

A LIBERTARIAN THEORY OF PROPERTY : ITS JUSTIFICATION,  
CRITIQUE AND IMPLICATIONS

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A Dissertation Submitted to the Faculty of Social Sciences  
and Humanities Philosophy Department, University of Cape  
Town, for the Degree of Master of Arts

Cape Town 1987

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## ABSTRACT

Title: A Libertarian Theory of Property: Its Justification, Critique and Implications.

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The author's major concern in this dissertation is a justification, its critique and some of its implications, of the libertarian theory of property according to which property, following John Locke, is legitimately acquired through a man's mixing of his labour with unowned resources and held in perpetuity or until the owner voluntarily alienates his just claim. Libertarian theory asserts that property thus acquired is held by natural right.

Accordingly, this dissertation commences with an elucidation of how we are to understand the concept of property and the concept and language of natural rights. The dissertation then attempts to show that:

1. The concept of universal natural right, at least in relation to private property, is not non-sensical.
2. The libertarian justification of exclusive private property can be argued for coherently.
3. Universality in the natural right to private property entails (coercive) redistribution.

Over 3 the author departs from the 'orthodox' libertarianism of Murray Rothbard, Ayn Rand and John Hospers in favour of a 'welfarist' libertarianism that is more in accord with the positions of Robert Nozick, Milton Friedman, Friedrich v. Hayek and others, and which is closer to the spirit of

Locke's Second Treatise. Welfarist libertarianism leads the dissertation through:

4. Marx's critique of private property and capitalist political economy.
5. Liberal/non-Marxist arguments advocating equality or greater egalitarianism.
6. Certain implications welfarist libertarianism holds regarding the justification, extent and operations of the state.

The conclusions the author arrives at include:

1. There is a natural right to limited exclusive private property.
2. Property is limited not in it's acquisition but in it's (perpetual) holding.
3. Redistribution may be coercive but that coercion is legitimated on grounds of justice.
4. Property rights preserve the liberty of some but necessarily infringe the liberty of others. This too is legitimated on grounds of justice.
5. The Marxist argument that private property and capitalist political economy is exploitative is mistaken, and that it alienates man an argument insufficiently contended for.
6. Egalitarianism and greater egalitarianism as political policies are wrong if welfarist libertarianism is just. Both also fail to accord persons a sufficiently central place in moral-political philosophy. Egalitarianism is, furthermore, necessarily self-defeating.
7. The state is not necessary for the protection of our lives, liberty and property nor for the implementation of redistribution. These functions could be performed through the free market. Should a state justly evolve from the

market it cannot ensure it's stability due to the pressures  
morally demanded financial obligations impose upon it.

**DECLARATION**

I declare that this dissertation is my own, unaided work. It is being submitted for the degree of Master of Arts in the University of Cape Town. It has not been submitted before for any degree or examination in any other University.

Signed by candidate

**Graham A. Williams**

**12 October 1987**

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#### ACKNOWLEDGEMENTS

Especial thanks are due to my supervisor, Mr. P.H.D. Collins, the value of whose rigour, perceptiveness and encouragement is inestimable. Thanks must also be extended to my friends and my parents for all their intangible support.

Financial assistance provided by the University of Cape Town Postgraduate Scholarships Office is gratefully acknowledged.

Who whom? As Lenin said.

Who rules whom?

Who hands out the soup to whom?

Who is a better person than whom?

Who is more democratic than whom?

Who says 'Who whom' to whom?

Michael Frayn, 'Constructions', 1974

## INTRODUCTION

'Property is theft' remarked Pierre Proudhon. And quite incoherently. The major concern of this dissertation is property: about the morality of its acquisition and distribution and the implications any theory (moralized notion) of property holds for our values, mores, institutions and so on. I say 'any theory' but do not consider all the possible options, and some are addressed at greater length than others, but all in relation to, with reference to, a justification of exclusive, individual, original private property and the more full-fledged justification this gives rise to. The sense of 'exclusive, individual, original' property will become clearer later. Suffice it to say here that only originally acquired property is held exclusively, and then only a specific amount, against any claims that may - and I believe do - press upon it.

I shall not argue separately the case that property is fundamental to the way we see ourselves, others and our milieu but accept that any moralized notion of property has extensive ramifications for our estimation of the value of persons, the organization of production and exchange, the limits to liberty, etc.. Having said that, it is not easy to show that none of these moral-political conceptions are not in some way presupposed in their justification, particularly that of the status of persons. Whether we move outward from a theory of property or inwards to one the justification of the theory may remain identical.

One justification of property, enjoying its philosophical and political zenith in the eighteenth century - the United States Declaration of Independence 1776 and the French Revolution 1789 - is that premised on and drawn from the natural rights of man. Justifying property according to the natural rights of man is necessarily a justification of private property, indeed of exclusive private property, for the rights of man are the rights of individual men. The Lockean, Spencerian and Georgist theses concur in this respect. Even communalistic property rights guarantee for each a share. Today, natural rights theory has become somewhat discredited. Whilst there is much talk about rights; what they supposedly are, the grounds for them and what purpose(s) they serve, such as claim-rights enjoining corresponding duties, rights talk is rarely natural rights talk.

Some critics charge that natural rights talk fails to pick out anything in the world and hence is devoid of referential meaning. For instance, Alasdair MacIntyre, by no means working within a positivistic paradigm, dismisses natural rights as 'fictional' and not to be confused with those rights 'conferred by positive law or custom' saying, 'The best reason for asserting so bluntly that there are no such rights is indeed of precisely the same type as the best reason which we possess for asserting that there are no witches and the best reason which we possess for asserting that there are no unicorns: every attempt to give good reasons for believing that there are such rights has failed' (1981, p.67).

Not everyone, however, has relinquished adherence to natural rights theory. Contrary to what MacIntyre and others may claim in Chapters I and II of this dissertation it will be argued that the political libertarian's employment of a broadly (neo-)Lockean understanding of natural rights and for the natural right to private property can be made cogent, rigorous and, ultimately, plausible, without yielding so much to its detractors - but yielding unlimitedness in original acquisition - that it surrenders its political identity.

Political libertarianism has its own political spectrum the major one of which has been alluded to in the preceding paragraph. Murray Rothbard cites non-aggression against persons and property as the basis of political libertarianism (1973,p.8) but this is not sufficiently fundamental or basic, for if non-aggression is somehow good or desirable or right it requires a background against which it is set. The issue over which the division in political libertarianism takes place is the issue of property, and may be seen as one of whether outrightly to reject what Alan Ryan calls 'the consensus view': that the standing or situation of others affects the justification of ownership, enters into that justification. As Ryan puts it, it is a question of whether "its his" invites the further question "What good does its being his do for everyone else?"(1984,p.177). Or what harm does it do?

Some political libertarians hold that no person's originally acquired property may be invaded for any reason, for example confiscated for redistributive purposes. Only the free consent of the owner can alienate property. Others hesitate

and allow, under various conditions, the overriding of claims to originally acquired holdings (and what flows from them) despite absence of consent. The former reject the consensus view, the latter do not. Accordingly, the distinction could be drawn in terms of absolutist and non-absolutist property rights libertarians, with Rothbard, Ayn Rand and John Hospers adhering to the former and Robert Nozick the latter position by virtue of his 'moral catastrophe' clause which allows the avoidance of moral catastrophe to override just title. While embracing the distinction the terminology is misleading in regard to the justification embodied in Chapters I and II, the conclusion of which renders coercive redistribution under certain conditions a moral imperative. In the light of this the two positions shall henceforth be referred to as the 'orthodox' and 'welfarist' libertarian theories or justifications respectively. It is the conception of the natural right to private property in self and things that is the hallmark of libertarianism, both of the orthodox and welfarist types. 'The crucial axiom of that creed is: no man or group of men have the right to aggress against the person or property of anyone else'(Rothbard 1973,p.8).

That no man or group has the right to invade the property of another because, as libertarians argue, each person has a right to whatever property they have legitimately acquired presupposes a theory of legitimate ownership through a principle of first possession or original acquisition. To this end libertarians make use of John Locke's thesis of first possession through the mixing of one's labour with natural or unowned resources. Orthodox libertarians employ Locke's labour thesis but disavow his provisos limiting the

appropriation of natural resources - though not, for Locke, money(1690,pp.139-40) - while Nozick contends that the only limitation to acquisition itself is that the position of others not be made worse-off(1974,pp.178-82). Beyond this, providing the moral catastrophe clause is not invoked, Nozick agrees with the orthodox libertarians that all unowned resources a man mixes his labour with are, to cite Rothbard, 'therefore his or his assigns in perpetuity'(1962,p.148).

Libertarians are to all intents and purposes secularised neo-Lockeans. They allow as Locke did not because an offence against God the giving away of our lives (suicide) and liberties (slavery) and, Nozick excluded, the proviso-absent<sup>1</sup> unlimited appropriation of unowned resources for the reason that, as secularised neo-Lockeans, they reject Locke's claim that the earth is bestowed upon all men in common by God, who is the sanction of Locke's three provisos.

A reading of Locke's Second Treatise on Civil Government makes plain how orthodox libertarians adopt the spirit of the Lockean thesis, to wit, labouring to acquire, but reject the letter, the provisos. In Chapter I a review of Locke's justification is included to illustrate this and then later to show why he was substantially correct. Rejection of any and all provisos signifies the divergence of orthodox libertarianism from the position of the Second Treatise.

The libertarian justification of private property, given

1. For Locke's position see Locke (1690,p.119, p.128 and p.129 respectively).

Ryan's instrumental - self-developmental distinction, would seem to be staunchly instrumentalist, where it is understood that 'the instrumental tradition regards work or labour as a cost incurred by men who want to consume the goods thus made available to them. The natural condition of mankind is one in which the earth will not satisfy human needs save when human beings expend labour to make it do so'(Ryan 1984,p.7). Locke himself says as much when commenting that the 'penury' of man's situation necessitated labouring(1690,p.132). However, the second of the two features of the self-developmental tradition on Ryan's account would seem to qualify this for it stresses that work should not only be satisfying as a form of human self-expression but also that the relation between a man and his legitimate property is intrinsically significant(Ryan 1984,p.11).

To what extent libertarians' place in the instrumentalist tradition is so qualified is not readily seen, though the inclusion of intrinsic significance does make apparent the point that instrumentalism is not incompatible with self-developmentalism. Some work is necessary to procure commodiousness, and there is no a priori reason to believe even this work to be inimical to human self-expression.

Having commented that disagreement over questions of the legitimacy of acquisition and holding of property furnishes the standard around which the orthodox - welfarist distinction is forged this is not the only point of disagreement. Rothbard argues that a state reserving to itself a monopoly of the powers of coercion and enforcement of justice is neither necessary nor desirable, and is alone

in believing that the alternative of a free market in protection and justice enforcement is practicable. Thomas Paine<sup>2</sup> remarks that a man would only submit to government providing he did not stand to lose more than he had a hope to gain, and Rothbard's argument is to similar effect: under monopolistic government (the state) we are net losers. Government in this form is not necessary for the market can provide; it invades property rights if it taxes to pay for itself; it is inefficient, financially and effectually. Others disagree with Rothbard. Rand advocates a unitary state funded by a lottery or voluntary contributions in the form of the purchasing of state protection on contracts and business transactions. Nozick adopts a different line, believing that abiding by the canons of justice and respecting people's rights will lead away from the private protection association scenario to what he calls the 'minimal' state (similar to a liberal 'nightwatchman' state) where all are protected - hence it is monopolistic - as compensation for the prohibiting of their own (risky) self-protection.

The format this dissertation follows is set out point-wise below, and while the points are not pursued in an exactly systematic manner they serve to indicate a framework, particularly for the first three chapters. These points capture the rudiments of a secularized interpretation of the content of Locke's labour theory of acquisition.

2. 'Man did not enter society to become worse than he was before, nor to have fewer rights than he had before, but to have those rights better secured' (Paine 1791, p.55)

(i) There are natural resources and (ii) they are unowned.  
(iii) These natural resources are finite and (iv) are ownable. (v) They are acquired as of right through the liberty each person has to mix their labour with them, which liberty is (vi) universal under conditions of availability. (vii) Where all resources are once owned the propertyless have a positive claim to a share of owned resources, as an entailment of (v) and (vi), which positive claim is (viii) non-categorical given (iii), that is, there may be claims for more resources than there are. (ix) Given the finiteness of resources either the positive claims are satisfiable or they are not satisfiable. (x) If they are not satisfiable then necessarily they remain unsatisfied, but (xi) if they are satisfiable then they ought to be satisfied. (xii) Once satisfied either there will be a surplus of resources or there will not. (xiii) When there is no surplus then necessarily (near) equality of resources/outcome prevails, but (xiv) if there is a surplus then either equality is enforced or resource (wealth) differentials tolerated. (xv) Given (v) - just ownership in first possession - and (xi) - the satisfying of positive claims - resource (wealth) differentials ought to be tolerated.

Commencing Chapter I with the acceptance of Crawford MacPherson's distinction between property as mere possession or control and property as ownership, that is property in control plus a moral title, the rationale for a theory becomes apparent. It has not passed unnoticed that Nozick (as with other libertarians) provides little in the way of argument for the right to private property beyond his referring to Locke's Second Treatise and his recourse to

the Kantian injunction not to treat others as means. The upshot of this, as Onora O'Neill points out, is that an argument to bridge the gap between labour and entitlement 'proves perennially elusive'(1981,p.314). All this is by way of preamble. The objective of the first chapter is to set the requisite background for a libertarian justification sanctioning private property within a framework of natural right. This project can be decomposed into two strands, the one 'metaphysical' and the other substantive. The former attempts to show that to talk of natural rights is not to talk nonsense or nonsensically, contrary to what Bentham and others believe.

Margaret MacDonald admits that natural rights are usually considered 'obscure' ideas blending a priori and empirical propositions more conducive to the expressing of value decisions or choices than to the picking out of entities or objects or referents in the world. John Mackie and Stuart Brown in their respective papers, while not wholly disagreeing with MacDonald, are more concerned with showing that a rights-based moral theory captures the valuable, almost indispensable, idea (ideal) of the individual as inviolable moral subject, seeking his own happiness and living the good life of his own conception (Mackie), protecting his 'moral interests' (Brown). The 'metaphysical' strand concludes that subscribing to a rights-based moral theory, even of the universal, inalienable, natural kind is to effect an ethical decision, to announce as MacDonald says 'This is where I stand'(1967,p.35), but that one can give reasons for the decision or stance adopted. (In Chapter II reasons are given as to why the labour theory of acquisition

in very much its Lockean form can be acceptable). Natural rights talk is neither inordinately obscure nor nonsensical if confined to the giving of reasons for what ought to be accepted as the 'condition of a good society'(34).

A brief historical purview of the labour - reward relation and an exegesis of Locke's thesis from his Second Treatise constitutes the second substantive strand as complement to the first. Tracing anticipations of the Lockean thesis leads some way towards undermining the objection that the labour theory of acquisition is a piece of bourgeois apologetics - radical at the time no doubt - delivered as justification and to facilitate the expansion of the embryonic market society of the late seventeenth century. A labour expended - reward expected connexion was, albeit less systematically, recognized prior to the rise of the capitalist market order.

Locke's thesis is the most famous justification of private property. Locke argues - in a brilliantly simple manner - that a man gains rightful possession of those unowned resources he mixes his labour with for he has joined them to his body which he 'unquestionably' has a property in(1690, p.130). This is not, however, a carte blanche justification of unlimited appropriation for Locke imposes (arguably impossibly) rigorous restrictions on the conditions under which a man may so appropriate. Though these provisos are problematic the universality of (some level of) property Locke attempts to secure by them is, I argue, a legitimate consequence of his natural rights theory and orthodox libertarians, and Nozick, in neglecting this consequence are in error. In short the orthodox libertarians are operating

with an inadequate conception of natural rights and drawing mistaken conclusions and inferences from it.

Chapter II embodies what Ellen Frankel Paul terms an 'ontological deduction'(1979,p.270) and what I call the 'libertarian justification' for the natural right to private property with a clause on the retention of holdings that secures a formal universality of property distribution. Briefly, the justification tracks the orthodox libertarian position in contending for the right to private property acquired through labouring with unowned resources. The argument follows Locke in maintaining that labouring invests a moral claim in resources but does so because our intentions - our moral agency manifested - 'carry' our morality in our actions and relations, subsuming resources as property into this complex bounded only by our obligation to observe the equal liberty of others to do the same and any positive claim or claims that may arise from our and others' intentions. A clause restricting the holding as opposed to the appropriation of resources is an ex post facto restriction and is therefore redistributive. The positive claim(s) effecting redistribution are non-categorical because such claims arise under conditions of (potential) scarcity and may lay claim to more resources than there in fact are. Some positive claims, the later ones, may pass unsatisfied because unsatisfiable. Chapters I and II, then, are an embarkation on what Richard Furniss and Timothy Tilton see as '...the slippery business of describing how they [rights] arose or even exactly what they are'(1977,p.62).

By way of conclusion the end few pages of Chapter II are devoted to the issue of the naturalistic fallacy, and whether or not the libertarian justification commits it. Due to the overtly normative sixth premise the justification does not commit the fallacy, that premise being the intentions-carrying-moral-agency premise. Anyway, the clarity of the fact - value distinction is disputed by MacIntyre via functional-teleological explanation, and by Charles Taylor through a facts-informing-ethical-decisions approach. Both these critical stances are supportive of the 'reasons for decisions' interpretation of the doctrine of natural rights.

Allowing that positive claims entail redistribution under the appropriate conditions in Chapter III some possible types of welfare structures are considered, how redistribution is to operate and whether or not the libertarian justification lends prescriptive import to the complexion of redistribution itself. To this effect the Nozick - Gerald Cohen controversy over how redistribution upsets non-patterned distributions and how entitlement theory upsets patterned distributional matrices is examined. This controversy revolves around Cohen's rejection of Nozick's claim that liberty is necessarily upset by patterns, and Antony Flew's criticisms of the concept of 'freedom' - and the authoritarian implications Flew believes it holds - as understood by Benjamin Gibbs. For instance, 'educating' the less enlightened to seek the good and to come to want to choose it. The Flew - Gibbs debate I treat as an extension of the Nozick - Cohen controversy.

Does the libertarian justification lend prescriptive import to redistribution? I argue that it does. If the justification legitimates any holdings then it legitimates all identically relevant holdings (hence, also, if any then all identically relevant wealth differentials) once any positive claims are satisfied. Extant wealth differentials will be affected by taxation for redistributive purposes and progressive rates will affect differentials more than proportional rates, and it is proportionality that best accords with the justification. Property is legitimately held once all positive claims are met and in lieu of new ones arising, and if my holdings are just ought I to contribute more - may I be compelled to contribute more - simply because I have more? Rejecting disproportionate contributions leaves the legitimate claims of original acquisition and what flows from them to be captured in the dictum 'maximal holdings, minimal redistribution'.

How liberty upsets patterns if tolerated or patterns upset liberty if enforced, and possible extenuations of this, comprise the remainder of the third chapter. From the Friedman - MacPherson debate over capitalism or socialism best preserving freedom I turn to Nozick's contention that without continual interference in the distribution of holdings the liberty to use and dispose of property will upset any patterned distributional matrices. On the other hand, enforcing patterns infringes liberty, to dispose of property, etc.. Cohen argues to the contrary that only patterned distributions preserve liberty by preserving matrices people would choose were they cognizant of how the outcome(s) of their choices would diverge from the chosen

matrix and jeopardize their own and the liberty of others. Liberty is preserved by patterns, Cohen says, and only those consequences arising from an initially just situation 'which all transagents would still have agreed to had they known what the results of so transacting were to be is itself just' (1977,p.250). Whether or not this is tantamount to a demand for omniscience it remains the case that some liberty is infringed, and worse still that patterns require enforcement, require that we be forced to be free. And this, Flew emphatically comments, is not freedom at all no matter what others may think, for instance Gibbs. 'It is to commend what precisely is not as not merely a, but the, highest kind of freedom'(Flew 1983,p.57).

Marx's critique of private property and capitalism is discussed in the fourth chapter, particularly the two major bulwarks of the Marxian critique: that man in the capitalist historical epoch is alienated, lives an alienated life, and that under a capitalist political economy the proletariat are economically exploited. With regard to both it is not unreasonable to read Marx as saying that capitalism necessarily alienates and exploits the proletariat. The necessity in this connexion I dispute.

The proletariat and to a lesser extent the bourgeoisie are alienated, whether they feel so, believe or think so, or not. Whilst some undoubtedly do feel alienated for Marx the evidence for the phenomenon of alienation is manifested in the sociological happenings it helps explain, such as class stratification and polarization. However, this is not to establish a necessary nor unique 'capitalism - alienation'

connexion, and belongs more to promissory dialectics than to an indisputable analysis of the supposed empirical data. Marx's exploitation thesis is addressed first. The exploitation thesis I hold to be mistaken because the appropriation of surplus value makes little economic sense and, even if it did, would not constitute 'exploitation'. That would require a second argument of moral dimensions beyond the economic, value-free, 'scientific' explanation provided in Kapital. Marx does employ the emotive term 'exploitation' and his doing so leads to a slight digression examining the status of ethical evaluation in Marx, particularly with regard to distributive justice. Marx's slogan 'From each according to his abilities, to each according to his needs' is certainly formulated as a (crude) prescriptive canon of distributive justice, though not one that is argued for.

Why exploitation makes no economic sense nor lends itself to prescriptive inferences (this holds if it were true as economics) is demonstrated in the following manner. Marx explains the determination of the price of labour through market forces, that is, supply and demand, but the price of commodities by the value of the labour they embody. Remunerating the workers at the necessary or subsistence rate and having them labour beyond the necessary labour time (in which they produce enough to maintain themselves) the capitalist expropriates the surplus value the workers have created and thereby exploits them. In short, the worker does not receive the full value of that which he produces.

The exploitation thesis is mistaken on the grounds that it is not an accurate depiction of the workings of market economics and contains a number of internal incoherences. What is more, and possibly more damagingly, Marx could give no reason why the worker should receive the full value of what he produces - he has, after all, sold his labour-power and nothing else and is remunerated for his labour, and nothing else. There are two reasons why Marx could not. One, that this notion of reward is close to a Lockean quid pro quo in distributive shares in that he who transforms resources claims them for himself, and two, such a notion runs contrary to the prescriptive slogan. True, the capitalist does not need the surplus, but often enough neither does the worker.

Chapter V turns to non-Marxist criticisms of private property and entitlement-based justifications of distribution, revolving round the arguments for, or for greater, equality. John Rawls has the most suggestive argument for greater equality if not equality per se which states that the distribution of holdings is morally arbitrary because grounded in amoral features of personality and circumstance, and run contrary to the principles of justice that would be formulated by persons in the original position behind the veil of ignorance and, therefore, should not be adhered to. Rawls argues that persons would, if they hypothesized themselves into the original position in which they have no knowledge of their capacities or standing in life, opt for his two principle of justice: no-one to have more liberty than any other and no-one to be better-off than any other except where such differences work to the advantage of the least well-off group in society.

Rawls's argument has been criticized on a number of grounds. Some theorists object that the original position is not obviously a realistic portrayal of rational agents and is from the outset value-laden, for example William Letwin (1983). Others that the difference principle (the second of the two principles of justice) may very well not work to the advantage of the least well-off group in the long(er) term. Otherwise, it is objected, either against Rawls and/or certain types of equality, that: persons are not as dissolvable as Rawls would have us believe; egalitarianism sorely stretches some of our intuitions or moral sentiments, for instance regarding intrusions into or abolition of the family; equality of outcome if pursued is necessarily self-defeating, a view held by Flew(1978); that moral luck cannot be neutralized nor equality of welfare achieved without sometimes equalizing downwards and equalizing downwards, as Jan Narveson says, is not something we wish to readily endorse(1983a,1983b). Finally, it may be objected, if moral luck really is luck, good fortune, then why discriminate against the fortunate who are neither more nor less deserving than the less lucky or fortunate?

As a conclusion to Chapter V Samuel Scheffler's argument purporting to show how consequentialism can affect non-consequentialist moral theories is related. The argument indicates how consequentialist considerations affect deontological theories by providing a second-order level of reasoning and justification for a course of action when there is a choice between two or more actions equally illegitimate from the perspective of deontology.

The sixth and final chapter marks a return to mainstream libertarianism to consider how in a world of (morally) fallible human agents persons and property are to be protected. How is non-aggression to be secured and is there any best way - best both morally and technically - that this can be done? To this question Rothbard on the one hand and Nozick and other libertarians on the other offer different answers.

Rothbard understands that while protection from transgressions is considered a necessity the state as body politic with a monopoly of coercion and enforcement is not. The function(s) of what is now the domain of government can better be done by protection associations trading on the free market and serving those who pay for their services. Protection would be provided through the free market by competing protection associations having recourse to their own courts (or affiliated ones) for settling inter- and intra-association disputes or to a neutral arbitration court for settling those inter-association disputes not resolvable at the association-court level. 'Rogue' associations who abuse their powers would be held in check by the market, there will be cost-effective and efficient protection and, thanks to competition, no tendency towards a liberty-threatening if not liberty-restricting monopoly of force that Rothbard equates with the state. For, asks Rothbard, '...who can guard us against the State? No one' (1973, p.50).

Nozick is, as most are, sceptical of the practicability of the Rothbardian scenario and maintains that from just such a market in protection will develop the minimal state

(protecting all independently of their paying for it) via a de facto monopoly protection association and the ultraminimal state. Accounting for this derivation in the initial stage is the emergence of a dominant association in the market which turns into the ultraminimal state protecting only those who pay for its services. How the minimal state evolves from this is through the adoption as a precept of justice the principle of compensation requiring 'those who act in self-protection in order to increase their own security to compensate those they prohibit from doing risky acts which might have turned out to be harmless for the disadvantages imposed upon them' (Nozick 1974, p.114).

If the Rothbardian scenario is untenable, and if the minimal state develops from it, factors admitted by Nozick into his explanation may well count against the coherence of his derivation. Specifically, adhering to the principle of compensation raises the question Why not be a self-protector, be prohibited and compensated? A sufficient though indeterminate number of people behaving accordingly would jeopardize the stability of the minimal state as they decided to remain or become independents leaving others to shoulder the (increasing) redistributive burden, making it more appealing for these others to become independents, be prohibited and compensated.... Nozick's principle of compensation might prove a ready-to-hand device for independents gaining free protection from minimal statist.

Rand has two interesting ideas for the voluntary financing of government - a levy on contracts to purchase government protection of them and the meeting of expenditure through a

public lottery. Whether government could provide sufficient protection using both of these systems is another matter.

Chapter VI closes with Paul's 'time-frame theory' of governmental legitimacy explaining how government might be legitimate in a world of violated Lockean rights - the world in which we undoubtedly reside. Paul reasons that government is just only and for so long as it is rights-protecting. We do not need to refer to its origins good or bad to determine legitimacy. Revolution is justified or resistance permitted against government only when it ceases to protect. And this is very much Lockean. 'Whosoever uses force without right', said Locke, '- as every one does in society who does it without law - puts himself into a state of war with those against whom he so uses it, and in that state all former ties are cancelled, all other rights cease, and every one has a right to defend himself and to resist the aggressor' (1690,pp.234-5). The same applies to governments equally as it does to individual citizens, and is the dissolution of government, which, for Rothbard, is the inception of the stateless society.

## A LIBERTARIAN THEORY OF PROPERTY : I

Hobbes said of it that it was a state of war of every man against every man, of a life 'solitary, poor, nasty, brutish, and short'(1651,p.82) in which there was neither justice nor injustice. 'To this war of every man, against every man, this also is consequent; that nothing can be unjust. The notions of right and wrong, justice and injustice have there no place'(83). And this, said Hobbes, gave rise to the second branch of the fundamental law of nature: every man has a right to everything. Rousseau saw man's condition as one of 'natural liberty and ...unlimited right to everything he tries to get and succeeds in getting'(1762,p.16) and Locke 'a state of perfect freedom to order their actions, and dispose of their possessions and persons as they think fit, within the bounds of the law of Nature, without asking leave or depending upon the will of any other man'(1690,p.118).

What Hobbes, Rousseau and Locke have in common across their portrayals of the pre-societal condition of man Locke is marked off by constructing into the state of Nature as he conceived of it the natural right to property. Man can acquire legitimate, that is moral, possession in his pre-societal condition, something both Hobbes and Rousseau disavowed. Hobbes for the reason that where there is no justice in the pre-commonwealth state there can be no propriety(1651,p.94) and Rousseau because only through the social contract does man acquire 'civil liberty and the proprietorship of all he possesses'(1762,p.16).

Libertarians follow Locke in his treatment of property. Man in the state of Nature can come to proprietorship through the mixing of his labour with unowned resources. This, Locke maintained, is a natural right of all men apprehendable by reason. The libertarian thesis is substantially the same. Locke's theory of original acquisition has been strongly, and not unreasonably, objected to on two major grounds: (i) it presumes the existence of natural pre-societal rights but does not substantiate this presumption, and (ii) explains acquisition according to a man's mixing his labour with unowned resources but fails to justify, morally justify that is, the conceptual connexion between labouring and coming to ownership.

In the next chapter I shall present a possible libertarian argument justifying the major pillar of both Locke's and the (neo-Lockean) libertarians' moral-political philosophy, namely, the labour theory of acquisition of exclusive individual private property. As pointed out in the introduction the conclusion reached bears a closer affinity to the corpus of Locke's Second Treatise than it does to the orthodox libertarian's position. The concern of this chapter is to set the background and groundwork for the project of Chapter II wherein is employed the theme of rights as moral imperatives in the way Nozick employs them, that is as constraints on action which have moral priority. 'Moral philosophy', states Nozick, 'sets the background for, and boundaries of, political philosophy. What persons may and may not do to one another limits what they may do through the apparatus of a state, or do to establish such an apparatus' (1974,p.6). Rights, as Mill noted, are something that one

ought to be protected in the possession of, and, under the conception here employed, are blocks to arguments seeking to restrict or override them for alternative reasons, such as general utility. Rights, Dworkin maintains, are political trumps held by individuals(1977,p.xi) and are held against what the majority believes wrong even where the majority are made worse-off by it(194).

The terminology of resources has been deliberately used in order to lead directly to the next point. Resources and objects naturally occurring or manufactured are acquirable at least in the physical sense of 'control' as consumable or utilizable commodities. A man may have no recognized claim to something he has, may have a duty not to have it, and yet it can be said without inconsistency that it is nevertheless his. We would not say that he owned the object, rather that he possessed it. We can shift our focus between pre- and post-justification senses of control. Consider this example: 'I stole it and now its mine', 'Its not yours because you stole it'. Both statements are true but in different senses. It is the thief's because he stole it and yet it is not his because stolen. Theft does not confer ownership but presupposes it. Hence the incoherence of Proudhon.

A man can appropriate resources in a number of ways; by straightforwardly stretching out his hand and picking an apple, say, or by deceit or by conquest, and whether that holding is recognized or not that property is his because, and only for this reason, that it is under his exclusive control. (The insertion of the 'exclusive' prefix accommodates the case of the investment manager who controls

without owning and is not a thief. He controls on behalf of another and does not pretend to exclusive ownership.) As long as he controls it it remains de facto his, and following from this crude definition of property as control over things - people not (yet) excluded - it is an easy matter to appreciate the truth of MacPherson's dictum: 'So all roads lead to property'(1973,p.121). MacPherson is quite correct to assert that there is a relation between the theory and the practice of property by which, he explains, 'the theory and the practice, or the concept and the institution, of property are interdependent. As an institution, property - and any particular system of property - is a man-made device which establishes certain relations between people'(121).

Ownership wrought through control is in itself no more than an established practice without an accompanying theory, and while it may be true (for Hobbesian reasons) that any social practice 'requires at least the acquiescence of the bulk of the people, and the positive support of any leading classes', a theory, what MacPherson terms a 'justificatory theory', is a method of securing property in practice, of transforming property into an institution of possession with a theoretical justification. MacPherson writes that 'What distinguishes property from mere momentary possession is that property is a claim that will be enforced by society or the state, by custom or convention or law'(1978,p.3). It is the addition of theory that marks the distinction between ownership and mere possession, providing the basis whereby legal right becomes grounded in moral right. 'Property has always to be justified by something more basic; if it is not so justified it does not for long remain an enforceable claim. If it is not so justified it does not remain property'(11).

MacPherson's practice - theory distinction sets a reasonable demand that any proprietorial relation should meet if it is to command assent, and the groundwork of this chapter endeavours to show that the demand is one that can be met by a rights-based theory issuing from an argued right to private property. An analysis of property in terms of such a right is less inclusive than one in terms of control, the difference being summed up in the dictum that legitimated property is a relation and not a thing. Yet it is (always? Think of people) a relation between things, and this is the sense which I believe natural rights theorists would understand MacPherson's statement that property is a man-made device, structuring our institutions to compatibilize them with the expressed relation.

All roads lead to property. In the following chapter a libertarian argument demonstrating a right to private property is presented. The argument assumes the form of a demonstration primarily because the critics of natural rights theory are not unreasonably sceptical of straightforward assertions to the effect that persons have such rights which merit protecting, treating such statements as in some way abstruse, usually as either the a priori legislating into existence of peculiar ethical entities or unwarranted derivations to moral matters of fact.

The scepticism of the critics is largely justified. Contemporary rights theorists do seem to appeal to the various consequences their diverse interpretations would hold if observed instead of arguing directly for the said rights, appeals which, for obvious reasons, prove unsatisfactory.

Nozick's Anarchy, State, and Utopia is a case in point. Nozick appears to make a case for the right to private property in a retrospective manner via the appeal to certain consequences his theory holds allied with certain moral intuitions many undoubtedly share, such as the Kantian persons-as-ends invocation that Nozick makes do a lot of work for him. 'To use a person... does not sufficiently respect and take account of the fact that he is a separate person, that his is the only life he has', and that 'There is no justified sacrifice of some of us for others'(1974,p.33).

The cornerstone of Anarchy, State, and Utopia is the bare assertion with which the book commences, to wit, 'individuals have rights' and these rights delimit morally sacrosanct ground around their bearers placing constraints on the actions of others. 'Individuals have rights', opens Nozick, 'and there are things no person or group may do to them (without violating their rights)'(ix). The most significant such right is the right to acquire and hold property through the mixing of one's labour with unowned resources limited only by the injunctions that one's appropriation not worsen the position of any others and that rights may be overridden<sup>1</sup> in order to avoid 'moral catastrophe'.

1. This last injunction Nozick later explains(1981,p.495) allows for teleological considerations to 'take over' from deontological ones if moral catastrophe threatens. Nozick stresses he does not imagine the transition to be smooth nor know just when it is to occur. Scheffler(1981,pp.99-100) has an argument for when teleology takes over but one Nozick is unlikely to assent to for it makes no use of moral catastrophe being the limiting case. Scheffler's argument is recounted in Chapter V.

How is the Nozickian cornerstone argued for? Here the appeal to consequences becomes more explicit. If we find the entitlement theory of justice and the depiction of the minimal state attractive and in accord with some of our fundamental beliefs, or values, or prejudices etc., we are likely or more likely to assent to the rights Nozick premises all this on. In so assenting not only might we be committing the fallacy of affirming the consequent but should be accused (and not unreasonably so) of adopting an unduly uncritical attitude towards moral-political theory. 'Nozick's "entitlement theory", as he calls it', says Martin Gardner, 'rests on a whopping metaphysical posit: that the right to acquire and keep money and property is one of the most inviolable of all human rights'(1983,p.130) and faces the obvious objection that 'Nothing is easier than to make contrary posits about human rights'(131). Bernard Williams summarises neatly how Anarchy, State, and Utopia proceeds and criticizes Nozick accordingly. 'In particular, he has tried - using, obviously, much ingenuity in the attempt - to get to his destination while avoiding any general discussion of a notion central to his views: property'. There is no account 'of property as (what he requires) a purely moral notion' (1975,p.32). Nozick is not unaware of his error of omission nor it seems unaware of the way his thesis is supported by consequentialist considerations, for he says 'This book does not present a precise theory of the moral basis of individual rights.... Much of what I say rests upon or uses general features that I believe such theories would have were they worked out'(1974,p.xiv).

Other rights theorists fare little better in the light of this objection, often equating the 'metaphysical whopper' with a self-evident truth or a truth supposedly derived from self-evident axioms. Murray Rothbard for one anticipates Nozick in this respect - and possibly outdoes him - by avoiding formal argument in a different manner, in his case by refuting or making sufficiently unattractive so as to be untenable possible rival moral theories in order to leave a rights-based morality as the only candidate for rational assent. His procedure of elimination is open to the objection that his thesis may be no less a straw man than the vanquished theses as well as laying himself open to the charge of intellectual disingenuousness by substituting iteration for argument and being less candid than Nozick in admitting to these failings.

'If the central axiom of the libertarian creed is non-aggression against anyone's person and property', he states, 'how is the axiom arrived at? What is its groundwork or support?'(1973,p.23). Rothbard then turns to his eliminative task of refuting the two major moral alternatives of emotivism and utilitarianism. Emotivism, we learn, is non-rational and thus outside the realm of moral discourse because non-aggression based 'purely on subjective, emotional grounds... can scarcely serve to convince anyone else'(23). Apart from possibly begging the question against emotivism with his rationality stipulation, emotivism fails to the extent similar but unformulated views are not held by others or where persuasion is ineffective, that is, where the purpose of the moral utterance is frustrated and, as a matter of fact, nobody behaves or believes as the utterer intended.

Emotivist utterances may in some instances prove successful in eliciting the desired attitude and/or behaviour. Utilitarian theory is rejected on two grounds. Firstly, the rejection of the consequences of action x as morally undesirable raises the question 'why is it not equally legitimate to apply such judgements to x itself? May there not be something about an act itself which, in its very nature, can be considered good or evil?(24)

In his endeavour to emasculate utilitarianism Rothbard's challenge merely begs the question. A utilitarian need only reply there simply is nothing inherent in any act that determines its moral status outside of considerations of the goodness or badness of its consequences for the agent and/or others.

Rothbard's second criticism of utilitarianism that it fails to provide 'an absolute and consistent yardstick to apply to the varied concrete situations of the real world'(24) is equally misdirected. Utilitarianism makes no virtue of consistency in the way Rothbard has in mind - an act in one situation can be right and under different conditions wrong without there being any difference between the two acts themselves. Killing a single innocent person to save the lives of many innocent persons (for the sake of the greater good) and killing an innocent person, period, would be an example. Not only does Rothbard not really argue for a natural rights ethics, as will be seen below, he also fails to refute the major of the two moral alternatives.

Seeking to establish his libertarian axiom by knowledge of natural law, Rothbard says of natural rights that they are 'embedded in a greater structure of natural law' where natural law is understood as the insight we have of our environment and our human nature which is such that 'each individual person must, in order to act, choose his own ends and employ his own means in order to attain them'(26). He then proceeds to iterate a reduction of Locke's argument that a person has a right to self-ownership and through this a right to all unowned resources they mix their labour with, the implication being, presumably, that a violation of property constitutes a violation of person (right) because the resources have become 'body', as it were. Unfortunately, this is not an argument at all for the inviolable right to unlimited private property Rothbard needs to prove aggression an infringement of right for it cannot explain how it is that resources once laboured with come under the cover accorded to a person's body, nor indeed the further question as to why person's bodies have this cover, and Rothbard cannot rationalize into his axiom of non-aggression any such right. To merely assert that 'In a free society, any piece of nature that has never been used is unowned and is subject to a man's ownership through his first use or mixing of his labour with this resource'(1962,p.147) begs the 'metaphysical whopper' counter. And Rothbard does little more than assert.

The sparseness of coherently argued support for the right to private property is not irredeemable, and stating this presumes an answer to the first theme of Chapters I and II, viz. that individuals have a natural right to property, that they may know of this and hence that the notion of natural

right is not so obscure as to be incomprehensible or a flight of metaphysical fancy. Richard Schlatter in summing-up how natural rights were conceived by sixteenth- and seventeenth-century natural law theorists writes that 'Stripped of the trappings which each particular theorist hung upon it, the bare theory was a simple pattern of a priori assumptions which, in the opinion of the men whose interests they served, were as obviously true as the axioms of Euclid'(1973,p124). The dictates of 'right reason' (Cicero's term) meant a rational man could not conclude otherwise. Schlatter's view may well be a true description of those sixteenth- and seventeenth-century theorists but contemporary rights theorists hesitate in emphasizing the role of a priorness in determining what rights people have. The inclusion of normative and empirical considerations alongside those that are self-evident secures for natural rights theory a firmer base, as will be seen below.

Despite their seeming obscurity Margaret MacDonald contends that 'the claim to "natural rights" has never been quite defeated'(1967,p.21) even though propositions about societally independent rights have traditionally been interpreted as a 'curious hybrid' of tautological-analytical and empirical-contingent propositions which by logical fusion tended 'to be represented as statements of a necessary natural fact'(24), which is a false representation of what rights are. <sup>2</sup> The doctrine of natural rights is very obscure, 'which justifies the impatience of its opponents'(22).

2. MacDonald stresses her use of 'proposition' is not meant to imply a truth relation between what is asserted and any empirical, testable fact(1967,p.34).

In assertions of rights there is a (sometimes surreptitious) incorporation of values, of 'ought' propositions, and natural rights theory is really an admixture of necessary natural facts and expressions of value featuring in the theory as, respectively: reason as the defining characteristic of man; the similarity of men regarding their rationality, and man's making of reasoned moral judgements. The fountainhead of humanity for the natural rights theorist is reason. 'Men share all other characteristics with the brutes and might themselves have them in varying degrees, but reason was alike in all men, it was man's defining characteristic. Hence it is the foundation, too, of his natural rights, as a human being'(28). Without the rational faculty the human - non-human (or the person - non-person) distinction would be lost, and presumably this is the import of the 'necessity' in this necessary natural fact.

