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Egalitarian Liberalism And Economic Freedom

Abstract

This dissertation considers three major challenges to egalitarian liberal institutions made by classical liberal-

als: that egalitarian liberal institutions involve too much coercive interference with individual economic decisions, that free markets tend to do better at rewarding people on the basis of their economic choices, and that only by recognizing full liberal rights of ownership can a society best promote a stable property regime consistent with our pre-political conventions of ownership. Each of these objections fails, but they point to an underlying concern that egalitarian liberal institutions fail to adequately protect economic freedom.

The dissertation then develops and defends a conception of economic freedom that is reflected in egalitar-

ian liberal institutions. Economic freedom depends on the quality and availability of options individuals have in markets, especially the quality of exit options available to avoid coercive or exploitative conditions of employment or exchange. It then extends this view to the idea of property-owning democracy and worker-ownership of firms.

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EGALITARIAN LIBERALISM AND ECONOMIC FREEDOM

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ABSTRACT

EGALITARIAN LIBERALISM AND ECONOMIC FREEDOM

Pierce Randall

Samuel Freeman

This dissertation considers three major challenges to egalitarian liberal institutions made by classical liberals: that egalitarian liberal institutions involve too much coercive interference with individual economic decisions, that free markets tend to do better at rewarding people on the basis of their economic choices, and that only by recognizing full liberal rights of ownership can a society best promote a stable property regime consistent with our pre-political conventions of ownership. Each of these objections fails, but they point to an underlying concern that egalitarian liberal institutions fail to adequately protect economic freedom.

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CHAPTER 1 : INTRODUCTION

Economic activity is an important dimension of human life: it includes how we work, what sorts of authority relationships persist in our places of employment, how we save and plan projects, how we make decisions with our property, and how we live when not formally employed. The significance of economic activity raises a cluster of related normative questions: Who should get to make these decisions? How much latitude should they have to make them? How important are economic rights vis-à-vis other important and possibly competing values, such as economic equality or efficiency? A normative theory of economic freedom is a set of answers to these questions. In this dissertation, I develop an egalitarian liberal conception of economic freedom, focusing on the quality and availability of options available to members of society. Left-liberals and social democrats seem to have surrendered the language of economic freedom to the right. Libertarian and classical liberal organizations go by names like “The Freedom Center” or the “Liberty Fund.” Libertarians and classical liberals are on appropriately sensitive to the value of economic liberty. But taking their insights seriously leads us to a conception of economic liberty that does not favor the policy or institutional recommendations of libertarianism or classical liberalism, I argue. In fact, we have reason to think that it favors those of egalitarian liberalism.

In chapters 2-4, I respond to recent arguments by contemporary classical liberals, such as Tomasi, David Schmidtz, and Gerald Gaus. I argue that, underlying their criticisms is a view about economic freedom central to classical liberalism, and I try to make that position explicit. In chapter 5, I defend a quality-and-availability of options conception of economic freedom, and, in chapters 6 and 7, I examine the institutional recommendations this theory makes for liberal political societies. Chapter 6 focuses on property-owning democracy, as well as the role of worker-ownership and worker-management in a property-owning democracy. In the remainder of this chapter, I will frame the problem, make distinctions relevant to my central argument, and discuss the methodological assumptions I make in the dissertation.

1.1. Framing the problem: socialism redux

Since at least the late eighteenth century with the publication of *The Wealth of Nations*, but arguably at least a century earlier with the pamphlets that laid out the theory of mercantilism, how we structure economic institutions and how employment and trade are conducted has been increasingly seen as a concern

for public policy.¹ As with any domain that might be subject to state regulation, there are various considerations we might apply to it: What is the function of the activity, and how might it be structured to best satisfy that function? How can the activity be regulated to make it fairer, and what standard of fairness should we apply to it? Who should get to make decisions about what happens in that domain, and how should regulation ensure that they retain this privilege? Finally, what sorts of claims to individuals have against coercive interference by the state, and how do we decide the relative weights of these claims?

In the nineteenth and early twentieth centuries, the main debate regarding the state's role in economic activity involved who controls the means of production (major capital assets and infrastructure). Should it be workers, "the people," or public planners authorized to act on their behalf? Or should it be private investors or owners of property? The great debates between socialists and capitalists in the nineteenth century were largely over the *control* of economic assets.

Defenders of capitalism as a mode of economic production seem to have largely won that debate. Even if there are some merits to having democratic control over major investment decisions, centrally planned economies where those decisions are made without price signals that come through private investment have largely been shown, both empirically and theoretically, to be inefficient. That is, they fail to adequately fulfill the function of economic activities in the first place, which is, so to speak, to "get the goods": to provide people in the present and in the future with at least reasonably prosperous and stable means to satisfy their needs and desires. Contemporary socialists have largely embraced varieties of market socialism, which allow private investors (via markets) to retain control over how society allocates economic resources, even if the income of such activity is devolved to individuals through non-market means (by being distributed equally, or by non-transferable shares being held by members of the public).² Centrally planned economies have, historically, tended to wield excessive power we may not wish to accord to the

¹Adam Smith, *An Inquiry into the Nature and Causes of The Wealth of Nations*, edited by R. H. Campbell and A. S. Skinner (Indianapolis, IN: Liberty Fund, 1981). This is not to say that economic regulation does not pre-date the development of economic theory. Guilds and state-maintained (or licensed) monopolies have a much longer history. But these were not conducted through *public* policy, so much as through the private contractual rights of monarchs and rulers within a feudal system. Guilds operated through grants by lords or through their town charters, all understood in the feudal political context as extensions of a lord's private political power. State monopolies often operate as private businesses of the head of state—for instance, of the king—and state-granted monopolies, including the ancient practice tax farming (selling the right to collect taxes to private businesses), are a means of raising revenue by privatizing what would otherwise be a state-run monopoly.

²For an overview of the intellectual trajectory of socialism in the twentieth century, see John E. Roemer, "Socialism Revised," *Philosophy & Public Affairs* 45, no. 3 (2017), 261-65.

state, since it appears to be easy to bend such institutions to the will of authoritarian rulers or totalitarian political movements.³

Since the mid-twentieth century, liberals, but increasingly socialists as well, have been concerned with questions of economic distribution. They have been attempting to answer the fairness question: how should the economic product of society (and perhaps the roles undertaken to produce it) be distributed—perhaps consistent with viewing society as a fair system of social cooperation, one in which individuals receive an equal initial resource allotment (accounting for differences in talent), or according to some other distributional ideal?⁴ These are, of course, very important questions. But we seem to have come to something of an ideological impasse with regard to them. Political philosophers, as well as members of the public at large, have different intuitions about what distributions are and are not fair. For instance: it is unfair that the more talented earn more, if their skills are in greater demand?⁵ Is it unfair that some, because of a disability or an unusual psychological disposition for expensive tastes, require greater resources to achieve the same degree of satisfaction as others do?⁶ Should fairness lead us to close inequalities by leveling down those who are unequally well off, even when doing so won't make the disadvantaged better off?⁷ Without suggesting that further work in distributive justice won't yield fruit or is no longer needed, there is room for inquiry into other dimensions of economic justice.

One issue with the focus on questions of distributive justice in contemporary political philosophy is that it becomes largely disconnected from debates in its own intellectual history, or from within those of political economy. For better or worse, millions are still inspired by socialism on the grounds that they

³Authoritarianism, as I will use the term, is the antonym of democracy: authoritarian rulers attempt to usurp control of the government from the public and ignore public feedback mechanisms. Totalitarianism is the excessive limitation of freedom in most domains of social life: restrictions on who can marry, where a person can work, where they can live, and, I would argue, racially-based social caste systems such as segregation in the United States prior to the 1960's, are the tools of totalitarian ideologies. Many authoritarian regimes are also totalitarian, such as the Soviet Union under Stalin. But some authoritarian governments might not be totalitarian, such as benevolent or liberal dictatorships. Conceivably, a totalitarian society could be non-authoritarian, if its interference in everyday life occurred according to the will of its population and it had participatory support from the public. This is perhaps how the Bolshevik Party under Lenin (in which political legitimacy was allegedly grounded in workers' soviets) or the Government of Iran (originally a popular anticolonial movement) have conceived of themselves, although at least the Soviet regime was authoritarian in practice.

⁴John Rawls, *A Theory of Justice*, rev. ed. (Cambridge, MA: Harvard University Press, 1999), 10-15; Ronald Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (Cambridge, MA: Oxford University Press, 2002), 65-119.

⁵G. A. Cohen, *Rescuing Justice & Equality* (Cambridge, MA: Harvard University Press, 2008), 101-06.

⁶On the general problem of converting resources to utility, see Amartya Sen, *Poverty and Famines: An Essay on Entitlement and Deprivation* (New York: Oxford University Press, 1982), 25-30.

⁷For the levelling down objection, see Derek Parfit, "Equality or Priority?" in *The Ideal of Equality*, ed. Mathew Clayton and Andrew Williams (New York: Macmillan Press, 2000), 81-125.

object to the control of society's economic forces by wealthy capitalists. And opponents of socialism are opposed to it, often, on the grounds that socialist societies in practice seem to fail to accord individuals even minimum freedom regarding how to live their lives, including what commodities to purchase, where to live, and what sorts of employment to pursue. Economic conservatives and libertarians still discuss "economic freedom." Wage labor agreements predominate in capitalist societies, that, though much more humane and subject to greater government regulation, follow the same formal structure as those of nineteenth century industrial capitalism. Questions of who should have control of economic resources and what decisions individuals should be free to make with regard to economic activity have never really left the public consciousness, and this is a question at least partly orthogonal to the question of how a society's income or wealth should be distributed.

Even if we were to arrive at an otherwise satisfactory theory of distributive justice, we may wonder if there aren't good grounds to oppose it on the grounds that it imposes objectionable restrictions on individuals' freedom. If, to draw on a (slightly updated) version of Robert Nozick's famous thought experiment, it would be objectionable to say that LeBron James can't charge as much as people are willing to pay him to play basketball and to keep the money they freely give him, then one might doubt the permissibility of redistributive taxation or limits on wage inequality even if one thinks that such policies would better realize a defensible ideal of equality.⁸ If, on the other hand, fairness requires giving investors and workers as close to the marginal product of their work as possible in a competitive capitalist economy, but this results in leaving a majority of workers in a condition of subjugation, then perhaps we should temper our desire to give capitalists their "fair share," and focus instead on widely distributing the freedom of workers to pursue their life projects, develop their productive talents, and exercise agency at their places of employment.

Questions of economic justice, in short, are not exhausted by questions of distributive justice, or by weighing distributive justice against the value of greater per capita income. We may find that the most efficient or fairest set of institutions are objectionably restrictive of individual freedom, or we may find that apparent tensions between freedom and equality in economic matters are merely apparent and not as serious as they initially appear.

⁸Robert Nozick, *Anarchy, State & Utopia* (New York: Basic Books, 1974): 160-64.

1.2. Does the concept of economic freedom do any normative work?

Most theories of justice, especially liberal ones, maintain that freedom is an important ideal. But this is not the same thing as saying that it does important work in a normative theory. One may think that a value is important while denying that it does any justificatory work in a theory: it may be that its importance is entirely derivative upon or reducible to another value or set of values. If whether or not someone counts as free depends on whether they or their choices have some other morally important feature, such as the tendency to promote their welfare or autonomy, then it may be that the fact that freedom tends to promote welfare or autonomy explains why it is valuable. If this is the case, then the real normative work justifying certain commitments in a theory is done at a lower level, and its theory of freedom simply falls out of those lower-level commitments. On this view, while freedom may be important, appeals to freedom are unlikely to resolve any normative disagreements or give us additional insights, since judgments about freedom depend on other, more fundamental, moral issues.

Some theorists hold *moralized* conceptions of freedom. According to these views, whether someone is free depends on some morally-relevant criteria being met. For instance, Locke and Montesquieu both held that liberty is not license—in other words, that being free does not merely mean doing whatever one wants. One is not made less free, on this view, by being unable to do at least some morally impermissible things, such as dominating others.⁹ This is only a partially moralized conception of freedom, because judgments about whether someone is free on this view may also depend on other considerations that do not themselves imply a normative judgment, such as what options are available to them, whether or not their consent is consulted when they act, and whether or not they are able to attain certain resource. Locke's and Montesquieu's respective views are nevertheless partially moralized because they hold that the inability to do something morally illicit—engage in behavior that falls under the description of mere license—does not make them unfree.

