony* capitalism; I want *ethical* capitalism."

Of course, the egalitarian's temptation here is to reply: "Well *that's* not going to happen. Don't expect people to restrain their pursuit of self-interest to unlock opportunities for others." Maybe. But if we make this decidedly nonideal assumption, then we must apply it all the way—in which case the stipulation of an ideally functioning egalitarian state is taken off the table.

In sports, there's an old saying that there's a difference between how games play out on paper and how they actually play out on the court. Along the same lines, egalitarian critics of the market rightfully remind us that there's the way markets work on the economics chalkboard and the way they actually work when humans enter the equation. What needs emphasizing, though, is that the same goes for the way democratic governments work in the pages of egalitarian philosophy and the way they work when humans enter the equation.

Dworkin, for instance, recognizes that there's no reason in principle why market allocation cannot satisfy egalitarian principles. He writes, "If people start with equal amounts of wealth, and have roughly equal levels of raw skill, then a market allocation would ensure that no one could properly complain that he had less than others, over his whole life [. . .]. But in the real world people do not start their lives on equal terms."⁸⁸ So there's a difference between how one might ideally *want* an institution to work and how it actually works. We should hold this difference in mind when evaluating the *political* institutions enlisted to regulate markets. Unequal starting points lead to economic inequalities, but they lead to political inequalities too.

Now we're in a position to see why standard egalitarian criticisms of the market are deficient from the get-go. They tend to start with the observation that luck infiltrates market-generated distributions of opportunity in all sorts of ways. If you inherit money, or natural talent, or if your parents donate a building to a college, you've got an unearned head start in labor market competitions. From here, egalitarians move to the claim that the state should step in and correct the unfair inequalities.

But you don't clinch the case for state regulation of the market simply by showing that the market creates unfair inequalities. You need to show that a regulated market does *better*. Think of it like this. All Star and NBA MVP Steph Curry misses roughly 55% of his three point shot attempts. He misses three point shots more often than he makes them. Should we conclude, then, that his team should either reduce his playing time or even cut him outright? Of course not. Why not? Because Curry's replacement will miss an even *higher* percentage of his three point shots. It turns out the Curry

is the greatest three-point shooter in the history of the league. In this context, getting things right 45% of the time is as good as it gets.

Free market institutions could be like Steph Curry. Maybe they fall short of egalitarian success most of the time. But showing that markets fail to live up to egalitarian standards doesn't establish that their institutional alternatives do any better.

Of course, if we had a principled reason for thinking that the advantaged will be less tempted to seize political power than economic power, then the egalitarian could fend off my argument. But I'm not sure there is one. Insofar as people comply with justice, they'll refrain from pursuing both unjust economic outcomes and unjust political outcomes. Insofar as they let their self-interest get the best of them, they'll be willing to pursue both. If anything, the more redistributive and regulatory functions the state performs, the more enticing state power becomes.⁸⁹ I made this point earlier, so I'll keep it short: a state that has greater power to tax and regulate market activity is one that profit seekers have greater incentive to influence.

What's more, as taxation and regulation raise the cost of doing business in the market, they tempt people to do their business in politics. If people are out to exploit their advantages and their initial channel for exploiting them is closed off or made less lucrative, then we should expect them to turn to another channel where the payoffs are greater. At the very least, it's safe to say that political contexts don't provide *less* incentive than markets for the fortunate to use whatever means are at their disposal to get ahead.

In closing, I'll reemphasize that the state is not a *deus ex machina*. It's an institution that is created, operated, and monitored by human beings with psychologies and incentives of their own. In this respect, it's no different from the market. Luck saturates the market when people exploit their luck. But luck saturates the state when people exploit their luck too.

Notes

1. Daniels 2003, 249.
2. Cohen 2009, 21. (And Cohen suggests that even equal pay per hour worked might not go far enough because it privileges those who enjoy work).
3. 1999, 63.
4. 2001, 137.
5. See, e.g., Cohen 2008, 163.
6. Tomasi (2012, xviii) writes, "Market democracy affirms a humanitarian interpretation of social justice rather than an egalitarian one. The basic rights of all citizens in place, social institutions should be designed so that the members of the poorest class personally control the largest possible bundle of goods (say, wealth and income). Anyone committed to an egalitarian interpretation of social justice will be unhappy with market democracy."
7. 1974, 274.
8. 2001, 131.
9. Wood, Unpublished manuscript.
10. Marx and Engels 2004, 16.
11. 2001, 131.

12. On so-called “luck egalitarianism” see, for instance, Arneson 1989; Nagel 1991; Rakowski 1991; Temkin 1993; Roemer 1998; Vallentyne 2002.
13. See, e.g., Temkin 1993; Brighouse and Swift 2006; Cohen 2008.
14. Dworkin 2002, 73.
15. Ibid.
16. Anderson 1999.
17. Rawls 1999, 62.
18. Ibid., 57.
19. Ibid., 63.
20. Ibid.
21. Ibid.
22. Rawls 2001, 137.
23. Ibid., 137.
24. Dworkin 2001, 207.
25. Ibid.
26. Ackerman 1983, 69.
27. Ibid., 66.
28. Olsaretti 2004, 28.
29. Ibid., 165–166.
30. 2008, 163.
31. Ibid., although he attributes this thought to a personal communication with Gustav Arrhenis.
32. 2011, 102.
33. 1999, 156.
34. Debate concerning whether individuals’ personal conduct and society’s basic structure are correctly assessed by identical normative standards has been extensive. For an incomplete sampling of defenses of the claim that they are, see, e.g., Cohen 1997; Murphy 1998. Against this claim see, e.g., Williams 1998; Wolff 1998; Cohen 2001; Scheffler 2006.
35. See Cohen 1992, 1995, 1997, 2000, and 2008.
36. Cohen 1997 13.
37. 2008, 221.
38. Brennan 2014, 86.
39. On a Carens market, see Carens 1981.
40. Cohen 1995, 30, fn. 25.
41. 1999, 156. For valuable discussion of Rawls’s claim, see Cohen 2008, 75–76.
42. Rawls 2001, 137.
43. Tullock 2005, 6.
44. 2001, 131.
45. Lareau 2003, 5.
46. Ibid.
47. Ibid., 6.
48. 1983, 304.
49. For a useful discussion of agreeableness and interpersonal relationships, see Matthews et al. 2009, 255ff.
50. See Palmer and Peterson 2016.
51. To take one example of gender bias, evidence suggests that people associate the facial features of male politicians more readily with the qualities that make for effective leaders than those of female politicians (Chiao et al. 2008). For an overview of racial bias and politics, see Kinder and Ryan 2017.
52. These considerations also suggest that political power will concentrate in the hands of the lucky even if they don’t *intend* to acquire unequal political power (just as economic power may concentrate in the hands of the lucky even if they don’t *intend* to acquire unequal economic power).

53. 2001, 148.
54. 2002, 65.
55. 2005, 404, fn 39.
56. *Ibid.* Rawls argues that effective political power is as important, if not more important, than income for one's self-respect: "The basis for self-respect in a just society is not then one's income share but the publicly affirmed distribution of fundamental rights and liberties." 1999, 477.
57. Rawls 2001, 46.
58. Wood, Unpublished manuscript.
59. 1982, 73.
60. For a discussion of some real-world examples, see Scheiber and Cohen 2015.
61. 1999, 244–245.
62. Environmental Working Group 2016.
63. *Ibid.*
64. U.S. Government Accountability Office 2015.
65. USDA 2016.
66. See, e.g., Dal Bo 2006.
67. North 1994, 360.
68. In 2008, U.S. firms with fewer than 20 employees faced a yearly regulatory compliance cost of \$10,585 per employee compared to the cost of \$7,755 for firms with 500 or more employees. See Crain and Crain 2010, 7.
69. Stigler 1971, 13.
70. For an overview of the occupations that require licensing in the United States and the burdens they create for lower-income Americans, see Carpenter et al. 2012.
71. Grynbaum 2011.
72. On the regulation of nurses and dental hygienists, see U.S. Executive Office of the President 2015.
73. See, e.g., Glaeser et al. 2005.
74. White 2015.
75. *Ibid.*
76. Bureau of Labor Statistics 2015.
77. For a book length treatment, see Moe 2011. Here's a key passage for present purposes: "In both respects, incentives and resources, the most reasonable expectation [. . .] is that the teachers unions will normally be the most powerful of all groups that might care about public education. Parents certainly have strong incentives, but in most districts they are not organized (outside the PTA), not funded, not active—and not powerful. Business groups, ethnic groups, and other community organizations have resources they might employ in school board elections and, especially in cities, are potential competitors to the unions. But their social agendas are broad and diverse, and this gives the unions a huge incentive advantage—for the unions care *only* about public education. This incentive advantage, in turn, should ultimately translate into a huge resource advantage: because they not only have massive resources to begin with (compared to most other groups), but also incentives to invest *more* of their resources in education-related politics and to do it more regularly." Moe 2011, 153 (*italics in the original*).
78. Thomas 2012, 20.
79. *Ibid.*
80. Anderson 2009. The Bartels work Anderson mentions is Bartels 2008.
81. See, e.g., Peltzman 1973; Becker 2004. Becker (2004, 94) writes that loosening regulatory standards such that drug manufacturers wouldn't need to demonstrate drug efficacy would "lower costs and raise the number of therapeutic compounds available. In particular, this would include more drugs from small biotech firms that do not have the deep pockets to invest in extended efficacy trials. And the resulting increase in competition would mean lower prices—without

the bureaucratic burden of price controls. In turn, cheaper and more diverse drugs would induce insurance companies and public providers to cover many more new drugs, even when their efficacy was uncertain.”

82. 1999, 63 (my italics).
83. 2001, 137 (my italics).
84. Ibid., 207 (my italics).
85. 2004, 165–166 (my italics).
86. 2001, 208 (my italics).
87. Ibid.
88. Ibid., 207.
89. James Buchanan (1999, 109) writes, “Rent-seeking activity is directed related to the scope and range of governmental activity in the economy.” See also Nozick 1974, 272.

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6 Social Equality

Dangerous human proclivities can be canalized into comparatively harmless channels by the existence of opportunity for money-making and private wealth, which if they cannot be satisfied in this way, may find their outlet in cruelty, the reckless pursuit of personal power and authority, and other forms of self-aggrandizement. It is better that a man should tyrannize over his bank balance than over his fellow-citizens.

—John Maynard Keynes, *The General Theory of Employment, Interest and Money*

I remember when my wife first mentioned me to her father. They were talking on the phone, so I couldn't quite catch what my future father-in-law was saying—until, that is, I heard my wife say, “Oh, he's a philosopher.” Then I was able to clearly make out what he said. The spit-take was audible from across the room: “A *philosopher*? Ha!”

My station in life didn't earn me status in my father-in-law's eyes. (If anything, it *cost* me status.) He's a trucker. His status is earned through convoying across life-threatening roads. As one trucker said upon being assigned to a rare and risky “megahaul”: “This is the greatest thing ever. There is no happier person on the planet Earth than me right now. I could have just won the lottery.”¹ A philosopher's standing is earned through publishing *Nous* articles on paradoxes of self-reference. My father-in-law hasn't heard of the philosophy journals I've published in and I haven't heard of the companies he's trucked for. We're not climbing the same ladders.

Our case isn't unique: a liberal society that nurtures different lifestyles and ideals thereby nurtures different sources of social status. Often, these sources don't compete. Daryl Morey is treated like Kanye West at the MIT Sloan Sports Analytics Conference—but that doesn't knock down the standing of an Amish bishop in Pennsylvania Dutch Country. (That you've probably never heard of Daryl Morey supports my point).² Status needn't be a zero-sum game.

If I'm right, free market regimes can answer a perennial challenge. Some argue for egalitarian regulation and redistribution on the grounds that they're needed to reduce economic inequalities that can produce inequalities

in social status. But even if we set aside the previous chapter's worries (maybe empirical inquiry reveals them to be unfounded) and grant for argument's sake that regulation and redistribution effectively rein in the rich, there's reason to doubt that the result will be greater social equality. Since people get status from lots of non-competing sources, societies can raise everyone's status by creating more sources. How might they do that? One way is to enrich everyone, even if the wealth is distributed unequally. Wealth empowers people to form new social groups and thus new social hierarchies. The more status games you can play, the better your odds of "winning." So a concern for the status of the badly off should prompt us to encourage contributions to positive-sum economic activity. But this is precisely what economic equalization *discourages*.

Indeed, equalizing income and wealth to raise the social status and self-respect of society's worst off could be self-defeating. On the assumption of behavioral symmetry, economic equalization will merely re-route status-seeking behavior away from market activity toward something else. The trouble is, the pursuit of alternative status sources won't produce the positive spillover that the market-modulated pursuit of wealth does.³ So economic equalization threatens to impoverish, rather than enrich, the social status and self-respect of the worse off.

Status and Self-Respect

Maria Callas demanded that any opera house in which she performed pay her one dollar more than the company's second highest paid singer.⁴ Callas clearly cared a lot about her relative standing within the opera community. We can assume other singers did too.

It's good to find win-win resolutions to these sorts of conflicts, but there isn't one here. Callas has to drop down a rung for someone else to rise; she must lose standing for her rivals to gain standing. Insofar as we favor the interests of the worse off, we have no choice but to worsen the better off in cases like these. Rawls writes, "Status is a positional good, as is sometimes said. High status assumes other positions beneath it; so if we seek a higher status for ourselves, we in effect support a scheme that entails others' having a lower status."⁵ Traditionally, status is *the* positional good. Only 400 people can muscle their way into the Forbes 400 richest. When newcomers arrive, they necessarily box out old members. That's not politics, economics, or philosophy—that's just math.

Status matters because, as Harry Brighouse and Adam Swift write, people's self-respect suffers when "they judge their own worth by comparing themselves with others who are better off, in some dimension judged relevant, than themselves."⁶ In particular, your economic position relative to others affects your social standing.⁷ Your social standing, in turn, affects your achievement of other goods like self-respect. Being at the bottom of the economic ladder hurts in absolute terms—it can dent your self-worth

and it's hard to live well when you see yourself as unworthy. A concern for people's self-respect therefore seems to give us a reason to compress material inequalities even if we find them unobjectionable in themselves.