Challenging both aspects of the analytical - empirical hybrid MacDonald claims reason is unlikely to prove acceptable as the defining characteristic of man because not all men are rational, such as children and lunatics, and because the concept is too vague and does not necessarily exclude certain animals. Secondly, MacDonald disagrees with the sameness precept - 'Men do not share a fixed nature, nor, therefore, are there any ends which they must necessarily pursue in fulfilment of such a nature'(30). This contrasts markedly with what Herbert Hart enumerates as the 'minimum content of natural law' where 'the facts mentioned afford a reason why, given survival as an aim, law and morals should include a specific content'(1961,p.189). Unless these facts are acknowledged in law and/or morality the purpose of

associating for survival would not be advanced. Hart's list is: (i) men are mutually vulnerable physically, (ii) men are approximately equal in their abilities to help and harm one another, (iii) men possess only limited altruism, (iv) resources are limited and (v) men have only a limited understanding and strength of will. Points (i) - (iii) and (v) if true do tell us something about human nature. MacDonald might retort that even if men do share a fixed nature, so what? Natural facts do not command us to do. But they do inform our decision-making. We decide and then execute our decisions in the most rational fashion if we take ourselves seriously. (This might be to misinterpret Hart's point. He does, after all, build in the hypothetical survival-as-an-aim clause.) But natural rights are not advanced merely as counsels of prudence (maximally efficient conduct guides) owing to the incorporation of values into our decisions. This I take to be MacDonald's point. They are moral injunctions both independent of and prior to political society, its mores and institutions. Why were they given this status? 'I suggest', says MacDonald, 'that they were so considered in order to emphasise their basic or fundamental character'(32) who is given to the view that 'The exponents of the natural Rights of Man were trying to express what they deemed to be the fundamental conditions of human social life and government'(33). They were, in effect, legislating for the legislators. For them, as for contemporary libertarians, the basis of legal right is moral right.

Asserting the existence of rights is equivalent to expounding moral imperatives 'of what ought to be the result of human choice... as being ethical assertions or expressions of

value'(34). 'So I will plunge', concludes MacDonald, 'and say that value utterances are more like records of decisions than propositions. To assert that "Freedom is better than slavery" or "All men are of equal worth" is not to state a fact but to choose a side. It announces This is where I stand'(35). Decisions (oughts) do not have the truth functions of geometrical axioms. More accurately, the propositional content of decisions does not have the same truth status. It is tautologically true that if I decide to do x then it is x that I decide to do. However, x-ing may not serve my intended purposes for it may not be the best way, or any way at all, of securing y or ensuring my y-ing. Between deciding and acting my project may be thwarted. One can ought contrariwise... but not in any old fashion, for our decisions if informed are neither random nor arbitrary. In defending and substantiating our (strictly unprovable) decisions we can and often do make (good or bad) appeal to contingent natural facts. 'They [decisions] cannot be proved correct by evidence. Nor, I suggest, do we try to prove them. What we do is to support and defend our decisions. The relation of the record of a decision to the considerations which support it is not that of proof to conclusion. It is much more like the defence of his client by a good counsel'(37-8). Which is to say that our decisions are information-relative; the more relevant information we possess the better - in principle at least - our decisions will be. In this way Hart's five principles are relevant in providing a backdrop against which our decisions are made and effected. It is true that we convince but cannot prove in matters moral, but it is also true that there is better and worse convincing done, and often none at all. With this

MacDonald agrees, acknowledging that 'There are no certainties in the field of values. For there are no true or false beliefs about values, but only better or worse decisions and choices'(39).

Where rights cannot be strictly proven to exist this should not be construed as counting against the worth of attempting to demonstrate them. MacDonald says of values, 'They are not known, but accepted and acted upon'(40), and John Mackie the same of rights. 'It is true', he writes, 'that rights are not plausible candidates for objective existence'(1978,p.170) and argues instead that they are posits rather than objective moral truths or posits with objective value for the reason that 'A belief in objective prescriptivity... cannot in the end be defended'(170-1). In this Mackie has a point. Conceiving of rights as posits saves belabouring what otherwise might be an exercise in metaphysical futility for 'the positing of rights is no more obscure or questionable than the positing of goals or obligations'(171) and as such is not a senseless project.

Mackie in his paper does what has already been attributed to Nozick and Rothbard, only more explicitly than either, and that is making comparisons between right-based, duty-based and goal-based moral theories and opting for the theory which does the greater work in the most morally acceptable manner. Which theory does this? The rights-based theory. Why? Because when doing moral philosophy we must take into account the 'good for man' (on Mackie's strict account the good for a man) - 'something like Aristotle's eudaimonia'(175) - and once we do this, and given the diversity of changing and

competing conceptions of the good life, 'our theory will change insensibly into a right-based one. We shall have to take as central the right of persons progressively to choose how they shall live'(175). Where MacDonald described the aims of the natural rights theorists as their desire to show that rights are the conditions of a good society Mackie concurs, qualifying his central right to prima facie status because people's conceptions of the good life conflict and so necessitate the introduction to the schema of 'vital interests', meaning 'that a right decreases in weight with the remoteness of the matter on which it bears from the person whose right it is'(177). While this cannot rule out all clashes of equally vital interests it serves as a model for solving the majority of differences. In the 'Postscript' to his paper Mackie concludes by stating: 'Finally, it does not seem to me to be a reasonable requirement for a moral theory that it should, even when fully developed, be able to resolve all conflicts'(181).

To illustrate how vital interests might conflict imagine that it is in A's vital interest that he x, have x (say be given a new heart), and in B's vital interest that he x, have x.<sup>3</sup> Where x is unique or unrepeatable either A x-es or B x-es or neither A nor B x-es. A's and B's vital interests cannot both be served. The requirements for x-ing might be numerous and the same as those for y-ing. A needs a, b, c,... (surgeons, operating theatre, blood,...) and B needs a, b,

3. I assume that A's and B's interests are equally vital to them. External criteria may, of course, be introduced to decide. It may be in C's vital interest that A survive (x-es) where no such interests attach to B.

and c for y-ing (having haemophilia treated). A's and B's vital interests now conflict over c (x, y).

Lastly, with reference to evaluating the coherence of an argument for the natural right to private property, a case stronger than either MacDonald's or Mackie's and which does not make appeal to consequences has been made by Stuart Brown. Commencing with the inappropriateness of conceiving of the objective existence of rights and agreeing that their existence cannot be proven in the way geometrical axioms are it is nevertheless a plausible conjecture that human beings have inalienable rights, and that evidence can be adduced in support of this conjecture. It is in the spirit of this conjectural method, similar to MacDonald's reasons-for-decisions approach, that Brown directs his argument - towards the thesis that the posit of rights is meaningful. Brown discounts as mistaken attempts to show that men have inalienable rights 'by reason of empirical generalizations about characteristics common to all men and nothing else' for two reasons. One, we may know it to be true that all men have inalienable rights without being able to substantiate this claim. Two, we can dispute 'on grounds of truth or relevance any empirical generalizations which do not support or which seem to count against inalienable rights'(1955, p.249).

'All men have inalienable rights' is a statement true in two ways, namely the weak and the strong self-evident senses. Brown concedes the statement cannot be inductively or deductively proven but is nonetheless true in the weak self-evident sense that if it is true it cannot be demonstrated to

anyone who doubts it, and if asserted cannot for any reason be denied, and true in the strong self-evident sense 'that one cannot deny its truth and admit the validity of moral inference'(251). This latter self-evidence is explained as being due to the way moral arguments move from circumstances of goodness or badness to instances of rights or duties, and the way these rights and duties are confirmed or disconfirmed by the goodness or badness of the background state of affairs against which they are juxtaposed, or statements regarding the goodness or badness of the juxtaposed state of affairs. Inalienable rights can only be denied 'by denying that statements about goods validate statements about rights. To deny this would be to reject the principle of moral inference. Inalienable rights are, therefore, self-evident in the strong sense. It is logically impossible to deny a statement where this requires the denial of the principle presupposed in validating any statement of that kind'(251).

The fundamental right Brown desires to show all men possess is each man's right to the realm of his 'private goods', '... an inalienable right to the protection of his moral interests, his person, and estates'(245), a right similar to the fundamental right advocated by Mackie,<sup>4</sup> and incorporating by Brown's own admission vague notions such as moral liberty, impartiality in deciding issues of honour and conscience, objects, services and options, but a right capturing the essence of a priveleged realm of individual autonomy founded

4. And Dworkin: 'The basic idea of a right-based theory is that distinct individuals have interests they are entitled to protect if they so wish'(1977,p.176).

on a non-transferrable, non-violable and inalienable right. And why this realm of private goods is protected as of right is to emphasize that it is the right of each and every man in a non-fortuitous, non-conventional and non-supernatural way.

Where Brown argues for a realm of individuality which all men have a right to whether they realise it or not or exercise it or not Mackie is less categorical. His fundamental right is advanced as universal, not knowable a priori nor objectively valid, and formulated as a prima facie right recommended for 'general adoption as a moral principle'(1978,p.178). Despite this difference both Mackie's and Brown's rights establish a recognizable (in most cases) area of moral sanctity for each person firmly in the tradition of what MacDonald calls 'rugged individualism'(1967,p.32).

It is in this tradition of the appreciation of the autonomy of the individual that rights are entrenched, and probably none more so than that to private property, and of the private property rights none more so than the orthodox libertarian justification premised on the labour theory of acquisition. Writing in an historical vein Rand recognizes the extent of this legacy. 'It took centuries of intellectual, philosophical development to achieve political freedom. It was a long struggle, stretching from Aristotle to John Locke to the Founding Fathers. The system they established was not based on unlimited majority rule, but on its opposite: on individual rights which were not to be alienated by majority vote or minority plotting'(1967,p.138). In the remainder of this chapter an exegetical and critical review of Locke's labour theory of acquisition as found in

his Second Treatise is given, prefaced by acknowledgement that some of the theoretical articles incorporated in Locke's work had been previously entertained, albeit rudimentarily. The value of such a review is to weaken the historical thesis that the doctrine of the natural rights of man, and the Lockean justification especially, are items of bourgeois apologetics justifying and reinforcing the embryonic market (capitalist) economy of the seventeenth century. In MacPherson's view one had to change the theory of property to effect greater and more rapid economic transformation, and that the orthodoxy was under pressure to change because of the expanding market. A further and equally important value of such a survey is heuristic: to develop a principle of non-exclusion from problems the provisos cause for Locke's theory, and to show why the orthodox libertarians are mistaken in forsaking the feature of universality Locke was securing with his provisos.

The justification of the Second Treatise had been anticipated in respects by Aristotle who recognized four possible proprietarial relations or practices, namely, exclusively common, exclusively private, and mixed proprietarial relations divided into common land/private usufruct and private land/common usufruct(1947,p.32). More especially, a connexion between the expenditure of labour and the expectation of a commensurate reward was noted by Aristotle who saw property as an instrument of living and who harmonises a co-existence of communal and private property, though greater flexibility and certain inherent advantages as an instrument of living are credited to private property. For example, not only is it more useful in the exercising of the virtues of modesty

and liberality (which are definite social goods) but it also produces a greater sense of pleasure (hedone) in the owner as a (partly) self-interested individual. Furthermore, 'what is common to many is taken least care of'(29). Self-interest as an apparent good (daimonion) was for Aristotle a 'spring of action' and as a psychological principle is assumed in the labour - reward relation, where labour is held to establish the basis of a claim. '[T]hose who labour hard and have but a small proportion of the produce, will certainly complain of those who take a large share of it and do but little for that'(33).

The connexion - even if only fleetingly acknowledged - that a man should work for wealth and deserves the benefits of his work, or some part thereof, is anchored in Western thought as far back as Ancient Greece and has been a recurring theme since. Herbert Spencer goes so far as to write of a 'consciousness' of 'the natural connexion between labour expended and benefit enjoyed'(1907,p.95).

In Cicero's Republic there can be found the rudimentary proto-Lockean concept of a spoilage proviso. Cicero, one of the Roman school of natural law theorists, writes that the 'common law of nature' 'forbids that anything shall belong to any man save to him that knows how to employ and to use it', the sanction for which is 'true law' standing over mankind as an objective standard(Schlatter 1973,p.24). 'True law is right reason in agreement with nature... it summons to duty by its commands and averts from wrongdoing by its prohibitions'(21). Further, Seneca maintained that in the state of nature property is unowned and available to all

for the satisfaction of needs, and while libertarians embrace the unowned resources precept some, the orthodox libertarians, disavow any limitations on acquisition that Seneca's principle of universal availability for need-satisfaction might entail, and something similar to which is found in Locke.

A more explicit citing of the labour - reward relation occurs in Martin Luther's 'Address to the German Nobility' of 1525 wherein Luther says, apropos criticizing the monks' unearned wealth, 'If a man will be poor, he should not be rich; if he will be rich, let him put his hand to the plough and get wealth himself out of the earth.... It is not right that one should work that another may be idle, and live ill that another may live well'(82). In 'On Christian Liberty' Luther stresses that property was to be acquired by work but tempered this with the theological injunction that it was the duty of a Christian to acquire property in order to provide relief for the poor. Property so acquired was not to be considered as belonging to the labourer. Paraphrasing Melancthon, Schlatter writes that 'The Christian Philosopher recognizes three natural laws: honour God; injure no man; use all things in common. But fallen man would not obey these rules. He could only approximate them by establishing an order in which as few men as possible would be injured. Thus since Adam fell, the natural law has consisted of four commands: honour God; injure no man; but let magistrates be appointed to protect the innocent and punish the guilty; and divide property to keep peace among men'(94). These four post-Lapsarian commands are all embodied in Locke's theory, and it is the Lockean justification of

private property that merits present and more detailed discussion.

'Of Property', Chapter V of the Second Treatise, opens with Locke reiterating a precept of the state of Nature.

'Whether we consider natural reason, which tells us that men, being once born, have a right to their preservation, and consequently to meat and drink and such other things as Nature affords for their subsistence, or 'revelation', which gives us an account of those grants God made of the world to Adam, and to Noah and his sons, it is very clear that God, as King David says (Psalm cxv 16) "has given the earth to the children of men", given it to mankind in common' (1690, p.129).

How, then, can an individual gain ownership over anything, and what justifies his so doing, the parcelling of the common into meum and tuum?

Owing to our (for Locke God-given) rationality we know how to utilize the natural environment '... to the best advantage of life and convenience'(129), and a feature central to the private property acquisition thesis, that is, a feature that is an inseparable concomitant of an individual's life plan, has been introduced. Alone, rationality is powerless to gain possession, yet Locke does seem to make rationality a necessary condition of ownership in claiming that - contra Hobbesian man - each acknowledges 'the unquestionable property of the labourer' to the 'labour' all men have in their own persons(130). Rationality and especially rational recognition of the above is the indispensable faculty upon which hinges Locke's transformation of private possession from mere practice to justified institution. If men never had or were to lose their rationality they would lose with it the recognition that the nourishment gained by his labour

belongs properly to the labourer. Indeed, man would forthwith lose all conception of the idea of property as more than possession and might be plunged (back?) into that war of each against all.

This is Locke's position and one shared by some libertarians. And it is a position which, of course, is controversial. Cultural diversity to one side, there are many otherwise rational people who question what to Locke (and Rand and Rothbard) is supposedly unquestionable - the supposedly self-evidently true second premise of the Lockean syllogism (see below). Spencer for one objects to the incorporation of a priori propositions in political theory, regarding their inclusion as suspicious attempts at logical vindication always characterized by vagueness. 'Whilst possessed of a certain plausibility', he says, 'they yet cannot be considered conclusive; inasmuch as they suggest questions and objections that admit of no satisfactory answers'(1850,p.126). And to the proponent of the labour theory of acquisition Spencer has his own objection. Of acquiring property through labouring Spencer asks (from the mouth of the cosmopolite to some backwoodsman)

'Still you have not shown why such a process makes the portion of the earth you have so modified yours. What is it that you have done? You have turned over the soil to a few inches in depth with a spade or a plough; you have scattered over this prepared surface a few seeds; and you have gathered the fruits which the sun, rain, and air, helped the soil to produce. Just tell me, if you please, by what magic have these acts made you the sole owner of that vast mass of matter, having for its base the surface of your estate, and for its apex the centre of the globe? All of which it appears you would monopolise to yourself and your descendents forever'(117).

Must Locke merely reiterate 'Because I have mixed my labour so'? Is this all there can be to the Lockean position,

leaving nothing more to be said in it's defence?

It is this sort of objection that a formal demonstration attempts to counter. At this juncture all that needs be noted is that to talk of the (unquestionable) property the labourer has in his own person may be misleading, or more confusing than would be the case if labouring is considered only the method of acquisition and not the 'magic' (justness) of possession. It is not labouring per se that gives title in private property but that each man is at liberty to mix his labour with resources that are unowned and in so labouring 'injects' or 'imparts' his moral personality into his proprietarial relations. There is no 'magic', though there is the necessity of rational recognition (of the right, not the labour per se) if the practice is to become a legitimate institution.

Locke writes in explanation of this unquestionable property that 'Though all earth and all inferior creatures be common to all men, yet every man has a "property" in his own "person". This nobody has any right to but himself. The "labour" of his body and the "work" of his hands, we may say, are properly his'(1690,p.130). Unfortunately, this is no more informative. When a man mixes his labour with a common (unowned) object he thereby makes it his, 'a part of him'(129), for, as Locke explains, he has 'joined to it something that is his own, and thereby makes it his property'(130). Expressed in syllogistic form Locke's argument - capturing only here the barest essentials - is something like this:

All resources are naturally common (unowned)

A man owns his body

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Therefore, all a man mixes his body (labour) with he removes from the unowned state by annexing it to his person.

This syllogism could have as well concluded 'Therefore, all a man mixes his labour with remains in the unowned state, his labour is annexed from his person'. 'But why', Nozick asks, 'isn't mixing what I own with what I don't a way of losing what I own rather than a way of gaining what I don't?'(1974,pp.174-5). Locke's idea that a man's property is an extension of his body is, I believe, on something like the right tracks. Explication of this I leave until the next chapter where the issue of intentionality is central to the libertarian justification (and central to the libertarian enterprise). Karl Olivecrona remarks that the intention to keep natural resources for oneself must have been sufficient for Locke's theory to make that resource one's property (1974,p.227).

A man's ability to acquire is limited in an obvious weak way by his inability to mix his labour with all that he may wish to. A man cannot labour in two places at the same time, though proxies can of course compensate for this limitation. Locke, however, imposes stronger prescriptive restrictions on appropriation as dictates of reason drawn from the knowledge

5. Olivecrona follows Locke closely. 'Since being one's own means being a part of oneself, making a thing one's own means making it part of oneself.... Something of oneself is infused into an object. Then the object contains something of oneself; in this sense it is part of oneself'(1974,p.225).

that (God has given, or) nature is given to mankind in common. It is necessary to evaluate these regulations in order to determine whether or not they are warranted inferences from Locke's portrayal of the state of Nature and man's rational knowledge of this state. If they are warranted then as far as one concurs with Locke one accepts his provisos. If they are not warranted by Locke they need not prove dispensable for that, but if dispensable - and failing any alternative limitations - the unlimited acquisition position adhered to by the orthodox libertarians might prove the only justification of private property using the labour theory of acquisition that is coherent.

Once a man annexes his labour (self) to an unowned resource - Locke has land particularly in mind - '...no man but he can have a right to what that is once joined to, at least where there is enough, and as good left in common for others' (1690,p.130). The enough-and-as-good-remaining proviso applies because no man may rightly appropriate from the common stock more than he needs when his doing so will disadvantage or prevent another from mixing their labour with that which is common for their needs. 'He that had as good left for his improvement as was already taken up', says Locke, 'needed not complain, ought not to meddle with what was already improved by another's labour; if he did it is plain he desired the benefits of another's pains, which he had no right to'(133). Provided this proviso is observed Locke stipulates that 'As much land as as a man tills, plants, improves, cultivates, and can use the product of, so much is his property'(132), and in so stipulating introduces the second and third of his limitations: the so-called

'spoilage' proviso and a (veiled) utilization proviso. While Locke himself seems to fail to distinguish between them they are nonetheless conceptually distinct.

Nature's fruits afford man 'conveniences of life' and these fruits in their natural condition are unowned until a man mixes his labour with them and annexes them to his person. To appropriate from the common stock more than a man can use and then allow to spoil is for Locke an offence to God and Nature, but more importantly it may, under conditions of scarcity, prejudice the equal rights of others: '...if the fruits rotted or the venison putrefied before he could spend it, he offended against the common law of Nature, and was liable to be punished: he invaded his neighbour's share, for he had no right farther than his use called for any of them, and they might serve to afford him conveniences of life'(135). The phrase 'can use the product of' raises the third (veiled) proviso, and one that is stronger than that of spoilage. The exhortation to use a resource is stronger than that not to let it spoil for the reason that a man might not use something he has mixed his labour with without it spoiling, and land is the prime example. Considering the provisos together it transpires an individual may hold property if, and only if, his acquisition disadvantages not the prospects of others and that he use what he appropriates, with the spoilage proviso made contingently redundant.<sup>6</sup> Using something precludes its spoiling in the sense that Locke has

6. This utilization proviso marks another point of contrast between Locke and orthodox libertarians for the latter argue that land, at least, need not continue to be used if it is to remain a person's property. See Rothbard (1962,p.147).

in mind, the sense of neglect, that is, going to waste or rotting.

Man in the Lockean state of Nature possibly, and man in civil society almost certainly, will discover the impracticableness of the provisos if not the outright impossibility of observing them at an early stage in the history of ownership. Should a man mistakenly cultivate more than can be used, through ignorance, miscalculation of consumption levels etc., he has, according to Locke anyway, violated the law of Nature by failing to observe the utilization proviso and perhaps that of spoilage and enough-and-as-good-remaining as well. Does everyone really have the right to punish the transgressor as Locke asserts?<sup>7</sup> A hunter kills a deer for meat, hide etc., but cannot use all of the animal before it begins to spoil, whatever 'all' can be meaningfully said to include. Or a more contrived example. The hunter prevents the deer from spoiling by burying it in permanent ice. Still he is liable to be punished for violation of the utilization proviso. Finally, a hunter kills a deer for a valid Lockean reason not knowing he leaves only nine deer as-good-as remaining for a further ten hunters, who won't violate any provisos as it happens. Must the tenth hunt other animals (maybe the availability of similar ones, a moose perhaps, legitimizes the initial kill?) or can he justly punish the others? All of them? The first hunter? Or the ninth...?

Could the inclusion of an intentionality clause save the

7. Locke (1690,p.120).

provisos? Only, it would seem, by drastically altering them and rendering Locke's argument in the Second Treatise a foreseen-but-unintended-consequences type argument.

Something like the following. 'I can foresee that my acquiring of x (an always used, non-spoilable resource) will leave you and others without enough-and-as-good remaining.

This is an unintended consequence of my acquiring x.

Unintended consequences are less morally culpable, if at all, than those intended. Therefore, I may legitimately acquire resource x'. Transforming the provisos in this manner leaves them without much force for it would not be easy to discern when they are and when they are not invoked, except perhaps in clear cases of miserliness and hoarding. And the controversy surrounding the doctrine of double-effect makes the cost of the intentionality clause high indeed. The use of money (an always usable, non-spoilable resource) does not circumvent the enough-and-as-good-remaining proviso either.

This is Locke's explanation of the use of money: 'And thus came in the use of money; some lasting thing that men might keep without spoiling, and that, by mutual consent, men would take in exchange for the truly useful but perishable supports of life'(139-40). Historical truth or not, the use of money tolerates a man possessing 'more than he himself can make use of by receiving gold and silver, which may continue long in a man's possession without decaying for the overplus...'(141).

But the enough-and-as-good-remaining proviso remains untouched because money is resource-dependent and the law of Nature declaring the earth to be common and each having the right to as much as is necessary for preservation sanctions this proviso.

There is a route out of the proviso quagmire not made use of by Locke, and the taking of which has a not inconsiderable implication for one of Macpherson's tenets (as well as the orthodox libertarian's property right). Locke's argument was and is an important one. To MacPherson it is the justification for the theory of what he calls 'possessive individualism', defined according to three criteria: (i) man is 'absolute natural proprietor of his own capacities', (ii) society is 'a lot of free individuals related to each other through their possessions', including their capacities, and (iii) 'political society is seen as a rational device for the protection of property'(1973,p.199). MacPherson's thesis is, as already noted, that if the embryonic market economy of the seventeenth century was to become optimally operative everything had to be converted into private property, including labour, and so implies that the natural exclusive individual rights advocated by Locke are in some measure an ex post facto justification for an already established but formative market (capitalist) economy. 'If the market was to operate fully and freely', his thesis claims, '...then all labour and resources had to become, or be convertible into, this kind of property. As the capitalist market economy found its feet and grew... it was natural that the very concept of property should be reduced to that of private property - an exclusive, inalienable, 'absolute' individual or corporate right in things'(1978,p.10). And thus it came to pass that this justification was 'in effect written into, or was at least implied in, the constitutions of the first modern capitalist nation-states'(13).

The broader claim may well be supportable but MacPherson's second point is less defensible. <sup>8</sup> MacPherson writes that with the Second Treatise 'Locke was the first to make a case for property of unlimited amount as a natural right of the individual...' (15) yet this neglects or overlooks the opening sentence of Chapter V (as well as discounting the provisos) where Locke stresses that all men 'have a right to their preservation, and consequently to... such other things as Nature affords for their subsistence' (1690, p.129). Rather should it be said that Locke presented a radical case for universal limited natural property rights.

Problems besetting the provisos are not addressed by Locke who does not furnish suggestions as to how they might be made practicable. Possibly he believed they would rarely be operative. In the beginning, reminisced Locke, '...all the world was America' (140). It wasn't. And anyway, there are too many Americans. Without a quantitative or qualitative standard proffered for rendering the provisos applicable to man both in and outside of the state of Nature Lockean justice obligates an appropriating of what is already appropriated despite considerations of first and/or long possession and any improvements made. 'But if either the grass of his enclosure rotted on the ground, or the fruit of his planting perished without gathering and laying up, this part of the earth, notwithstanding his enclosure, was still

8. Ryan disputes MacPherson's broader thesis. 'Kant really was', Ryan contends, 'and knew he was, the defender of the bourgeoisie and petite bourgeoisie. In some senses, he was, as Locke was not, the theorist of possessive individualism... This is not to say that Kant was the defender of "unlimited acquisitiveness"...' (1984, pp.97-8).

to be looked on as waste, and might be the possession of any other' (135).

It is Locke's revisionaries who have made of his theory a justification of unlimited private property and not Locke himself. It is his revisionaries who have accepted the labour theory of acquisition while neglecting or discarding the universality the provisos guarantee, and it is the feature of universality that is capable of by-passing the proviso regulations while yet remaining within the the moral conceptual framework of the Second Treatise. Each man seeks his preservation and the necessities of subsistence and owing to the earth being originally unowned if any man has a natural liberty (legitimate claim) to appropriate unowned resources then all men have. Where a man has not the opportunity of mixing his labour once all resources are appropriated - where there are too many Americans and not enough America - his equal natural liberty to secure 'meat and drink and such other things' is not thereby negated or in abeyance. Labouring is the method of original acquisition and not the morality of ownership, and this equal liberty gives rise to a claim upon resources but does not involve the liberty to mix one's labour per se. It lays claim upon a share of resources and hence through this a claim upon others, those with resources. (Brown's fundamental inalienable right is compatible with this description. 'Each man has an inalienable right to the protection of his moral interests, his person and estate. The goods for which a man has a right to protection are private rather than public. They are the rights of a man to the protection of what is in his interest' (1955, pp.245-6).)

The claim to resources could be interpreted in one of two ways. The one a claim to charity, the other to duty. The former is the unlimited appropriation interpretation wherein the claim is only one for the non-interference in a person's (moral) attempts at self-preservation. All that is important on this interpretation is to make clear that the claim is one under the aspect of negative liberty and claiming upon others abstention from certain and specifiable actions, to wit, the class of all actions which interfere with an individual's (moral) pursuit of preservation. Once all resources are owned the claim to abstention would fall and positive, that is charitable, actions towards the propertyless would be supererogatory acts.

The second claim-interpretation grounded in universal natural liberty affirms that the claim is of the positive or dutiful variety. As well as enjoining abstention from the same actions as under the first interpretation it enjoins simultaneously a positive duty to act in certain and specifiable ways on the part of the propertied towards the propertyless if and when they arise. Because the claim is not to the opportunity of mixing one's labour with unowned resources, once all resources are acquired the positive claim is to the necessary and sufficient conditions of preservation. Thus the corresponding obligation (duty) to furnish these requirements on the part of the legitimately propertied, consistent with their own like claim to the same. Those who have are morally obliged to observe the claims of those who have not. The natural right to private property includes that to a redistributed share and when secured through the transfer of wealth the Lockean provisos are

circumvented, but the feature of universality they secure is preserved in another way.

Spencer drew the different conclusion that though men had the right to exclusive private property ownership of land was not so subject because the acquisition of land could only occur to the detriment of others and in violation of 'the law of right social relationships', viz. 'Every man has the freedom to do all that he wills, provided he infringes not the equal freedom of any other man'(1850,p.103). Spencer continues: 'Briefly reviewing the [Lockean] argument, we see that the right of each man to the use of the earth, limited only by the like rights of his fellow-men, is immediately deducible from the law of equal freedom. We see that the maintenance of this right necessarily forbids private property in land'(125).

This last sentence does not necessarily follow. Spencer is here drawing a conclusion anticipatory to that of Henry George who saw that while a man was perfectly entitled to the produce of his labour and anything exchanged for it he was not so entitled to any original nature-given factor for this, George reasoned, would constitute the invasion of a common heritage. But neither does this follow. 'The right of each man to the use of the earth' is perfectly compatible with exclusive individual ownership of land: each man being entitled to his aliquot portion. No man may have more nor should he have less than any other man. Furthermore, the Georgist position seems inconsistent. One cannot produce ex nihilo, as it were. Some nature-given factor(s) must be transformed if not consumed in production, and if I am not

entitled to the factor(s) used how am I entitled to the product of my labour containing them?

That private ownership of land is necessarily forbidden is, I think, too hasty a conclusion, for the rights of others - the law of equal freedom or the positive claim - can be effected independently of non-private ownership of land, as well as of access to land. It is Spencer's emphasizing the neglect of the (absolutely) propertyless which is to be commended, for their being so is contrary to natural law as understood by himself and Locke. Says Spencer admonishingly,

'In our tender regard for the vested interests of the few, let us not forget that the rights of the many are in abeyance; and must remain so, as long as the earth is monopolised by individuals'(124), and further, 'that to deprive others of their rights to the use of the earth, is to commit a crime inferior only in wickedness to the crime of taking away their lives or personal liberties'(125).

Reiterating the right to the use of the earth Spencer advocates as a remedy to the present inequitable situation the returning of all land to the 'great corporate body', that is, society, with compensation paid to current landowners for their honest exertions, the benefits provided by their labour. All land would be held in tenancy by individuals under the patronage of society. In rejecting private ownership of land Spencer is outrightly rejecting also Locke's idea that a man owns any and all resources he mixes his proviso-satisfied labour with.

If a man has the positive claim to a share of resources, as I have said Locke is correct in allowing for, or to not have all means of (morally) pursuing his preservation foreclosed

or denied him (which, incidentally, is a position close to that of Spencer's Social Statics) then the positive duty incumbent on others is the provision of property necessary and sufficient to ensure the enjoyment of this. Essentially, the claim entails non-exclusion from the enjoyment of the necessities of life and is not a claim to access to land, employment or the means of production.

Hillel Steiner argues that the right to natural objects is just such a right to 'non-human means of production'. Seeking to discover criteria under which a right can be universally and inalienably enjoyed Steiner stresses that, if there are such rights, it must be 'logically impossible for one individual's exercise of his rights... to constitute an interference with another individual's exercise of his rights'(1977,p.42). Concerning the right to natural objects, Steiner is critical of Lockean and Nozickian analyses in their forsaking the 'constant identity constraint', for failing to take into account the fact that people as bearers of rights 'are not all contemporaneously existing entities but rather entities the existence of some of whom co-occur with those of some others, overlap incompletely with those of some others and entirely precede or succeed those of still others'(45), and, consequently, any institutions respecting their rights must be end-state oriented operating continuously over time.

Given that all have a right to natural objects, how is this to be practically realized under the conditions of universality and inalienability? Steiner goes on to say, assuming the constant identity constraint, that if one adopts

an 'exact similarity proviso' in the spirit of Locke's enough-and-as-good-remaining proviso it becomes apparent that 'each individual has a right to an equal share of the basic non-human means of production'(49) where 'basic' means as-much-and-as-good natural resources as anyone else. (Relax the constant identity constraint and this becomes indeterminate quantitatively.) This conclusion, like Spencer's, is unnecessarily radical for non-exclusion need mean no more than non-exclusion from the necessities of life, and which claim can be universally and inalienably recognized under end-state institutions while yet according private ownership of resources and means of production to those who originally appropriated them from the common stock.

In concluding this chapter one final background feature of the appeal to the concept of natural rights should be noted, and it is the connexion between claiming or appealing to rights and the possessing of them. The problematic nature of this connexion is epistemological in that we may claim by right what we do not have a right to, and, conversely, may fail to affirm those rights we legitimately bear. The former is the error critics of natural rights theory accuse its advocates of committing, frequently in a Benthamite 'nonsense upon stilts' fashion. This is the concern of Chapter II.

The argument to a committal of the latter error (if such it is) has also been wielded to discredit the thesis of natural rights. Critics have argued from the fact of cultural diversity to the conclusion that the positing of rights is the product of a particular intellectual - cultural

environment and, therefore, so this line of reasoning runs, hardly principles to be upheld as universal. As MacDonald rhetorically expresses the purpose of this criticism, 'What may be agreed is that only at a certain level of intellectual development do men claim natural rights. Savages do not dream of life, liberty and the pursuit of happiness' (1967,p.29). This much can be conceded as a likely truth, but if true as irrelevantly so. As a more than description-only argument the argument from cultural diversity is not a good one, incapable as it is of withstanding close scrutiny. 'It's entire force', writes Brown, 'rests upon the supposition that recognising and asserting inalienable rights is a necessary condition of having them'(1955,p.252). And this is patently untrue. I may know I have rights but choose not to assert them. I may, on the other hand, uphold as a right what I do not have a right to, and I may do so deliberately. Perhaps savages do not dream of what might be or otherwise engage in metaphysical speculation but, again, what does this show about our - and their - possessing inalienable rights? Brown is to the point. 'Any man can have rights and yet not know that he has them. A child has rights which it does not understand and has no wish to exercise'(252). It is not that the conclusion of the argument from cultural diversity is necessarily wrong, only that the reasoning is utterly fallacious.

Belief in a quid pro quo in distributive shares for whatever reason(s) is not, I have argued, an exclusively post market-economy phenomenon. This sociological-historical fact does not show that natural rights theorists attracted to the Lockean theory of acquisition are not labouring under an

illusion. Nor does this fact in any way constitute a rebuttal of the argument from cultural diversity. Only a valid deductive inference from true premises could prove Locke's and the libertarians' conclusions. Thankfully, justification need not be so rigorous and may attempt to be reason-giving, as most moral-political philosophy is, and not conclusion proving. The libertarian justification of the next chapter endeavours to show that the epistemological divide between having a right and knowing that we have, and what rights they are, is bridgeable. We can say, with MacDonald, 'This is where I stand' - and we can give reasons for deciding to stand here rather than elsewhere.

## A LIBERTARIAN THEORY OF PROPERTY : II

In Chapter I some of the issues, concepts and arguments, placed in general historical context, surrounding the advocacy of natural rights requiring elucidation if the libertarian justification was to make sense and not be axiomatically dogmatic (in the way Nozick's Anarchy, State, and Utopia strikes its critics) were discussed. It is now opportune to set forth what I have so far referred to as 'the libertarian justification' - an exposition of a neo-Lockean natural right in private property mediated, that is, delineated and determined, in the first instance by the labour theory of acquisition. 'In the first instance' because the finalized justification contends for a right in private property even where the possibility of acquisition through the mixing of labour is closed. Thus, 'in the first instance' assumes that there are resources still unowned. And because the justification is an amended construction of the orthodox libertarian case for unlimited appropriation this argument, contended for by Rothbard, Rand, and Hospers, shall be presented first, with the premise of non-exclusion added and explained later in order to yield the right to non-exclusion or positive-claim regulated (limited) private property. The orthodox libertarian argument presented first is not to be found in the form given here in the works of the above cited authors for all are satisfied with the case for acquisition given by Locke - minus the Lockean provisos. However, the argument for unlimited acquisition is in accord with the Lockean spirit of the authors, as will be shown by

reference to Rothbard and Rand particularly, though also to Nozick.

Ordinary discourse frequently assumes without question a connexion between what is 'good' and what is 'natural', and teleological explanations of morality and civil society explicitly and frequently invoke this connexion. We believe ourselves to be in a state of natural liberty, we feel ourselves to be so, and in the final analysis sometimes seek to empirically demonstrate by our actions that we are; a paradigm case being the existentialist acte gratuite. Nietzsche's broadly existentialist attack on the 'herd morality' and his belief that the truly creative individual is the one with the will and ability to transcend established laws and create anew (to reevaluate) is one critique of this what-is-natural-is-good assumption. Hobbes, too, stressed that outside of political commonwealth man was in a state of natural liberty, in a state of amorality, even though this was an undesirable position.

Any stance such as this is not necessarily antipathetic to the thesis of natural rights which has usually been construed as embodying three, and necessarily so, fundamental precepts. They are (i) that natural rights are universal and immutable, (ii) they are 'higher' rights than those bestowed by political or civil authority, and (iii) are discoverable by reason. Precepts (i) and (ii) emphasize the 'legal' or morally legislative character of natural rights and precept (iii) their natural character. Together, they collapse 'speculative' and 'practical' reasoning into a single system.

Set out at once, the case for unlimited acquisition assumes the following schema (or something like it).

Premise P1: Persons, qua persons, are rational animals (agents).

P2: The existential predicament of a person is such that; (i) persons must labour in order to survive, and (ii) persons must have some knowledge in order to do this. The more knowledge a person possesses the better able are they to satisfy (i).

P3: Each person, though in a similar existential predicament, is individually distinct at least as a knowing and labouring (from P1, P2) agent.

P4: Each person, in order to survive, must attempt to alleviate their existential predicament, and this is best done in a rational (from P1, P2) and individual (from P3) way.

P5: Every person, qua person, has the liberty to mix their labour with unowned resources.

P6: Each person is the moral 'owner' of their own body.

Therefore, because each person (P3) needs to labour in order to survive (P2, P4), has the liberty to mix their labour with unowned resources (P5) - which liberty they may know they have (P1) - all unowned resources a person mixes their labour with are rightfully theirs, for they annex them to their body which they have a property in (P6), whereby they constitute an extension of that body.

What, then, of the justification of these premises?

"'Man' equals 'rational animal' Df." is the fossil preserved in logic textbooks since Aristotle. It was never accompanied by any adequate account of the meaning of "rational", which was, however, generally assumed to include the capacity to abstract and generalize by the use of symbols in speech and writing; to formulate and understand general propositions and laws and to perceive necessary or logical connections between propositions'(MacDonald 1967,p.28). For the argument to be at all consistent, particularly as regards premises 2 and 4, it needs be shown that a person's rationality at a minimum include the dimension of an ability to solve problems as a function of practical intelligence.

Not all persons need be rational all the time for premise P1 to be true. Rights are ascribed to human beings according to a cluster of concepts of which the capacity to reason is a necessary but not a sufficient one. Hence lunatics and children can be rights bearers, but disembodied persons can not.

What it is to be a rational solver of problems is a complex and contentious subject. It would seem to include such notions as an understanding of causal connexions and an understanding of causal efficacy, memory, the ability to logically infer. In short, all those characteristics not normally attributed to non-human animals. Rationality, we may say, involves the ability or capacity to give reasons for actions and beliefs.

Interpreting rationality as (partly) a problem solving activity is sufficient for the scope of premise P1, is not an

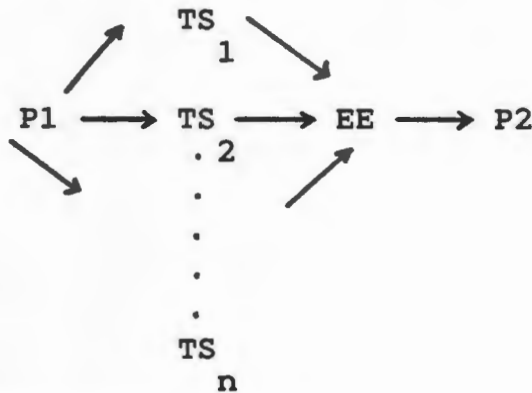
unacceptable interpretation, and is one that accords with what Rand has written, to wit, 'The action required to sustain human life is primarily intellectual: everything man needs has to be discovered by his mind and produced by his effort. Production is the application of reason to the problem of survival'(1967,p.17), and later, '...man cannot survive for long in a state of nature, that reason is his tool of survival, that he survives by means of man-made products, and that the source of man-made products is man's intelligence. Intelligence is the ability to grasp the facts of reality and to deal with them long-range (i.e. conceptually)'(1982,pp.39-40). On the axiom of the primacy of existence intelligence is man's most precious attribute.