Contrast partially moralized conceptions of freedom with fully moralized conceptions. According to a fully moralized conception of freedom, freedom merely consists in achieving some other moral ideal. For instance, according to Epictetus, freedom simply is self-mastery, where self-mastery is a moral notion

⁹John Locke, *Two Treatises of Government*, edited by Peter Laslett (New York: Cambridge University Press, 1988), 270 [II.ii.6]; Montesquieu, *The Spirit of the Laws*, edited by Anne M. Cohler, Basia C. Miller, and Harold S. Stone (New York: Cambridge University, 1989), 155 [11.3].

achievable only by being virtuous and not dependent on one's passions.¹⁰ According to some libertarian theories, to be free requires only that someone's rights—specifically, those recognized by the libertarian political theory in question—are recognized by the state and upheld. On this view, a person is free if she is able to own property, her property rights are stringent and not easily overridden by the claims of others, she has full control over her own body, and any alienation of these rights occurs only because she consented or contracted them away. On this extreme, arguably caricatured, depiction of libertarianism, a person can be free even though she has entered into permanent indentured servitude (so-called “voluntary slavery contracts”), or if she can afford no property and is subject to forcible exclusion by property-owners anywhere she goes. She is free in these cases because her libertarian rights, including to exercise full freedom of contract and to own property, are being upheld, consistent with the property rights of others.¹¹

Partially moralized conceptions of freedom can do justificatory work in a normative political theory, because other moral properties do not make all the difference between whether someone counts as free or not. It may be that the lack of ability to act on licentious desires does not undermine one's freedom, but that having fewer options among the set of permissible (non-licentious) options open to one does. We can then say that it is *ceteris paribus* objectionable to restrict someone's ability to pursue their non-licentious aims without holding that the value of being free consists merely in the value of one's aims. Fully moralized conceptions of freedom, on the other hand, which hold that other moral properties make *all* the difference to whether someone counts as free, cannot furnish independent justificatory work in a normative theory. This is because, according to these views, what makes a person free is also what explains the moral significance of being free. If, for instance, freedom consists merely in self-mastery, then freedom will be morally important if, and only to the extent that, self-mastery is important. If freedom consists entirely in having one's libertarian rights protected, then freedom will owe its entire appeal as a value to the force those rights have over us.

¹⁰Epictetus, *Discourses and Selected Writings*, translated by Robert Dobbin (New York: Penguin Books, 2008), 424 [IV.1]; Wright Neely, “Freedom and Desire,” *Philosophical Review* 83, no. 1 (1974): 32-54.

¹¹For the debate over whether libertarianism implies the validity of voluntary slavery contracts, see Samuel Freedom, “Illiberal Libertarians: Why Libertarianism is Not a Liberal View,” *Philosophy & Public Affairs* 30, no. 2 (2001): 105-51; Peter J. Boettke and Rosolino A. Candela, “Liberal Libertarianism: Why Libertarianism is a Liberal View,” in *The Routledge Handbook on Libertarianism*, edited by Jason Brennan, David Schmidtz, and Bas van der Vossen (New York: Routledge, 2017), 92-107.

Relatedly, theorists may differ regarding what Ian Carter has called the *specific* (or non-specific) *value of freedom*.¹² According to some, freedom as such is not morally important. Rather, it is the freedom to do some specific activities, or to exercise some options, that is important. Is there a loss when Alice is made unable to φ ? According to theories that hold that freedom only has specific value, that depends on the moral value of her φ -ing. To hold the view that freedom only has specific value is to hold the view that freedom is only important insofar as one is free to do specific things that are themselves of value. This is a kind of fully moralized conception of freedom, on the taxonomy I use. On this view, freedom as such does no normative work; rather, the normative work is done by the value of the options one should be free to exercise. A theory of which options it is in one's interest to exercise, or one's welfare, will be what lends freedom its normative importance on this view.

By contrast, one could hold that freedom has distinctive, non-specific value. On this view, one is made worse off in at least some sense by being made less free, regardless of what one is made less free to do. (To allay doubts about measuring or quantifying freedom, say that a person is at least made less free when the set of options available for them to choose is reduced without a corresponding change in the quality or quantity of the remaining options or her degree of preference for them.) One might think that freedom has non-specific value because it has non-instrumental (i.e., final) value. On this view, the value of freedom as such is not grounded in any way on the ends one might pursue. But freedom might have non-specific value without having final value: if it is instrumental to obtaining many different kinds of goods that are themselves of final value, then its overall value need not depend on the value of any one of these. On this view, freedom is valuable in similar way that money is valuable: instrumentally, because both are only valuable in virtue of being useful to pursuing other valuable ends; but non-specifically, since it is since generally better to have more freedom, or more money, rather than less regardless of one's aims or interests, since both are useful for attaining a wide range of final ends.¹³

¹²Ian Carter, *A Measure of Freedom* (New York: Oxford University Press: 1999), 31-67.

¹³The "generally" qualification deserves comment. People can be corrupted by money, so that being given the offer of money might conceivably make them worse off. Offering to pay someone to do something they don't want to do may make it harder for them to exercise their choice not to do the thing. Similarly, people might be made worse off by being given an additional option, if that changes their deliberative costs or their ability to make long-term plans. For instance, a chronic procrastinator may not welcome the option to procrastinate. But this doesn't put pressure on the claim that freedom is *ceteris paribus* better to have more of: being corrupted by money or being given an unwelcome option are cases in which all else is not equal, because it changes the costs or desirability of other options a person can choose. Offering someone money to engage in degrading activity raises the opportunity cost of not being degraded, and offering someone the opportunity to procrastinate raises the difficulty of not procrastinating.

In chapter 5, I argue that freedom has a kind of non-specific value. I also argue that, while acknowledging the importance of freedom, most classical liberal theories have moralized conceptions of freedom, and so freedom does no normative work in justifying their favored conceptions of political justice. This is the sense in which it may be accurate to call this tradition the “liberalism of happiness” in contrast to the “liberalism of freedom” evinced by the Kantian inspired liberalism of Rawlsians.¹⁴

1.3. Three liberalisms: classical liberalism, high liberalism, and libertarianism

This dissertation is a contribution to a conversation primarily between liberals.¹⁵ Specifically, my aims are to analyze a moral issue that classical liberals take seriously, economic freedom, and then to argue that these considerations actually favor egalitarian liberal institutional and policy recommendations. In order to do this, it is important to distinguish classical liberalism from egalitarian or high liberalism. Since the aim of this dissertation is not to respond directly to libertarians, it is also important to explain the distinction between libertarianism and classical liberalism that I will follow.

Intellectual traditions in political thought such as liberalism and socialism can be individuated along a variety of different dimensions. One is according to the underlying moral commitments of the theory, and which considerations it takes as central or important to political justification. For example, perfectionist liberals differ on how they think society ought to be governed, even whether or not certain commitments that are central to other liberal theories—specifically, the idea that political societies ought not to favor any one way of living one’s life over another—are justifiable. But they agree that, fundamentally, the state should uphold certain liberal rights and freedoms in order to promote the autonomy or welfare of members of society (according to a comprehensive conception of what it is to be autonomous or of the good

¹⁴For this distinction, see John Rawls, *Lectures on the History of Moral Philosophy*, edited by Barbara Herman (Cambridge, MA: Harvard University Press, 2000), 366.

¹⁵Why only between liberals? One reason is that differences between liberals and socialists, or perhaps between liberals and republicans, regarding how best to conceive of liberty are vast. Another is that, at least for Marxist-influenced varieties of socialism, they start from very different fixed intellectual points. The Marxist theory of exploitation arguably relies on the labor theory of value, which isn’t widely embraced in mainstream economic theory. Marxist theories of freedom, while instructive as a contrast to liberal theories, rely on a highly perfectionistic conception of the human good: that people conform to their natural state or essence insofar as they live together in communities tied by some form of identity of interest. Liberals get off the boat rather early in these discussions, rejecting the assumption that society ought to be structured around a single controversial conception of a good life (which has its roots in Romantic German thought in the mid-nineteenth century). The reasons to accept or reject this view are largely orthogonal to the reasons to favor one or another liberal theory of economic freedom, so it seems inappropriate to address them here.

I do discuss republican theories of economic freedom, as articulated by Elizabeth Anderson, Philip Pettit, and Nien-he Hsieh, in chapter five of this dissertation. I frame this discussion as answering the question: why not go in for a republican view instead of the account I lay out?

of members of political communities). The idea that the role of political communities is to promote autonomy or welfare (understood in a pluralistic sense) is a moral commitment that defines perfectionist liberalism.

Political traditions may also be individuated according to the institutional structures they favor or the policy recommendations they make. For instance, classical liberalism may be understood as a proposal for a certain kind of political constitution that protects robust property rights and which seeks, insofar as possible, to provide economic goods efficiently through free markets. Sometimes, the policy recommendations seem to be implied more or less straightforwardly by the moral commitments of a tradition, but this need not be the case. Libertarians may support a set of classical liberal institutional recommendations, or they may support more radical redistributive policies as compensation for being excluded from enjoying their right over the natural resources of the earth out of respect for others' property rights. (Views of the latter sort are sometimes called *left-libertarian*.¹⁶) So I will discuss both the normative commitments as well as the institutional recommendations of the three main strands of liberalism I canvas as well as their institutional and political commitments. Figure 1 summarizes the taxonomy I will describe in the next three subsections.

Liberal & Quasi-Liberal Views		
	Moral commitments	Institutional structure
Libertarianism	Self-ownership, side-constraints, inequality mostly unimportant	Minimal state
Classical liberalism	Sufficientarian view of inequality, welfarist	Robust capitalism with a somewhat limited welfare state
Egalitarian liberalism	either inequality is objectionable, or sufficientarian about relational goods	property-owning democracy, liberal socialism, robust welfare state

Figure 1: A summary of the moral commitments and institutional prescriptions of liberal and quasi-liberal theories

¹⁶See, for instance, Peter Vallentyne, "Critical Notice of G. A. Cohen's *Self-Ownership, Freedom, and Equality*," *Canadian Journal of Philosophy* 28 (1998): 609-26.

1.3.1. *Libertarianism*

How to define libertarianism is notoriously contested. Some writers who are sympathetic to the view are wary of what they take to be attempts by its critics to define it in a way that commits it to a lot of normative baggage that makes the view seem less plausible or rationally defensible than it otherwise might be. G. A. Cohen has defined libertarianism as a set of theories that are committed to the self-ownership thesis: that individuals have property rights over their person, including the right to exclude others from the use of their person except by their consent, including the right to alienate it through private contracts as they see fit, as well as claims against the taking of their labor through taxation.¹⁷ Many liberals accept the idea that individuals own themselves in *some* sense. For instance, liberals (along with all other reasonable political theories) reject the idea that individuals can be owned by anyone else. Liberals who are not libertarians may accept the self-ownership thesis, but they may hold that this only means that an individual's basic liberties are recognized in a liberal constitution. In other words, the ideal of self-ownership is the output, not the starting point, for non-libertarian liberal theories. So, in addition to being committed to the thesis of self-ownership, libertarians are committed to something stronger: the view that a person's full ownership of herself has a fundamental justificatory status in a normative political theory. It is not the case that we find out what self-ownership amounts to by doing normative political theory; rather, we start from an already worked-out idea of full self-ownership, and from that we can deduce subsidiary political principles, such as the *prima facie* impermissibility of state coercion without consent or a person's full ownership of her labor.

Theorists sympathetic to libertarianism, especially so-called "right-libertarian" theorists, sometimes charge that the self-ownership thesis is too strong to saddle libertarianism with. Robert Nozick, whose *Anarchy, State, and Utopia* is the *locus classicus* of 20th century libertarianism, only mentions the idea of self-ownership briefly, as a traditional view among classical liberals.¹⁸ Nozick advanced the idea that individuals have fundamental moral rights against coercion and force, and that these rights are side-constraints that can only be overridden when failing to do so would be "catastrophic," or involve the unproductive hoarding of natural resources.¹⁹ On Nozick's view, then, it is not the thesis of self-ownership, but rather

¹⁷G. A. Cohen, *Self-Ownership, Freedom, and Equality* (New York: Cambridge University Press, 1995), 67-72

¹⁸Nozick, *Anarchy, State & Utopia*, 172.

¹⁹See *ibid.*, 180-81.

a stringent conception of individual rights, that is basic in the justificatory structure of libertarianism. So, understood as a set of moral commitments, I will use a somewhat weaker definition of libertarianism: libertarians are committed to the view that a moral notion of self-ownership, or some similarly strong set of moral powers that are supposed to cash out what it means to own one's self, are basic in an overall justificatory structure of the theory, and whichever of these is adopted places substantial constraints on what the state can do with respect to individuals.