It's important to emphasize that a concern for social equality allegedly grounds an argument for minimizing the disparities between better and worse off rather than raising up the worse off specifically. Here's T.M. Scanlon:

When the mode of life enjoyed by some people sets the norm for a society, those who are much worse off will feel shame and inferiority at the way they must live. The egalitarian character of this objection is shown by the fact that it provides a reason specifically for the elimination of the difference in question rather than for the improvement of the lot of the worse off in some more general sense. This is obviously so where the differences are purely ones of status. But even where the basis of inferiority is a difference in material well-being, the aim of avoiding stigmatization can in principle provide a reason for eliminating the benefits of the better off (or for wishing they had never been created) even if these cannot be transferred to the worse off.⁸

Harry Brighouse and Adam Swift are more explicit about the positional dimensions of wealth grounding an argument for "leveling down" wealth—that is, lowering the wealth of the rich even if doing so fails to enrich the poor.⁹ Leveling down wealth improves the relative economic position of the poor and can increase their self-respect by enabling them to make more favorable economic comparisons to others. As Brighouse and Swift emphasize, our apparent reason to level down wealth "has nothing to do with envy or an irrational preoccupation with relativities or comparisons."¹⁰ We can arrive at egalitarian conclusions about the distributions of wealth and income from non-egalitarian premises that accord moral weight only to individuals' absolute well-being.

In addition to status inequality's impact on well-being, worries about status cause Rawls to question whether large economic inequalities are consistent with a constitutional regime that creates conditions that enable everyone to have a healthy sense of self-respect. A stable society is one that's consistent with the self-respect of all. Rawls says, "Our problem is whether the principles of justice are a reasonable undertaking in view of the propensities of human beings, in particular their aversion to disparities in objective goods."¹¹ Assuming that the achievement of economic sufficiency and fair opportunity is consistent with economic inequalities of some sort, we need reason to think that these inequalities will not yield destabilizing status inequalities. Otherwise, we must equalize wealth and income even further (assuming we can). Indeed, Rawls suggests that social stability might require the basic structure to compress material inequalities beyond what's demanded by the difference principle—a result that would yield *less* income

for the poor. He worries that “it may be that the inequalities permitted by the difference principle are already too great for stability.”¹²

What Do Judith Jarvis Thomson and J.J. Watt Have in Common?

There’s reason to doubt that market-generated economic inequalities will translate into destabilizing status inequalities. Here’s why. It’s true that relative wealth contributes to social status and in turn self-respect—but it’s not the *only* contributor to social status and self-respect. So maybe equalizing wealth adds to self-respect by raising the poor’s relative economic standing but subtracts from self-respect in an even greater amount by worsening the poor’s status in other respects. Here equalization generates a *net* loss of standing for the poor and thus fails on its own terms. It frustrates the end it is supposed to further. In what follows, I consider the possibility that Pareto efficiency and economic growth will be more effective strategies for benefiting the worse off than economic equalization.¹³

A number of philosophers reject the idea that there is a fixed sum of social standing.¹⁴ Pluralism about what makes lives and projects worthwhile translates into pluralism of standing.¹⁵ Rawls himself underscores liberal institutions’ tendency to generate a “plurality of associations [. . .] each with its secure internal life [. . .]. The various associations in society tend to divide it into so many noncomparing groups, the discrepancies between these divisions not attracting the kind of attention which unsettles the lives of those less well placed.”¹⁶ Economic standing is only one contributor to social standing. There are other, non-overlapping social bases of self-respect; consequently, we can bring about gains in the self-respect of the relatively less wealthy through the proliferation of these social bases of self-respect.

A proliferation of dimensions of social comparison can improve everyone’s self-respect if people value the dimensions differently and can participate selectively. Indeed, evidence indicates that we tend to highly value those dimensions in which we perform well.¹⁷ Nozick puts it this way:

Though the weighted sum of a number of independently varying normal distributions itself will be normal, if each individual (who knows his score on each dimension [along which he compares himself to others]) weights the dimensions differently from the way other persons do, the total sum of all the different individuals’ differently weighted combinations need not itself be a normal distribution, even though the scores on each dimension are normally distributed. Everyone might view themselves as at the upper end of a distribution through the perspective of the particular weights he assigns. The fewer the dimensions, the less the opportunity for an individual successfully to use as a basis for self-esteem a nonuniform weighting strategy that gives greater weight to the dimension he scores highly in.¹⁸

Conversely, the more dimensions, the greater the opportunity for individuals to successfully use nonuniform weighting strategies as a basis for self-esteem.¹⁹

People who subscribe to different conceptions of the good subscribe to different conceptions of standing. Linebackers, biologists, drummers, and Teamsters vie for standing along different dimensions, or at least assign different weights to the dimensions along which they compete. For example, Judith Jarvis Thomson and NFL star Justin James (J.J.) Watt are among the best in their fields; however, their fields have very different measures of success. Watt has collected plenty of quarterback sacks but he cannot claim credit for the “violinist” thought experiment. The point is that we rely on distinct, frequently esoteric measures of prestige.

As Rawls suggests, status pluralism seems to be an implication of the flourishing of value pluralism under liberal institutions. Individuals subscribing to different conceptions of the good will believe that different attributes confer status differently.²⁰ There may be no common frame of reference that enables us to compare the status of all persons. That is to say, status rankings might be incommensurable.

The plurality of status bases is also evidenced by people’s concern for where they stand along a variety of dimensions of comparison. Our self-respect hinges not only on our place within the nationwide distribution of income, but on our standing within softball leagues, sales teams, physics departments, Regional Emmy Award competitions, poker games, pub trivia tournaments, and amateur film festivals.

Here’s the point. Since there isn’t a common frame of reference that enables us to compare the standing of all persons, the standing won by a person along one dimension of comparison needn’t come at the cost of the standing of a person along another dimension. Why, then, is status so often seen as a zero-sum game? I suspect it’s because standing within a particular social hierarchy is confused with standing in general. The music industry cannot create more than ten spots in the top ten best-selling jazz albums. But the inherent scarcity of spots on a Top Ten list doesn’t confirm the inherent scarcity of status in general.²¹ Think of it this way. If I want *that* box of Cap’n Crunch on the supermarket shelf, then I’m locked in zero-sum combat with all like-minded consumers. A win-win outcome isn’t possible. But we shouldn’t infer that Cap’n Crunch is a fixed sum good. Why not? Because PepsiCo can, thankfully, manufacture more Cap’n Crunch. And a pluralistic society can manufacture more status.

While it’s true that the music industry cannot create more than ten spots in the top ten best-selling jazz albums, it can create new musical genres and, in turn, new Top Ten lists. Last I checked, Wikipedia listed roughly four dozen subgenres of heavy metal, including something called “cello metal.” That kind of diversity wasn’t available even twenty years ago. And my hunch is that the cello metal fan base doesn’t overlap much with Taylor Swift’s, meaning that cello metallers won’t gain status within their community by

doing what Taylor Swift does. Indeed, they'd probably lose credibility if they started winning Grammys.

So I don't think status presents a special problem for economic inequality. *Particular* bases of self-respect are positional goods just as *particular* boxes of cereal are positional goods. Just as Rich Ron will outcompete Poor Paula for material status, he will outcompete her for the lone box of cereal—he'll simply outbid her. But neither status nor cereal considered as a general type of good is positional. We can make more of each.

Status Pluralism: A Comparative Institutional Analysis

How, exactly, can a pluralistic society manufacture more status? Here's one way: facilitating general gains in social wealth. You need to live in a society that's pretty rich in absolute terms to participate in softball leagues, sales teams, physics departments, Regional Emmy Award competitions, poker games, pub trivia tournaments, and amateur film festivals. Will Wilkinson writes,

Liberal market societies not only create new technologies, they create proliferating forms of association, affiliation, expression, and identity at a sometimes alarming rate. Each musical genre, each hobby, each committee, each church, each club, each ideology, each lifestyle provides a new dimension—a new frame of reference—for positional competition [. . .]. Dynamic market liberal societies create higher-order positive-sum games.²²

Wealth can facilitate the formation of new social groups in which individuals can compete and excel. It can do this through direct means, for example by expanding capital-intensive associations ranging from the lofty (e.g., universities, laboratories, wine-tasting clubs) to the prosaic (e.g., online multiplayer video games). I play fantasy basketball on my phone from my couch in Virginia with strangers in Cleveland. And the amount of jawing over league rank is . . . unnerving. (Granted, I'm responsible for most of it, but I don't think that undermines the point.)

Wealth can also encourage the formation of new social groups indirectly by increasing individuals' disposable income, leisure, and education, thus enabling them to participate in—and gain standing through—new kinds of activities that they otherwise wouldn't have the time or energy for. The greater your access to instruments, leisure, and recording equipment, the greater your chances of inventing cello metal.

The take-home point is that absolutely wealthy societies multiply the frames of reference for social comparison and thus allow people to enjoy more opportunities for favorable comparisons.²³ Enriching the relatively poor can improve their social standing and self-respect even if their *relative* position in the distribution of wealth is unchanged. Social wealth has

increased the size of the pie of social status rather than simply re-divided the pieces. Indeed, economists Betsey Stevenson and Justin Wolfers conclude from their analysis of decades of cross-country data that, among other things, “income [measured in terms of real GDP per capita] is positively related [. . .] with feeling treated with respect” and “with feeling proud.”²⁴

Brian Barry worries that a society that prioritizes wealth will make your income share the main determinant of your status: “The more materialistic a society—the more that it is generally believed that money is the only significant goal in life—the more that people with a lot of money will feel like winners and those with a little will feel like losers.”²⁵ But counterintuitively, increasing social wealth may work to democratize status in virtue of *diminishing* wealth’s importance as a dimension of status. We might reasonably think that the more dimensions of status there are, the less important any particular dimension becomes, including wealth. In a society where material resources are scarce and a lot of attention is devoted to acquiring more of them, having more material resources than others will confer considerable status simply because people’s focus is fixed largely on resource acquisition. Take the limit case: in absolutely poor, ancestral hunter-gather societies, status was probably distributed according to rank along two dimensions: hunting and gathering. If you aren’t good at either of those tasks, you’re out of luck.²⁶ Thankfully for me—someone who neither hunts nor gathers—I can swing by 7–11 for a snack on my way to a pickup basketball game.

Suppose, though, you’re not convinced that greater social wealth will produce robust general gains in status and self-respect. It remains an open question whether we should pursue economic equalization. Just as the perfect is the enemy of the good, the good is the enemy of the least bad. There might not be a strategy for raising the social standing of the poor that we would consider good in absolute terms. If that’s the case, we’re forced to choose the least bad alternative.

Think back to my analogy to Steph Curry. Curry shoots 45% on his three point attempts. He is no doubt imperfect—after all, he could have made his shot the other 55% of the time. Indeed, failing over half the time is pretty terrible by absolute standards. Still, Curry’s imperfections don’t justify benching him because his backup is even *more* imperfect. The standard for judging a basketball player isn’t perfection; it’s the best available alternative player. And the best available alternative to Steph Curry is going to be worse than Steph Curry. So it could be the case that the best available alternative to growth is going to be worse than growth. The gains in the self-respect of the worse off due to equalizing wealth might be modest enough that even small gains due to economic growth will surpass them.

There are a variety of reasons to doubt that compressing national wealth differentials will generate appreciable gains in the self-respect of the poor. First, recent research emphasizes the significance of comparisons to people who are close to us geographically, professionally, or socioeconomically.²⁷ Rawls himself writes, “We tend to compare our circumstances with others

in the same or in a similar group as ourselves, or in positions that we regard as relevant to our aspirations.”²⁸ Our focus on proximate comparisons may be due partly to the vividness effect. Social psychologists Richard Nisbett and Lee Ross say that information is vivid when it is “likely to attract and hold our attention and to excite the imagination to the extent that it is [. . .] proximate in a sensory, temporal, or spatial way.”²⁹ For example, our self-esteem might suffer when our top choice medical school rejects us but accepts our roommate. But most of us don’t stop to consider the hundreds of *other* applicants that also got in, or got into even better schools. *Their* acceptance letters don’t bother us because we don’t see them.

Since we focus on a similarly situated comparison class, doubling a billionaire’s taxes won’t boost a West Virginia coal miner’s self-perception.³⁰ What’s more, shrinking income gaps without erasing them can make matters even worse—now you’ve got a fresh batch of competitors in your comparison class, thereby worsening your odds of “winning.”

Furthermore, the emphasis on compressing wealth differentials overlooks the importance of *ordinal* economic position. Similar to the case of Maria Callas, when basketball star Bill Russell renegotiated his contract with the Boston Celtics in 1965, he insisted that he be paid \$100,001—narrowly topping the \$100,000 contract of rival Wilt Chamberlain. Pure rank matters to us.³¹ To the extent that individuals focus on ordinal comparisons, the rationale for income and wealth compression becomes less compelling and less operational. Short of absolute equality, we cannot improve the ordinal rank of some without worsening the ordinal rank of others. Compressing, but not eliminating, inequalities will do nothing to improve the ordinal rank of the worse off.

But maybe the lesson here is that we have (defeasible) reason to *fully* equalize economic standing. But even total economic equalization may ultimately do little to improve the self-respect of the worse off. Michael Walzer suggests that once some dimension of social comparison has been equalized, it ceases to be a valued source of recognition: “Even if we could somehow identify and collect [those goods that produce public recognition] and then give them out in equal parts, they would instantly cease (because of the equality) to command admiration.”³² A contemporary American student may take pride in her ability to write in Latin, but presumably Lucretius did not. The ability to write in Latin makes someone unusual in Montana but not ancient Rome—in modern America, this is a quality by which someone can distinguish herself and gain a sense of self-worth. Or take an example adapted from Nozick.³³ Students get a nice psychological bump from wearing their Harvard sweaters at the hometown bars on winter break but it fades once they’re back on campus. Favorable interpersonal comparison implies some source of differentiation.³⁴ If all the members of a peer group share some attribute, this attribute is not a dimension along which they can distinguish themselves and thus favorably compare themselves to others.

Indeed, economic egalitarians might not even *want* material equality to extinguish status inequality. Joseph Carens explicitly appeals to greater

“social approval” as an incentive to work in a broadly egalitarian regime.³⁵ If you’re taxed too highly to ever be Warren Buffet, you can at least be Alexey Stakhanov, Hero of Socialist Labor 1970. But if status inequality disappears, then people living under an egalitarian economic regime would lose this incentive to put their shoulder to the wheel.

Nevertheless, by equalizing material resources, we eliminate material resources as a source of unfavorable social comparison simply by eliminating them as a source of social comparison altogether. But there’s reason to doubt that equalizing wealth will produce even this more modest gain in the self-respect of the materially worse off. We should expect new dimensions of social comparison to replace the lost ones and so create new inequalities in social standing. Nozick suggests that when a good is equalized, people will substitute an alternate good possession of which confers standing.³⁶ This substitute now becomes a positional good, creating a new class of the worse off with respect to this new social basis of self-respect.³⁷ This thesis gains support from empirical evidence suggesting that status seeking is exogenous to particular social structures and culturally mediated forms of status.³⁸ Indeed, on the assumption that social standing is a key part of our self-assessments (an assumption on which the argument for equalizing standing-conferring goods rests), we should not expect the elimination of one source of standing to deter us from competing over a *new* source. If a new set of unequally distributed standing-conferring goods appears in the place of material resources, then equalizing material resources will not create a net gain in the self-respect of the worse off (that is, the worse off with respect to the standing-conferring good *du jour*).