Unlike plants, a person's behaviour is not wholly conditioned and unlike other animals it is not governed to such an overriding extent that rationality, the ability to give reasons, is excluded from an explanation of human action. In the unlikely event that Hume is recording the complete story in saying that reason is (and ought only to be) the slave of the passions, the truth of the first premise is not thereby affected.

A person must use their practical intelligence/reason to solve the material and social conditions their predicament presents, that is man must, as Rothbard puts it, 'sustain his life by grappling with and transforming resources' (1973,p.44). Karl Popper has connected his idea of problem solving in the context of scientific discovery with that of the evolutionary order using the following schema;

P1 → TS → EE → P2

where P1 = problem 1, TS = tentative solution, EE = error elimination and P2 = new problem 2. In his Objective Knowledge(1972,p.243) Popper gives the more sophisticated schema incorporating the multiplicity of attempts at problem solving;



(Popper, it must be said, includes the evolutionary activity of plants and animals under his schema.) If to be a creature manifesting goal-directed behaviour, to be a creature that solves or attempts to solve problem situations in a manner that is indicative of practical intelligence, is to be a (partly) rational agent then premise P1 is true.

As for the second premise there is a broad consensus that man as a species, and ipso facto as individual, discovers himself to be a part of the natural order and which membership means certain relationships, foremost amongst these being the expenditure of labour for survival and after that commodiousness. 'God, when He gave the world in common to all mankind', says Locke, 'commanded man also to labour, and the penury of his condition required it of him'(1690,p.132). 'God commanded, and his wants forced him to labour'(133). And if there be only a single point of common ground between advocates of private property and Marxists it is that labour is the essential activity of man. Under the subtitle

'History: Fundamental Conditions' in Part I of The German Ideology, Karl Marx writes that '...we must begin by stating the first premise of all human existence and, therefore, of all history, the premise, namely, that men must be in a position to live in order to be able to "make history". But life involves before everything else eating and drinking, a habitation, clothing and many other things. The first historical act is thus the production of the means to satisfy these needs, the production of material life itself'<sup>1</sup> (1846, p.48).

Precept (ii) is no more problematic or complicated. Rothbard's observation to the effect that every person 'must, in order to act, choose his own ends and employ his own means' has already been noted. Even in a land of milk and honey a man must labour in order to draw milk and collect honey. Labouring accompanied by knowledge is conducive to greater productive efficiency. Fictitious paradises aside, it is nonetheless true that the more pertinent knowledge a man has of his environment, his abilities and of others and their abilities the more successful his labouring is likely to prove and the greater his chances for survival, psychological security and wants-satisfaction. Rand has summarized the connexion between the first two premises when asserting that 'Since everything man needs has to be discovered by his own mind and produced by his own effort, the two essentials of the method of survival proper to a rational being are: thinking and productive work'(1964, p.23). Rationality has

1. Nature is, as Ryan aptly remarks, a 'niggardly mother' (1984, p.77).

survival and wants-satisfaction value. Premise P2, we may conclude, is true.

Premise P3, viz. 'Each person, though in a similar existential predicament, is individually distinct at least as a knowing and labouring agent', should not be construed as an account of personal identity. It aims only to present the basis of the necessary and sufficient conditions for the identification of an individual as possessor of the right to original property, that is as a contingently (partly) rational agent whose separate and recognizable labouring activities allow the determination and delineation of legitimate proprietarial control. All this premise contends is that labouring is necessary to epistemologically ascertain which individuals have property rights in what, and that labouring is, in most cases anyway, a cognitive activity expressed overtly on the physical plane. In cases where there are no witnesses to an act of labouring this clause still holds, for we are, in most instances, able to determine the extent of labouring by comparison with a previous known or hypothesized state or presently comparable one and the laboured state. I may not see a person tilling land but on seeing tilled land it is not unreasonable that I should infer the existence of a tiller. Two or more mutually incompatible claims to ownership presents a difficulty that may defy all attempts at resolution because all the evidence available to suggest that one person is the tiller is available to support the other's claim. I do not think there can be a crucial experiment to determine who is rightful owner in such cases, but do imagine such cases would be few and far between. Conversely, the physical principium individuationis of

acquisition provides knowledge of those who do not have any - or any legitimate - proprietorial control. When I know the identity of the tiller I know the identity of all non-tillers.

As formulated, the fourth premise states that 'Each person, in order to survive, must attempt to alleviate their existential predicament, and this is best done in a rational and individual way'. This premise is more problematic. Certainly, should a person fail to be at all rational in endeavouring to alleviate their predicament their prospects for survival - assuming that luck does average out - will not be encouraging. But what is meant by saying that predicament alleviation is best done in a 'rational and individual' way? And is this true? It is not difficult to imagine situations in which agents would be acting rationally if they voluntarily entered into mutually beneficial arrangements, but this would not infringe the individuality clause. Rather would it attest to their problem-solving ability. Not all inter-personal, -class, -communal interests are mutually beneficial, however, and what the 'rational and individual' clause seeks to rule out is the viability and not just the moral wrongness of those forms of behaviour broadly classifiable as 'parasitic'. Parasitism is unjust, but this is the conclusion of the argument, not an assumption of the fourth premise. ▼

What the inclusion of the individuality clause desires to show is that predicament alleviation is best done, that is to say maximally effected, by individuals choosing, acting and especially interacting in voluntary ways. Rand is adamant

that those who would attempt to survive by 'counting on productive men to serve as their prey' would not succeed.

'If some men attempt to survive by means of brute force or fraud, by looting, robbing, cheating or enslaving the men who produce, it still remains true that their survival is made possible only by their victims, only by the men who choose to think and to produce the goods which they, the looters, are seizing'(1964,p.23).

'Such looters', continues Rand, 'may achieve their goals for the range of a moment, at the price of destruction: the destruction of their victims and their own'(24). Rothbard, writing more circumspectly, maintains that 'parasitism itself violates the basic economic requirement for life: production and exchange'(1973,p.27). Rational parasitism cannot be ruled out as glibly as this.

The greater the extent an individual or group has managed it's environment the greater the scope for others to alleviate their predicament by turning parasitic, forcefully and/or fraudulently, which establishes in effect a proportional relation between opportunities for parasitism and the general extent of predicament alleviation. If reason discharges it's 'duty' promoting self-interest alongside the free promoting of the interests of others through the solving of problem situations, reason is equally capable of seizing on the practice of parasitism as a problem solution. The argument to the conclusion that parasitical behaviour is necessarily self-defeating should be rejected. It is possible that parasites might survive '...even over a whole

2. I believe this to be the import of Rand's stance, and Nozick agrees with such a reading. He writes of the argument: 'It might be said that a rational person follows principles, general policies, and so we must consider those principles of

lifetime and many generations. And new hosts come along' (Nozick 1971,p.214). Persons as rational animals are not precluded from being rationally parasitic some, most or all of the time - opportunities permitting - as perhaps the history of European imperialism has made plain and as Marxists wish to show of the bourgeoisie through the exploitation thesis. In The German Ideology Marx writes

'It is a long established view that over certain epochs people lived by plunder. But in order to be able to plunder, there must be something to be plundered, and this implies production. Moreover, the manner of plunder depends itself on the manner of production, e.g. a stock-jobbing nation cannot be robbed in the same way as a nation of cowherds' (1846,p.138).

Yet the consequentialist argument contra parasitism is not irredeemable if read as an empirical one contending for the impracticability of parasitism on a large scale in the long-run rather than the a priori (and false) argument that all parasites eventually undermine the productiveness of their hosts and so frustrate their own purposes.

What makes the modified argument plausible explicitly emphasizes the conjunction of rationality and individuality by considering the likelihood of a rational individual response to parasitic behaviour on the part of the hosts, this response taking the form of the institutionalized protection of persons and property. 'A man's method of using his consciousness', says Rand, 'determines his method of survival'(1961,p.21) and the institutionalizing of protection

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action which make man's survival possible. But it has not been shown why each person must follow the same principles, and why I may not, as a rational being, have a clause in mine which recommends parasitism under certain conditions' (1971,p.215)

is an obvious method. Certain social, economic and political preconditions will undoubtedly need to be realized, and while protection cannot end all instances of parasitism due to the impossibly high opportunity costs this would involve it is capable of terminating it on a large scale and in the long-run with acceptable costs. The issue here is that it is a rational course of action for individuals concerned with their welfare, if not their rights, as hosts - to protect their persons and property - and parasites alike - to protect themselves against possible retaliation - to be protected. (The provision of institutionalized protection is the subject of the final chapter.)

Hart says of man's 'limited understanding and strength of will' (article v of his minimum conditions of natural law) that 'All are tempted at times to prefer their own immediate interests and, in the absence of a special organization for their detection and punishment, many would succumb to the temptation.... "Sanctions" are therefore required not as the normal motive for obedience, but as a guarantee that those who would voluntarily obey shall not be sacrificed to those who would not' (1961, p.193).

Premise P4 therefore affirms the value of rational autonomy in predicament alleviation where this frequently results in cooperative enterprises for mutual benefit. Cooperation aids in the realization of goals open to individuals alone, but more than that allows for the achieving of objectives not possible to individuals in isolation. Though all situations of parasitism cannot be prevented they can be minimized.

The fifth premise has been assessed in Chapter I. Natural resources are unowned. The only way that they can become owned is (i) by all men freely consenting to abide by what they all agree to be fair shares, or (ii) by an individual appropriating for himself and/or others without the consent of all. That the only way this can be done is through the mixing of one's labour (thereby subjecting resources to personal-moral control) is not absurd. Why not (i)? Because if natural resources really are unowned, and persons are at liberty to acquire them, why does one need consent? That all have a say in determining fair - and their - shares and a claim to a share of unowned resources in no way immediately follows. I turn now to the sixth premise.

A premise to the effect that each person is the 'moral owner' of their own body (standing here for the orthodox libertarian right of self-ownership) needs to be included in the labour theory of acquisition argument if the Lockean syllogism is to conclude that men gain what they mix their labour with and do not lose their labour to the natural state. Having a liberty to mix one's labour is insufficient to explain in moral terms - and an overtly moral premise is necessary - why labouring is central to original acquisition and how it is. Indeed, the idea of the liberty to mix one's morally 'owned' labour can be spelt out at greater length and with greater rigour and sense than the unargued libertarian self-ownership precept as derived from Locke. Specifically, I wish to show

3. The impossibility of getting universal consent made plain to Locke the absurdity of this position. 'If such a consent', he says, '...was necessary, man had starved, notwithstanding the plenty God had given him' (1690, p.130).

because it needs be shown, that human moral agency establishes a right in private property by persons intentionally (for the greater part) mixing their labour with unowned resources.

This sixth premise is undoubtedly the most important, and is a rudimentary self-contained argument for the libertarian justification to which the other premises set the background and define the limitations. To their detriment libertarians treat the self-ownership claim, as Locke himself did, as a self-evident truth demanding rational assent but not reasoned argumentation. Rothbard, cited here as a representative case, straightforwardly attests that 'each individual, as a natural fact, is the owner of himself, the ruler of his own person'(1970,238). Not only does this confuse ruling with owning it also fails to show why I am a ruler and not an unowned resource nor the labour-acquired property of another. Why am I not the property of my parents, my grandparents, or (the conclusion of Robert Filmer's resisted by Locke) ultimately the property of Adam...? The truth is plainly not self-evident.

The line of reasoning favouring premise P6 is adduced through a more-or-less standard wielding of the Kantian theme of persons as ends-in-themselves. Orthodox libertarians do share the categoricalness of Kant. Nozick asserts that a right is a basis for demanding or enforcing compliance towards my, or your, 'basic moral characteristics' (1981,p.499) and, as was noted in Chapter I, invokes the notion of not using others as resources. Rand, by no means sympathetic to Kant's philosophy, occasionally writes in a

similar style: 'every living human being is an end in himself, not the means to the ends or the welfare of others' (1964,p.27).<sup>4</sup> And it is Kant who implores us to act only in ways such that we treat humanity, either in ourselves or others, never solely as a means but always at the same time as ends. Adopting the categorical imperative for the purposes of the libertarian justification, the support for the sixth premise may be set forth as follows:

(i) Persons are ends-in-themselves. Persons are rational autonomous agents.

(ii) It is morally wrong to treat persons in ways that violate their autonomous agency.

(iii) Persons are embodied autonomous agents.

(iv) To violate or impinge upon a person's body is to violate or impinge upon their autonomous agency, which is morally wrong (by (ii)).

Point (i) reaffirms that this is what it is to be a person or autonomous agent (for Kant they are synonymous). Persons, as homo noumenon, have unconditioned value, which is to say that we are moral subjects and do conceive of ourselves as such.

'I am an end-in-myself' is, Kant says, a subjective principle of human action become universal when all persons consider themselves thus, as they do. It is an expression of our very nature.

'Rational beings', Kant tells us, '...are called persons because their nature already marks them out as ends in themselves - that is, as something which ought not to be used merely as a means - and consequently imposes to that extent a limit on all

4. 'Individual rights', she says, 'are the means of subordinating society to moral law'(1964,p.92). For Rand's hostility to Kant see Rand (1982,pp.100-114).

arbitrary treatment of them....Persons, therefore, are not merely subjective ends whose existence as an object of our actions has a value for us: they are objective ends...' (1795, p.96).

How deep personhood runs is an issue with important implications for moral-political philosophy and many of our central beliefs, such as the nature, role and desirability of the family. However far personhood runs, however 'thick' the concept of persons is, Kant makes it clear that somewhere the spade will turn, and the spade's turning signals the violation of autonomous agency. The thicker the concept of personhood - which matter may be in part empirically decidable - the less will we be able to do to or with one another without impinging upon personhood, violating autonomy. Unless we are someways bigoted or prejudiced Kant's categorical imperative captures something central to morality with the unconditioned value and separateness of persons, something which, Exdell says of it, '...upon reflection most of us would count... among our firmly held convictions' (1976, p.142). Even utilitarianism accords some (though arguably far less) credence to personhood if the utility calculations are to be of maximal average utility over plain maximal utility.

As an end I ought not be treated as a means. This is what is meant or picked out by my being an end; that I may not be used, in Nozick's phrase, as a resource for others. The moral sanctity autonomy secures ought not to be overridden and my intentions, as expressions of agency, ought never to be frustrated insofar as they are legitimate. (What this means will be made clearer below.)

That persons are embodied as (iii) affirms is herein asserted as a contingent truth. Disembodied persons are a conceivable possibility but we do not know how moral-political philosophy affects them, and particularly not the labour theory of acquisition. What is important is the relationship between me and this body I (and others) call mine which leads me to see this body as being my body, the one with which, employing sans metaphysics, Cartesian language, I interact. Part of this relationship between the way the self or I is dominant in this body (Leibniz's expression) can be understood under the rubric of intentionality, the agency of the autonomous.

Having an intention to act is just to bring about that act which I intend to bring about providing there are no countervailing factors present. An intended act will result providing that what is intended is neither logically impossible, nor contingently not-possible given a description of my abilities and general situation, and where no-one and nothing intervenes and frustrates my intention(s).

It is the fourth point that is most important when (iv) renders true a violation of my body as simultaneously constituting a violation of my intentions, autonomous agency, and, therefore, is morally impermissible. In many if not all cases of action my body is the vehicle of my intentions, which is to say that my body is necessary to effecting my intentions. The conditions of satisfaction for intentional action include my body. And, if intentionality expresses moral agency, and where my intentions accord with the Kantian injunction that all be treated always at the same time as ends, then no-one ought to frustrate my intentions.

Something frustrating my intentions would be a case of brute bad luck and as such beyond the scope of this argument.

How this connects with the labour theory of acquisition can now be developed. Labouring is for the most part an intentional activity where beliefs and desires are involved whose conditions of satisfaction must be met by doing certain things with a person's body. That I have the liberty to mix my labour with unowned resources has previously been contended, so the conclusion arrived at is that I may mix my labour with unowned resources providing I respect the autonomy of others, and this is clearly incompatible with preventing another from likewise mixing their labour.

As an expression of my moral agency or autonomy my intentions furnish the moral connexion between my body and the resources with which I mix my labour; my intentions or more properly my intentionality explain how it is that I extend my moral personality into resources and thereby annex them to my body. (Recall here that premise P3 said that labouring is a cognitive activity physically manifested.) I extend my body into or over natural resources by labouring with them and thus they become part of the morally autonomous me, the morally protected me. Intentionality is the moral umbrella under which my property becomes an extension of my body.

Where thwarting my intentions to acquire resources is wrong so too is frustrating my intentions in holding property for it represents a violation of my (intentionally) extended body. If frustrating intentions is morally impermissible it is as wrong to frustrate my intentions in possession as it is

to frustrate them in taking possession. Both are infringements on autonomy. 'This granted', says Exdell, 'the right to keep the fruits of one's labour follows as a simple corollary. If someone steals the vegetables you have raised in your garden, he has acted on the maxim that your efforts may be used, without your consent, to serve his own ends. He has, in effect, treated you like a slave'(1976,p.144).

Though a man has the liberty to labour with unowned resources this cannot be understood as the liberty to mix one's labour per se. There is no positive claim to employment or of access to unowned resources. This has a distinct bearing on what follows, re. Locke's saying that reason informs us that men 'have a right to their preservation, and consequently to meat and drink and such other things as Nature affords for their subsistence'. Where all resources are once acquired and an individual cannot pursue their preservation their positive claim to a share does not lapse into abeyance.

The connexion between resources-for-survival and the labouring that secures them (rightfully) is that between the right established in original private property and a foreclosure on the exercise of the method of original acquisition. Some, in exercising their liberty, have foreclosed on others the opportunity of doing likewise, a consequence unavoidable in a world of more and more Americans. Infringement of moral claim would only be brought about if the propertied did not redistribute a portion of their wealth to the propertyless, in this case a sufficient amount to ensure their preservation. The propertyless, not having a claim to employment or to the means of production

and yet having a positive claim to a share of resources, necessitate redistribution, and redistribution respects the right established in property originally acquired as well as the positive claim corollary upheld in the principle of non-exclusion. It is the principle of non-exclusion that yields the absent premise necessary for the finalized libertarian justification. This justification assumes the following schema (or something like it).

Premise P1: Persons, qua persons, are rational animals (agents)

P2: The existential predicament of a person is such that; (i) persons must labour in order to survive, and (ii) persons must have some knowledge in order to do this. The more knowledge a person possesses the better able are they to satisfy (i).

P3: Each person, though in a similar existential predicament, is individually distinct at least as a knowing and labouring (from P1, P2) agent.

P4: Each person, in order to survive, must attempt to alleviate their existential predicament, and this is best done in a rational (from P1, P2) and individual (from P3) way.

P5: Every person, qua person, has the liberty to mix their labour with unowned resources.

P6: Each person is the moral 'owner' of their own body.

P7: When all resources are once owned the subsequent propertyless have a positive claim to a redistributed share of property/wealth in respect of their claim to non-exclusion.

Therefore, because each distinct person (P3) needs to labour in order to survive (P2, P4) and has a liberty to mix their labour with unowned resources (P5) all unowned resources a person mixes their labour with belong rightfully to them as an extension of their body (P6) (which they may know: P1) - less any property/wealth redistributed or to be redistributed in observation of the positive claim to non-exclusion (P7).

How does all this cash out in terms of rights? How is it that I acquire a right in exclusive private property? Assuming, following Kant, that my autonomy ought to be respected (is to be considered inviolable) - Kant would say imposes a duty on others not to infringe it - I have the right held against others to protect my moral agency. My moral agency enters the world through many diverse ways of acting, one of which is labouring. Once invested it cannot be disinvested or undone other than by me. My moral agency comes to 'reside in' the world, in those resources to which it is imparted. Others are obligated to respect me and my property, protected as of right. What I have a right to ought not to be infringed: this is what it is to have a right. And because such a right is not bestowed by general consent or convention neither can it be abrogated in this manner.

This understanding does accord with that of both Rand and Nozick.

'The concept of a "right"', explains Rand, 'pertains only to action - specifically, to freedom of action. It means freedom from physical compulsion, coercion or interference by other men. Thus, for every individual, a right is the moral sanction of a positive - of his freedom to act on his own judgement, for his own goals, by his own

voluntary, uncoerced choice. As to his neighbours, his rights impose no obligations on them except of a negative kind: to abstain from violating his rights' (1964, p.94).

In answer to the question what is it that bestows a right, Nozick suggests that 'One view would be the following.

It is important and valuable that a person have a range of autonomy, a range or domain of action where he may choose as he wishes without outside forcing. Recognizing and respecting such a domain of autonomy is a response to the person as a value-seeking self; so we ought to recognize such a domain' (1981, p.501).

Later Nozick writes: 'There is much to be said for recognizing the widest possible domain of autonomy, limited only by the boundary of not violating the similarly specified autonomy of another' (502).

Non-exclusion regulated private property parallels in important respects the conclusions reached by Spencer and Alan Gibbard, particularly with regard to what Gibbard calls 'not unencumbered ownership' (1976, p.81). Gibbard commences with his 'Hard Libertarian Position' which is such 'that a person can be denied the right to use a thing only with his consent'<sup>5</sup> (77).

Under this conception all men have two natural rights: (i) the equal right to the use of all things, and (ii) the right to consume and transform things. Under the Hard Libertarian Position these rights are indefeasible. 'What I am supposing', he says, 'is that it is morally permissible,

5. Gibbard states that manufactured items are, given the Hard Libertarian Position to 'be regarded simply as commonly owned raw materials put into a new form' (1976, p.79) and so has not yet distinguished between ownership and use.

in certain cases, to deprive someone else of an opportunity without his consent, but that it is impossible to deprive someone of a right unless he himself gives up or loses that right through a voluntary act'(78). In the real world this position would be 'miserable' because unworkable; all would have equal rights to the fruits of others' labour(79). So, people would consent to allocate exclusive rights in ownership though they would not automatically consent to alienate their right to the use of all things. They find themselves in a bargaining situation and in return for agreeing to allocate exclusive control make stipulations for due returns. Some renounce their rights in exchange, and a system of welfarism is instituted. As Gibbard says (of the handicapped who would be obvious beneficiaries under this system):

'The handicapped may in effect collect a rent, rather than exchange their joint proprietorship of all land for ownership of a piece of land. The able will achieve not unencumbered ownership, but ownership subject to taxation for the handicapped. A right in welfare, in this situation, stems not from factors which override considerations of natural liberty, but from considerations of natural liberty itself'(81)

Welfarism is a justified practice if, and only if, it follows from the equal rights and liberties of men without violating any of them.

Spencer's principle of non-exclusion goes further than Gibbard's. In his Social Statics he gives as his 'first principle' the law of right social relationships. 'Every man has freedom to do all that he wills, provided he infringes not the equal freedom of any other man'(1850,p.103), from which he draws as corollaries the rights to life and personal liberty - but not the right to private ownership of land.

If such ownership be tolerated non-landowners would exist 'by sufferance only'. What Spencer attempts is, as mentioned earlier, a (proto-Georgist) compromise, with the individual holding land as a tenant of society. 'Instead of being in the possession of individuals', Spencer says, 'the country would be held by the great corporate body - Society'(123).

Tenant landedness, I have suggested, is not demanded, and Spencer goes some way to undermining his own case for it. In his Principles of Ethics he writes;

'But now let it be remembered that this principle of natural equity, expressed... as the freedom of each limited only by the like freedom of all, is not an exclusively a priori belief. Though, under one aspect, it is an immediate dictum of the human consciousness after it has been subject to the discipline of prolonged social life, it is, under another aspect, a belief deducible from the conditions to be fulfilled, firstly for the maintenance of life at large, and secondly for the maintenance of social life'(1893,p.60).

Let Spencer be granted his 'immediate dictum' for this is not where his case weakens, and attend instead to his two conditions.

Both the libertarian justification and Spencer's reasoning concur that the earth in it's natural condition is unowned and that every man has the liberty to appropriate from the common stock, and must do so in order to survive. And in this lies the crux of Spencer's argument. Granted the liberty of each to appropriate from the common lot, how is appropriation to be justified when removal infringes the equal freedom of another? The principle of non-exclusion rests upon two answers. One, the liberty to appropriate from the common stock lasts only as long as the common stock. How could it last longer? Two, Spencer's conditions to be

fulfilled can be met by redistribution. Hence, tenant landedness is not demanded on either a priori or empirical grounds.

As was made clear in Chapter I the libertarian justification should not be construed as a deductive proof of the right to private property. Rather is it a justification purporting to demonstrate in a way that is not axiomatically dogmatic the plausibility of our having such a right. Of course, the justification is criticizable, but one objection will be considered here. This criticism is the charge of having committed the naturalistic fallacy.

The status of the naturalistic fallacy as a fallacy is contestable and there are ways of facing the anti-naturalist's challenge without becoming embroiled in logical excavation. One approach makes use of functional concepts and another advances, in a not very explicit manner, the thesis that in moral discourse facts and values are sometimes not separable and neither need they be. While facts without values are obviously possible but not part of moral discourse values without facts are often uninformed or misinformed values, and part of moral discourse. Indeed, facts may be necessary if moral discourse in these cases is not to be impotent or possible, as Charles Taylor puts it, only to 'A race of inactive, godless angels, as really disinterested spectators...' (1967, p.168).

Can an appeal to functional concepts show that the naturalistic fallacy is not always committed when facts are adduced and imported in moral argumentation, that is, that

some things cannot be satisfactorily defined independently of what it would be to be a 'good' something? MacIntyre in After Virtue employs this Aristotelian approach and says 'It is only when man is thought of as an individual prior to and apart from all roles that "man" ceases to be a functional concept'(1981,p.56) and is sceptical about whether so thinking is possible, believing the naturalistic fallacy to be the result of an '...impoverished moral vocabulary... a sign of a deep lack of historical consciousness'(56). For MacIntyre moral discourse has entered a new barbarian dark ages - 'the twentieth century's decline into emotivism'(63). Some things, and actions too, we define as good or bad according to how well they fulfil the functions they serve. MacIntyre cites as an example that of a watch, and explains that 'From such factual premises as "This watch is grossly inaccurate and irregular in time-keeping" and "This watch is too heavy to carry about comfortably", the evaluative conclusion validly follows that "This is a bad watch"'(55). This is one argument to demonstrate that 'any argument that moves from premises that assert that the appropriate criteria are satisfied to a conclusion which asserts that "This is a good such-and-such", where "such-and-such" picks out an item specified by a functional concept, will be an argument which moves from factual premises to an evaluative conclusion'(55).

Leading straight into the second approach this might, if successful, clarify MacIntyre's question: 'Up to the present in everyday discourse the habit of speaking of moral judgements as true or false persists; but the question what it is in virtue of which a particular moral judgement is true or false has come to lack any clear meaning'(57).

Taylor attempts to provide an answer, and in this respect has been anticipated, albeit crudely, by Rand, who writes

'In answer to those philosophers who claim that no relation can be established between ultimate ends or values and the facts of reality, let me stress that the fact that living entities exist and function necessitates the existence of values and an ultimate value which for any given living entity is its own life. Thus the validation of value judgements is to be achieved by reference to the facts of reality. The fact that a living entity is, determines what it ought to do. So much for the relation between "is" and "ought" (1964, p.17).

Describing something can be done without evaluating it. Description is logically distinct from evaluation. Moral beliefs are, however, often connected to beliefs about the world and/or with other beliefs themselves concerning propositions of matters of fact, and what makes these beliefs moral ones is their relevance to agents in the real world. Some moral beliefs are better borne out by facts than others. Moral beliefs are not merely epiphenomena to factual beliefs yet there is sometimes a supervenient relation between moral beliefs and facts explaining why things are as they are in the moral world and why, possibly, they ought to be other than they in fact are. An example might be whether a foetus is a person or not. Given a criteria for personhood, either the foetus does or does not meet the criteria. Our not being in a position to know, if such is our position, is not at issue. As Taylor expresses the facts-to-values relation, '...to say of something that it fulfils human needs, wants, or purposes always constitutes a prima facie reason for calling it "good", that is, for applying the term in the absence of any overriding considerations'(1967, p.161), and that the use of 'good' 'is unintelligible outside of any relationship to wants, needs, and purposes'(167).

There are reasons for evaluations and some reasons are better than others. Without the prospect of modifying or changing our values by comparison with evidence moral discourse would be largely if not altogether pointless. Without reasons an evaluation could express nothing more than an attitude or feeling, for to evaluate 'is always to claim that there are reasons for commending whatever it is applied to'(161).

'A judgement without reasons', Taylor emphasizes, 'cannot be allowed, for it can no longer be distinguished from an expression of feeling'<sup>6</sup>(165).

What both approaches show is that there is room in moral discourse for empirical, descriptive matters, and that questions of fact may resolve issues over which normative stances vary. In short, it is not obvious a descriptivist would be wrong to say that we cannot always hold apart the descriptive and normative import of moral utterances and beliefs, and that some are just expressions of feelings and attitudes, and others are just false, if unrelated in any way to facts.

6. It is exactly this objection to emotivism that Rothbard failed to make, instead leaving it an open question as to whether one could successfully convince another to assent to the axiom of non-aggression.

## REDISTRIBUTION, COERCION AND FREEDOM

Rightful exclusive private property holdings that the libertarian justification sought to establish were seen to be universal, that is, not dependent upon the mixing of labour with unowned resources. Everyone is entitled to  $\underline{x}$ , when they do not currently have  $\underline{x}$ , and where  $\underline{x}$  denotes that property (wealth) necessary and sufficient to satisfy the claim to non-exclusion. In such cases  $\underline{x}$  is not labour dependent; it makes no reference to original acquisition. If unowned resources are available to satisfy non-exclusion and those hitherto propertyless are capable of mixing their labour with them then this positive claim to a redistributive share is not effective. (The term 'available' is, admittedly, vague, but might include such notions as proximity, economic viability, etc., and does apply to employment opportunities.) Universality is a feature secured by the principle of non-exclusion which attested to every individual's claim to property legitimately acquired providing such holdings did not contravene the principle of non-exclusion. Expressed conversely, any individual not unjustly excluded from acquiring unowned resources has a positive claim upon the surplus property of others sufficient for preservation.

From this it can be seen that the claim to non-exclusion is not categorical because it is not in principle possible to meet all such claims due to the scarcity of resources to which they lay claim. As Charles Fried remarks, 'Positive rights are inevitably asserted to scarce goods, and

consequently scarcity implies a limit to the claim' (1978,p.110). On the minimal resources account alluded to in Chapter I (food, shelter and clothing), they need not be presently scarce, only that they could become so, are finite.

The concept of 'preservation', though, becomes vague unless it means no more than continued bodily existence exemplified in the three archetypal economic needs, and if so construed then it is, as R. Dahl and Charles Lindblom say, 'a relatively concrete goal to pursue'(1963,p.145). While the extent of redistribution is not unimportant, the primary concern of this chapter is to examine some intricacies and possible operations of a system for non-exclusion oriented redistribution, with the extent of welfare receipts analyzed secondarily. Before proceeding to this task there is another objection to redistribution per se not broached in Chapters I and II. This objection, made by contemporary orthodox libertarians, is left until now because it illustrates singularly well why there is a universal right to private property by drawing on premises and inferences of an orthodox critique of redistribution.

Rothbard maintains, as does Rand, that no man may, under any pretext, appropriate the legitimate (labour-acquired) property of another without the owner's free and express consent: the unstated but implicit assumption of inalienable<sup>1</sup> first possession. Now, Rothbard challenges that 'liberals' force a breach in the concept of property where none should

1. By 'liberals' Rothbard seems to refer to anyone not of the orthodox libertarian persuasion, including Marxists.

be, that is, when the reality, the facts of the matter, do not warrant such separation. This (strict Lockean, no provisos) point is that property in person and property in things - and it is property in things that is of present concern - are inseparably, and it seems inextricably, intertwined. Consequently, there is no justification nor can there be for the separation of a man from what, according to Rothbard, he has a right to. Rothbard maintains that,

'In short, the liberal attempts to uphold the individual's right to the ownership of his own body, but then denies his right to "property", i.e. to the ownership of material objects. Hence, the typical liberal dichotomy between "human rights", which he upholds, and "property rights", which he rejects. Yet the two, according to the libertarian, are inextricably intertwined; they stand or fall together' (1973, pp.43-4).

Rothbard does have a point, and a point that is valid. Unfortunately, the point is not the one which either he, or Rand, wishes to make. 'Property rights are human rights', says Rothbard, 'and are essential to the human rights which liberals attempt to maintain'(45). Rand remarks that 'Without property rights no other rights are possible' (1964,p.33) and later, to the same effect, that 'No human rights can exist without property rights'(91). This is the valid point. To then conclude that all property in self and things is inalienably and absolutely sacrosanct, and the forcing of the breach morally unwarranted, is incompatible with the assertion that property rights are human rights. Rothbard and Rand stand facing Spencer's 'rights in abeyance' challenge, and neither can meet it. The right to property if a human right is a non-contingent, because held in virtue of simply being human, though non-categorical, due to potential scarcity, universal right of each and every individual as a

human being, and a right that not only every human being has but one which ought to be respected in as far as it is a positive claim. Because the right to property is a human right the dichotomy consequent upon the liberal breach is morally warranted. It is warranted for the reason that if human rights and property rights are inseparable then the propertyless are without in spite of their human right. To say 'property rights are human rights' is equivalent to saying 'there is a human right to property'; they are biconditionally true statements. If human rights are universal and inalienable - and how else are they to be understood? - then so too must property rights be. Rothbard is correct to affirm of property rights and human rights that they stand or fall together, but if, as orthodox libertarians contend, they stand together then redistribution to meet the 'human' clause stands also - which is the point neither sought to make.

How redistribution affects the justificatory theory for unlimited acquisition can be seen more clearly by developing Nozick's attenuated thesis of justice in holdings. Nozick writes 'If the world were wholly just, the following inductive definition would exhaustively cover the subject of justice in holdings.

1. A person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding.
2. A person who acquires a holding in accordance with the principle of justice in transfer, from someone else entitled to the holding, is entitled to the holding.
3. No one is entitled to a holding except by (repeated)

applications of 1 and 2.

The complete principle of justice would say simply that a distribution is just if everyone is entitled to the holdings they possess under the distribution' (1974, p.151).

Nozick's points 1 and 2 seem acceptable as they stand. However, given the demands of non-exclusion, point 2 is insufficient, and, due to this insufficiency, point 3 must be adapted to allow for (possibly coercive) redistribution, and thus yield something like the following.

3'. Entitlements to legitimately acquired holdings are maximally restricted by the obligation to observe the principle of non-exclusion.

So reformulated, 3' means that 2 also needs to be adapted. For Nozick, justice in transfer covers only the free bestowing of property either gratis or in exchange, and this is clearly inconsistent with (possibly coercive) redistribution.

2'. A transfer is just, even when not voluntary, when that transfer is effected in order to satisfy the conditions of the principle of non-exclusion.

Nozick's paranthetical clause to his denunciation of redistribution is worth mentioning for what, from the perspective of the libertarian justification, it can accommodate. 'From the point of view of an entitlement theory', he says, 'redistribution is a serious matter indeed, involving, as it does, the violation of people's rights. (An exception is those takings that fall under the principle of the rectification of injustices.)' (168).

Redistribution entails the transfer of resources or wealth from some to those who have a positive claim to some portion of them. Money transfers are, of course, the most likely medium. 'In a money economy, claims largely take the form of money income'(Dahl & Lindblom 1963,p.129), though conditions where the movement of tangible goods would be more appropriate can be envisaged, for instance, remote islands. In what follows the assumption will be that all talk of the redistribution of resources and wealth refers to money transfers.

Turning now to the primary question, How is redistribution to operate? Relying on the goodwill, charitable intentions or sense of moral duty of those propertied is not only patently optimistic but ruled out on grounds of justice. Many are not charitable, or not sufficiently so, and weakness of will is never redundant. Hence, redistribution will in all likelihood require some form of coercive apparatus which identifies genuine recipients and executes the transference of resources to them. We do not reside in a world populated by saints and heroes. Indeed, Milton Friedman goes so far as to say, in effect, that coercive redistribution would not be necessary in such a world for 'The welfare state', he says, '...has extortion and coercion at its very centre, because in order to do good the welfare state must use force to take people's money away from them'<sup>2</sup>(1976,p.4).

2. Welfarism violates Friedman's 11th commandment: 'Everyone shall be free to do good at his own expense' (1976,p.10).

In contemporary societies practicing non-voluntary redistribution the apparatus is part of central government or part thereof, and redistribution is governmentally decreed, assessed and executed - hopefully in an efficient and impartial manner. All the same, committal to non-voluntary redistribution is not necessarily a commitment simultaneously to centralized state welfare. A non-statist welfare system is at least a theoretical possibility. (This topic forms part of the final chapter.)

Whichever way redistribution is facilitated two distinct aspects are involved: one of welfare accumulation and the other of welfare distribution. The former is the realm of contributive justice and involves the identifying of those liable to contribute, forming a standard for contributions, assessing the level of contributions necessary to meet the positive claims and then collecting them. Welfare distribution is the identifying of bona fide recipients and ensuring their claims to non-exclusion are met, within the constraints of scarcity. Of all of these sub-processes only the formulating of a standard for welfare contributions is contentious and/or problematic, for the others are no more than matters of data collecting, means-testing, etc..

The standard of contribution (welfare accumulation) that best conforms with points 1, 2' and 3' above, is that of proportional taxation. A number of reasons advanced by Friedrich v. Hayek attest to the desirability of proportionality over other standards, usually progressive rates of taxation, the most important of these being that it does not discriminate against the wealthy simply because they

are wealthy. Hayek argues that redistribution effected through taxation 'has come to be almost universally accepted as just'(1960,p.306) and maintains that once progressive rates of taxation had been politically realized it's supporters 'reverted to the original, but long avoided, justification of progressive taxation as a means of bringing about a more just distribution of income'(311).

A system of proportional contributions is not open to the objection, which is intuitively suggestive at least, and which is levelled against another possible formulae for welfare contributions, namely, the standard of a per capita flat-rate contribution, that the more property (holdings) an individual has not only the more are they able to pay but the more they ought to pay. Part of the suggestiveness of this argument derives from straightforward utility calculations. Recall the adage that a penny to a poor man has greater utility than the penny from the rich man has disutility. This may well be true,<sup>3</sup> generally, but is not a case for the reallocation of pennies as it stands.

The weight of this objection to proportionality revolves around an implicit notion of just 'compensation'. Those who have more property ought to contribute more for, after all, in terms of original acquisition, they have foreclosed to a greater extent the possibility of others mixing their labour and should, therefore, compensate for what they are

3. Hayek believes that 'Modern developments within the field of utility analysis itself have, however, completely destroyed the foundations of this [decreasing marginal utility] argument'(1960,p.309).

responsible for bringing about. This serves only to raise Hayek's charge of discrimination. If holdings are legitimately acquired (and maximally restricted) why should anyone pay more, proportionally, than anyone else? 'It is', surmises Hayek on progressive taxation, 'no more than a rejection of proportionality in favour of a discrimination against the wealthy without any criterion for limiting the extent of this discrimination'(313). This objection is further blunted when it is pointed out that under a system of proportionality some do pay more - absolutely - than others. And though the wealthy (or their forebears) are causally responsible for bringing about that state of affairs whereby some are propertyless they are not morally responsible. Why then should they be taxed as though they were?

Other reasons favouring proportionality cited by Hayek include: (i) it is more acceptable to those who pay absolutely less because 'since almost all economic activity benefits from the basic services of government, [which remain constant] ...a person who commands more of the resources of society will gain proportionately more from what the government has contributed'<sup>4</sup>(315-6); (ii) it places limits on the continual raising of contributions because if it makes any worse-off in terms of disposable income it makes all worse-off, and (iii) it retains net differences of remuneration between types of employment and with it money incentives to remain in and/or enter fields of employment. Hayek's conclusion draws all these themes together.

4. John Lucas cites this as favouring proportional contributions(1985,p.167).

That a majority should be free to impose a discriminatory tax burden on a minority; that, in consequence, equal services should be remunerated differently; and that for a whole class, merely because its incomes are not in line with the rest, the normal incentives should be practically made ineffective - all these are principles which cannot be defended on grounds of justice'(322).

Given the prospect of institutionalized redistribution, the complexion of the system best suited to the libertarian justification and the principle of non-exclusion requires review. Richard Furniss and Timothy Tilton have catalogued three types of response to the welfare issue, though they exclude the first as not being a welfare state on the grounds that it fails 'to guarantee surrogate forms of property for all citizens' and favours those 'one would expect would prosper most readily'(1979,p.16). All three represent distinct moral-political approaches to the redistribution question, as each's defining characteristic shows. They are, firstly, the 'positive state' where 'The primary aim...is to protect the holders of property from the difficulties of unregulated markets and from potential redistributive demands'(15) and which puts 'major emphasis on social insurance programs'(15). Secondly, there is the 'social security state' wherein 'the important objective of a guaranteed...minimum is introduced'(17) and, thirdly, the 'social welfare state'. Of this system it is said 'The values of the social welfare state are equality, freedom, democracy, solidarity, security, and economic efficiency. Intrinsic to each of these is the fundamental assumption of individual human worth and dignity'. It is made clear by the authors that 'This list of values is not meant to be complete'(28).

These three categories or types are useful for they enable the locating of redistribution according to the libertarian justification within known welfare organizations. Initially it might seem that any principle of non-exclusion accords best with the social security state where the idea of a guaranteed minimum is introduced, and, indeed, this idea is the very core of redistribution. But the positive state accords equally well owing to it's emphasizing social insurance. In the example to follow the priority of a mixed positive and social security state will be illustrated and justified on the grounds that while the positive state urges the private provision of welfare via the social insurance schemes, and is commendable for this reason alone, the social security state nevertheless retains the 'safety-net' of a guaranteed minimum the principle of non-exclusion secured in the libertarian justification under the feature of universality.