Libertarianism can, conversely, be defined as a set of concrete recommendations for how to structure a political constitution. Samuel Freeman has noted five features of democratic constitutions that, he argues, liberals tend to unanimously support: equal rights to basic liberties (such as freedom of speech and conscience), equality of opportunity, the use of markets to allocate resources and a social minimum to distribute resources to the less advantaged, the use of public goods to correct for market failures, and the public nature of political and legal authority.²⁰ Freeman argues that libertarians are committed to rejecting all five of these commitments of liberalism: they reject the equality of basic liberties because they hold that liberties may be alienated (consistent with full self-ownership, which implies the ability to alienate one's rights).²¹ Because they are committed to a stringent conception of property rights, libertarians allow for invidious discrimination by private businesses and reject the use of a social minimum to secure resources for the disadvantaged. They reject the state's financing of public goods through taxation in some cases even when doing so would be economically efficient, since they are committed to the view that most forms of taxation are unjust in light of stringent property rights.²² Finally, Freeman argues that libertarians are committed to rejecting the public nature of political authority, since they view political legitimacy as deriving from a set of private agreements by members of society to submit to the state, reject legislative authority when it would exceed the minimal bounds of libertarian justice, and reserve to individuals the private right to enforce their rights outside of courts. Freeman concludes that libertarians, who are committed to rejecting each of the features he identifies as part of a libertarian constitution, is an illiberal view.

²⁰Samuel Freeman, "Illiberal Libertarians," 108-23.

²¹Ibid., 131-49.

²²There is also a significant strand of libertarian economic thought that argues that deviations from laissez-faire economic policies are never efficient. For instance, many libertarian economists are skeptical of public goods arguments to justify public policies, because they claim that there are few, if any, genuine public goods. See, for instance, Randall G. Holcombe, "Public Goods Theory and Public Policy," *Journal of Value Inquiry* 34 (2000): 273-86.

I do not wish to weigh in on whether libertarianism, understood as a set of moral or justificatory commitments, is compatible with a liberal constitution. What is important for the purposes of the taxonomy I provide here is that Freeman has identified features of libertarianism understood as a set of institutional prescriptions for how society ought to be structured, rather than picking out something fundamental in the justificatory structure shared by libertarians. On the view I sketch here, someone might be a libertarian in the first sense if they accept the principle of self-ownership, but may also not qualify as a libertarian in the second sense if they endorse some of the features of liberal constitutions that libertarians (according to Freeman) reject. For instance, Locke did not accept the view that all rights are alienable, nor did he completely discount the role of the state (or, at least, the law) in providing a basic minimum for members of society.²³ Left-libertarians accept the principle of self-ownership, but also endorse substantial economic redistribution on the grounds that each person has an equal right to the resources of the world and is owed compensation for the initial appropriation of those resources by holders of property rights.²⁴ It is not entirely accidental that libertarians who accept the principle of self-ownership (or a Nozickian theory of side-constraints) also tend to reject redistributive taxation or insist that all rights are alienable, since they derive one's right to own property in external things from one's (absolute) ownership of one's self and treat basic rights as analogous to property rights which can be alienated. These two sets of commitments are related, but their relation is not one of entailment: there is room for libertarians to accept more modest institutional conclusions, and perhaps for someone to endorse any one or all of the features of a libertarian constitution that Freeman identifies without embracing the principle of self-ownership (or some equivalently strong and explanatorily basic set of commitments).

²³For Locke's view that individuals cannot give others power over their own lives, see Locke, 382-83 [II.15]. For the view that individuals are obliged to assist those in extreme poverty, without attaching conditions of servitude, see Locke, 170 [I.4]:

As Justice gives every Man a Title to the product of his honest Industry, and the fair Acquisitions of his Ancestors descended to him; so Charity gives every Man a Title to so much out of another's Plenty, as will keep him from extream want, where he has no means to subsist otherwise; and a Man can no more justly make use of another's necessity to force him to become his Vassal, by with-holding that Relief, God requires him to afford to the wants of his Brother, than he that has more strength can seize upon the weaker, master him to his Obedience, and with a Dagger at his Throat offer him Death or Slavery.

²⁴For a defense of this view, see Michael Otsuka, *Libertarianism without Inequality* (New York: Oxford University Press, 2003).

1.3.2. *Classical liberalism*

It is more challenging to identify a common set of moral premises to characterize views identified as classical liberals. Classical liberalism developed out of the tradition of classical economics and the utilitarian tradition in the eighteenth and nineteenth century, and its historical exponents have tended to assume that efficiency or utility should guide society's selection of economic policies and institutions. The extent to which Adam Smith or David Hume can be assimilated to the utilitarian tradition is debatable: later utilitarians certainly saw themselves as developing and further elaborating ideas they found in Smith and Hume, but it is unclear how close this reading is to their own views. Most early nineteenth century classical liberals at least implicitly assumed utilitarian moral commitments, and many, such as Francis Edgeworth and James Mill, were utilitarian theorists as well as economists.²⁵ Hayek, possibly the most influential classical liberal theorist in the twentieth century, seems to have accepted a version of rule consequentialism: that while individual actions and policies should not be judged on the basis of their social utility, general rules for governing society should be, and that rules which tend to allow individuals to best use diffuse social information for their own and others' good will normally be the best way to structure society.²⁶

One important strand in the moral foundations of classical liberalism is its rejection of the idea of social justice. Hayek famously calls the idea of social justice a "mirage," an unattainable ideal for all-knowing legislators to decide what the right distribution of property or rights are for a society.²⁷ Hayek rejected redistributing wealth or income in order to benefit the less fortunate. Such activities, he thought, would be self-defeating, since they would distort market outcomes and prevent entrepreneurs from using their knowledge to improve society more generally. For Hayek, the idea that legislators—or political philosophers—know what the just or correct distribution of income is at a given time is a fatal conceit: an artifact of incorrectly framing political questions as one of how to engineer a better or more just society rather than articulating general rules of conduct for people to follow. Instead, he thought, we should use the market process to determine the most generally advantageous distribution of economic resources.²⁸

Some classical liberal theorists have more recently embraced the idea of social (or distributive) justice. Instead of accepting the premise that markets tend to generate undeserved economic inequalities,

²⁵Samuel Freeman, "Capitalism in the Classical and High Liberal Traditions," *Social Philosophy & Policy* 28, no. 2 (2011): 25.

²⁶F. H. Hayek, *The Constitution of Liberty*, edited by Ronald Hamowy (Chicago: University of Chicago Press: 2011), 158-59.

²⁷F. H. Hayek, *Law, Legislation and Liberty*, vol. 2, *The Mirage of Social Justice* (New York: Routledge, 1998).

²⁸*Ibid.*, 67-70.

but denying that this is an objection to market society, these classical liberals—dubbed neo-classical liberals by Jason Brennan and John Tomasi²⁹—argue that markets do tend to give individuals what they deserve, or normally produce outcomes that are to the benefit of the least advantaged. David Schmidtz and David Gauthier have argued that markets tend to do a better job than alternative patterns of distribution at giving individuals what they deserve. Gerald Gaus, a social contract theorist, accepts the ideal that the laws and social norms that undergird social institutions (including markets, the law, and the state) should be justifiable to each person in light of the diverse evaluative criteria they apply to determining whether or not a rule is just.³⁰ This imposes at least a minimal reciprocity constraint on the way social institutions are arranged: those who are less advantaged, or who possess a high degree of aversion to inequality, will reject social rules that are clearly to their disadvantage, at least when compared to having no such rule at all with respect to the given question. (As I will argue in chapter 2, Gaus does not draw the potentially egalitarian conclusions that this view may seem to imply for the burdens society imposes on the least advantaged.) Tomasi accepts the basic justificatory framework of Rawlsian egalitarian liberals, but argues that economic liberties should count as basic rights, so that it would be impermissible to violate them for the sake of reducing economic inequality.³¹ Tomasi rejects Rawls’s difference principle—the principle that economic inequalities are justified only if they are to the benefit of the least advantaged—but endorses a distributional adequacy condition on inequalities arising from market distributions. This is essentially a sufficientarian condition that each person have adequate all-purpose means to pursue their projects and exercise some measure of their basic liberties.

A second major moral commitment broadly shared among classical liberals is what Brennan and Tomasi call a *thick conception* of economic liberty.³² Most liberals treat certain rights as *basic*, or fundamental to a liberal constitution. Rights thought of as basic are closely attached to the ideals of citizenship in a liberal democracy. For Rawls, they are necessary for the exercise or development of the two moral powers of political personhood: the ability to form and revise a conception of the good and the ability to possess and act on a conception of justice. For example, liberty of conscience is closely tied to an individual’s

²⁹Jason Brennan and John Tomasi, “Classical Liberalism,” in *The Oxford Handbook of Political Philosophy*, edited by David Estlund (New York: Oxford University Press, 2012), 115-32.

³⁰Gerald Gaus, *The Order of Public Reason: A Theory of Freedom and Morality in a Diverse and Bounded World* (New York: Cambridge University Press, 2011).

³¹John Tomasi, *Free Market Fairness* (Princeton, NJ: Princeton University Press, 2012).

³²Brennan and Tomasi, 115-16.

ability to form and their private religious beliefs, which ultimately bear on what they think is of value in life. For this reason, liberty of conscience qualifies as a basic right.³³ Since John Stuart Mill, however, the dominant strand of liberalism—high liberalism, which I will discuss in the next subsection—has treated economic liberties as non-basic. In *On Liberty*, Mill applies the harm principle (the claim that for the use of political power to restrict individual liberty to be legitimate, it has to be undertaken in order to prevent harm to others) to defend individual liberties of conscience and expression, freedom of religion, and to live one’s life as one sees fit. However, Mill stops short of applying the harm principle to mutually consensual commercial activities, because, he claims, “[t]rade.. is a social act.”³⁴

Classical liberals disagree with this derogation of individual economic rights. According to the classical liberal conception of society, the ability to act on one’s economic information, to express one’s preferences in the market, to own property (including the right to own capital, such as the means of production), the right to exchange one’s labor for an income with few if any restrictions, are elevated to the status of other familiar liberal constitutional rights. Furthermore, these rights are normatively robust, in that they sometimes place limits on what the state may do to pursue other ends, such as promoting equality or the welfare of its citizens. When these goals conflict with a person’s property rights, then at least sometimes, the state is not permitted to act on them. This is not to say that classical liberals can accept any restrictions on economic liberty whatsoever. Just as it is compatible with the liberal conception of freedom of speech to include certain emergency exemptions or, perhaps, restrictions on hate speech, it may be compatible with a robust conception of economic liberty to, for instance, restrict false advertisement, or to tax income for the purpose of providing essential government services, or restrict one’s right to own assault weapons. In chapter 2, I discuss a range of ways to cash out what is involved in having a robust conception of economic liberty.

Neo-classical liberalism can be understood as an updated and somewhat moderated version of the classical liberal intellectual tradition. As such, it is a potentially powerful competitor to the dominant high liberal tradition that I will discuss next. I see the targets of this dissertation as neo-classical liberal theories. Dialectically, my argument aims to show one way in which egalitarian liberalism (a subset of high liberalism) is favorable relative neo-classical liberalism even if the latter can be shown to have an adequate

³³John Rawls, *Political Liberalism*, revised edition (New York: Columbia University Press, 2002), 324-25.

³⁴John Stuart Mill, *On Liberty*, edited by Elizabeth Rapaport (Indianapolis, IN: Hackett Publishing Company, 1978), 94-95.

account of social or distributive justice. This project is an attempt to put (broadly Rawlsian) egalitarian liberalism into dialogue with neo-classical liberalism. So far, that dialogue has been mostly unidirectional, with neo-classical liberals criticizing commitments of egalitarian liberals as being too strong. What is distinctive about neo-classical liberalism is that it acknowledges the importance of issues that high liberals have long thought salient but which earlier classical liberals have long ignored: the ideal of social justice. My dissertation can be read in the same light: as focusing on a moral ideal that classical liberals have long taken seriously—economic liberty—and trying to show how egalitarian liberalism can be understood as embracing a distinctive and morally attractive version of this ideal. Both projects can be understood as advancing a discussion by examining premises and values shared by both sides of the controversy and seeing what follows from it.

