

Democracy versus libertarianism

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The ideals of democracy and equality have inspired progressive political movements throughout the nineteenth and twentieth centuries. The democratic egalitarian seeks a world in which political rulers are agents accountable to majority will of the citizens, inequalities in income, wealth, and status are not extreme, and the members of society collectively take responsibility for assuring decent conditions of life for all, including the least advantaged, so that, so far as is feasible, each member of society has the opportunity and ability to choose sensibly among a wide array of valuable life options and live well.

The shining ideals of democracy and inequality are disparaged in the Lockean libertarian and classical liberal traditions of political thought, which have themselves become inspirations for many thinking people in modern times, perhaps especially in prosperous market economy societies. Very roughly, according to libertarian and classical liberal thinking, what ought to be prized and defended above all is individual liberty, understood as inseparable from respect for private ownership of property. Government by majority rule might encroach on individual liberty, and when this happens, the majoritarian pedigree confers no moral legitimacy on the encroachment. If the modern state can be justified at all—a doubtful proposition for the libertarian—the right form of governance in given circumstances is whatever form will be protective of liberty in those circumstances. From a liberty-first perspective, robbing the rich to aid the poor is just robbery, and such Robin Hood policies are still just robbery when perpetrated by an organized state in the name of justice and equality.

This simple statement of opposition needs to be qualified in various ways. Democratic and egalitarian liberalisms form a loose family of views, not a single monolith. On the other side, Lockean libertarianism and classical liberalism are still works in progress, not two single doctrines set in stone. This chapter introduces some complications and shadings in the simple picture just painted.

The stark, simple contrast is nonetheless of great interest. The ideals of democracy and equality can seem platitudinous and uncontroversial. Their dismissal, for broadly similar reasons, by libertarians and classical liberals, provides an occasion for shaking up beliefs taken for granted and for rethinking what has seemed obviously true in a harsh critical light. From the other side, if some norms of democracy and equality should command our allegiance, the failure of libertarianism and classical liberal doctrines to affirm these norms registers as a sharp criticism of those doctrines. In this confrontation, whatever the verdict of the reader might be, the chapter will succeed if it brings to the table some unsettling food for thought.

1. Plan of the Chapter.

The topic of this chapter is large and ungainly. Addressing it, I make some simplifications, here flagged. Contemporary libertarianism is a set of views about liberty, property, and government, claimed to be justified in two very different ways. One appeals to the natural moral law tradition as reworked into a doctrine of individual

moral rights by the seventeenth-century political theorist John Locke (Locke 1980), and streamlined and given a succinct formulation by Robert Nozick in his canonical work *Anarchy, State, and Utopia* (Nozick 1971). The other path of justification is associated with the writings of Ayn Rand (Rand 1964), who believed that each person ought rationally to seek her own interest above all, and that rational egoism thought through consistently implies libertarian moral and political views. The attempt to derive libertarianism from egoism strikes me as hopeless, for reasons briskly stated by Robert Nozick (Nozick 1997). At any rate, in this chapter the Lockean libertarianism that is discussed is the position of Locke and Nozick. Here it should be noted that Locke's own views differ, especially on the topics of property and consent to government, from Nozick's version of natural rights doctrine (for Locke's positions, see Simmons 1992 and 1993).

Classical liberalism encompasses a wide range of views united around the idea that the minimal state ought to confine its role, for the most part, to protection of basic individual liberties and private ownership and enforcement of contracts and protection of individuals against wrongful harm to their persons and property. This discussion focuses on the ideas of Friedrich Hayek (Hayek 1944, 1960, 1973/1976/1979, and 1988) to illustrate the main themes of this tradition of thought.

Section 2 of this chapter introduces the Lockean libertarian position and section 3 introduces classical liberalism. Section 4 discusses the libertarian response to the ideal of democracy and section 5 discusses the classical liberal response. Section 6 examines the libertarian opposition to egalitarian liberal justice; section 7 examines the classical liberal dismissal of social justice norms as a rationale for state action. Section 8 looks at the normative basis of the classical liberal critique of rent seeking (which libertarians can also embrace). Section 9 takes stock.

2. Lockean Libertarianism.

For purposes of this discussion "Lockean libertarianism" is a label for a cluster of claims about the moral law, natural moral rights, and the moral basis of private ownership of resources. The claim is that there is a moral law that is accessible to persons, beings with rational agency capacity at or above a threshold level. One gains access to the moral law by consulting one's conscience, using one's reason to figure out what we owe to each other by way of conduct and disposition. The moral law tells us that each adult person has moral rights, which everyone has a strict duty to respect. These are natural moral rights, which means that they hold true independently of people's opinions and beliefs, existing institutions and social practices, and cultural understandings.

The fundamental moral right is a right of each person to act in whatever way she chooses with whatever she legitimately owns, provided she does not thereby wrongfully harm others in certain ways. A companion moral right possessed by each person is not to be harmed by other persons in any of these certain ways. These ways are given by a list: forcing or coercing others, stealing what they legitimately own, fraudulent transactions, promise-breaking and breach of contract, physically harming the person or property of another, or acting in ways that unduly create risk of such harm, and threatening to do any of the above.

