

LIBERALISM AND HUMAN FLOURISHING

ABSTRACT

Liberalism is not sufficiently concerned with, or is opposed to, securing the material conditions and taking the positive steps necessary for people and society to flourish. This inadequacy arises from questionable or mistaken assumptions, argument and emphasis. A more humane political philosophy is both required and achievable.

Liberalism espouses individual freedom, opportunity and religious tolerance. It requires the state not to oppress its citizens. There is much to applaud in this philosophy. But without adequate economic and social goods, freedom and opportunity have no substance. Without an active state, many remain imprisoned by their circumstances.

Firstly, the consequences of liberalism in action are examined. Liberalism emphasises individual freedom over social responsibility, is attached to private ownership, has faith in the efficacy of markets and distrusts the state. The effects, argued here, are concentrated wealth, leading to abuses of power and stagnating economies; wretched poverty for many, with lives bereft of opportunity and hope; and markets which malfunction, characterised by boom and bust, monopoly and environmental destruction.

Next, scrutiny falls on the key liberal ideas implicated in these adverse effects: rights, property, redistribution and the limited state. Robert Nozick espouses, with little foundation, a narrow set of absolute freedoms, which permit coercive exploitation and appalling conditions. John Rawls also emphasises liberties, but founded in a social contract. Yet, neither he nor Nozick adequately explain the absence of positive rights. Liberals attach extensive rights to private ownership, but fail to justify them, because accounts of legitimate property acquisition and transfer are unconvincing. Nozick's argument against redistribution and "patterned distributions" is fatally flawed. Rawls' specifications of equality of opportunity and the "difference principle" help the least well-off, yet are insufficient to prevent inequality increasing. Nozick's argument for a minimal state is defective. Liberals, generally, in wishing to limit the state's oppressive potential, fail to see its potential for good.

Finally, an alternative approach is sketched, which seeks to avoid these adverse consequences and philosophical flaws. This new political philosophy makes no claim to moral objectivity; rather it is based on a practical morality, which reflects the self-interest and altruism in our nature. The right and the good are interdependent. Rights and outcomes are ranked according to their contribution to human flourishing. The philosophy advocates an active state, financed largely by progressive taxation.

Liberalism favours the favoured. The new philosophy, by contrast, seeks a society in which all can flourish.

LIBERALISM AND HUMAN FLOURISHING

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No part of this dissertation has been submitted previously for a degree or other qualification at The Open University or any other university or institution.

The dissertation is entirely my own work, except for material, duly referenced, derived from sources listed in the bibliography. I wish to acknowledge the helpful guidance and encouragement given by my tutor, Dr P W.

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1. INTRODUCTION

1.1. Thesis

Liberalism is not sufficiently concerned with, or is opposed to, securing the material conditions and taking the positive steps necessary for people and society to flourish. This inadequacy arises from questionable or mistaken assumptions, argument and emphasis. A more humane political philosophy is both required and achievable.

1.2. Argument Outline

Any political philosophy concerned with maintaining a stable, well run society, whose members are to have a realistic possibility of reasonably fulfilled lives, should give serious attention to the material conditions of life. These involve not just physical necessities, but also education and other goods needed for persons to progress economically and socially. Beyond that, they cover the distribution of resources and proceeds in a society and the way economic activities are organised. This is not to argue that materialistic concerns are ultimately the most important, in the sense of being closest to our highest goals, but they are the most urgent. Without sufficient material goods and opportunity most members of society have little chance of formulating, let alone attaining, higher goals.

There are many ways of living well, but that is not to say there are no common features worth pursuing or no common pitfalls to be avoided. Active intervention is sometimes required to overcome the circumstances in which many people find themselves. The political philosophy, then, might endorse public involvement in people's lives, if that would enable them to flourish.

The most fully worked-out liberal theory, John Rawl's *Theory of Justice* (1999), is perhaps the most *persuasive* against my thesis, so it is worth examining its economic arguments closely as well as its fundamental principles. The libertarianism of Robert Nozick as expressed in *Anarchy, State, and Utopia* (1996) is the most *opposed* to the ideas behind the thesis, so that deserves special attention too. The most favourable arguments to my thesis are those of John Mackie (1977), James Sterba (2002), James Grunbaum (1987), the psychologist Derek Wright (1975), the economist Thomas Picketty (2014) and the sociologist Andrew Sayer (2016).

Overall, as the form of the thesis suggests, the supporting line of argument is three-pronged:

- i. it aims to show how adverse economic and social consequences flow from or are not prevented by liberal tenets;
- ii. it seeks to expose flaws in the derivation of these tenets;
- iii. it sketches a political philosophy that deals with the problems revealed in (i) and (ii).

The first prong, in chapter 2, examines liberal ideas and their possible adverse economic and social consequences. It draws on real-world empirical evidence to determine if these consequences have actually transpired. This is a quick overview rather than a detailed account, as the emphasis in the dissertation is on philosophy rather than economics. Following the references will provide interested readers with further information.

The second prong, in chapters 3 and 4, exposes inadequate foundations and flawed arguments in key areas of liberal philosophy. Critical attention is given to rights, property ownership, distributive justice and the role of the state. Chapter 3 contains the following arguments:

- a) Nozick follows Locke in ascribing rights to natural law, but does not provide further justification for the rights despite building his political philosophy upon them.
- b) Nozickean rights are absolute and inviolate, so, to avoid conflicts, counter-rights are arbitrarily excluded and coercion narrowly defined. This allows exploitation and terrible consequences.
- c) Rawlsian rights are rooted in a social contract, but it is arguable which rights would arise from that contract. Their priority over the good overlooks that minimal part of the good without which the rights cannot be exercised.
- d) Extensive property rights rest upon legitimate ownership. The libertarian account of legitimate property acquisition and transfer does not pass scrutiny. Other liberals are unquestioning in accepting conventions on property ownership.

From these, I conclude that rights should be well founded, not absolute, not exclusive of counter-rights and not followed without any regard to outcomes. The questionable priority of liberties over needs, leads to a case for positive rights. Failure to provide an adequate account of legitimate property ownership brings into question the exclusivity of property rights. These permit a radical rethink on inequality.

In chapter 4, the arguments are:

- a) Nozick's entitlement theory of justice not only rests upon shaky foundations of ownership and rights, but relies on a failed argument against patterned distributions.
- b) Although Rawls' difference principle ensures that the least advantaged benefit from any inequality, it does not prevent a widening of the gap between them and the most advantaged.
- c) Taxation is an important means to redistributive justice. Nozick's forced-labour argument fails. Rawls prefers proportional over progressive taxation, but this is inadequate and less fair.
- d) Nozick advocates a minimal state, but the account of its formation from anarchy reveals defects. The expanded state of Rawls and others is limited by undue concerns over oppression and interference, making it ineffective in dealing with (i).

From these, I conclude that patterned distributions may not be unjustified. Rawls' difference principle is not enough to tackle inequality. Taxation can be used to reduce inequality, without being oppressive. A more active state is both required and justifiable.

The third prong, in chapters 5 and 6, attempts to provide better foundations upon which a political philosophy can be constructed, paying due regard to the conditions needed for individual and social well-being. In chapter 5, the arguments proceed as follows:

- a) A political morality is better founded, without any claim to moral objectivity, on a practical, personal morality that reflects our egoistic and self-referentially altruistic

nature. In translating to a consensual political philosophy, a general, impartial benevolence remains.

- b) Deontological and teleological approaches are interdependent. A political philosophy should use both approaches. The blurred distinction between the right and the good suggests a nuanced approach to conflict resolution.
- c) What constitutes human flourishing is found by asking what is most urgent to our existence. If flourishing matters most to us personally, then it must have primacy in our political philosophy. High-priority positive rights secure the material conditions for living.
- d) From (b) (and (a)), the right, should not have automatic priority over the good, rather, from (c) (and (a)), conflicting claims should be ranked according to what best serves human flourishing.
- e) Rights over larger holdings become incrementally weaker, so either non-owners should have more property rights or more property becomes communally owned. This has correspondences with autonomous ownership, but here human flourishing is the basis.

Thus, from a practical morality reflecting our nature, a political morality is constructed, featuring a significant, impartial benevolence. This sets the level at which the philosophy can achieve human flourishing. The right and the good are interdependent, so rights and outcomes are ranked together. Greater communal rights over property are required.

In chapter 6, guidelines for implementing the philosophy are sketched:

- a) Taxation is the principal source of funding for the state. To be fair, tax should be progressive and simple and tax liability should arise where wealth is generated.
- b) An active public sector is essential for people and society to flourish. It should be involved in reducing inequality and intervening in markets. The public realm promotes good life choices, which people are free to ignore.
- c) An egalitarian deliberative democracy, at various levels, provides the endorsement needed for public activity, the law and rights.

The intention is to demonstrate that the philosophy is achievable. Non-oppressive taxation, sufficient to fund an active state, is feasible. The public sector is engaged in producing an economic and social environment in which people can flourish.

Much ground is covered in the dissertation, too much to provide a fully developed account. Rather than a single argument, it is a series of arguments unified in support of the thesis. Together, they are intended to show that liberalism has serious defects in both consequences and theory and that a better way is both needed and possible.

2. LIBERAL IDEAS AND THEIR CONSEQUENCES

2.1. Liberalism is implicated

There are many versions of liberalism or "liberal theories" as Nelson terms them (2002: 197), which range from socialist-flavoured liberalism to libertarianism. Indeed, as Nelson points out, there is a dispute as to what liberalism actually is, and some would exclude one end of the range or the other. What all liberal versions share is a focus on the individual and a concern to protect individual freedoms; an insistence on legal and political equality for all; a tolerance of different beliefs and values, so that individuals are left free to pursue their own conceptions of the good; an awareness of the oppressive potential of a too powerful state, leading to a wish to limit its activities to only those deemed necessary; a belief in the efficacy of markets; and, with the exception of libertarianism and versions near it, a concern to protect a basic level of economic welfare. The theories tend to be more deontological than teleological in character, because rights are prominent.

Liberalism emphasises the individual over society and freedom over need and obligation. Individuals are seen as acting primarily out of self-interest, rather than altruism. It defends the exclusive rights attached to private property ownership. Liberalism has faith in the efficacy of markets and distrusts state intervention. The effects are staggering inequality, power imbalances, corruption, exploitation, inadequate welfare, starvation, disease, economies characterised by boom and bust, monopoly and environmental destruction.

Even liberals concerned about inequality, are reluctant to go too far in tackling it. Suspicious of the state and its oppressive potential, many liberals are unwilling for the state to be active in pursuit of social justice or humanitarian ends, beyond (at most) a basic level of welfare. They worry that taxation might be oppressive: even Rawls prefers proportional to progressive taxation (1999: 246). Rawls, though, seeks genuine fairness of opportunity and, via the difference principle, assurance that the least well off benefit from extra income received by the more advantaged. This is in the right direction, but is not effective enough.

Other liberals towards the libertarian end of the spectrum may see poverty as unfortunate, but not as something which imposes an obligation on individuals or society. Libertarians like Nozick assert that legitimate private ownership confers an inviolable entitlement. People are free to use their property as they wish, so it would be a denial of individual freedom to force them to pay for the welfare of others less fortunate than themselves. Nozick contends that only a state, with minimal duties to protect individual rights, enforce contracts and defend the country, can be justified.

Liberal faith in market capitalism, where private enterprise is (almost) always preferred over its public counterpart, partly reflects a belief in its efficacy. In pursuing profit, private individuals and businesses are seen as more focussed and less bureaucratic than their public sector equivalents. Ultimately, perhaps, that faith derives from the idea that private economic activity is an expression of individual freedom. So the state should be limited with respect to the market, maintaining the requisite legal framework, with neither tax nor regulation overly burdensome.