1.3.3. High liberalism

High liberals such as Rawls, Freeman, Dworkin, Martha Nussbaum, Amartya Sen, Will Kymlicka, David Estlund, and Joshua Cohen embrace a robust conception of social or distributive justice. On this view, in order for society to be just, it has to provide sufficient all-purpose means to member of society to exercise their basic rights and liberties and enjoy a tolerable degree of welfare or consumption. High liberals disagree about what principle should determine the range of acceptable inequality. Egalitarian liberals hold that there is something presumptively objectionable about social or economic inequality that has to be justified. This is not to say that all social or economic inequalities are unjust according to these views—an inequality may be all things considered justified if its existence is necessary to ensure the protection of basic rights, or if those who are less well off are made better off by the inequality. Non-egalitarian liberals hold that social justice only requires a (relatively high) minimum threshold of the relevant distribuendum be met. For instance, Nussbaum argues that social justice requires that each person be able to exercise their basic human capabilities to a sufficiently high degree. Her view does not require that each person be equally able to exercise their capabilities, an ideal that would be difficult to realize.³⁵

As noted above, high liberals reject a particular robust conception of economic liberty. While high liberals generally accept that there is a presumption in favor of liberty—individuals should be free to act

³⁵Martha Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Cambridge, MA: Harvard University Press, 2006), 71

as they wish so long as there is no reason to restrict their behavior in a given domain³⁶—they do not regard this presumption as being especially stringent with regard to economic activities such as selling one’s labor, owning investment property, or engaging in trade. Mill is identified by Brennan and Tomasi as a point of inflection here: while Mill thought that the harm principle generally forbids efforts to regulate speech and freedom of conscience, he thought it did not extend to economic affairs.³⁷ For example, Mill thought that whether or not prices should be controlled depends on whether doing so would promote welfare, not on a stringent right to engage in mutually-beneficial trade.³⁸ One interpretation of Mill’s claim that trade is inherently social is that economic activity unavoidably impacts the lives of others. Another rationale he may have had in mind is that the liberty to buy and sell at any mutually agreeable price, unlike liberty of speech and liberty of conscience, is not so centrally tied to a person’s ability to develop their own individuality. The reason why Mill thought that, in general, respecting the harm principle would align with the principle of utility was grounded on his conception of the good: for a way of life to be valuable to someone, they must be able to rationally endorse it, which means they must arrive at it through the free cultivation of their personality. Since, Mill thought, full economic liberties are not necessary to develop one’s individual character, they do not have the stringent protection the harm principle accords to non-commercial speech or liberty of conscience.³⁹

Rawls follows this second approach when he claims that economic liberties, unlike familiar constitutional liberties such as freedom of thought and expression, are not constitutionally *basic*, in that their protection is not lexically prior to efforts to satisfying his second principle of justice.⁴⁰ For Rawls, a right is basic, and so affords maximally stringent protection, if it is necessary for the use and development of the two moral powers: the ability to independently form and revise a conception of the good and the ability

³⁶For a statement of this view, which he calls “liberty as such,” see Rawls, *Political Liberalism*, 292.

³⁷Brennan and Tomasi, 116.

³⁸Brennan and Tomasi, 116. Cf. Freeman, “Capitalism in the Classical and High Liberal Traditions,” 30-35.

³⁹This is not to say that Mill would not have thought that economic restrictions never run afoul of the harm principle. For instance, he thought that restricting the sale of alcohol for the benefit of those who would willingly purchase it, and not in order to prevent social harm to others brought about by alcohol, violates the principle. What is important is that, for Mill, the harm principle does not generally apply to all cases of mutually agreed-upon trade in the way that it would, Mill thought, to all potential restrictions of speech.

⁴⁰A demand is lexically prior to another, on Rawls’s theory, when the first demand must be fully satisfied before evaluating a set of institutions according to how well they satisfy the second demand. Rawls thought that it is unjust to fail to protect basic rights and liberties even if this results in more inequality than would be necessary to maximally benefit the least advantaged. In other words, no amount of reduction of economic inequality could justify policies that violate basic rights—with the notable caveat that a degree of social equality is necessary to protect an individual’s basic rights to political participation.

to develop and act on a sense of justice.⁴¹ Freedom of thought and expression is necessary in order to test competing ideas so that one will freely develop an idea of what sorts of things are valuable and worth pursuing. It is also necessary to engage in political participation in a liberal society, and to challenge policies or situations on the grounds that they are unjust. Rawls did not think that the ability to own capital or to retain a large share of one's pre-tax income are necessary to develop and exercise the two moral powers, so these kinds of economics are not, on his view, basic rights. Rawls *did* think that *some* economic liberties were basic rights such as the right to own personal property (a home, a car, etc.) and the right to choose one's occupation.⁴²

A second feature of high liberal theories is that they are committed to a robust conception of social justice which places limits on the degree of social inequality that can persist in a society. A subset of high liberals, *egalitarian liberals*, hold that there are limits on the degree to which the primary distribuendum of social justice—money, resources, primary goods, welfare, or capabilities—may be distributed unequally. For instance, Rawls's difference principle treats inequalities in basic goods (general all-purpose goods with non-specific value, such as wealth, the social bases of self-respect, non-basic rights and liberties) as *prima facie* unjustified, and allows that they may be justified only if they are ultimately to the advantage of the least well-off group. For instance, inequalities in wealth are only justified if members of the least advantaged class is made wealthier (or compensated in some other way within an index of primary goods) than they would be without the inequality.⁴³ Similarly, according to Dworkin's conception of resource egalitarianism, inequalities in economic resources are justified only if they proceed from an individual's choices. Inequalities arising from brute luck—luck that does not result from an individual's choice to take on risk, such as one's genetic endowment, one's parents' wealth, one's race, sex, or gender, etc.—are unjustified on this view.⁴⁴

Some high liberals aren't egalitarians. Like classical liberals, these theories have a sufficientarian standard for the just distribution of the relevant distribuendum. However, high liberal sufficientarians tend to argue that the relevant social minimum should be higher, and indexed functionally to an egalitarian ideal such as equal participatory citizenship. Moreover, most high liberal sufficientarians don't think that

⁴¹Rawls, *Political Liberalism*, 325-31.

⁴²Ibid., 298.

⁴³Rawls, *Theory of Justice*, 65-70.

⁴⁴Dworkin, *Sovereign Virtue*, 73-83.

resources—such as wealth, level of available consumption, etc.—are the appropriate distribuenda for assessing whether a given level of distribution meets the sufficientarian standard.

Nussbaum and Sen are among the most prominent high liberal sufficientarians. They are most well-known for defending the capabilities approach to distributive justice. According to this view, there are certain functionings that constitute a (partial) theory of the good for members of contemporary modern societies. A functioning might include being healthy, practicing a religion, or engaging in political participation. On this view, distributive justice requires that each person have sufficient resources to be able to exercise a high degree of functioning with regard to the relevant list of capabilities. According to Sen's approach, which capabilities are to be guaranteed by a social minimum should be decided democratically.⁴⁵ Nussbaum, by contrast, provides a list of capabilities.⁴⁶

Notably, the capabilities on Nussbaum's list tend to have one of two features. Some are not highly scalar. While it is true that one can be more or less healthy, health as a good tends to be valued as a non-scalar condition: people tend to value being healthy, not being as healthy as possible. Other capabilities tend to be positional goods: goods whose value depends on how (equally or unequally) they are distributed. For instance, social respect is partly a positional good: for one person to command a great deal of respect—the ability to insist that others stand when they enter or leave a room, or bow to them in deference—others must be able to command less social respect.⁴⁷ Things like titles of nobility depend for their value on the fact that most people don't possess them. Providing a sufficient level of social respect would require,

⁴⁵ Amartya Sen, "Human Rights and Capabilities," *Journal of Human Development* 6, no. 2 (2005): 157-60.

⁴⁶ Nussbaum, 76-78.

⁴⁷ As Steven Darwall points out, there are two senses of "respect": recognition respect and appraisal respect. Steven Darwall, "Two Kinds of Respect," *Ethics* 88, no. 1 (1977): 36-49. Recognition respect involves being recognized as a holder of some status, such as being a parent or being a human being. The most general sense of recognition respect, recognizing reciprocal obligations to someone else in virtue of their humanity, is what is captured in the moral ideal of respect for persons. But, sometimes, we respect people for how well they do at something. To say, "I respect her as a parent" might mean simply that one recognizes that the person in question is entitled to be treated as a parent of their children in good standing; but the person who utters it may be more naturally taken to mean that they judge that the person is a particularly good parent, worthy of admiration. These two senses of respect can come apart: it's possible to have recognition for someone as a parent, for instance—acknowledging that they and only they are entitled to make parental decisions regarding their children—without having appraisal respect for them—if, e.g., one thinks that they are a bad parent.

The respect involved in social respect and mutual recognition among citizens in a democratic society is a form of recognition respect: recognition of one's mutual obligations as members of a shared society and political system. This need not be positional: each person can be respected equally, and the value of this respect does not diminish when others are respected in the same way. However, there are positional forms of recognition respect: having *more* recognition respect than other members of the same society involves being recognized as their social betters. This is the kind of respect aristocrats and nobility sometimes command, but it is also sometimes suggested in capitalist societies that business leaders—"makers," rather than "takers"—merit the same recognition of higher social status. This good can be scalar: social hierarchies involve nested systems of recognition respect. But it *is* scalar: the only way to occupy a higher status than someone else is for them to occupy a lower status.

among other things, not having a caste or class system in which one group of people, either through merit or circumstance of birth, can command the social deference of others. So while the standard of assessing whether a positional good like social respect is sufficientarian, not egalitarian—it matters that each person has enough of it, not that it is distributed equally—ensuring that each person has enough of it will require not having large inequalities of that good, because one person or group’s having a great deal of social prestige or respect will tend to come at the expense of the value of that good to others. The fact that a good is (partly or wholly) positional imposes a rough egalitarian constraint on its being distributed sufficiently.

Classical liberals, by contrast, tend to be sufficientarians about the overall level of resources available to a person. On this view, what matters is not that the gap between the income or wealth of rich and poor is narrowed, but only that the poor have enough income or wealth. By having a broader conception of the relevant distribuendum to include things like the ability to influence or be consulted for political decisions or social respect, sufficientarian high liberal theories will tend to favor much less economic or social inequality than sufficientarian classical liberals.

Because high liberal theories tend to favor a higher degree of social equality, they tend to be ambivalent about capitalism, a social system which can produce nearly unlimited inequalities. Some high liberals, such as Dworkin, favor using capitalist markets to allocate resources, with a substantial welfare state to adjust for inegalitarian market outcomes. Notably, John Rawls argued that capitalist societies, both in their unchecked, *laissez-faire* form as well as when paired with a functioning welfare state, are not candidate forms of social organization for a just society. According to Rawls, this is because capitalist societies do not even aim to secure the fair value of political liberty: because they are compatible with unlimited inequalities of wealth and income, perhaps only with a social minimum doled out to the poor, they will generate substantial inequalities in the degree to which members of society can effectively engage in political participation. Throughout his career, Rawls maintained that two kinds of arrangements of society’s economic structures are potentially just: liberal socialism, in which the state at least maintains beneficial ownership of major economic sectors (the “means of production” or the “towering heights of the economy”), and property-owning democracy. The substance of the latter idea is contested, in part because, unlike socialism and capitalism, no large political community has tried to arrange itself as a property-owning democracy. The most important feature of a property-owning democracy is that it places significant limits

on the degree of inequalities of wealth—especially intergenerational wealth—that accrue in society. Suggested features of property-owning democracy include policies such as progressive wealth taxation, the state guarantee of basic goods such as healthcare and education, basic income, reducing as much as possible the real risk-free return on capital (so that all profits from owning capital come from socially useful entrepreneurial speculation instead of rents collected from pure ownership), support for worker-managed firms and labor-capital partnerships, and limits on the market power of corporations. Property-owning democracies, however, are not socialist societies: private individuals retain both control rights and, to some degree, income rights from owning capital.

In this dissertation, I will take property-owning democracy as the institutional arrangement characteristic of high liberalism. While not all high liberals advocate a radical restructuring of society's economic institutions—and while some argue we should go even further and embrace liberal forms of socialism—few normative high liberal theories render the verdict that a property-owning democracy would fail to realize their favored theories of justice. In chapter 6 of this dissertation, I substantially expand on the idea of property-owning democracy.

1.4. Institutions as the appropriate level of analysis

A pessimistic Rawlsian, steeped in neoclassical economic theory, might conclude that, while capitalist economies fail to do a decent job at satisfying the two principles of justice, they do a better job than any alternative. Given certain (arguably implausible) empirical assumptions, the least advantaged group in society *will* do better in a more-or-less free market than they will under any alternative arrangement. And while capitalist societies fail to do a particularly good job at ensuring the fair value of political liberties, if one is sufficiently pessimistic about the prospects of social arrangements with less stringent protections for private property and more state intervention in the economy to avoid capture by powerful interests and the creation of a class of administrative elite that grew under the Soviet Union, one may think that, unfortunately, capitalism is as good as it gets when it comes to political participation.

Likewise, someone reasoning from libertarian first principles might conclude that a truly just society would need to resemble socialism much more so than the laissez-faire capitalism usually advocated by proponents of this view. Under most libertarian theories, contemporary property rights derive their legitimacy from an unbroken chain of entitlement-preserving exchanges tracing back to permissible orig-

inal appropriation of unowned resources. But it's not clear that the actual history of property follows any recognizable libertarian pattern. In fact, it is reasonably clear that it does not: almost any property right today can be traced (in relatively few steps) to some illegitimate appropriation violating the rights of others according to libertarian (or any other) theory. For example, in the United States, it is impossible to disentangle most property, including equity in firms and household wealth, from the legacy of slavery, unequal civil rights afforded to African Americans, or to the forcible appropriation of land from Native American groups. Even if breaks in the chain of justifiable transfer of property—each break being a rights-violation—can be dismissed, the original acquisition of property is similarly morally suspect. Actual human beings, in settling the globe, did not follow anything like an “as much and as good” proviso for the appropriation of the fruits of the Earth that is supposedly held in common by each person. Some left-libertarians make a great deal of this fact, arguing that, because the conditions of appropriating unowned resources were not (or could not) be satisfactorily followed in the original acquisition of property, everyone retains a residual right over the resources that have been appropriated by others without their consent. According to some left-libertarian theories, this residual right justifies some form of beneficial ownership of those resources, such as substantial redistribution of wealth resulting in the profit from (otherwise unjustly owned) resources. Alternatively, some left-libertarians, Georgists, hold that all land should be held in trust by political bodies, who should then charge maximally high rents on land-“owners,” and then redistributing these rents to each person on a per capita basis.