Suppose A and B are two characters washed ashore upon a desert island from a shipwreck, and both have justly acquired holdings (in the form of coins) in their pockets, only A has ten times the amount of holdings that B has. Washed ashore with them is the ship's automatic drinks dispenser. The machine dispenses drinks at a price. The price is exactly two-tenths of A's holdings and therefore twice what B has. A necessary condition of preservation is that both have a drink. Accordingly, A must (is morally obliged to) redistribute to B one-tenth of his holdings in order that B may purchase a drink. So much, from the point of non-exclusion, is uncontentious.

Now imagine that two unowned plants containing an equal number of seeds are washed ashore and A and B discover one each. By a peculiar quirk of fate the seeds are like the coins needed to operate the drinks dispenser, and both A and B recognize this. Is it reasonable for A to say that B must (is morally obliged to) 'invest' some of his seeds - now playing the role of money - against future redistribution-effecting contingencies and not fritter them away, say, by gluttonous consumption? After all, A has just shouldered the redistributive burden B presented prior to their joint discovery. Can A not insure himself against having to do so again by coercing B to insure himself through a social insurance policy, what Hayek describes as 'coercion intended to forestall greater coercion of the individual in the interests of others'(1960,p.286) and Friedman as being 'justified not for his [B's] own good but for the good of the rest of us'(1962,p.188)?

Non-exclusion is not categorical, and yet where there are resources bona fide recipients of welfare cannot, morally, be denied, and A is not excused from all future redistributive commitments. But it does not seem wrong for A to 'distance' the prospect of further redistribution by having B insure himself from his own property, conditions permitting, which means that A may (in a world not populated by saints and heroes) coerce B to so insure himself, only, of course - for the sake of consistency - if there is general compulsory social insurance at the same time, that is, providing A does not exempt himself. 'We must also expect', warns Hayek,

'that the availability of this [public] assistance will induce some to neglect such provision against emergencies as they would have

been able to make on their own. It seems logical, then, that those who will have a claim to assistance in circumstances for which they could have made provision should be required to make such provision themselves....[I]t seems an obvious corollary to compel them to insure (or otherwise provide) against those common hazards of life'(1960,pp.285-6).

Friedman objects to the compulsory purchase of annuities on the grounds that it restricts the freedom of many to spend a portion of their income as they wish in case they should later become public charges. For Friedman it all depends on fact: it depends on the actual number of people on public assistance, while to Hayek it is clearly a matter of moral principle. The greater the number of public charges dependent upon the financial assistance of others, and thus restricting the freedom of others to dispose of their income as they choose, the greater the impetus favouring the compulsory purchase of annuities. Friedman does not, however, stipulate when, at what point, compulsory self-provision is justified.

Coercion in this respect would not be unreasonable on two grounds. Firstly, each and every individual has a right established in original property (and what flows from it) limited only in holding by the demand of non-exclusion, and secondly, legitimate property ought to be respected as far as possible by avoiding unnecessary and undue redistributive demands. The maximization of legitimate holdings and the minimization of claims on it is best served by the social insurance schemes of the positive state. Though not all claims are liable to be terminated through the operations of this welfare model the positive-social security state can provide a guaranteed minimum and undermine this rationale for a movement to a more thoroughgoing welfare state.

Enforced transfers of wealth substantiate Nozick's criticisms of end-state principles of distributive justice, but social insurance does offset such an undesirable state of affairs. Under end-state systems, Nozick says, 'Each person has a claim to the activities and the products of other persons, independently of whether the other persons enter into particular relationships that give rise to these claims, and independently of whether they take these claims upon themselves, in charity or in exchange for something' (1974,p.172). Redistribution as not morally wrong switches the focus from the redistribution - no redistribution debate of the orthodox libertarians to the problems of welfare minimization and what, for that matter, a minimal claim may be said to be. Before examining the substantial import of a positive claim, that is, what it demands to be redistributed, it can be noted that compulsory social insurance programmes also lend themselves to an easing of the free-rider problem.

Friedman writes, in 'The Alleviation of Poverty', that because many have come to reside in 'large impersonal communities' the redistribution of wealth cannot be feasibly practiced through charity, and, furthermore, that the sacrifices of the charitable are of benefit to others beside the express recipients. Poverty is an eye-sore, and it is true of each of us, as Friedman tells, 'I am distressed by the sight of poverty; I am benefitted by its alleviation; but I am benefitted equally whether I or someone else pays for its alleviation; the benefits of other peoples charity therefore partly accrue to me'(1962,p.191). Friedman then goes on to say, because, I suspect, that the 'charity' of government involves more people as donors and less,

therefore, as free-riders, than would otherwise be the case with individual's acting alone:

'Suppose one accepts, as I do, this line of reasoning as justifying governmental action to alleviate poverty; to set, as it were, a floor under the standard of life of every person in the community. There remain the questions, how much and how. I see no way of deciding "how much" except in terms of the amount of taxes we - by which I mean the great bulk of us - are willing to impose on ourselves for the purpose. The question "how", affords more room for speculation'(191).

The speculative arrangement 'that recommends itself on purely mechanical grounds'(191-2) is redistribution in the form of vouchered cash according to the assessment of a negative income tax.<sup>5</sup>

While Friedman stresses the plan of a negative income tax is to 'ease the transition from where we are to where we would like to be'(1980,pp.149-50) - with people on pay-rolls rather than welfare-rolls - his plan would be tantamount to a volte face in the current welfare status quo, and Friedman is critical of the present (United States) welfare system.

'Most of the present welfare programs', he writes,

'should never have been enacted. If they had not been, many of the people now dependent on them would have become self-reliant individuals instead of wards of the state. In the short-run that might have appeared cruel for some, leaving them no option to low-paying, unattractive work. But in the long-run it would have been far more humane'(149).

Burgeoning welfare has created a new class, the welfare class, who consume without producing, and whom Rand calls the 'visible profiteers of altruism'(1982,p.158). This class is

5. Rothbard, as is to be expected, objects to Friedman's welfarism. 'By advocating a new form of taxation, Friedman, if for that reason alone, vitiates and destroys the basic libertarian principle and goal of a taxless society'(1973,p.310).

unlikely ever to totally disappear, but redistribution can be organized in such a fashion that its membership be reduced, and Friedman touts his scheme as the best way of achieving this goal, stressing that the advantages are clear, one being that 'In this way, it would be possible to set a floor below which no man's net income...could fall' (1962,p.192). Among the other advantages of a negative income tax and vouchered cash are: that it aims specifically at reducing poverty; provides help in its most useful form, that is, cash; is simple and can replace many of the present mechanisms for redistributing wealth; and, though it does reduce incentives, it yet does not eliminate them entirely 'as a system of supplementing incomes up to some fixed minimum would'(192). Income supplements would take the form of cash-voucher payments and directed to address specific lacks (vouchers would be non-transferable). When an individual's income falls below a stipulated level they receive a subsidy to cover the difference, thereby assuring a guaranteed minimum.

Redistribution has so far been defined no more stringently than as the requisites for preservation, traditionally understood to be food, shelter and clothing, which Dahl and Lindblom describe as 'a relatively concrete goal to pursue'. Their comment is prefaced by two sentences marking a tension between the strict (traditional) interpretation of preservation and other intuitions and/or moral convictions we share about the intrinsic worth of others. 'Satisfying opportunities for the development of personality require more than a full stomach, adequate dress, and a home. Unfortunately these important tangibles are not easily

controlled. Physical subsistence has been a relatively concrete goal to pursue; one can choose among various alternative techniques'(1963,p.145). The concreteness of subsistence as the standard is attractive and yet there are strong inhibitions against identifying preservation so narrowly. It raises Dickensian images of Victorian working-houses, slum tenements, and crude poor relief, which, naturally resisted, loose the concept of preservation (like need) to become a concept not objectively determined but one 'in the eye of the beholder'(Friedman 1980,p.166). It seems that as soon as the relevance of the 'important tangibles' is acknowledged the notion of preservation collapses properly into the wider one of needs determinable within a more-or-less narrow or broad range of moral as opposed to economic parameters. What is gained in moral comfort is paid for in concreteness. The issue of preservation is not one that can be reasonably expected to be decisively settled, but provided a minimum is stressed any scheme of welfare grounded in needs can be made workable.

Greater clarity, though not a satisfactory definition, of preservation can be gained by juxtaposing it on the range of poverty classifications. In answer to the question, How poor is poor? Edward Banfield lists four types (broadly speaking 'experiences') of poverty. They are: (i) 'destitution', where there is less than sufficient for survival, (ii) 'want' wherein 'essential welfare' cannot be secured due to lack of resources, (iii) 'hardship', where there is insufficient wealth to prevent 'acute, persistent discomfort or inconvenience', and, lastly, (iv) the poverty of 'relative deprivation' where a person has less than sufficient

resources to prevent them from feeling poor by comparison (1968,p.116). As already alluded to in the previous chapter, preservation entails not being excluded from enjoyment of the necessities of life, and on this sort of interpretation (which follows Locke) types (iii) and (iv) are discounted because the experience of discomfort and inconvenience and the phenomenon of relative deprivation<sup>6</sup> are socio-relative and not captured by the meaning of 'the necessities of life'. Type (i) is ruled out for an obvious reason, leaving only type (ii). Henceforth I shall refer to 'want(s)' as that level of resources the positive claim drawn from the principle of non-exclusion secures.

Fried emphasizes that 'The situation of our fellow men makes an affirmative claim upon us, and that claim supports an argument for positive rights'(1978,p.119), and further, that the claim is one grounded in needs: 'And it is to the satisfaction of needs that we have a positive right'(120). As to the determination of needs Fried concurs with Friedman. 'For though needs and their satisfaction have an objective quality', Fried admits, 'the fact is that any commitment, via the recognition of positive rights, to meet needs also makes us hostage to vastly varied and voracious needs'(122). Hence the moral instead of economic parameters. 'Our common humanity and the norms of our good functioning tell us what we mean by the satisfaction of need'(120), and he lists as needs (with attendant positive rights) health care,

6. If indeed it is a phenomenon at all. William Letwin condemns as 'fictitious' the problem of relative deprivation, viewing it as 'a sophisticated attempt to justify the intention deliberately to institute equality'(1983,p.68).

education, legal assistance and a basic diet. Needs ought to satisfy the conditions of moral integrity, to create 'discretionary space' for those without while not threatening the space of those with(130).

Obviously, the problem with such ideas as common humanity, discretionary space and so on, are that they are no less or only marginally less vague and numerous than the idea of need. The parameters are as indeterminate as what they bracket. The needs - wants distinction only shows that there are some clear cases of needs and some clear cases of wants, with much blurring between the two. Under which does the provision of education for example fall? Fried employs the term 'fair shares' in an equally vague way, stating 'my primary positive right is to my fair share of the total pool of benefits resulting from the schemes of cooperation in our common life - that is, my fair share of income and wealth' (131) where fair shares include physical security, occasions to speak and be heard, and the ability to move without intentional restraint. Nonetheless, as Friedman notes, '"Fairness", like "needs", is in the eye of the beholder' (1980,p.166).

Varied and voracious needs marks the slip from public provision for the 'deserving poor' to a new and different system of welfare where people are given '...as a matter of right what they have only to a small extent paid for'(Hayek 1960,p.292) in the name of social justice. 'Under this system', Hayek writes, 'all are provided with that standard of welfare which it is thought they should enjoy irrespective of what they can do for themselves, what personal

contributions they have made, or what further contribution they are still capable of making'(292).

In 'The Mirage of Social Justice' Hayek strives to show that not only has the phrase 'social justice' no determinate content, has proved destructive of moral feelings and is destructive of the market order and the rule of the Great Society,<sup>7</sup> but also had its origins in the 'laudable desire to abolish destitution'<sup>8</sup>(1976,p.139), which desire is not only compatible with the free market but has been made good thanks to it. 'It has been this market mechanism which has created the increase of aggregate income, which also has made it possible to provide outside the market for the support of those unable to earn enough'(139).

Hayek's argument revolves around the thesis that 'social justice' presents either a potential threat to, or actually and currently involves interference with, the political freedom liberalism brought to the majority of men so late in the history of western civilization. Hayek seems to align himself with the former, latent threat approach, and though not as explicit as one might wish he does state that the 'great merit' of the free market has been the termination of independent foci of arbitrary power. 'This great triumph of personal freedom', he warns, 'the seduction of "social justice" threatens again to take from us'(99).

7. The Great Society is the spontaneous order 'in which the individuals are to be free to use their own knowledge for their own purposes...'(1976,p.2)

8. See also Friedman (1976) who says of the welfare state that it is born of 'generous impulses' but has as its consequence 'the destruction of freedom'(4).

Argument along these lines is neither new nor peculiar to Hayek. It is as old as the realization, if not the articulation, of the concept of negative liberty, and the concentration of power has always been considered prejudicial to the practice of political freedom. Even Marx makes use of it with his criticisms of capitalist domination of the means of production and the restriction of proletarian freedom non-access entails. Economics, the champions of negative liberty contend, must be structured in such a way as to ensure it's maximum compatibility with political freedom, and a system of open competition with remuneration according to market forces (what Hayek calls the wealth-creating game of catallaxy; 'the special kind of spontaneous order produced by the market through people acting within the rules of the law of property, tort and contract'(109)) is best suited to this purpose. Foremost amongst the champions of political-economic freedom (viewed at this 'macro' level) are, with Hayek, Friedman and Michael Oakeshott.

Oakeshott contends that political freedom is premised on private property rights - with freedom of association as the other major pillar. '[P]roperty', he says, 'is a form of power'(1949,p.45) and 'The institution of property most favourable to liberty is, unquestionably, a right to private property least qualified by arbitrary limits and exclusions, for it is by this means only that the maximum diffusion of the power that springs from ownership may be achieved'(46). Collectivism and syndicalism Oakeshott believes to be the greatest threats to freedom, necessitating the imposition of order from above that is clearly incompatible with the premises of political freedom. 'Having discouraged all other

means of social and industrial integration, a collectivist government must enforce its imposed order or allow the society to relapse into chaos'(51). The separation of economic and political power is of prime importance to the preservation of freedom. For Oakeshott as for Hayek, the failure to tighten the ideological screw has contributed to the demise and/or precariousness of freedom. 'Liberty', Oakeshott reminds us, 'has been lost inadvertently through the lack of a clearly formulated libertarian policy of reform'(55), the lack of which undermines the tradition and character which imports meaning and value to liberty, that are the quintessential markers of the very idea.

Whether this has the importance Hayek, Oakeshott et al ascribe to it, this political-historical perspective can be better substantiated through an examination of the way economics and politics interact at the 'micro' rather than at the 'macro' level, and how arguments, particularly Nozick's, against the redistribution of wealth executed coercively supposedly fit into this general framework. Friedman presents as the acid test of freedom under a socialist regime (where the means of production are under the control of political authority) 'the freedom of individuals to advocate and propagandize openly for a radical change in the structure of the society'(1962,p.16). Under capitalist regimes such propagandization is not prohibited - though, admittedly, it is not frequently encouraged - but under a centralized system the raising of funds for this purpose would be an almost insuperable problem. 'Perhaps there is some way in which one could overcome these difficulties and preserve freedom in a socialist society. One cannot say that it is utterly

impossible. What is clear, however, is that there are very real difficulties in establishing institutions that will effectively preserve the possibility of dissent'(18-9). Friedman's point is that capitalism is a surer basis for political freedom than socialism could ever hope to be.

MacPherson objects to the assumption of Friedman's (and most likely Hayek's and Oakeshott's) that capitalism better preserves freedom. Briefly, his two objections can be enumerated as follows. To suggest that freedom was consequent upon capitalism has no greater a priori veracity than the contrary claim that capitalism grew out of the new spirit of freedom. It is not obvious that the causation runs one way rather than the other, or at least Friedman does not argue for his choice of explanation. Secondly, the market system may enable (potentially) the offsetting of political power but not (actually) lead to any offsetting, and MacPherson maintains - with, I think, as little reason as Friedman does according to MacPherson - the opposite causal interaction. 'For the more completely the market takes over the organisation of economic activity...where the state establishes and enforces the individual right of appropriation and the rules of the market, but does not interfere in the operation of the market, the more completely is political power being used to reinforce economic power' (1973,p.149). As MacPherson concludes, Friedman certainly has not established 'The logical link between competitive capitalism and political freedom'(149). It may perfectly well be possible for resources to be made available under a socialist regime to those wishing to advocate capitalism, and though these resources may be less than the resources

available to a socialist under a capitalist regime, equally well they may be greater. Monopolies, and governments have monopolistic powers, are protective of their status, and certainly have the power to manipulate if not coerce, but, contends MacPherson, this is a question of 'will' rather than of 'way'. 'A socialist government which wished to guarantee political freedom would not be prevented from doing so by its having a monopoly of employment. Nor need it even be tempted to curtail political freedom by virtue of that monopoly'<sup>9</sup> (151). Perhaps Friedman and MacPherson are arguing partly at cross purposes. Neither is arguing a thesis that is exclusive of the other. Rather, Friedman is less optimistic than is MacPherson about government generally showing sympathy to, let alone enthusiasm for, political freedom. Without question, he writes, the greatest defence of freedom is 'the inefficiency of government'(1976,p.31).

The 'creeping socialism' of the welfare state argument is based on questionable empirical assumptions, supported by questionable empirical evidence, and fails to make the causal and/or logical connexions it's proponents are desirous of establishing.<sup>10</sup> This is because the thesis is at one time both too broad and insufficiently cogent. A more rigorous

9. 'In a country where the sole employer is the State, opposition means death by slow starvation. The old principle, who does not work shall not eat, has been replaced by a new one: who does not obey shall not eat'(Leon Trotsky, The Revolution Betrayed, quoted from Hayek 1960,p.137). But the temptation to curtail political freedom is nonetheless there, and under monopolistic conditions so too is the means.  
10. Gardner, while accepting as fact that socialism stealthily 'seeps into the cracks of capitalism', points out that there is, in certain communist countries, the converse phenomenon of 'creeping capitalism'(1983,pp.126-7).

foundation is needed if Hayek and others are to maintain that creeping socialism (certain forms of welfareism) is antipathetic to liberty, and how it is so, if it is. In Anarchy, State, and Utopia Nozick furnishes a considerably more sophisticated, analytically rigorous, and hence plausible case against redistribution (or any patterned end-state theory of distributive justice) by allying entitlements, under any description, to liberty and then explaining how patterned end-state principles of distributive justice involve continual or frequent interference with individual liberty.

'Let us call a principle of distribution patterned', Nozick says, 'if it specifies that a distribution is to vary along with some natural dimension, weighted sums of natural dimensions, or lexicographic ordering of natural dimensions. And let us say a distribution is patterned if it accords with some patterned principle'(1974,p.156). Nearly all systems of distribution are patterned. Entitlement is not. An end-state or current time-slice system maintains 'that the justice of a distribution is determined by how things are distributed (who has what) as judged by some structural principle(s) of just distribution'(153). Entitlements entail differential holdings, and the movement to another distribution matrix, even if structurally identical, '...may violate people's entitlements or deserts; it may not fit the actual history'(155). Things, maintains Nozick, come into the world with people's legitimate claims of entitlement already staked to them and any distribution must - morally 'must' - follow from this initial position and not any other. Hence the maxim 'from each as they choose, to each as they

are chosen'(160) that sums up the justice of entitlement theory. Nozick then sets forth his argument making clear how patterned conceptions of distributive justice, if and when enforced, upset liberty. (The subtitle to Nozick's argument is 'How Liberty Upsets Patterns', but since the concern here is how patterned, end-state non-historical principles upset entitlements and the freedoms that flow from them the converse application is perfectly legitimate.)

Nozick's argument can be summarized as follows.

(i) A non-entitlement (i.e. patterned) conception of distributive justice holds, whatever it is. Call it, after Nozick, D1.

(ii) Some free agents, such as Wilt Chamberlain, secure personally advantageous financial contracts.

(iii) Consumers willingly, as free non-exploited agents with stipulated D1 holdings, realize, through their consumption, the advantages of the (Wilt Chamberlains') contracts as in 2 above.

(iv) As a consequence of 2 and 3 the Wilt Chamberlains have a greater income than under the D1 stipulated holdings and the consumers have a lesser income than under D1, whatever they are.

(v) Everyone is now at a new distribution matrix D2.

Now, asks Nozick, 'If D1 was a just distribution,

and people voluntarily moved from it to D2, transferring parts of their shares they were given under D1 (what was it for if not to do something with?), isn't D2 also just? If the people were entitled to dispose of the resources to which they were entitled (under D1), didn't this include their being entitled to give it to, or exchange it with, Wilt Chamberlain? Can anyone else complain on grounds of justice?'(161).

Nozick answers in the negative, and emphasizes that whatever the society and socio-economic system, any work in or outside

of it which satisfies conditions 1 through 5 (or those like them) and results in a new distribution matrix is also just. Thus it is that Nozick concludes,

(vi) Interference in the holdings established under D2 and restrictions on the legitimate disposal of holdings under D1 is necessarily interference in personal liberty: `...no end-state principle or distributional patterned principle of justice can be continuously realised without continuous interference with peoples lives'(163).

This is a strong a priori argument against egalitarian or socialist conceptions of distribution that at the same time value individual or group liberty. Patterns do upset liberty if and when enforced, and if not enforced liberty will upset any externally prescribed distribution matrix. One cannot pass through the horns of the Nozickian dilemma unscathed. Essentially, Nozick wishes to show that those who simultaneously value patterning and liberty - and he has in mind socialists and egalitarians - cannot have their cake and eat it. As G.A. Cohen expresses Nozick's conclusion in his critique of the argument, Nozick wishes to show not only that socialism is unjust but that, anyway, even if it were not, it is nevertheless incompatible with liberty.

`Does liberty always preserve justice?' Cohen inquires (1977,p.148). And does what arises by just processes from a just situation always itself prove just? Cohen is searching for a falsification of precept 2 of Nozick's exhaustive inductive definition of justice in holdings, viz. `A person who acquires a holding in accordance with the principle of justice in transfer, from someone else entitled to the

holding, is entitled to the holding'. Cohen desires to show that contrary to what Nozick might say, and because 'disturbing' states of affairs may result from accepting precept 2 - particularly unforeseen deleterious consequences of intended free and moral actions - we should rather accept over precept 2 his own precept 3.

'(3) Whatever arises from a just situation as a result of fully voluntary transactions which all transagents would still have agreed to if they had known what the results of so transacting were to be is itself just'(250).

Cohen's reason for limiting holdings maximally via this principle is that it prevents the acquisition of power by some to the disadvantage of others. Wilt Chamberlain's new-found wealth may prejudice the access consumers have to resources and further 'the consequent power over others he now has'(251). But, and more importantly, in the light of this, people will refrain from making similar consumption decisions (such as transferring resources to Chamberlain) that so disadvantage them and their progeny. 'They will be especially averse to doing so because the resulting changes would profoundly affect their children'(251) who will inherit a changed socio-economic environment wrought through many transactions of this sort over an extended period of time.

This is the most likely and major of the unforeseen and unintended consequences of free moral actions subsequent to a patterned basis. If people knew how much Wilt Chamberlain or the like were gaining from their consumption they might be disturbed. (Equally well they may very well know and not be disturbed.) Paying is one thing, having an individual reap the lion's share of the benefits is another. The status of

consumers is prejudiced to their detriment through the foreclosing of (some of) their options, and realizing the status of their descendents is likewise so prejudiced may prove even more disturbing. As Cohen says, 'The Wilt Chamberlain fans, acting independently, would probably be unable to buy a set of houses and leave them unoccupied, with speculative intent, but Chamberlain can'(253). Chamberlain might not use his money in such a fashion that he acquires power (he may donate it to charity), but equally well he might, and under the entitlement theory it is acceptable if he does. Putting restrictions on the disposal of income infringes on the freedom to earn it, and vice versa. Think of prostitution. Thus, Cohen maintains, seemingly just acts may have consequences some, possibly most, will subsequently view as disturbing or unjust. Nozick's dilemma remains, however, though it is not so severe that one cannot pass through the horns, only that one cannot pass through unscathed. Either patterns will be upset or liberty interfered with, or both to a lesser extent than would be the case if either patterning or liberty were given priority.

If the holdings under D1 are just, then it is not immediately settled that;

(i) Wilt Chamberlain or the like uses his wealth in a way detrimental to the status of others.

(ii) If he does this that this is wrong.

(iii) If he does this then interfering in his holdings, by taxation, for example, or rendering his consumption harmless, by legislation, or impossible, by preventing such advantageous contracts from being drawn up, is not interfering with liberty.

Point (iii) remains even if consumers do not know that 'the results of so transacting were to be itself just' for either Chamberlain's liberty is infringed or the liberty of consumers to voluntarily dispose of their incomes even when they are cognizant of the potential detrimental ramifications of their so doing is infringed. If consumers know what deleterious effects will follow their free actions the challenge remains, and becomes relevant to the notion that voluntary self-enslavement is wrong because this one liberty (free action) discounts all future liberties.

Cohen appreciates this. 'How much equality', he writes, 'would conflict with liberty in given circumstances? If life in a cooperative commonwealth appeals to them they do not have to sacrifice liberty to belong to it'(254). So much is all well and good for those who do happen to value equality highly and do not need to violate rights or liberty to achieve their egalitarian goals. But should individuals have rights, and their holdings when just be subsumed under the coverage of rights (as I have argued), then patterns will upset liberty and liberty will upset patterns because, and possibly for this reason only, the paradox of freedom entails it.

Given Nozick's premises some liberty of some people will necessarily, that is to say unavoidably, be infringed by patterning. Given Cohen's unforeseen and unintended deleterious consequences argument some liberty now may upset liberty later. Nozick can, of course, concede this point without admitting that the later loss of liberty is a wrong or an injustice. The foreclosing of options to some does not

mean that they now have to do something they would not otherwise have done if the options had been open. A lesser range of options they may have, but not none at all. This bottom line of 'liberal-capitalism'(258) - that everyone has an either/or option - at worst, is challenged by socialists who contend that this option is, apart from being the normal predicament of many, really no option at all. As Cohen puts it, there is a discrepancy between rights and the 'corresponding effective powers' for securing, them and the discrepancy is not as great as it would be or was only because 'of a hard-won institutionalisation of a measure of working class power'(258). Workers really have no choice but to sell their labour-power facing, as Cohen believes they do, 'a structure generated by a history of market transactions in which, it is reasonable to say, they are forced to work for some or other person or group. Their natural rights are not matched by corresponding powers'(258).

Cohen is here confusing liberty or freedom to do (something) with the power or ability to do (something) and, it seems to me, operating with a compatibilist understanding of freedom. Nozick, and libertarians generally,<sup>11</sup> work with a libertarian or contra-causal model of freedom. Recognition of this difference aids in seeing why Nozick and Cohen are so fundamentally at odds. Part of this metaphysical debate spills over into political philosophy with the case for and against the coercion of the working class into capitalist production (examined briefly in the next chapter).

11. Excluding Hospers (1958).

For present purposes all that needs be shown is that the different models of freedom that Nozick and Cohen operate with make each see the other's model as unavoidably restrictive of freedom or liberty. Nozick employs the contra-causal model which stresses that freedom consists in our freely choosing to do what we in fact do - we could have done otherwise if we had so chosen - no matter if it be only a choice among undesirable options or in an either/or situation. This I take to be the issue illustrated by his example of the choosing of marriage partners (1974, pp.262-5).

Cohen, on the other hand, works with a compatibilist model. Our choices to be free must not be constrained, must not be choices between undesirable options. 'Either sell your labour-power at the subsistence wage or starve' would not be a free choice: no reasonable man would withhold his labour-power. He is constrained, and hence not free, and therefore not responsible.

12

We do want that our own and others' choices be between desirable or good options rather than undesirable or bad ones, say 'wage-slavery or starvation'. Nonetheless, the compatibilist model applied to political realities is

12. 'If I am constrained, I do not act freely. But in what circumstances can I legitimately be said to be constrained? An obvious instance is the case in which I am compelled by another person to do as he wants. In a case of this sort the compulsion need not be such as to deprive one of the power of choice. It is not required that the other person should have hypnotized me, nor that he should make it physically impossible for me to go against his will. It is enough that he should induce me to do what he wants by making it clear to me that, if I do not, he will bring about some situation that I regard as even more undesirable than the consequences of the action that he wishes me to do'(A.J. Ayer 1946, pp.19-20).

restrictive of freedom, even if at first blush it does appear to be the better model. Better in the sense that we would choose that our choices be between a range of desirable or good options over a range of undesirable or bad ones. And it is restrictive of liberty for the following reason. Creating only good options infringes the liberty to create bad ones, intentionally or otherwise, and, more importantly, a range of good options once created must be enforced if we are to ensure that people will not choose not to do the good. Bentham was well aware of this when asking, 'Is not liberty to do evil, liberty? If not, what is it?' (Flew 1983, p.52).

Leading from this, where Cohen describes how unintended outcomes of free actions can deleteriously affect liberty, Benjamin Gibbs goes still further in arguing that 'society' ought to ensure or lend greater surety to our choosing that which is in fact good. Operating with his moralized notion of 'conative' freedom, that is, freedom to do what one wants for its own sake, Gibbs contends that not only ought we be free to do (act) but that our choices be ones that are in fact good. He is, he says, 'stressing the accessibility of good' (1976, p.15). 'We want, surely, to be free to choose things that not only seem good, but really are good' (22). Few would take issue with this. Yet it is Gibbs's recommendation that 'society' - or more precisely 'some resolute organization, endowed with political wisdom' (139) - should direct us in choosing the good that is disturbing. It is to this, the raising of an authoritarian spectre, that Antony Flew directs a portion of his criticisms of Gibbs: against '...the new philosopher kings who will, if all goes well, create, and impose their own values upon, what Gibbs

wants to honour as "A free society" (1983,p.48).

'Freedom', for Gibbs, 'consists not merely in having one's conduct directed rightly...but in having one's inclinations, and thence one's conduct, directed rightly'(1976,p.109). It is peculiarly this 'directing' of person's inclinations that is sinister - though Gibbs denies any intention behind this (1983,p.71) - involving 'education of the appropriate sort' (1976,p.112) as well as legislation against 'a wide range of economic activities'(135), in order to ensure autonomy. Moral freedom, we are assured, involves conformance with what one ought to be(105-6). And it seems one may be forced to be what one ought to be.

While Flew's criticisms do not do complete justice to Gibbs's text, his paper does show that whatever sense or understanding of freedom one adopts from amongst it's polymorphous configurations the issue of whether patterns upset or preserve liberty takes place in a wider context. Either we tolerate the liberty of persons to choose bad options as well as good and thereby tolerate the deleterious consequences for their own and others' choices this may give rise to, or we do not tolerate this liberty and restrict it, or there is some restricting of liberty under certain conditions. What the extent of such restriction(s) will be is not to be decided by society or philosopher kings but by the nature and extent of person's rights. My rights delineate and protect my liberty and restrict your freedom, and your rights limit my freedom and secure your liberty. Any coercion used to guarantee rights and protect the liberty they circumscribe is morally acceptable.

## THE MARXIST CRITIQUE OF PRIVATE PROPERTY

Cohen's socialistic rejoinders to Nozick's 'Wilt Chamberlain' argument presage the content of this chapter; Karl Marx's critique of private property and laissez-faire (capitalist) economics, a critique standing centrally rooted in the self-developmental and self-expressive tradition, as these two quotations indicate. 'Communism', Marx says, 'is the positive abolition of private property, of human self-alienation, and thus the real appropriation of human nature through and for man'(1844,p.127), and later, 'The supercession of private property is therefore the complete emancipation of all the human qualities and senses'(132). These two statements from the Economic and Philosophical Manuscripts underscore a fundamental tenet that runs through  
1  
Marx's writings.

Broadly speaking, that tenet is the claim that private property holdings and relations are 'unnatural', that the institution of private property is inimical to or, more plausibly, inhibitory of human development, and that private property has deleterious consequences for mankind which manifest themselves in what Marx terms the phenomenon of alienation. Alienation and the retardation of human

1. My referring to both the earlier and later writings of Marx does not presuppose commitment in the debate over the lack or otherwise of an epistemological break between the 'early', young humanist and 'late', mature scientist Marx. For the purposes of this chapter I am interested only in the issues of exploitation and alienation as I understand them.

development are manifested at the individual-personal level (and experienced at this level, if they are experienced) but Marx can correctly construe them as primarily class phenomena for they are individual only insofar as individuals are members of an economic class. It is the concept of alienation that explains this instrumental - self-developmental contrast,<sup>2</sup> the great divide between man and his lot in pre-communist society and his true interests and being harmonized under communism.

A second theme common to Marx, and made explicit in Kapital, is that private property and capitalist economic relations generally are based, at the individual and ipso facto at the class level, upon the exploitation of the proletariat by the capitalist (ruling) class. The issue of the unjustness of meum and tuum connects this second with the first tenet. As regards the claim that private property is in some way unnatural (and an injustice, that is a moral wrong) the situation is very much less ascertainable independently of any analysis of alienation and exploitation because Marx's comments are given more-or-less only in passing when discussing these two concepts. What the above quoted sentences serve to introduce is an idea of the interconnectedness of the issues of alienation, exploitation, and injustice and to mark the 'artificiality' -and, for Marx, in the light of his historical determinism -the temporality of the state of alienation and exploitation under a specific mode of production.

2. This can be paralleled with the with the realm of necessity versus realm of freedom distinction drawn by Marx.

From the outset it should be made plain that Marx believed he had arrived at an empirical standard of evaluation, an objective measure for determining how much or how little our institutions, beliefs, practices, etc., accord with how mankind should ideally be from the vantage point of an appreciation of human nature, or how mankind will become under communism (91). Marx's conception of man's true nature is coupled with his own supposedly scientific explanation - as opposed to an ideological explanation - of the historical-social development of man from and through temporal historical epochs, identified by the prevailing dominant mode of production, towards the unchanging and non-temporal communist world-order that embodies, is in accord with, the Marxian conception of man's real nature. Accompanying the promise of development and liberation according to the 'iron laws' of economics is the guarantee of the cessation of exploitation and alienation with the collapse of capitalism and the returning to mankind of what Marx calls it's 'species being'.

There are, then, two broadly consequentialist themes in Marx's writings, as identified. The first the ending of an exploitative economic relationship in which the proletariat are subject to the bourgeoisie and the second the (metaphysical) unification of man within and in man's relation to his work and fellow men: the Marxian Romantic

3. Marx writes of these iron laws: 'It is a question of these laws themselves, of these tendencies working with iron necessity towards inevitable results. The country that is more developed industrially only shows, to the less developed, the image of its future'(1867,pp.8-9). 'One nation can and should learn from others'(9-10).

theme of Promethean man rising to lordship and mastery of his environment, his nature and his own human essence. Each issue needs to be dealt with independently even though they are interconnected, and it is wise to commence with the analysis of exploitation as this not only finds clearer expression than does the concept of alienation, but once elucidated lends itself to a better understanding of alienation. Together the exploitation and alienation theses lend themselves to an understanding of Marx's concept of man and the contention that private property is unjust.

Marx's exploitation thesis asserts that private property holdings under a capitalist economic system are founded on and perpetuated by the economic exploitation of the proletariat class. This accounts for the fact that the capitalist class is the ruling propertied class and bourgeois ideology the dominant (ruling) one, and for vast wealth differentials. Exploitation per se is unjust, by definition; the attendant consequences compound its wrongness. While exploitation and alienation can be analyzed separately Marx makes it clear they are both necessarily connected with capitalist production (and each other), the former as a necessary integral component, that is, this is how capitalism functions and if it did not would not be capitalism, and the latter as a partial consequence of capitalism. It is only a partial consequence because it is both a catalyst of private property as well as a result of it. 'Only in the final stage of the development of private property', remarks Marx, 'is its secret revealed, namely that it is on one hand the product of alienated labour, and on the other hand the means by which labour is alienated, the realization of this

alienation'(106). It could be more accurately put by saying that alienation increases and is of greater intensity under capitalism than under any previous socio-economic system, where the institution of private property was less extensive.

What is significant about this is that should exploitation of the worker end while the institution of private property remain it would not signal the cessation of alienation. At the most it might terminate alienation wrought in the relationship between worker and what he produces, that is, in the result of production when the worker's labour 'becomes an object, assumes an external existence... it exists independently, outside himself, and alien to him, and that it stands opposed to him as an autonomous power'(96). This is one of the four facets of alienation identified by Marx, and he stresses that there is much more to capitalism than the expropriation of surplus value. For instance, if the full value of his labour was returned to him the worker might acquire greater control of his labour activity, making of the proletariat a class of lesser or petite bourgeoisie but hardly constituting their emancipation. Indeed, it would involve a more thoroughgoing relation to private property and it's institutions and a hardening of egocentric individuality while retaining all the associated evils of capitalism such as division of labour and non-control of the means of production. Mankind as a whole (the bourgeoisie are also alienated) would remain alienated, though possibly less so.

4. Is this logically possible? Can something be both cause and consequence (effect)? However, I do not wish to construe Marx too literally on this point.

Marx identifies the moving forces of political economy as 'avarice and the war between the avaricious, competition'(94) where avarice is a manifestation of alienated existence.

An ascendancy to the status of petite bourgeois would constitute a further embroilment in this 'war'. It would be, as Bertell Ollman explains, the expansion of the 'anarchistic galaxy of selfish worlds'(1971,p.211). 'The requirements of competition', writes Ollman in explanation of the capitalist's enslavement to the market, 'take as great a toll of his initiative as of the workers. He is forced to do with his product what the market demands - making it more, less or different, selling it here or there, for this price or that, and so on'(154). Capitalists enjoy more freedom than the proletariat but this represents a difference of degree and not one of kind: they have greater freedom to buy and to sell, to do what they wish with what they own, but not the freedom not to buy and sell.

To preface the exposition of the labour theory of value the ethical relevance of exploitation and alienation is worth noting. Putting to one side Marx's deterministic interpretation of human development, suffice it to say that if exploitation and alienation are 'injustices' (though particularly exploitation for alienation has been described by Ollman(132) as an illness and so not a moral phenomenon in it's own right) which are integral to, that is inseparable from capitalist production - 'exploitation of the worker belongs to the essence of capitalism'(Wood 1980,p.27) - and if the injustice is sufficiently weighty to create the moral obligation to end it then one is committed to the ending of

the private ownership of the means of production and the institution of private property wholesale. An injustice creates a prima facie obligation to end the unjust state of affairs or the cause thereof. Deliberations over the morality of means-ends complicate this issue. As John Elster says, writing of the moral import of the thesis,

'The importance of exploitation in Marxism is twofold. First, the presence of exploitation in a society provides the outside observer with a ground for normative criticism. Exploitation is wrong; exploiters are morally condemnable; a society that tolerates or generates exploitation ought to be abolished. Secondly, exploitation can provide the exploited with a ground for taking individual or collective action against the system, and hence enters into the explanation of such action'(1985,p.166).

Not wishing to dwell upon Marxian determinacy all that need be noted at this juncture is that the iron laws appear tenuous, if not outrightly falsified, by the inadequacies of the labour theory of value and the post-1867 development of capitalism and to a lesser extent socialism, and that a strict interpretation of Marx's assertion that social conditions determine consciousness has a paradoxical flavour. These problems are addressed below.

Exploitation of the working class by the owners of the productive forces is for Marx a central feature of political economy as practiced under the productive relations pertaining to capitalism. It is as a feature of the essence of capitalist production that exploitation is meant to be central. A review of capitalist production according to Kapital and the earlier Value, Price and Profit is required if we are to understand how exploitation is supposedly brought about, and this review may commence where Kapital commences - Marx's explaining the determination of price.

In Volume I Marx furnishes an example to illustrate how price or the money-value of a commodity is arrived at. The example is the exchange ratio between corn and iron `...represented by an equation in which a given quantity of corn is equated to some quantity of iron: e.g., 1 quarter corn = x cwt. iron' (1867,p.37). The question for Marx was what determines `the proportions in which they are exchangeable'? and his answer was that `there exists in equal quantities something common to both. The two things must therefore be equal to a third, which in itself is neither the one nor the other. Each of them, so far as it is exchange-value, must therefore be reducible to this third'(37). This third is identified as the amount of labour invested in the production of any commodity. `A use-value, or useful article...has value only because human labour in the abstract has been embodied or materialised in it. How, then, is the magnitude of this value to be measured? Plainly by the quantity of the value-creating substance, the labour, contained in the article...measured by its duration'(38). For Marx only human labour expended in transforming raw materials gives commodities value, and because labour has a price commodities too have a price. Marx says as much himself: `Price is the money-name of the labour realised in a commodity'(101). It is `...a peculiar form assumed by value'(1865,p.65).

It is this idea that lies at the heart of Marxian economic analysis, and it is both a peculiar and confusing idea. Necessary labour time (value) is that amount of labour expended in producing `the value of the means of subsistence necessary for the maintenance of the labourer'(1867,p.171) while any labouring beyond what is necessary is surplus

labour time (value) which accrues not to the worker but to the capitalist, or rather is expropriated by the capitalist. 'During the second period of the labour-process', as Marx states it, 'that in which his labour is no longer necessary labour, the workman, it is true, labours, expends labour-power; but his labour, being no longer necessary labour, he creates no value for himself. He creates surplus-value which, for the capitalist, has all the charms of a creation out of nothing'(217).