Libertarians want markets to be as free as possible. The argument is that as the market automatically adapts to changes in supply and demand, almost any intervention by the state would reduce its efficiency, as well as violating the freedom of participants to conduct their business as they wish. Yet most libertarians recognise that a state, albeit minimal, is necessary to the proper functioning of markets: for enforcing contracts, protecting property-ownership and recording patents.

Such precepts help explain the consequences below.

2.2. *Extreme Inequality*

Does it matter that "The richest 80 people in the world own as much as the poorest half of the world's population, all 3.5 billion of them" (Sayer, 2016: 7, quoting Oxfam) or that "Sixty-nine percent of Britain is owned by 0.6 percent of the population" (Large, 2010: 187)? *Prima facie*, the answer is "yes".

Poverty shortens lives because of inadequate food, shelter, sanitation, disease prevention, health care and education. Those who survive beyond infancy are blighted by lack of education and opportunity, their potential unrealised. They are also prey to oppression from the unscrupulous. Sinclair (1986) gives a horrific account of the exploitation of immigrants in the Chicago stockyards of the early 1900s. Tressel (2005) relates the experience and abuses of casual working in Edwardian England. Poverty gives rise to conflict and mass migration, with their attendant horrors.

Great wealth brings power to usurp the democratic will through control of the media, lobbying and buying political influence, determining policy in favour of their elite; also to usurp justice by manipulating the law. Marx writes of the changes to legislation in England to expropriate common land through enclosure and eviction of agricultural workers. As more people were thrown off the land throughout Europe to become the urban destitute, they were perceived as a threat to social order, particularly to property owners. Braudel (1983: 516-9) tells of the summary justice meted out to thieves and troublemakers. New ideas on political economy led to harsher treatment of those seeking help. Waller's account (2006) of the suffering of workhouse children forced to work in cotton factories amplifies Marx's description. Concentrated wealth reduces economic efficiency: rentiers extract wealth that could finance innovation; only so much can be consumed, leaving huge surpluses hidden in tax havens.

The unequal distribution of natural talents contributes to inequality and it would be a denial of self-fulfilment and a waste for society if people were prevented from making use of their abilities. Periodic deprivation accompanies natural disasters and conflict. But extreme inequality in the long-term is not inevitable, because it arises principally from social and economic arrangements: in the concentrated ownership of land and means of production, in the operation of markets and in the effect of supporting institutions.

The application of libertarian-inspired policy from the beginning of the 1980s was accompanied by an explosive growth in inequality.

2.3. Malfunctioning Markets

Markets work well where there are low barriers to entry and good information is available to producers and consumers alike. Here, there can be a high level of competition between producers. As more enter the market, prices fall, but so do profits. Low prices should attract more consumers, giving rise to a greater volume of sales, but if profits are too low, producers will leave the market, reducing the supply, so prices will rise and the number of consumers will fall. Thus, supply and demand automatically adjust: Adam Smith's "invisible hand" in action. This responsiveness to consumer demand, supplying the right amounts, is better than central planning could achieve.

Yet, free markets have problems such as: a tendency to monopoly and, by squeezing out smaller businesses, stifling of competition; unpredictable cycles of boom and bust, which hurt smaller players most; and without adequate regulation, fraud and corruption. Marx enumerates nearly thirty periods of boom and bust from 1770 to mid-1800s. Nor is the market good with coordinating very large scale (public) infrastructure projects, especially if low profits are expected, for example in: building social housing, building and maintaining roads; building and running prisons, schools and hospitals (health care in the US is very expensive for what is provided); providing energy and water supplies, maintaining drains, treating sewage and preventing floods. Hostile takeovers, asset stripping, short-termism, demands for continual growth, damage to the environment cannot be prevented without intervention. There is a limit to the invisible hand.

A dogmatic preference for private "enterprise" has resulted across Europe in successive privatisations of state functions. Public assets, paid out of taxation, have been sold to the private sector at knock-down prices. In the UK, the Private Finance Initiative represents a massive transfer of public funds to the private sector (see Picketty (2014), Sayer (2016) and Large (2010)).

The 2007-8 crash was due in part to financial deregulation. Banks and mortgage lenders were free to engage in high-risk activity, securitising debt into bundles that were sold on, divided up, re-bundled and resold many times, so that their nature and risk became almost unknowable. Restrictions, in place since the 1930s, preventing banks from carrying out both investment and commercial activities were lifted in the 1980s by governments anxious to reduce regulation, so there was nothing to stop the collapse in investment operations spreading to the retail and commercial side, with potentially disastrous consequences for just about every person and business in the countries affected. The financial institutions had become too big to fail. Although state support prevented a 1930s-style depression, it was at enormous cost. To rescue the banks, governments lent to them at very low interest rates, which the banks used to lend back at higher interest by buying government bonds, "a massive transfer of debts from the private to the public sector" (Sayer, 2016: 230). The creation of money through "quantitative easing", was intended to enable bank lending to the wider economy, but has instead fuelled asset inflation on the stock market and in the private housing sector. It should have been invested directly in public assets, infrastructure such as

railways, hospitals and schools, or even public commercial banks, but that would have contravened the prevailing philosophy in favour of the private over the public.

Even if bailing out banks would meet with libertarian disapproval, the same would not be said for the aftermath. The consequent, huge increase in UK public debt could have been offset by profits, generated as recovery gathered momentum, from large government shareholdings in the rescued banks. However, most of the shareholdings were divested too soon, not least through discomfort at the continued involvement of the state in commerce. The debt could have been offset by increased taxes, but instead tax rates were reduced. The approach actually followed, very much according to libertarian thinking, was to shrink the state by reducing public spending on welfare, health, infrastructure and education. Regulations on employers were eased, allowing “flexible working practices” to gain ground, resulting in greater insecurity and lower real wages for employees. Such austerity measures have been highly regressive, impacting those on low and middle incomes while benefiting wealthy rentiers. The result is the burden for the financial crisis has fallen on those who did not cause it (Sayer, 2016: 16-7, 235-6).

The effects in the UK are a failure of the private sector to build enough affordable housing, increases in private rents, an increase in low-paid and casual employment, the necessity for food banks, the withdrawal of bus services (limiting job opportunities), higher transport fares and utility charges, the closing of Surestart centres and libraries, higher education made unaffordable, vocational training reduced, lack of social mobility, reduction in policing and increases in violent crime.

3. RIGHTS AND PROPERTY UNDER LIBERALISM

3.1. Nozickean Rights

Nozick articulates a libertarian position on rights. Following Locke, he asserts that people are free to act and to use their possessions as they will, subject to the law of nature, which requires that no-one should harm another in his person, liberty or possessions. People may defend themselves against others who invade their rights, seek compensation from them and punish them in proportion to the offence (1996: 10). Natural law "is sometimes described as the view that there is an unchanging normative order that is part of the natural world" (Buckle, 1993: 162), but neither he nor Locke justify why these and only these rights are contained within it. Nozick freely admits this.

The completely accurate statement of the moral background, including the precise statement of the moral theory and its underlying basis, [...] is a task for another time. [...] That task is so crucial, the gap left without its accomplishment so yawning, that it is only a minor comfort to note that we here are following the respectable tradition of Locke, who does not provide anything remotely resembling a satisfactory explanation of the status and basis of the law of nature in his *Second Treatise* (1996: 9).

Locke, at least, does provide some religious grounds, even if we would not grant them today. As Russell says

The view of the states of nature and of natural law which Locke accepted from his predecessors cannot be freed from its theological basis; where it survives without this in modern liberalism, it is destitute of clear logical foundations (1991: 602).

Nozick's omission is remarkable, since so much of his political philosophy rests upon this ethical foundation.

Nozick's rights operate as side-constraints upon actions rather than ends in themselves, restricting the means available or even prohibiting the entire action. They "reflect the underlying Kantian principle that individuals are ends and not merely means" (1996: 30-1). Does this require the seller of a good to consent to its planned use by the buyer, or at least not object? Nozick thinks that is too stringent. It is sufficient that the seller, despite objections to the planned use, gains enough to be willing to trade; such an exchange, being voluntary, would satisfy the Kantian principle. Genuine willingness, though, cannot be obtained through deceit or deliberate withholding of information. As another example, should personal rights be infringed as a means to a greater social good? Although individually we may choose to undergo some sacrifice for our own good, Nozick says no social entity can do this, as it is just a collection of separate individuals with different viewpoints. Talking in collective terms obscures that. It does not respect persons if they are *forced* to bear a cost so that others may benefit.

Despite characterising social entities as simply collections of individuals, Nozick finds methodological individualism problematic, since it denies the existence of basic social filtering processes that might occur in *invisible-hand* explanations (1996: 22). He perceives

an explanatory deficit in that approach, yet does not see an ontological deficit in his own view. Of course, social entities are made up of individuals of different viewpoints, but the individuals have something in common that binds them together. It might be a common interest, status, belief or cause. Such entities are distinct from their members; they continue to exist as people leave and new ones join. Entities have a separate dynamic and capability, operating collectively in ways that no individual could. Above all they have an *organisation*. If all this were not so, there would be no need for sociology or political philosophy. Accordingly, we should not discount collective decisions about the social good.

Nozick says political philosophy is concerned only with *certain* ways that people may not use others, especially ways involving physical aggression. This prohibits not only physical violence but also its threat, which may include certain state actions that are ultimately backed up by force. He builds into rights the requirements to avoid causing harm in these regards and to respect the same rights of others. Nozick considers side-constraints express the inviolability of other people in the sense of *not* using them in specified ways. Without side-constraints, viewing persons as ends and not merely means would only require *minimising* the use of persons in certain ways as means. Nozick argues that applying side-constraints better reflects Kant's formulation on treating persons "never simply as a means, but always at the same time as an end" (1996: 32). Nozick infers too much: while always treating persons as ends *does* imply enough respect to curb certain ways in which they can be used as means, curbing might amount to prohibition in some cases, but in others, minimisation might be sufficient.

Nozick seems to equate being coercive with physical aggression; but this is too narrow. Rightly, he says that the voluntariness of a person's actions depends on what limits them (1996: 262). One can accept that actions constrained by "facts of nature" are still voluntary, but does this also apply, as he suggests, to actions constrained by the activity of other people acting within their rights? He gives two examples (1996: 263-4). In one, people agree on the ranking of potential marriage partners according to desirability. Higher ranking individuals are able to choose higher ranking partners. Thus, people acting within their rights have left the least favoured with little choice, but that does not mean it is an involuntary one. In the other example, there is an analogous situation between the owners of capital and workers. The (presumably least favoured) worker must choose between accepting the conditions of the (presumably least desired) owner and starving. Is not this choice also voluntary? I say "no", because the two examples are not equivalent. While not finding the marriage partner you want is bad enough, starving to death is a starker prospect, particularly where it involves not just yourself but also your family. But there is another difference: the nature of the choice facing the least favoured marriage partners arises from the reasonable actions of others, whereas the choice of the last worker depends not just on the prior choices of others but also the extent to which the last owner takes advantage of the situation. The relative undesirability of the least favoured marriage partners stems from personal attributes over which they probably have no control; if either gains any advantage from the situation, it is not of their making. By contrast, the last owner would be well aware of the conditions potential employees face and so could gain extra profit by offering the worker very poor terms, with reasonable certainty of acceptance. By so acting, the owner

would be within his (Nozickean) rights. Yet, it is not far from offering the worker a choice at gun-point: the owner does not aim the gun, he consciously lets the legal, social and economic conditions do that for him. Thus, Nozick's restrictive interpretation of coercion allows exploitation; it is inconsistent with his position on the inviolability of the person, as it allows someone to be used primarily as a means. Tressell, in his fictional account of working life in Edwardian England, gives a damning verdict on the sort of liberty that Nozick advocates.