Both of these proffered examples are cases in which a theory's moral foundations are at odds with its institutional recommendations. If the argument ultimately goes as described in the first example, then Rawlsians should be reluctant capitalists, conceding to classical liberals that their institutional recommendations were sound even according to Rawlsian principles. In the second example, if the line of reasoning offered there is sound, then libertarians should be reluctant socialists in at least some sense: even according to libertarian principles, the ownership of property turns out to be a way for exploiters to collect rents unjustly, and the appropriate (or only feasible) way to correct for this is to redistribute those rents through taxes and direct transfers.

There are two ways to interpret those cases dialectically—to “keep score,” so to speak, in a long-running intellectual debate. According to one view, we should think of normative political theories as

only being committed to a set of basic moral principles. We should think of the possible vindication of Rawlsian moral commitments while conceding left-liberal politics as no longer an active option—not the option most Rawlsian political philosophers hope for, obviously, but still not fatal to their position. And a version of libertarianism that favors a much more expansive degree of economic redistribution than is usually thought of as acceptable to their view would still be a victory for libertarianism: understood as a set of fundamental moral commitments, libertarianism turns out to be correct, but this requires a substantial alteration of what we normally think of as libertarian institutional recommendations. I will call this response the *narrow commitment thesis*.

Alternatively, we may apply what I will call the *expanded commitment thesis*. According to this view, it is a powerful internal critique of a political theory to show that its fundamental moral principles are at odds with its institutional recommendations. On this view, political theories are not just sets of fundamental normative principles. They also imply views about what sorts of social arrangements would be just according to any extensionally adequate theory of justice—what Rawls calls “fixed points” in our moral judgments that we are keen on seeing our moral principles accommodate.⁴⁸ On this view, if Rawlsians find out that Rawlsian principles vindicate an unequalitarian social arrangement such as capitalism, they are definitely in trouble. Perhaps they should respond by giving up their entire view, or by rethinking their fundamental moral commitments in order to realize their goal of articulating principles that characterize a society as a fair system of social cooperation between free and equal members. Similarly, to show that libertarian ethics are at odds with libertarian politics as traditionally construed is to show that there’s something wrong with libertarian thought. While some theorists have embraced the mantle of “left-libertarianism,” and even identify similarities between their views and traditional “right-” libertarian theories, it’s worth noting that the term “left-libertarianism” is a relatively recent one, coined by Cohen to describe the view we are led to if, according to him, we respond to the tensions in libertarian thought.

In this dissertation, I will assume that the extended commitment thesis is correct. The basic structure of the argument I give in it is that a moral consideration classical liberals take seriously at least partly serves to vindicate egalitarian liberal institutions. This serves, I think, to highlight a tension in classical liberal

⁴⁸Rawls, *A Theory of Justice*, 18.

thought, not to strengthen it by arguing its institutional recommendations are less inegalitarian than once thought.

Of course, someone who embraces the narrow commitment thesis may see things differently. They may seek to score points elsewhere, by arguing that this approach vindicates a moral commitment classical liberals have long taken seriously and egalitarian liberals have been slow to recognize. In some ways, this has been the line taken by neoclassical liberals in response to the dominance of high liberalism for the past half-century in American political thought. According to the narrow commitment thesis, the embrace of the ideal of social justice by neoclassical liberalism shows that it is a more formidable and hard-to-argue-with position than the less nuanced classical liberalism of Hayek and Milton Friedman. High liberals cannot bludgeon neoclassical liberalism with examples of property-less individuals starving to death or children being denied healthcare because their parents lack insurance. On the extended commitment thesis, though, these are concessions: it turns out that dogmatic classical liberalism was wrong to ignore some issues of social justice. In this dissertation, I argue that it has also been wrong to ignore the various ways that capitalist institutional structures make us unfree.

CHAPTER 2 : COERCION AND MARKETS

A classical liberal constitution protects stringent, wide-scope economic liberties—including the right to own property in capital and robust rights of private contract—treating these as on par with other basic rights and liberties. This political arrangement does not attempt to reduce or prevent vast inequalities of wealth or social status, even if these lead to inequalities of political power. Proponents of classical liberalism sometimes claim that classical liberal political institutions do a better job of protecting individuals from coercion than more egalitarian alternatives, such as socialist or social liberal constitutions. In this paper, I argue that since the protection of private property rights imposes potentially high coercive costs on individuals who are unequally badly-off, some protection against inequality is necessary to protect individuals from coercion. I then develop an account of economic freedom consistent with the motivations of classical liberalism, and argue that it favors a more expansively egalitarian political constitution.

In the first section of this paper, I discuss the features common to classical liberal constitutions. In section two, I present and respond to Hayek’s argument that a classical liberal constitution provides each individual with the broadest sphere of freedom possible by minimizing coercion. In section three, I respond to Gaus’s argument that a classical liberal constitution is the only constitution capable of being justifiable to each member of the moral community in light of the costs of coercion associated with taxation and economic redistribution. In the fourth section, I sketch an account of egalitarian economic freedom, in which economic freedom depends on the quality and availability of options to avoid coercive sanctions associated with property rights.

2.1. Classical liberalism and thick economic liberties

By “classical liberalism,” I refer to a tradition in normative political economy that stretches from Adam Smith and David Hume to twentieth century thinkers such as Hayek, Gaus, Milton Friedman, David Gauthier, and John Tomasi. In *The Wealth of Nations*, Adam Smith describes three roles of the state in what he calls “a system of natural liberty”: to provide national defense; to protect, “as far as possible, every member of society from the injustice or oppression of every other member of it”; and to provide public works which “can never be in the interest of any individual, or small number of individuals, to erect and

maintain.”¹ A classical liberal constitution, as I will refer to it here, shares many features with other liberal constitutions: a commitment to guaranteeing equal rights to basic liberties, equality of opportunity (even if merely formally codified into law), the use of markets to allocate economic resources, and the provision of public goods by the state.² What distinguishes a classical liberal constitution from alternatives favored by more egalitarian forms of liberalism—such as those recommended by social or “high” liberalism—is its commitment to a thick conception of economic liberty.³

In a thick conception of economic liberty, such as the one defended by Tomasi, particular economic liberties are elevated to the status of basic constitutional rights alongside those of freedom of conscience, religious liberty, and political rights. A liberty is “thick” insofar as it has a wide *scope* (i.e., it applies to a wide range of activities), it is *stringent* (so relatively difficult to override), and it is *integrated* within a broader scheme of basic rights. Following John Nickel, Tomasi lists a range of economic liberties which classical liberals are committed to recognizing in this way: the liberty of *labor* (i.e., to use one’s body and time for productive activity), the liberty of *transaction* (i.e., to trade with others and manage one’s own economic affairs), the liberty of *holding* (i.e., owning) property, and the liberty of *using* what one owns both for personal consumption and productive activity.⁴ According to a thick conception of these liberties, they have a wide scope, i.e., their range of application is broad; they are difficult to override even when doing so might promote economic efficiency or distributive fairness; and they are tightly integrated into a general scheme of constitutionally recognized rights, such as freedom of religion or rights governing political participation. For instance, a wide scope of the liberty to hold property guarantees that citizens may own shares in capital and large firms (the “means of production”), while a wide scope of the right to transact freely guarantees employees and employers the right to individually negotiate the conditions of their labor without restrictions imposed by the state. According to classical liberals, these rights are stringent in the sense that they are not easily overridden by considerations of political equality or social justice. Tomasi argues that the economic liberties should be considered as fundamental as other basic rights

¹Adam Smith, 687-88 [IV.ix.51].

²Cf. Freeman, “Illiberal Libertarians,” 108-23. Freeman also includes the provision of a social minimum and the public use of political power (i.e., that the state has a fiduciary duty to represent the interests of members of society). I have omitted these because they are not directly relevant to my argument here.

³Tomasi, 22-26 & passim.; Brennan and Tomasi, 115-32.

⁴Tomasi, 24-25. Cf. James W. Nickel, “Economic Liberties,” in *The Idea of Political Liberalism*, edited by Victoria Davion and Clark Wolf (Lanham, MA: Rowman & Littlefield, 2000), 156-57.

and political liberties, and, in a broadly Rawlsian framework, he argues that they should be lexically prior to other considerations of justice, such as distributive justice. Like political liberties and rights to freedom of thought and expression, Tomasi claims that economic liberties are integral to the capacity of individuals to be authors of their own lives.⁵ Other classical liberals have argued that the protection of property rights is essential to protecting other basic political rights: according to James Ely, James Madison and other constitutional framers saw property rights as “the guardian of every other right.”⁶

Under a classical liberal constitution, the state may attempt to provide a decent social minimum, but it does not aim specifically to curtail economic inequality. Many classical liberals are opposed to addressing social inequality at all. Hayek devoted the second volume of his systematic work of political philosophy, *Law, Legislation, and Liberty*, to arguing against what he called “the mirage of social justice,”⁷ by which he meant attempts to use legislation to reduce social inequality. Others, whom Jason Brennan and Tomasi describe as “neo-classical liberals,” claim to share a commitment to social justice and economic equality with high liberals such as Rawls, Ronald Dworkin, Martha Nussbaum, and Will Kymlicka. However, because the thick conception of economic liberty restricts how economic justice may be pursued, what the state can do to promote economic equality is constrained. For instance, redistributive taxation appears to conflict with individuals’ right to hold property, while minimum wage and collective bargaining laws limit the rights of workers and employers to transact freely.⁸ Many neo-classical liberals support a weaker sufficientarian requirement for distributive justice. On this approach, a classical liberal society is not just if it fails to provide each person with a minimum adequate degree of material wealth to be authors of their own lives and to pursue their own good in their own way. This is compatible with unlimited inequalities in wealth, income, social class, and other goods. Note that this account of classical liberalism is distinct from libertarianism (see sections 1.3.1 & 1.3.2).

As I noted in the previous chapter, classical liberalism differs from high liberalism in that the latter view includes specific provisions for social equality. One form of high liberal constitution is what Rawls calls a *property-owning democracy*. In a property-owning democracy, the state guarantees equal rights to

⁵Tomasi, 215-16.

⁶James W. Ely, *The Guardian of Every Other Right: A Constitutional History of Property Rights* (New York: Oxford University Press, 1992).

⁷Hayek, *The Mirage of Social Justice*, vol. 2 *Law, Legislation, & Liberty*.

⁸Tomasi, 216.

basic liberties, including some economic liberties such as the right to manage one's economic affairs and the right to own personal property. However, the right to own large holdings of wealth, or to own stock in corporations or the means of production, will not be guaranteed as constitutionally basic. A property-owning democracy, unlike liberal forms of socialism, still uses markets to allocate investment capital. It does, however, contain specific provisions to limit significant inequalities of wealth. In a property-owning democracy, large inheritances would be taxed, and large holdings of wealth might be taxed at a progressive rate.⁹ The state may have inducements for those with less wealth and income to save and invest, and it may also direct subsidies to worker-managed firms as an alternative to labor arrangements negotiated between owners and workers.

Classical liberal theorists offer different justifications for incorporating a thick conception of economic freedom into a political constitution. Tomasi argues that the economic liberties are essential for self-authorship, so that each individual is able to pursue her own good in her own way.¹⁰ Some classical liberals argue that free markets with minimal intervention will best promote welfare, while others argue that allowing additional state intrusion into the economy will inevitably lead to corruption and political capture by industry. In the next two sections, I discuss one particular strand of argument for a classical liberal constitution central to economic freedom as a moral ideal, which is that a classical liberal constitution best protects members of society against coercion.

2.2. Hayek and legislative coercion

For Hayek, a free society is a spontaneous order in which individuals impose coherent and rational patterns on to their own actions. According to Hayek, an individual is free when she is not subject to coercion by the arbitrary will of another.¹¹ On this view, coercion “occurs when one man's actions are made to serve another man's will, not for his own but for some other's purpose.”¹² He distinguishes co-

⁹John Rawls, *Justice as Fairness: A Restatement* (Cambridge, MA: Harvard University Press, 2001), 138-40. Though his comments in this later work are brief, Rawls later makes clear that he intended his discussion of a non-socialist alternative for realizing the conception of justice he lays out in *A Theory of Justice* to refer to the idea of property-owning democracy and not to a version of the welfare state. See Rawls, *A Theory of Justice*, xiv-xvi & 242-51. For discussion of the institutions of property-owning democracy, see J. E. Meade, *Efficiency, Equality and the Ownership of Property* (Cambridge, MA: Harvard University Press, 1965), chapter V. For a detailed contemporary discussion of property-owning democracy, see Alan Thomas, *The Republic of Equals: Predistribution and Property-Owning Democracy* (New York: Oxford University Press, 2017).