Even if no additional forms of standing arise, eliminating wealth as a dimension of social comparison can make matters worse if it means that people will compete for standing along one fewer dimension of comparison, thus making standing that much more scarce.³⁹ Suppose that society has ten dimensions of comparison, one of which is wealth. Then suppose we do successfully equalize wealth, thereby removing wealth as a dimension of social comparison. This change wouldn’t make *any* progress in advancing the self-esteem of the badly off (as gauged by relative position on the dimensions). It would simply redistribute the weight that wealth had onto the remaining dimensions. It would make each of the remaining nine dimensions that much more important. So instead of those relatively poor in economic terms feeling bad, those relatively poor in musical talent (for example) feel worse than before. Indeed, equalization would make matters worse since it would make standing scarcer—you can compete along only nine dimensions rather than ten.

Here we come to the internal tension within the status argument for economic equality. This argument rests on the assumption that status is a fixed-sum, positional good. But if standing really is a fixed-sum, positional good, then it’s a problem without a solution. Economic equalization won’t make it better. *Nothing* will make it better. Equalizing any one of the specific means

to status (e.g., economic standing) will be futile because its share of the status pie will simply be redistributed to the remaining means. By analogy, if we equalize shoe quality among tennis players, we simply make (e.g.) differential racket quality that much more important as a means to the fixed-sum good of victory. So economic egalitarians have a dilemma. If status is fixed sum, then economic equalization won't help. If status is not fixed sum, then economic growth *can* help, even if the benefits are distributed unequally.

How to Economize on Humility

Status itself can be a powerful incentive to put your talents to work for the benefit of others. Kant writes of humanity's "unsocial sociability." He says that "competitive vanity" can yield unintended social benefits. Kant notes humanity's desire

to achieve a rank among his fellows whom he cannot tolerate but from whom he cannot withdraw [. . .]. Without those in themselves unamiable characteristics of unsociability from whence opposition springs—characteristics each man must find in his own selfish pretensions—all talents would remain hidden, unborn in an Arcadian shepherd's life, with all its concord, contentment, and mutual affection. Men, good-natured as the sheep they herd, would hardly reach a higher worth than their beasts [. . .]. Thanks be to Nature, then, for the incompatibility, for heartless competitive vanity, for the insatiable desire to possess and to rule! Without them, all the excellent natural capacities of humanity would forever sleep, undeveloped.⁴⁰

Adam Smith and David Hume make similar points.⁴¹ Smith talks of "the poor man's son" who burns with ambition to join the ranks of the rich. "With the most unrelenting industry he labours night and day to acquire talents superior to all his competitors. He endeavours next to bring those talents into public view, and with equal assiduity solicits every opportunity of employment."⁴² The result of the poor man's son's work is social prosperity:

Through the whole of his life he pursues the idea of a certain artificial and elegant repose which he may never arrive at. . . . *And it is well that nature imposes upon us in this manner.* It is this deception which rouses and keeps in continual motion the industry of mankind. It is this which first prompted them to cultivate the ground, to build houses, to found cities and commonwealths, and to invent and improve all the sciences and arts, which ennoble and embellish human life; which have entirely changed the whole face of the globe, have turned the rude forests of nature into agreeable and fertile plains, and made the trackless and barren ocean a new fund of subsistence, and the great high road of communication to the different nations of the earth.⁴³

On Smith's view, hyperambition is bad for the ambitious but good for the rest of us.

Here's a real-world example of what Smith is talking about. In the 1990s, Steve Jobs and Michael Dell waged a public and acrimonious battle for market share in the computer industry. When Apple Computers was struggling in the mid-nineties, rival Michael Dell was asked what *he* would do to fix Apple. "I'd shut it down and give the money back to the shareholders," he said.⁴⁴ About a decade later, on the day Apple's worth overtook Dell Computer's, Apple CEO Steve Jobs took the time to point this event out to his employees, and to comment on Michael Dell's shortcomings as an evaluator of Apple's success.⁴⁵

But, as Kant might put it, thanks be to Nature for their heartless competitive vanity. One unintended consequence of Jobs's and Dell's quest to outdo each other created opportunities for *others* to achieve standing. These kinds of tussles over the hearts and wallets of consumers have resulted in better and cheaper computers for everyone. Better and cheaper computers, in turn, have democratized creative processes that were once closed to all but the rich and connected. Ten years ago, amateur musicians and filmmakers would typically be unable to afford the equipment needed to produce music and film of decent quality. Today, someone can make an entire movie on a computer or even a phone that costs less than a thousand dollars. This means that amateur filmmakers can now, for example, enter competitions that were previously closed to them and, in turn, gain standing in their niche community. Musicians and filmmakers need not be wealthy relative to Jobs or Dell to win standing along their favored dimension, but they do need to live in an absolutely wealthy society that supplies abundant leisure, disposable income, and sophisticated technology. Enriching the poor, even when coupled with inequality, can produce a net gain in their self-respect.

As a general point, we can expect more niche communities and subcultures—and thus more opportunities for standing—to arise when art, film, and music become cheaper to produce and buy. Hume writes that in "the more polished and [. . .] luxurious ages" people "flock into cities; love to receive and communicate knowledge; to show their wit or their breeding; their taste in conversation or living, in clothes or furniture [. . .]. Particular clubs and societies are everywhere formed."⁴⁶

Channeling status pursuit in positive-sum ways is important for another reason as well. As Rawls argues, people are less likely to resent the higher status of others if they believe that the status was achieved by making others better off: "[W]e like to think those with higher status normally earn or achieve their position in appropriate ways that yield compensating benefits for the general good."⁴⁷

Consider also that the status goods disproportionately consumed by the rich resist deflation by their very nature.⁴⁸ Goods that signal high economic status confer status in proportion to their scarcity (e.g., diamonds, original paintings, very old wine). Once everyone has a smartphone, having a

smartphone no longer signals high economic status. So you need to buy the newest, marginally improved iPhone to show off to your friends. This means that the wealthy are spending greater shares of their income on luxury goods just to remain on top.

Economist John Nye points out that competition for these sorts of status goods can be “a positive force for the democratization of the benefits of economic growth.”⁴⁹ Elsewhere, Nye elaborates on this Smithian point:

Because positional and other fixed goods become harder to buy as people get wealthier, those who are particularly status-obsessed will have to work more to buy these goods, which ultimately benefits us all. Working longer hours to buy the choicest piece of real estate or to be the first to get the latest new toys serves as a voluntary progressive tax on income. Especially in the latter case: those who slaved away to buy flat screen TVs when they were rare and cost \$10,000 made it easier for most of us to eventually own similar sets at a tenth the price.⁵⁰

Whereas smartphones started out concentrated in the hands of wealthy first movers, their costs quickly dropped to the point of wide accessibility. Consider this: in 2015-dollars, the original 2007 iPhone would cost \$572. In 2015, you could buy a phone with *better* specs than the original iPhone for \$9.82.⁵¹ Smartphones became roughly 58 times cheaper in 8 years. And as I’ve already mentioned, smartphones made it easier for me to compete—and lose standing—in Fantasy Basketball leagues. (I’m sure they’ve encouraged less geeky activities as well, but I wouldn’t know about those.)

The broader point here is that competitions for status that appear zero sum at first glance may yet be positive sum. As noted earlier, the assumption that people engage in competitions for standing is what motivates the problem of social inequality in the first place. Our aim, then, should be to channel this competitive striving in ways that produce public benefits, and more specifically, new opportunities for standing for others. Equalization measures can conflict with this aim. By preventing people from competing over relative economic standing, equalization eliminates an incentive for economic production and, in turn, may eliminate opportunities for people to gain standing in the non-material dimensions of comparison made possible by growth.

Here again, we need to be careful not to violate the principle of behavioral symmetry. Otherwise, we might fail to recognize the possibility that attempts to equalize economic standing will create perverse incentives. The assumption that people are status seekers is needed to get the “self-respect argument” for economic equalization off the ground at all. But if we consistently apply this assumption, then we are driven to the conclusion that egalitarian economic regimes will simply redirect status-seeking behavior. The regimes change the payoffs of different forms of status pursuit but do nothing to extinguish demand for status.

Once we consistently apply the behavioral assumption of status seeking across regime types, the issue becomes choosing between status arms races rather than eliminating them. If money becomes an expensive way to get status, then people will try to get their status from something else, just as an embargo on Mountain Dew will drive caffeine-and-sugar drinkers toward café mochas.

Indeed, economic equalization will not just redistribute remaining status randomly, but rather will tend to preferentially redistribute at least some of it to political standing. Nozick argues that when there is “a centralized effort to remove certain dimensions as important [. . .] the more contributions to it will come to the fore as the commonly agreed upon dimension on which will be based people’s self-esteem.”⁵² So, for instance, when there is a centralized political effort to reduce the importance of wealth and income, standing within politics will take on added importance. The greater the power and prominence of politics in a society, the more one’s status will be determined by one’s relative *political* standing.⁵³ (In support of the idea that greater power correlates with greater status, think of LBJ’s line about the difference between a senator and a congressperson.) And this would be an especially counterproductive outcome because, as we’ve seen, political power is a positional good. It’s fixed sum, making mutual gains in standing impossible.⁵⁴

Conspicuous Compassion

Here’s one last way that markets economize on humility: people who create fortunes today often show off by giving them away tomorrow. Market critics worry that capitalism encourages conspicuous consumption—that is, highly visible luxury purchases to signal your wealth. Fair enough, but we hear less about what some have called “conspicuous *compassion*”—that is, highly visible forms of charitable giving to signal your wealth. Bill Gates gets status from Microsoft *and* the Gates Foundation. Indeed, these two phenomena seem to arise at the same time in the U.S. history.⁵⁵

Why think that status acquisition is a major motive for charitable giving? For one, charity volunteers work twice as hard when others can watch.⁵⁶ And get a load of this: fewer than 1% of donations to a number of prominent organizations are made anonymously.⁵⁷ Even that figure might be an overestimate. Geoffrey Miller writes, “There is the phenomenon of the ‘anonymous donor,’ but we should not take the term at face value. A London socialite once remarked to me that she knew many anonymous donors. They were well known within their social circle—the set of people whose opinion matters—even though their names may not have been splashed across the newspapers.”⁵⁸

As long as we’re on the topic of “conspicuous co’s,” I’ll mention “conspicuous conservation.”⁵⁹ Part of the Prius’s success is due to its distinctive style. Other hybrids tend to look the same as their non-hybrid counterparts. But the Prius looks only like a Prius—a quick glance tells others that you’re driving a hybrid. The Prius’s *signaling* value helps explain its popularity

relative to equally green cars.⁶⁰ If helpers cared only about the welfare of those they help, then they'd have no desire to advertise with a hospital wing bearing their name or an easily recognizable low emissions vehicle. There'd be no demand for stickers at polling stations or blood drives. That there is such demand suggests that altruists take a strong interest in being *seen* as altruistic. (Gates named it the "*Gates Foundation*" after all).

Consider also some experimental evidence. One study of "competitive altruism" indicates that when contributions in a public goods game were publicly known, players contributed more.⁶¹ More crucially, "altruistic group members received more status. They were more respected, held in higher esteem, and were more likely to be chosen as group leaders."⁶² Altruism even raises testosterone levels.⁶³ What's more, evidence indicates that the connection between philanthropy and the status of the philanthropist holds across cultures.⁶⁴

Enabling market actors to amass wealth now enables them to donate it later. Political interventions designed to stymie the accumulation of wealth may unwittingly stymie the highest utility forms of competitive altruism, as charitable giving is skewed toward the richest.⁶⁵ Families in the top 2% for income give 37% of all charitable dollars; those in the top 7% for net worth give 50% of all charitable dollars.⁶⁶ Indeed, these higher rates of giving at higher levels of wealth and income should be unsurprising: the marginal utility of status-signaling altruism will surpass the marginal utility of consumption as the latter speeds toward zero for the super-rich.

On the assumption that people are status-seekers, the institutional design problem becomes one of channeling status seeking rather than extinguishing or suppressing it. Facilitating a competition to see who can help others the most is as benign an outlet for status-seeking behavior as one could hope for.

Notes

1. This quotation is from episode 8, season 4 of the History Channel's *Ice Road Truckers*.
2. He's the general manager of the NBA's Houston Rockets. Here's how sports writer Bill Simmons (2009) describes Morey's status in the basketball statistics community: "A few weeks ago, I spent a Saturday at MIT's Sloan Sports Analytics Conference, or as I dubbed it, Dorkapalooza 2009! A slew of statistical rock stars showed up: Dean Oliver, Aaron Schatz, John Hollinger. Panels argued topics like "Where are basketball analytics headed?" and "What's more important, coming up with a cool formula or kissing a girl?" The hottest celeb? My friend Daryl Morey, the Rockets GM, who was hounded by MIT students as if he were Britney among the paparazzi. I dubbed him Dork Elvis. Even he admitted that was funny. Begrudgingly."
3. Indeed, if we reintroduce the worry that redistributive and regulatory efforts might *not* function properly and instead incentivize the rich to invest in capturing political power, then these efforts would divert activity away from economic production and toward zero-sum political activity in particular. I'll say more below about why this result would be especially damaging to the goal of producing mutual gains in social status.

4. This story is reported in Pinker 1999, 390.
5. Rawls 2001, 131.
6. Brighouse and Swift 2006, 490.
7. For discussion, see Nagel 1978, 3.
8. 2003, 204.
9. Brighouse and Swift 2006.
10. 2006, 475.
11. Rawls 1999, 469.
12. Rawls 2001, 127.
13. These two strategies are of course mutually exclusive, as leveling down a good necessitates reducing its supply. Moreover, as Rawls famously emphasizes, permitting inequalities often generates beneficial incentive effects. Thus, we can expect efforts to level down wealth to result in a general decline in social wealth.
14. See Nozick 1974, 245; Walzer 1983; Rawls 1999, 470.
15. What matters for “standing pluralism” is not genuine value pluralism but rather *perceived* value pluralism. That is, what matters is that individuals accept a plurality of values (rightly or wrongly) and thus render different evaluations of dimensions of comparison.
16. Rawls 1999, 470.
17. See Tesser and Paulhus 1983.
18. Nozick 1974, 245.
19. See also Lucas 1977, 268; Smith et al. 1990; Ben-Ze’ev 1992, 580.
20. In Brighouse and Swift’s characterization, people lose self-respect when they fare poorly along a dimension they themselves judge to be important. Self-respect is, in large part, determined subjectively. Indeed, they write that a deterioration of self-respect “operates via a psychological or subjective mechanism.” Brighouse and Swift 2006, 490.
21. For a similar point, see Wilkinson 2006, 4ff.
22. Wilkinson 2006, 7.
23. Scanlon notes that diversification can mitigate problems of self-worth. Scanlon 2003, 216. Yet the ways in which high social wealth facilitates diversification have been generally overlooked.
24. 2008, 67.
25. Barry 2005, 78.
26. Rawls (1999, 478) stresses the importance of decoupling self-respect and material standing. When the two are coupled, “having a higher status implies having more material means than a larger fraction of society. Everyone cannot have the highest status, and to improve one person’s position is to lower that of someone else. Social cooperation to increase the conditions of self-respect is impossible. The means of status, so to speak, are fixed, and each man’s gain is another’s loss. Clearly this situation is a great misfortune. Persons are set at odds with one another in the pursuit of their self-esteem [. . .]. It would tend to make the good of social union difficult if not impossible to achieve.”
27. On the importance of income comparisons to those similar to oneself in education level, age, and location, see Ferrer-i Carbonell 2005. On the importance of income comparisons to others that belong to your professional class, see Senik 2004. Erzo Luttmer (2005) finds that having richer neighbors decreases your self-reported happiness. There’s also evidence (Daly et al. 2007) suggesting that suicide risk rises with reference group income, where the reference group is understood in terms of members of one’s county. Workers’ job satisfaction also appears to be inversely related to the earnings of a “typical” employee that shares their key demographic characteristics (Clark and Oswald 1996).
28. Rawls 1999, 470.