Does Marx mean by 'the money-name of the labour realised in a commodity' the necessary labour time money the capitalist pays to the worker to keep him working optimally productively? If it does it would cancel out all talk of making a profit. Perhaps it means the money paid to the worker in the period of necessary labour time and then extended to the time spent performing surplus labour? For example, if necessary labour time is valued at forty currency units for it's duration of four hours (ten units per hour) and the surplus labour time is six hours (also at ten units per hour) then the price would be, theoretically, one hundred currency units divided by the number of commodities produced. Now there is the prospect of the capitalist making a profit by taking some or all of the surplus labour sixty currency units and remunerating the worker at the necessary (=subsistence) wage rate only. Unfortunately, prices are just not determined in this manner because prices fluctuate while labouring and wage rates remain constant, and labouring and wage rates change while prices remain constant. (This latter could be explained by assuming the capitalist is enduring a dent in his profit margin).

Interpreting Marx's theory in this way is not as preposterous as may at first appear. This is not a straw man of my own creating, as consideration of the following will show.

'The value of a commodity is determined by the total quantity of labour contained in it.... Part of the labour contained in the commodity is paid labour; part is unpaid labour. By selling, therefore, the commodity at its value, that is, as the crystallization of the total quantity of labour bestowed upon it, the capitalist must necessarily sell it at a profit. He sells not only what has cost him an equivalent, but he sells also what has cost him nothing, although it has cost his workman labour. The cost of the commodity to the capitalist and its real cost are different things. I repeat, therefore, that normal and average profits are made by selling commodities not above, but at their real values '(1865,pp.87-8).

Capitalism is purportedly the activity of accruing capital from business transactions in the form of profit. Marx held that the ceaseless quest for profit permeating capitalism is indicative of the alienatedness and depravity of bourgeois man. This is all he aims at. The 'idealism' of private property '...is fantasy, caprice and fancy'(1844,p.141). However, it is also indicative of the incoherence of the labour theory of value because making profits means retailing at a price greater than the costs of production, so price is the money name of the labour realized in the production of a commodity, among other costs, plus as much extra money as the (grasping) capitalist can successfully coin while still selling his wares. And this is why, for Marx anyway, profit making is necessarily exploitative: minimising the money name of the labour embodied in production is the first step towards maximising profits. Drawing the distinction (as noted) between necessary and surplus labour time, Marx straightforwardly asserted that the rate of profit equals the rate of exploitation and is, measured in money terms, the

difference between surplus labour value when necessary labour value is subtracted from it, and he repudiates the thesis above saying that profit is not the retailing of commodities 'at a price over and above their value'<sup>5</sup>(1865,p.69).

Remuneration of the worker at the necessary labour rate and the expropriation of surplus value has a consequence which Marx had earlier, though much less systematically, recognized. 'Labour certainly produces marvels for the rich but it produces privation for the worker. It produces palaces, but hovels for the worker'(1844,p.97). Price, says the labour theory of value, is determined by labour expended; profit by surplus value less necessary value when the worker labours 'gratis' for the capitalist. 'The rate of surplus-value is therefore an exact expression for the degree of exploitation of labour-power by capital, or of the labourer by the capitalist'(1867,p.218).

Increasing the rate of surplus value is possible to the capitalist in three ways. By intensifying the labour process; through wages being forced down further towards subsistence level where they remain due to the over-supply of labour on the market; and thirdly, through technological innovations. The capitalist must remunerate his workforce at the necessary labour rate and not less to ensure their greatest productivity, and not more because the competitive market penalizes such generosity (higher prices translate

5. The rate of exploitation =  $\frac{\text{Time worked} - \text{time required to produce the worker}}{\text{Time required to produce the worker}}$  (Cohen 1979a,p.341)

into decreased sales) and the worker, it seems, must accept employment at the necessary labour rate for a number of reasons.

The worker has only his labour-power to sell and is forced to sell it. 'The manifest intent of the Marxist claim', says Cohen, 'is that the proletarian is forced to continue to sell his labour power, and we may understand "is forced to sell his labour power" as short for that'(1979b,p.21). There is no shortage of ready labour due to the ever-present unemployed competing for work - what Marx called the industrial reserve army - and the worker is more easily exploited because the capitalist controls the means of production and is seen as the legitimate owner. In sum, very little overt coercion is required, and there is always the illusion of choice.

Marx did not appreciate, or at any rate did not show any appreciation, that while competition amongst workers would, *ceteris paribus*, tend to keep wages low, the competition between employers would tend to raise wage levels. As unskilled manual labourers the wage levels of the proletariat class would likely be least affected by competition for employees, and this much can be conceded without giving to Marx all he desires. Frequently, the rates of remuneration for unskilled labour are respectable because their work is mundane, tedious, etc., and the working conditions less attractive than other (lower paid) forms of employment. Trades unions pressure, welfare measures etc., have further weakened the asymmetry Marx imputes to the determination of wages. Gardner criticizes Marx on just these grounds.

`In the simple Eden of free markets unemployment ought to lower wages. But in the real world, wages tend to go only one way. Unions grudgingly accept wage freezes...but a reduction? Never!'(1983,p.160). Incidentally, the first reason cited above as to why wages remain low raises an oft-overlooked objection to the manner by which Marx proceeds. It shows he was content to accept the premises of classical economic theory, viz. supply and demand, for determining price when it could account for how wages (the price of labour) might remain at the necessary rate but abandoned this method of explanation in accounting for commodity prices. Marx's explicitness hardly lessens the charge of inconsistency. `The relations between the supply and demand of labour undergo perpetual change, and with them the price of labour'(1865,p.44).

This, then, is the Marxian economic explanation of exploitation, and it immediately raises two questions. Is it true as economics, and if it is, is it `exploitation', something morally iniquitous?

The labour theory of value has an attractiveness born of simplicity, an attractiveness Nozick, for one, thinks lost `when it is realised that according to the definition there will be exploitation in any society in which investment takes place for a greater future product...and in any society in which those unable to work, or to work productively, are subsidised by the labour of others'(1974,p.253). It is the very simplicity of the theory that is its own undoing for it is inadequate both as a description of economic fact(s) and as a methodological tool capable of dealing with the whole

gamut of economic phenomena. Particularly difficult for the theory are anomalies of price that can and do arise. Marx's theory supposedly explains prices (values) of commodities as wholly labour-determined, but there are straightforward anomalies that cannot be subsumed under the theory without conceding too much to classical supply and demand analysis, and in attempting to account for some of these Marx is forced to make just these concessions, thereby effectively surrendering the labour theory of value. Anomalies include rare goods, objects of great value easily acquired such as diamonds discovered on the earth's surface, and aged objects. How is the value of these to be explained by the labour theory of value?

Take the example of the diamond. Only a fraction of the labour expended in mining a diamond is expended in simply picking one up, so why do these diamonds have the same value - as they do - as their mined counterparts? In Kapital Marx writes, 'Diamonds are of very rare occurrence on the earth's surface, and hence their discovery costs, on an average, a great deal of labour time. Consequently much labour is represented in a small compass'(1867,p.40). Introducing the idea of an 'average' amount of labour time looks suspiciously ad hoc. However, let this manoeuvre pass uncontested and agree that the value of a diamond is determined by the average value of all other diamonds. Of all the diamonds in all the world any new addition has just average value. If this makes any sense another anomaly

6. Cohen for one thinks that it does not. 'For if labour creates value', he says, 'past labour creates value; and if

springs immediately to mind, to wit, objects for which no average is possible, those rare and unique objects. Ancient Greek vases and da Vinci paintings have a value exceeding that of the money cost of the labour expended in producing them, allowing for inflation, and this runs contrary to the postulates of the labour theory of value.

Marx was cognizant of these difficulties for his theory, and commenting on things having embodied labour but no value, he writes that 'Nothing can have value, without being an object of utility. If the thing is useless, so is the labour contained in it; the labour does not count as labour, and therefore creates no value'(41). Now an object, to have value, must not only contain embodied labour (which will be shown below to be untrue) but any labour it does embody must be 'socially necessary labour', that is, the labour must contribute to socially useful production, which is true, in the sense that what is produced must have utility if it is to have value. And the sense in which it is true marks the collapse of the labour theory of value and especially the notion of price being wholly labour-determined. Marx was correct to affirm that nothing can have value if it does not have utility, but once the notion of utility is invoked nothing can henceforth be excluded a priori as not being capable of bearing a price (having value).

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past labour creates value, then past labour determines the value of the product. But the labour theory of value says that value magnitudes are determined by currently necessary labour time. It follows that past labour does not create value, if the labour theory of value is true'(1979a,pp.353-4)

Not all commodities have embodied labour either, and the example of virgin (unlaboured) land is sufficient proof of this.<sup>7</sup> There are an indefinite number of points between having no embodied labour and great value, such as virgin land, and having great amounts of embodied labour and no value, for instance Nozick's example of the labour-intensive large knot(1974,p.259). If something has a price it is because it has utility, and conversely, if it has utility it will have a price. Virgin land may not be put to productive use for it may be purchased for contemplative purposes. Even Nozick's large knot could have great value. After all, the late Mr. Warhol might have made it. It would then satisfy Marx's stipulated condition: 'A commodity has a value, because it is a crystallisation of social labour'(1865,p.57). But the case of virgin land remains outstanding and falsifies the 'social labour' condition.

Price is not therefore wholly labour-determined, and occasionally not in any way labour-determined. Utility is always utility to someone and can be gained as much from works of art in rope as from hard-laboured diamonds. Marxian pricing ends with utility where the labour endowed in the production of a commodity '...counts effectively only in so far as it is spent in a form that is useful for others. Whether that labour is useful for others, and its product consequently capable of satisfying the wants of others, can be proved only by the act of exchange'(1867,p.85).

7. Marx says of virgin land that it has use-value but not value because what utility it has is not due to labour (1867,p.40). But what the virgin land example demonstrates is that the use-value - value distinction is redundant.

A not unfair conclusion is that the labour theory of value is not true as economics. With but little intellectual contortion 'usefulness for others' is recognizable as the demand side of the pricing equation where artistic knots and unlaboured diamonds are the supply side. While the procedure is different to that taken by Nozick the conclusion is substantially the same: 'There is no longer any labour theory of value; the central notion of socially necessary labour time is itself defined in terms of the processes and exchange ratios of a competitive market!'(1974,p.260). The proletariat do not create value. They create what has value. And it is only a market analysis that can plausibly subsume all pricing phenomena, including those that resist explanation through the labour theory of value.

The failings of the labour theory of value has a major ramification for the concept of exploitation. Given the fact that supply and demand determine the price of labour (as Marx accepted) and given also the fact that the product prices are likewise determined, wherein lies the moral iniquity of 'exploitation'? The workers gain as much as they can for their labour-power on the open market and the capitalists as much as they can for the produce thereof on the open market. The rules of performance apply equally to both classes and there seems no morally relevant feature to mark the first transaction exploitative in the light of the second. As Alan Wood has said of Marx's recognition of the market exchange of labour for wages,

'Surplus value, to be sure, is appropriated by the capitalist without an equivalent. But there is nothing in the exchange requiring him to pay any equivalent for it. The exchange of wages for labour power is the only exchange between capitalist and

worker. It is a just exchange, and it is consummated long before the question arises of selling the commodity produced and realizing its surplus-value' (1980,p.21).

Just because the individual workers usually get less for their labour than the capitalist does in selling the product it does not mean the workers are exploited. It is doubtful if Marx would have thought the capitalists exploited if and when they received less for the product than the worker for labour, as for instance when the worker is paid a market wage and the capitalist incurs a loss. Think of Ford Motor Company's ill-fated 'Edsel' model of the 1950's and, more recently, Sir Clive Sinclair's 'Sinclair C5' electronic tricycle.

So it seems the special feature of capitalist production that Marx believed justified his use of the moral-emotive term 'exploitation' is not one that warrants the expropriation of the expropriators. Cohen is sure that many Marxists have believed that one reason for overthrowing capitalism is that it is exploitative and exploitation is wrong, '...among them Karl Marx'(1979a,p.342). But creaming off surplus value, if it occurs at all, is not morally condemnable without canons, or a concept, of distributive justice, or without advancing utilitarian arguments showing it to be undesirable, which perhaps the tendency towards immiseration posit could do. The ethical significance of exploitation may have arisen more from a sense of humanitarian indignity at mid-nineteenth century working conditions than from an impartial analysis of

8. It would not be doubtful but impossible if Marx had been right: 'But the price of a commodity, and therefore also of labour, is equal to its cost of production'(1848,p.43).

the relations of production and exchange rendered by the labour theory of value. Accordingly, its significance will have declined - perhaps to the status of an argumentum ad historium - if invoked against the present liberal-democratic states.

'Suppose that', H.B. Acton asks, 'as appears to be the case in this country [England] now, workers under what is still predominantly a capitalist system - for that is what Marxists say it is - do not work long hours and are able to live fairly comfortable lives. Is anyone going to say that they are still exploited because, however comfortable they may be, surplus value is being filched from them so long as their labour contributes to the profits of any employer? This would surely be a most metaphysical sort of exploitation that could exist when no one was aware of it' (1955, p.245).

Any reasonable Marxist should reply in the affirmative given the stipulations of the labour theory of value, but this adds nothing to an understanding of the concept of exploitation as a morally evaluative concept which remains a dubiously apposite, possibly propagandist, way to describe the making of profit.

Marx could not furnish a reason for supposing that what value labour does create belongs in its entirety to the labouring party as this would be too bourgeois a notion, seeming to be working within the framework of individual property rights. Cohen is aware of this difficulty for Marx, though for different reasons. Cohen's 'Plain Argument' explaining exploitation begins with the worker creating the valuable product by his transforming resources in the productive process. The capitalist takes some of the value of the product, depriving the worker of the full value of that which he creates, and thereby exploiting him (1979a, p.356). The problem with this argument is this: the value of that which

labour creates is, to some extent, determined outside of the labouring/productive process, that is, by the demand for it. But to hold that those who demand the product have a claim to what they create (some) value in, or are exploited, is 'absurd'(357).

Marx does nonetheless say that that exploitation is the extraction of surplus value without return, thereby implying that the worker's investment in the process of production deserves or merits a greater reward (greater than the necessary returns). Even if we followed Cohen in seeing exploitation 'as a certain kind of lack of reciprocity' (1979a,p.343) the inadequacies of the labour theory of value make it extremely difficult, if not impossible, to ascertain how much value labour is responsible for creating. (In a market economy does the question, 'How much value does labour create?' make sense?) Accordingly, workers could not be rewarded on this basis. Such a notion is not too far removed from a quasi-Lockean conception of ownership and justice in acquisition. And this raises a related difficulty for Marx. The abolition of private property and division of labour is advocated partly on the grounds of it's 'unnaturalness' and deleterious consequences rather than on grounds of it's incompatibility with some canons of distributive justice. The slogan 'From each according to his abilities, to each according to his needs' is sometimes cited as just such a principle, but Marx never expanded upon this slogan and as it stands it is inadequate. William Letwin says of this formula that it is 'the basic outline for a system of taxation' (1983,p.44). Letwin then goes on to remark that enforced contribution according to abilities is unavoidably

inegalitarian because it discriminates against some by neglecting substitutivity of abilities, in his example one of two people who could equally well run the country as sweep streets. Marxists, I should imagine, would maintain that in post-capitalist society there is no need of enforcement. This belongs though with other Marxian postulates themselves 'belonging to a particular interpretation of human affairs, rather than self-evident truths or indisputable historical facts'(5).

In a famous passage from his Preface to a Critique of Political Economy Marx asserts that social life is (wholly?) an epiphenomenon of economic life, saying that social existence determines consciousness and not vice versa. In The German Ideology Marx goes so far as to say 'Life is not determined by consciousness, but consciousness by life' (1846,p.47). Strict economic determinism is too simplistic a thesis for the reason that consciousness, that is conscious actions, can and do influence the mode of production, witness the imposition of taxes. Admittedly, a more sophisticated determinism can incorporate this. All the same, the relation between economic substructure and ideological superstructure is predominantly asymmetrical and morality - canons of distributive justice included - is an element of the ideological superstructure. 'Religion, the family, the state, law, morality, science, art, etc.', we are informed, 'are only particular forms of production and come under its general law'(1844,p.128), meaning they are all subject in the last resort to the iron laws of economic development and hence are temporal in their capitalistic content. Thus it is that Wood states, 'The judgement whether a social institution

is just or unjust depends, then, on the concrete comprehension of the mode of production as a whole, and on an appreciation of the connection between this whole and the institution in question'(1980,p.15).

For Marx the difficulty in evaluating capitalism assumes the form of a paradox (to which all deterministic explanations are subject). In criticizing capitalism one must not employ a standard(s) of evaluation peculiar to that epoch, and yet to attempt otherwise one must first show - against the dictum in The German Ideology - that one's consciousness, including one's standard(s), is not predominant-epoch determined, that is, ideologically unsound, but that they are trans-cultural and trans-historical. Cohen has expressed the same: 'When Marxists think obviously true what others think not obvious at all, one side at least is very wrong, and an explanation of the error in terms of class position or ideological standpoint is not enough, because it does not show how the error is possible, by what intellectual mechanism it can occur'(1979a,p.353).

Whatever the paradox jeopardizes, Marx thought he had arrived at an impartial objective standard with which to evaluate the development of humanity according to the development of productive forces and the working out of their inherent antagonisms. This standard is purportedly both trans-cultural and trans-historical. The standard is freedom: as much 'freedom from' as 'freedom to', and Marx saw, as did Hegel, the history of humanity as the history of increasing freedom. In Marx's case the movement towards species life-activity, expressed through the realm of economics as much as

any other. In the Manuscripts Marx claimed that 'Since...for socialist man, the whole of what is called world history is nothing but the creation of man by human labour, and the emergence of nature for man, he therefore has the evident and irrefutable proof of his self-creation, of his own origins' (1844,p.139). More moderately, Marx later wrote that 'the multitude of productive forces accessible to men determines the nature of society, hence, that the "history of humanity" must always be studied and treated in relation to the history of industry and exchange' (1846,p.50).

Bourgeois and proletariat alike are generally 'better off' under capitalism than men were under feudalism but will only be objectively liberated when capitalism is succeeded by communism, wherein freedom represents the culmination of 'the development of man, his capacities and abilities, through his productive forces and relations towards a conscious mastery and control over these forces and relations (particularly those of his own creation)...'(Brenkert 1980,p.96). Under capitalism all men, though more so the proletariat, are in some ways unfree, and the release from bondage is incompatible with a capitalist mode of production and a

9. Marx held no romantic illusions about the past. In the Neue Rheinische Zeitung of 22/1/1849 he wrote: 'But we say to the workers and the petty bourgeois: it is better to suffer in modern bourgeois society, which by its industry creates the material means for the foundation of a new society that will liberate you all, than to revert to a bygone form of society, which, on the pretext of saving your classes, thrusts the entire nation back into medieval barbarism' (Elster 1985,p.441). Neither, it seems, did Engels: '...the modern bourgeois, with civilisation, industry, order, and at least relative enlightenment following him, is preferable to the feudal lord or to the marauding robber, with the barbarian state of society to which they belong' (1848,p.489).

bourgeois morality (ideology) perpetuating commodity fetishism, egocentric individuality, etc.. Brenkert says of this antagonism that 'private property in its developed, capitalist form renders such freedom impossible. It does this through fostering a separation and conflict of interests among the individuals of a society(96). This lack of freedom is evident in the whole spectrum of human relations from the wage-slavery of the proletariat through to their ideological oppression, ranging from bourgeois jurisprudence to a conspiracy programme of religious pacification. The movement towards greater freedom may not take obvious forms. This can be illustrated by reference to Marx's essay 'The British Rule in India' of 1853 where the destructive effects of British rule are condoned, or perhaps excused, despite 'whatever bitterness the spectacle of the crumbling of an ancient world may have for our personal feelings' because the question is, as Marx asked it, 'Can mankind fulfil its destiny without a fundamental revolution in the social state of Asia? If not, whatever may have been the crimes of England, she was the unconscious tool of history in bringing about that revolution'(1853,p.518).

Summarizing the situation Brenkert points out that '...at the heart of bourgeois society lies the antithesis of private property to labour. Each has its own separate and opposed interests. One is in control, the other is under control' (1980,p.85). All is thrust upon the proletariat, all is alien, and thus their freedom is necessarily limited. 'Capitalism and capitalist private property', Brenkert concludes, 'are, then, condemned for limiting freedom'(99).

The antithesis of private property to labour results in alienation, and it is to this concept, often considered Marx's foremost criticism of capitalism, that attention is now turned. Alienation, we are assured, begins with a 'contemporary economic fact' - the immiseration of the worker as he becomes more productive - and a fact that finds ubiquitous expression, for it is a 'whole system' defined by 'private property, acquisitiveness, the separation of labour, capital and land, exchange and competition, value and the devaluation of man, monopoly and competition'(1844,p.94). All the features Marx thought peculiar to capitalism contribute to the alienation of the working class.

Before proceeding to an exposition of the concept of alienation a perusal of Marx's concept of man is helpful, for it informs, via the setting of a background of stable facts, how alienation is unnatural and corrupting of man. Man has certain natural powers or functions such as eating, sex, and especially for Marx, labouring - the conscious transforming of resources - which are man's tendencies and abilities seeking fulfilment in external objects. Man also possesses qualities uniquely his own as a species-being. He is self-reflexive (in the language of the existentialists man is a being-for-himself) and this primary quality is supervenient upon his natural being. Freedom is a necessary prerequisite for self-reflexive man and is inextricably bound up with and in the cumulative process of the development of man's powers. In the realm of necessity, the realm in which the proletariat finds itself, there is no freedom. In the realm of necessity work may be rational, that is, it may be successful, interesting, purposive, social, but it remains necessary, and

freedom is excluded by necessity. Against this background Marx inveighs against capitalism through the medium of the concept of alienation. 'The theory of alienation', says Ollman, 'is the intellectual construct in which Marx displays the devastating effect of capitalist production on human beings, on their physical and mental states and on the social processes of which they are a part'(1971,p.131).

Ollman believes alienation to be a fact, like illness (his term), and not an evaluation couched in moral terms, and a fact, furthermore, that is known by contrast with the state of non-alienatedness. This illness, according to Marx, assumes four manifestations. Firstly, is the alienation of the worker in his product when what he produces belongs not to him but stands opposed to him 'as an alien and hostile force'(Marx 1844,p.96). The more the worker produces the more is he alienated because the more that stands in opposition to him. Standing antagonistically viz-a-vis the working class is the capitalist class as masters of the product opposed to the worker, the latter 'related in such a way that another alien, hostile, powerful and independent man is the lord of this object...he is related to it as activity in the service, and under the domination, coercion and yoke, of another man'(104-5). Secondly, the worker is alienated in the productive activity itself whereby he 'does not fulfil himself in his work but denies himself, has a feeling of misery rather than well being, does not develop freely his mental and physical energies but is physically exhausted and mentally debased'(98). The worker is also estranged from his life-activity and this results in an artificial separation of individual activity from species activity, particularly the

natural function of labouring. Work in a capitalist economy (and post-labour enjoyment, if any) for the proletariat is dehumanized and purely instrumental, a means and never an end. Both the type of employment; monotonous, simple, repetitive, etc., and the worker's relation to it; as a living appendage to a lifeless machine, are denying of man's self-expression and inherent creativity. 'He [the worker] becomes an appendage of the machine, and it is only the most simple, most monotonous, and most easily acquired knack, that is required of him'(Marx 1848,p.42). Finally, Marx iterates the alienation of man from his fellow men. 'In general', he says, 'the statement that man is alienated from his species life means that each man is alienated from others, and that each of the others is likewise alienated from human life. Human alienation, and above all the relation of man to himself, is first realised and expressed in the relationship between each man and other men'(1844,p.103).

Alienation, we are to believe, is at one and the same time both cause and consequence (effect) of private property, though this is only revealed in the final stage of it's development when it is realized that private property, paradoxical as it sounds, 'is on one hand the product of alienated labour, and on the other hand the means by which labour is alienated, the realization of this alienation' (106). Only the dissolution of capitalism and private property and the advent of communism and self-ownership will herald the demise of alienated existence, for communism is the returning to mankind of his life and humanity the economist has taken 'in the form of money and wealth'(144).

All men under capitalism are alienated, and Marx stresses that this and other inferences are factual. '[M]y conclusions', he maintains, 'are the fruit of an entirely empirical analysis, based upon a careful critical study of political economy'(91), and later, 'We began with an economic fact, the alienation of the worker and his production'(103). Thus it is that alienation is not to be interpreted only, or even primarily, as a psychological state, that is as a sense or feeling (though it is often this) but rather is inferred from certain relations of production as a deductive conclusion, and thanks to this Marx can without inconsistency insist the proletariat has a true class interest even though it's members may not be cognizant or may be mistaken about this. With knowledge of these economic relations Marx can conclude the slave (proletarian) is no less a slave because he feels himself to be free. It is not a necessary condition of being alienated that one should actually feel alienated. Indeed, this is one of the very marvels of alienation...for the bourgeoisie: making the ascendance of revolutionary class consciousness that much more difficult.

When communism replaces capitalism the change in economic relations will terminate man's alienated existence, yet those not experiencing the psychological phenomenon but nevertheless alienated will not experience anything different as regards the sensation of being not-alienated, though obviously, if Marx is correct, they will otherwise flourish as liberated and integrated human beings. Often, however, alienation is experienced, and Elster describes it as a lack of sense of meaning or sense of lack of meaning(1985,p.74). The proletariat's relationship to the hostile powers of the

means of production (capitalists included) and consumption goods has two major features. Firstly, they do not realize alienation is the result of their own activities, and secondly, they are unable to control or change the former feature. Even if the first does not obtain the second may.

'Men may well know that their own social environment is the product of their own behaviour, and yet be unable to control it. This can happen if they know that but not how their actions generate the aggregate features that they deplore. This is not a trivial insight'(1985,p.101).

What credence can be accorded to the Marxian concept of alienation? It is a vogue word, but one would be rash to dismiss it as positivistically as does Eugene Kamenka when he declaims that alienation 'is a concept useful to the moralist, to the litterateur and social critic, rather than to the serious ethical theorist' and is to be avoided because 'it is a moral-advocative term deriving its force from moral assumptions it does not seriously examine and from the disparity between existing social conditions and some of the hopes and expectations born of the optimism of the scientific and industrial revolutions'(1969,p.30). Neither should we be willing to follow Ollman on his question-begging exercise. He suggests the concept of alienation (incorporating the labour theory of value) '...is a useful aid for understanding capitalism only for those people who share with Marx certain basic beliefs'(1971,p.247) and numbers as instances of such beliefs the relations of man to his activity, product and other men, as well as that of man's potentialities and the capitalist - proletariat antagonism.

But alienation is to be understood as more than an heuristic device for exploring and making sense of capitalism. It is an empirical discovery consequent to an investigation of capitalist political economy. To contend that we cannot know what observations or states of affairs could lead us to accept as true or reject as false the concept of alienation would not be unreasonable, for the crucial test - the self-realization and self-actualization of man - remains in the future.

A course that is available is to challenge the empirical-scientific basis of the factual (economic based) interpretation of alienation via a questioning of the socio-economic realities as Marx described them and of the predictions he was wont to draw from them. It has already been seen that the labour theory of value is an inadequate explanation of pricing, and other purportedly empirical facts are also disputable, which serve to cast doubt on the soundness of the explanation of alienation which makes no appeal to psychological states.

On falsificationist grounds the propriety of 'scientific socialism' can be challenged, which, if it is approached as alienation is so that no experimental or observational state could invalidate the hypothesis, is not really scientific. If this is the conclusion then alienation may be a commonly occurring psychological feature of bourgeois society but not a necessary feature of it.

Falsificationism can be employed to refute other aspects Marx considered integral to capitalism and historical development

and thereby undermine the veracity of the 'if capitalism, then alienation' connexion. Amongst these aspects are the failure of the tendency towards the immiseration of the proletariat. Mental immiseration is no less difficult to refute. Marx writes that 'Time is the room of human development. A man who has no free time to dispose of, whose whole lifetime, apart from the mere physical interruptions by sleep, meals, and so forth, is absorbed by his labour for the capitalist, is less than a beast of burden. He is a mere machine for producing Foreign Wealth, broken in body and brutalized in mind'(1865,p.109). Unless Marx is waxing metaphorical, one need only reply that conditions such as these no longer obtain in the modern liberal-democratic states. Increased leisure time brings attendant problems - how to spend it. Watching television or developing one's capacities and talents? On the abolition of the division of labour Marx states that it will be 'possible for me to do one thing today and another tomorrow, to hunt in the morning, fish in the afternoon, rear cattle in the evening, criticize after dinner, just as I have a mind, without becoming hunter, fisherman, herdsman or critic'(1846,p.54). This would strike many as highly unlikely if this life is to be available to all and not to be the luxury of a few. For good or ill, trade-offs have to be made between pleasant work and socially useful work, between one's doing as one likes and one's getting what one wants. Marx seemed to think that they will coincide in a post-capitalist society and that there will be no need to give people a choice. This belongs more to the discipline of psychology than economics: work may not alter, attitudes will.

The failure of revolutionary activities to follow the developmental lines predicted by Marx according to the iron laws of economics is another instance of falsification. In his essay 'Russia's Pattern of Development' Marx wrote that 'If Russia is tending to become a capitalist nation...she will not succeed without having first transformed a good part of her peasants into proletarians; and after that, once taken to the the bosom of the capitalist regime, she will experience its pitiless laws like other profane peoples' (1877,p.478). Russia was only minimally industrialized prior to 1917, and the pivotal role of the peasantry as opposed to the industrialized proletariat as the revolutionary vanguard in the theories and revolutions of Maoism and Castroism further upset this prediction. Two other falsifying facts undermine the 'if capitalism, then alienation' connexion. Some countries, Switzerland for example, have never had an industrial reserve army forcing down the wages (price) of labour. Lastly, and leading from the above, the coercive enrolment in capitalist industry of the proletariat is no longer unavoidable.

'Whatever may have been the truth of the non-access view at one time, in our society large sections of the working force now have cash reserves in personal property, and there are also large cash reserves in union pension funds. These workers can wait and they can invest. This raises the question of why this money isn't used to establish worker-controlled factories. Why haven't radicals and social democrats urged this?'(Nozick 1974,p.255).

Cohen disagrees, avowing that working class people are 'importantly unfree' in not being in a position not to sell their labour(1979b,p.9). While so much may be true of the proletariat as non-owners of the means of production, that

is, given Marx's definition, it is also true of the majority of non-proletarian non-owners of the means of production, such as high-salaried architects. Marx's definition is, therefore, too broad. So, Cohen suggests, we shall call a person a proletarian if, and only if, they are 'forced to sell their labour power to capitalists. For they cannot live by producing with the means they own, except in capitalist employment'(18). This is a strange claim. Is the high-salaried architect more or less unfree? Perhaps he cannot not sell his labour power, and cannot not sell it to capitalists. Furthermore, it is a stronger claim and one that does not circumvent Nozick's challenge. Proletarians may be forced (unfree not to do otherwise) to sell their labour power on pain of starvation, but why, after one hundred years of post-Kapital development, continue to insist on the 'to capitalists/in capitalist employment' clause? And this I take to be Nozick's point. Whatever reasons may be adduced as to why the proletariat do not purchase means of production - from laziness to class solidarity(24) - it can hardly be said that they are forced not to, and saying that they are not forced not to so purchase is incompatible with maintaining that they are forced to continue to sell their labour power to capitalists.

Marxists have responded to these objections. For example, they point to the conspiracy programme of embourgeoisement, and the politically narcotizing effect of increased consumption(Ryan 1984,p.181), to explain the failure of the tendency to class polarization and immiseration, but this looks, again, suspiciously ad hoc, an attempt at immunization or, less charitably, explaining away.

That the antagonistic rift between the bourgeois and proletariat classes has neither widened nor polarized makes attractive an alternative categorization of class. Banfield suggests that the class to which an individual belongs be determined according to their disposition to postpone or defer satisfaction(s) for the sake of the future.

'In the analysis', says Banfield, '...the individual's orientation toward the future will be regarded as a function of two factors: (1) ability to imagine a future, and (2) ability to discipline oneself to sacrifice present for future satisfaction. The more distant the future the individual can imagine and can discipline himself to make sacrifices for, the "higher" is his class' (1968,p.47).

On this scalar view a member of the (Marxian) proletariat class may belong to any one of the four classes identified by Banfield: lower, working, middle or upper. And likewise for a member of the (Marxian) bourgeoisie. It may well be the case that the proletariat belong predominantly to the lower and working classes, but Banfield's analysis has the advantage of dispensing with class interests and antagonisms by explaining embourgeoisement by the less obviously ideological and conspiratorial notion of 'social mobility'.

Ollman is more circumspect than some might be and admits that for some tenets of Marxism there could not be any evidence, including here 'Marx's philosophy of internal relations, his conception of human nature and the theory of alienation' (1971,p.232). Marxism, he argues, should be evaluated in terms of utility rather than truth and contends that Marx's views 'are extremely useful aids for understanding nature, man and society'(233). But utility was not what Marx intended his theory to provide for. The spirit and the letter of his writings are in the idiom of truth, not

utility. Cast back to the idiom of truth (objective, immutable) the epistemological problem pervading complete deterministic-mechanistic explanations rears it's head in the form of a lack of rational explanation and the impossibility of knowing whether something is true, if it is. I see no way that Marx avoids falling foul of this problem.

## EGALITARIANISM

Having devoted Chapter IV to consideration of Marx's critique of private property and capitalism I wish now to consider some disagreements and disputes concerning or relevant to private property that fall within the ambit of non-Marxist theory.

This chapter concentrates on arguments for equality or for greater egalitarianism advocated by non-Marxists and the objections to the (any) entitlement theory of justice which, it's critics claim, is ultimately grounded in morally arbitrary assumptions. Of the first response, the arguments for general egalitarianism, I have selected only the three most fruitful arguments put forward by its proponents, all of which are to be found in Williams's(1967) essay 'The Idea of Equality', and in Dworkin's argument, below . It merits notice that the second argument in Williams, long used in much and divergent liberal moral-political philosophy, has a bearing upon Rawl's 'difference principle' which forms the restitutive spine of his argument contra entitlement. If the objections to entitlement theory constitute the bulk of this chapter it is only because of the complexity of these objections and counter-criticisms and the significance they have for entitlement justifications of private property.

Of these factual arguments the argument from 'common humanity' is the first advanced by Williams in favour of equality, but is only an argument pressing a claim to a weak

sense of equality. That all men, qua men, bear certain characteristics which are morally relevant is the cornerstone of this egalitarianism, these characteristics being, for example, pain, desiring affection and 'a desire for self respect'(1967,p.157), and further, that these characteristics are not trivial because, as Williams points out 'there are political and social arrangements that systematically neglect these characteristics...and neglect moral claims that arise from these characteristics and which would be admitted to arise from them'(155). These characteristics, Williams holds, are purportedly 'definable characteristics universal to humanity' and they are 'in a sense, negative: they concern the capacity to suffer, and certain needs that men have, and these involve men in moral relations as the recipients of certain kinds of treatment'<sup>1</sup>(157).

Even if this is true the claim(s) of equality that arise thereby should hardly trouble the non-egalitarian. Dogs feel pain and exhibit a desire for affection, and while dogs do not seem desirous of self respect neither do many humans - besides children and lunatics. Furthermore, this argument from a transcendent human essence commits the fallacy of collapsing the distinction between 'sameness of degree' and 'sameness of kind'. The latter cannot be translated into the

1. On Rawls's account these characteristics are, surely, at least in their degree if not in their nature, morally arbitrary. My having a higher pain threshold, say, is not of my doing, whatever that could mean without begging the question. Neither is my craving for affection. These characteristics presumably must themselves be susceptible to equalization. By neurophysiological surgery...? The point is rhetorical but it does underscore a permeating difficulty for equality of outcome.

former, which is to say that things that are the same may be unequally so and things that are not the same cannot be compared.

The first argument makes greater sense in light of the second. With the second argument Williams proceeds by utilizing the Kantian idea of the transcendental conception of man as an intrinsic moral agent to be treated with due moral respect as an end (in-itself/himself), with the moral respect all men are presumed to deserve per se, as bearers of moral capacities, in order to argue against arbitrary and fortuitous inequalities in other natural capacities.

'Accordingly', Williams goes on, 'the respect owed equally to each man as a member of the Kingdom of Ends is not owed to him in respect of any empirical characteristics that he may possess, but solely in respect of the transcendental characteristic of being a free and rational will'(158).

Moral equality as that treatment accorded persons in virtue of their transcendent human essence is not equality full-fledged (equality of outcome). I may treat you as an end but still have a thousand times as much wealth. This does not show that political or social equality is not in any way connected with moral equality but only that it is not connected in the strong way Williams believes. Specifically, moral equality is compatible with a stable political hierarchy, contrary to what Williams holds (161).

What political equality means is not clear. Universal suffrage? Equality before the law? Any movement towards political equality away from arbitrary and fortuitous

inequality is threatened by the charge of inconsistency: such a movement may involve using some, namely the fortuitously and/or undeservingly talented or endowed, as a means to the egalitarian end, or, as Nozick says, it would mean treating them as 'resources for others'. Means-ends relationships may or may not be justifiable - this is another matter. However, to parry the charge of inconsistency it would need to be shown that treating some as 'resources' does not violate the moral respect they deserve. Showing this would be part of the justification of the means-end relationship but not the whole because there might, somewhere along the line, be an incompatibility between using some as resources justly and according others the respect they deserve.

Williams's third approach, that from equality of need, is the most plausible. His thesis questions the consistency of recognizing the equivalence of need over two or more identical cases while yet treating these cases, when it comes to satisfying or meeting these needs, differently. In schematic form his argument is:

- (i) Medical care generally caters for those in ill-health.
- (ii) In some societies money is required to purchase medical care. No money, no medical attention.
- (iii) Two people equally ill and equally in need of medical treatment are not treated equally (equally treated) because one cannot afford it. (They are living in a (ii)-society.)

Williams concludes thus: '...we have straightforwardly the situation of those whose needs are the same not receiving the same treatment, though the needs are the ground of the treatment. This is an irrational state of affairs'(163).

As Berlin put the same point in an earlier essay on equality, similar cases call for or should be accorded similar treatment(1956,302), and clearly (ii)-societies do not treat similar cases similarly.

Nozick expressly comments on Williams's paper, questioning whether medical activities should be 'allocated via the internal goal of medical care?'(1974,p.234) and decides that the answer is 'No', largely because internal goal-orientated equality is too inclusive - which is why Williams's case is for a strong sense of equality - concluding the argument shows 'that society (that is, each of us acting together in some organised fashion) should make provision for the important needs of all its members. This claim, of course, has been stated many times before. Despite appearances, Williams presents no argument for it'(234). Williams does have a case, albeit a weak one (one that is further weakened when the arguments for private insurance against needs are restated). The 'irrational state of affairs' his example presents is more an intuitive antipathy towards the idea that although everyone has a right to something - relevance of reasons - only some, namely the wealthy, can secure that something -  
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operativeness of reasons - to which all have a right. This, he says, 'rings hollow to the point of cynicism'(1967, p.164).

To have a right to something or to the existence of some state

2. This is similar to Cohen's discrepancy between rights and corresponding effective powers and is, likewise, a confusion between having a right to something with actually having that something.

of affairs, such as the right to purchase medical aid, according to Williams, implies having also the right to the means necessary to satisfy, or meet that right.

Not only is this in itself not at all obvious but Williams does not seem to contend for this entitlement. Why not rights 'all the way down', whereby the necessary and sufficient condition of having (in the operative sense) a right is the having of prior rights, say in resources? Is not this the case with the (ii)-society?

The charge of inconsistency aligns Williams with a system of rule equality where 'every member of each class has an equal right to that which has been accorded to the class as a whole'(Berlin 1956,p.306), but still does not enable his objection to be carried through because it is not obvious that only a single system of rules is operating, and being controverted. In the case of (ii)-societies there are two rules operating, at least for the different classes, to wit, one for the class of those who cannot afford medical aid and another for the class of those who can, and there is no inconsistency between these. More than establishing a consistency paradigm the equality-of-need argument fails to do, and the use of the idea of internal goals makes all talk of rights second-order by shifting the emphasis to needs (and why not wants as well?) and the institutions and activities structured to meet them.

The weakness of the three common arguments for equality Williams presents somewhat undermine Dworkin's own case for equality, mainly due to the dearth of real argument for egalitarianism as such. Certain situations demand equality

for the sake of moral consistency - to meet the clause of universalizability - but this is not the same as equality per se.<sup>3</sup> 'Treat equals equally' is an injunction of a vastly different order to the injunction, crudely put, 'Everyone to be equal', where 'be' expresses not the treatment accorded to persons in lieu of relevant similarities between them that they happen to possess but the call for all people to be equal in as many respects as (technically, presumably) possible, and to be treated equally in these respects, assuming consistency is valued. Why equality per se should be valued is only of secondary importance in Dworkin's papers, who admits of his scheme for equality of resources that he will not explicitly defend it except in as much as definition acts as defence (1981b,p.283).<sup>4</sup>

Dworkin begins saying 'Equality is a popular but mysterious political ideal'(1981a,p.185) and devotes his papers to a consideration of two theories of distributional equality; welfare and resources. 'The first...holds that a distributional scheme treats people as equals when it distributes or transfers resources among them until no further transfer would leave them more equal in welfare. The second

3. Why be consistent is a legitimate question. 'Consider now the immoral man who steals and kills, to his own benefit or for some cause he favours. Suppose we show that some x he holds or accepts or does commits him to behaving morally. He now must give up at least one of the following (a) behaving immorally, (b) maintaining x, (c) being consistent about this matter in this respect. The immoral man tells us, "To tell you the truth, if I had to make the choice, I would give up being consistent"'(Nozick 1981, p.408).