¹⁰Tomasi, 94-95.

¹¹Hayek, *The Constitution of Liberty*, 210.

¹²*Ibid.*, 133.

ercion from the direct application of force or violence, though both are wrong.¹³ According to Hayek, only threats—specifically, threats of bodily harm with the intention of bringing about compliance with a directive—constitute instances of coercion.¹⁴

Essential to Hayek’s conception of coercion is the distinction between general rules of conduct and directives specifying concrete actions from particular persons according to the will of a legislator. According to Hayek, general rules are far less coercive, “[i]n that they tell me what will happen *if* I do this or that, the laws of the state have the same significance for me as the laws of nature.”¹⁵ Hayek’s idea seems to be that the natural consequences of one’s actions, such as injuring oneself when one jumps from great heights, can be serious, but they aren’t coercive or objectionable limits on one’s behavior, since they are familiar parts of life that affect everyone. They form the background conditions against which individuals live their lives and form their plans—gravity forecloses some logically possible ways of life, or makes some dangerous—and so do not interfere with a person’s aims in a way that limits their freedom. On the other hand, particular directives aimed at bending one’s behavior to another’s will are interferences with a person’s plans, and so are (at least *pro tanto*) objectionable. Hayek claims that coercion by the state is only justified when it creates general stable expectations against which people can form their plans of life and freely pursue them.¹⁶

Hayek is not very specific about what makes a directive a demand on a particular set of individuals in a way that would violate the generality constraint on rules of conduct. He claims that taxation and compulsory military service impose demands on particular individuals.¹⁷ But this is puzzling, because legislation enacting these requirements normally specifies who they apply to in general terms (e.g., everyone over a certain income, all permanent residents who reach the age of 18, etc.). The important distinguishing feature here seems to be the will of a legislator. In critiquing what he calls “social justice,” Hayek claims that it amounts to “a demand that members of society should organize themselves in a manner which makes it possible to assign particular shares of the product of society to the different individuals or groups.”¹⁸ Legislation aimed at securing a fairer economic arrangement than what would otherwise arise under free markets becomes a political “tug of war for shares of the income pie” between competing interests in so-

¹³Ibid., 199-200.

¹⁴Ibid., 200.

¹⁵Ibid., 210.

¹⁶Hayek, *Law, Legislation, and Liberty*, vol 3, 135 & passim.

¹⁷Hayek, *The Constitution of Liberty*, 210.

¹⁸Hayek, *Law, Legislation, and Liberty*, vol. 2, 64.

ciety, each aiming to impose their will on others through majoritarian political power.¹⁹ For this reason, Hayek concludes that “all use of coercion to assure a certain income to particular groups (beyond a flat minimum for all who cannot earn more in the market) [must] be outlawed as immoral and strictly anti-social.”²⁰

Attempts to ensure fair equality of opportunity fare little better in avoiding the imposition of objectionable coercion according to this view. While Hayek accepts that providing education and healthcare for those who cannot afford them may be justifiable expenditures by the state, he claims that real (i.e., not merely formal) equality of opportunity, understood as more or less equivalent chances for each person to attain the same careers and similar social status, would require equalizing each person’s starting position and compensating for any handicaps they might have by burdening the talented.²¹

According to Hayek, what is supposed to distinguish general rules of conduct from particular directives by legislators is that the former are both normally avoidable and predictable while the latter are not. One can avoid being coerced at all because one can simply avoid being in a position to which those rules apply: “[p]rovided that I know beforehand that if I place myself in a particular position, I shall be coerced and provided that I can avoid putting myself in such a position, I need never be coerced.”²² Even some particular requirements, such as taxation or a draft, are predictable, and so less coercive, because a person can form their plan of life around those rules in a way that would be impossible under *ad hoc* directives from legislators.²³

As Arash Abizadeh points out, Hayek’s claim that avoidable consequences are not coercive conflates the threat of harm by the state with the harm itself. The point of coercion is to induce compliance with a coercer’s directives, which allows the person being coerced to avoid being sanctioned. So the bad consequences of most coercive directives are designed precisely to be avoidable—indeed, to be *avoided*, by acting

¹⁹Ibid., vol. 3, 150.

²⁰Ibid. Hayek thinks that a flat minimum of income support is justified, not out of considerations of social justice or economic activity, but as a form of social insurance for all members of society. Hayek suggests that such a mandatory social insurance scheme is justified in order to prevent mass discontent among the disaffected so as to ensure social order. See *ibid.*, 55.

²¹Ibid., vol. 2, 85. Here, Hayek seems to conflate real equality of opportunity with strict equality of opportunity, that each person has exactly equal chances of achieving a certain outcome. There are, however, standards of equality of opportunity which fall short of strict equality of opportunity, yet are more robust than merely formal equality of opportunity as Hayek understands it, viz., equality under the law. I will not pursue this point further here.

²²Hayek, *The Constitution of Liberty*, 210.

²³Ibid.

as the coercer wishes. Draconian sanctions are avoidable if one simply does what those who threaten them wish, but this does not make them less coercive.²⁴

In any case, there is no reason to think that promoting economic justice through legislation can never be achieved through general rules of conduct. Taxation is predictable, since tax rates are publicized and widely-known. Normally, taxes are generally applicable, in that they define for each person how much of their pretax income they will be able to retain and how much they owe to the state. One wishing to avoid the sanctions associated with not paying their taxes could simply pay them. One wishing to pay less in taxes could earn less, or save more to offset higher tax rates. Since taxation, even redistributive taxation, is generally applicable, predictable, and avoidable, it seems no less coercive than other similar laws on the view of coercion Hayek sketches.

Hayek argues that progressive taxation fails the generality constraint because it violates the principle of “equal pay for equal work,” since it assigns rewards to particular persons for the same activities on the basis of their income levels.²⁵²⁶ But even a flat tax can be used to promote substantial economic equality when paired with a progressive transfer program. This is because the progressivity of an overall system of taxes and transfers depends on what the money is used to pay for, and how much people at different levels of income pay for it. The US, for instance, has a highly progressive tax code, but its overall income transfers are not very progressive at all. Taxation is used to fund the military and to subsidize benefits that largely redound to middle-income earners. Many Western European countries, by contrast, have flatter tax schedule because they derive a large percentage of revenue from value-added taxes (VATs), which, like sales taxes, are regressive (since the poor spend a higher percentage of their income than the rich). But Western European countries tend to have much more progressive transfer schemes, such as universal healthcare and benefits for the unemployed, and so tend to have overall tax-and-transfer schemes that promote greater income equality. A flat tax is compatible with a highly progressive transfer system: suppose that the state imposed a 50% tax on all income, but used it to fund direct cash transfers to the least advantaged in order to raise the income of those less advantaged. This is at least a candidate policy mechanism to promote greater

²⁴Arash Abizadeh, “Democratic Legitimacy and State Coercion: A Reply to David Miller,” *Political Theory* 38, no. 1 (2010): 124.

²⁵Hayek, *The Constitution of Liberty*, 316-17.

²⁶As I use the terms here, a tax is *progressive* insofar as it collects a higher percentage of the pre-tax income of those with higher incomes, and a tax is *regressive* insofar as it collects a higher percentage of pre-tax income from those with lower income.

economic equality. So even if Hayek is correct that only flat taxation satisfies the generality constraint, this is compatible with a range of policy options to promote equality.²⁷ Transfers, on the other hand, are benefits, not sanctions, so they cannot be coercive: one cannot normally “threaten” someone with a potential benefit such as income subsidies.²⁸ And it is unlikely to help Hayek if we imagine that his objection to progressive taxation extends to the entire tax and transfer system, taken together, so that if progressive or flat taxes fund progressive transfers, then this amounts to objectionable coercion. It would be very difficult to engineer the entire schedule of taxes and benefits so as to be distributively neutral. This would likely require substantial intervention by state planners to anticipate what kinds of income effects particular forms of general taxation might have, and require them to make targeted compensation policies to those made worse off. This is unlikely to be less coercive than progressive income redistribution through taxes and transfers.

It is also difficult to see how generality *per se* tends to make requirements less coercive than requirements which include exceptions. A socialist society might have a general rule barring any ownership of capital. Intuitively, and given Hayek’s other political commitments, this should turn out to be more, not less, coercive on his view than a tax policy aimed at limiting the aggregation of capital in the hands of a few wealthy people. But the socialist rule against owning capital is general and predictable: someone wishing to avoid coercion according to this rule could simply avoid hiring a lot of people or producing commodities. This does not seem to make it less coercive than legislation preventing certain kinds of capital ownership, such as private ownership of banks or railroads. So generality and predictability are doing less work here in showing why some laws are more coercive than others than Hayek seems to think.

Hayek thinks that making questions of economic redistribution and social equality subjects of legislation will make citizens subject to the political whims of those in power, making the rules of society and

²⁷Monica Prasad and Yingying Deng, “Taxation and the Worlds of Welfare,” *Socio-Economic Review* 7, no. 3 (2009): 431-57.

²⁸Possibly, one could argue that progressive transfers are *throffers*, i.e., offers that are conditional upon the recipient performing some desired action. In this case, these are implied threats to withhold benefits that one would normally receive or be entitled to unless one performs a requested action (e.g., “I’ll toss you a life raft if you agree to transfer the deed to your house when you reach the shore”). The idea would be that the state is threatening to withhold benefits from higher-income people unless they earn less. This seems like an implausible route of argument, though: it’s not the will of legislators that people earn less, and progressive transfers aren’t designed to coerce people to earn less. Throffers may sometimes exist with respect to social benefits. For instance, the US Supreme Court ruled in *Wyman v. James* (1971) that welfare agencies may withhold family assistance benefits unless recipients consent to warrantless searches. This potentially subjects beneficiaries of government benefits to a high degree of coercion by the state, and so (I suggest, but will not argue here) is at least *pro tanto* objectionable. But this is an argument against attaching behavioral conditions to the receipt of state benefits, not against making them progressive.

the market order more arbitrary in manner that is characteristically coercive. One response to this claim, which I will not discuss in great detail here (see ch. 6), is that vast inequalities of wealth tend to increase the incentives of unscrupulous politicians to be captured, so that they would tend to pass legislation that promotes the interests of particular individuals who lobby to them and who fund their campaigns. Another response, which I *will* pursue here, is that the thick conception of economic liberties favored by a classical liberal constitution allows private individuals to make others subject to their arbitrary will. Property rights come with the power to legally enforce sanctions: the right to exclude carries with it a right to have the police forcibly prevent others from using one's property or arresting them when they attempt to. Firms with a high degree of market power can impose coercive demands on consumers and employees.²⁹ For instance, the only employer in town potentially wields a great deal of control over the lives of working adults and those dependent on them, since they lack other potential employers to bargain with.

Hayek anticipates this line of objection, but he thinks private economic coercion is less likely or objectionable than legislative coercion. In an ideally competitive market, individuals do not have monopoly or monopsony powers over anything anyone else wants.³⁰ As such, they do not have a strong bargaining position to use their legal rights of property to threaten others, since those they wish to threaten could find someone else to trade with. Hayek notes that the state has much more effective power to carry out threats that actually set back the interests of the party being coerced than participants in free and open markets. In a competitive market, it is not really a threat to me for you to say that you will not hire me unless I do something you want me to do, because if I do not like your terms I can seek employment elsewhere. However, I cannot choose to ignore the state's threats and deal with someone else. So Hayek thinks that while corrupt legislation can successfully subject those subject to it to the arbitrary will of another, strong property rights under free market conditions generally cannot.³¹

²⁹A seller possesses market power to the extent that, when it raises prices, it does not experience a corresponding drop in demand. An employer has market power in the labor market to the extent that, when it offers a lower wage or other undesirable working conditions, it does not see a corresponding drop in the number of workers seeking employment. See Jan De Loecker and Jan Eeckhout, "The Rise of Market Power and the Macroeconomic Implications," National Bureau of Economic Research Working Paper 23687 (August 2017), available online at <http://www.nber.org/papers/w23687>; Cf. Joseph E. Stiglitz, *Rewriting the Rules of the American Economy: An Agenda for Growth and Shared Prosperity* (New York: W. W. Norton & Company, 2015), 19.

³⁰A *monopsonist* is the sole purchaser of a good or service, such as the only employer in town.

³¹See Hayek, *The Constitution of Liberty*, 135-37.