29. Nisbett and Ross 1980, 45.
30. Perhaps we should worry that technological advances have expanded people's comparison sets beyond their local circles. However, our awareness of these distant comparison sets is probably fleeting. The most recent research suggests that one's economic standing relative to the national distribution has little effect on life satisfaction. See Stevenson and Wolfers 2008. This finding is plausibly explained by our regarding local comparisons as the most relevant to our assessments of our own lives, as these comparisons concern those people who are similarly situated to us and with whom we are in the most direct competition for (e.g.) wealth and status.
31. See Brown et al. 2008. For discussions of the idea that individuals value the ranked position of their wages, see Robert Frank 1985; Layard 2006.
32. Walzer 1983, 256.
33. Nozick 1974, 244.
34. On this idea, see Nozick 1974, 243.
35. Carens 1981, 158.
36. Ibid. See also Lucas 1965, 304.
37. See Nozick 1974, 243.
38. Both Robert Frank and Richard Layard cite studies that show that serotonin and testosterone concentrations in vervet monkeys correlate positively with standing in the dominance hierarchy. Frank 2000, 140–142; Layard 2006, C27.
39. See Lucas 1977, 267.
40. Kant 1963, fourth thesis.
41. Smith 1982, IV.1 and VI.1; Hume 1987a, 111–137. See also Arneson 2007.
42. Smith 1982, IV.I.8.
43. Ibid., my italics.
44. Milian 2011.
45. Ibid.
46. Hume 1987b, II.II.5.
47. Rawls 2001, 131.
48. See Nye 2009.
49. Nye 2002.
50. Nye 2009. Nye shares my worries about the substitution effect too: "Attempts to limit positional competition only push status seeking to different dimensions, which are often less accessible to all. Consider that in countries like the Soviet Union, where the role of money and markets was officially repressed, competition became fiercer for government connections and "socially approved" professions, like chess master or ballet dancer, since that was one way to obtain both fame and highly restricted material goods like special imports."
51. Deleon 2015.
52. Nozick 1974, 246.
53. The idea here is not simply that holding elected office will become a higher-prestige position but working in politics generally—e.g., in lobbying, on campaigns, as interns, in public relations, as part of a bureaucracy, and so on.
54. One final worry worth keeping in mind is that the substitution of political status for economic status can have damaging effects on attempts to secure the fair value of political liberty. It jeopardizes real political equality. People have a new incentive to acquire unequal political status. An increase in real political inequality is of course undesirable on its own terms but Rawlsians should also worry about its effects on self-respect in particular. Rawls (1999, 477) writes, "The basis for self-respect in a just society is not . . . one's income share but the publicly affirmed distribution of fundamental rights and liberties. And this distribution being equal, everyone has a similar and secure status when they meet to conduct to the human affairs of wider society." That said, Nozick (1974, 243)

has a point when he denies that the equal distribution of liberties will do much to secure people's self-esteem given that self-esteem tends to come from qualities that are *unequally* distributed.

55. Harris 1962.
56. Ariely et al. 2009.
57. Glazer and Konrad 1996, 1021.
58. Miller 2001, 323.
59. Sexton and Sexton 2014.
60. Ibid.
61. Hardy and Van Vugt 2006.
62. Ibid., 1411.
63. Dabbs and Dabbs 2001.
64. Boone 1998.
65. Havens et al. 2006.
66. Ibid.

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7 Libertarian Legitimacy

We must be careful here not to compare the ideal of one conception with the actuality of the other, but rather to compare actuality with actuality.

—John Rawls, *Justice as Fairness: A Restatement*

I want to round out the arguments I've been making about particular policies by making a general point about free market institutions: they have no special problem satisfying liberal standards of justice or legitimacy. To this end, I'll consider Samuel Freeman's argument that libertarianism (roughly similar to what Rawls calls "laissez-faire capitalism") isn't a liberal view.¹ If, as I'll argue, libertarian institutions are compatible with liberal standards in principle, then so too are more moderate sorts of free market regimes.

The claim that libertarianism isn't a liberal view might seem puzzling at first. After all, isn't libertarianism simply a juiced up version of liberalism? Libertarian institutions are like liberal institutions in that they permit people to pursue their own conceptions of the good in their own way; they just permit more conceptions and more ways ("Freedom of speech—but with heroin! And baby selling!").

But Freeman thinks this appearance is deceiving. Libertarian institutions tolerate things like monopolies, abject poverty, and slavery contracts. And you're not *really* free to pursue your own good in your own way when you have to buy cable from Comcast, sew Nikes in a Vietnamese sweatshop, or live as a piece of someone's property.

Freeman succeeds in showing that a particular subset of libertarians tolerates illiberality—namely self-ownership libertarians like Robert Nozick. However, his arguments don't establish that libertarian institutions as such are illiberal. He overstates his case when he declares that "libertarians reject essential liberal institutions."²

The core of my argument is, as usual, the insistence on behavioral symmetry. When assessing libertarian institutions' compatibility with liberalism, we have to separate three levels of analysis.³ The first is philosophical: what are the basic principles of justice and political legitimacy? The second is institutional: what regime type best satisfies the aforementioned philosophical

principles? Finally, we have a behavioral level where we theorize about how people act within the constraints of a given regime type.

If we want to compare how two competing views stack up at the institutional level, we should hold our assumptions fixed at the philosophical and behavioral levels. More specifically, we should compare the two institutional types on the assumption that (i) citizens are fully compliant with (ii) liberal principles of justice. This is how we can make an all-else-equal comparison. Remember one of Brennan and Buchanan's arguments for behavioral symmetry:

On the basis of elementary methodological principle it would seem that the *same* model of human behavior should be applied across different institutions or different sets of rules [. . .]. If, for example, different models of human behavior were used in economic (market) and political contexts, there would be no way of isolating the effects of changing the institutions from the effects of changing the behavioral assumptions. Hence, to insist that the basic behavioral model remain invariant over institutions is to do no more than apply the *ceteris paribus* device in focusing on the question at issue.⁴

To re-purpose this point for my own argument, if different models of behavior are used in the context of libertarian institutions and Freeman's favored liberal institutions, there is "no way of isolating the effects of changing the institutions from the effects of changing the behavioral assumptions."⁵ It would be like comparing a weight-training regimen followed by a population of steroid users to a yoga regimen followed by a population of all-natural exercisers. Even if the former works better than the latter, we cannot pin its success on the regimen rather than the steroids.

The trouble is, Freeman *does* use different models of behavior for different institutions. He implicitly uses a "public interest" model of people's behavior and motivation when analyzing his conception of liberal institutions and a "private interest" model when analyzing libertarian institutions. But this equivocation rigs the game from the start. Freeman says that political institutions must use their power for the public interest rather than private interests to qualify as liberal. Simply assuming that officers of libertarian institutions will act for their private interests (and that officers of liberal institutions won't) therefore amounts to the *stipulation* that libertarian institutions fail to live up to the demands of liberalism.

My argument takes inspiration from John Tomasi's defense of "market democracy" and Jason Brennan's criticism of G.A. Cohen.⁶ Tomasi argues that a version of the classical liberal state can satisfy broadly Rawlsian standards when judged by its performance in the same idealized conditions that Rawlsians use to judge their own institutions. Brennan defends capitalist institutions partly by an appeal to behavioral symmetry: if we're theorizing about socialist institutions for the kind-hearted and public-spirited, we should do the same for capitalist institutions. What's good for the socialist

is good for the capitalist. And what's good for the liberal is good for the libertarian. Once we hold our behavioral assumptions fixed, we see that Freeman's philosophical criteria can be met by even those libertarians who endorse the most stark raving versions of free market anarchism (not that there's anything wrong with that.)

What Liberalism Is

Freeman distinguishes between philosophical liberalism, on the one hand, and liberal institutions, on the other. The former is characterized by three theses: (i) that there exists a plurality of values and good lives that cannot be realized within single life; (ii) that the ability to freely adopt and work toward your conception of the good is essential to a good life; and (iii) that constraining one's pursuit of one's life plans in accordance with the requirements of justice is a necessary feature of one's good.⁷

However, Freeman doesn't set his sights on philosophical liberalism but rather liberal institutions. Freeman divides liberals into two camps: classical liberals like David Hume, Adam Smith, and F.A. Hayek, on the one hand, and high liberals like Kant, Mill and Rawls, on the other. Although classical liberals assign the market a more prominent role than high liberals, both should be distinguished from libertarians like Robert Nozick and Eric Mack. Liberals, Freeman says, recognize that "political power is a public power, to be impartially exercised for the common good."⁸ Libertarianism, by contrast, is a kind of neo-feudalism, whereby political power arises from private contracts entered into for the sake of the parties' mutual benefit.⁹ In brief, Freeman equates libertarianism with the privatization of security (which may or may not result in a monopolistic security agency resembling a state).¹⁰

At the institutional level, the differences between liberalism and libertarianism allegedly manifest in a variety of ways. Liberal institutions, unlike libertarian ones, will: (i) refuse to enforce agreements that alienate basic liberties, (ii) ban discrimination and mitigate the effects of luck on citizens' opportunities, (iii) fund a healthy social minimum, and (iv) correct market failures by supplying public goods and regulating monopolies. In Freeman's view, then, "libertarians reject essential liberal institutions."¹¹ Let's review these institutional differences one by one.

(In)alienability of Basic Liberties

Suppose Rick signs a contract with Morty selling himself into slavery, thereby alienating his basic liberties. A year passes and Rick wants out of the deal. Should the state enforce the contract?

Freeman says that liberal and libertarian institutions part ways here. On a liberal view, people may not alienate their basic rights. So, the contract is unenforceable.¹² We shouldn't treat other people as mere things even if they *want* to be treated as mere things. On the other hand, libertarians who think

of all rights as kinds of property rights would have the state treat Rick's sale of himself on a par with his sale of a 2008 Toyota Camry—both are enforceable.

The libertarian's mistake is regarding slavery contracts as just another capitalist act between consenting adults (to borrow Nozick's phrase). This conception of the contract is mistaken because "alienation of basic rights, if politically recognized, imposes duties not just upon the transferor, but also upon society and its members to respect and uphold such transactions."¹³ By asking society to uphold the contract, the contractors would have third parties get their hands dirty—more specifically, other citizens would need to "recognize and respect a private agreement bestowing ownership in another person."¹⁴ Since we have a duty *not* to treat people as ownable things, we have a duty not to enforce the contract. This point stands even if the alienation of rights is in the signatory's interests (say, Rick needs the money to buy an expensive experimental drug to save his daughter's life.)¹⁵

Equality of Opportunity

Another key difference between liberal and libertarian institutions concerns their treatment of equality of opportunity. A liberal state works for a more robust conception of equal opportunity than libertarian institutions. To briefly rehash my earlier discussion, a liberal state prohibits discrimination on the basis of race, gender, religion, or socioeconomic status. But removing obstacles isn't enough when people don't start on equal footing. Even if an employer must give a poor applicant the same consideration as a rich applicant, the rich applicant is more likely to have the Harvard degree that gets them the job. So, Freeman argues, a state should structure opportunities in a way that evens out the effects of background inequalities.¹⁶

Not only does a libertarian society fail to take positive steps to mitigate the influence of socioeconomic background in the distribution of jobs and social positions, it doesn't even ban outright discrimination. Private businesses and colleges, for instance, may deny access to people on the basis of their race, gender, religion, and so on. This permission to discriminate follows from what Freeman characterizes as the libertarian's support for "absolute" property and contract rights—"people may transfer their holdings to whomever they please, and may allow holdings to be used only by others they choose [. . .]. It follows that there is nothing unjust about racial, ethnic, gender, or religious discrimination in employment, education, and the provision of goods and services."¹⁷ If you may do whatever you want with your privately owned business, then you may close its doors to whomever you like for any reason you like.

The Social Minimum

Freeman argues that liberalism requires state-mandated redistribution to substantiate the worth of citizens' liberties.¹⁸ If you grind out long hours at work for low pay, you probably won't have the money or the time to make

good use of your freedom to (e.g.) express yourself or participate in politics. So the liberal state will redistribute from rich to poor to make the poor's liberty worth more.

We've seen that classical liberals like Hayek are happy to authorize a tax-funded basic income (although it's more basic than Freeman would like). But out-and-out libertarians like Nozick have no truck with coerced redistribution whatsoever. Libertarian institutions' failure to substantiate the *worth* of people's liberties is yet another way in which they aren't truly liberal.

Public Goods and Economic Efficiency

Both classical and high liberals want the state to play an active role in providing public goods and securing the conditions needed for markets to work efficiently (e.g., by regulating monopolies). Libertarians, by contrast, deny that people may be forced to support the provision of public goods, even if the coercion works to their benefit.