At the same time it must be admitted that the workman scores over both the horse and the slave, inasmuch as he enjoys the priceless blessing of Freedom. If he does not like the hirer's conditions he need not accept them. He can refuse to work, and he can go and starve. [...] He enjoys perfect Liberty. He has the right to choose freely which he will do. Submit or Starve. Eat dirt or eat nothing. (2005: 257)

As rights are absolute, they must not conflict, for then upholding one person's rights could infringe the rights of other persons. Nozick avoids conflicts not only by circumscribing rights with a requirement of mutual respect, but also by denying the existence of counter-rights. The latter is not only contrived but potentially inhumane in its consequences: for example, by denying the existence of a right to sustenance, it frees wealthy individuals from any obligation to help the destitute. There is a *prima facie* case for other rights besides those Nozick espouses. Rights can be classified in different ways; Mackie distinguishes between liberties and claim-rights (1977: 173). A liberty is usually paired with a claim-right on others not to interfere with the liberty. It is because of the requirement on others *not* to interfere, that liberties are classed as negative rights. Plausibly, there can be positive rights too, which require others to *do* something for their holder. Examples of such rights might be those of a child to be looked after by parents or guardians, and those of citizens to a minimum standard of welfare or education. Positive rights can clash with negative ones, but it is question-begging to reject them on this account, because one could reject negative rights in favour of positive rights by the same argument. It is also possible for rights of either sort to clash with others of the same sort. If such conflicts occur, rights are properly infringed in deciding between them.

James Sterba (2002: 183-6) argues for positive rights. To be rational, an argument must not be question-begging. First, he argues for a conception of the good that includes altruism as well as egoism, since a conception that included one but not the other, without good grounds, would be question-begging. Assuming this argument holds, the next step is to argue that the conception of the good must include positive rights as well as negative ones. Consider a typical conflict situation where the rich have more than enough to satisfy their basic needs, whereas the poor do not, despite having tried every available legitimate means. Libertarians might concede that although commendable if the rich gave some of their surplus wealth to help the poor, they are under no obligation to provide assistance. The rich are free to spend their surplus on luxuries or to hoard it. Their liberty has priority over the needs of others, because the liberty of those others is not at stake. But, Sterba argues, the liberty of the poor *is* at stake: it is the liberty to take from the surplus possessions of the rich just enough to satisfy basic needs. In this conflict of liberties, choosing one will deny the other. To decide which is morally preferable according to the conception of the good,

Sterba applies the "ought implies can" principle. By this principle, persons are not morally required to do what they lack the power to do or what would be unreasonable to do. Here, it is more unreasonable to require the poor to give up their liberty than for the rich to give up theirs, because the poor would suffer more. As the conception of the good includes altruism as well as self-interest, the conflict resolves in favour of the poor. This establishes a "negative welfare right" for the poor to take what they need. Once libertarians accept this, they might prefer a positive welfare right in its place, because a legal requirement to contribute would be less intrusive than submission to the discretion of individuals taking what they need directly.

Libertarians may object that Sterba's argument relies on a liberty which the poor do not possess. They are not entitled to take from surplus goods they do not own. But this begs the question why people cannot have rights and entitlement based on need as well as ownership.

Nozickean rights are absolute, based on natural law, yet that basis is insufficiently justified. Their inviolability as side-constraints ignores need. Limiting coercion to physical aggression allows exploitation, contravening Kantian respect. That and denying counter-rights artificially reduce conflicts between rights, allowing bad consequences. It is question-begging to deny positive rights. Can Rawls do better?

3.2. Rawlsian Rights

Amongst the basic liberties defined and protected by his first principle of justice, Rawls identifies the following as important (1999: 53): political liberty (the right to vote and hold public office), freedom of speech and assembly, liberty of conscience and freedom of thought, freedom of the person (includes freedom from psychological oppression as well as from physical assault), freedom from arbitrary arrest and seizure and the right to hold *personal* property (but liberty to own other types of property, such as means of production, is not basic (1999: 54)). Most reasonable people, with widely varying outlooks, would agree that these liberties are important, subject perhaps to a clearer specification of personal property. The contentious point, though, is their *pre-eminence*.

Rawls, recognising that people's rights may conflict, allows that the liberties in the first principle are not absolute. However, he insists they cannot be overridden in order to meet the requirements of the second principle. Hence, *in relation to* the second principle, they are absolute. He asserts that "infringements of basic equal liberties protected by the first principle cannot be justified or compensated by greater social and economic advantages" (1999: 54). The members of a well-ordered society see themselves as free and equal moral persons, who have fundamental interests which justify their making claims on others. They have a sense of justice, which normally regulates their conduct towards each other, and they expect equal respect in determining the principles governing society. The liberties covered by the first principle of justice are accorded priority by Rawls because they protect this status, as well as giving persons the freedom to revise their ultimate goals (1999: 475). Yet his subordination of the second principle is questionable, because that principle is not about *any* social or economic advantage. Rather, it is concerned with genuine equality of

opportunity to all positions in society and an economic distribution which wins the consent of even the worst-off. Without sufficient social and economic well-being, to which the second principle contributes significantly, the liberties in the first principle are more formal than substantive, failing by themselves to ensure equality of respect, protection of fundamental interests and ability to determine ultimate goals. Rawls later states that persons will not trade liberty for economic advantage if they know “their basic liberties can be effectively exercised” (1999: 474-5), but the *effectiveness* of exercising liberty depends crucially on social and economic goods which the second principle partly secures. Why then is the second principle subordinate or, at the very least, those parts of it indispensable to genuine liberty?

Alternatively, if Rawls wishes to maintain the priority of the first principle in order to highlight and group together the most important concerns of the state, he could transfer into that principle those indispensable parts of the second principle, in the form of rights. For example, opportunity can be partially translated into: the right not to be discriminated against upon grounds other than ability to fulfil the role, the positive right to an adequate education and the positive right to sufficient material resources to meet basic needs and take advantage of openings. Most non-libertarian liberals want the state to ensure opportunity exists and to provide at least a basic level of welfare. These might be expressed as aspirations, directives or principles, or they might be formulated more strongly as positive rights. The liberal state is not neutral in espousing and enforcing certain freedoms and in showing tolerance. Embracing, rather than rejecting this limited non-neutrality, one might ask why Rawls does not include positive rights in the first principle, at a minimum those required for making liberties truly effective. If enough positive rights were included, there would be greater reason to accord the first principle priority over what remained of the second and the demarcation between the right and the good would seem less arbitrary.

In formulating the two principles of justice, the deliberations of the representatives in the original position rely upon certain assumptions about what is good. A rudimentary, or “thin” (1999: 348), theory of the good is needed to account for these assumptions and establish a list of primary goods, of which Rawls says

Rational individuals, whatever else they want, desire certain things as prerequisites for carrying out their plans of life. Other things being equal, they prefer a wider to a narrower liberty and opportunity, and a greater rather than a smaller share of wealth and income (1999: 348).

The primary goods include liberties, rights, opportunities, income and wealth, but also self-respect, a sense of self-worth. By all these, well-being and expectations are measured. Some of the primary goods, liberties and other rights, form the content of the first principle, while others are found in the second. Rawls acknowledges the difficulty of constructing an index of primary goods, which specifies what distribution of them can be reasonably expected by persons, but the task is simplified by the ordering of the principles of justice. Rawls says “The basic liberties are equal, and there is fair equality of opportunity; one does not need to balance these liberties and rights against other values” (1999: 80). On the other hand, the primary goods of income, wealth and prerogatives of authority vary in their

distribution. It would seem on this basis that opportunity should be part of the first principle, but perhaps one reason for the omission is because *equality* of opportunity, or even a fair approximation, is not easily achieved. Opportunity is affected by distribution of wealth and power as well as family upbringing. The rights Rawls does identify, on the other hand, can be readily granted equally to all, at least in a legal sense. This may be why he sees opportunity more as a matter of social and economic advantage than as a right. However, as discussed, making liberties substantive requires the provision of goods whose distribution may be currently far from equal. So the problems of ensuring fair equality of opportunity and genuine equality of liberties are related, since both require empowering portions of social and economic goods, shared with approximate equality between persons. The argument here is not for an equal distribution of the totality of income, wealth and power, which would be infeasible, but rather that everyone has a minimally sufficient portion of that totality. Rawls understands this, acknowledging that satisfaction of the two principles of justice depends in part on the level of such a social minimum (1999: 251), but he sees this more as a matter of distribution covered by the second principle (see 4.2). My point is that possession of a minimum portion of social and economic goods, as applying equally to everyone and vital to effective equality of liberties and opportunity, should be expressed as a set of positive rights enshrined within the first principle.

The central tenet of the thin theory of the good is "a person's good is determined by what is for him the most rational long-term plan of life given reasonably favorable circumstances" (1999: 79). But we cannot always be sure of favourable circumstances, so goods, that help us overcome adversities inimical to our life plans, should be included by the thin theory in the list of primary goods. Further, one would expect the parties in the original position, deliberating rationally, to order the primary goods prudentially: not so much on ultimate relevance to life plans, but more on what is most urgent to them. Whilst a range of goods are necessary to formulating, revising, moving towards and living a rational plan of life, at each stage some must be obtained or secured before being able to use other goods in subsequent stages. The first need is to stay alive, free from harm and as well as possible. For this, implementation of Rawls' freedom of the person and freedom from arbitrary arrest protects against physical and psychological attack and unjustified imprisonment. Adequate food, shelter and clothing are also necessary, since without them a person will weaken, become ill, starve, be exposed to the weather, be vulnerable to physical assault and eventually die. Lastly, access to health provision is essential, in the form of public health measures and personal health care, to protect against and mitigate the effects of disease, illness and injury. Part of a minimum level of income is needed to pay for any of the material necessities that are not provided free by the state. The second need is develop one's economic potential, to be able to take advantage of opportunities and to live beyond mere survival. Education is crucial to this development. Rights relating to *personal* property are probably appropriate here too. The remainder of the minimum level of income is to cover the many other items *necessary* in an advanced society, without which opportunities cannot be realised. The third need is to develop as a person, to be able to decide and act upon life plans. Again, education is crucial to appreciating life-affirming possibilities. Freedoms of thought and, to a lesser extent, of conscience are required at this stage. Political freedom

and freedom of expression appear next. This sketch of the highest priority primary goods is only provisional, as there are other candidates such as affordable public transport, but it is enough to show that minimum allocations of certain goods, in the form of positive rights, rank higher than most liberties.

In considering Rawls' list of primary goods and their ordering on the basis of urgency of need, I added health and education. To underline their importance to rational life plans, I now examine these two in more detail. Rawls is aware that there are such candidates for inclusion on the list, but he says

Other primary goods such as health and vigor, intelligence and imagination, are natural goods; although their possession is influenced by the basic structure, they are not so directly under its control (1999: 54).

While it may be that such natural goods are not so directly or completely under the control of the basic structure as other primary goods, some of them might be significantly improved by it nonetheless. Without public health provision and access to personal health care, life for most people would likely be short and impaired. The state is uniquely placed to institute a system of public health, to provide access to clean water and adequate sanitation for all, to provide immunisation programmes, to inspect food sold to the public and the premises where it is prepared and to enforce action where necessary. As indicated in 2.3, the market is poor at *creating* the large-scale infrastructure needed, such as interconnecting drains, water mains, reservoirs, water filtration plants and sewage treatment works. Only a state or state-like body can organise the measures needed to prevent and control epidemics, to establish minimum standards and be impartial in their application and to have the authority and legitimacy for enforcement (see also 4.4). The state can provide health care for those who cannot afford to pay for it in full or who are unable to obtain insurance cover. Insufficient access to health care blights and shortens lives, with serious consequences for families and businesses, and increases the risk of contagion.