Each adult person is the full rightful owner of herself. From this premise of self-ownership plus some further uncontroversial normative premises, the libertarian holds

that one can derive the conclusion that an individual can acquire full, transferable, bequeathable ownership of unowned land and moveable resources. Full ownership of a thing is a bundle of rights over it including the right to exclude others from using the thing, the right to use the thing as one chooses (so long as one does not thereby harm others wrongfully as specified just above) the right to allow another persons or persons to use the thing on mutually agreed terms, and the right to transfer the entire bundle of rights just listed to another person or persons.

Rights on the Lockean view are forfeitable, transferable, and waivable. Pointing to my chin and saying to you “Give me your best shot,” I waive my right, for here and now, that you not injure me by hitting me on the chin. You then lack a duty, here and now, to refrain from hitting me on the chin. By bad conduct that violates the moral rights and others, I open the door to be treated in certain ways, such as being forced to relinquish stolen goods or submit to criminal trial procedures or submit to punishment, that would be violations of my rights but for my wrongdoing. Any right I possess, I can transfer to another (who agrees to take it).

3. Classical liberalism.

Classical liberalism can be understood in terms of two contrasts. This doctrine differs from Lockean libertarianism by (1) eschewing any commitment to the idea that the foundation of morality is the principle that people have moral rights independently of social arrangements that each person must always and everywhere respect and (2) denying the existence of any principled pro tanto reasons to favor anarchism. A state that facilitates security of private ownership of property and protects and respects the important human liberties in a manner consistent with the rule of law, and in these ways improves on the condition in which there is no functioning state, is thereby morally justified. The important liberties involve the freedom of each individual to do what she chooses with whatever she legitimately owns. (Legitimate ownership may have a conventional character and need not be understood in terms of natural moral rights. The conventions must tend to have beneficial consequences and must be consistent with the core notion of private ownership.)

The second contrast that illuminates the content of classical liberalism is between this doctrine and modern egalitarian liberalism, which regards the state as fundamentally bound to promote an ideal of social justice or the common good. If and when a market economy organized on a basis of private ownership becomes a hindrance to achieving these fundamental political values, the egalitarian liberal is prepared to advocate regulation, restrictions on ownership and expropriations of privately owned property, or conceivably abolition of the market economy altogether. In contrast, the classical liberal favors the minimal state that limits its role to (1) protecting private ownership and (2) maintaining a rule of law that complements and stabilizes the market economy and (3) making provision for a few uncontroversial public goods such as national defense and police protection.

What according to the classical liberal is the moral justification of this doctrine? What would be the best justification? Some think the classical liberal position rests on broadly utilitarian foundations (Freeman 2011, Gray 1984, but see Kukathas 1989). Hayek writes, “The recognition of the right of private property does not determine what exactly should be the content of this right in order that the market mechanism will work

as efficiently and beneficently as possible” (Hayek 1960). Richard Epstein has written about “The Utilitarian Foundations of Natural Law” (1989).

The classical liberal is at most “broadly utilitarian.” The classical liberal rejects the utilitarianisms of J.S. Mill (1978 and 1979) and Henry Sidgwick (1907), which presuppose that the happiness, well-being, or utility of different individuals can be added together and that morality bids us to maximize the aggregate sum. If the utility of different individuals cannot be added together, there is no coherent idea of maximizing an aggregate total. If well-informed individuals voluntarily make an exchange, each is better off according to his own lights, and provided the transaction does not impose physical harm on the persons or property of others, trade makes some better off and none worse off. To this approbation of voluntary exchange the classical liberal adds a broad empirical surmise to the effect that free trade, in a setting in which the government provides rule of law facilitation of trade and blocks uncompensated negative externalities (costs imposed by the activity of some on others that do not register in the market prices the imposers face), over time tends to increase prosperity and improves almost everybody’s condition by her own standards (Schmidtz 2012).

If one cannot create a greater amount of aggregate well-being by harming some to help others, there is no utilitarian case for harming some to help others. But nor is there a utilitarian case against doing that. The classical liberal breaks this impasse by affirming individual liberty and interpreting liberty as the condition in which one is not coerced or forced (except as necessary to prevent some from coercing or forcing others). So something like an appeal to moral right does enter the account.

4. Democracy Through a Libertarian Lens.

On the Lockean view, as interpreted by Nozick, no one has any moral duties to obey political rulers unless one has voluntarily undertaken a duty to obey by pledge or agreement. Nor do self-styled political rulers have rights to command others or force the others to obey their will, even when this coercion would be instrumental to bringing conditions for civil order and cooperation. An individual has no right to coerce another individual, and a group of persons organized around a common plan has no more right to force bystanders to join the group and further the plan. John Locke plainly states that the natural condition we are in, prior to any agreement to submit to the authority of others, is “a state of perfect freedom to order their actions, and dispose of their possessions and persons, as they think fit, within the bounds of the law of nature, without asking leave, or depending upon the will of any other man.”