4. 'Like all human ends it [equality] cannot itself be defended or justified, for it is itself that which justifies other acts - meanstaken towards its realisation'(Berlin 1956,p.326).

...holds that it treats them as equals when it distributes or transfers so that no further transfer would leave their share of the total resources more equal'(186).

Equality of welfare seems immediately attractive: differential resource allocation can meet instrumental vagaries in equal welfare satisfaction. If 'welfare is what really matters to people' then no-one having less welfare than another entails some having more resources than others. One way of fleshing-out the idea of equality of welfare is to measure it in terms of success, as a 'matter of his [a person's] success in fulfilling his preferences, goals and ambitions' and where transferring resources can 'decrease the extent to which people differ in such success'(191).

Success can embody, in order of increasing restrictivity, the following preferences: all preferences; non-political preferences; personal preferences. While attended with practical difficulties equality of success is nonetheless capable of representing the ideal of equality. For Dworkin the question is, 'If (impossibly) we could achieve equality of welfare in some one of these conceptions, would it be desirable, in the name of equality, to do so?'(197), and the first two conceptions are straightforwardly rejected. The former because political dissenters would upset such a scheme unless they were compensated and we do not wish to compensate those whose political opinions are morally anathema, including inegalitarian theories. The latter for similar reasons, for example, the compensating of eccentric preferences, and because sorting preferences requires a theory for ascertaining the reasonableness of non-political preferences and the compensating of them.

The third conception accounts for overall welfare resulting from overall success - and welfare is what is important.

'[W]elfare is what really matters to people...Equality of welfare proposes, that is, to make people equal in what is really and fundamentally important to them all'(207).

Overall success introduces the idea of 'reasonable regret' for mediating resource distribution. Dworkin summarises this principle when saying 'People have lives of less overall success if they have more reasonably to regret that they do not have or have not done'(216) and that what people reasonably regret is their 'not having whatever share of material resources they are entitled to have'(217).

Entitlement, however, cannot be defined in virtue of equality of success without circularity, but could be determined by, as Dworkin says, an independent theory, namely equality of resources, 'which would contradict equality of overall success not in some cases only, but altogether' (217). What the theory seeks is a distribution of resources congenial to the equalization of the extent of reasonable regret felt by all, and the vagaries of preferences both personal and impersonal must be subordinated to the fair distribution theory. Reasonable regret signals the failure of any wholly welfare idea of equality as inadequate, for without a notion of justice supporting it 'equality of welfare is not so coherent or attractive an ideal as it is often taken to be. We therefore have reason to consider with some care the alternative ideal of equality of resources'(244). But this alternative is, as was noted above, to be defined, and not defended 'except as such definition provides a defence'.

Dworkin's argument for equality of resources starts with The Auction; a hypothetical market in abundant resources to which a number of people have an equal claim and in which resources are equally divided up and which division passes the 'envy test'. In its fullest exposition the envy test 'requires that no one envy the bundle of occupation and resources at the disposal of anyone else over time, though someone may envy another's bundle at any particular time'(1981b, p.306). Straightforward mechanical division would incorporate an unfairness, to wit, differences of taste, and so fail the envy test. A market is needed and The Auction is begun. An equal number of valueless currency units (clamshells) are used for bidding and all resources are auctioned until the market is cleared. Everyone now has the bundle of resources he prefers to all others, the envy test is met, and equality is served by the market rather than impeded by it, which<sup>5</sup> impeding is a common supposition.

Post-auction equality will be disturbed by luck, both 'option' (calculated gambles) and 'brute' (metaphysical) as it also will by insurance against bad luck. Contingencies for future bad luck are accountable under equality of resources but not so the disadvantages one is born with, the handicaps and genetically proximate bad luck for which higher insurance premiums are the norm. 'They cannot buy insurance

5. Does inequality result in envy? Letwin contends that historical evidence suggests that it does not and that our psychology makes envy a personal response rather than a consequence of external causes. While Dworkin is not arguing such a point anyone who wished to would have to show the causal antecedency of inequality over envy lest the effort to end envy by ending inequality be 'like trying to eliminate crime by abolishing law'(Letwin 1983, p.19).

after the event'(297). 'Someone who is born with a serious handicap', writes Dworkin, 'faces his life with what we concede to be fewer resources, just on that account, than others do. This justifies compensation, under a scheme devoted to equality of resources, and though the hypothetical insurance market does not right the balance - nothing can - it seeks to remedy one aspect of the resulting unfairness'(302). This (compulsory) scheme provides for mitigation of handicaps, genetic misfortunes, etc., to preserve equality in those aspects of personality which are means or impediments to the attaining of a successful life.

Equality is still not secured, for it would be further disturbed by 'production and trade' and the unequal distributions this would effect. It is for this reason that the finalized presentation of the envy test is introduced. This formulation incorporates a person's occupation and the way they choose to utilise their share of resources, the idea being that someone may envy another's bundle of resources even over time but shall not so envy them when cognizant of what they have done, occupation wise, to attain this bundle. Only, however, admits Dworkin, if the unrealistic assumption of an equality of talent (ability and perseverance etc.) is assumed.

Given an inequality of talent as an empirical fact does equality revert to a 'starting-gate' theory of fairness which stipulates 'that if people start in the same circumstances, and do not cheat or steal from one another, then it is fair that people keep what they gain through their own skill. But the starting-gate theory of fairness is

very far from equality of resources. Indeed it is hardly a coherent political theory at all'(309). Such a theory is not necessarily incompatible with equality, but why, asks Dworkin, could we not equally well suppose that at the auction the bidders agree to periodic redistribution of resources to maintain equality between all people and their schemes of life? Distribution must not be endowment-sensitive `...affected by differences in ability of the sort that produce differences in a laissez-faire economy among people with the same ambitions'(311), and hence institutionalized redistribution is necessary via an income tax to restore equality from wealth differentials subsequent to differences of occupation, traceable to genetic luck. Equality of welfare is forsaken in the attempt to find a political theory to support it and what Dworkin finally arrives at is, to summarize his argument for equality of resources, `the idea of an equal initial auction, followed by trade and production constrained by taxation mimicking hypothetical insurance markets'(335).

Dworkin's two papers have sparked off something of a sustained debate between himself and Jan Narveson, who in his critical paper `On Dworkinian Equality'(1983) argues against the general idea of equality as being of `final importance'. By his own admission Dworkin does not address himself to the issue of why equality is valuable, desirable etc., defending equality only in so far as iteration of his theory provides defence, and instead maintaining that if equality is valuable, desirable, etc., then his theory is a viable and attractive one. At the same time, though, he advances the idea of equality of resources `as a positively

attractive political ideal, one that is of 'final importance' (Narveson 1983,p.2). Why then does Dworkin not argue for equality ?

The argument, considers Narveson, makes appeal to intuition, and the obvious question is simply, Do we share these intuitions? For Narveson there are two questions. '(1) In so far as the welfare idea has any appeal at all, wouldn't a more satisfactorily-defined utilitarianism be better than equality of welfare as an idea? (2) Is the idea of equality of resources as a political idea really attractive, anyway?' (3).

Dworkin's thesis advocates strong egalitarianism, that is, more than equal welfare contribution, for, he says, 'as far as is possible, no one should have less welfare than anyone else'(1981p.191). Is this 'absolute welfare' equalizing upwards or equalizing downwards? If we do not read into equality of welfare a maximizing assumption we cannot answer the question Why choose maximum average happiness over maximum average misery? 'Part of the objectionableness of the idea of equality of absolute welfare as a political goal, at least in many minds', Narveson counter-intuits, 'is that it calls up the image of the state cutting X down to size in order to bring about X's equality with Y'(1983,p.4). Perhaps equality of marginal improvement is fairer, whatever the differences between X and Y before they receive state help. If more resources are diverted to Y would not X have cause to complain? 'Those complaints will certainly be cast in the terminology of fairness and justice. And is this not the right terminology to apply?(5).

More importantly, any conception of absolute equality of welfare, far from being intuitively sound, is actually counter-intuitive. Cases of thwarted political and impersonal preferences, as the cases of racial bigots and hard nosed ecologists exemplify, need not and should not - for intuitive reasons - be compensated as Dworkin says they must, for a morality of egalitarianism calls for the restriction of non-egalitarian preferences (more accurately preferences running counter to the mores of equality). Such preferences should be restricted in the name of upward equalizing/maximal equal welfare. 'A program of penalties aimed at extinguishing the aberrant tastes rather than rewarding them, would have, it is hoped, the effect of promoting long term equality at a higher level'(6). A more powerful intuition pump contra welfare-equality is presented by Narveson in the scenario of some so-contented-whatever-their-lot that others cannot be brought up to their welfare level. Equalizing down is now the only option. 'There is nothing for it, if equality is our goal, but to cut them down to size, perhaps by flinging them into prisons of quite unusually desparate awfulness'(7). Admittedly, this is an old argument against any utilitarian theory, but it loses none of its persuasiveness for that.

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6. It is an argument that can be withstood only by a strongly consistent utilitarian. 'Even in my most utilitarian moods I am not happy about this consequence of utilitarianism. Nevertheless, however unhappy about it he may be, the utilitarian must admit that he draws the consequence that he might find himself in circumstances where he ought to be unjust. Let us hope that this is a logical possibility and not a factual one.... One must not think of the utilitarian as the sort of person who you would not trust further than you could kick him'(Smart 1973,p.71).

Narveson then proceeds in his rejection of Dworkin's notion of reasonable regret and arguments of conscious-state welfarism. As regards the former, Dworkin contends that success is relative to resources, and that one can reasonably regret what one has not achieved but could have given the resources others in fact do have. Narveson responds by pointing out that resources are finite and so resources-for-success must be weighted, and once this is done attaining equal success by eradication of reasonable regret is tricky. 'Reasonable regret is then measured not by an independent notion of fairness, but simply(!) by the realism of the supposition that the requisite level of resources would be available to each person, given the aim of equalizing the reasonable-regret levels of all'(8), and this is far too complex and problematical to ascertain and so can be rejected as impracticable.

Of conscious-state welfarism Narveson says it is not possible, for four reasons: (i) enjoyments differ in importance among people, (ii) utility is not constantly and identically accessible, (iii) enjoyment is not always the sole object of our pursuit. Satisfying values is insufficient. Often it cannot actually be done, and when it can may involve harming B for A, which is ruled out prima facie on utilitarian grounds, and (iv) people prefer their good to that of others. 'The goods of others are, indeed, goods for them; but reason does not, after all, constrain us to embrace everyone's good on an exact par with everyone else's'(10).

Turning to the more important of Dworkin's papers, Narveson wishes to criticize equality of resources from the perspective of political theory rather than from within, while appreciating that the lack of argument for equality as such makes this project less accessible. The most serious obstacle to equality of resources is the naturally arbitrary unequal distribution of 'initial resources' - 'one's genetic "endowment"'(15). Can the theory treat these as resources for transfer, as it seems it must? 'Technology, indeed, does not permit, at least at present, many of these transfers. And we may suppose that certain identifiable portions of one's genetic endowment cannot be transferred.... But whether or not that is so, there will surely remain other portions of which we should not be inclined to think in that way - Nozick's example of the normally sighted Jones transferring one eye to the totally blind Smith seems an apt case in point'(16). Dworkin himself thinks it wrong to so conceive of natural endowments but wishes as a matter of justice to compensate for handicaps on the grounds that they have a greater claim to more resources. To not so view endowments does strike one as an intuition egalitarians need to come to terms with, but, and for obvious reasons, are reluctant to. Endowments have, after all, played a significant role in the development of me. Compensation for handicaps and wealth differentials produced by trade and production entails ongoing redistribution to the less fortunate and less talented. Argues Dworkin, '...people should not be penalised for talent', nor 'allowed to retain the benefits of superior talent'(1981b,p.312), but Narveson's intuitions, and mine too, run in the opposite direction.

'The talented, I daresay, will feel that they are being penalised for their talent if they are not allowed to retain the benefits of that talent'(1983,pp.17-18), and neither come out behind nor ahead of anyone else. Redistribution from the talented-wealthy seems wholly incompatible with endowment-neutralization because on the market Dworkin accepts it is endowments together with ambitions - and the latter may be a product of the former - that lead to inequality. Dworkin seems to retain an ambition-sensitive but not endowment-sensitive theory when ambitions may be, and Rawls for one contends they are, facets of the morally arbitrary natural lottery.

So, why equality? One answer, already given by Williams, replies 'that all humans...deserve an equal share, are equally deserving'(20), but this is open to two immediate replies. Firstly, why must or should all resources be distributed equally? Secondly, why do all humans deserve equal shares? 'A simple minded insistence that they just do, as a basic moral fact, would seem to provide not an answer to our question, but rather a reiteration of the theory whose rationale we seek'(20).

If we accept equality we will seek the best conception of it in accordance with two features of what people's interests are, 'and then what follows from supposing that these interests matter equally'(Dworkin 1983,p.25). In relation to the first of these there are, as reasons/motives for doing things within the rubric of 'interests'; primitive impulses; 'tastes that are not primitive impulses and are more amenable to our decisions about which to cultivate

and which to discourage'(25) and; attachments and projects whose value lies in their realization. These motives and values are regulated by higher-order interests which involve living as good a life as possible. And because of this we often cultivate our talents, desires, ambitions, etc., in a non-strategic way, meaning in a way not seeking 'glow'-psychological or desire-satisfied states. 'We do not in general aim', states Dworkin, 'as an overriding goal, at maximising "happiness" or any other psychological state that can be defined simply as a glow. Nor do we aim at a glow plus having a belief that accounts for the glow, the belief that our life is a good one. We cannot make sense of our own lives on the welfarist view'(26).

Hence Dworkin's 'judgemental view'. People should have better lives and have their higher-order interests treated on a par with anyone else's'. Under this conception, (i) a person's life must be the subject and not the object of value, (ii) that (i), above, is 'fundamental'/'intrinsic', and, (iii) it is fundamental that a person have a good life, rather than one thought to be good.

The significance of this conception for equality is that it creates a role for the state. I, as leader of a good life, am both agent (my aims) and object (my life). If political society treats me as an equal, raising my interests into the arena of political (public) interest, then the body politic assumes the role of agent. 'So the state takes over my aim, and aims to make my life as good as it can be'(27). Through a process of elimination of which he is aware Dworkin has opened a potential 'Pandora's box' for

paternalistic interference, of the sort Flew, as has been seen, is so acutely critical.

Utilitarianism has been excluded by the judgemental view because of its adherence to conscious-state principles, and libertarianism now because based upon freedom as the highest-order interest, which leaves only the 'totalitarian conception of equality', under which the state gives to people a good life and forces them to live it. But, continues Dworkin, we would reject this appropriation-of-aims model as unduly and deeply paternalistic.

Equality of resources overcomes the intransigence of equality of welfare by regulating the provision of resources 'according to the most abstract possible account of what resources are, so that the resources an individual actually has available to him, in virtue of the political goal, depend on his decisions and projects from time to time'(30). It frees the agent to realize his (as object) changing conception of a good life, of a life that is in fact valuable. So much for the best conception of equality.

Narveson's major complaint was over the dearth of argument for equality per se, and Dworkin now goes some way towards redressing the sought-for balance, with the qualification that the principle of equality is too fundamental '...to admit of any defense in the usual form'(31), which is to say that it cannot be derived from any more basic principle of morality. And neither can it be desert- or talent-based because contingent qualities 'cannot be used to justify a principle taken to be both foundational and

universal'(31). Anyway, Dworkin considers it odd that people 'own' their talents. [The Concise O.E.D. entry for 'own' reads: '(Appended to possessive adj. or case) in full ownership, proper, peculiar, individual, and not another's'. Surely talents fall under this definition? If not then our ordinary usage of the term is hopelessly misleading.]

How Dworkin does defend the equality thesis is in an a priori fashion, asking whether it is possible to consistently reject egalitarianism as a political ideal. Dworkin moots three coherent objections to the thesis, while stressing beforehand that the position (or question) 'Why anything at all as politically basic? is not a legitimate one because incoherent and subject to self-refutation. In political terms the Why anything at all? position is itself a political position, and a fundamental one at that, and hence can be rejected as viciously circular.

The three coherent positions can be enumerated as follows.

- (i) Neither my own nor anyone else's life matters objectively and therefore cannot properly be the concern of the body politic.
- (ii) My life and the lives of others matter objectively and are the concern of the body politic. However, there are more important things - politically more important that is - such as the promotion of culture/art and the observance of rights, which override equality when in conflict with it.
- (iii) It matters how good my life is but others' lives matter less. Some lives are more important than others.

Of these positions Dworkin claims that they all fail to undermine the equality thesis by 'denying any of the

components that make it up, and so...indicate why I think you should find this [(i) -(iii)] implausible'(32).

The first is implausible because the subject - object distinction is not a sensible one owing to the difficult questions of value it raises, and because the distinction calls into question the very purpose of politics. 'I do not see', he writes, 'how we could construct any general justification of political action - including any justification for failing to take political action - that does not assume it is important what happens in people's lives'(33).

Part of position (ii) is raised in the face of assumptions made by Dworkin in his papers to the effect that, under equality of resources, cultural/artistic interests can be catered for. Concerning rights - 'rights are more problematic'(34) - it is not at all clear how they can be fundamentally prior to the thesis of equality, and anyway, rights need not necessarily stand antagonistic to equality. 'Presumably people have rights because it matters how their lives go; and if this matters equally, any scheme of rights must be one which recognises and respects that fact'(34). Rights can be interest-derived and follow from the principle of equality. Finally, Dworkin addresses the 'least likely' of the three positions, which maintains it matters how some lives go more than other lives matter, and merely asserts that from the objective standpoint this is 'hard to conceive'. We all value our own lives intrinsically and the characteristics we value in ourselves we value not because we have them but by virtue of the characteristics

they are, and of course this fact fails to 'plausibly distinguish you from anyone else who has a life to lead' (35).

In the closing paper of the Dworkin-Narveson debate Narveson claims he is not sure that the principle (thesis) of equality can be separated from the best conception of equality, namely equality of resources in Dworkin's theory, at the 'institutional level', the level of concern of the body politic. To whom do community interests matter and matter equally? Not every person in the community matters equally to every other member of the community as we have associations and relations with some which elevate their interests in our estimation above the interests of others. As a matter of fact it is false, and obviously so to answer 'Everybody' to the question 'Whose interests matter equally?' 'It is well that it doesn't, since that would seem to be manifestly false' (Narveson 1983, p.42).

As a normative principle the answer 'Everybody' is also false 'since we are understanding it in a way that permits you and I to have quite drastically varying concerns for different individuals. So why, then?(42). The only affirmative response to the question is drawn from the political standpoint, and this response is not a particularly cordial one for the equality thesis. Interests matter from the political standpoint only to political institutions when functioning properly. 'Whenever a political institution is established...then that institution must have equal concern for the interests of the people, or those of the people with whom that particular institution deals'(43).

Equality-before-institutions is a form or practice of rule-egalitarianism, and one captured in much non-egalitarian liberal theory, especially in the theme of equality before the law, and is, further, a conception of equality compatible with the starting-gate political theory.

However this conception is modified and adapted it remains far from being a derivation from, or a sanction for, equality of resources, and this leads Narveson to his final criticism (and one that faces Rawls): How were the resources for the auction 'divided up', what was the sanction for dividing them according to the Dworkinian model?

On arrival the immigrants as individuals have no antecedent claim to any of the island's resources, so it is a moot point whether as a group they have any claim to the resources. Not only does this undermine the possibility that the resources were divided according to majority agreement, for it might be as illegitimate as individual appropriation, but if they were so divided why must or ought the minority abide by the decision? If the decision was by unanimous agreement then at the stage of initial consent and division why should there be later and continual redistribution? Would people choose this as opposed to a starting-gate theory of distributive justice? Unanimous consent raises problems similar to the majority consent scenario, to wit, dissenting later generations who were not party to the original decision and whom Dworkin presumes must obey the political procedure established by their forebears. And if the immigrants had been utility-oriented rather than the Dworkinian presumption of their being equality-oriented they would surely have

chosen equality of welfare before equality of resources. Concluding his papers and criticisms of Dworkin, Narveson sums up the realities of treating interests equally-before-institutions: 'Equality of procedural rights under the law, by all means; equality of respect for the persons, property and the liberty of others, yes. But not, so far as I can see, equality of resources themselves. The clamshells might not be divided up equally'(44).

Institutions structured according to the structures they protect and serve are assumed by Rawls in his A Theory of Justice. For example, Rawls says of his 'difference principle' that it rules out justifying institutions 'on the grounds that the hardships of some are offset by a greater good in the aggregate. It may be expedient but it is not just that some should have less in order that others may prosper. But there is no injustice in the greater benefits earned by a few provided that the situation of persons not so fortunate is thereby improved'(1971,p.15). That institutions are derived from and subservient to moral theory Rawls makes abundantly clear, and the moral theory his difference principle is grounded in is one that denies the validity or legitimacy of an entitlement theory of acquisition and holdings which, Rawls argues, are morally arbitrary. <sup>7</sup> 'There

7. Rawls is not the first to have noted this feature of moral capacity. D.D. Raphael acknowledges this 'egalitarian position', saying that 'a man might be enabled to develop his capacities but required to devote the fruits of his capacities to the common good; that is to say, he might be expected to attain or receive, for his own enjoyment, a roughly equal amount of material means to satisfaction as others, while any surplus material results of his exercise of capacity were distributed to others whose own capacities did not allow them to affect as much. This is the egalitarian

is no more reason', he argues, 'to permit the distribution of income and wealth to be settled by the distribution of natural assets than by historical and social fortune'(74), or, as Rawls writes later, 'No one deserves his greater natural capacity nor merits a more favourable starting place in society'(102). For Rawls it is the difference principle as derived from this feature of moral theory that compensates for those disadvantaged by or in the lottery of natural fortune, for the difference principle asserts that 'All social values - liberty and opportunity, income and wealth, and the bases of self-respect - are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone's advantage'(62).

Talents, natural abilities, social fortune, etc., cannot always be cancelled out or neutralized. Hereditary peerages can be abolished and inheritances confiscated but it is considerably more problematic to efface a public school education once acquired, or a talent in bio-chemistry, or works of art in rope, and Rawls recognizes this, saying as he does, that 'it is not in general to the advantage of the less fortunate to propose policies which reduce the talents of others'(107). Rather, we ought to conceive of talents as social assets utilizable in the service of the 'common advantage'. Accordingly, we treat the naturally gifted with

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position - from each according to his capacity, to each according to his needs. The position conflicts with the principle of maximum social liberty, but not with the principle of maximum opportunity'(1951,p.193). Flew, however, maintains that the principle of equality of opportunity does represent a threat to liberty because it entails abolishing or minimizing the advantages that accrue from being brought up in a good home(1983,pp.154-5).

respect by 'arranging inequalities for reciprocal advantage and by abstaining from the exploitation of the contingencies of nature and social circumstance within the framework of natural liberty'(179). Natural endowments are, in a moral sense, not properly deserved by the holders of them and, therefore, neither can the benefits thereof be said to properly accrue to the holder. He who deserves not the endowments deserves not the benefits that flow from them, and the difference principle seeks to create a situation of equilibrium between the better and the less well-off (endowed) where the random distribution of talents, abilities, etc., works to the maximum advantage of all parties. The attack on moral arbitrariness the difference principle embraces is a serious threat to any entitlement theory where natural endowments can and do play a large part in determining distributive shares, and has provoked considerable discussion.

Granted that endowments are arbitrarily (amorally) distributed, and if it could be shown that the recipients of good fortune had no moral claim to the proceeds thereof, the assertion that they are rightly 'social' assets, and belong equally to one and all, remains to be justified. 'To show that individuals, as individuals, do not deserve or possess "their" assets is not necessarily to show that society as a whole does deserve or possess them'(Sandel 1982,p.96). Moral arbitrariness and the 'thin' conception of personhood do weaken entitlement theories but alone fail to establish any alternative picture of how assets are to be regarded and the benefits distributed.

Narveson points out the manner by which egalitarians move - illegitimately, he believes - from undeserved natural individual assets to undeserved assets that may be used by and for the community. Instead of the premise P1 'People do not deserve their initial assets' which would conclude, C1 'We should take all initial assets from all persons', egalitarians premise their argument thus: P2 'No person deserves native assets any more than any other' - therefore: C2 'All assets should, as nearly as possible, be distributed equally'. And if assets cannot be equally distributed the differential rewards flowing from them can.

Narveson's objection is that C2 does not follow from P2 because P2 follows from P1, and the conclusion of P1 is C1, not C2. For C2 to follow from P2, Narveson continues, 'we need to add to P2 the premise that at least some persons do deserve their native assets. Assuming that this would, then, give them a claim on what they can get by utilizing those assets, then subjoining P2 will indeed yield C2'(1985,p.41). To do this, however, means going back on, or 'fudging', the support of P2: '...the impossibility of making any sense of the claim that anyone deserves his or her native assets at all'(41). Doing this yields a new argument. 'P3 - some people deserve what they acquire by the exercise of their native assets. (P2, as before:) No person deserves native assets any more than any other. Therefore: (C2, as before:) All acquisitions should be distributed equally'(42).

This leads Narveson to inquire whether P3 is compatible with P1 or not. If it is then C2 or C1 do not follow inferentially and it becomes not an issue of whether people

deserve or do not deserve their native assets but the different things they do with them and the different results that gives rise to as regards distributive shares. If P3 is incompatible with P1 then to retain P1 in the argument would be to draw a conclusion from inconsistent premises. 'The argument', Narveson concludes, 'is, therefore, hopeless. The grand premise that we all are utterly undeserving of our native endowments and assets is quite true, but entirely useless in attempting to support equalitarian conclusions. Accordingly, it provides no support for rectification, and thus for redistribution so far as it stems from this source'(42).

Obviously, the difference principle and arguments from arbitrariness are somewhere going to have to include issues of personhood, moral and otherwise, on the one hand as creating claims or demands contra arbitrariness and entitlement, and on the other hand as presenting limitations on the way talents may rightfully be thought of as social assets. Nozick proffers the idea that adherence to the difference principle disregards the choices, or rather the conscious exertions, of individuals in their endeavours to improve their lot. 'Notice that there is no mention at all', he points out, 'of how persons have chosen to develop their own natural assets'(1974,p.214). Rawls, though, has insured himself against just such an objection when stressing that the notion of moral arbitrariness runs deep, or at least deeper than a survey of any individual's holdings could show. He maintains that even a person's character, including therewith his choices and success in the exercising of his talents, 'depends in large part upon fortunate family and

social circumstances for which he can claim no credit' (1971,p.104). This insurance turns out to be less than fully comprehensive.

One way by which an inadequacy is shown is that although the difference principle can be seen as negating in a single stroke how an individual may have planned their life, life's ambition(s) and goal(s), opportunity costs, etc., to do so is to pay scant heed to one common conception of personhood. Once enacted, redistribution according to the difference principle will result in a change of life plans on the part of others, but the objection above contends that it is wrong to institute redistribution for the reason that it violates some aspects of personhood. There is, I think, a second objection to Rawls's position to the effect that the argument from natural moral arbitrariness is a two-edged one. There are cases attesting to the transition from a deprived, socially disadvantageous natural lot to one of achievement and success. This outcome is itself morally arbitrary by the standards of the deep theory of endowments (which subsumes how we choose to exercise them) but it stretches our intuitions quite radically to maintain that the 'rags to riches' achiever does not deserve his success and attendant material benefits. Working long and hard against the odds, coming from nothing, 'making good', are all embodied in the everyday understanding and usage of the term 'deserve'. Rawls can argue ex post facto, and so extend his insurance cover, by consistently holding that any and all morally arbitrary conditions that subsequently turn out to be involved in a person's betterment are not bases of desert - but this not the same as saying that the rewards are not

deserved at all. To be better-off because of the natural lottery is one thing. Being better-off in spite of much that the natural lottery endowed one with is another. The self-made man can claim no credit for 'fortunate family and social circumstances' because he did not have them...unless Rawls wishes to have read by 'fortunate' something quite unlike the common understanding and again argue ex post facto.

This does seem to pose a problem to the difference principle. There now exists the possibility of the principle being sometimes unallowable or of it violating its moral justification (not to forget sorely testing intuitions and common understanding) if there is redistribution from those who do seem to deserve what they have acquired under non-favourable or positively unfavourable social circumstances. Though I may not deserve what flows from favourable arbitrary circumstances this does not automatically demonstrate that the proceeds of unfavourable conditions are not deserved. Application of the difference principle must either violate the basic underlying moral theory or be selective in its application, and thereby operate by an ex post facto criterion if the deserving are not to be treated unfairly as resources for others.

Nozick adopts a different approach by discussing the issue in terms of entitlement and wishing to show that some of the 'things' an agent uses in acquiring holdings he may have 'not illegitimately'. 'It needn't be', Nozick says, 'that the foundations underlying desert are themselves deserved, all the way down'(1974,p.225). We may not deserve our talents and so on but we are nonetheless entitled to them and the

benefits thereof. In full, Nozick's argument is this:

- '1. People are entitled to their natural assets
2. If people are entitled to something, they are entitled to whatever flows from it (via specified types of processes)
3. People's holdings flow from their natural assets

Therefore,

4. People are entitled to their holdings
5. If people are entitled to something, then they ought to have it (and this overrides any presumption of equality there may be about holdings)'(225-6).

Arguing the case for entitlement rather than desert returns the individual person to centre stage of moral-political theory when in danger of being lost amongst endowments and assets he bore but were no part of him. An individual's entitlement to morally arbitrary goods rules out others having any entitlement to them, and this precludes also their nullification through welfare policies. One question of especial relevance here is, What is a moral agent with respect to endowments? What is mine rather than me and what may be done to or with those endowments without detrimentally affecting me and my identity as a moral autonomous being? Such a distinction is necessary for preserving what Michael Sandel states it does preserve. 'It preserves for the self a certain dignity and integrity by saving it from transformation in the face of the slightest contingency' (1982,p.55). But the problem is to determine when pursuit of a course of action involving others uses only what is theirs, that is, what is under their 'jurisdiction' or 'control', and not them as persons. This resilience of persons is not easily gauged.

Imagine the following individual who spends the majority of his time sculpting, who is recognized in the community as a sculptor, and who earns an above average income from sculpting. His ability to sculpt is a morally arbitrary characteristic and he deserves neither the status nor income it brings. The question is how far, if at all, his talent is separable from his identity and what may be done to or with his talent while still observing the me - mine distinction? Can we do any - or all - of the following? (i) Forbid him to sculpt at all. (ii) Tell him what he must sculpt. (iii) Expropriate his wealth until his income is average. (iv) Tell him what he must sculpt and expropriate his wealth until his income is average...? (There are other possibilities but four are sufficient.)

Now it might be proposed that the method of deciding whether any - or all - of (i) to (iv) impinge upon personhood is a matter of empirical investigation. An observed change in behaviour brought about by (iii), say, would indicate the degree of resilience of identity and the limits of the me - mine distinction. Narveson comments along similar lines. '[W]e may suppose that certain identifiable portions of one's genetic endowment cannot be transferred, in the sense that they are what literally identify one as the particular person one is, so that it would be logically impossible to transfer them from, say, Jones to Smith without raising the question who had given what to whom' (1983, p.16).

But this is all beside the point if resilience itself is socially arbitrary, as according to Rawls it is. Without a conception of personhood - and the thinner the conception the

better - Rawls's difference principle may be stifled in the face of appeals to moral agency (with the intuitive efficacy such appeals have), and therefore fail to realize the argument for maximum equality consistent with the specific inequalities that work to the advantage of the least well-off group in society his principle seeks. The point is whether my (morally arbitrary) ability to shoulder a greater burden entails that I ought to shoulder a greater burden, and whether I may be forced to shoulder a greater burden in the name of (Rawlsian) equality?

Recall that the difference principle regulated the inequalities of the natural lottery by 'arranging inequalities for reciprocal advantage...within a framework of equal liberty'. All well and good as far as the natural lottery goes - and given Rawls's metaphysically dubious and anti-intuitive thin conception of personhood. Rawls acknowledges the important theme of moral personal autonomy and the Kantian injunction to treat persons as ends and never solely as means, and through his thin conception of personhood allows himself a good deal of room to manoeuvre between the two poles of treating someone's assets as social and themselves as ends. The thinner personhood is construed as being the greater is the scope for treating assets as properly the material for the advantage of the least well-off. The less thin the concept of personhood one operates with the less scope for applying the difference principle there is while respecting autonomy. Because morally arbitrary factors include intelligence, physique, artistic temperament, etc., and are subject to nullification, Rawls's conception of personhood is thin. Indeed, it has been

objected to Rawls's conception that all that remains of us subsequent to the purification of our arbitrary assets is a radically disembodied (transcendent) subject whose only attribute shared with others is a 'seat of consciousness' capable of knowledge of its very thinness.... Nozick, in expressing his dissatisfaction, writes: 'Why we, thick with particular traits, should be cheered that (only) the thus purified men within us are not regarded as means is also unclear'(1974,p.228). Likewise, Narveson's challenge presumes a 'thick' conception of personhood. 'To insist that things must go only to those who deserve them, is to deny that one has the right to be whomever one is. And if we deny that right, what could possibly be left that is recognizable, let alone worth having?'(1985,p.40).

Closer examination of the controversy between desert and entitlement will indicate certain incompatibilities for the difference principle and expose some weaknesses in the construction of the desert basis of distributive justice. If the desert thesis of distributive justice is to be at all plausible we must identify the bases of desert for the reason that, as Joel Feinberg proclaims, 'Desert without a basis is simply not desert'(1963,p.72). 'In general', Feinberg later states, 'the facts which constitute the basis of a subject's desert must be facts about that subject'(72-3), and while desert must have a basis and the basis be a fact about the deserving subject, neither of these conditions is sufficient for they are too inclusive. 'They do not exclude, for example, need as a desert basis for reward or ignorance as a desert basis for punishment'(74).

Feinberg identifies five major types of desert bases of which only one is of relevance to the present discussion; that of 'compensation, reparation and liability'.<sup>8</sup> Owing to their distributional arbitrariness natural attributes are themselves not bases of moral praise or blame, though Rawls can contend that their use is likely to be. According to Feinberg's typology we should view the difference principle as a maxim for compensation where compensation applies to 'losses which are no one's fault'.<sup>9</sup> (86). Natural assets - the arbitrary consequences and outcomes of the natural lottery somewhere sometime - are losses of this type. Their very arbitrariness assures this. And though the better-endowed (and presumably the better-off) are not deserving neither, it would seem, are the less well-endowed (presumably the less well-off) deserving in Rawls's sense as the basis upon which the difference principle compensates. Rather we should simply say they are unlucky. Compensation for intentional harm is one thing, 'Compensation for harm which is no assignable person's fault is, however, a different matter' (86). The less- and the better-endowed are, ex hypothesi, equally undeserving. Why, then, compensate the former from the holdings of the latter?

A prejudice or presumption in favour of equality would answer this but only at the cost of substituting a psychological tendency or intellectual fashion for argument.

8. The other four types are: 'Awards of prizes; assignments of grades; rewards and punishments; praise, blame and other informal responses' (1963, p.75).

9. And if no one's fault why should some(one) or any(one) pay?

Eschewing utilitarianism as he does, Rawls's theory is in some trouble, and should he or anyone else choose to argue that exercising these endowments is where liability and the justness of compensation enters they would serve only to invoke one of Rawls's own major tenets, namely, that an individual's strivings, motivations, etc., '...depends in large part upon fortunate family and social circumstances for which he can claim no credit' - but for which, equally, he cannot be blamed. Pushing the argument back behind the 'veil of ignorance' cannot help Rawls greatly because his portrayal of the 'original position' is disputed on the grounds that it is normatively weighted from the outset.

Rawls's pre-societal persons choosing the principles of justice from behind the veil of ignorance in a purely rational and endowment-disinterested manner are, so critics have objected, not so impartial or neutral as choosers but persons who are risk-averse. The depiction of them is theory-laden (normatively weighted) from the outset. And because they are timid rational calculators the principles of justice that they choose represent the choice of such persons.<sup>10</sup> Why don't these rational calculators lay down a 'catastrophe-avoiding' minimum level of resources after which there is no maximal limit to legitimate holdings? From there on out a starting-gate theory guides our actions. The objection that a rational agent might provide such a

10. The strong preference for liberty built into Rawls's portrayal of persons in the original position renders them moralized agents from the outset - and conservative at that, for they make the safest (least risky or rash) choice open to them. (Williams 1975, pp.96-7)

guaranteed minimum is made by Letwin(1983,p.35), and another objection to the effect that such a safety-net with it's attendant compulsory exactions in taxes would be less restrictive of liberty is levelled by Flew(1978,pp.160-1).

As rational agents Rawls's persons cannot choose any one from the four societies Letwin depicts because all are identical as regards their expected values, that is, their possible pay-offs given the probability of each's occurring. In these cases the expected value is \$7500.

(1) All get \$7500 each

(2) Half get \$5000, the other half \$10,000

(3) One per cent get \$3000, 99 per cent get \$7545

(4) One per cent get \$100,000, 99 per cent get \$6566'

(1983,p.23).

Letwin's idea is merely this: it is not clear that persons would so readily opt to live in a Rawlsian society (1) over any of the others.

If the well-off are not deserving and the less well-off are also not deserving then the argument from moral arbitrariness to egalitarian conclusions proves too much. Alone, the argument cannot provide a reason for deciding in favour of the difference principle in the name of desert. Setting up an appeal to desert to undermine entitlement theory proves inadequate, and, almost incidentally, the inadequacy of the argument from moral arbitrariness undermines support for general egalitarianism not premised on arbitrariness. Isaiah Berlin has demanded a 'special justification' for inequality in property(1956,p.304) and Richard Wollheim has claimed that 'the principle of equal rights demands that if two people

have rights to different quantities of some commodity, then there must be some difference somewhere<sup>11</sup> that justifies this' (1956,p.288). The indeterminacy of desert forces the egalitarian to provide a justification for assuming equality to be the norm and that deviations from it require justification. The logic of desert rebounds on the egalitarians. With his 'cake parable' Letwin highlights that the presumption of equality contains at least two elements. A mother serving four children cake at the tea-table naturally distributing equal shares presumes scarcity in the face of greed (as opposed to plenty in the face of restraint) and the absence of any criteria for an unequal distribution(1983, pp.6-7). Is the absence of criteria really the norm?

A further objection to egalitarian positions comes from the line of reasoning developed by Hayek. Even if Rawls is correct that those in the original position - that pre-institutional gathering of moral selves - or those who think in the same disinterested way, would choose his two principles of justice, they ought, if they are concerned with the least well-off group, this objection runs, to choose a more laissez-faire system or a system of 'natural liberty' of holdings and exchanges which tolerates greater wealth differentials. What if, as Hayek contends, a laissez-faire system tolerating any wealth differentials resulted not only in a greater aggregate good but increased the well-being of

11. Dissenting voices have been raised. 'There is no need morally to justify specific distributions (of income or wealth) which have not been brought about deliberately but are the outcome of a game that is played because it improves the chances of all'(Hayek 1982,p.117).

all in the long-term? Some groups may have their position improved more than other groups and wealth differentials may increase but all are made better-off, even though the less well-off groups could have done better - possibly only in the short-term - under a different system. Thus the reading of the Rawlsian dictum cited earlier would be changed to: 'It is expedient and it is just, or not unjust, that some have less (relatively) that all may prosper'. One aspect of this counter is it's implicit criticism of the myopic vision engendered and reinforced by the preoccupation with wealth distribution over wealth generation. One commentator has gone so far as to suggest that without understanding this related feature our perception of capitalism is bound to be flawed. 'Democratic capitalism', Michael Novak maintains, 'cannot be judged satisfactorily by the traditional ethics of social justice unless the moralist introduces the dimension of the production of new wealth. It is in this dimension that capitalism has been uniquely beneficial to all nations that have felt its touch'(1979,p.35). If Novak, Hayek et al, are correct then the more hard-nosed egalitarians would, as Letwin comments, be prepared in the name of a ghost to stifle a living thing(1983,p.69).

Acceptance of the difference principle entails acceptance of the fact that some will have less in order that others may prosper because the better-endowed are worse-off than they would be under a system of natural liberty, for instance. Any redistribution entails this. Consider, in this regard, the application of the Rawlsian dictum to the problem of the relation between fixed (finite) natural resources and justice across generations.

That the difference principle advocates inequality only in so far as it improves the lot of the least well-off group in society is incompatible with using all or the greater part of a fixed resource, oil say, at time t1 by generation g1, thereby unavoidably leaving leaving less for generation g2 at time t2.<sup>12</sup> Without an explanation of why g1 at t1 (or the least well-off group within g1) should prosper at the expense of g2 at t2 (or the least well-off group within t2) the difference principle seems inconsistent with Rawls's anti-utilitarian proviso, re. it being expedient but not just that some should have less so that others may prosper. Why we should be committed to maximizing the position of the least well-off now when it might become possible to maximize the position of a greater number to a greater extent at a later date requires explanation to those to whom it does not strike as an obvious principle of justice.

Why we should be committed to later maximization (and why we should choose, if true, Hayek's position over Rawls's) is brought out in an interesting argument by Samuel Scheffler. His argument introduces consequentialist considerations into deontological theories when there is no method for deciding between two courses of action that both formally satisfy the conditions of the moral theory in which they arise. With regard to the above we are presented with a situation where, ceteris paribus, however we choose some do gain at the expense of others.

12. Rawls does not discuss natural resources in the application of the difference principle in terms of justice across generations, only capital.