In the preceding discussion on the priority given to fair equality of opportunity, education was mentioned as a key component. The better one's education, the greater the number and quality of opportunities available and the more likely one can take full advantage of them. But education is not just a matter of improving the chances of securing a better position in society, with a commensurate increase in income and prestige. It also enhances the contribution a person can make to society, both economically and socially. A deliberative and participatory democracy is only feasible if the electorate have a good standard of education and are well informed; if the democracy is to be egalitarian as well, the state must attempt to educate everyone to at least that level. A good education opens up possibilities in forming life plans, by increasing understanding of the world and the human condition. Such indeed are the social and personal benefits, that education should be included explicitly as a right for all. Since private education is affordable by only a few, the state must not only set and enforce standards, but be the major provider too. It may not be possible to increase a person's intelligence, but education allows its potential to be realised.

Including positive rights in the first principle will engender greater conflict. This might seem a threat to those liberties which Rawls is at pains to protect. But liberties should be infringed where they deny a minimum level of material well-being to others, for in so doing they deny the liberties of those others. The non-neutrality of Rawlsian liberalism, in espousing a partial conception of the good, may interfere with living according to some conceptions, for example religious fundamentalist ones, but overall is very supportive of individual pursuit of the good life. Adding rights to education, health care and a basic level of welfare makes that pursuit more possible. If we recognise that liberties are mutual *and* require them to be substantive, so that, in defending my liberties, I must not harm the *effective* pursuit of yours, then far from threatening the liberties, positive rights help secure them.

In Rawls' theory of justice, rights as well as distributive precepts stem from the social contract made by the representative citizens in the original position. While that gives the rights chosen considerable force, there are two problems. As discussed with reference to the list of primary goods, there is the question of why is it just those basic liberties which are to have special status but not other rights. The other question relates to their ongoing validity, for they are presented as permanent. Since fundamental social attitudes do change, albeit gradually, and the rights have their basis in a social contract, the rights should be reviewed periodically, for example in a constitutional assembly. Only a continuing democratic mandate, with suitable safeguards, lends credence to contractual foundations. A unanimous decision is improbable, dissent and apathy are likely, but however imperfect the consent so obtained, it is better than one that is merely assumed.

Rawls, in valuing basic freedoms, undervalues basic needs. He omits positive rights that guarantee minimum portions of socio-economic goods, necessary for making liberties substantive and fulfilling our most urgent needs. If the first principle is to have priority, it must include these rights as well as liberties. Primary goods should include health and education and be ordered according to urgency. Contractual underpinning of rights should be renewed periodically. Thus adapted, Rawlsian ideas contribute towards my new philosophy (see 5.3 and 6.2).

3.3. Property

As Tony Honoré (2003: 5.4:1-9) explains, ownership of property is complex. He identifies the standard legal incidents, a mix of rights, duties and other features, which are necessary to the *liberal* concept of ownership in the sense that all are part of the concept and can be united in any one person. But, importantly

the listed incidents, though they may be together sufficient, are not individually necessary conditions for the person of inherence to be designated owner of a particular thing (2003: 5.4:2).

So, contrary to some expressions of the libertarian viewpoint, it is possible to qualify for ownership without all incidents present. This is important, especially with respect to the right to income, as will be discussed. Honoré's incidents include the rights to possess, use

and manage, the right to income and to the capital, the right to security, the incident of transmissibility and the duty to prevent harm. The right to possess is the right to have exclusive physical control. However, there are limits. While uninvited people can be generally excluded from land by the owner, some officials cannot. The right to income is to income generated from the property. This may be rent, interest or the "fruits" of agriculture, manufacture or commerce. The first two, especially, might be seen as compensation for foregoing personal use. The right to capital comprises rights to alienate, consume, waste and even destroy. Of these, the right to alienate is the most economically important and includes not just exchange for value but also bequests. The latter is related to transmissibility, which governs the duration and manner of passing on property; clearly a property that can be bequeathed is more valuable than a similar one that cannot. The right to security is a protection against general expropriation. The duty to prevent harm limits what may be done with or to a property; essentially protecting the rights of those who *do not own* it but nonetheless have an interest.

For libertarians, these extensive rights occupy centre stage and all are exclusive to the owner. "Without property rights, no other rights are possible" (Rand, 1969: 382). Liberals generally value private ownership as a means to greater individual autonomy. Rand continues

Bear in mind that the right to property is a right to action, like all the others: it is not a right to *an object*, but to the action and consequences of producing or earning that object. It is not a guarantee that a man *will* earn any property, but only a guarantee that he *will own it if he earns it* (1969: 382).

We may accept there is no guarantee of earning property, whatever constitutes this sense of "earning", but dispute the idea that property rights vest exclusively in the "owner". Now libertarians, accepting Rand's view on the right to property, might say that whether a person has ownership benefits or not is entirely up to their own efforts to earn them. But property in all its forms is relatively scarce and not very extensible, so, in the absence of equal shares, many people, perhaps the majority, will acquire little or none no matter how they strive. Despite the central place they give to ownership rights in our existence, libertarians are content that many people cannot enjoy them.

But this is jumping ahead. If property rights are to be justified as *ownership* rights then property ownership itself must be justified. How might property be owned? Philosophers, like Locke and Nozick, say it is through initial acquisition of previously unowned resources, followed usually by transfers of ownership, but both initial acquisition and subsequent transfers must meet certain conditions to be legitimate. James Grunebaum (1987: 53-6) outlines Locke's deontological argument for initial acquisition. All men are equal in a state of nature, largely respecting natural law, and each owns his own person. Thus each individual owns his own labour, because otherwise he would be subordinate to another. Locke asserts that if a person mixes his labour with unowned resources, given by God to all in common, such as land or mineral ores, then the product becomes that person's property. In arguing for this step, Locke makes acquisition of the resource subject to the proviso that only "where there is enough and as good left in common for others" (Mackie, 1977: 175).

Any ownership claim by another over what a person labours to appropriate must involve some claim to superior rights, since the proviso undermines any justification based on utility or need. But, assuming Locke's premise on equality under a state of nature, no such claim can be made. Hence, a person, who mixes his labour with an unowned resource, is the rightful owner, subject to the proviso. But we could object that Locke's argument, as presented by Grunebaum, only establishes at most that the labour part of the property belongs to the appropriator. As Mackie says (1977: 175), we might agree that the labour part is exclusively his, but maintain that the resource part remains common to all. Arguably, the proviso anticipates this objection. If unowned resources of similar quality are not effectively reduced, the value of the resource component would be zero.

However, the proviso could not be satisfied anywhere in Locke's time, still less now. It may have seemed to Locke as if North America was such a place, but each act of appropriation displaced the native population and forced later settlers to travel further in search of similar plots. Locke holds that property initially acquired as he prescribes can be transferred to others legitimately by bequest, gift or exchange for value. Even if there was a time when the proviso could be satisfied, the claim to perpetual ownership must lapse as resources became scarce, because "on Locke's principles, God must be presumed to give the whole earth *at any time* in common to all the men there *at that time*" (Mackie, 1977: 176). It might be countered that Locke's state of nature should not be interpreted historically. But, in that case, it must serve a purpose relevant to the situations covered by the argument; just as Rawls' fiction of representatives operating under a veil of ignorance in the original position establishes the idea of justice as fairness. The proviso has no such relevance in understanding property ownership, because resources have been relatively scarce and subject to competition throughout history. Inheritance is another problem: if A is the rightful owner of some property, his rights surely lapse on death, so cannot be passed legitimately to B. There may be a case for inheritance, but no absolute right follows from the labour theory of property rights (*ibid*: 177). Abandoning Locke's theory, we might retreat to the position that a person only owns the part that is his labour, but in vain. A person's labour may include techniques and knowledge obtained from many others and a manufactured item usually involves multiple workers. Further, the market value of a product may vary and not reflect value in terms of effort expended (*ibid*: 176-7).

Nozick (1996: 174-82) adopts a similar position on initial acquisition and transfer of property, but acknowledges scarcity of resources and abandons Locke's theological premises. He suggests the idea of property acquisition, through mixing your labour with an unowned resource, derives from the effort involved and the value added. But more is needed. Nozick reinterprets Locke's proviso as stipulating that the situation of others is not worsened by the act of appropriation. If this modified proviso is satisfied, a right to bequeath arises. The proviso is weaker than Locke's, because it does not treat a more limited opportunity to appropriate as worsening. In justifying this weaker hurdle, Nozick questions whether the position of persons, who are unable to appropriate, is generally worsened. Ownership of land and means of production will tend towards those with entrepreneurial skills and willing to take risks, thereby increasing the social product. This product is compared with a suitable baseline position to determine if worsening has taken

place. The baseline might be, for example, the rental income of unimproved land or income from unimproved mineral resources. Nozick says legitimate transfers of property must meet more complex requirements to handle cases where individual transfers may not violate the proviso, but taken together they do. Legitimate ownership carries with it a history of previous transfers and initial acquisition. If any part of that violates the proviso, then the current owner does not have full property rights.

The problem with Nozick's justification is that he seems to assume everyone benefits from an increase in the social product, but this is far from guaranteed and not borne out historically. By leaving the baseline very low and vague, Nozick conveniently reduces the number of worse situations. Should not worsening be in relation to opportunities missed as a result of appropriation rather than a baseline prior and unrelated to that act? Another person, of greater skill and benevolence, might have improved and shared out more from the appropriation. Elsewhere, Nozick uses compensation as a way of preventing injustice. Are persons, who miss the opportunity to appropriate land by mixing their labour with it, but who agree to work on that land for wages, sufficiently compensated? Profits due to the owner may be considerably more and, in bequeathing the property, the owner passes on a benefit to descendants, which the wage-earners cannot. The greater the duration of ownership, the greater is the probable discrepancy between income from property and employment. The owner faces risks, but others who missed out are denied opportunity to take those risks, yet face more pressing risks of their own. If the property-less must work or starve, they may be coerced, in which case their labour does not rightly belong to the owner. Nozick does not elaborate how those robbed by illegitimate transfers are to be compensated.

In what sense can property be unowned? If it is taken to mean "not privately owned" according to Lockean or Nozickean ownership rules, then it is question-begging, because that presupposes such a form of ownership is uniquely legitimate before private appropriation as a property-acquiring act has been justified. If a property is unowned in the sense of not being privately owned, but is owned communally, for example, then there is nothing in the account of appropriation that justifies cancelling communal ownership rights (Grunebaum, 1987: 80-1). Similar can be said of communal *usage* rights. Native Americans did not see land as ownable in the same way as white immigrants; rather as given in trust to be used and respected by each succeeding generation. Did they not have a prior claim of usage over centuries or millennia: a better title to the land than the settlers?

The conclusion to these first-appropriation arguments, as Mackie states, "is not that there can be no rights to property [...] but that such rights cannot be derived from self-evident first principles" (1977: 177).

Instead of reliance on a simple, natural principle, Hobbes, Hume and Rawls see ownership of property as a beneficial convention. Mackie (1980: 76-85) says that Hume in *Treatise III* sees justice primarily concerned with the rights of property owners. Our natural moral instincts tend to be directed towards family and friends; they are inadequate for supporting impartial rules of honesty or justice. The advantages of division of labour and mutual protection motivate us to live in social groups. Natural affection leads to co-operation in

small familial groups, but tells against larger-scale co-operation. Possessions are in short supply compared to people's wants, so competition for them generates conflict. The remedy is not instinctive affection but artifice, in the form of judgement and understanding. People see they would fare better if they could live in larger societies without conflict over possessions. The only effective solution is

a convention enter'd into by all the members of the society to bestow stability on the possession of those external goods, and leave every one in the peaceable enjoyment of what he may acquire by his fortune and industry (*ibid*: 83).