Of course on Nozick’s view an adult person also is at liberty to give up this perfect freedom by voluntarily agreeing to obey one who offers to take up the role of clan leader or political ruler. One is not at liberty to join a criminal conspiracy, such as a political state dedicated to wrongful conquest, but one is free to agree to submit to political rule, for sound prudential reasons or bad reasons, and one then becomes bound to carry out one’s agreements. Just inhabiting a territory that has a functioning state that protects one’s rights would not trigger any enforceable duty of reciprocity to join the enterprise and fulfill the duties of members. Locke: “men being, as has been said, by nature, all free, equal, and independent, no one can be put out of this estate, and subjected to the political power of another, without his own consent.”

Democracy has no special status compared to other forms of government. One might consent to be subject to the authority of nondemocratic elite rule, as well as one might consent to a majority-rule form of government. To be valid, the consent cannot be coerced. But so long as the persons offering to be one's political rulers have not made nonconsent options unviable by violations of one's rights, the choice one is offered to consent might be combined with no remotely acceptable alternative options. Absence of acceptable alternatives does not in itself, according to the Lockean, vitiate consent.

Nozick suggests that starting with anarchy, we could expect individuals to behave in ways that would bring about the existence of a state-like entity, which we might as well call a state. Beset by bandits, people would seek protection services, and ultimately on each compact territory there would arise a dominant protection agency (DPA), a firm that enjoys a monopoly on the sale of such services on the territory. Nozick argues that this DPA, without necessarily violating anyone's rights, would successfully claim a monopoly on the legitimate use of force within the territory it controls. The DPA would view independents practicing self-help enforcement of rights as imposing undue risks on its clients, so would prohibit self-help enforcement of rights. However, doing this would only be permissible if the DPA compensated the independents for the severe loss involved in being denied the right to protect one's rights by defensive violence, so the DPA, in order to function without violating rights, would protect all residing on its territory. Its compensation to erstwhile independents would take the form of a free basic protection service.

Nozick tentatively suggests that we might view this hypothetical showing that a DPA arising under anarchy could become state-like as a justification of the minimal state. It is not clear that showing a DPA could appear state-like without violating rights would justify an ordinary state, which does enforce compliance with its rules and forces all members to pay for its upkeep. These seem like violations of libertarian natural rights. Also, Nozick's argument that the DPA could become state-like and must become that looks unsatisfactory. The independents he imagines are either following reasonable, non-reckless self-help enforcement procedures or not. If they are, the DPA has no moral right to prohibit them from engaging in self-help enforcement, so the rights-respecting DPA does not rightly claim a monopoly on the use of force and defensive violence. If the independents are following unreasonable procedures that impose undue risks of violating the rights of DPA customers, it is permissible to prohibit such self-help enforcement, and in this case no compensation would be owed to reckless independents. Either way, the account of how the DPA could and must become state-like fails.

Were Nozick's hypothetical account successful as a justification of a minimal state, there would still be no requirement that the state, to be legitimate, must be democratic. Let us say a democratic state is one in which the laws and public policies that are enforced are selected by legislators, who along with top public officials are selected by voters via a majority-rule procedure, with each permanent adult member of society being a citizen with an equal vote, the majority rule process operating against a background of robust freedom of speech and association.

The failure of Nozick's account to maintain that a morally legitimate state, which has a right to enforce its commands on citizens, must be a democratic state, will register as a deep moral flaw in his libertarianism according to a wide array of liberal egalitarian theories of justice. One common liberal egalitarian view is that the state massively

coerces its members and also claims to act in their name. Moreover, the state does not just happen to claim to act in the name of those it governs; it must do so, on pain of being illegitimate. It must claim to be authorized by those it governs, and this claim can only be made good if the state is accountable to its members via a majority-rule system of governance as already described. In the ideal of a democratic state, political rulers are not bosses who push people around; they are rather agents acting on behalf of a democratic public, to which they are accountable. Citizens have the obligation to vote for just laws and policies and for public officials who will respect and protect people's moral rights, and they in turn have the right that the laws and public policies imposed on them be authorized by a political process in which they have a fair opportunity to participate on equal terms with all other members of society.

The libertarian sees no special moral merit in democracy and holds that the equal moral status for all that we should accept is that each and every adult person equally possesses the same basic moral rights and all persons ought always without exception to respect the moral rights of every other.

5. Democracy through a Classical Liberal Lens.

In contrast with the libertarian, for whom the basic moral legitimacy of the state is problematic, the classical liberal tradition does not flirt with anarchism. Except for would-be predators, we are all better off having a functioning government that maintains a monopoly over the use of force and maintains basic order, according to the classical liberal. But why democracy? The commitment of the classical liberal is to something close to the minimal state, the night watchman state that provides uncontroversial public goods including national defense, police protection and criminal justice, and enforcement of contracts and protection of private property rights. The minimal state need not be a democracy in which legislators and top public officials are ultimately accountable to an electorate in which all citizens have an equal vote and decisions are by majority rule.