Legitimate Political Power

Last but not least we arrive at the root of the disagreement between liberals and libertarians. Liberalism upholds "the principle that political power is a public power, to impartially issue and enforce uniform public rules that apply to everyone and that promote the common good."¹⁹ Freeman breaks this general idea down into six sub-principles:

- (1) "Political power is *institutional* and not personal; it is ultimately held, not by a specific individual, but by an artificial person, that is, a publicly recognized institution."²⁰
- (2) "Political power is *continuous*; the public institution vested with political power appoints individuals to occupy offices of authority periodically, and survives their demise."²¹
- (3) "Political power is held in trust, as a *fiduciary* power; those who occupy political offices act in a representative capacity, for others' benefit. Since it is held in trust, political power is not to be exercised for the benefit of the person who occupies political office."²²
- (4) "As a fiduciary, government has political power *delegated* to it by the Body Politic; as the People's agent government is to exercise power solely for the benefit of those represented. But since political power is public, it is to represent everyone, and therefore is to be *impartially* exercised and only for the *common good*."²³
- (5) "Since government is to rule in a fiduciary capacity and solely for the common good, those who hold political power are recognized as having *authority* to rule, and their legal actions are conceived as possessing *legitimacy*. Its political legitimacy in turn supplies government with its basis for demanding allegiance and obedience to its laws."²⁴

- (6) “Each person ought to have a share of political authority to better ensure that no one’s basic rights are undermined or interests are neglected in political procedures. Characteristic of contemporary liberalism then is a further feature of the public nature of political power, namely [. . .] the requirement of *open democratic rule*.”²⁵

Freeman concedes that a libertarian regime could conceivably satisfy conditions (1) and (2), but thinks libertarians run into trouble when it comes to the idea that those who exercise political power do so, not for their own benefit, but for the benefit of those they represent.

Libertarian power, unlike liberal political power, is exercised for the private benefit of the contracting parties. Here’s Freeman:

Economic contractual relations are not fiduciary relations, which by their nature require acting for another parties’ interests even at the expense of one’s own. Moreover, a peculiar feature of the minimal state, and of competing protection agencies under anarchical libertarianism, is that political power becomes a sort of (private) corporate power. As a for profit enterprise, the protection agency’s primary duties extend to its owners or shareholders.²⁶

One consequence of the for-profit nature of libertarian institutions is that, since their power is exercised for the sake of their owners or shareholders, society at large won’t recognize that they possesses the *moral* authority to rule—insofar as people obey, it’s out of fear.

Freeman considers the objection that private contracts can generate fiduciary duties—e.g., lawyers agree to act in the best interests of their clients—and so officers of libertarian institutions may be bound by fiduciary duties just like officers of the liberal state. In reply, Freeman argues that private fiduciary relations such as those between lawyers and clients are embedded within a larger political structure that ensures they don’t run counter to the public interest. The state looms in the background to make sure that lawyers don’t cross the line when pursuing their clients’ interests. In a libertarian regime, by contrast, “no structure of publicly recognized principles and institutions imposes general duties on protection agencies to act in a fiduciary capacity for their members’ interests or for the public interest.”²⁷ Since there’s no state using its public power as a kind of moral backstop, Freeman claims that the coercive power of libertarian institutions is used only to benefit the signatories of the security contracts.

Lastly, Freeman tackles the condition that political power must be exercised for the public good (he doesn’t press the condition of open democratic rule). It’s here that libertarianism fares worst. Protection services are distributed according to ability to pay and so security firms act only for the benefit of their customers and shareholders, not the public in general.

This point stands, Freeman says, regardless of the intramural disagreements between minimal-state libertarians like Nozick and no-state libertarians like Murray Rothbard: “In both accounts political power is privately exercised for the benefit of those who can afford it and according to whatever favorable terms each person can bargain for. The distribution of political ‘services’ depends then on a person’s wealth and relative bargaining position.”²⁸ Libertarians err in treating rights enforcement as a garden-variety economic good like jeans and televisions, to be supplied by profit-seeking entities for paying customers. Indeed, this is the root of libertarianism’s illiberalism.

Holding All Else Equal

In what follows, I’ll show that Freeman’s case does less damage to libertarianism than it seems. He fails to show that liberal philosophical criteria rule out libertarian institutions as such.

To begin, let’s revisit the three levels of analysis distinguished earlier:

1. Philosophical: what are the basic principles of justice or legitimacy?
2. Institutional: what sorts of political and economic structures best satisfy the relevant philosophical principles?
3. Behavioral: to what extent do people acting within those political and economic structures prioritize their self-interest relative to the public interest as specified by the relevant liberal principles?

Freeman’s main target is (2): his stated “focus is not philosophical liberalism but liberal institutions and the primary features of a liberal constitution.”²⁹ Libertarian institutions allegedly fail to include all of the provisions needed to meet the philosophical criteria of liberalism.

The reason why Freeman’s argument doesn’t show the illiberality of libertarian institutions is that he doesn’t make a *ceteris paribus* comparison between libertarian institutions and his conception of what liberal institutions must be. He assumes not only different institutional structures when comparing liberals and libertarians but also different behavioral profiles. When considering libertarian institutions, he models people as self-interested. When considering his account of liberal institutions, he models people as public-interested. He then criticizes libertarian institutions for exercising their power for private gain rather than the public good. But to assume that officers of libertarian institutions act selfishly amounts to *stipulating* that libertarian institutions will fail to act for the public good and thus fail to meet the demands of liberalism. In brief, the violation of behavioral symmetry rigs the comparison against libertarian institutions from the start.

I’ll show that a *ceteris paribus* comparison of institutional types reveals the possibility of a fully liberal free market capitalism. Suppose, following

Freeman, we think of a minimal state as a private protection agency whose competitors have gone out of business. At the very least, we can *conceive* of a private business that acts in the public interest just as we can *conceive* of a government institution that acts only for the private interests of its members. As a matter of *a priori* analysis, then, the mere fact that libertarian institutions are in some sense “private sector” doesn’t rule out the possibility that they can meet Freeman’s moral standards.

First, a concession. I think Freeman’s objections land against a particular kind of libertarianism that we can call “self-ownership libertarianism.” Here’s Freeman’s gloss:

The fundamental libertarian claim is then that each person is absolute owner of herself, body and powers. Because we each have absolute property in our persons, it is supposed to follow that each has absolute powers over what she owns or acquires consistent with others’ ownership rights. On this conception a person’s liberties are among the things owned by that person; in this sense, “liberty is property.”³⁰

Self-ownership libertarians like Nozick are committed to the claim that there is nothing unjust or illegitimate about a minimal state that acts for the benefit of its customers and shareholders so long as it doesn’t violate the relevant deontic side constraints. Justice is understood narrowly—it’s basically respect for property rights. People may use their property rights in the kinds of illiberal ways I discussed above without being guilty of injustice.

But you can endorse libertarianism at the institutional level without endorsing self-ownership libertarianism at the philosophical level. You might think that Rawlsian liberalism is the best theory of justice *and* that privatizing security is the best way to realize it. In what follows, I’ll show that Freeman’s argument doesn’t defeat libertarian institutions as such—only one way of defending them.

RawlsCo and the Rawlsian Republic

To illustrate, I’ll consider a monopolistic private security firm called *RawlsCo*. The employees of RawlsCo scrupulously conform to the strictures of justice as fairness and never abuse their power for private gain. Behaviorally, then, they’re identical to the officers of Freeman’s ideal liberal state, which I’ll call the *Rawlsian Republic*. We will see that RawlsCo is just as capable of satisfying Freeman’s conditions as the Rawlsian Republic. (My arguments generalize to anarchist schools of libertarianism too, so I could talk about competing idealized security firms—RawlsCo and DworkinCo—and make the same point. But talking about RawlsCo and DworkinCo is wordier than talking only about RawlsCo.)

(In)alienability of Basic Liberties

We've seen Freeman point to the alienability of basic liberties as one front on which libertarianism fails to be liberal. Even if Rick voluntarily signs a slavery contract with Morty, third parties have a moral duty not to enforce it.

As noted, to make a *ceteris paribus* comparison of libertarianism and liberalism at the institutional level, we need to hold them equal at the philosophical and behavioral levels. So let's break it down. At the philosophical level, the question is this: do people have a moral duty not to enforce (e.g.) slavery contracts even if voluntarily agreed upon? At the behavioral level, the question is this: do people comply with this duty? When Freeman is considering his favored version of liberal institutions, the answer to both questions is "yes." It's wrong for agents of a contract-enforcing institution to enforce those particular contracts that treat a signatory as less than a person. And Freeman assumes that this moral duty of non-enforcement is upheld when discussing officers of the liberal state.

When we apply Freeman's philosophical and behavioral assumptions consistently across institutional types, we see that the libertarian has no difficulty addressing the alienability problem. Consider this conversation between Rick, Morty, and an officer of RawlsCo:

- Rick:* "Morty's treatment of me is intolerable and I wish to no longer live as his slave."
Morty: "Too bad. I have a contract here with your signature on it. Officer, it's your job as an enforcer of contracts to ensure that Rick makes good on the deal—by force, if necessary. So put the cuffs on him please."
Officer: "No."

This reply seems too easy, I know. But remember, the officer of RawlsCo is following Rawlsian principles and thus doing exactly what Freeman would have an officer of the Rawlsian Republic do: refuse to enforce contracts that alienate basic liberties on the grounds that we have a duty not to treat other people as ownable things. If we're imagining societies in which enforcers of rights uphold a moral duty to not enforce slavery contracts, then officers of both RawlsCo and the Rawlsian Republic will refuse to recognize Rick and Morty's agreement. It's true that one institution is private and the other is governmental, but this difference doesn't rule out the possibility that officers of both will do their moral duty.

Equality of Opportunity

We can tell a similar story about Freeman's other principles. Take liberalism's commitment to a robust equality of opportunity. It's not just that "careers are open to talents;" rather, the influence of race, gender, family circumstances, etc. on your life prospects is minimized.

Here again, let's hold philosophical and behavioral assumptions consistent across regime types. Presumably for Freeman's liberal state to comply with justice, voters take responsibility for researching, electing, and monitoring public officials and administrators who are committed to mitigating luck. Along these lines, let's assume that in the libertarian alternative, the Fair Business Bureau grades businesses on their commitment to hiring practices that mitigate the influence of chance. Customers are sure to shop only at businesses with the "FBB Approved" sticker on their window and boycott those with low grades. Schools, from pre-kindergarten to colleges, preferentially admit students from disadvantaged backgrounds. Libertarian consumers do their homework just as liberal voters do. In short: customers and officers of RawlsCo commit to equal opportunity just as voters and officers of the Rawlsian Republic do. I see no reason why libertarian institutions cannot, in principle, realize the ideal of equal opportunity.

The notion that markets, like states, can be a medium of justice isn't exactly science fiction either. Take the idea of "conscious capitalism." A private business may elect to minimize its ecological impact, preferentially hire from underrepresented groups, design work environments that enhance worker well-being, and so on. Customers can also engage in "ethical consumption." They can boycott and divest from coffee sellers that treat their bean suppliers unfairly. They can buy sweatpants from factories that pay their workers comparatively high wages. They can eat at a vegan restaurant instead of a steakhouse. If we're holding our idealized behavioral assumptions fixed across regime types, then this is roughly how we should model market actors in a libertarian society.

The Social Minimum

Since an earlier chapter explains why I think that ideally just people will voluntarily contribute to an adequate social minimum for all, I won't belabor the point. The core idea is that an ideal version of minimal state libertarianism or even no-state libertarianism will provide a social minimum via ethically informed market and philanthropic decisions. People donate to those who need it because they're committed to substantiating the worth of everyone's liberties, just as Freeman's voters, public officials, and bureaucrats are.

Public Goods and Monopolies

I've discussed the public goods at length, too, so I'll only very briefly review my argument. A state that provides public goods is itself a public good. If the Justice-as-Fairness party's candidate beats the Liberty-as-Property party's candidate, then I'm governed by the Rawlsian even if I voted for the Nozickian (or not at all). So if Freeman can help himself to the assumption that people in his liberal state will voluntarily contribute to public goods (in this case, an ideal Rawlsian democratic state), so too can the libertarian, thereby

obviating the need for a more-than-minimal state to coercively enforce public goods provision.

As far as regulating monopolies goes, consider that the state itself is a monopoly. Freeman assumes that the liberal state will act for the public interest, so he must be assuming that it's possible for monopolies to act for the public interest. In that case, libertarians have no special problem here: they can simply help themselves to Freeman's assumption and stipulate that any monopolies that arise from market transactions won't abuse their power.

Political Power Under Ideal Libertarianism

Now for the heart of the issue: libertarianism's apparent rejection of "the principle that political power is a public power, to impartially issue and enforce uniform public rules that apply to everyone and that promote the common good."³¹ Let's go through the sub-principles one at a time to see how RawlsCo can satisfy them.

Freeman concedes that libertarian regimes can satisfy his first two conditions, at least in principle, so I'll run through them quickly. Here are the two conditions: (i) political power is ultimately held by an institution, not a person and (ii) the institution survives the loss of particular officers. We could imagine that RawlsCo survives across time with publicly known procedures for replacing officers in roughly the same way the U.S. government survives as an institution across time with publicly known procedures for replacing presidents, senators, Supreme Court justices, etc.

The problems for libertarianism allegedly start with the condition that political power be a fiduciary power, whereby officers act as representatives who work for the public's benefit, not their own. Freeman recognizes that private actors like lawyers may have fiduciary duties. However, these duties are backstopped by a state that set limits on the extent to which lawyers may pursue their clients' interests.

Here's my question: what backstops the backstop? Lawyers won't overstep their bounds because the state keeps them in line. So far, so good. But what keeps the state itself in line? Maybe the electorate does, but that answer only invites another question: what keeps the *electorate* in line? If voters, public officials, and administrators act for others' benefit out of a compelling sense of moral duty, that's fair enough. I insist only that Freeman make the same move available to the libertarian. But in *that* case, Freeman has to forfeit his objection to libertarianism. The customers and officers of RawlsCo, like the voters and officers of the Rawlsian Republic, act for the public's benefit because they're compelled by their sense of moral duty. Maybe RawlsCo is a "social business" that reinvests its profits back into itself to (e.g.) fund its provision of pro bono services to those unable to pay its regular fees. (its justice-minded customers are happy to pay a little extra to provide these services).

When we compare the Rawlsian state with RawlsCo using the same idealized behavioral assumptions, the libertarian responses to Freeman's remaining conditions fall easily into place. RawlsCo is an agent of the people, using its power impartially, for the public good. In virtue of impartially serving the common good, the public recognizes RawlsCo's authority to enforce laws.³² Indeed, the officers and paying customers of RawlsCo are gracious enough not to exercise disproportionate influence over the direction of RawlsCo, giving all those affected by its policies a voice—just as the officers and wealthy citizens of the Rawlsian state choose not to take advantage of their advantageous position in the interest of equality (as discussed in greater detail in Chapter 5).³³

Before moving on, I'd like to note that Freeman's wording of his conditions is ambiguous. For instance, he writes, "political power is not to be exercised for the benefit of the person who occupies political office" and that "since political power is public, it is to represent everyone, and therefore is to be impartially exercised and only for the common good."³⁴ Are these claims normative or predictive? Either alternative creates problems for Freeman. If the claim is that political power *ought* to be impartially exercised and only for the common good, then Freeman is theorizing at the philosophical, rather than institutional, level. Again, this is a legitimate enterprise, but it fails to rule out libertarian institutions. The libertarian can simply agree with this normative claim and insist that RawlsCo *ought* to exercise its power impartially for the common good, just as the Rawlsian state ought to exercise its power impartially for the common good. But if this is how things stand, the liberal regime and the libertarian regime are on equal moral footing.