Scheffler's intention is to show how consequentialist factors can be important to cases dealing with the separateness of persons and the wrongness of violations of personhood.

'Why does this consideration', Scheffler asks, 'make rational the view that it is wrong to violate such a restriction even in order to prevent a still greater number of equally weighty violations of the very same restriction?'(1981,p.99). Or more emphatically, '...what is it about a person that makes it impermissible to victimise someone else even in order to minimise victimisations which are equally objectionable from an impersonal standpoint?'(100).

The impasse described above is an impersonal one, and a forced, momentous one. Either we accept the difference principle or the Hayekian alternative proceeds by default. Because of the ceteris paribus clause the proviso is violated either way. We ought, I surmise, to choose the Hayekian option for we can furnish a morally better reason for thus choosing: It is better to violate the proviso when unavoidable in favour of the greater as opposed to the lesser good.

## ANARCHISM AND STATISM

The libertarian justification concluded that there is a right in private property and that redistribution to those below a certain level of wealth (understood to be when their preservation was in jeopardy) did not constitute an injustice to those from whom the wealth was redistributed.

Redistributing wealth in order to prevent 'destitution/want' was an imperative of the justification derived from the principle of non-exclusion. An obvious question, and one central to this dissertation, was how is this redistribution to be facilitated? What is to be the complexion (institutionally) of a redistributing society? Chapter III outlined the most apt procedural mechanism for just redistribution in a society adhering to the holding of private property in accordance with the libertarian justification, namely, compulsory private social insurance with contingent recourse to redistributive wealth according to a negative income tax and cash-voucher payments.

The subject of this chapter is to draw some implications of the libertarian justification for the existence, de facto and de jure, of the state. For the sake of clarity (and brevity) I will define the state by a single essential feature that it possesses. The state is that body politic which in any given area has a de facto (at least) monopoly over the means of coercion and which it reserves to itself. Employing this non-moralized definition the major implication for the state is whether it is the case, as is commonly believed, that the

state is 'necessary'. An explanation purporting to demonstrate the necessity of the state will have to do three things: (i) identify what function(s) the state serves or performs, (ii) demonstrate that these functions are indispensable, which will most likely entail viewing the state as a precondition or condition for the attaining of certain goals and/or the preservation of certain states of affairs, and, (iii) argue that these functions cannot, or cannot satisfactorily, be fulfilled by something non-<sup>1</sup>statelike.

Today, in all societies where redistribution occurs as a so-called) principle of social justice, that welfare is determined and redistribution enacted by the state or some part thereof. This much is simply common knowledge. But in the first of the accounts of a possible institutional complexion given here, and to a lesser extent in the second, the emphasis is on showing that even where redistribution is morally demanded state-enacted redistribution is not necessary, nor inevitable, nor even desirable. The first account echoes and is in many respects a modified and expanded scenario found in Rothbard(1970, 1973) where his major theme is that of the stateless society. It is modified owing to the failure of the orthodox libertarian property thesis Rothbard subscribes to, and it is expanded for two reasons. It is modified and the modifications require explanation and substantiation, and as Rothbard's own argument for the stateless society stands it is in many ways

1. The necessity here will, of course, be political and not mathematical, cf. Plato: 'The necessity [of sexual union] will be sexual and not mathematical'(1955,p.239).

inadequate. The second scenario depicted is reasonably close to Nozick's argument attesting to the the derivation of a de facto monopoly in protection through to the 'minimal state' from a number of initially competing protection associations. The second analysis is closer to Nozick's own than the first is to Rothbard's.

Rothbard's anarchistic theme of the stateless society is presented first because it is at once more radical than the notion of a de facto (yet just) monopoly protection association or the minimal state, and more importantly because only the failure of the Rothbardian thesis allows Nozick's derivation to proceed at all. Nozick's derivation begins where Rothbard's ends. Where the stateless society defaults, if indeed it does, the de-facto-monopoly-to-minimal-state explanation can proceed.

Williams, in his review of Anarchy, State, and Utopia thinks it reasonable to feel that there are no 'real candidates' as alternatives to the state(1975,p.27). But Williams expositis not on what a real alternative candidate should be like, what an alternative must look like, or encompass, in order to be accepted as 'real'. Both the Rothbardian and Nozickian alternatives (for that is what they are touted as) attempt to establish themselves as serious options, and though Williams believes 'Mr. Nozick is not an optimistic idiot'(33) I am not so sure that he would not apply the epithet to Mr. Rothbard. In the first presentation I hope to show that the stateless society scenario is not unduly optimistic (nor naive nor inconsistent) and is a valuable alternative worth examining on it's own merits, and also because of the close

connexion between it and the derivation of the minimal state according to Nozick. Thus Rothbard is not to be classed from the outset a myopic libertarian supplementing the ranks of cranky left-anarchists and hopelessly utopian communists.

So, what is the state necessary for, if anything? Again, a commonly held belief is that the state is necessary for the protection of persons in the pursuit of their goals and for preserving states of affairs. At the very least, many hold the state to be a necessary evil. Not all states protect their citizens - nor their citizens' 'interests'(Marx) - but ought to do so. That the state protects it's citizens is the minimal description of it's raison d'etre. A stateless existence need not be a Hobbesian war of each against all for us to find the the state's presence worthwhile, even if not the best of all possible worlds. All that is required is the fallibility of men; our own and others' proneness to akratic lapses.<sup>2</sup> But while we may argue that protection is indispensable it is nonetheless not clear that state (that is, reserved monopoly) protection is so.

Before proceeding to the first account let it be mentioned that each and every individual protecting themselves is not a real, in the sense of viable, alternative. The considerable

2. David Hume's enlightened self-interest explanation of the origins of government is founded on a similar assumption. Government, for Hume, is the method by which we secure for ourselves the remoter greater advantage over our desire for the 'near and contiguous' lesser one, by submitting in advance that our commitment to the former may needs be enforced(1739,pp.534-9). Thomas Paine echoes Hume: 'Society is produced by our wants', he says, 'and government by our wickedness'(1776,p.69).

limitations on self-protection expose it's fundamental and insuperable inadequacies. The first limitation is that inordinate and excessive retribution on the part of victims may lead to an escalation of conflict. In punishing, says Locke, a man must avoid 'the passionate heats or boundless extravagancy of his own will'(1690,p.120), and later, and more explicitly, Locke asserts

'I doubt not but it will be objected that it is unreasonable for men to be judges in their own cases, that self-love will make men partial to themselves and their friends; and, on the other side, ill-nature, passion, and revenge will carry them too far in punishing others, and hence nothing but confusion and disorder will follow...'(123).

In Locke's view government is ordained 'to restrain the partiality and violence of men'(123). As John Hospers puts across the same point, 'He may consider death-by-a-thousand-cuts to be the appropriate punishment for someone who stepped on his toe'(1971,p.440). Secondly, there is the possibility of escalation through retaliation on the part of the punished for what is perceived to be inordinate punishment leading to a compounding of the problem. Thirdly, the time-consuming and perhaps dangerous nature of self-protection, which disadvantages the elderly, weak, etc., is aggravated by (fourthly) unequal means of pursuing restitution, such as finances. Some (idle) rich may choose to protect themselves but it is unreasonable to expect others not to circumvent the limitations by purchasing protection, particularly when, as will be shown below, one person has protection and all others are subsequently disadvantaged in their relations to that person. Once I have a guard and a lawyer without either you are disadvantaged, whether you are victim or violator.

Rothbard's thesis allows the postulating of the way the stateless society with private protection associations can overcome the limitations, briefly by (i) the calculated, dispassionate, business oriented and procedurally rigorous pursuit of justice, (ii) observing justice at stage (i), (iii) the use of trained and experienced protectors with time, information and other resources at their disposal, and (iv) by providing a basic level of protection for all. These suppositions are only outline answers which in the course of this chapter will be more fully considered.

Rothbard's account of the non-state provision of protection proceeds partly from his reiteration of the orthodox libertarian equation of taxation with theft. The principle of non-exclusion shows how it is possible to answer his question 'How can you define taxation in such a way which makes it different from robbery?'(1973,p.55) - when it serves to satisfy a positive claim. The modification of the first scheme has already commenced. So I shall begin Rothbard's stateless society thesis from a different standpoint which allows for the eventuality of redistribution for protection but fits this in with his stateless society where persons and property are protected by private protection associations.

'Competition', says Rothbard, 'insures efficiency, low price, and high quality, and there is no reason to assume a priori, as many people do, that there is something divinely ordained about having only one police agency in a given geographical area'(223). It is better that protection be provided on the competitive market for just these obviously advantageous reasons, and the belief that non-state provided protection is

an a priori impossibility should be resisted. The connexion with the libertarian justification is as follows. An efficient, high quality and low price provision of protection is manifestly commensurable with the maximization of private property holdings and, though less manifestly, with the minimization of redistribution. Redistribution is reduced because low cost protection enables the less well-off to allocate more of their scarce resources to other things, thereby postponing if not preventing their recourse to redistributive wealth.

Where people dispose of or utilize their own property as opposed to the property of others they do so with more discretion.<sup>3</sup> The free market is born of the exchange of private property and its optimal functioning is, arguably, best assured by private property exchanges. It is the allusion to the a priorist perception of the state in many people's minds that Rothbard deems to upset - to 'demystify' and 'desanctify' the state as an object of unreflective allegiance(11) - yet recognizing that 'Probably the most difficult single area to grasp, however, is the abolition of government operations in the service of protection...'(219). Two questions arise. Is this a priorness an unreflective prejudice, an unquestioning acceptance of the status quo,<sup>4</sup> or possibly a case of operant conditioning writ large? And if

3. See Friedman (1980, pp.146-9).

4. 'A rat in a box which received food when it presses a red lever and an electric shock when it presses a blue lever will very soon press the one and avoid the other. Similarly, voters who receive benefits from one government and have their status position lowered by another government will soon learn to vote in accordance with their interests'(Eyesenck 1957, p.275).

Rothbard is correct in maintaining that one of these explanations is the right one and his depiction of the stateless society is successful in overcoming or undermining this, then how, indeed can, redistribution ever operate in a society where people purchase the services of an association with the protection of their property in mind and where protection can be protection against the predations of contributory justice? A sceptic might wish to show that for this reason the stateless society scenario fails at the first objection raised. Competition in protection would involve, and reasonably enough the sceptic would wish to say, competition in redistribution avoidance as another aspect of proprietorial protection, and might not an association be more marketable the better it protects property from the impositions of contributory justice?

The assumption that people subscribe to an association with the protection of their property in mind and then allow part of that property to be taken for redistributive purposes is either naive or inconsistent or both. Can we assume that the tendency to protect property is so easily 'neutralized' in the name of justice...? I would maintain the moral sense of persons would indeed go a long way to answering the sceptic but choose not to rely on this principle of moral charity in the bulk of this chapter.

It is at this juncture that the modified Rothbardian scenario can be shown to be neither naive nor inconsistent. I will attempt to illustrate in what follows that the tendency to protect property per se (including the avoidance of redistributive burdens) in a society where protection is a

privately purchasable commodity on the free market need not have built into it any optimistic assumptions. It is not naive for the reason that the straightforward acceptance of a (just) levy on wealth for redistributive purposes is rejected, and it is not inconsistent because the very tendency to protect wealth even in the face of just claims upon it can be made a central feature of this account. Surmounting the sceptic's challenge lends this account extra plausibility and coherence.

'On the free market, protection would be provided in proportion and in whatever way that the consumers wish to pay for it'(220), and, says Rothbard, 'Very poor people would be supplied, in general, by private charity'(224). Perhaps charitable intentions would suffice to provide the needy with protection, but we need not (optimistically) assume this to be the case. Working with the supposition of selfishness-<sup>5</sup>contra-justice three arguments can be adduced to show why the resort to charity, weak as it is, need not be made.

(A fourth argument to this effect is Nozickian and is left for the second complexion. The somewhat cynical argument for 'public assistance or relief' Hayek relates is not included on the grounds that it fails to show why it is desirable that others should be protected when the better-off have protection. 'The necessity of some such arrangement...is unquestioned...in the interest of those who require protection against acts of desperation...of the needy' (1960,p.285)).

5. 'He [the taxpayer] may very well be paying more in taxes for police now than he would in fees to private, and far more efficient, police companies'(Rothbard 1973,p.225).

The first argument for universal tax-funded protection is that whereby protection is classified as a need because necessary to the enforcement of a positive claim, and therefore includable in redistribution through non-exclusion as a commodity purchasable by the needy. Rothbard comes close to endorsing this classification. 'But isn't protection necessary? Perhaps, but then so is food of many different kinds, clothing, shelter etc.'(224). 'Needs', though, to an orthodox libertarian, lay no enforceable claims.

Whether protection is deemed necessary or not it is undoubtedly true that many would not choose to forego the benefits, psychological and material, protection bestows. An individual labours to procure the basis of a commodious life, to satisfy aspirations, etc., and in doing so sets the preconditions that makes parasitism possible, and attractive, as was seen in Chapter II. And the prevention of parasitism it was there said lies with protection as a rational response. The demand for protection has partly been created by the necessity of labouring and the desire to maintain established property joined with the creation, as consequence, of the conditions for parasitism, and the free market supplies in response to this demand (seen by others as a way of labouring and achieving commodiousness themselves). Protection is the means whereby civil society becomes possible (Hobbes) or better (Locke) in a world of fallible beings prone to act wrongly. Adopting a Hobbesian line, it

6. Protection can be against violations of one's body, such as enslavement, murder and rape.

is not even required that persons see themselves as defending their rights - they may well not know they have any - only defending the property they currently possess, echoing Hume's dictum that reason is incapable of moving us to action but seeks nonetheless the surest way to the satisfaction of our passions.

In order to show the (indirect) way protection could be classified as a need the relations between the violator of a right and the victim of the violation must be enumerated. In such a case the relations will be one of a possible four, and include the attempts of protected individuals to prevent others from acquiring protection. Where successful, such prevention is subsumable under either (b) or (c). (Would it more likely be a case of (c)?)

(a) The violator is not a member of a protection association, the victim is not a member.

(b) The violator is not a member of a protection association, the victim is a member.

(c) The violator is a member of a protection association, the victim is not a member.

(d) The violator is a member of a protection association, the victim is a member.

In relation (a) both parties are equally poorly protected, that is, by themselves. The violator from retaliation by the victim and the victim from the initial as well as further violations. With (b) the violator is not protected against retaliation by the victim and his association, and while he retains the ability to protect himself and his property he is in a weaker position than his victim, handicapped as he is by the four limitations listed above. In relation (c) this

position is reversed: here the violator is protected against the retaliatory measures of the victim, which are less sure than would be the case if the latter were protected also. Finally, (d) is the opposite position of (a), where now both parties are equally well protected.

Relations (b) and (c), and to a lesser extent (a) - even if and when no right has been violated - furnish clear motivation to purchase protection. Regarding (a), the state of nature in Locke's and Nozick's analyses, when one individual purchases protection all others are placed in the potential relationship of either (b) or (c) until they too acquire protection and thereby remedy their disadvantaged status. Either violation becomes less easy/accessible and the probability of detection, etc. increases, or the violator assures himself of some protection against retaliation, or, as would likely be the case, both.

What this means in actual cases of the violation of the claim to non-exclusion, when the violator refuses the demands of contributory justice, can be illustrated by imposing this class of infringement upon the four relations. In a case of type (b) the victim has an improved prospect, viz. (a), of enforcing his claim and in a case (c) situation this prospect is reversed as the violator's association restricts the room to manoeuvre for restitution on the part of the victim. The state of nature (a) is unlikely to last long in a world of fallible yet rational beings for victims will purchase protection against unprotected violators in order to be more successful in gaining restitution and preventing further violations. This effects a movement to (b), which in turn

disadvantages others (violators) and leads to the movement to (d). Even violators have an interest in ensuring they do not suffer unduly at the hands of their victim or their victim's association and are treated as justly as possible. How this connects with protection being defined as a need, rather how protection might be classified as a need because necessary to the enforcement of a positive claim, can now be shown.

Where an individual's claim to non-exclusion has not been observed the excluded party has the right to enforce their claim against those morally obliged to redistribute. (Relations (b) and (d) need not concern us here for they apply to those victims who have already bought protection. The argument shows how protection can be legitimately be included for redistribution and (b) and (d) are not of this type.) In relations (a) and (c) the violated party subscribes (or has already subscribed) to a protective association, even though they cannot presently afford to do so, as the best method of enforcing their just claim. The association accordingly sets about enforcing it's clients' claim and takes it's payment from the monies it is successful in redistributing to it's client. So on top of the amount required to assure the victim his claim to non-exclusion an extra sum is levied from the violator to pay the association's costs. 'Hire now - pay later' protection is financed on a principle of awards where the costs of enforcing a just claim are borne by those who have violated that claim and rendered the extra cost necessary. This principle is enshrined in some legal systems today where costs are awarded against the guilty party. Protection is thus a need, a necessity, in these cases for, ex hypothesi,

without it the claim to non-exclusion would remain unsatisfied. There is, furthermore, a formal neatness to this 'hire now - pay later' enforcement of justice in that it fits well with the workings of a free market: the association acquires new custom, and though this (selfishness in the face of justice) hypothesis rules it out, ethical prestige could be a motivating factor. Protection-as-redistribution in this manner is only possible when the wealth upon which the needy have a claim is withheld and as such this argument appears to contain a major flaw. Withholding wealth and meeting the association's attempts at enforcement successfully might be, and when unsuccessful probably would be, more expensive than contributing when supposed to. Defence costs are involved in successful withholdings and in unsuccessful withholdings there are award costs to boot. What is due to you from me may be less than the expected costs incurred in my avoiding paying my dues. Such an argument works least well where there are vast wealth differentials between a wealthy few and a destitute many, though in the more homogenous societies closer to the libertarian's heart this is not the case, and it remains in my best interest to pay my dues. And, the argument concludes, if we do pay our dues how to the destitute gain protection?

The first argument to show that protection is a need is tentative at best given the selfishness assumption. The second argument, where protection is not a necessary item includable in redistribution, is in a way connected with the first. Wealth once redistributed requires protection, not specifically because it itself is at stake - it takes the form of non-transferable vouchers - but because the recipient

now becomes a more attractive proposition for would-be parasites. Where parasitism reduces the welfare recipient to the position of once again effecting a claim under non-exclusion a new round of redistribution is initiated, for the effects of parasitism cannot always be compensated by the parasitic party, even when apprehended. Protection as a corollary of general redistribution may therefore be the wisest, and financially the most prudent, policy to adopt. As in the first argument this provision of protection is provisional.

It is with the third argument that, I think, the strongest case for redistributive protection lies, combining as it does the positive aspects of the first and second arguments with a genuinely unavoidable aspect of protection supposedly only to those paying for it, namely, the free-rider or 'neighbourhood effects' dilemma.

We have already noted Rothbard's commitment to protection being provided only to those paying for it, and earlier in For A New Liberty he writes that 'There will be no governmental machinery that pursues and tries criminals even against the wishes of the victim'(1973,p.48). These issues are mentioned in tandem to show just how mistaken Rothbard is on both counts. One, in brushing over the free-rider problem; protection just as a matter of fact is not a commodity (good) provided only in proportion and in whatever way to those who pay for it. Two, 'government' machinery aside, we do generally believe that non-victims may protect themselves from violators despite the victim's wishes to the contrary, and may punish a violator accordingly. As James

Buchanan puts it: 'Punishment, as carried out, is necessarily ex post; a person who violates law is punished after the fact. The objective of punishment, on the other hand, is ex ante; punishment institutions are chosen only for the purpose of preventing or deterring violations'(1975,p.134). And it is the ex ante justification of punishment that Rothbard wholly - and mistakenly - neglects. We do not only want punished violations but prefer fewer violations none of which go unpunished. Protection free-riders gain from the benefits of others purchasing protection through the incarceration of actual criminals and the deterring of potential ones, and the free-rider problem supposedly poses the following dilemma: either coerce the free-rider into paying for his (weaker) protection or tolerate the redistribution (of goods) his presence involves, when this redistribution is beyond the canons of justice in non-exclusion.

But the free-rider problem may be seen as only a pseudo moral<sup>7</sup> problem. Privately purchased protection operates within the matrix of free, uncoerced choice, and the gains to free-riders are incidental gains for some that those who purchase protection pay for. Or, if one prefers, the utility some gain from purchasing protection is sufficient to outweigh the disutility they suffer - if any - knowing others are gaining utility from their expenditure. Free-riders undoubtedly do get something for nothing, but a free market operates in

7. Many instances whereby free-riders are created can be envisaged: mowing the front lawn, dressing stylishly and expensively, having a public school education. The co-opting of others into a scheme from which they benefit on the grounds that because they benefit they must contribute is discussed by Nozick (1974,pp.90-5)

acknowledgement of this and without infringing the rights of anyone.

Secondly, Rothbard overlooks the ex ante justification of punishment. Rothbard's emphasizing the discretion of the victim might allow for the performance of noble acts of forgiveness but it cannot override or negate the liberty of others to seek assurances against further violations through the institutions of punishment and deterrence. Though the Pope forgave Ali Agca his prosecution for attempted murder went ahead, and rightly so.

If we are to understand how a group or sanctioned organization may punish we could assume, as Locke did(1690, p.120), the right of everyone to punish transferred to the group or organization. Owing to the limitations outlined earlier this right is most efficiently and effectively secured when surrendered to others who then enforce that right on behalf of those who, in Rothbard's presentation, are now their clients. But what if, as the two previous arguments made allowance for, there are some people who cannot afford protection and who therefore cannot, though they may greatly desire to do so, initiate proceedings against violators with the objective of restitution, or punishment, or deterrence, or all three? Others have the right to punish but with the sceptical picture of selfish homo economicus I have built into the Rothbardian stateless society why would anyone choose to initiate proceedings and pay the costs when they are not the specific victim, nor a greater-than-average probable future victim? The maximum level of general defence of persons and property that a

society can obtain is considered best, but economic constraints, opportunity costs and the disparate choices of individuals precludes ever attaining that level. The best that can be practicably realized is the maximizing of protection within the constraints and choices as known. If there is the right to punish another we might be tempted to say, as with non-exclusion, that there corresponds with this right the non-categorical positive claim to the resources requisite to enforce it. I shall not argue this line. Instead, let the selfishness-contra-justice assumption be dispensed with and in its place recall the 'maximum holdings, minimal redistribution' dictum. Now we can argue that crime prevention and prosecutions' marginal benefits become financially worthwhile the lower the cost of securing them is, and redistributing wealth in the form of protection vouchers in response to the right of all to punish - and making it a condition of redistribution that victims initiate and pay for proceedings - makes the cost of securing these marginal benefits to each and every person as low as possible.

The redistribution of wealth for protection decreases the financial burden (on individuals) by spreading the cost of maximizing security over the greatest number, thereby securing the marginal benefits at the lowest possible unit cost. What was not worth my initiating alone when the benefits are so marginal and the cost high becomes worthwhile when I and a large number share the burden by providing protection for those unable to afford it and committing them to initiate the self-same proceedings that secure the marginal benefits. All gain a marginal increase in

protection at a low price and the less well-off acquire full protection in a way that maximizes utility while observing the constraints of maximal private property holdings. The fourth (Nozickian) argument I shall present after assessing whether the Rothbardian stateless society is tenable and whether or not Mr. Rothbard is an optimistic idiot. Even if the above arguments fail to assure that all will be protected in a free market provision of protection - if charity cannot make up any shortfall - failure here does not mitigate against the practicability of the stateless society scenario. What the arguments try and show is the compatibility between the libertarian justification's conception of the right and everyday notions of the good. It is not wrong that some people are less well-off than others in any number of ways if their being so is not the consequence of any rights violations, and yet we might think such a state of affairs undesirable and wish to remedy it without ourselves violating any individual's rights. The above arguments show how this might be done (minus appeal to charity). Admittedly, these arguments are in large part empirical and empirical solutions to complex and contentious theoretical problems are never really satisfying; they puncture formal neatness and thus have a tendency to disappoint.

The above arguments have contributed towards an understanding of the free market protection thesis by outlining ways in which protection might be supplied to the less well-off. This allays slightly the suspicion some may entertain of an unscrupulous group, namely the protected, preying upon an unprotected group. It is the workings of a free market in protection when set out that must make the greater impression

in refuting any argumentum ad terrorum, a la Hobbes, directed against the stateless society. '[A]ny alternative to the existing State', Rothbard notes, 'is encased in an aura of fear...the State raises the spectre among its subjects of the chaos that would supposedly ensue if the State should disappear'(63). 'We cannot', says Rothbard later, 'blueprint a market that exists only as an hypothesis'(222), but it can be done to a reasonable extent and must be done if the 'aura of fear', the 'spectre of chaos', are to be dispelled and the a priorness of conceiving of the state as necessary for protection (at least) is to be overcome. The rationale, motivation and the justness of the first scenario have been elucidated. What is now required is the operational 'blueprint' attesting to the viability of a free market in protection.

The major question against operational plausibility is what Rothbard dubs the 'final nightmare' for privately subscribed protection, usually considered 'decisive in rejecting such a concept'. 'Wouldn't the agencies always be clashing? Wouldn't "anarchy" break out, with perpetual conflicts between police forces as one person calls on "his" police while a rival calls in "his"?'(225). Conflict over the occurrence or otherwise of a violation happens when A, a client of association X, and B, a subscriber to another association Y, are in honest disagreement. Either A or B is seeking prosecution of or restitution from the other and either A or B is seeking protection from prosecution and/or restitution, and A turns to X and B to Y to help them. A(X) and B(Y) attempt to resolve their difference through interaction in a court of law, if it proceeds this far, A(X)

through his court and B(Y) through his, where associations X and Y are not affiliated to the same court. Let us call the two courts Xc and Yc respectively. If the two clients (associations) reach an agreement the difference is settled at this stage. But is this particularly likely when X and Y have a vested business interest in protecting their clients to the best of their ability and where there seems no compulsion for either X or Y to try their client? Why should X even bother to defend A (guilty or innocent) in court against B(Y) when there seems no pressure to do so? And if one court pronounces a verdict of guilty and the other a verdict of innocence...? When schematised the blueprint has this form:

- (i) Dispute between A(X) and B(Y) leads to,
- (ii) A(X) and B(Y) seeking resolution in the courts of Xc, for A(X), and Yc, for B(Y).
- (iii) Either there is a cross-court resolution of the dispute, that is both Xc and Yc find the same party guilty, or the dispute impasse is displaced from A(X)-B(Y) to A(X, Xc)-B(Y, Yc). If the latter this leads to,
- (iv) A(X, Xc) and B(Y, Yc) seeking resolution at a neutral court of arbitration, court Z.
- (v) Court Z passes binding judgement on the A-B dispute. This judgement is held to be binding on all parties.

8. If A(X) and B(Y) were affiliated to the same court then A and B would have a prima facie obligation to abide by that court's decision, pending appeal, etc.. If they subscribed to the same protection association they would in all likelihood be affiliated to the same court. Business pressures might possibly work for the conglomeration of all the separate enterprises in the provision of protection such as insurance, personnel as well as the courts under the auspices of any given protection association.

According to Rothbard it is only as far as stage (iv) and the judgement at stage (v) that any dispute will progress.

'The appeals judge would make his decision and the result... would be treated as binding on the guilty'(233) for the reason that '...a decision arrived at by any two courts shall be binding'(234).

Why is there ever a movement from stage (iii) to stage (iv), or even from stage (i) to (ii)? The reasons for the latter movement have been given above when indicating why having protection is advantageous. And the more you have the better. Of the (iii)-(iv) shift economic pressure is likely to be the key to an explanation. If either A(X) or B(Y) refuse to participate in seeking a resolution the ensuing protracted honest disagreement fuelled naturally by the desire of A and B to protect themselves through X and Y, and compounded by X's and Y's motivation to serve their clients, will prove financially costly. Increased costs will be passed on to consumers in the form of higher subscription premiums and demand for the services of X and Y will fall as clients transfer their patronage to other associations. Of course, if protection is so desirable then we should assume that the demand for it will be inelastic and hence demand will not fall off as prices increase. Therefore, though we may be able to explain the movement to courtroom resolution we cannot explain the movement to arbitration at court Z. An impasse may not hurt business. Would not strong protection by non-participation, a retreat into the inner sanctum of the protection association as it were, be attractive to clients and prove marketable? There are reasons for thinking not.

Any two or more associations which pre-arrange a method for resolving honest disagreements between them and their clients would be highly marketable, more so than associations bereft of such procedures. Clients desire resolution: any inter-association agreement to this effect will be attractive. Thus, associations will agree in advance to procedures for resolving disputes, that is, at the (X,Xc)-(Y,Yc) level, plus a procedure for binding arbitration at a neutral court. Clients would, when subscribing to either X or Y, commit themselves contractually to these arrangements and be bound to whatever decision is reached thereby. Arbitration formalities would be written into contracts. 'The parties to a contract would indicate in writing that in case of a dispute, a certain arbitration agency would be agreed upon by them to hear the case...', and, continues Hospers, 'There could be a heirarchy of such agencies...written into the contract, up to the final court of appeal'(1971,p.432).

Considerable pressure can be brought to bear against an association to participate in conflict resolution as the analysis of the rogue association will show, and so the blueprint for workability can proceed. A(X) and B(Y) seek agreement and possibly find it without without either party admitting guilt but nevertheless accepting the verdict of the court(s). However, the problem arising from this simple example is what threatens the Rothbardian scenario, on default, to collapse into the second, Nozickian, explication of the mechanics of protection. Where a conflicting verdict is the outcome - and we should expect these to occur - there must be a tenable depiction of an appeals procedure A and B and their respective associations would be able to appeal to,

and where the verdict would be accepted by both parties, that is, A(X,Xc) and B(Y,Yc).

If arbitration proves unsatisfactory to one of the parties why ought they accept the verdict? They ought to because it sees an end to the impasse, but there is a non-prudential reason why they ought to: A and B, and their associations, had agreed to move to arbitration and accept the decision there arrived at as mutually binding. Arbitration as a contractual undertaking ought to be adhered to for moral as well as prudential reasons and therefore not for the reason Rothbard himself advances, to wit, that a two-court decision shall be binding simply because reached by two courts. The answer to Nozick's question 'Why is anyone who has not in advance agreed to such a two-court principle bound by it?' (1974,p.343n12) is given through both A and B agreeing in advance to arbitration in a neutral court in order to overcome the impasse at stage (iv) above. Associations not incorporating dispute-resolution channels in their contracts would, it is arguable, not be serving the interests of their clients. Victims want protection and punishment and restitution and violators want protection from these. An A(X)-B(Y) or A(X,Xc)-B(Y,Yc) standoff constitutes an unsatisfactory, perhaps expensive, position for both A and B. Neither has what they desire and what they subscribed to X and Y for. It is somewhat akin to an arm-wrestle which both parties are interested in not losing. Stratagems for ending stalemates become attractive to both parties.

A stronger challenge comes with the problem of the 'rogue' association. 'We have shown how a libertarian legal and

judicial system could work on the purely free market, assuming honest differences of opinion - but what if one or more police or courts should become, in effect, outlaws? What then?'(Rothbard 1973,p.243). Rothbard alleges that the 'built-in corrective mechanism' that is the market would minimize any tendency to become dishonest and then isolate and extinguish by market means any association or court that did become 'venal or crooked'. To his detriment Rothbard is less than expansive and his arguments are weak. Of the courts he writes that 'The very life of the court, the very livelihood of a judge, will depend on his reputation for integrity, fair-mindedness, objectivity, and the quest for truth in every case'(244). And of rogue associations that they are faced by 'other police forces who could use their weapons to band together to put down the aggressors against their clientele'(246) - a thought more at home in the Wild West than in a modern city. Thirdly, and lastly, Rothbard suggests that there could be no sense of legitimacy attached to associations that abused their moral raison d'etre, and popular support could never be forthcoming for such associations.

Other ways by which the activities of rogue associations might be curtailed are passed by in Rothbard's work. There may be a movement away from the abusive police and/or court by it's own clientele of their own (possibly moral) choice. Clients might move away due to the increased costs incurred by the association in it's antagonisms with the rights-respecting associations. Indeed, in such a situation these latter associations would do well to lower their subscription rates as an incentive for clients to switch from the rogue

association. Related to this is a potential 'weapon' of the rights-respecting associations. If a rights-respecting association or court is particularly subject to the predations of a rogue association, for instance if the majority of it's clients reside in an area where the incidence of improper activity is high, the other respectable associations' long-term interests would be best served by helping to offset the financial burden this single association has unwittingly shouldered for, after all, there is strength in numbers, the possibility of reciprocation and the possible avoidance of potential conflict with the rogue association at a later date. Dishonesty may lead to a boycott on inter-association dispute-resolution and lead to the effective isolation of the rogue association. Lastly, as long as individuals sought protection there would remain the sufficient condition for the worthwhile supplying of this demand. A rogue association would be a moral as well as an economic aberration.

The Nozickian derivation, I have said, can only proceed on default of the Rothbardian hypothetical market in protective services, that is to say, only if there is a breakdown of the market and a movement as a consequence, or as Nozick depicts it a progression, to the minimal state. Nozick's derivation is as follows, with each stage following the previous one(s):

- (i) The state of nature where rights are sometimes violated.
- (ii) Private protection associations evolve to protect against violations,
- (iii) one of which, being preeminent in power, becomes the dominant protection association.
- (iv) This association in turn evolves into the ultraminimal state exercising a monopoly of force and protecting only those who

pay for it's services, and then into (v) the minimal state which 'redistributes' protection from paying clients to non-clients as compensation for the prohibition of their (risky) self-protection. Nozick's 'first explicit objective', says Buchanan, 'is to demonstrate that a minimal state will qualify as morally legitimate, a demonstration that is specifically aimed at undermining the opposing claims of the libertarian anarchists (notably Murray Rothbard)'(1977,p.51). And of the free market protection hypothesis Buchanan remarks that 'Nozick accepts this paradigm, but he recognizes the inherent instability of the system'(51).

Is the Rothbardian hypothesis inherently unstable? I have endeavoured to show that if it is so then it is not obviously so, for there are features that lend coherence to that hypothesis within the framework of free choice and exchange and the sceptical picture of homo economicus. A brief recapitulation of Nozick's 'hidden-hand' derivation of the de facto monopoly protection association will lend support to why the free market scenario is not obviously inherently unstable.

Nozick's derivation commences with what is arguably the weakest feature of Rothbard's blueprint. 'Initially, several different protective associations or companies will offer their services in the same geographical area. What will occur when there is a conflict between clients of different agencies?'(1974,p.15). Nozick then posits three possible developments from such a (recurring) situation.

- (1) One association always wins conflicts. The disadvantageousness of being a client of a losing association

forces clients 'to do business with the winner'(16).

(ii) People gravitate towards the association strongest in their area where protection is likely to be better.

(In both (i) and (ii) 'Only one protective agency operates over a given geographical area'(16)). Thirdly, Nozick surmises how the Rothbardian arbitration-regulated scheme produces a monopoly in a given area.

(iii) The associations win and lose an equal number of disputes, and '...to avoid frequent, costly, and

wasteful battles the two agencies, perhaps through their executives, agree to resolve peacefully those cases about which they reach differing judgements. They agree to set up, and abide by the decisions of, some third judge or court to which they can turn when their respective judgements differ'(16).

Private protection associations do not claim and certainly do not have a monopoly on the use of force and so cannot be said to constitute ultraminimal states. Is there default at the arbitration-regulated level (iii)? Nowhere does Nozick tackle this issue, instead managing to circumvent the problem by arguing that 'The operators of the ultraminimal state are morally obligated to produce the minimal state'(52) owing to the moral necessity of adopting a principle of compensation. So we may wonder whether the ultraminimal state will develop from a free market in protection. The principle of compensation 'requires those who act in self-protection in order to increase their own security to compensate those they prohibit from doing risky acts which might actually have turned out to be harmless for the disadvantages imposed upon them'(114). Fallible individuals or groups enforcing their rights sometimes leads to further rights violations or increases the likelihood of them due to ignorance,

partiality, over-zealousness, etc.. Such acts will impose risks on others and will be perceived as risk-imposing, and this raises the question, Why cannot others protect themselves against risky and fear-imposing acts by prohibiting them? Adoption of a principle of compensation leads to the following dilemma: either (i) I enforce my right to self-defence in a risky and fear-imposing manner and then pay (compensate) others for any violations of their rights committed by me, or (ii) others prohibit my risky rights-enforcement and compensate me for their so doing. With case (i) your rights are violated and compensated, in case (ii) my right is prohibited and compensated. Now we will, or ought, to choose the second horn of the dilemma because - and for the reasons Nozick cites - some rights simply cannot be compensated if and when violated, for example, murder. Without default at (iii) above there cannot be the transition to even the ultraminimal state out of which the minimal state arises, and at stage (iii) the principle of compensation is acceptable and workable. Associations compensate for any prohibiting activities and compensation disputes are themselves subject to arbitration resolution. Furthermore, what reason do we have for believing that the ultraminimal and minimal states as monopolies will compensate?

From the competing associations Nozick contends that a movement will be effected through either (i), (ii) or (iii) to a monopoly situation of one association dominant in any given area, which association becomes an ultraminimal state for it 'maintains a monopoly over all use of force...but it provides protection and enforcement services only to those who purchase its protection and enforcement policies'(26).

Compensation facilitates, indeed necessitates, the movement to the minimal state, defined as possessing a monopoly of protection (force) and compensating those it prohibits from protecting themselves by redistributing wealth to them, in voucher form, 'that can be used only for their purchase of a protection policy from the ultraminimal state'(27). Thus, the moral obligation to bring about the minimal state results from the moral imperative of adopting a principle of compensation directed towards those who are prohibited from protecting themselves because of the risks it imposes on others.

Associations are allowed to prohibit those who enforce protection, associations included, when this enforcement is pursued in a risky or perceived-to-be-risky manner, provided compensation is forthcoming. They may be justly prohibited because of the fear and apprehension risky enforcement causes in others and which also gives rise to their defending themselves against it. The principle, says Nozick, is

'that a person may resist, in self-defense, if others try to apply to him an unreliable or unfair procedure of justice. In applying this principle, an individual will resist those systems which after all conscientious consideration he finds to be unfair or unreliable'(102).

Unreliable procedures of enforcement impose risks and therefore an association 'may treat the unreliable enforcer of justice as it treats any performer of a risky action'(105). And, for Nozick, some acts must be prohibited. They cannot be allowed even if compensation is paid. Belonging to this class are: those goods that would be reallocated to those willing to pay compensation; uncompensatable acts such as murder; compensatable acts which

induce fear which cannot be compensated; and acts which cause public fear but where only victims can receive compensation. Risky self-enforcement falls under the second, third and fourth types, and possibly under the first if self-enforcement were such a good that it's practitioners were willing to pay for it by compensating for the fear imposed and thereby have this good reallocated predominantly to their jurisdiction. Such people would be the (idle) rich I mentioned earlier when the limitations of self-protection were listed. This, then, is Nozick's non-free market argument against the (idle) rich. For him it is not that self-enforcement is impractical or unlikely to be successful (though this is true), rather that it is just not legitimate.

At this point no monopoly is claimed and independents (those who practice self-enforcement procedures) may still exist. Nozick states that by virtue of it's power a dominant protection association occupies a unique position because when enforcing justice and prohibiting risky and unreliable procedures of enforcement `..it enforces its will, which, from the inside it thinks correct'(109). Only the dominant protection association can do this continually and consistently - only it has the requisite power and financial resources - against the sporadic, inconsistent and, when against the dominant protection association, ineffectual enforcement of independents and other competing associations. Hence the dominant protection association does have a de facto monopoly position in the defence market, and one that once acquired is seemingly unassailable. (How the dominant association might lose it's monopoly I consider later.) `The dominant protective agency', as Nozick puts it, `can offer

its customers a guarantee that no other agencies can match: "Only those procedures we deem appropriate will be used on our customers"(109). The de facto monopoly is rendered a de jure monopoly and the dominant protection association becomes the minimal state when compensation, at least in part, takes the form of protective services 'to cover those situations of conflict with the paying customers of the protective agency'(110).

R.L. Holmes argues that only if the dominant protection association does in fact compensate the individuals it prohibits will there be the movement to the minimal state. Holmes points to a break in the continuity of Nozick's derivation, to wit, the dominant protection association is morally obligated to compensate independents it prohibits, but on Nozick's own account the ultraminimal state does not in fact do so. Holmes concludes that the ultraminimal state is morally impermissible for this reason, and secondly, that the minimal state is not legitimately a product of the ultraminimal state - not all the procedural stages in the progression from state of nature theory to the minimal state are just (as Nozick says they must be) and Nozick's depiction of the just manner by which a state may arise is flawed (1977, pp.60-1).

Another objection raised by Holmes pertains to the dominant protection association's 'guarantee'. Nozick contends that if the dominant association observes what he calls the 'Epistemic Principle of Border Crossing' defined as 'If doing act A would violate Q's rights unless condition C obtained, then someone who does not know that C obtains may not do A'

(1974,p.106), then it is morally justified in its activities. This is the stricter definition of the Principle. The second iteration of the Principle has the qualification that an agent 'may not do A if he has not ascertained that C obtains through being in the best feasible position for ascertaining this'(107).