Committed to the rule of law and equal formal treatment of persons, the classical liberal opposes a feudal rule with an hereditary elite ruling class or twentieth-century authoritarian regimes. But this does not yet amount to a robust commitment to democracy. Insofar as the background classical liberal moral foundation, even if eclectic and hybrid, does include a utilitarian component, or better a quasi-utilitarian commitment in which any welfare maximizing norm is limited by skepticism regarding interpersonal comparisons of welfare, the position inclines toward viewing forms of political governance as properly to be assessed on instrumental grounds, as means or hindrances to other values. For any broadly utilitarian position, human welfare is primary, and power is a resource; it should be assigned to people in whatever way would do the most good.

Friedrich Hayek cautions that democratic political procedures, even if procedurally fair, do not guarantee substantively fair outcomes in terms of laws and public policies. He is mostly worried about incursions on private property rights by a democratic electorate, but insofar as classical liberals take an instrumental approach to democracy, one wonders if there is any rock-bottom moral error in this stance. If assigning me an equal vote and in this respect equal political power with other would not tend to make the functioning of the regime likely to produce morally better results, what is my ground for supposing I have a fundamental moral right to an equal say?

Hayek comments that the reasons for supporting democracy underdetermine the type of political institutions that should be established, and might be compatible in some circumstances with, for example, schemes that deviate from one-citizen-one-vote and assign extra votes to the more educated or otherwise competent. Another possibility is that a system of government might introduce checks and balances and divided powers to block immediate implementation of majority-will populist whims and reduce the chances of some political officials gaining unchecked power. To this end one might seek to make government less democratic in the sense of immediately responsive. (Along this dimension, a government structure is more democratic, the shorter the time lag between a shift in majority opinion and change of policies bringing them into accord with that shift.) A government structure might also be more or less democratic in terms of equal opportunity for influence, a government set-up being more democratic along this dimension, the more it is the case that all those with equal political talent and equal political ambition have equal prospects of being politically influential.

Again, I take the democratic commitment of the classical liberal to be hedged and qualified, and perhaps, none the worse for that. Perhaps we should not take exception to the idea that democracy should be upheld not as an intrinsically fair procedure but rather insofar as in actual circumstances it is conducive to rights fulfillment and the common good. The classical liberal along with the libertarian will disagree with the egalitarian liberal about what constitute morally good consequences.

6. Equality.

In broad terms, the idea of equality that Lockean libertarians repudiate is any idea of distributive equality. This idea itself appears in various guises. Uniting them is the idea that we together have a moral responsibility to improve the condition of badly off people, bringing about some compression of the inequalities between better offs and worse offs. In different egalitarian theories, the measure of inequality in people's condition gets construed in different ways—in income and wealth, or resource holdings, or opportunities for resource acquisition, or life prospects in terms of positive hedonic feeling, or in terms of objective well-being, or preference satisfaction, or opportunities for well-being understood subjectively or objectively.

Another distributive justice view that will in a variety of circumstances recommend equalizing transfers of resources without prizing equality of condition for its own sake is the idea that it is morally desirable that individuals should enjoy well-being in proportion to their deservingness. On this view, it is more fitting that saints end up faring better than sinners.

Natural rights libertarianism need not deny the possible coherence and plausibility of some distributive justice views. In much the same way, the natural rights libertarian is not committed to denying the virtue of charity. The sticking point for her is that these types of considerations do not affect the morality of coercion and the proper uses of coercion along with the idea of liberty that is correlative to it. The natural moral rights are trumping values so far as justified coercion is concerned. Perhaps it would be morally nice for a property owner to give up her property to aid a needy person in the style of a good or splendid Samaritan. But since the property owner has legitimate ownership of her property, she is morally at liberty to dispose of it as she sees fit so long as she does not thereby wrongfully harm others (violating one of their spare natural moral

rights). She is at liberty to be a good Samaritan or not as she chooses, and it would be morally forbidden, a violation of her rights, to force her to give up her property against her will to aid the needy.

By the same token it might be morally nice if equality of condition prevailed in society. Maybe so, maybe not. This does not matter. Individuals are at liberty to coordinate voluntary transfers of their resources to bring about greater equality of condition, or for that matter to try to bring about any other distributive pattern they might fancy. But equally they are morally at liberty to use their property as they choose within natural moral law constraints, so they are morally at liberty to pay no heed to supposed distributive justice values if they are so minded. Again, it would be morally wrong, a violation of the property owner's legitimate rights, to expropriate her property in order to advance distributive justice aims. This would be to upend the moral order, brushing aside the constraints of moral rights that have strict lexical priority over other values in the determination of what each person ought to do, and favoring instead alleged moral values that are morally weightless by comparison.

From the standpoint of the egalitarian liberal, Nozick's claims pivot on an illicit slide between some and all. Even if each person has some moral right to live as she chooses, why think this right is a trump that overwhelms any other values to which it might be opposed? We might interpret moral rights of this sort as having some weight but not absolute priority over other concerns.

Nozick interprets the right to live as one chooses as the right to do whatever one chooses with whatever one legitimately owns provided one does not violate anyone's rights not to be wrongfully harmed. Freedom to move as one chooses arises from the fact that according to Nozick each person is the full rightful owner of herself. Self-ownership sounds like an appealing thought until you consider its implications. It rules out even minimal good Samaritan duties (understood as enforceable). Suppose you can rescue a baby drowning in the shallow end of a swimming pool on the side of which you alone are sitting. You could stretch out your arm and easily rescue the child, at hardly any cost to yourself. Self-ownership says you have no enforceable obligation to carry out this rescue and it would be wrong to use coercion to induce you to undertake the rescue.