On the other hand, Freeman could be making a prediction—the liberal state *will* exercise its power impartially for the common good. The problem with this interpretation is that such a claim requires empirical support that Freeman does not provide. The question of whether liberal or libertarian regimes are more likely to satisfy Freeman's conditions is analogous to the question of whether Crest or Colgate is more likely to prevent cavities. It's a question worth pursuing, but it's not a *philosophical* question.

Objections

At this point, I'm sure the objections are piling up. So let's have a look.

Objection #1: It's Implausible to Think That a Private Security Firm Will Have Moral Scruples

This objection alleges that it's wishful thinking to expect private actors to care about the public interest. This could very well be the case. That said, it's not crazy to think that private organizations at least sometimes comply with public moral duties. For instance, legal firms and medical practices often

provide pro bono service. Wealthy private colleges frequently offer need-based financial aid. Even critics of markets like G.A. Cohen point out that plenty of people make labor market decisions at least partly on the basis of altruistic attitudes, like nurses or teachers.³⁵ To what extent they act for the public interest is of course an empirical question. But it's not like the picture of private sector actors working for the public interest is something we'd see only on a movie screen.

Also: whether *political* actors in liberal institutions will consistently do their duty is an empirical question. After all, officers of the state face their own temptations to stray from the moral path. Imagine you're a public official in the Rawlsian Republic. A real estate developer wants to build a riverfront casino but some low-income housing stands in her way. She'd like you to use the power of eminent domain to authorize the bulldozing of these houses. In return, she offers to generously support your re-election campaign and hints that you'll have a cushy lobbying gig lined up at her firm when you retire from office.

Suppose, as is plausible, the decision that serves the common good is to rebuff the developer and allow the housing to stand. But this decision runs counter to your self-interest. So you face the dilemma of serving the public interest or your self-interest. The broader point is that officers of the Rawlsian Republic are no different than employees of RawlsCo here: both have professional opportunities to serve their self-interest at the expense of the public interest. Whether they act partly or entirely for the benefit of others is an open question, but it's not as though the altruistic choice carries no opportunity costs for the officer of the Rawlsian Republic. Again, Freeman may *stipulate* the justness of the Rawlsian Republic, but then he should extend the option to libertarians, too.

We're now in a position to see why Freeman's criticism that "nothing but goodwill can prevent libertarianism's progression into veritable economic serfdom" is off the mark.³⁶ Assume for argument's sake that Freeman is right that market power will eventually accumulate in a few hands under a libertarian regime. His worry is that when an agency exercises monopolistic control over a given industry, we can only rely on its "goodwill" to stop a descent into serfdom. But a state, by definition, exercises monopolistic control over rights enforcement. So it seems as though people are at the mercy of the goodwill of the Rawlsian state, too.

Objection #2: Justice is a Byproduct, not the Intention, of RawlsCo

Freeman dials up an objection to his own argument that resembles the one I've been making. He asks, "Why couldn't Nozick's minimal libertarian state govern for the common good, understood as protecting people's libertarian rights?"³⁷ In reply, Freeman notes that the "minimal state is just a private for-profit business" and so might promote the common good as "an

incidental side effect” of its pursuit of private benefit in the same way that other for-profit businesses do.³⁸ However, liberal theory requires that the state be “instituted and designed with the *intention* of securing the common good.”³⁹ Here again, I think Freeman’s criticism of self-ownership libertarians hits the mark but leaves libertarian institutions as such unscathed.

To begin, I have to confess I’m not sure that the intention/side effect distinction matters much in this context. Suppose a bureaucrat working for the state does an exemplary job because she wants a raise. Her *intention*, then, is to earn more money, but a side effect of her work is the promotion of the common good. I don’t see the bureaucrat’s motivation as a reason for thinking that the state is failing to live up to liberal political standards so long as the job is done right.

But here’s the main problem with Freeman’s objection: it’s both the case that (i) private institutions can operate with the intention of promoting the common good and (ii) government institutions can fail to operate with the intention of promoting the common good. Take (i). Plenty of privately run institutions have as at least part of their mission the promotion of some aspect of the common good. For instance, the goal of MIT might be to educate. The goal of a dental clinic is fixing teeth. Plenty of private sector workers say things like, “I entered this line of work because I wanted to give children a healthy smile” or “I want to cook my family recipes for new people.” If we take them at their word, the money they get for their work is an incidental side effect, not their intention.

So at the very least, it’s *conceptually* possible for officers of libertarian institutions to intentionally satisfy the common good. People might work for RawlsCo because they’re motivated to serve the community just as people sometimes work as doctors and teachers and nurses to serve their community. True, they seek money to stay in business, but that’s a means to an end—just as politicians in the Rawlsian Republic seek votes to stay in office.

On the flip side, we can imagine that officers of the Rawlsian Republic do not have the intention of promoting the common good. I already mentioned the case of a bureaucrat out to pad her salary, but you could also imagine that someone wants to become a senator for the fame and power. In the event that these motivations produce behavior that aligns with the common good, then justice would be an “incidental side effect” of state action.⁴⁰

Objection #3: The Market Will Select for Unscrupulous Firms

Another objection concerns the possibility of an adverse selection problem. Consider a case. On the one hand, you have a company that commits to the ideal of equal opportunity. It spends time and money to ensure that its hiring and promotion practices comply with this ideal—say, it adds a full-time employee to ensure the company’s compliance with the relevant standards.

On the other hand, its competitor cares only for the bottom line and opts not to invest resources to comply with equal opportunity hiring practices. The competitor's costs are lower, so it can sell its product at a lower price and gain market share. In brief: businesses that pay the price of justice will lose market share to those that don't.

I have two replies. First, if we're assuming a fully just society, then there simply won't be any self-interested competitors. *Everyone* will be willing to pay the price of justice. Even if we shift to a *nearly* fully just society where a handful of actors disregard justice (as Rawls sometimes does), the adverse selection problem still wouldn't be worrisome. Nearly all consumers and businesses would be willing to absorb the costs of doing business justly. The tiny pool of selfish business owners will lose business to their more ethical competitors because ethical customers will preferentially buy from ethical businesses.

Second, the conditions that would give rise to an adverse selection problem for libertarian institutions would also give rise to a parallel problem for Freeman's liberal institutions. As Stanley Kelley puts the point, "Just as firms that do not engage in the rational pursuit of profit are apt to cease to be firms, politicians who do not pursue votes in a rational manner are apt to cease to be politicians."⁴¹ By way of illustration, think back to the real estate developer who wants to build a riverfront casino but is thwarted by the presence of some low-income housing. Suppose you're a politician running for re-election and the developer promises to throw her full support behind your campaign in exchange for your agreeing to bulldoze the housing with the power of eminent domain. Winning the support of this wealthy, well-connected developer helps your election chances more than losing the support of the poor, ill-connected residents of the houses.

All else equal, a candidate willing to sell out their poorer constituents is more likely to win the election. In this way, we should expect democratic procedures in a world with injustice to preferentially select for candidates that prioritize opportunism above principle. If you stick to your principles, an unscrupulous competitor can scoop up the opportunity and gain an advantage. Many of the candidates could be good people; it's just that the system pressures the well-motivated to adopt strategies that resemble those of the ill motivated. As Hume says, it is "a just *political* maxim, *that every man must be supposed a knave*; though, at the same time, it appears somewhat strange, that a maxim should be true in *politics* which is false in *fact*."⁴² Even if officials are not self-consciously opportunistic, it can be sensible to model them, following Hume, *as if* they are.

The moral: if we live in a world in which sufficiently many people are unwilling to pay the price of ensuring that rights-enforcement institutions (be they RawlsCo or the United States government) act for the common good, then the common good won't be served. This point holds regardless of whether the institutions are private or public.

Objection #4: RawlsCo Isn't Public in the Relevant Way

Maybe libertarianism isn't liberal because libertarian political power isn't *public* in some relevant way. Which way is this? One possibility is that public power must be exercised in accordance with clearly defined and accessible rules. The following from Freeman suggests something like this interpretation: "Libertarian agents are invariably going to be unsure of and will disagree about the application of their abstract rights and duties. The absence of a public institution that refines libertarian principles and authoritatively issues public rules to apply to historical conditions and specific circumstances will result in (as Locke says) great 'inconvenience.'"⁴³ Libertarian institutions, then, will not be able to cleanly resolve disagreements about the proper understanding or application of political principles.

To begin, I don't see why RawlsCo cannot clearly and publicly state its guiding principles and provide mechanisms for dispute resolution and rule enforcement simply in virtue of being part of the private sector. Think of a private university's honor code. It's public in the sense of having its rules clearly stated and accessible to all (just visit its website). And private universities have mechanisms for adjudicating disputes and carrying out penalties.

Here again, Freeman compares idealized governmental institutions to warts-and-all private institutions. When we look at warts-and-all governmental institutions, we find that their laws and regulations are not as accessible and clearly defined as we'd hope. I can do no better than simply quote John Hasnas:

Supporters of government claim that government must make the law in order for it to be accessible to the citizens to be governed by it. The government promulgates its legislation in statute books that are available to all citizens. [. . .] The proper response to this is: Are you serious? Look around. Please! Can any human being possibly be aware of the myriad arcane government regulations to which he or she is subject? Have you ever seen the Code of Federal Regulations? When was the last time you tried to prepare your income tax return? [. . .] Year after year, studies demonstrate that even most professional tax preparers and IRS employees cannot understand what the United States tax code requires.⁴⁴

Sticking with the tax example, consider that the U.S. internal revenue code clocks in at over 5,000 pages.⁴⁵ So to get a handle on what the government's tax policy requires of you, you basically have to read *War and Peace* a few times. This task would be a "great inconvenience," to borrow from Freeman's borrowing of Locke. And taxes are just a drop in the flood. Let's not get started on the roughly 80,000 pages of the *Federal Register*.⁴⁶ (As for the local level, don't even *think* about letting your kids open a lemonade stand.)⁴⁷ I should note that there's good reason to doubt that this sort of bureaucratic bloat is simply an unlucky accident. As I've been arguing, rules that require armies of accountants and lawyers to navigate tend to favor

(and win the political support of) people with the means to hire armies of accountants and lawyers.

The Possibility of Liberal Free Market Capitalism

Remember, I think Freeman *does* manage to show that self-ownership libertarianism is illiberal. But that's not the same as showing that libertarianism *as such* is illiberal. Indeed, I worry that the in-principle compatibility of liberal philosophical principles and libertarian institutions is overlooked because Freeman evaluates institutions using a double standard.

Consider, for instance, that Freeman is willing to give socialism a seat at the liberal table simply because it is *theoretically possible* that socialist institutions could satisfy the relevant criteria: "Liberal socialism, allowing for public ownership combined with market allocations of productive resources, is theoretically possible, and if feasible may be called for under certain historical conditions if needed to enable everyone to effectively exercise equal basic liberties."⁴⁸ Here Freeman suggests that so long as it's theoretically possible for a regime type to satisfy liberal standards, it gets on the list of eligible types. But we've seen that nothing in Freeman's arguments speaks against the theoretical possibility of "liberal free market capitalism." Theoretical possibility is a low threshold and surely libertarianism meets it. It is theoretically possible that the privatization of security will produce liberal justice just as it is theoretically possible that public ownership of productive property will produce liberal justice.

Along the same lines, Freeman may not rule out libertarian institutions on the grounds that it's theoretically possible that they will produce *injustice*. Why not? Because it's theoretically possible for his own favored institutional arrangement to produce injustice. Look at Freeman's reply to the following challenge from the libertarian:

"Just because democracy could result in totalitarianism does not mean that anything is necessarily wrong with democracy." I disagree, for the conceptual possibility shows the moral limitations of majoritarian democracy. Pure majoritarianism—the view that whatever the majority wills is fair, just, or even legitimate—is unreasonable. Majority rule needs to be subsumed within some larger democratic conception of justice to define its scope and restrict the kinds of laws majorities can agree to.⁴⁹

Now, there are at least two ways to interpret Freeman's claim that a larger democratic conception of justice should "restrict" the laws majorities can agree to. The first interpretation is a behavioral one—people should act in accordance with a particular conception of justice, such that the kinds of laws majorities demand are limited in the right way. But my reply here is easy enough to predict: in a libertarian society, people should act in accordance with that same conception of justice, such that the kinds of protection services they buy and sell are limited in the right way.

The second interpretation is an institutional one: a liberal state needs to build in constraints on majoritarianism such as a written constitution and the separation of powers. But now the libertarian objection that it's *possible* for democracy to crumble into totalitarianism stands. Constitutions and the separation of powers don't guarantee liberal justice. If a totalitarian electorate supports totalitarian legislators and executives (who in turn support a totalitarian judiciary), then we'll eventually get totalitarian results. So it's possible for a constitutionally limited democracy to result in totalitarianism just as it's possible for libertarian institutions to result in what Freeman calls "economic serfdom."⁵⁰ Indeed, it's possible for a constitutionally limited democracy to result in *any* of the illiberal policies Freeman attributes to libertarian institutions—it may permit (or even *require*) discrimination, enforce slavery contracts, fail to provide public goods, and so on.

So Freeman faces one last dilemma. Either the mere possibility of producing injustice establishes the inadequacy of a regime type or it does not. If it does, then Freeman's own favored regime is ruled out. If it does not, then libertarian institutions may not be ruled out either.

Notes

1. Freeman 2001.
2. *Ibid.*, 107.
3. Compare Tomasi 2012, 211–213.
4. 2008, 10.4.6.
5. *Ibid.*
6. Tomasi 2012; Brennan 2014.
7. Freeman, 105.
8. *Ibid.*, 107.
9. It's interesting to note, then, that Freeman's understanding of libertarian institutions is *historical* in an important sense. Libertarian institutions are equated with those private sector rights enforcement agencies (or agency, in Nozick's case) that arise in a certain way, i.e., generated by decentralized market transactions.
10. *Ibid.*, 142.
11. *Ibid.*, 107.
12. *Ibid.*, 110.
13. *Ibid.*, 112.
14. *Ibid.*
15. *Ibid.*, 113.
16. *Ibid.*, 115.
17. *Ibid.*, 136.
18. *Ibid.*, 118.
19. *Ibid.*, 120.
20. *Ibid.*, 121 (*italics in the original*).
21. *Ibid.*, (*italics in the original*).
22. *Ibid.*, (*italics in the original*).
23. *Ibid.*, 122 (*italics in the original*).
24. *Ibid.*, (*italics in the original*).
25. *Ibid.*, (*italics in the original*).
26. *Ibid.*, 145.
27. *Ibid.*, 146.