The problem with this argument is that it only works in ideally competitive markets. But no actual market is ideally competitive. The power to threaten is a scalar relationship between two parties. Someone's power to economically threaten another person by withholding something the other person depends on is 0 in a fully competitive market, since potential customers or employees could safely ignore the threat and effortlessly find someone else willing to trade the same thing at the market rate. Conversely, the threat potential of someone who has absolute monopoly rights over something necessary to the survival of another person is 1, because they can exclusively decide if the person receives something necessary for their survival. (Imagine the coercive power the person who owns the only watering hole in the desert for hundreds of miles has over the traveler who would die of thirst if denied a drink.) In all actual markets, the threat potential of the property rights each member holds is somewhere between 0 and 1. That it is more than 0 in any actual market with imperfect competition suggests that, at least to some extent, legally recognized property rights allow individuals to impose their wills in a way that Hayek would recognize as coercive.

Hayek could respond by claiming that while the threat potential of property rights would only be 0 in ideally competitive markets, the threat potential of property rights under actual more-or-less competitive markets would tend to approach 0. One reason to think this is that entry and investment into profitable industries, such as those in which present companies receive monopoly rents, would be highly profitable.³² This may be true to some extent, but such societies would need substantial legal intervention to remain competitive. For instance, such a society would need laws preventing particular individuals or groups from attaining monopolies or leveraging market power to place barriers to entry by competing firms. And it would need an extensive regulatory regime to prevent ownership rights over natural monopolies from being used coercively. Hayek recognizes the need for modest anti-monopolistic legislation.³³ But such legislation requires restricting the scope of full private property rights. It requires legislation to prevent exchanges that result in one person acquiring the sole means of producing some important good, or it requires legislation restricting how a monopolist may use her property rights. While Hayek allows that

³²That is, instead of conceiving of actual economies as outside of equilibrium, because some market participants have market power, markets should instead be viewed as a process that takes place over time that tends to reduce monopoly rents. Contemporary defenders of more or less laissez-faire markets have argued that this was the vision of early classical liberals. See, e.g., Frank M. Machovec, *Perfect Competition and the Transformation of Economics* (New York: Routledge, 1995), 157-58.

³³Hayek, *The Constitution of Liberty*, 381-83. Hayek, however, thought that labor unions were a particularly troubling form of monopoly.

legislation restricting private market activity is sometimes justified to control monopoly formation, this is not a rare exception to the state's policy of economic non-interference, but instead a general problem of preventing too much economic power to fall under the control of any arbitrary will.

Even under decently competitive conditions, the power of someone to threaten others by exercising their economic liberties also depends on the bargaining position of those subject to their threats. If someone is very poor, or has such a limited set of opportunities open to them that they are only able to obtain a very low wage for their labor, then they are liable to be subject to arbitrary demands of the economically powerful even if others are able to trade with them. They may be unable to purchase what they need from anyone willing to sell at the market price. As such, they are subject to potentially exploitative proposals from anyone willing to provide them with goods they cannot do without. In order to prevent legal power from being used by particular individuals to make others serve their interests or arbitrary will, each member of society must have a range of opportunities available as well as an adequate social minimum. Since there is no guarantee that the spontaneous order of a free market will provide these for each person, there is a strong presumption for some legislation restricting private market activity, alongside laws restricting monopolies. So even if legislative capture is a real worry in a redistributive state, some form of limits to thick economic liberties and economic redistribution is justified in order to limit the coerciveness of the private property system.

2.3. Public reason and the public justifiability of coercion

Public reason theories maintain that, in order to be justified, laws must be publicly justifiable to those who are subject to them. Most public reason theories are broadly Rawlsian, in that they maintain that reasonable persons (or persons otherwise suitably qualified) form an overlapping consensus regarding a family of publicly-affirmed principles of justice from which legislators and judges can draw on to confer legitimacy on constitutional provisions and pieces of legislation.³⁴ Gaus has provided a compelling alternative account of public reason, according to which members of society converge on a set of social moral rules which they each have sufficient reason to comply with, given their diverse standards for evaluating rules. According to Gaus's account of public reason, members of a moral or political community do not form a consensus around a public conception of justice according to which they assess political proposals. In-

³⁴Rawls, *Political Liberalism*, 2005)

stead, they evaluate legislative proposals, as well as changes to other social rules, according to their private standards for evaluating rules, which may be religious, perfectionist, or illiberal. One advantage Gaus suggests to this approach is that, unlike Rawlsian consensus theories, it does not require individuals to refrain from assessing legislation and other applications of political power according to their deeply-held private moral standards. Instead, they must simply be willing to arrive at rules they and others can agree to live by.³⁵

According to Gaus, social morality is the subset of morality which licenses individuals to issue commands to one another insisting on certain kinds of treatment characteristic of social cooperation (such as refraining from violence, keeping one's agreements, accepting impartial dispute resolution, etc.).³⁶ On this view, a rule is eligible for inclusion in the "eligible set" of social-moral rules when each person subject to it has sufficient reason to follow its directives. Someone has sufficient reason to accept a rule just in case they, suitably idealized, would actually support it after applying a decent but realistic amount of good reasoning.³⁷ Specifically, Gaus claims that members of the public should not reject rules because of mere errors of reasoning, or on the basis of evaluative standards others find unintelligible.³⁸ (This second condition is supposed to rule out monomaniacal or eccentric bases of rejecting social rules, such as the overwhelming desire to count blades of grass or future Tuesday indifference.) For Gaus, a rule is eligible for inclusion within social morality if and only if it is preferable to each member of the public over having no rule at all regarding the relevant domain, and if it is not strictly dominated by any other alternative rule.³⁹ The set of eligible rules will likely include more than one possible system of social morality. According to Gaus, each person would have sufficient reason to follow the demands of rules that pass this text if they were the operative social rules in a given society. Determining which among the eligible sets of rules a society should adopt is a social coordination game, Gaus thinks, but any result will be acceptable given that it will be publicly justifiable.⁴⁰

³⁵Gaus, *The Order of Public Reason*, 38-42. It is debatable whether allowing members of the public to assess social rules or principles of justice according to their private evaluative standards is a virtue of a theory of public reason. One might think that the point of having a theory of public reason is to have a theory of *shared* reasons, rather than of the convergence of private reasons on a particular social-moral order.

³⁶*Ibid.*, 1-14.

³⁷*Ibid.*, 26.

³⁸*Ibid.*, 279-83; 244-51.

³⁹*Ibid.*, 323.

⁴⁰*Ibid.*, 395-97.

Gaus rejects the holistic approach of applying the public justification test to entire proposed systems of social morality taken as a whole.⁴¹ Such a test would likely yield a Hobbesian result: nearly any complete set of social rules is preferable to having no system of social morality at all, if that means being entirely unable to demand that others conform to set standards of behavior to facilitate social cooperation. Instead, Gaus's approach to public deliberation follows an order of justification. First, he thinks that members of the public would establish rules protecting fundamental values of agency. Among those would be basic rules against interference and coercion. Initially, members of the public agree to a right against coercion understood as a right against having threats made against one's natural person, such as threats of violence.⁴² Later in the order of justification, once a scheme of property rights has been settled, the social rule forbidding coercion extends to threats against one's justified property rights: to threaten to destroy someone's property becomes a threat against their person.⁴³ The idea behind having an order of justification is that it allows members of the public to settle urgent moral matters necessary for social cooperation before moving on to more complex issues. Otherwise, it would be difficult to conceive of them bargaining about how to organize law or the state without having settled rules outlining what basic moral rights they have against coercion.

Law and legislation comes later in the order of public justification than rules protecting against coercion and interference with property rights. Once a prohibition against coercion and a penumbra of rights extending beyond one's natural person have been established, members of the public will be aware of the potentially high coercive costs of legislation. Not only will each law need to be justifiable to each person, but its benefits must be judged by each person to outweigh its coercive costs. According to Gaus, high rates of taxation will impose increasingly higher coercive costs on individuals, since they are burdensome and the costs of failing to comply with them are high.⁴⁴ Additionally, Gaus thinks that members of the public will recognize basic facts about history and political science, and will realize (if they apply a suitable amount of good reasoning) that societies with robust protections for thick economic liberties do a better job at preventing political oppression than socialist societies. Though some members of the public might prefer a more egalitarian state, Gaus thinks that these individuals will prefer the laws in a classical liberal

⁴¹Ibid., 272-75.

⁴²Ibid., 352.

⁴³Ibid., 317-18.

⁴⁴Ibid., 500-01.

society over no comparable protections at all, while classical liberal members of the public will prefer no rules regarding redistribution of the economic product over rules mandating redistributive taxation.⁴⁵ So while it is not a necessary truth that members of the public will converge on a classical liberal constitution, Gaus thinks that the requirement that coercive laws be publicly justified favors the less expansive classical liberal state.

Here, I will raise three objections to Gaus's argument that a classical liberal constitution imposes lower coercion costs than more egalitarian alternatives.

First, Gaus is not clear whether he intends the rule against coercion to apply against all threats against the natural persons of others or their property, or only threats that are normally thought to be morally wrong to make. According to Alan Wertheimer, *A* successfully coerces *B* to do *X* only if: (i) *A* makes a proposal that creates a choice situation in which *B* has no reasonable alternative but to do *X*, and (ii) *A* is wrong to make such a proposal.⁴⁶ Call a theory that holds that condition (ii) is a necessary condition of coercion a *moralized* conception of coercion, and a theory that does not a *non-moralized* conception. Gaus is not clear whether his conception of coercion is moralized or not. If his account of coercion is non-moralized, then it's unclear why a rule against coercion understood in this way would be justifiable to all members of the moral community. If, prior to settling on property rights or a legal order, someone else depends on me allowing them to use my body, it would be rational for me to insist on being able to withdraw that permission at any time, even if this threat compelled them to do things I wanted them to do. For instance, I might insist on retaining the right to not work without better compensation from my employer. This is a threat which could, conceivably, be difficult to refuse. If I have a rare skill set, it may be unreasonable for a potential employer to refuse my offer. Still, in many cases, intuitively, this will not be objectionable unless there is some moral reason why the person I am threatening is entitled to my services (at a price they're willing to pay). In any case, it is unlikely that each member of the public will have sufficient reason to accept a rule against making threats of refusing to work without greater compensation. So it seems likely that a rule against non-moralized coercion would be rejected. On the other hand, if only proposals which are morally indecent for some reason besides their coerciveness (in the non-moralized sense) are prohibited by a rule against coercion, then coercion itself does no work in showing why the costs of

⁴⁵Ibid., 500-06

⁴⁶Alan Wertheimer, *Coercion* (Princeton: Princeton University Press, 1987), 172

particular legislative proposals are justified or unjustified. They only impose coercion costs if the state's threat of sanctions is itself unjustified for some other reason. Gaus would need another argument to show why it is indecent for the state to propose coercing people to fund, e.g., redistributive economic policies. Given that the point of Gaus's approach is to ground a moral rule against coercion without appealing to some set of moral rules antecedently understood to be correct, it seems unlikely that the rule against coercion he proposes, which comes early in the order of justification, would be agreed to if it has controversial implications such as limiting the state's power to levy taxes.⁴⁷

Second, Gaus's order of justification seems to lean heavily on agenda setting which artificially favors a particular outcome, viz., classical liberal institutions. Gaus's argument is essentially that, while classical liberals will reject moral rules calling for a more economic redistribution than found under a classical liberal constitution, high liberals would at least agree to classical liberal distributive rules over no rules at all, so a more expansive state than a classical liberal one is not publicly justified. According to this way of framing the choice situation, high liberals who prefer a state with narrower economic liberties but greater protections against poverty and social inequality are offered a Hobbesian bargain: choose between the classical liberal set of economic rules or no set of economic rules—an economic state of nature. On the other hand, classical liberals who favor a thicker conception of economic liberties, but who aren't particularly concerned about robust protections against economic inequality, are offered the Liberal bargain: choose between the institutions favored by high liberals or those favored by classical liberals. Hobbes drives a harder bargain than the liberals. This is only the choice situation because areas in which classical liberals favor more expansive rules than do high liberals, such as property rights, are settled earlier in the order of justification. But this seems like a reason that won't stand as a public justification: we agreed to the classical liberal's favored set of rules earlier, so now the classical liberal doesn't have to consider further, more expansive, proposals. While there may be reasons for ordering deliberation about social rules and legislation in Gaus's theory, this is not a feature of his view which would seem to demonstrate to those who disagree the justifiability of a controversial claim about how society ought to be structured (viz., to

⁴⁷Gaus's account of public reason is supposed to tell readers what social-moral rules are broadly acceptable to impose on each member of society. Coercion comes early in the order of justification; we settle rules against coercion before settling rules against, say, property rights or other higher-level social-moral rules. The theory would have to already have an account of which kinds of threatening proposals constitute genuine coercion, i.e., which are unreasonable to refuse or wrong to make, in order for Gaus to appeal to a moralized conception. But his theory lacks the resources to make such a distinction. Instead, his theory, which presupposes an account of coercion, is supposed to provide guidance in how to make such distinctions.

the liking of classical liberals). So it undercuts the motivation for Gaus's account of public reason to rely heavily on this feature of his view in order to defend a controversial substantive position.