Nozick's argument for justifying his spare conception of natural moral rights is an appeal to reflective equilibrium. That is to say, if you assume that individuals have rights as Nozick characterizes them, you will be better able to explain and justify the ensemble of the moral judgments at all levels of generality that you will uphold after extended critical reflection. If we find ourselves unable to explain and justify our strongest moral judgments, those we most confidently affirm after extended critical reflection, except by rejecting Nozick's proposed doctrine of natural moral rights, Nozick has no further argument, except that he takes some shots against contrary views that we might uphold against his libertarianism.

One Nozickian objection against opposing views is that a coherent and plausible account of how a set of natural moral rights might impose exceptionless duties is forthcoming only by dismissing claimed rights to the aid of others. A reply is that we could construe natural moral rights not as holding without exception, but as offering serious considerations, to be balanced against each other and maybe against other moral considerations in the determination of what ought all things considered to be done in any particular situation. One possibility is that any right gives way when the ratio of the costs

to rightholders if the right is infringed to the costs to nonrightholders if the right is upheld is sufficiently unfavorable.

Nozick objects that any distributive justice ideal that insists that some pattern of holdings across people (such as equality) must be maintained ignores the moral significance of history. The legitimacy of one's holdings of property for the libertarian depends on how one acquired the holding. If one appropriated an unowned resource, or gained a resource by gift or exchange from someone who himself had a valid claim to it, by obtaining it from someone else who had a valid claim to it, and so on, all the way back to legitimate initial appropriation of unowned stuff, one's holding is legitimate. How one's holdings compare to other individuals' legitimate holdings is neither here nor there.

Nozick sharpens this point into a famous objection (Nozick 1974). If resource holdings are arranged to satisfy your favorite conception of justice at any particular time, if people are then entitled to their fair resource holdings, they will use their holdings in many different ways, so that very soon the pattern that we are hypothetically treating as just will be undone. If maintenance of the favored pattern is required by justice, to sustain the pattern we must continuously redistribute resources, undoing the effects of acts people have voluntarily undertaken from an initial imposition stipulated to be fair. How can that be fair and just? Nozick concludes that the maintenance of any patterned conception of justice among individuals with diverse aims will require continuous, massive, and clearly unjustified restrictions of individual freedom.

One response is that Nozick must be making the assumption that ownership of a resource must be permanent not provisional. If ownership of (say) a car is provisionally assigned to me, on condition my continued ownership of the car does not come to be part of an extremely unfair pattern of distribution (maybe I come to own all the cars there are), then taking away my ownership if the triggering condition for takeaway obtains will not be a violation of my rights. This response is not fully satisfactory. To have anything that looks like genuine freedom to do as one pleases with what one owns, one must have at least somewhat stable, reliable confidence the thing one owns will not be snatched away as one comes to rely on it. Maybe this stable expectation condition allows some rejiggering of ownership entitlements, but surely not massive, continuous rejiggering. A further reply might propose that the sensible patterns required by distributive justice will be loose patterns—not that everyone has the same wealth, but that the wealth of the richest individual is no more than X times the wealth of the poorest, where X might be a sizeable number.

Another possible response to Nozick's objection against enforcement of distributive justice principles is that the sensible principles might assign to individuals fair initial opportunities, including fair initial resource shares, and from then on let individuals do as they choose with their initial fair share provided a fair framework for transactions among individuals is sustained. On an initial opportunity conception of distributive justice, if a set of individuals has fair initial opportunities on Friday afternoon, it is entirely a "don't care" from the standpoint of opportunity-oriented justice what people do with their fair shares, so a pattern of inequality popping up after the weekend, arising from the overall effect of the ensemble of people's weekend choices, would not in itself trigger distributive justice concern. On this view, roughly speaking, each person's distributive justice right is to have access to a fair share of opportunities at

the onset of adulthood, regarded as the start of responsible life, in which one is free to choose the life one wants.

The initial-opportunity conception of distributive justice might be qualified in two ways, in the interest of plausibility. One qualification is disaster avoidance: A rider might be placed on the evolving pattern of individuals' holdings, that if anyone's holdings drop too drastically subpar, justice requires relief from the threatening extreme poverty.

Another qualification is that upholding some patterns might be worth their cost in liberty restriction. After all, we accept large restrictions in individual freedom to drive as one likes for the sake of smooth and safe traffic flow on public roadways. Nozick's objection then actually trades on the use of strict equality to illustrate how patterns crush desirable individual liberty. Strict equality of condition might not be a plausible distributive ideal, but its unattractiveness does not rule out that other ideals of distribution might be more reasonably appealing.