28. Ibid., 142.
29. Ibid., 106.
30. Ibid., 128.
31. Ibid., 120.
32. Here I'm setting aside the issue I've been belaboring in the rest of the book—i.e., if everyone does their duty, it's not clear why *coercive* rules are needed at all. Maybe RawlsCo is just a conflict adjudication business and everyone voluntarily agrees to its verdicts.
33. If you think some element of democracy is required, you could even imagine that RawlsCo is a democratically run worker cooperative.
34. Ibid., 121, 122, respectively.
35. Cohen 2009, 59.
36. Ibid., 137.
37. Ibid., 149, fn. 89.
38. Ibid.
39. Ibid., (my italics).
40. It's also worth pointing out that both private sector and public sector workers can have more than one motivation—e.g., both private and public school teachers might do their job both to educate America's youth and to earn money.
41. Kelly, foreword to Downs, 1957.
42. Hume 1963, I.VI.1–2 (italics in the original).
43. Freeman 2001, 142.
44. 2008, 118.
45. Wolters Kluwer 2013.
46. *Federal Register* 2016.
47. Kain 2011.
48. Freeman 2001, 119.
49. 2001, 134, fn. 58.
50. Ibid., 137.

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8 Behavioral Symmetry, Again

Loyalty to any one sports team is pretty hard to justify. Because the players are always changing, the team can move to another city—you're actually rooting for the clothes when you get right down to it. You know what I mean? You're standing and cheering and yelling for your clothes to beat the clothes from another city. Fans will be so in love with a player but if he goes to another team, they boo him. This is the same human being in a different shirt—they *hate* him now. Boo! Different shirt! Boo!

—Jerry Seinfeld

I've spent most of my time defending a conditional: *if* the principle of behavioral symmetry is correct, *then* Rawlsian ideal theory is self-undermining. As for whether the principle of behavioral symmetry is correct, I addressed Rawls's own *a priori* argument against symmetry earlier. But other arguments remain. I consider some of these arguments below and conclude that none succeed in showing that people are characteristically more public-interested in politics than elsewhere. So my objections to ideal theory stand.

Rational Choice Theory

Some criticisms of public choice economics—which makes behavioral symmetry a foundational assumption—focus on the alleged inadequacy of rational choice theory.¹ Plenty of empirical evidence indicates that people aren't purely self-interested, so we shouldn't model them as such. To take just one example, experimental economics indicates that people aren't relentless wealth maximizers; they'll sacrifice money to play fair.²

I have two replies. First, this sort of objection misunderstands rational choice theory. Rational choice theory does *not* assert that people maximize wealth or self-interested preferences more generally. Rather, it asserts that rational agents make the choice that satisfies their evaluative standards to a greater extent than any other alternative option, all else equal. In brief, rationality involves preferring more value over less value.³

There's nothing irrational about pursuing altruistic values. What *is* irrational is choosing less altruistic value over more altruistic value, all else

equal. For instance, if your goal is to eliminate world hunger, it would be irrational to forgo the “buy one, get one free” deal on bread and pay full price instead. You’d only get one loaf for a dollar instead of *two* loaves and thus satisfy your values to a lesser degree.

Second, behavioral symmetry doesn’t assert a particular behavioral model; it asserts only that you should apply your model consistently across institutions. If people aren’t unmitigated egoists, then we should model them accordingly inside of politics *and* outside of it. And surely people aren’t unmitigated egoists in their nonpolitical lives. They’ll spend the weekend building houses for Habitat for Humanity, put money in the church collection plate, buy pricier but conflict-free diamonds, and edit Wikipedia pages for free. To disconfirm behavioral *symmetry*, it’s not enough to show that people are often altruistic. Instead, you’d need to show that people are characteristically *more* altruistic in their role as political actors than non-political actors. So let’s turn to an argument for that conclusion.

Competition in Markets and Politics

One argument I’ve pressed is that political interventions designed to rein in the rich increase the value of political power relative to market power and thus perversely incentivize the rich to seek out political power. But maybe this concern is off the mark because markets encourage a competitive, “greed is good” mentality whereas democracies ask us to listen to each other, work together, and compromise for the common good.

The thought that market actors are encouraged or at least expected to act selfishly is a common one. G.A. Cohen, for instance, has reservations about even market socialism in part because “market competition leads to inequality between winners and losers.”⁴ Markets thrive on greed and fear; others “are predominately seen as possible sources of enrichment, and as threats to one’s success. These are horrible ways of seeing other people.”⁵

Along similar lines, Elizabeth Anderson writes, “Each party to a market transaction is expected to take care of himself and not to depend on the other to look after his own interests. Every extension of the market thus represents an extension of the sphere of egoism.”⁶ By contrast, Anderson alleges that one of the norms of an “ideal” democracy is “the idea that citizens are equals engaged in a common cooperative project [. . .]. An uncorrupted democracy distributes goods in accordance with shared principles (including a shared understanding of citizens’ needs).”⁷

Yet if competition is what encourages selfishness, then we shouldn’t expect political behavior to be much different than market behavior. As I mentioned earlier, democratic politics is itself a kind of market competition. Accordingly, Cohen’s concerns about markets apply with at least as much force to democracies. Democratic competition leads to inequalities between winners and losers. Republicans view Democrats as threats to their success and vice versa. And voters are viewed as a possible source of enrichment. As Gordon

Tullock says, politicians craft policies to induce people to give them votes just as businesspeople craft products to induce customers to give them money.⁸

But maybe political competition is gentler and more likely to induce competitors to “go easy” on each other. I’m not sure why this would be, though. If anything, markets involve more positive-sum cooperation than democratic politics. It’s true that Target and Gap compete to sell you a wool coat. But Adam Smith would have us focus on all of the unseen cooperation needed to put the coat on the shelf in the first place. The shepherd, the shearer, the dyer, and the weaver “with many others, must all join their different arts in order to complete even this homely production.”⁹ That’s just the tip of the iceberg. How, for instance, does the shearer get her shears? “The miner, the builder of the furnace for smelting the ore, the feller of the timber, the burner of the charcoal to be made use of in the smeltinghouse, the brick-maker, the brick-layer, the workmen who attend the furnace, the mill-wright, the forger, the smith, must all of them join their different arts in order to produce them.”¹⁰ To transport the wool, ship-builders, sailors, and merchants need to work together. And so on. The point is that the market in wool coats contains far more cooperation than competition.

Notice also that customers of Target have no reason to fight with customers of Gap. If you prefer a coat from Target, you can buy it and it alone. If your neighbor prefers Gap, that’s where she can shop. The competition results in your both getting what you want. Contrast the win-win outcome from market competition with the zero-sum outcome of much political competition. If a soda tax passes, I lose because I like drinking cheap Mountain Dew. If it fails, my neighbor loses because she’s worried about the spread of diabetes. The tax draws us into a conflict because her gain is my loss.¹¹

Indeed, social scientific evidence suggests that citizens can be quite hostile to their political opponents. To take the most dramatic example, we’re subject to a strong cross-partisan prejudice; indeed, it’s stronger than cross-racial prejudice in some cases.¹² In one study, experimenters had subjects play the trust game and the dictator game. In the trust game, subjects received 10 dollars per round to split with Player 2 however they’d like. Any money given to Player 2 would be tripled, at which point Player 2 could send any preferred allocation back to Player 1.

In the dictator game, the subjects were given a ten-dollar endowment and were told they could transfer as much or as little as they’d like to Player 2. Unlike the trust game, the money is not tripled and Player 2 has no opportunity to return money back to Player 1. The experimenters note, “Since there is no opportunity for Player 1 to observe the strategy of Player 2, variation in the amount Player 1 allocates to different categories of Player 2 in the dictator game is attributable only to group dislike and prejudice.”¹³ To test group dislike and prejudice, subjects were given information about Player 2’s age, gender, income, race, and party affiliation.

While race had no significant effect on allocations, subjects gave 10% more to copartisans in the trust game and 24% more in the dictator game.¹⁴

To separate the effects of in-group favoritism from out-group discrimination, the experimenters ran a final study in which a Player 2 profile with no partisan identity was included. Subjects' offers to opposing partisans were \$0.63 lower than their offers to nonpartisans in both the dictator game and the trust game. Subjects' offers to copartisans in the dictator game were \$0.67 higher than those to nonpartisans, but their offers in the trust game were only \$0.30 higher.¹⁵ The experimenters summarize: "Participants assume that copartisans are more likely to return money and adjust their allocations upward to increase potential returns. They remain, however, more punitive and untrusting of opposing partisans (with the opposing partisan penalty amounting to almost twice the copartisan bonus)."¹⁶ These results suggest that people are both less generous and less trusting when interacting with those from the other side of the political aisle. Other studies corroborate the pervasiveness of cross-partisan hostility or "affective polarization."¹⁷ So there's reason to doubt that real-world democratic competition induces citizens to think of themselves as engaged in a "common cooperative project" and move toward "shared principles."¹⁸ We shouldn't expect democratic competition to be any less ruthless than market competition.

Public-Interested Voting

What I take to be the strongest argument against behavioral symmetry goes something like this. When you shop for soup, your focus is narrow. You're probably considering only your own good or maybe your family's. But when you're shopping for a senator, you're considering the good of all. And there's a lot of empirical evidence that suggests that people tend not to vote selfishly.¹⁹ It's simply the case that, as a contingent matter of fact, people are more willing to contribute to the public good of good government than to other sorts of public goods.

This argument ultimately falls short. Voters need more than public-interested intentions if they are to promote the public good of good government; they need accurate beliefs about how to promote the public interest. By way of example, for the state to provide the public good of clean air, the electorate must support policies that will, in fact, provide clean air. If citizens vote for candidates who favor "clean coal" because they hold the mistaken belief that "clean coal" is good for the environment, they won't promote the public interest despite considering the public interest when casting their vote. Similarly, if you buy a gas-guzzler because you have the mistaken belief that it's environmentally friendly, your consumption choice isn't actually promoting a cleaner planet despite your public-interested intentions.

Here the distinction between promoting a value and expressing your allegiance to that value is crucial. The theory of *expressive* voting famously analogizes voting for your favorite candidate to cheering for your favorite team.²⁰ I cheer for the Philadelphia Eagles even when I'm on a couch 295 miles away from Philadelphia. I'm under no illusion that I'm helping them win. I'm

expressing my support for my team even though it won't change anything. Similarly, the expressive theory argues that people vote to express their support for certain political values even though it won't change anything.

Rawlsian ideal theory needs voters to *promote* the common good, not just express support for a particular conception of the common good. How can we tell if voters are trying to promote values or express them? Consider an analogy. Someone trying to choose the drug that will actually prevent a heart attack will do at least two things.²¹ First, they'll gather information about the relative merits of different drugs. What do the studies say about each? Second, they'll be open to changing their views in light of counterevidence. If a new study indicates that their current drug actually *increases* the risk of a heart attack, they'll switch to something else.

By contrast, you don't need to gather information or consider counterevidence to simply *express* your allegiance to some value or end. "Liking" a Facebook post advocating for a wildlife preservation organization expresses your endorsement of wildlife preservation even if you haven't done any research into whether the organization actually helps preserve wildlife. Correcting ignorance and bias is costly, so the rational choice view predicts that people seeking only to express allegiance to an ideal will do neither. In short, if voters are motivated to promote values rather than express them, they will (i) acquire information relevant to determining the best political means of promoting these values and (ii) revise their beliefs about the best political means of promoting these values in light of counterevidence. But the empirical evidence suggests that they do neither.

Let's start with political ignorance. Surveys from the 2010 election indicate that most Americans are well informed about only a handful of very basic issues, for instance, that the federal deficit had grown since the 1990s.²² Americans are more likely to be wrong than right about many other issues—e.g., that the economy had grown the previous year, that defense is the largest source of federal spending, or that the TARP bailout occurred under Bush rather than Obama.²³ And most Americans don't know the majority leader of the Senate, the speaker of the House of Representatives, or the chief justice of the Supreme Court.²⁴ Earlier surveys show that less than half of respondents could give correct answers to questions about general political trends like the rate of federal spending on the poor or the crime rate.²⁵

Here's another problem: you need to know more than (e.g.) the rate of federal spending on the poor to vote well. Is that rate too high or too low? What are the likely effects of more or less federal spending on the poor? What are the opportunity costs? To have good answers to these questions you need to know a fair amount about economics, among other things. But most citizens lack this sort of knowledge, too.²⁶

Finally, there's the question of how citizens make use of the information that they do possess. For instance, do they evaluate policy on the basis of information that's relevant to the policy's quality? If not, then we have grounds for doubting that their votes will reliably promote the public interest.

A number of theorists analogize political partisans to sports fans.²⁷ Along these lines, suppose you have a friend who is an inveterate Eagles fan. His judgment of whether a football player is good or bad depends largely on whether or not he plays for the Eagles. Your friend spends a little time watching games, studying players' statistics, and reading the scouting reports, but what matters most to him is the player's team affiliation. If the player is wearing Eagles' green, you can bet your friend will judge him favorably. As the old saying goes, your friend "roots for laundry" (although he claims otherwise). Needless to say, you shouldn't trust this friend's judgment about which football players are good and which players are bad. The factors relevant to assessing the quality of football players aren't motivating his assessments of the quality of football players. So, we should doubt that his assessments of the quality of football players are generally accurate—if they are, it would be a coincidence.

Evidence suggests that citizens often judge policies in much the same way that Eagles fans judge football players. (Indeed, Jason Brennan calls such citizens "hooligans"—that is, "the rabid sports fans of politics.")²⁸ For instance, Geoffrey Cohen found that people's attitude toward a policy is predicted by the policy's party affiliation rather than the content of the policy itself.²⁹ He presented self-identified liberals and conservatives with two different proposals. The first was a policy of expansive welfare benefits; the second, a policy of small welfare benefits. Expectedly, liberals preferred the first and conservatives preferred the second. But then Cohen presented the proposals to a different group of liberals and conservatives with one twist: subjects were told which political party supported and opposed each policy. When the stereotypically conservative policy was labeled with Democratic support, liberals supported it. And when the stereotypically liberal policy was labeled with Republican support, conservatives supported it.

Cohen summarizes the study thusly: "For both liberal and conservative participants, the effect of reference group information overrode that of policy content. If their party endorsed it, liberals supported even a harsh welfare policy and conservatives supported even a lavish one."³⁰ Crucially, participants tended to claim that they based their policy assessments on the policy's merits and their own "philosophy of government" and downplayed the influence of party affiliation.³¹ Subjects were unaware of their own partisan bias. This finding suggests that, despite what people believe about their own judgment, they aren't judging policies on their merits but rather whether they come from one's own side or the other side.³² They're a lot like the Eagles fan, so we should doubt that their political beliefs are justified just as we doubt that the Eagles fan's football beliefs are justified. The factors relevant to assessing the quality of policy proposals aren't the factors motivating their assessments of the quality of the proposals.