This convention has grown up gradually and is not a contract or promise; rather it is based on mutual interest and reciprocity. Though an artifice, Hume thinks people could not have lived long without it. If there were no scarcity or men were universally benevolent, justice would not be needed; a property convention arises because these conditions do not obtain. However, in the *Enquiries*, Hume cautions that scarcity of goods must not be too extreme, otherwise "the strict laws of justice are suspended, in such a pressing emergence, and give place to the stronger motives of necessity and self-preservation" (1986: 186). The examples he gives are of a shipwreck and a besieged city whose occupants are starving.

Hume's account of property ownership is an improvement on those of Locke and Nozick. He ascribes a more realistic psychology to people: although motivated greatly by self-interest, we are moved too by altruism stemming from natural affection, albeit largely confined to family and friends. Unlike Locke, Hume has no need of a fictional, unlimited supply of resources; indeed, scarcity and confined generosity are what make the convention of property necessary. Unlike Nozick, he does not resort to a low baseline to reduce cases of worsening. Instead, he concedes that the application of property rules is disadvantageous in some instances; only the overall practice is beneficial (Mackie, 1980: 84). Although he thinks mixing an unowned resource with labour has utility and people would be supportive of granting the appropriator possession, such acts do not serve as the origin of justice and property. No natural principle is sufficient, only a convention does that (Hume, 1986: 309-10). An emergent, mutually beneficial convention on private property is more plausible, but, in acknowledging those circumstances where normal rules break down, Hume fails to recognise that they are not limited to catastrophic emergencies. Extreme want arising from scarcity was normal for a large section of the population in his day and was contained, not by measures to alleviate suffering, but by the most severe punishments. A lack of necessities still affects the marginalised in modern liberal societies. Overall, a convention has utility, but Hume is too complacent in accepting the convention of his time.

Rawls has little to say explicitly about private ownership of property and its basis in his *Theory*, beyond what might be inferred as general approval of its role in the economy (1999: 234-42). So I shall follow Grunbaum (1987: 110-5) in focussing on Rawls' interesting approach to self-ownership: one's talents, not being deserved, should be regarded as a communal asset. Any collective rights to natural talents would be a proper subset of full private ownership rights. It is the nature of such talents that they cannot be wrested from their possessor, so there can be no collective rights to possess, alienate or bequeath (I would add this applies to all aspects of an individual's person). The remaining property rights are

to: use, manage, capital and income. Grunebaum thinks Rawls is not clear with respect to the first three. Each person's right to the most extensive mutual liberty suggests they vest in the possessor of the talents. On the other hand, the difference principle, by requiring some of the income from the use of those talents, may influence how those rights are exercised. However, it is clear that there is a communal right to income from people's talents.

Nozick (1996: 228) objects that if each person's talents are collectively owned, then little remains of the (privately self-owned) person to be accorded Kantian respect. Indeed, he says Rawls can only maintain that the principles of justice do not treat men as means "if one presses very hard on the distinction between men and their talents". But Rawls actually says

The two principles are equivalent [...] to an undertaking to regard the distribution of natural abilities *in some respects* as a collective asset so that the more fortunate are to benefit only in ways that help those who have lost out (1999: 155; my italics).

He does not say here or elsewhere that the essence of a person is separable from their talents, nor does he mean talents are collectively owned for the community to control and decide their use. After all, for Rawls, one advantage of a market system is that "Citizens have a *free choice of careers and occupations*" (1999: 240-1; my italics). I think, rather, he means, as talents are not deserved, yet are fostered and developed by living in society, something is owed back to society by those who possess them. It might be in the form of charitable good works or a share of the income generated by those talents. Nozick (1996: 228-9) says people's talents, having beneficial effects, *are* an asset to the community, but suspects Rawls wants to extract more by claiming talents are a collective resource. Nozick is correct; Rawls is asking more of the talented than the crumbs of beneficial side-effects.

However, there is no need to consider natural talents as a collective asset in order to obtain a collective income from them. John Christman (2003, 5.5:1-15) distinguishes between control and income rights. The first includes rights to possess, use, manage and alienate, with derivative rights involving security and transmissibility. Any justification for control rights will be individualistic, based on concerns for liberty, autonomy or self-determination. They largely depend on actions arising from owners' preferences. Income rights cannot be justified in this way, because they depend heavily on *social* factors over which individual agents do not have control. These factors include: institutions supporting the existence of markets; the legal framework, in particular laws of contract; measures taken to reduce market imperfections, such as monopolistic tendencies and information deficits; the availability of an educated and skilled workforce; accumulated knowledge; and so on. These factors presuppose and result in distributions of resources. Christman sees the same distinction applying to self-ownership

to say that I alone possess the right to dispose of me and direct my actions does *not* entail that I thereby have also the right to benefit from the *exchange* of my skills in any way available (2003: 5.5:11).

Following Christman, this different basis of income, its social contingency, that without society there would be no income, is sufficient to give rise to a social obligation on the recipient. No assertion of collective ownership is necessary.

There is merit in seeing property ownership as a convention, given the lack of a natural basis. If the convention is to benefit both individuals and society as a whole, but in a way that is fair and equitable, one should not accept established ideas and legal practices without question. I shall examine this topic further in 5.4.

4. REDISTRIBUTION AND THE STATE UNDER LIBERALISM

4.1. *Liberty and Patterns*

Nozick (1996: 160-4) advocates a principle of distributive justice based on entitlement, which derives from legitimate initial acquisition and subsequent transfer of property holdings. Thus the justice of a distribution depends on its history. He contrasts this with a principle of distributive justice based on a state of affairs at a particular time; such a principle might be to distribute according to a pattern, such as equal shares or according to merit. He does not see how anyone could reject the entitlement principle, because liberty would upset any “patterned” distribution, leading over time to a distribution based on entitlement. His argument proceeds as follows. Suppose people have shares according to a non-entitlement distribution, D_1 , which conforms to your favourite pattern, so that you consider it just. Suppose also that Wilt Chamberlain is a great attraction as a basketball player, so he is able to negotiate a contract where part of the admission price goes directly to him. People want to see him play and willingly pay an extra charge above the normal admission fee. By the end of the season, he has a much greater share than anyone else. Let the new distribution be D_2 . Nozick asks

If D_1 was a just distribution, and people voluntarily moved from it to D_2 , transferring parts of their shares they were given under D_1 [...], isn't D_2 also just? (1996: 161).

But this begs the question of what is just. Suppose a distribution is just *only* by virtue of its conformance to a particular pattern, then it does not follow that D_2 is just, even though the transfers that transformed D_1 into D_2 were voluntary. For, in such a case, by definition, the steps leading up to the new distribution are irrelevant. If, on the other hand, justice was based on entitlement, the means, such as voluntary transfer, by which a new distribution is formed from another, are crucial, because entitlement depends on the legitimacy of those means and the preceding distribution. It is not self-evident that transforming a distribution, which is just according to one principle, by an action conforming to another principle, produces a just distribution according to either principle. If we imagine a slightly more realistic scenario, where people not only have initial shares but engage in economic activity, producing new goods and services as well as consuming them, then voluntary transfers will be part of that activity. Assuming only distributions of a particular pattern are just, all that is required are periodic adjustments to return to the pattern. Nozick says the general point illustrated by the Wilt Chamberlain example is that any pattern will be upset by the activity of people, so continuous interference with their lives is necessary to maintain the pattern. Well yes, maintenance of the pattern requires readjustment, but it need be neither continuous nor overly intrusive. A periodic tax assessment would be sufficient (assuming Nozickean objections to taxation can be overcome).

Thus, even if notions of legitimate property ownership and entitlement were secure, Nozick's argument would still fail to establish that a distribution based on entitlement is preferable or more just than one conforming to a pattern. There is a case for saying that states of affairs and histories are both relevant to justice and which is more morally urgent

depends where the greatest departure from justice lies. Rawls' difference principle is redistributive without prescribing a fixed pattern.

4.2. Difference Principle

The picture of representative citizens in the original position, choosing behind a veil of ignorance what sort of society they want, does bring out the idea of fairness very well. Not knowing, until the veil is lifted, what their abilities, character and social position are in this society, the representatives choose prudentially out of self-interest. We may vary considerably in physique, intellect, experience and character traits, but we share much more than we differ. It is through this common humanity, above all the respect due as moral persons (Rawls, 1999: 442-3), that fairness finds expression in the first principle as equal liberties and equality before the law. Although shared humanity has a place in the second principle, so too do the differences. Rawls says the initial presumption, after the original position, is one of equality in society, but the variation in possession of natural talents leads over time, along with historical accidents, to increasing inequality in social position and wealth. In the second principle, Rawls does not seek to eliminate this inequality, rather to deal with it fairly, by requiring that it works to the benefit of everyone. The principle of fair opportunity, which is one part of the second principle, goes beyond formally opening the different positions in society to all. It applies a fair procedure which takes no account of existing social position or wealth. However, this could lead to a meritocracy were it not for the other part of the second principle, the difference principle, which demands that those "who have been favored by nature [...] may gain from their good fortune only on terms that improve the situation of those who have lost out" (1999: 87). This echoes the overall theme of the difference principle which requires that social and economic inequalities are arranged "to the greatest benefit of the least advantaged, consistent with the just savings principle" (1999: 266). The just savings principle requires that each generation put aside some capital for future generations in order to achieve "a state of society with a material base sufficient to establish effective just institutions within which the basic liberties can all be realized" (1999: 256).

Yet the difference principle does not prevent a widening in inequality, for although the least advantaged may receive the greatest benefit possible, others better placed can receive still larger shares. The "greatest benefit possible" is normally limited by Pareto's criterion of not making others worse off, but Rawls does allow that where the basic structure is unjust the expectations of the better off may be lowered (1999: 69). This matters, because transforming a highly unequal society to a more equal one would normally require redistributing from the rich to the poor. The difference principle contains no explicit provision for moderating the disparity between them, but Rawls specifies background institutions for distributive justice. The "distribution branch" attempts to prevent concentration of wealth and power through taxation and adjustments to property rights. However, as will be discussed, Rawls' tax proposals are not quite adequate. The "transfer" branch sets and provides a social minimum through transfer payments, because "A competitive price system gives no consideration to needs and therefore it cannot be the sole

device of distribution" (1999: 244). The difference principle sets the minimum at a point that, including wages, maximises the expectations of the least advantaged, taking account of the just savings principle. The correct level for the minimum is the point beyond which adequate savings for future generations cannot be made or the tax level damages efficiency. I suspect the demotivating effect of taxation is exaggerated. In a developing country, such factors may limit the minimum payable, but in a rich country, they should not affect the essential criterion of meeting needs.

Over time, then, despite conforming to the difference principle, the cumulative effect can be to produce a cumulative divergence between the fortunes of the least advantaged and those more fortunate, albeit less rapidly than in libertarian environments. Picketty's analysis of economic data over two centuries, reveals the return on capital generally exceeds that for national income, so the private owners of capital receive more income than non-owners, concentrating capital into fewer hands (2014: 164-98). Taxation is perhaps the simplest way of putting the difference principle into effect.

4.3. Redistributive Taxation

For Nozick "Taxation of earnings from labor is on a par with forced labor" (1996: 169). To support this assertion, Nozick points out that tax is backed up by the coercive power of the state. However, such coercive measures require the process of law and are less than would be employed for forced labour. Taxpayers are not forced to work on particular tasks. To the extent that they can choose occupations and terms, taxpayers can decide how much they earn and hence their liability to tax. As Christman argues (see 3.3) a social right to income does not infringe ownership. Nor does an enforceable non-contractual obligation, like paying taxes, involve a relation of slave-ownership (Cohen, 2003: 5.7:2-6).