The opposition between the libertarian (and the classical liberal as well) and the egalitarian liberal on the moral urgency of equalizing people's condition is not best viewed as a dispute about whether or not everyone's having the same or getting the same by any metric is fundamentally morally important. Consider egalitarianism as a broad doctrine not a sectarian creed. The egalitarian holds that, under a broad array of modern conditions making people's prospects more equal is important for a wide variety of reasons, given different weight in different versions of the doctrine. The fundamental aim might be to ensure that everyone has enough for a genuinely good life. Moves toward distributive equality might be effective means to other valuable goals (even if equality in itself should be a "don't care"). Another possibility is that the worse off one is, in absolute terms, the more important it is to improve one's condition or prevent further losses to one. To reiterate, the libertarian need not dispute the worth if any of these varied equality ideals; she just insists that respect for spare Lockean rights takes strict priority over the lot. The classical liberal tends to take a more radically negative stance, to the effect that distributive justice ideals are just hot air.

7. The Mirage of Social Justice.

Hayek writes of the "mirage" of social justice. The claim is not just that the social justice values are lesser lights, not sufficiently valuable to render rational some incursion into private property entitlements. The claim is that any perception of social justice values is an illusion, a case of seeing something when there is really nothing there to be observed.

The Hayekian holds that justice must be understood as conformity by members of society to a set of rules that facilitate coordination and mutual exchange and provide a framework for voluntary interaction. The rules must be impartial, not rigged to favor some individuals over others or some groups in society over others. The framework sustaining a rule of law is neutral between persons; it is not selected with a view to bringing about any particular outcomes, though of course given the way circumstances actually unfold, the rules will end up producing winners and losers. But this is very different from state action intended to produce a particular mix of benefits and burdens falling on particular people.

The idea that justice is conformity to an established and accepted set of rules that facilitates trust and voluntary cooperation among persons and is impartial across persons leaves it open that various rules, within some broad range, might be acceptable for this purpose. There is not just one acceptable set of rules regulating exchange, contract, and tort. But the rules must be impartial in the sense of not being rigged to favor one group in society over others. Also, the rules must facilitate what reasonably qualifies as trust and voluntary cooperation. (A rule that every third set of people who make a contract will be summarily shot would not fall within the acceptable range.)

Perhaps more needs to be said to characterize the idea of impartiality as used here. If the law forbids employers to hire black-skinned individuals for skilled jobs, impartiality is violated. If the law stably and predictably results in talented and hard-working persons faring better, on the whole and on the average, than untalented individuals and those averse to work, is the law rigged against me if I am untalented and averse to work? Probably not. But a law that prohibited paying talented less than untalented, or non-hard-working more than the hard-working, according to some assumed standards, would violate impartiality.

From Hayek's standpoint, any state establishment and enforcement of distributive justice standards violates the rule of law. In his words: "any policy aiming directly at a substantive ideal of distributive justice must lead to the destruction of the Rule of Law (Hayek 1944: 79). The government just expropriates some people's property and hands that stolen property to others. This robbery is not morally justified by being dressed in pretty rhetoric such as egalitarian rhetoric. Nor would antiegalitarian rhetoric succeed at justifying such takings. The Hayekian rejection of distributive justice as a mirage sweeps away any standards that might operate to justify state redistribution. The Hayekian rejection of distributive justice rejects ex post takings that fail to respect rule of law property rights and also rejects ex ante restrictions or regulations on transactions that are designed to favor some identified group of persons deemed to be more deserving or more meritorious or for some other reason more worthy of being the beneficiaries of government's coercively pushing some people around.

What is not so clear is how Hayek, and classical liberalism adherents generally, will distinguish in a principled way between the government takings they accept or at least can tolerate and those they completely repudiate. Where should the line in the sand be drawn? Hayek does not find especially objectionable need-based aid that prevents people who lose in market endeavors or are left at the margin of market exchange from falling into utter destitution. Milton Friedman (1962) once suggested that a modest negative income tax (also known as a guaranteed annual income) might be preferable to a phalanx of welfare state initiatives that are costly to administer and in the ensemble tend to result in perverse incentives to avoid paid employment or self-employment that one could undertake. More recently Richard Epstein (1995) has opined that governments might find it necessary on reasonable grounds to exercise eminent domain powers and take private property from individuals to make way for some government project. The sensible constraint on such takings is that the government must be required to compensate fully those whose property is taken in this way according to fair-minded estimates of the market value the land would have if the government project were not going forward.

The rule of law broadly enhances security of private ownership and thus long-run prosperity. Acceptable government activities to this end include enforcement of contracts and criminal law, building infrastructure such as roads and harbors, maintaining a stable currency, police protection and national defense. Perhaps state relief to ease dire poverty perhaps works to the same end, by preventing the disruptive actions to which the destitute might otherwise resort in the absence of relief.

Another distinction is between tinkering at the margins of the Hayekian rule of law in small and self-limiting ways that do not seriously undermine security of property and open-ended state action defended by appeal to “principles” that are not principles and that can be represented as justifying any expropriation or enforcement of special privilege that any group might calculate is in its interest.