To make matters worse, counterevidence doesn't seem to move us to reconsider and correct our partisan beliefs. Rather, we try to explain away the counterevidence or seek out evidence to counter the counterevidence. To

see why the pervasiveness of “motivated political reasoning” ought to erode our confidence in citizens’ political judgments, consider yet another analogy to football.³³ Ilya Somin notes that political partisans are similar to “dedicated sports fans” who “play up evidence that makes their team look good and its rivals look bad.”³⁴ When I do philosophy, I prefer thought experiments because I tend to be ignorant of the real world (but it’s *rational* ignorance!); this, though, is a real-world case. DeMarco Murray, a running back for the Eagles’ rivals, the Dallas Cowboys, was named the National Football League’s Offensive Player of the Year in 2014. When the news broke, Eagles fans argued that Murray was undeserving of the award and they had the statistics to prove it. On average, Murray got to run for 2.8 yards *before* an opponent touched him, so the credit should go to Murray’s blockers rather than Murray himself.³⁵ But then a funny thing happened. Murray signed with the Eagles during the offseason. And yet even though he hadn’t played a single down since receiving the award, Eagles fans miraculously unearthed *other* statistics showing that he *did* deserve the award after all! It turns out that Murray was in the top fifth percentile for long runs *after* contact, a feat for which his blockers couldn’t claim credit.³⁶

You wouldn’t trust the football beliefs of these fans, even though they’re well informed. Why not? Despite their impressive command of statistics and scouting reports, they preferentially accept the information that confirms their partisan belief that Eagles players are good and rival players are bad. So they’re unlikely to correct their false beliefs in the face of counterevidence.

Once again, the reason for being skeptical of even well-informed football judgments is equally a reason for being skeptical of many well-informed political judgments. We’re prone to motivated political reasoning—in particular, interpreting evidence in a way that confirms our partisan commitments and affirms our sense of political identity³⁷ Dan Kahan summarizes the expansive literature:

As a form of “identity self-defense,” individuals are unconsciously motivated to resist empirical assertions—that the death penalty deters or does not deter murder, for example (Lord et al. 1979), or that gun control reduces or does or does not reduce crime (Taber and Lodge 2006)—if those assertions run contrary to the dominant belief within their groups (Cohen et al. 2007; Liu and Ditto 2013; Munro and Ditto 1997).³⁸

As is the case with football fans, “team affiliation” influences how we interpret political information, thereby reducing the likelihood that we will correct our false beliefs. To make matters even worse, experimental evidence indicates that people experience *pleasure* upon confirming their political biases.³⁹

Note that this sort of epistemic irrationality is *practically* rational or, as Bryan Caplan puts it, “rationally irrational.”⁴⁰ Having accurate beliefs about the quality of Eagles players doesn’t do Eagles fans any good—it’s not as

though they have control over who makes the team and who doesn't. Indeed, having accurate beliefs about Eagles players is probably downright *harmful* since it would disabuse them of their enjoyable but false beliefs about how good their favorite players actually are.⁴¹ Similarly, having accurate beliefs about policy doesn't do voters any good because they have no control over which policies get implemented and which do not.⁴²

So the empirical evidence fails to support the claim that voters promote the public good of good democratic governance. Voters *are* motivated by considerations other than narrow self-interest but they tend to vote to express allegiance to an underinformed and biased conception of good government.⁴³ As Caplan writes, "Good intentions are ubiquitous to politics; what is scarce is accurate beliefs."⁴⁴

I'll take a moment to acknowledge that there is probably one asymmetry between people's political behavior and their nonpolitical behavior, but it's not an asymmetry that gives Rawls and other ideal theorists what they need. I'd wager that people are more likely to engage in *expressive* behavior in the voting booth than the grocery store. But this asymmetry doesn't undermine behavioral symmetry as such. To the contrary, a more basic, formal principle of behavioral symmetry explains why we see this asymmetry in expressive behavior. If people prefer more value to less across institutional contexts, then we'd expect to see more expressive behavior when the cost is lower. In the voting booth, you can't reasonably expect to get much of anything *other than* expressive utility, so the opportunity cost of expressive behavior is low.⁴⁵ By contrast, the expressive benefit of shopping at Whole Foods is higher than the expressive benefit of shopping at Wal-Mart, but you pay a steep price for it. So the rational choice principle predicts that we will see more expressive behavior in the voting booth than in the supermarket.⁴⁶

It's worth repeating, though, that an asymmetry in expressive behavior won't vindicate Rawlsian ideal theory. For the state to (e.g.) solve the public goods problem, then voters must *promote* a public goods-providing state, not simply *express* their support for such a state. Otherwise, they'll be like the customer who expresses their support for clean air with a "greenwashed" gas-guzzler.

Notes

1. See, for instance, Udehn 1996.
2. For an informative overview, see Andreoni et al. 2010.
3. This formulation follows Gaus 2008, 20. On maximizing or instrumental rationality as the "default" conception of rationality, see Nozick 1993, 133; Hardin 2003a, 16.
4. Cohen 2009, 69.
5. Ibid., 41.
6. Anderson 1990, 183.
7. Ibid., 193. Notice that Anderson's account of an "ideal" democracy is morally infused in a way that her account of an "ideal" market is not. Self-interestedness is *defined* into "ideal typical" market behavior whereas public-interestedness

is *defined* into “ideal typical” democratic behavior. Anderson (1990, 184) is careful to note that “any particular institution or practice is apt to diverge from its ideal type in multifarious and complex ways [. . .]. Hence, any move from a relative evaluation of ideal types to a relative evaluation of actual practices must be informed by detailed empirical investigation of the actual norms they embody.” Still, Anderson’s characterization of markets and democracies stacks the deck against markets at the level of ideal types.

8. Tullock 2005, 6.
9. Smith 2003. I.1.11.
10. *Ibid.*
11. For further discussion of how politics draws us into conflicts, see Hasnas 1995; Schmidtz and Freiman 2012, 425; Brennan 2016, chapter 9.
12. Iyenger and Westwood 2015.
13. *Ibid.*, 701.
14. *Ibid.*, 702.
15. *Ibid.*, 703.
16. *Ibid.*
17. See, e.g., the further studies reported in Iyengar et al. 2012; Iyenger and Sean Westwood 2015; Miller and Conover 2015. See also Pew Research Center 2016.
18. Anderson 1990, 193.
19. See, e.g., Sears et al. 1980; Markus 1988; Ponza et al. 1988; Sears and Funk 1990; Funk 2000; Huddy et al. 2001; Caplan 2007, 149.
20. See, e.g., Brennan and Lomasky 1997, 33.
21. This argument draws inspiration from Huemer 2012, 19.
22. Somin 2013, 21.
23. *Ibid.*, 22.
24. *Ibid.*, 22.
25. *Ibid.*, 32.
26. See Caplan 2007, chapter 3.
27. On the analogy between being a political partisan and being a sports fan see, e.g., Somin 2013; Mason 2015; Brennan 2016.
28. Brennan 2016, 5.
29. Cohen 2003.
30. *Ibid.*, 811.
31. *Ibid.*
32. For similar findings, see Munro et al. 2013; Verkuyten and Maliepaard 2013.
33. On the term “motivated political reasoning,” see Taber and Lodge 2006, 756.
34. Somin 2013, 79.
35. ESPN 2015; Sherman and Cohen 2006.
36. Pro Football Focus 2015.
37. For a sampling of the evidence for pervasive partisan-based motivated reasoning, see Lord et al. 1979; Bartels 2002; Redlawsk 2002; Taber and Lodge 2006; Gerber and Huber 2010; Kahan et al. 2010; Nyhan and Reifler 2010; Kahan et al. 2011; Kahan 2013; Kahan et al. 2013.
38. Kahan 2013, 408.
39. Westen 2006.
40. 2007, 139.
41. For a similar point about voters’ beliefs, see Huemer 2012, 19.
42. As Russell Hardin (2003b, 166) says, “If individuals have no reason to participate, because they cannot affect outcomes, then they would have no reason to know enough to participate wisely if they did participate.”
43. For summaries of additional work on biased political reasoning, see Caplan 2007; Brennan 2016, chapter 2.
44. 2007, 157.

45. Brennan and Lomasky 1997, 25.
46. The rational choice view that people's willingness to engage in expressive behavior is sensitive to opportunity costs can also explain the finding that people are more likely to cast a selfish vote when their vote matters more. See Feddersen et al. 2009.

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Conclusion

One upshot of my arguments is that we ought to reject an *a priori* ideal institutional analysis of the state. To see why, let's revisit the basic dilemma for ideal theory. If we undertake a consistently ideal *a priori* institutional theory that assumes that people are fully compliant with justice, we have no need for the state. Alternatively, we can generate a need for the state by switching to the nonideal assumption that people are only *partially* compliant with justice. However, in doing so we lose the right to make the *a priori* stipulation that the state itself is fully just. In this case, we may not assume, as Rawls does, that the state acts "in accordance with its public aims and principles of design" and therefore set aside empirical inquiry into "the political, economic, and social elements that determine its effectiveness in achieving its public aims."¹ The empirical evidence must drive our endorsement of a particular institutional type rather than stipulation. Take Rawls's difference principle as an example: states should arrange their economic institutions to make the poorest as rich as possible. It's an open, empirical question what *kind* of economic institutions are the best means to this end. If the social scientific evidence speaks in favor of laissez-faire capitalism, or liberal socialism, or anything else, so be it.

In closing, I want to address the worry that my argument against ideal theory doesn't change anything of substance. You might be thinking something along the lines of: "I suppose you're right that Rawls was wrong to rule out free market institutions *a priori*. But his conclusions nevertheless stand because there's so much empirical evidence that policies like dramatic income redistribution and campaign finance regulation are needed to advance the aims of liberal egalitarianism. Consider Denmark/Sweden/Thomas Piketty."

I won't examine the relevant empirical claims here. I will, however, sound a call for caution: we should be skeptical that the empirical institutional analysis is *easily* and *obviously* settled. After all, there is evidence that socialism isn't responsible for Scandinavian success and that Piketty gets things wrong.² We should be sensitive to the possibility that partisan bias is at work here too, guiding our judgments about which social scientific findings to accept and which findings to reject.

Ideally, we'd be like a juror who bases her verdict of "not guilty" on a sober and dispassionate assessment of the evidence presented to her by both sides. Unfortunately, we might be more like a juror who *starts* by judging the defendant not guilty and then cherry-picks evidence to rationalize that judgment. There's reason to think that we *start* with the moral judgment that laissez-faire capitalism (or liberal socialism, etc.) is just and *then* cherry-pick empirical evidence to rationalize the initial moral judgment. We choose what economic evidence to accept and what to reject based on whether it or not it confirms our moral preconceptions.

Anthony Randazzo and Jonathan Haidt report that economists' "moral judgment profiles" predict their responses to empirical questions.³ For example, liberals have a moral profile that assigns greater importance to reducing suffering than conservatives' moral profile. Haidt calls this the moral foundation of "care."⁴ It's not that conservatives are indifferent to suffering; rather, "care" doesn't dominate competing values like strengthening community ties or respecting authority the way it does for liberals.

Here's where things get interesting. How sensitive economists were to the "care" foundation predicted their views on policies like the effectiveness of the minimum wage in helping workers. To be clear: the finding is *not* that people who score highly on care are more likely to have the moral belief that it's important to help workers. Rather, people who score highly on care are more likely to hold the *economic* belief that the minimum wage is an effective means to helping workers. But why should a general moral concern for improving people's well-being predict the endorsement of a particular institutional mechanism for improving people's well-being? By analogy, wouldn't it be strange if, say, a strong concern for keeping rooms warm predicted a person's belief about the effectiveness of wood stoves relative to gas stoves as a mechanism for keeping rooms warm? Your concern for keeping rooms warm shouldn't in itself tilt you in favor of one kind of heater over another.

Similarly, there's nothing inconsistent in thinking that we should improve workers' well-being *and* thinking the minimum wage is not an effective means to this end (maybe it causes unemployment by lowering the demand for labor.) But it turns out that this moral belief and this economic belief tend not to go together. As Randazzo and Haidt put it, "this data shows that economists' substantive conclusions about the workings of the economy are *suspiciously correlated* with their moral values."⁵ The suspicion is that (e.g.) neoclassical economists think the minimum wage doesn't work because they're on the political right; they're not on the political right because they think the minimum wage doesn't work.

Of course, Randazzo and Haidt are careful to note that this finding doesn't in itself show that economists' moral profiles are what's causing them to accept certain empirical claims. However, they note that "causal effects are quite likely" given what we know about motivated reasoning: decades of research indicates that we *start* with our moral conclusions and then work

backwards, accepting evidence that supports our preordained conclusions and rejecting counterevidence.⁶

In short, we academics may be as susceptible to motivated political reasoning as anyone else. To continue with my earlier analogy, evidence suggests we're like a juror who finds the testimony exonerating the defendant credible because of her prior belief that the defendant is not guilty. This gets things backwards: she should find the defendant not guilty because, among other things, she has (independent) reason for thinking the exonerating testimony is credible. Similarly, our acceptance of the empirical evidence should determine our moral conclusion, but our prior acceptance of the moral conclusion may determine what empirical evidence we accept. We're all tempted to think that *we* are the exception to the general rule; *our* political judgments aren't the result of partisan bias. Maybe, but let's be cautious here, too: there's a mountain of evidence indicating that we tend to be ignorant of the causes of our own attitudes.⁷

I'm not saying we should abandon empirical institutional analysis. On the contrary, I don't see a way around it. After all, I've made use of empirical evidence and I'm no doubt vulnerable to motivated reasoning myself. My point is only that we should be on guard against a natural, kneejerk tendency to think that the weight of the empirical evidence *clearly* favors our preferred institutions.

Here's what we can say as a matter of philosophical inquiry: Rawls and others haven't produced successful arguments for ruling out free market regimes *a priori* on the grounds that they are incompatible with liberal egalitarian standards of justice. We may not claim a role for government while assuming away the possibility of government failure. And if we may not assume away government failure, then we may not dismiss the classical liberal worry that the state tends to hurt, rather than help, the cause of justice.

Notes

1. 2001, 137.
2. On Scandinavian success, see, for instance, Sanandaji 2015; on Piketty, see, for instance, Wolfers 2014.
3. Randazzo and Haidt 2015.
4. See, e.g., Haidt 2012, 147–8.
5. *Ibid.*, 53, my italics.
6. *Ibid.*, 53. See Nickerson 1998; Haidt 2012, chapter 4; cited in Randazzo and Haidt 2015, 53.
7. Nisbett and Wilson 1977; Haidt 2001; Sripada and Konrath 2011; Hall et al. 2012. See also Cohen 2003, 811 for evidence that we are unaware of the influence of partisan bias on our political attitudes in particular.

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