Rawls favours a proportional expenditure tax because

it is preferable to an income tax (of any kind) at the level of common sense precepts of justice, since it imposes a levy according to how much a person takes out of the common store of goods and not according to how much he contributes (assuming here that income is fairly earned) (1999: 246).

Rawls does concede that progressive rates may be better where necessary to preserve justice, in terms of the first principle and fair equality of opportunity, preventing concentrations of property and power likely to undermine it. Proportional taxes are part of an ideal scheme for a well-ordered society. However, given actual injustice, even steeply progressive rates may not be unjustified. The distribution branch taxes inheritance and income, progressively when necessary. But proportional expenditure or income taxes provide revenue for public goods and the transfer branch. Justice rather than ability to pay determines taxation (1999: 246-7).

Unfortunately, expenditure taxes are highly regressive. On any commodity, rich and poor pay the same proportion of the *price*, that is, the same amount, in tax. A poor person may spend all her income on essentials, whereas a rich person may spend only a tiny proportion

of income on such items. In market-driven economies, income is a very unreliable measure of contribution to society (compare incomes of carers, nurses, teachers, slum landlords and vulture-fund managers). Such taxes are fair only when income and wealth are equally distributed or, arguably, when applied only to luxuries. Expenditure taxes would fall disproportionately on the least advantaged in Rawls' well-ordered society, since that tolerates any inequality conforming to the principles of justice. Although he allows progressive taxes where there is injustice and suggests the possibility of such taxes on inheritance and income, he still advocates proportional taxes to pay for public goods. But irrespective of its purpose, taxation is fairer if it is progressive, because: (i) as one's income increases, the proportion of surplus to essential income rises steeply; (ii) the higher one's income, the greater is one's obligation to the society that made it possible. In this sense, justice must take account of ability to pay.

4.4. Limited State

Libertarians, like Nozick, support a minimal state to enforce the protection of rights, provide a legal framework for contracts and maintain a defensive force. The taxation required to pay for these activities might seem to contradict a libertarian precept. Nozick justifies his position by explaining how a minimal state would develop from a Lockean state of nature, starting here to avoid building into his account any presupposition of a state. The initial position is one of anarchy, but not an unfavourable one, since people within it generally act according to the constraints of natural law. The argument for a state is stronger if it arises from such a relatively benign position (1996: 6-7). Some people, though, overstep the limits and in response the injured have the right to seek compensation and punishment. In judging their own case, some victims want disproportionate redress. Others lack the power to enforce their rights. Mutually protective associations are a partial solution, but there are drawbacks which can be avoided by paying for protective services from a commercial protective agency. This private agency relieves its clients of protecting other members and evaluating claims. It can even seek compensation and apply punishment, avoiding the excesses of self-enforcement (1996: 10-5). Eventually, in disputes between agencies, one agency will become dominant. Such a dominant protective association is not a minimal state as: (i) it does not protect those in its domain who do not pay; (ii) it allows some people to enforce their own rights (1996: 15-25). Intermediate between a dominant association and a minimal state is an *ultraminimal* state, which has a monopoly in enforcement but does not protect non-clients. Viewing rights as side-constraints, the ultraminimal state is correct *not* to force clients to pay for the protection of others. How then might a monopoly in enforcement be justified? People who wish to enforce their rights independently of a dominant protective association may have a higher risk of punishing the innocent or being disproportionate. A large number of such independents constitute a threat to the clients of the association. No person has the right to prevent another exercising his right to self-enforcement, nor does the association since it has no rights beyond those of its clients. Nonetheless, in protecting its clients against the unjust acts of independents, the association does have the right to determine and enforce what procedures may be used against its clients. Procedures of independents deemed unfair, unreliable or unclear will be prohibited.

Without claiming any extra right, the association, being dominant, will eventually acquire a *de facto* monopoly in enforcement; it will have become an ultraminimal state (1996: 26-33, 51-3, 88-110). But this leaves independents unable to enforce their rights and vulnerable to clients who violate them. As clients benefit from the prohibition, they must compensate the independents accordingly. The least expensive solution is for the clients to pay for the protection of independents by the ultraminimal state. All in the state's domain are covered, so the transformation to a minimal state is complete and legitimate, because it was by an act of compensation rather than redistribution (1996: 110-5). However, to go beyond a minimal state, would violate people's rights (1996: 149), for example if it redistributed property holdings.

Besides the problems already discussed, regarding assumption of natural law, a narrow set of rights as absolute constraints and a question-begging argument against patterned distributions, the account has other difficulties. In the transition from dominant association to ultraminimal state, although no *right* to a monopoly in enforcement is claimed, a monopoly develops by virtue of the association's dominance, its *might*. Apparently, this is not illegitimate because it happened unintentionally by an invisible-hand process. If we accept this, it is not illegitimate for powerful individuals and corporations to deny the rights of others provided this occurs unintentionally and without invoking special rights.

If paying for independents is compensation rather than redistribution, the same could be said for paying taxes to provide welfare benefits. Much of the wealth of the rich is predicated on the efforts of a low-paid workforce, so in-work benefits and a higher minimum wage could be seen as compensation for a market that favours proprietors over employees. Even unemployment benefits could be interpreted as compensation where surplus labour is used deliberately to keep wages low. In considering the functions of the state, Nozick concentrates on the enforcement of rights. A legal framework for contracts and a defensive force are extensions to that enforcement. But assuming Nozick's characterisation of separate persons following their own interests, might such persons, out of self-interest, want more than protection of rights? For example, the minimal state could maintain public health, providing sanitation infrastructure and immunisation programmes. This would not be effective if it was limited only to those who could pay their share of the cost; all must be covered or else epidemics would sweep through the population, killing rich and poor alike. Yet to avoid such a redistributive measure, since no compensation explanation is available here, the self-interest of all must be denied.

Liberals are mistrustful of the state because of its oppressive potential. This preoccupation has historical roots. Locke sought protection from arbitrary monarchical power and the American founders wished to resist demands from their colonial master. However, checks and balances can be built in to the public sphere, through the operation of independent institutions. Ultimately, state oppression is countered by accountability to an extensive, well-informed electorate, for whom good education provision, an independent press and regular elections are essential. In concentrating on an oppressive potential which can be mitigated, liberals fail to recognise the state's potential for good. The effect is to prevent much needed action by the state, as outlined in 2.2-3. Similar oppressive potential applies

to large corporations, yet liberals do not betray similar concerns. Prevention of corporate oppression requires a strong state that can investigate and regulate.

5. ELEMENTS OF A NEW POLITICAL MORALITY

5.1. Ethical Foundations

Mackie contends that there are no objective values, that there is nothing in the fabric of the universe, in our nature or in the commandments of a putative, external moral authority, from which one can *rationally* derive them. His stance might be called moral scepticism, but it should not be confused with the view that there are no moral values or that conventional moral values are bunk, rather it asserts that they are not to be discovered or received on faith. His stance might also be called moral subjectivism, but again it should not be confused with the view that people should do whatever they like or the view that moral values are simply reports of people's attitudes. Instead, it asserts that moral values are to be made (1977: 1-49). Given differing views on moral foundations, a political philosophy should avoid if possible claims of moral objectivity.

For Mackie, a possible reason for constructing a morality is to overcome our limited sympathies towards others: without it, we could not coexist in society. Essentially, this involves a feasible extension of natural empathy to maintain a stable and mutually beneficial society (1977: 107-15). Besides this social imperative, there is an individualistic one, to direct us towards what is worthwhile in life. The morality might be deontological or teleological in character, or a mixture of both. In the next section, a mixed approach is advocated, where rules of thumb and observing rights save calculation and reduce the chance of error, but weightier matters require greater attention to consequences.

Echoing Rawls, Mackie (1977: 169-70) notes that people have irresolvably different views of the good life. Although what is good might be exemplified concretely in literature, there is no single abstract answer. What *can* be said in general terms is that a good life for any person is

made up largely of the effective pursuit of activities that he finds worthwhile, either intrinsically, or because they are directly beneficial to others about whom he cares, or because he knows them to be instrumental in providing the means of well-being for himself and those closely connected with him. Egoism and self-referential altruism will together characterize, to a large extent, both his actions and his motives (1977: 170).

It should not be seen as wrong that self-interest and confined generosity form an important part of the good life, although morality, in the narrow sense of constraining agents' actions towards others, may be needed to counteract some of their bad effects. Of course, co-operation and selfless acts extend beyond this, but so do competition and conflict. A practical morality must take all these elements into account (1977: 170-1).

This view reiterates Hume's, but is counter to that accepted by many modern liberals, especially those within the libertarian camp, who, although they may include family and friends in the sphere of an individual's concern, emphasise self-interest above all else. But, as Sterba maintains, unless such emphasis is well-founded, it is question-begging against altruism (2002: 179). Ayn Rand takes self-interest to an extreme when she argues for

“*rational selfishness* [...] which means: the values required for *human survival*”, a position in which “altruism is incompatible with freedom, with capitalism and with individual rights” (1969: 378, 383). Rand’s pseudo-Darwinian characterisation at best only captures part of our nature, for we have always been social creatures. As Derek Wright indicates

Living in communities demands that people sometimes put the interests of others first; acceptance within any group depends on the individual acknowledging that he has obligations to the group that may take precedence over his personal wishes (1975: 126).

Altruistic behaviour is a feature of social living, a view supported by psychological evidence (1975: 127) and everyday experience. Sympathy, generosity and self-sacrifice are considered good and as such, qualities to be cultivated. But this very social approval means that unselfishness, as a practice, is not unrewarded; it can act as insurance for when you need help yourself, as well as giving you the benefit of a clear conscience. People differ widely in their possession of altruistic traits: some are self-centred and use others instrumentally, whereas others sublimate their own interests when providing assistance. Wright classes an act as altruistic when it is primarily beneficial to someone else and is motivated by a desire to help; considerations of personal advantage are overridden, but there may be subtly beneficial consequences.

Altruistic behaviour is environmentally stable only in the most general sense. Particular instances of it are always conditioned by social pressures and individual personality. Such conditions include the effect of social norms, habit and a sense of duty, but especially relevant to my account is attachment to other individuals and groups, since this condition is two-edged. “If attachment intensifies altruistic tendencies in one situation, it may weaken them in others; for attachment implies preference” (1975: 130). Thus, where there are conflicting interests, altruism towards strangers and out-groups may be inhibited in favour of family, friends and in-groups. This echoes Mackie’s characterisation of self-referential altruism, where, although co-operation may extend further, conflict and competition with outsiders are present too. Psychologists have not found a functional link between attachment and altruism, but there are two suggestions:

- i. “It is through our relationship to others, our social embeddedness, that we define ourselves. [...] My self-esteem depends on how those I value value me” (1975: 130).
- ii. We value people and serve them to the extent that they are rewarding for us. We choose as friends those who share our attitudes and interests, but are complimentary in skills and needs. Sustained friendship is reciprocal.

Both suggestions imply an indirect form of self-seeking within altruism. However, the benefits involved are self-esteem and well-being, rather than materialistic ones. Reciprocity is not just transactional; it is also informed by a sense of justice. Altruistic behaviour is uncalculated and loses its altruistic character if calculation occurs. Humans are not alone in displaying altruistic behaviour. Instinctive, altruistic behaviour is universal amongst species, helping to ensure their survival. Human altruism has instinctive features too, even if modified by cultural influences, for example, mothers protecting children (1975: 128-9).

Thus, even if we cannot disentangle them, altruism is distinct from self-seeking. It is especially in our capacities for empathy and sympathy where that distinction lies.