8. The Critique of Rent Seeking.

Consider a government that is active and establishes many programs with a view to fulfilling aims that voters approve. The state legislates broadly for what is deemed to be the common good. The state taxes citizens and redistributes the proceeds, either directly by putting money into some citizens’ pockets or indirectly by funding projects that are to the benefit of some citizens and not others. The government might fund national parks in some regions of the country and not others, or might subsidize classical music but not rock or hip-hop. The government acts to benefit some cohorts of citizens and disfavor others. The government runs schools and businesses, offering their services for free or at subsidized rates to those the government declares to be eligible for benefits.

A government might also enact a host of regulations that constrain how persons shall carry on many types of affairs. For example, the government might decree that no one shall practice law, or medicine, or hairdressing, or real estate brokering, without having a license given out on terms the government specifies. The government might set pollution controls that limit the quantity of noxious fumes and smoke that cars and factory smokestacks are permitted to emit. The government might pass zoning regulations that limit how many businesses selling alcoholic beverages there may be in a given locale or set rules that restrict builders who seek to construct skyscrapers or erect new housing projects. A government might place special taxes on some activities such as cigarette smoking or skiing.

Suppose that individuals on the whole and on the average tend to be self-interested and to seek effective means to advance their own interests. We might then expect that people will engage in lobbying activities broadly construed that aim to affect the policies that a government pursues so that those policies boost their interests. People and groups in society with opposed interests will seek ways to influence the legislative and administrative and executive decisions of government. There will be jockeying for influence.

Classical liberals have observed that much of this activity will be offsetting and thus counterproductive and wasteful from a society-wide standpoint even if rational from the perspective of each individual doing the influence-peddling.

Classical liberals and social scientists such as public choice theorists inspired by their writings have also noted another pervasive phenomenon. An individual or small group may have a strong interest in obtaining a certain government policy, or a certain feature in a government policy. The individual or small group has a concentrated interest

in the feature of interest. On this matter, it might be the case that a broad diffuse set of individuals has opposed interests, that in aggregate greatly outweigh the gains that the small group with concentrated interests can amass if it succeeds in obtaining the policy it favors. The prediction is that in many settings the large diffuse group will fail to organize effectively and the small group each of whose members have a big stake in the outcome will more easily organize for the purpose of influencing government policy choice.

The term “rent seeking” invokes the economic theory notion of rent as payment to a factor of production for its contribution in excess of what would be needed to induce the owner of the factor to make that contribution. More broadly, one might conceive of rent seeking as activity that aims to secure gain through activities that are unproductive and do not increase the total net value of goods and services produced in a society.

Rent seeking activities can be expected to occur no matter what system of political governance is in place. We might hope that the requirement of majority rule under democratic governance might significantly check the misuse of governmental powers for the benefit of private interests, but first, majority rule offers no impediment to a majority voting to bring it about that legislatures squeeze the dissenting minority of voters for the benefit of majority-rule winners. Second, voters in a democratic political order will expectably be poorly informed and not highly watchful in arriving at their voting decisions, not only from antisocial motives, but also as a reasonable response to the incentives that face any single voter in a large electorate. The chance that one’s vote will make a difference to the electoral result may be miniscule, so the time and resources one expends on being a well-informed and conscientious voter might well be better spent in other pursuits. So by this argument majority rule is predicted to be no reliable fence against the uncontroversial evils that rent seeking generates. This train of thought leads one to entertain remedies such as constitutional restrictions on the state’s authority to redistribute wealth, or at least a culture that militates against coercive redistribution.

In principle, the critique of rent seeking, to the extent that the problems it highlights prove empirically to be significant obstacles to good governance, can be acceptable to those of left-wing or right-wing persuasion, egalitarians and anti-egalitarians alike. But if one holds that social justice is a mirage and that justice notions are just rhetorical drapery over self-seeking, the problem of rent seeking will loom very large in one’s political thinking and will tend to support a mind-set favoring small government and a suspicion of government regulations. If on the other hand one holds that a morally mandatory function of government is to improve the opportunities of those who have worse prospects than others and especially of those whose prospects are not merely comparatively bad but miserable in absolute terms, then in many circumstances one will, in a liberal egalitarian spirit, see a struggle for social justice, where the classical liberal or libertarian sees only rent seeking.

The egalitarian liberal seeks both to make the pie of economic benefits ever larger and to divide it fairly. The pure libertarian morality gives strict priority to the demand to respect each person’s Lockean rights, whatever the consequences for growth or fair division. The classical liberal values growth and prosperity but sees the demand for fair division as a dead end.

9. Lingering Questions.

The Lockean libertarian is faced with the difficulty of showing it to be plausible that duties to help others in need and to ameliorate the predicament of those who are far worse off than others through no fault of their own should have zero weight against the spare moral rights to do as one wants with what one owns that the Lockean celebrates. Why think the latter always trump the former? A similar worry applies to the libertarian disparagement of democracy. Suppose we could have aristocratic or dictatorial government or instead a democratic political order in which people's rights (except the claimed right to a democratic say) are just slightly less fulfilled. Why isn't gaining democracy worth sacrificing some other values? (I have suggested that the first question might have greater bite than the second.)