Holmes asks who determines whether condition C obtains, or who is in the 'best feasible position' for deciding? Obviously it is the dominant protection association itself, and the Principle threatens to collapse into a question-begging exercise. Who decides that it is the dominant protection association that is best located...? Now, Nozick admits that everyone has the right to punish violators of the Principle, that is any person 'who attempts to punish someone without first having ascertained their guilt by a procedure of justice of proven reliability'(Holmes 1977,p.63). It is not clear that what the dominant protection association deems appropriate and the criteria of justice Nozick adheres to will be compatible (always). Put more poignantly, and a deal more sceptically, the dominant association may prohibit if, and only if, it observes the Principle. If the dominant association sets the criteria for the Principle - and business and political aspirations are in play here - how are we going to see the criteria set? Is the dominant association likely to institute a set of antecedent conditions it cannot or may choose not to fulfil? Further, if the strongest association decides also what constitutes a threat then what restraint is there to its prohibiting activities? Ultimately, Nozick might follow Locke and say that when 'government' exceeds or neglects its raison d'etre

the people (as bearers of sovereign rights) would, and are entitled to, institute anew. Government, unfortunately, once established is not so easily dis-established....

Holmes's criticism reduces the de facto monopoly association to the status of, to use Peter Danielson's term, an economic firm. 'In other words, the dominant protective agency is merely an economic firm dealing in the protection of rights' (Danielson 1978, p.142), and a firm that may violate the rights of some in protecting the rights of others as business deems worthwhile - without the constraints, weak or otherwise, that the free market placed on associations in Rothbard's hypothesis. Another feature of Holmes's argument is one that accords with the first portrayal of the stateless society, namely, that the minimal state is an hypothesis that proceeds when, and only if, the free market in protection defaults, and that we may never make the progression, and if we do so unjustly (due to the absence of compensation at the stage of the ultraminimal state) there are grounds for believing that we might not stay there for long: the de facto monopoly's position is not unassailable and there may be a return to a market of competing associations, or possibly an oscillating around a de facto monopoly and a market provision of protection.

The major ground for believing that we may not rest so securely with the minimal state if arrived at is intricately, though I hasten to add not solely, connected with the free-rider problem. One ground for doubting the unassailability of the minimal state is the motivation for compensation. Below I try and show how the principle of compensation

'creates', gives rise to, free-riders through unproductive acts of exchange, and that there are two critical number points through which the minimal state is threatened with collapse. Arguably, the two points need never arise at all, but given the postulations of Nozick himself as to why and how people seek protection it is conceivable that they should arise. The argument does not make the implication that pecuniary reward is all (or even primarily) what all, or the majority, of freely choosing individuals are motivated by, only that there may be a sufficient (indeterminate) number who choose to defer from the minimal state and whose deferment is made possible by a sufficient (likewise indeterminate) number who abide by the compensating minimal state.

Compensating prohibited risky acts of self-enforcement leads to acts or cases of unproductive exchange and to a possible breakdown of the minimal state. The principle of compensation allows us to prohibit risky acts which we would otherwise not be able to prevent through our purchasing the abstention from such activities of would-be risk-imposers. However, as Nozick stresses, we might be securing 'relief from something that would not threaten if not for the possibility of an exchange to get relief from it'(1974,p.85),<sup>9</sup> that is, be party to an unproductive act of exchange. So why not be a prohibited and compensated independent enforcer of one's rights (surely one way for the poor to secure for

9. In unproductive acts of exchange, after purchasing abstention, the buyer is left no better-off than he would be if the seller did not exist or had nothing to do with the buyer.

themselves the protection they could not afford if they were to pay for it)?

This theme has been expressed by Buchanan who remarks that 'If there is potential money in it, individuals will find it to their advantage to be recalcitrant, not because this expresses their internal private preference but because it promises to yield valued returns'(1975,p.4). Buchanan's straightforward account of how a free-rider arises is informative and pertinent to the Nozickian derivation, and here a simple 'history' of the creation of a free-rider is presented in stages.

(i) An individual can (very roughly) choose between two ethical systems, broadly classifiable as either a universalizable rule, a sort of Kantian type moral law, or some form of utilitarianism. Otherwise, he may choose a private maxim that is circumstance regulated, by the selection of which he 'commits himself in advance to no particular principle of behaviour. He retains full freedom to act on the basis of expedient considerations in each particular situation that arises'<sup>10</sup>(1977,p.153).

(ii) The decision is or can be partly determined by that individual's assessment of the choices of others.

(iii) If the actual decisions of others preponderate in a critical (sufficient) number towards a universalizable rule the individual is freer to make his choice in favour of the private maxim: 'expediency in a duty-bound world'(154).

10. In fact an agent does thereby commit himself in advance. Let us say, then, that his specific behaviour is not and his principle is identifiable in advance

(iv) '[T]he individual himself retains the rule that allows him to act from his own private maxims, whereas substantially everyone else in the group follows some version of the moral law'(155).

(v) A free-rider is created.

All that is necessary for (i)-(iv) to be true is the first critical number. 'For any given individual

who may be observed to follow what may loosely be called the rule of moral law in his small-group interaction', Buchanan writes, 'there is some increase in group size that will cause him to modify his ethical rule and become a private maximizer'(162).

The implication of this first critical number for the compensating minimal state is that as it attracts more clients by the sureness of its protective ability more people will choose to remain or become independents and have their protection provided as compensation for their prohibited risk-imposition. The stricter the criteria of the Epistemic Principle of Border Crossing the more independents will be classified, classified as risk-imposing, or the less existing independents will have to do to be prohibited, the more compensation will be paid out, the more attractive independence will become, the higher premiums to the minimal state will become, the more people will choose to become independents (adopt a private maxim).... On the other hand, the weaker the criteria of the Principle the fewer individuals that can be justly prohibited and the weaker the status of the dominant protective association is.

Any movement away from the dominant association or cessation of movement towards it may be aggravated by other than financial considerations. People have, as Eric Mack rightly

indicates, 'layered motivation for planning to do what another disvalues...' (1981, p.177). And where financial returns are the reason for what is disreputable, disvalued activity it can quite easily be shrouded by a plethora of moralistic rationalizations. Herein lies the second critical number, as a consequence of the first.

As more people are motivated to seek protection-as-compensation the costs shouldered by bona fide paying clients increases, and as they increase more clients seek independence. Prohibition of these further exacerbates the predicament the dominant association or minimal state finds itself in leading eventually to the effective breakdown of its monopoly and a return to some state of affairs more akin to Rothbard's blueprint than to Nozick's derivation. Where compensation is a moral imperative there is, therefore, an argument against the lastingness of the minimal state, if ever instantiated. An argument that can only be precluded if Nozick abandons the principle of compensation - and alters his derivation accordingly - or produces a case for either classifying self-protection as an activity that may legitimately be prohibited without compensation or for the minimal state preventing its clients from leaving to become independents. Making a case for either would look ad hoc, and would so damage the bulk of Anarchy, State, and Utopia as to render the revised theory unrecognizably different to the original.

Before concluding, Rand's arguments for the voluntary financing of government merit mention if not anything like thorough analysis. Commencing with the unlimited property

thesis and 'taxation is theft' premise Rand asserts that

'In a fully free society, taxation - or, to be exact, payment for governmental services - would be voluntary. Since the proper services of a government - the police, the armed forces, the law courts - are demonstrably needed by individual citizens and affect their interests directly, the citizens would (and should) be willing to pay for such services...' (1964, p.116).

Rand mentions in passing the possibility of a lottery to raise finances, but would the state have the right to enforce a lottery monopoly?<sup>11</sup> After all, Rand does think there can be only one institution that enforces justice, and, as Nozick remarks, 'But since it would have no right to forbid private entrepreneurs from doing the same, why think the state will have any more success in attracting customers in this than in any other competitive business?' (1974, p.25).

A better approach is Rand's idea of a levy on contractual agreements whereby those who voluntarily pay the levy acquire governmental protection of that contract. Rand holds this method 'would be sufficient to finance all the other functions of a proper government' (1964, p.119). Now we have contracting parties providing the resources for the protection of others but doing so without violating rights. They provide an indirect benefit to others as 'merely a marginal consequence of the contributors' own interests and expenses' (119).

Protection proportionate to economic activity is an interesting development, but it begs the Rothbardian

11. Nozick's own argument allows for just such a right. The dominant association or minimal state could view the lotteries as threats and so prohibit them.

question: Why does there have to be only a single body providing protection when protection can be provided in a non-monopolistic way with all the benefits of competition to be enjoyed at the same time? To answer the challenge would place Rand in a position similar to Nozick's with all the problems attenuating his theory applying equally to hers. The challenge is not met, and Rand accepts the necessity of a monopoly of force(1967,p.331) founded on the consent of the individuals who have agreed to obey by renouncing private enforcement.

This chapter on anarchism or statism has concentrated on the provision of protection and the organization of the provision of redistribution in two possible, and mutually exclusive, ways; one spawned and perpetuated by the free market and the other later transcending the market nexus. If the state does arise it would be better that it did so justly, but where it did not arise justly we would be obliged to obey it providing it abides by and enforces the rules of justice - which may or may not include the toleration of independents.

The dispute between Rothbard and Nozick is more than one of practicableness for both involve claims to political legitimacy. Ellen Frankel Paul suggests that legitimacy for government (read here as associations or state) rests only on whether it protects rights, stressing

...it is a purely prudential question - which system protects rights more efficiently: one that sanctions a multiplicity of protection agencies, each legislating their own interpretations of the natural law, arresting and punishing offenders, making their own share of mistakes in arrests, and being resisted by innocent (or even guilty) individuals who they come to arrest - the anarchist model; or one single legislator, who enforces and makes

its share of mistakes, and compensates the unjustly accused in a peaceful transaction in accordance with the rule of law - the minimal state model?' (1979, p.278).

The consent of citizens is neither here nor there for the state needs no more sanction than that it is rights-protecting: '...it is perfectly conceivable', writes Paul, 'that individuals could voluntarily consent to a government which systematically violated natural rights'(271).

This is Paul's a-historical time-frame theory of legitimacy whereby governments, or competing agencies, are legitimate when between a given time-span  $t_1$  -  $t_2$  it is non-rights-violating and 'it guarantees the rights of its citizens from invasion by other individuals or states'(274). Part of what it is to guarantee rights is punishing those who violated rights before or in the process of the government acquiring legitimacy, even when those individuals are serving members of the now legitimate government. Though not explicitly spelt out by Paul, a government in any time-frame  $t_1$  -  $t_2$  is legitimate if, and only if, it attempts to rectify past injustices as well as currently protects and punishes. Whatever entitlements people have at any time  $t$  - whether they have them rightly or wrongly - '...is extraneous to a determination of the legitimacy of any particular government' (274).

Paul's theory is, as Paul admits, rather demanding in its application, though it emphasizes an important feature of any (property) rights-based notion of justice. Restitution to the violated party has frequently been neglected in favour of punishment and deterrence and a more balanced perspective of

rights protection is desirable, one that places greater weight on the restitution of property to its rightful owner as a complement to punishment and deterrence. There is no reason to assume that this feature cannot be compatibilized with either Rothbard's or Nozick's explanations of the mechanisms of protection.

## CONCLUSION

There are many issues and problems that have been left unexamined in the course of this dissertation. It is to make some amends for this lack that these concluding points are ostensibly directed. I have endeavoured to make each chapter as complete and self-sufficient as possible, and so only at the very end recapitulate the substantantive position that has been argued for under the heading of 'welfarist libertarianism'. Itemizing them, the themes to be addressed, albeit briefly, here are: justice across generations; the inheritance of property; the status of non-human animals and, finally; the institution of the family as a factor in moral-political philosophy.

Parties in the original position, says Rawls, 'want to insure for their descendants the best genetic endowment (assuming their own to be fixed)' and impresses the point that earlier generations 'owe' this to later ones(1971,p.107). This obligation must extend over at least two generations at any one time to secure succession of the principles of justice and thereby represent all people over time(288). Tackling the issue of what policy content justice across generations has Rawls focusses his attention primarily on the 'just savings principle', which stipulates the putting aside 'in each period of time a suitable amount of real capital accumulation'(285).

The just savings principle is calculated under the constraints imposed on the parties in the original position behind the veil of ignorance. Representative men of the least advantaged or well-off group in society as representatives of the least advantaged group in each subsequent generation specify the rate of savings, and the continuity their decision from behind the veil of ignorance creates avoids any preponderance in partiality towards later generations. In this capacity the representative men avoid placing heavy sacrificial demands on present generations 'for the sake of greater advantages for later ones that are better off'(287). The upshot of this is that the difference principle in it's fullest formulation includes the just savings principle as a constraint upon maximal equality compatible with the savings-absent formulation of the difference principle. Later generations are guaranteed a share of the capital growth of the earlier ones, but, more importantly, are assured that the movement towards equality in any single generation adoption of the difference principle entails does not adversely affect them.

What obligations to later generations do we have, if any, under the scheme of non-exclusion regulated private property? It would seem that we do not have any obligations if we read the claim to a redistributed share as dependent on extant claim-holders and resources, and not future ones. Our principle under this conception will be current time-sliced. In short, if there are no claim-holders (which means no persons currently pressing a claim to a redistributed share) then there are no claims pressing. The idea that we currently have redistributive obligations to future

generations (or members thereof) leads to a reductio argument. In a world of finite resources, so this reductio runs, to hold that when subsequent generations (individual members thereof) enter the world they will press claims to redistributive shares commits us to either (i) consuming no resources so such claims can be met, or (ii) consuming no more resources than needed for our avoidance of destitution/want, that is, no more resources than the equivalent claim would be a claim to. The first option denies both the justness of private property and that of positive claims. Must (ii) be the answer? No, because this is to neglect the libertarian justification of original acquisition. We have the justification of original acquisition and then initiate redistribution to meet any claims pressed by extant claim-holders. This is as far as our obligations to future generations (individuals) extends. Future persons press a moral claim upon us under a certain description, but this obligation is pressed contemporaneously with their existence under this description. Future generations do not have rights qua future generations, but future generations will, in all likelihood, be claim-holders.

Any course of action that I perform and perform intentionally that is done for the sake of the benefit of others, including later generations, that is not obligatory, is a supererogatory act of mine. As such it is an action that I am not bound to perform. Putting aside a portion of my wealth for my son or grandson would be an instance of such a supererogatory act.

The bestowing of an inheritance is, I have said, a supererogatory act. Inheritees have a right to the

provisions of a legally binding will though not the duty to accept it. A will is, or gives rise to, an enforceable right but not a right that is bound to be enforced. Offspring have no right to inherit parental wealth and parents have no duty to pass on their wealth to their offspring. This is not to say that parents have no duties whatsoever to their offspring, only that leaving them their wealth is not one of them.

Wherever a bona fide claim arises we are obligated to action and the claim may be enforceable against us. Wherever we could perform a supererogatory act we may use our discretion, succumb to our fears, etc., and fail to perform the laudable or commendable act in question.

To illustrate this contention imagine that my father leaves me (already well-to-do) his wealth in a legally binding will but requests outside of the provisions of the will - in his dying breath, perhaps - that I donate it all to the local old dogs home. Imagine, further, that I have not promised him that I shall do so.<sup>1</sup> The old dogs home has no cause to complain from the standpoint of a supposed violated right and the duties I have assuming that the request becomes public knowledge, though my failure to donate may be disapproved of. Doing as I am requested would be a good thing. Giving father's money to the local old peoples home in the face of his request would be better...?

1. Are promises made to people who subsequently pass away enforceable, or do they rather give rise to opportunities for supererogatory acts on the part of the promisee? Is any promise made under these or similar conditions between only two or between three parties?

The penultimate concern of this dissertation is the status of non-human animals. Perhaps most libertarians - though there is no textual evidence for this besides the absence of condemnation - would follow Locke in regarding non-human animals as 'inferior creatures' given to mankind in common and hence subject to ownership, and consumption(1690,p.130). Locke allows non-human animals no moral status at all, but Nozick is not happy with this position whereby animals are seen as mere objects. Nozick believes there are moral constraints to our treatment of animals, one that reflects something about ourselves and the other (better) one picking out intrinsic value or worth in animals - and his preference sides with the latter.

The first constraint suggests that we should treat animals morally, as moral subjects, in order to avoid undesirable moral spillover; a corrupting of our moral sensibilities weakening our resolve to treat humans morally. This however, as Nozick sceptically points out, rests on a vague human - non-human distinction and, what is more, may not work. There may just not be any corrupting of us no matter how we treat animals(1974,p.36).

Secondly, the gains from consuming animals do not outweigh the costs in terms of animal lives and suffering: '...in my view the extra benefits Americans today can gain from eating animals do not justify doing it. So we shouldn't'(38). This is not to say that animals have the same moral status as persons, only one sufficient to prevent their being treated as mere objects.

It is not clear that Nozick's position excludes our treating animals as resources, only that we not treat them cruelly, and so boils down to what he calls 'utilitarianism for animals, Kantianism for people' which stipulates 'animals will be used for the gain of other animals and persons, but persons will never be used (harmed, sacrificed) against their will, for the gain of animals'(40).

What is required when discussing the moral status of animals is a moral subject - non-moral subject distinction, as Rawls is aware. To what degree certain types of animals are classifiable under the moral subject heading will in large part determine the nature and extent of our moral obligations towards them. If we have a moral theory we need moral subjects for it to be about, to make it a moral practice, and 'moral subject' may be construed or stipulatively defined as 'person(s)'. But to then move from 'persons' to 'humans' or 'humankind' will, in many cases, simply not work. As Narveson illustrates. If equality of welfare is our concern, for the sake of argument, whose welfare is to be equalized? It cannot be that the answer is 'humankind' because they are deserving for '...nobody deserves to be a human being. We could, for all that desert has to say about it, have been squirrels, or - what? Microbes, perhaps?' (1985,p.40).

Rawls does in some way invoke the 'utilitarianism for animals, Kantianism for people' maxim because he excludes animals from the class of subjects calling forth strict justice from us (persons) on the grounds that they lack the capacity for the sense of justice. 'But it does not follow',

continues Rawls, 'that there are no requirements at all in regard to them'(1971,p.512), citing the wrongness of cruelty. An animal's capacity to experience pleasure and pain 'clearly impose duties of compassion and humanity in their case'(512). What excludes animals from equal justice is that they are not moral persons because incapable - in the way babies and children are not - of having a conception of their own good and of justice. They do not satisfy the conditions for parties to the original position. 'We use the characterization of the persons in the original position to single out the kind of beings to whom the principles chosen apply'(505).

As far as the libertarian justification is concerned whatever moral status non-human animals are to be accorded it appears that the right to property is not one of them. Sentient beings may have the right to life insofar as they share a family resemblance to our understanding of 'person'. It is difficult, though, to make sense of non-persons having moral value. It remains doubtful if even the higher animals are rational agents (or have the capacity to be so) and so doubtful that they meet the sixth, rational autonomous agent, premise of the libertarian justification. Unreflective anthropocentricity should be avoided when seeking the moral subject - non-moral subject distinction. Nevertheless, it still remains a moot point whether the higher non-human animals manifest the intentional rational agency which carries their moral subjectness into natural resources. Their lack of intentional agency, or more accurately, their lack of the ability to project themselves as moral agents, precludes them from being on a moral par with humans

(persons). Rawls is on the right lines: animals do have a moral status, but not the full-fledged one of persons.

Women and children to be held in common; marriage festivals to be arranged for the selective breeding of 'a real pedigree herd'; children to be placed in state nurseries forbidding parent-offspring liaison. Add the deception of the rigged lottery to select breeding partners and this is the core of Plato's policy for abolishing the family in the name of justice(1955,pp.237-43).

Since Plato, theorists who have advocated the use of centralized authority to secure moral-political goals have seen in the family an obstacle to their programme, an obstacle fostering partiality amongst men and a powerful generator and reinforcer of inequality and disparate life-chances, and, in Marx's (and Engels's) case, as an ideological tool responsible for the division of labour '...and the separation of society into individual families opposed to one another'(Marx 1846,p.52). Engels's eighth proposal contra the institution of private property echoes Plato. 'Education of all children', recommends Engels, 'as soon as they are old enough to do without the first maternal care, in national institutions and at the expense of the nation'(1847,p.89). For Plato the family was an obstacle to the correct ordering and education of society and rule of the Guardian elite. To Marx and Engels it is the block to equality, and true non-ideological consciousness, the family's fostering of partiality and perpetuation of differential opportunity presents. It is the latter impediment-to-egalitarianism position that carries the most serious threat of interference

with the institution of the family, even if the proponents of equality seem reticent to draw this implication of their position.<sup>2</sup> To be consistent they must hold that the family be abolished.

Do all forms of equality threaten the family? Usually, equality of outcome is held to be the major threat to the family (and to liberty generally, of which the liberty to raise a family is important) but not equality of opportunity nor equality of treatment. Both Flew and James Fishkin, however, believe that equality of opportunity impinges on liberty and stands antagonistically viz-a-vis the family. Fishkin holds equality of opportunity to necessitate 'systematic intrusions into the family'(1983,p.1) because only intrusions into the sphere of personal liberty can ensure that the processes dependent on equality of opportunity are fair and just and are, opportunity-wise, in fact equal. Process equalities are paid for in the coin of liberty, and, Fishkin emphasizes, paid for at 'substantial cost'(9).

Either process equalities are insulated from background inequalities which undermine them or background inequalities are eliminated. If the former cannot be done then, as consistent egalitarians, we are committed to attempting the latter, and neither Plato nor Marx nor many opponents of equality - because they take the prospect seriously - doubt

2. Abolition of the family, Letwin remarks, '...is part of the unspoken, because as yet unspeakable, mental baggage of a coherent egalitarian position'(1983,p.54).

that the latter can be done. Flew is well aware that equality of opportunity entails abolishing or minimizing as far as necessary the advantages accruing to persons from being brought up in a good home for the reason that people are naturally different(1978,pp.155-7). (Background inequalities cannot be eliminated or minimized, by genetic engineering say, or can better and more easily be done via institutional restructuring.)

Rawls realizes that the principle of fair opportunity he adheres to can only be imperfectly executed as long as the family remains, but tempers the inclination towards abolition of the family through the principles of fraternity and redress, and our acknowledgement of the difference principle's workings means 'We are more ready to dwell upon our good fortune now that these differences [the amoral distribution of assets and the inequalities they give rise to] are made to work to our advantage'(1971,p.512). Nonetheless, and consistency may demand it, the abolition of the family may prove a consequence of the adoption of difference principle-based egalitarianism - despite any psychological or sociological reasons we might have for reluctance in this matter? Families may not work to the advantage of the least well-off group.

Equality of treatment too presents a threat to liberty if resisted by family-created and fostered partiality: a partiality for kith and kin over one's neighbours (in the metaphorical, extended sense). Abolition of the family may cut away such partiality but it is not clear that the love of one's neighbour will automatically take it's place, and that

partiality will not be directed elsewhere, say to friends, teachers, and perhaps self. We may be able to work for the community, for others generally, but be incapable of esteeming, valuing and holding it to our affections in the way and to the extent we do family, friends and literal neighbours. Why believe that people are as malleable as all that, and the answer to our problems lies in new institutions redirecting our allegiance to public way from private authority? Self-regarding altruism may be deeper rooted.

Whatever the truth of the matter the enforcement of equality involves the coercive use of force by a centralized authority, whether of the philosopher-king or revolutionary vanguard variant, or the parliamentary type. And the presence of such an authority is clearly incompatible with true, complete, equality. This give rise to 'That one key question...' 'And who will equalise the equalisers?...' (Flew, p.163). Possibly we will all have an equal turn at equalizing....

What has been argued for in this dissertation I entitled 'welfarist libertarianism'. This I take to be the most plausible rendering of the central tenet of the theory of political libertarianism: the (Lockean) labour theory of original acquisition - when read as a natural right of the individual, prior to government or civil society, not requiring the leave of any other man but entailing, via its universality, the redistribution of legitimately acquired property. As such, welfarist libertarianism is a thesis closer to John Locke's Second Treatise than the orthodox libertarianism of Rothbard, Rand and others, representing, as

it does, the position wrought through the competing claims of ownership by annexation from the original state and universality of natural liberty: of the liberty to mix one's labour and the positive claim to a share of resources. Due to the positive claim engendered by the principle of non-exclusion welfarist libertarianism could be interpreted as a liberal departure from orthodox libertarianism, justifying the intrusions into liberty it sanctions by the liberty under the conception of rights it secures. And in so far as it is a liberal departure it blunts somewhat the charge that libertarians '...often seem icily indifferent to human misery' (Gardner 1983, p. 31).

This is not an anti-egalitarian tract. Equality of outcome is a theoretical possibility given what I have contended for. If equality results from or is a by-product of welfarist libertarianism then it is a just equal distribution. But welfarist libertarianism is libertarian nonetheless. It is a property right-centred liberty stamped with the 'hallmark of liberty' as Narveson understands it, namely, that to claim ownership is to claim the right to perform certain sorts of acts without the consent of others (1985, p. 56).

What is more, it is a liberty premised on a natural right in private property that tracks the orthodox libertarian theory back to Locke. Libertarianism, both welfarist and orthodox, represents a distinctive project for it is, as Narveson suggests such a project must be, 'concerned with liberty, to hold that what society should do is to respect liberty, and that it should be concerned to invoke coercion only in the interests of liberty...to hold that people may do as they

wish, even if some of the things they might have been forced to do would have done much more good for other people than the acts they chose to do'(52). Of course, a distinctive project may well be a mistaken one notwithstanding that it makes every endeavour to be complete and even ultimate.

In the final analysis - and this is no more than a tentative suggestion - a political theory and the moral theory it presumes (for I think it must presume one if it hopes to be truly explanatory) rests on certain metaphysical suppositions, or more properly, metaphysical commitments. In the case of libertarianism (and natural rights theories generally) the major commitment is to individuality: that view of each and all of us as unique author and agent in the world. Moral-political philosophy is concerned with persons - with reason, passion, intentions good and bad, sundry foibles, and much more. The metaphysical commitment is not to this as assent to a brute matter of fact, though it is that, but to a way we would like to see the contents of the world arranged.

## BIBLIOGRAPHY

Dates cited in the text refer to the original or earliest date of publication. The date cited after the name of the publisher refers to the modern edition from which the material and quotations were drawn, or to the journal in which the paper was published.

- Acton H.B. 1955 The Illusion of the Epoch. Routledge & Kegan Paul, London 1972
- Aristotle 1947 Politics. Everyman ed., J.M. Dent & Sons, London 1947
- Auspitz J.L. 1975 'Libertarianism Without Law'. Commentary 60, September 1975
- Ayer A.J. 1946 'Freedom and Necessity'. Free Will (ed.) G. Watson. Oxford University Press, Oxford 1982
- Banfield E.C. 1968 The Unheavenly City. Little, Brown & Co., Boston
- Berlin I. 1956 'Equality'. Proceedings of the Aristotelian Society, Vol.56, 1956-7
- Brenkert G.G. 1980 'Freedom and Private Property in Marx'. Marx, Justice and History (eds.) G. Cohen, T. Nagel & T. Scanlon, Princeton University Press, New Jersey 1980
- Brown S.M. 1955 'Inalienable Rights'. Contemporary Political Theory (eds.) A. de Crespigny & A. Wertheimer, Thomas Nelson & Sons Ltd., London 1971
- Buchanan A. 1980 'Revolutionary Motivation and Rationality'. Marx, Justice and History (eds.) G. Cohen, T. Nagel & T. Scanlon, Princeton University Press, New Jersey 1980
- Buchanan J.M. 1975 The Limits of Liberty: Between Anarchy and Leviathan. University of Chicago Press, Chicago
- Buchanan J.M. 1977 Freedom in Constitutional Contract. Texas A & M University Press, College Station
- Charvet J. 1969 'The Idea of Equality as a Substantive Principle of Justice'. Contemporary Political Philosophy (eds.) A. de Crespigny & A. Wertheimer, Thomas Nelson & Sons Ltd., London 1971

- Cohen G.A. 1977 'Robert Nozick and Wilt Chamberlain: How Patterns Preserve Liberty'. Justice and Economic Distribution (eds.) J. Arthur & W. Shaw, Prentice Hall, Englewood Cliff, New Jersey 1978
- Cohen G.A. 1979a 'The Labour Theory of Value and the Concept of Exploitation'. Philosophy and Public Affairs, Vol.8, 1978-9
- Cohen G.A. 1979b 'Capitalism, Freedom and the Proletariat'. The Idea of Freedom (ed.) A. Ryan, Oxford University Press, Oxford 1979
- Cone J. 1979 'Capitalism Means Property over Persons'. Will Capitalism Survive? (ed.) E.W. Lefever, Ethics & Public Policy Center of Georgetown University, Washington 1979
- Dahl R. & Lindblom C. 1963 Politics, Economics and Welfare. Harper & Row Publishers, New York
- Danielson P. 1978 'Taking Anarchism Seriously'. Philosophy of the Social Sciences 8, 1978
- Dworkin R. 1977 Taking Rights Seriously. Harvard University Press, Massachusetts
- Dworkin R. 1981a 'What is Equality? Part 1: Equality of Welfare'. Philosophy and Public Affairs, Vol.10, no.3, 1981
- Dworkin R. 1981b 'What is Equality? Part 2: Equality of Resources'. Philosophy and Public Affairs, Vol.10, no.4, 1981
- Dworkin R. 1983 'Comment on Narveson: In Defense of Equality'. Social Philosophy and Policy, Vol.1, no.1, 1983
- Elster J. 1985 Making Sense of Marx. Cambridge University Press, Cambridge
- Engels F. 1847 'Principles of Communism'. Manifesto of the Communist Party, Progress Publishers, Moscow 1977
- Engels F. 1848 'Defence of Progressive Imperialism in Algeria'. Marx and Engels: Basic Writings (ed.) L.S. Feuer, Fontana, William Collins & Co. Ltd., Glasgow 1959
- Exdell J. 1976 'Distributive Justice: Nozick on Property Rights'. Ethics, Vol.87, 1976
- Eysenck H.J. 1957 Sense and Nonsense in Psychology. Penguin Books, Middlesex
- Feinberg J. 1963 'Justice and Personal Desert'. Justice (Nomos VI) (eds.) J.W. Chapman & C.J. Friedrich, Lieber Atherton, New York 1974
- Fishkin J.S. 1983 Justice, Equal Opportunity and the Family. Yale University Press, New Haven

- Flew A. 1978 'The Procrustean Ideal: Libertarians vs. Egalitarians'. Against Equality. Readings on Economic and Social Policy (ed.) W. Letwin, Macmillan Press Ltd., London and Basingstoke
- Flew A. 1983 '"Freedom is Slavery": a Slogan for Our New Philosopher Kings'. Of Liberty. Royal Institute of Philosophy Lecture Series: 15 (ed.) A. Phillips Griffiths, Cambridge University Press, Cambridge 1983
- Freedman R.(ed.) 1963 Marx on Economics. Penguin Books, Middlesex
- Fried C. 1978 Right and Wrong. Harvard University Press, Massachusetts
- Friedman M. 1962 Capitalism and Freedom. University of Chicago Press, Chicago
- Friedman M. 1976 Milton Friedman in South Africa. (eds.) M. Feldberg, K. Jowell & S. Mulholland, Published by the Graduate School of Business & The Sunday Times, Johannesburg
- Friedman M. 1980 Free to Choose. Penguin Books, Middlesex
- Furniss N. & Tilton T. 1977 The Case for the Welfare State. Indiana University Press, Bloomington & London
- Gardner M. 1983 The Whys of a Philosophical Scrivener. Harvester Press Ltd., Sussex
- Gibbard A. 1976 'Natural Property Rights'. Nous 10, 1976
- Gibbs B. 1976 Freedom and Liberation. Sussex University Press, Sussex
- Gibbs B. 'Taking Liberties with Freedom: a Reply to Professor Flew'. Of Liberty. Royal Institute of Philosophy Lecture Series: 15 (ed.) A. Phillips Griffiths, Cambridge University Press, Cambridge 1983
- Hart H.L.A. 1955 'Are There any Natural Rights?'. Theories of Rights (ed.) J. Waldron, Oxford University Press, Oxford 1984
- Hart H.L.A. 1961 The Concept of Law. Clarendon Press, Oxford
- Hayek F.A. 1944 The Road to Serfdom. Routledge & Kegan Paul, London
- Hayek F.A. 1960 The Constitution of Liberty. Routledge & Kegan Paul, London
- Hayek F.A. 1976 The Mirage of Social Justice. Vol.2 of Law, Legislation and Liberty, Routledge & Kegan Paul, London 1982

- Hayek F.A. 1982 'The Atavism of Social Justice'. New Studies in Philosophy, Politics and the History of Ideas, Routledge & Kegan Paul, London 1982
- Hobbes T. 1651 Leviathan. (ed.) M. Oakeshott, Basil Blackwell, Oxford
- Holmes R.L. 1977 'Nozick on Anarchism'. Reading Nozick (ed.) J. Paul, Rowman & Littlefield, New Jersey 1981
- Hospers J. 1958 'What Means This Freedom?'. Determinism and Freedom In the Age of Modern Science (ed.) S. Hook, Collier-MacMillan Ltd., London 1961
- Hume D. 1739 A Treatise of Human Nature. (ed.) L.A. Selby-Bigge, Clarendon Press, Oxford 1978
- Johnson P. 1979 'Has Capitalism a Future?'. Will Capitalism Survive? (ed.) E.W. Lefever, Ethics and Public Policy Center of Georgetown University, Washington 1979
- Kamenka E. 1969 Marxism and Ethics. MacMillan & Co. Ltd., London 1979
- Kant I. 1795 Groundwork of the Metaphysic of Morals. (trans.) H.J. Paton, Harper & Row, New York 1964
- Letwin W. 1983 'The Case Against Equality'. Against Equality. Readings in Economic and Social Policy (ed.) W. Letwin, Macmillan Press Ltd., London & Basingstoke
- Locke J. 1690 Two Treatises of Civil Government. Everyman ed., J.M. Dent & Sons Ltd., London 1949
- Lucas J.R. 1985 'Towards a Theory of Taxation'. Liberty and Equality (eds.) E. Paul, F. Miller & J. Paul, Basil Blackwell, Oxford 1985
- Lyons D. 1981 'The New Indian Claims and Original Rights to Land'. Reading Nozick (ed.) J. Paul, Rowman & Littlefield, New Jersey 1981
- MacDonald M. 1967 'Natural Rights'. Theories of Rights (ed.) J. Waldron, Oxford University Press, Oxford 1984
- MacIntyre A.C. 1981 After Virtue. Duckworth & Co. Ltd.
- Mack E. 1981 'Nozick on Unproductivity: The Unintended Consequences'. Reading Nozick (ed.) J. Paul, Rowman & Littlefield, New Jersey 1981
- Mackie J.L. 1978 'Can There be a Right-Based Moral Theory?'. Theories of Rights (ed.) J. Waldron, Oxford University Press, Oxford 1984
- MacPherson C.B. 1962 The Political Theory of Possessive Individualism. Clarendon Press, Oxford
- MacPherson C.B. 1973 Democratic Theory: Essays in Retrieval. Clarendon Press, Oxford

- MacPherson C.B. 1978 'The Meaning of Property'. Property: Mainstream and Critical Positions (ed.) C.B. MacPherson, Basil Blackwell, Oxford
- Marx K. 1844 Economic and Philosophical Manuscripts. Marx's Concept of Man (ed.) E. Fromm, Frederick Ungar Publishing Co., New York 1983
- Marx K. 1846 The German Ideology. Lawrence & Wishart, London 1970
- Marx K. & Engels F. 1848 Manifesto of the Communist Party. Progress Publishers, Moscow 1977
- Marx K. 1853 'The British Rule in India'. Marx & Engels. Basic Writings on Politics and Philosophy (ed.) L.S. Feuer, Fontana, William Collins & Co. Ltd., Glasgow 1959
- Marx K. 1865 Value, Price and Profit. Charles H. Kerr & Co., Chicago
- Marx K. 1867 Kapital, Vol.I. Foreign Languages Publishing House, Moscow 1961
- Marx K. 1877 'Russia's Pattern of Development'. Marx & Engels. Basic Writings on Politics and Philosophy (ed.) L.S. Feuer, Fontana, William Collins & Co. Ltd., Glasgow 1959
- Narveson J. 1983a 'On Dworkinian Equality'. Social Philosophy and Policy, Vol.1, no.1 1983
- Narveson J. 1983b 'Reply to Dworkin'. Social Philosophy and Policy, Vol.1, no.1 1983
- Narveson J. 1985 'Equality versus Liberty: Advantage, Liberty'. Liberty and Equality (eds.) E. Paul, F. Miller & J. Paul, Basil Blackwell, Oxford 1985
- Novak M. 1979 'Productivity and Social Justice'. Will Capitalism Survive? (ed.) E.W. Lefever, Ethics and Public Policy Center of Georgetown University, Washington 1979
- Nozick R. 1971 'On the Randian Argument'. Reading Nozick (ed.) J. Paul, Rowman & Littlefield, New Jersey 1981
- Nozick R. 1974 Anarchy, State, and Utopia. Basil Blackwell, Oxford 1978
- Nozick R. 1981 Philosophical Explanations. Oxford University Press, Oxford
- Oakeshott M. 1949 'The Political Economy of Freedom'. Rationalism and Politics, Methuen & Co. Ltd., London 1962
- Olivecrona K. 1974 'Locke's Theory of Appropriation'. Philosophical Quarterly, Vol.24 1974

- Ollman B. 1971 Alienation. Marx's Concept of Man in Capitalist Society. Cambridge University Press, Cambridge 1976
- O'Neill O. 1981 'Nozick's Entitlements'. Reading Nozick (ed.) J. Paul, Rowman & Littlefield, New Jersey 1981
- Oppenheim F.E. 1968 Moral Principles in Political Philosophy. Random House, New York
- Paine T. 1776 Common Sense. Thomas Paine: Selected Writings (ed.) N. Gangulee, Nicholas & Watson, London 1948
- Paine T. 1791 Rights of Man. Thomas Paine: Selected Writings (ed.) N. Gangulee, Nicholas & Watson, London 1948
- Paine T. 1797 Agrarian Justice. Thomas Paine: Selected Writings (ed.) N. Gangulee, Nicholas & Watson, London 1948
- Paul E.F. 1979 'The Time-Frame Theory of Governmental Legitimacy'. Reading Nozick (ed.) J. Paul, Rowman & Littlefield, New Jersey
- Plato 1955 Republic. Penguin Books, Middlesex
- Popper K.R. 1972 Objective Knowledge: An Evolutionary Approach. Oxford University Press, Oxford
- Rand A. 1961 For The New Intellectual. New American Library, New York
- Rand A. 1964 The Virtue of Selfishness. New American Library, New York
- Rand A. 1967 Capitalism: The Unknown Ideal. New American Library, New York
- Rand A. 1971 The New Left: The Anti-Industrial Revolution. New American Library, New York
- Rand A. 1982 Philosophy, Who Needs It? Bobbs-Merrill, New York
- Raphael D.D. 1951 'Justice and Liberty'. Proceedings of the Aristotelian Society, Vol.51, 1951
- Rawls J. 1971 A Theory of Justice. Clarendon Press, Oxford
- Rothbard M.N. 1962 Man, Economy and State. Nash Publishing, California
- Rothbard M.N. 1970 Power and Market. Menlo Park, Institute for Humane Studies, California
- Rothbard M.N. 1973 For a New Liberty. Collier MacMillan, New York

- Rothbard M.N. 1979 'The Anatomy of the State'. Contemporary Anarchism (ed.) T.M. Perlin, Transaction Books, New Jersey 1979
- Rousseau J.J. 1762 The Social Contract. (trans.) G.D.H. Cole, Everyman ed., J.M. Dent & Sons, London 1966
- Ryan A. 1984 Property and Political Theory. Basil Blackwell, Oxford
- Sandel M.J. 1982 Liberalism and the Limits of Justice. Cambridge University Press, Cambridge
- Scheffler S. 1982 The Rejection of Consequentialism. Clarendon Press, Oxford
- Schlatter R. 1973 Private Property. Russell & Russell, London
- Singer P. 1979 Practical Ethics. Cambridge University Press, Cambridge
- Smart J.J.C. 1973 'An Outline of a System of Utilitarian Ethics'. Utilitarianism For and Against (eds.) J.J.C. Smart & B. Williams, Cambridge University Press, Cambridge
- Spencer H. 1850 Social Statics. John Chapman, London
- Spencer H. 1893 Principles of Ethics. Williams & Norgate, London
- Spencer H. 1907 The Man Versus The State. Williams & Norgate, London
- Steiner H. 1977 'The Natural Right to the Means of Production'. Philosophical Quarterly, Vol. 27 1977
- Taylor C. 1967 'Neutrality in Political Science'. The Philosophy of Social Explanation (ed.) A. Ryan, Oxford University Press, Oxford 1973
- Tucker R. 1961 Philosophy and Myth in Karl Marx. Cambridge University Press, Cambridge
- White A. 1984 Rights. Clarendon Press, Oxford
- Williams B. 1967 'The Idea of Equality'. Moral Concepts (ed.) J. Feinberg, Oxford University Press, Oxford 1969
- Williams B. 1973 'A Critique of Utilitarianism'. Utilitarianism For and Against (eds.) J.J.C. Smart & B. Williams, Cambridge University Press, Cambridge
- Williams B. 1975 'Rawls and Pascal's Wager'. Moral Luck, Cambridge University Press, Cambridge 1981
- Wollheim R. 1956 'Equality'. Proceedings of the Aristotelian Society, Vol. 56, 1956-7

- Wood A. 1980a 'The Marxian Critique of Justice'. Marx, Justice and History (eds.) G. Cohen, T. Nagel & T. Scanlon, Princeton University Press, Princeton, New Jersey 1981
- Wood A. 1980b 'Marx on Rights and Justice: A Reply to Husami'. Marx, Justice and History (eds.) G. Cohen, T. Nagel & T. Scanlon, Princeton University Press, New Jersey 1981