Wright defines empathy as "one component of sympathy, namely responding to the other person's emotional expression [...] with a similar emotional response" (1975: 134). Sympathetic behaviour is initiated by an empathetic response, where sympathy involves perceiving another's distress and seeking to ameliorate the situation. Empathy is not just an important factor in altruistic behaviour, it is fundamental to social interaction, yet people vary considerably in their possession of it. Nonetheless, those who lack it, psychopaths especially, stand out, as do those who possess it in abundance. Empathetic responses may reflect a biological predisposition, but conditioning is important too. A mother's empathetic mirroring of her baby's emotions is perceived by the baby, providing the conditioning for later empathetic awareness. Wright stresses the importance of this interaction for the development of empathetic responsiveness. Sympathetic behaviour does not automatically follow: that must be learned from others. As children grow older, an emerging capacity for conceptual thinking enables them to realise that a person may be suffering, even if no obvious signs of distress are manifest. Equally, this capacity enables an unfavourable assessment of the sufferer and withholding of sympathetic action (1975: 134-6). Empathy, though, has deeper roots in evolutionary biology and nurture. Its social characteristics suggest functions which are not simply individualistic in nature. We should not make the mistake of assuming that self-referential concerns fully encompass altruistic behaviour. There is enough here not just to refute Rand's image of humanity as completely selfish, but to question liberal neglect of altruism generally.

If Mackie's practical morality is to be translated into a political philosophy, a further step is required. Although I want what protects and furthers my own interests and the interests of those I care about, I am not indifferent to others. My altruistic and empathetic tendencies are not entirely self-referential. I may feel hostility to some, as a result of conflict or competition, and irritation or antipathy towards others, but for the most part I wish people well even if I do little to help them beyond occasional acts of kindness or limited charitable involvement. My feelings of general benevolence, such as they exist, are not enough to motivate sustained, practical solicitude for others who I do not know, but I would like those in genuine need to receive help from some quarter. Let us assume that most people, though by no means all, feel similarly. A political philosophy that reflects these benevolent concerns, and thus receives our overall support, must allow and indeed require the state to provide assistance where insufficient is forthcoming from the voluntary acts of individuals and organisations. Thus, although founded upon our personal, practical moralities, the political morality espouses a level of benevolent action above that displayed by us individually towards unconnected persons. Surprisingly, this position is supported when applying the self-interested and self-referentially altruistic components of our personal moralities to the political philosophy. I cannot expect a political system to consistently favour my interests, and the interests of those I care about most, above the interests of all others and yet retain general support. To be universally acceptable (or nearly so), the state, as prime embodiment of the system, must observe scrupulous impartiality, especially in resolving conflicts of interest. So, if I want the state to go some way in protecting and

furthering my self-referential interests, it must do the same for everyone else. Libertarians will object that they wish to place no such requirement on the state for themselves or for others, particularly with respect to action by the state in support of personal needs. Yet, only the wealthiest might have enough resources to overcome the serious adversities that can befall anyone, such as a life-changing illness or accident, or prolonged unemployment. *Rational* persons, in applying their self-referential interests to a political philosophy, must make allowance for these concerns. Prudentially, rational persons might want the state to act impartially and benevolently at a level above that suggested by their own disinterested altruism, but not perhaps to the level, dictated by the stronger ties of attachment, of their self-referential altruism. The state, in providing such benefits, would reflect both their self-interest and their altruism: in other words, their humanity.

5.2. *The Right and the Good*

An important feature of liberalism is the distinction between “the right and the good”. For Rawls the right has priority: it is not to be compromised in pursuit of the good, for example in applying “oppressive” levels of taxation to reduce inequality. It is the business of the state to protect rights. Nozick sees that as the only function of the state. By contrast, formulating and living according to a conception of the good is essentially a private matter. The distinction has an imperfect correspondence with that between deontology and teleology. Deontology is expressed in terms of rules or principles of action, rights and virtues. Actions are judged, not according to outcome, but how closely they obey these precepts. Teleology aims at achieving a good outcome according to some conception, say of happiness or fulfilment, and here actions are only morally significant in how well they serve the ultimate goal.

Yet the two ethical approaches are often complementary and mutually supportive. J.S. Mill counters a charge of impracticality by denying that utilitarianism requires a full calculation of consequences before every action. He says it would be absurd not to make use of the considered judgements of people in previous, similar situations and these are often compressed into rules or principles. He considers the use of such secondary principles is not inconsistent with the primary goal of utility, since they serve as signposts to it (1995: 24-6). Mackie agrees on the need for secondary principles, with respect to consequentialism in general (1977: 154-7). A calculation of outcomes prior to every action would be too difficult and time-consuming, even if only direct consequences were considered. In calculating repeatedly, too much weight would be given to immediate concerns over more detached judgements. Mackie points out that most actions take place in a social environment where we can rely on regularity in the behaviour of others, so that we can usually employ rules of thumb and principles towards achieving desired outcomes. The relation between teleology and deontology works the other way too. Where rights or principles conflict, a possibility which non-absolutists acknowledge, *and* where a deontological resolution cannot be found in terms of priority or rank, an appeal to likely consequences may decide the issue. Even where rights are held to be absolute, they are more appealing if they have generally beneficial consequences. Mackie distinguishes

between moralities in the broad sense, which are all-inclusive theories of conduct, from those in the narrow sense, which just constrain the agent's actions towards others (1977: 106). Any morality in the broad sense, even if primarily deontological, must admit teleological considerations. For example, a morality, which emphasises liberties and the constraints protecting them, leaves plenty of choice between allowed actions, where decisions are made according to likely *consequences*.

This interplay between deontology and teleology is not accidental. Any system of morality in the broad sense rests on a conception of the good, which applies as much to rights and virtues as goals. So although the teleologist determines goals and weighs alternatives to find the best way of achieving them and the deontologist considers the rightness or wrongness of actions, they apply measures based on the same moral foundations.

The inclusion of both deontological and teleological approaches might seem to be applicable only to a political philosophy which has aims beyond the protection of rights. However, even the libertarian state must set goals and consider the consequences of actions, not just the constraints upon them, if defence of the nation is to be effective and the burden of taxation is to be minimised. The morality on which a political philosophy rests may well be more restricted than a full theory of conduct, but it must still have a concept of goodness as its basis. Sterba says the idea that liberals are neutral towards conceptions of the good whereas communitarians are not "has bred only confusion": in fact, liberals "are committed to a substantive conception of the good" (2002: 190). I suspect the confusion arises from the phrase "conception of the good" applying both to an individual citizen's personal morality, where it encompasses a way of life, and to a political morality, where it determines what actions the state may reasonably take. Rawls is well aware of this duality:

I shall distinguish between two theories of the good. [...] in justice as fairness the concept of right is prior to that of the good. In contrast with teleological theories, something is good only if it fits into ways of life consistent with the principles of right already on hand. But to establish these principles it is necessary to rely on some notion of goodness, for we need assumptions about the parties' motives in the original position (1999: 347-8).

Underlying the principles of justice is what Rawls calls "a thin theory of the good", which, in explaining the rational preference for the primary goods (see 3.2) and defining the least favoured members of society, provides the foundations required to formulate those principles. It is only once the principles are determined that a full theory of the good emerges.

Although tempting to equate the right and the good with deontology and teleology respectively, the interdependence of the two approaches suggests a more complicated relation. Conflicts between similar ranking rights may be settled by considering consequences. A concern for individual rights and justice might well lead to the pursuit of egalitarian outcomes. Goals may be set and the actions to achieve them determined by employing secondary principles as rules of thumb. Giving due consideration to the rights of others may well have better consequences in the long term. This indicates a place for both

approaches in a political morality. Some convergence between them is likely because they rest upon a common conception of the good. Where there is greater convergence, as in my philosophy with its non-absolute rights and weight given to individual as well as overall consequences, the sharp distinction between "the right and the good" is blurred. So rather than giving absolute priority to rights, a more nuanced and contingent resolution is indicated, requiring the ranking of claims and consequences. In the following section, I shall consider how that may be done.

5.3. *Humanity and Rights*

Let me explain what I mean by human flourishing. On an individual level it is about living the best life one can. What constitutes the best life is for every person to decide and discover. A *eudaimonia-style* existence is a possible ultimate goal, but satisfying more basic needs may be more urgent. The answer lies both in our nature and circumstances. It involves, to various degrees, an iterative Rawlsian process of formulating a conception of the good, revising the conception in the light of experience and contemplation, pursuing it and living it. The process is iterative, because false starts and wrong paths may require multiple repetitions of all or part. Formulating, revising and pursuing a conception may result from conscious deliberation; more likely, these activities may not be so intentional, instead prompted by unsought discoveries and the trials and errors of experience. Rather than aiming for a single conception of the good, we set ourselves intermediate, short-term goals, dependent on our abilities, opportunities, commitments and other circumstances. Longer term aspirations emerge; some are discarded, while others coalesce, consciously or not, into our conception, or conceptions, of the good. Flourishing should not be seen as necessarily achieving final goals, rather it refers to living as well as possible on the way. It is to be found in enjoying moderate pleasures and friendships of an Epicurean kind, in overcoming difficulties and dealing with tragedy, in striving for self-improvement, in helping others and in caring for those we love. It is, as Mackie says, about the effective pursuit of activities we find worthwhile (1977: 170). The experiences gained are formative of understanding, character and spirit.

If what matters most to us is that we and those we care about are able to flourish, then that concern should have primacy in our political philosophy. It is the foremost expression of our humanity, of our self-interested and self-referentially altruistic natures, which the philosophy must translate to a universal form, subject to the limits placed on general benevolence. Further, if people in a society are to flourish, then that society must also flourish. It is not enough for the political philosophy to provide space, in the form of certain freedoms, for living according to a multitude of conceptions of the good. As Berlin says, "to offer political rights, or safeguards against intervention by the State, to men who are half-naked, illiterate, underfed and diseased is to mock their condition" (2000: 233). The philosophy must truly enable flourishing and that requires asking what is the most important or urgent to our existence as individuals and as a society. The result is a list of primary social and economic goods, in order of urgency of need, akin to the augmented Rawlsian list discussed in 3.2. As in the Rawlsian list, not all freedoms are considered most urgent or

important. At the highest priorities, where needs are most pressing, minimum portions of social and economic goods are secured as positive rights. Where the *minima* lie should ideally depend solely on the needs that *must* be met if flourishing is to occur, but, if the philosophy is to be practical, aggregate needs have to be balanced against the wealth of the society. A very poor agrarian society will not be able to afford the same level of health care and education as a rich, highly commercial society. This contingency might be seen as damaging the case for positive rights. Strictly, it is not the right that is contingent, but the level at which it is implemented. But the same contingency applies to the implementation of negative rights, for their effective exercise depends on the distribution of wealth, income, power and education. Ultimately, what rights are included, and how, must be decided democratically (see 6.2).

A political philosophy, that acknowledges the interdependence of the right and the good and avoids any claim to the objectivity of moral values, will not always give priority to the right over the good. Negative rights protect things of value from outside interference. Positive rights give entitlement to things of value. Rights should not be casually overturned, for that is to deny their purpose. But nor should they be upheld no matter what the consequences. The political philosophy, being derived from the practical morality based on our dual nature, requires that conflicts should be resolved on what best serves personal and social flourishing. Combining these ideas, both rights and outcomes should be ranked by this measure. Which rights and outcomes are to be considered in a conflict depends on the circumstances, including those of the contesting parties. For example, if parties are well-placed, the rights relating to minimum holdings may not be at issue. In a clash of rights, the highest ranking wins, no matter whether that is a negative or positive right. Similarly, in a choice between outcomes, where no rights are infringed, the highest ranking wins. In a conflict between rights and outcomes, extra weight is given to rights on account of their special status. Nonetheless, a high-ranking outcome will take precedence over a low-ranking right. As the political philosophy should be impartial, conflicts are viewed as between representative citizens in the given situation. So, for example, no extra consideration is accorded to those with expensive or unusual tastes. Nor should the number of people on either side of a conflict affect the decision where the opposing weighted rankings are not close. Thus a minor gain for a hundred people at the expense of a significant loss for one person, even if that gives the highest aggregate utility, would not be allowed. This protection is not the same as that afforded by Nozickian rights, for the latter would also protect the low-ranking right of a wealthy person to keep her surplus against the high-ranking claims of starving people.