The classical liberal also faces this second question about democracy. To the first question, as to why helping the needy and improving the condition of the worse off are never enforceable duties, the classical liberal especially in Hayek's version has a snappy reply. There are no coherent distributive justice values, so the question of how to balance them against the value of individual liberty and private ownership simply never arises.

This snappy reply invites the counterreply that there is nothing incoherent about the ideal of improving the lives of those whose lives would otherwise be bleak. If we had no way of comparing the life of a homeless beggar and the life of a wealthy and healthy banker and judging that the latter has more real freedom, greater opportunities to choose among valuable ways to live, the classical liberal dismissal would be compelling. But the egalitarian liberal finds this skepticism about such comparative assessments to be dubious to say the least.

One strand of classical liberal argument points out that there is not just one distributive justice conception, there are several competing conceptions, among which we cannot choose except on an arbitrary basis. The egalitarian liberal will try to cut this strand by arguments in favor of one true view. But suppose there turn out to be several alternative distributive justice conceptions, none obviously superior to the others, but all more plausible than the denial that democracy and distributive justice matter. Then the egalitarian liberal can say it is better to implement any one of these rival conceptions than to scrap the entire lot.

REFERENCES.

- Epstein, R. (1989). "The Utilitarian Foundations of Natural Law," *Harvard Journal of Law and Public Policy* 12.
- _____. (1995). *Simple Rules for a Complex World*, Cambridge, MA: Harvard University Press.
- Freeman, S. (2011). "Capitalism in the Classical and High Liberal Traditions," *Social Philosophy and Policy* 28: 19-55.
- Friedman, M. (1962). *Capitalism and Freedom*, Chicago: University of Chicago Press.
- Gray, J. (1984). *Hayek on Liberty*, Oxford: Basil Blackwell.
- Hayek, F. (1944). *The Road to Serfdom*, Chicago: University of Chicago Press.

- _____. (1960). *The Constitution of Liberty*, Chicago: University of Chicago Press.
- _____. (1973/1976/1979). *Law, Legislation, and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy*, vol. 1, *Rules and Order*, vol. 2, *The Mirage of Social justice*, vol. 3, *The Political Order of a Free People*, Chicago: University of Chicago Press.
- _____. (1988). Bartley, W., ed. *The Fatal Conceit: The Errors of Socialism*, Chicago: University of Chicago Press.
- Kukathas, C. (1989). *Hayek and Modern Liberalism*, Oxford: Oxford University Press.
- Locke, J. (1980). Macpherson, C., ed. *Second Treatise of Government*, Indianapolis, IN, Hackett Publishing Co. Originally published 1690.
- Mill, J. (1978). Rapaport, E., ed. *On Liberty*, Indianapolis, Hackett Publishing Co. Originally published 1859.
- _____. (1979). Sher, G., ed. *Utilitarianism*, Indianapolis: Hackett Publishing Co. Originally published 1861.
- Nozick, R. (1997). "On the Randian Argument," reprinted in Nozick, *Socratic Puzzles*, Cambridge, MA: Harvard University Press, 249-264. Originally published 1971.
- Rand, A. (1964). "The Objectivist Ethics," in Rand, A., with Branden, N., *The Virtue of Selfishness* (New York: New American Library).
- Schmidtz, D. (2012). "Friedrich Hayek," entry in *Stanford Encyclopedia of Philosophy*, <http://plato.stanford.edu/archives/entries/friedrichhayek/>
- Sidgwick, H. (1907). *The Methods of Ethics*, London: Macmillan. Originally published 1874.
- _____. (1974). *Anarchy, State, and Utopia*, New York: Basic Books.
- Simmons, A. (1992). *The Lockean Theory of Rights*, Princeton: Princeton University Press.
- _____. (1993). *On the Edge of Anarchy: Locke, Consent, and the Limits of Society*, Princeton: Princeton University Press.

FURTHER READING.

- Bader, M., and Meadowcroft, J. (2011). *The Cambridge Companion to Nozick's 'Anarchy, State, and Utopia'*, Cambridge: Cambridge University Press. (Recent essays on Nozick's writings.)
- Schmidtz, D., ed. (2002). *Robert Nozick*, Cambridge: Cambridge University Press. (A collection of essays on the philosophical writings of Robert Nozick including his political philosophy works.)
- Smith, A. (1981). *An Inquiry into the Nature and Causes of the Wealth of Nations*, Indianapolis: Liberty Fund. Originally published 1776. (Preeminent intellectual source for the 19th-century classical liberal tradition in political economy.)

Rawls, J. (1999). *A Theory of Justice*, rev. ed., Cambridge, Harvard University Press. First edition published 1971. (The most prominent and influential recent account of egalitarian social justice of the type Hayek repudiates).

Schmidtz, D. (2006). *The Elements of Justice*, Cambridge: Cambridge University Press. (A contemporary philosophical account of social justice defending elements of classical liberalism).

Wall, S., ed. (2015). *The Cambridge Companion to Liberalism*, Cambridge: Cambridge University Press. (Recent essays surveying and assessing aspects of contemporary liberal political philosophy).

Wertheimer, A. (1987). *Coercion*, Princeton: Princeton University Press. (Analytic account of the concept of coercion).