5.4. *Property Revisited*

Grunebaum develops an account of property ownership based on a principle of autonomy. This principle requires that

everyone ought to act so as to respect each person's equal right to decide for himself what his own good is, how to pursue it, and to promote where possible but never violate each person's fundamental well-being (1987: 143).

This has echoes of Rawlsian liberties, but the insistence on well-being requires them to be exercisable. So basic needs must be met to stay alive and make decisions. Other fundamental goods are needed too for genuine well-being. In determining relative needs, they are ranked, with basic ones first and other fundamental goods second (1987: 143-9). Grunbaum's ranking is similar to that in 5.3.

The autonomy principle requires rights over oneself which approximate to self-ownership. Each person can use himself as he chooses, subject to respecting the autonomy of others. These rights include rights over possession, management and income. However, the principle requires that land and resources are communally owned, because private ownership would not respect the autonomy of non-owners. Exclusion from decision-making about land and resources violates the rights of non-owners to decide their own good and threatens the well-being needed for autonomy (1987: 152-3).

As discussed in 3.3 and 4.3, there are social claims to income from personal labour. However, Grunbaum's idea of autonomous ownership of land and resources has some correspondence with my proposal below.

The distribution of social and economic goods above the minima guaranteed by positive rights is a function of private and public activity over generations, but, as argued elsewhere, the state must intervene to prevent it becoming too skewed. Positive rights, besides their direct purpose, enable a more equal exercise of negative rights, provided also suitable steps are taken in operating the law to remove the advantages of wealth and privilege. However, the *worth* of negative rights, especially of those relating to property, is far from equal. Clearly, the ownership rights of a huge plot of land are worth much more than those of a tiny one. Should negative rights only apply to the minimum necessary portions of social and economic goods, like their positive counterparts? The minimum would be very high for freedom of speech, but probably low for property rights as only personal possessions might be judged necessary. Yet, there needs to be some way of recognising the legitimacy of larger holdings. A solution is to consider negative rights as being strong in relation to minimum portions that apply equally to all, but as the goods to which they relate extend beyond those minima, the rights to each marginal portion become progressively weaker. For consistency, positive rights could be treated in the same way, applying to larger than minimum holdings, but becoming weaker the further they extend. The opposite relationship seems appropriate for the claim-rights or obligations associated with rights. For each extra portion of a social or economic good, the obligations become stronger just as the rights become weaker. If society enables you to have greater than equal shares, then you owe a greater obligation to society in return.

This understanding of rights suggests that personal possessions remain privately owned. As discussed in 3.3, private ownership is best seen as a convention, but the nature of that convention should be re-evaluated. It is not unreasonable to extend private ownership to domestic land and buildings and other small property holdings. As property holdings become larger, though, the incremental rights to them diminish and incremental social obligations increase. One way of reflecting that is to distinguish between property

ownership and the rights associated with property, so that some or part of the rights are not exclusive to owners. A person could own a large area of land, but non-owners would have certain rights on it, for example, of access and of final say in deciding on changes of use. Clearly, this form of ownership is not private in the normal sense, but is not communal either. Other large holdings of land and resources, of especial interest to the local community or to the nation, could be held communally or publicly respectively. Public ownership may involve organisations, financed by but legally independent of the state. Here, as with private ownership, arms-length regulatory bodies must prevent inappropriate use. Large-scale means of production could come under public ownership, but only where that makes socio-economic sense. Greater participation by employees and other stakeholders in decision-making is a possible alternative.

To a certain extent, such measures may be seen as righting the historical wrongs of forcible expropriation and economic exploitation. I am not proposing a kind of rough justice, rather the effective use of taxation and legislation to bring about a more equitable distribution of property rights. As a result, many people would enjoy greater autonomy at the expense of curtailing rights of current large-scale property owners. However, human flourishing, not autonomy, is the deciding factor in questions of property ownership and the rights attached.

6. TAX AND SPEND: THE ACTIVE STATE

6.1. *Taxation: Principles and Practice*

Taxation is crucial to delivering a political system for that works for everyone. Debt is another source of public funding, especially for large capital projects, but should be used only when necessary as it transfers wealth and power to the rich. Besides raising money for necessary public activities, taxation can be instrumental in reducing inequality, both directly through redistribution and indirectly through financing education, housing, health and social programmes. As discussed earlier, although legally enforced, paying taxes is not akin to forced labour. At the very least, it is a moral obligation to recompense society for benefits provided. A state should be free to set its own tax rates, although it may agree to harmonise rates with other countries: the essential proviso being that tax rates have democratic approval. I advocate the following principles:

- i. Tax should be progressive rather than proportional (or “flat”) because, for increasing levels of wealth, individuals have progressively larger proportions which are surplus after meeting basic needs. Taxes can be made more steeply progressive if the level of inequality is high or the democratic will is to reduce inequality over a shorter time period. Such taxes are not oppressive as long as they do not prevent taxpayers funding their needs and meeting all but the most extravagant aspirations. In other words, opportunities and life plans should not be significantly affected.
- ii. Tax should be as simple as possible, without loopholes or special cases. This makes it easier for all individuals and businesses to operate, and reduces any potential advantage gained by the wealthy through their ability to hire expensive advisors.
- iii. Liability to tax should arise in the country where income is generated or where the asset is located, instead of the country of personal domicile or registered business address. It is fair that each country where wealth is generated, through appropriation of its resources and activity of its citizens, receives the tax on that wealth.

The principle of progressive taxation applies both to income and capital, though the rate for taxes on the latter should generally be much lower, unless society is dangerously unequal. As Picketty argues, the greatest inequality arises from a highly skewed distribution of capital and applying a capital tax is the least invasive way of addressing that; also, for wealthy individuals, the boundaries between employment income, rents and capital gains are blurred, so if the state only taxed income it would not take account of their other sources of wealth. Regressive expenditure taxes should be phased out or reduced.

Taxing in the countries where wealth is generated, would make tax-havens redundant. There would be no need for double taxation relief or complex residency rules. This is a matter of fairness for all countries, but would be particularly beneficial for developing countries. Multinationals could not avoid local taxes on sales and profits. They would receive the same tax treatment as domestic companies in each country of operation. Calculation of a company’s profit on a country-by-country basis can be deemed where country-specific accounts are not produced.

Taxation reform requires international cooperation and greater transparency, but it is achievable through automated financial reporting and an evolution from regional to global agreements.

6.2. Role of the Public Sector

Given that markets do not operate well under all conditions and that social needs may outweigh individual entrepreneurial aspirations, there is no *general* philosophical reason to prefer private economic activity over public. The principle should be "what works best in the circumstances". Natural monopolies may be better run by the state. Private monopolies and restrictive practices can be curtailed through independent regulation. Public monopolies also need regulatory oversight. The state should ensure compliance with accounting, quality and employment standards. Markets need to be regulated, but according to these principles: not too onerous and fair to companies that observe good practice, but implacable against offenders.

Markets encourage innovation, provided there is sufficient access to capital and prospect of reasonable return. Access to capital requires a banking sector and a stock market able and willing to provide it. Banks and shareholders should have long-term relationships with companies and this can be encouraged through taxation. If adequate long-term funding for business is not provided by the private sector, the state could set up a state-owned commercial bank, nationalise banks or have large enough shareholdings in them to influence policy. A reasonable return is more likely if innovations are protected by patents, but if the latter are too long-lived, profits will derive more from rent-seeking than a fair payback on innovation. The state must invest in socially necessary projects where profits are too low for private involvement. The state may enter partnerships with private industry or co-operatives, in parts of the economy that are critical or have potential, but only on terms that are good for society as a whole.

Extensive functions are performed by modern, developed states, for example: regulation of the economy and the justice system, maintenance of public health (needed to avoid epidemics, like those endemic in the nineteenth century), provision of health care, social care and education.

An active state, if too centralised and bureaucratic, without proper checks and balances, could degenerate into authoritarianism, but this can be avoided by decentralisation, institutional oversight, judicial independence and democratic accountability. In a strong democracy that is both egalitarian and deliberative, well served by an independent press, the government is held answerable to the electorate. Being egalitarian, where all sections of society may vote and engage in political activity, there is less likelihood of the state serving narrow sectional interests. Being deliberative, where citizens have through education acquired the capacity and motivation to consider matters carefully, there is less chance of falling prey to demagoguery or manipulative reporting. There is less chance of either if the press is independent of both governmental *and* wealthy interests, fearlessly investigating and publicising instances of malpractice in government and business.

As discussed in 3.2, rights should be determined periodically in a suitable democratic forum, such as a constitutional assembly, because social attitudes change and, with them, the assessment of moral values. The law needs to be simplified, so that it is accessible to all. If application of the law is to approximate to justice, then success in legal action should not depend on ability to hire expensive lawyers.

The minimum income, as stated in 3.2, covers basic material goods not provided free by the state, together with a contribution towards those expenses necessary for genuine opportunity. Citizens in individualistic societies will be less inclined to vote for adequate minima than those in societies where there is greater solidarity. Where the minima are low enough to deny the possibility of a fulfilled life amongst the less advantaged, the citizens have chosen to abandon their commitment to a political philosophy aimed at human flourishing. The implementation of the philosophy provides the democratic means for its own rejection, as should any implementation of a consensual philosophy. However, in its principled but pragmatic reduction of inequality, countering of market imperfections and provision of social programmes, this philosophy provides the basis for a stable, well-run, economically efficient and humane society.

7. CONCLUSION

My account shows how liberalism, in its emphasis on individual freedom over individual need and social responsibility, elevation of self-interest and neglect of altruism, attachment to private ownership, faith in the efficacy of markets and distrust of the state, permits a host of ills. The demonstrable effects are concentrated wealth, leading to abuses of power and stagnating economies; wretched poverty for many, with lives bereft of opportunity and hope; and markets which malfunction, characterised by boom and bust, monopoly and environmental destruction.

Examination of these liberal precepts reveals defects in assumptions, argument and emphasis. Both Nozick and Rawls exalt liberties, but do not adequately justify the absence of positive rights based on needs. Nozick's absolutism permits coercive exploitation and is indifferent to consequences. Extensive rights attached to private ownership are not justified by liberal accounts of property acquisition and transfer. Nozick's arguments against redistribution and for a minimal state are flawed. Rawls ensures some benefit reaches the least well-off, but not enough to prevent inequality increasing. Liberals wish to limit the state's oppressive potential, but fail to see its potential for good.

A new philosophy is required. The one I propose makes no questionable claims to moral objectivity; instead it is well founded on a practical morality that reflects our natural self-interest and altruism. The right and the good are interdependent. Rights and outcomes are ranked according to their contribution to human flourishing. These ensure everyone has the material conditions for opportunity and exercise of rights. Education is crucial to personal fulfilment. Non-private forms of property ownership are advocated where socially beneficial. Progressive taxation redistributes wealth and finances an active state, which implements the measures needed.

Liberalism accommodates so many variants, it might seem that I am proposing just another. My philosophy owes much to Rawls, in ideas such as fairness and primary goods, and to other liberal philosophers, but in some ways is closer to socialism, in its approach to ownership and redistribution. Yet it is new in not being bound to any existing *ism* and in having its own ethical foundations. Its central aim is to improve social well-being and individual lives; all else serves that. Marx, through his philosophy, sought to change the world. Learning from the past, we should not be discouraged from developing a philosophy for the future, of the sort discussed here, that contributes towards a world where everyone can flourish.

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