Third, as noted in the previous section, the legal enforcement of property rights themselves are coercive, and this coerciveness is acutely felt by less advantaged members of society. Legally recognized property rights give owners the ability to threaten non-owners, since owners can, for instance, evict their tenants—even for failing to acquiesce to an unreasonable proposal—and have the police forcibly remove them if they resist. Even informally, property rights exert coercive pressure. The owner of a mine who is the only employer in town can expect a degree of deference to his every request, since his great economic power implies a threat to others who have no other employment options.

How coercive a proposal is when it is backed by potential legal sanctions depends on the amount and quality of options available to the person being coerced. Hayek's defense against the claim that property rights are coercive involved pointing to the ability of consumers and employers under competitive markets to deal with others instead of being subject to the arbitrary will of a particular owner. But, as noted above, the ability of someone to avoid coercion depends on their bargaining position. A very poor person has fewer quality options available to reduce the threat of coercion from other's application of their economic liberties. As G. A. Cohen has argued, wealth is a defeater of economic coercion, since it gives those who have it the means to pay for alternative options.⁴⁸ The person without a home is subject to coercion from all sides, liable to harassment by the police if they sleep in a public park or on someone's door stoop. The person with sufficient economic resources can evade this coercion because they can rent a hotel room. To lack of wealth is a necessary condition of one way of being unfree, because it leads to individuals being unable to reject the coercive proposals from property owners. Substantial poverty and economic inequality place the least advantaged in a condition of unfreedom with respect to owners. So even if high liberal proposals, such as highly redistributive taxation, impose high coercive costs on those with wealth, public reason's purported tilt in favor of classical liberalism is illusory, because the coercive costs of property rights are also very high in the absence of guarantees of an adequate social minimum and some degree of equality of wealth.

⁴⁸G. A. Cohen, "Freedom and Money," *Revista Argentina de Teoría Jurídica* 2, no. 2 (2001): 8-13.

2.4. Egalitarian economic freedom

Economic liberty is a moral ideal. It is valuable to have and dear to lose, even if there is some disagreement about how it should best be understood. Classical liberals normally understand promoting economic liberty as involving the guarantee of stringent, wide-scope versions of the economic liberties listed in section 2.1. But as I noted in the previous two sections, the exercise of economic liberties can impose enormous coercion costs if individuals lack sufficient bargaining power to turn down coercive offers.

The economic liberties elevated in a classical liberal constitution are usually understood as negative liberties—freedom from interference when, for instance, acquiring property or transacting with others. But as David Schmidtz, Brennan, and Tomasi have observed, what makes this conception of economic liberty attractive is that it accords individuals positive liberty: freedom to pursue projects central to their plan of life and to have a wide array of means to do so.⁴⁹ Conversely, having general all-purpose economic resources, such as wealth, accords one a kind of negative liberty against interference from property owners with one's choices, since it gives one a wider range of high-quality options to avoid a condition of unfreedom resulting from having a weak bargaining position vis-à-vis others with whom one transacts. It is essential to the classical liberal explanation for why their robust account of economic liberties promotes positive liberty that they allow individuals to avoid economic dependency by removing barriers to transactions.

This suggests that, underlying the classical conception of economic freedom is a view that having a favorable and legally protected bargaining position allows one to avoid being in a condition of unfreedom, since it gives one options to avoid the coercive economic threats of would-be monopolists or rent-seekers so as not to be subject to their arbitrary demands. According to this conception of economic freedom, one is economically free if, and insofar as, one has numerous, high-quality options, since this allows one to avoid coercive economic threats. Since it underlies the classical liberal story for why its conception of economic liberty enhances individuals' positive liberty, this conception does not beg the question against a classical liberalism or its institutional recommendations.

But unlike the allegedly thick classical liberal conception of economic freedom, the conception of economic freedom developed here does not stack the deck against high liberalism. In fact, it has potentially

⁴⁹Brennan and Tomasi, 120-21.

radically egalitarian implications. The elevation of economic liberties in a classical liberal constitution subjects those with limited options to a high degree of coercion. In order to reduce the coerciveness of a classical social order, wealth would need to be widely distributed. A society in which some people are subject to a great deal of coercion and others have a wide range of high-quality options is not very free, because many of its members experience a condition of unfreedom. The degree of egalitarian economic distribution on this view depends on what level of inequality of economic freedom is morally acceptable. Since economic freedom depends on one's bargaining power relative to others, it is a relational good. Applying a maximin rule to how economic freedom is distributed may push the distribution of non-relational goods such as wealth closer to equality, since inequality of wealth tends to make individuals potentially liable to economic domination by others. On the other hand, a sufficientarian conception of economic freedom would require only that each person have an adequate array of options available to prevent economic domination. This may still require a substantially more equal distribution of resources than guaranteed by a classical liberal constitution, since the bargaining power of market participants cannot be too great if those with the least amount of bargaining power are going to have many options at all.

That a satisfactory conception of economic freedom requires a substantially more equal distribution of economic resources than is guaranteed under a classical liberal constitution does not automatically show that this constitution should be rejected. It is possible that relatively free markets in which a thick conception of economic liberty is guaranteed actually does best at ensuring a wide range of high-quality options are available to the least advantaged. Additionally, it is not clear that redistributive taxation or protections against monopoly power really constitute violations of one's economic liberties. If that is the case, then a classical liberal constitution coupled with robust economic redistribution and some means of limiting inequalities of market power might do an adequate job of protecting economic liberty. But this brings a classical liberalism closer to high liberalism, and undercuts the motivation for arguments that attempts to redress inequalities of income are excessively coercive.

2.5. Conclusion

Classical liberalism has a robust conception of economic liberty. As explicated by Tomasi and Brennan, "economic liberty" is best understood as a countable noun: a classical liberal constitution protects expansive versions of rights such as economic liberties such as freedom of contract or the ownership of private

property, from coercive interference. In this chapter, I have argued that classical liberals are correct to identify the coercive interference in individual's private economic decisions are worth reducing. It is not obvious, however, that the best way to do this is by shielding economic liberties from regulation or limiting their scope. As theorists since at least Proudhon have observed, private property rights can be enormously coercive, as can bargaining terms set by employers with enormous market power.

In *Political Liberalism*, Rawls includes what he calls a narrow conception of the right to private property among the basic liberties which receive priority on his account of justice as fairness. The narrow scope of private property includes the right to own personal property. It excludes rights he associates with two distinct wider conceptions of the right to property: the right to acquire ownership over the means of production and to acquire through bequest; and the right to democratic participation in decisions regarding the use of the means of production. While degrees of both wide conceptions of property rights may be recognized in some just societies, Rawls argues that they should not be considered constitutionally basic, because they are not necessary for the development of exercise of the two moral powers he associates with equal citizenship: the ability to independently form and revise a conception of the good and the ability to act on a conception of justice.⁵⁰ This limited role for economic liberties in political liberalism has led some to claim that egalitarian liberalism as explicated by Rawls and others derogates the role of economic liberty in its conception of justice.

In this paper, I have tried to show that this need not be the case. To the contrary, there is good reason to think that egalitarian liberal institutions would do a better job at limiting economic coercion. I have examined two strategies for arguing that a classical liberal constitution is justified because it is the best way to protect members of society from coercion. While stringent, wide-scope political liberties do play a role in protecting some members of society from coercion, the best way to reduce the costs of coercion is to give members of society a wide range of high-quality economic options so that they are not subject to the coercive threats of others.

⁵⁰Rawls, *Political Liberalism*, 298.

CHAPTER 3 : DO MARKETS GIVE US WHAT WE DESERVE?

The notion that justice requires giving people what they deserve is perennially attractive, though it is sometimes contested a complete conception of justice. Liberals on both the right and the left have often been critical of using desert as a basis for justifying any particular distribution of income or wealth in a society. Rawls called it “one of the fixed points of our considered judgments that no one deserves his place in the distribution of native endowments, any more than one deserves one’s initial starting place in society.” “Thus,” Rawls concludes, “the more advantaged representative man cannot say that he deserves and therefore that he has a right to a scheme of cooperation in which he is permitted to acquire benefits in ways that do not contribute to the welfare of others.”¹ Hayek, sharing a similar sentiment, wrote that “the idea that we have morally deserved what we have honestly earned in the past is largely an illusion,” since, as he argues, markets tend to reward people differentially for unknowable and undeserving misfortune or good luck.²

This uneasiness with the concept of desert, however, seems to put liberalism at odds with everyday commonsense morality. Samuel Scheffler observed in the early 1990s that liberal politics have come under sustained assault by conservatives and others precisely because liberalism is at odds on this point with everyday notions of personal responsibility. In the realm of criminal justice, it sometimes treats those charged with criminal wrongdoing as victims of social or psychological forces beyond their control. And left-liberal theories of economic justice appear to treat a person’s relative position in society as a morally arbitrary fact about them, even when this seems to others to be the result of talent and hard work.³ Insofar as philosophical liberalism is continuous with, or aims to contribute to, liberal politics of some kind, being at odds with people’s deeply held notions of desert and responsibility risks the theory’s institutional proposals leaving us cold, of it failing to adequately respond to what we take to be the moral import of our own actions or characters. Ceding the language of desert may also be politically dangerous, since it gives illiberal actors a monopoly on an idea that can be used to convince those dissatisfied by social change

¹John Rawls, *A Theory of Justice*, 104.

²F. A. Hayek, *Law, Legislation, & Liberty*, vol. 2, 94.

³Samuel Scheffler, “Responsibility, Reactive Attitudes, and Liberalism in Philosophy and Politics,” in *Boundaries and Allegiances: Problems of Justice and Responsibility in Liberal Thought* (New York: Oxford University Press, 2001), 17-29. Scheffler’s essay first appeared in *Philosophy & Public Affairs* 21, no. 4 (1992): 299-323.

that they deserve their relative social and economic advantages over others and that these things are being wrongly taken away from them.⁴

The ambivalence 20th-century liberals felt toward desert-based claims for economic fairness is surprising, given how much 19th-century social thought centered around the extent to which individuals' economic contributions merit receiving a certain income. Many classical political economists accepted the labor theory of value, the canonical version of which holds that the market value of some commodity depends on the units of labor (of average efficiency and productivity) needed to produce it. David Ricardo, who accepted what some have called a 93% labor theory of value (the other 7% of value being accounted for by increases or decreases of wages in a normal market, affecting relative prices),⁵ thought that money paid to landlords on the basis of land scarcity was a form of economic rent, and thought that it tended to vary inversely with the wealth of society.⁶

While Ricardo was not interested in arguing that other people deserved landlords' share of the national income, the idea that most of the income paid to landlords was not the result of a genuine economic contribution they've made, but rather a fee they charge because they have cornered a scarce good, land, was historically influential in rejecting the notion that the landed aristocracy deserved a particular level of income to be supported by price protections. Marx took the labor theory of value a step further, and argued that only labor makes a contribution to the value of some commodity, since commodities are merely congealed labor.⁷ On this view, the incomes both capitalists and landlords receive are exploitative economic rents that deprive workers of the value of their contribution to the economic product.⁸

In the latter half of the nineteenth century, marginalism displaced the labor theory of value. According to marginalist product theory, the product of an input (land, labor, or capital) is equal to the increase in output of an additional unit of that input. According to marginalist price theory, the price of a good or service will tend to be equal its marginal product, viz., to the increase in utility of an additional unit

⁴See, for instance, Donald Trump and Dave Shiflett, *The America We Deserve* (Los Angeles: Renaissance Books, 2000).

⁵George F. Stigler, "Ricardo and the 93% Labor Theory of Value," *American Economic Review* 48, no. 3 (1958): 357-67.

⁶David Ricardo, *On the Principles of Political Economy and Taxation*, vol. 1 of *The Works and Correspondence of David Ricardo*, ed. Piero Sraffa (Indianapolis, IN: Liberty Fund, 2004), 67-84.

⁷Karl Marx, *Capital*, vol. 1, trans. Ben Fowkes (London: Penguin Books, 1990), 130.

⁸For a helpful discussion of this issue, see G. A. Cohen, "The Labor Theory of Value and the Concept of Exploitation," *Philosophy & Public Affairs* 8, no. 4 (1979): 341-44 & 353-56. Cohen argues that the Marxist argument that profits are exploitative can be better formulated by giving up on the labor theory of value. He thinks that labor produces commodities, not value, and that only labor does this. Income from mere ownership is not a kind of productive activity, so it is exploitative of others' labor.

of that product to the highest bidder. Departing from theories of economic value held by earlier classical economists, marginalists argue that capital (including machinery, warehouses, land improvements, etc.) makes a non-zero contribution to the production of market value, since the increase in output of an additional unit of capital to production will normally be greater than zero. The labor theory of value, by contrast, implies that labor produces *all* of the value in the economy: if a firm employs 100 workers of relatively indistinguishable skills and productivity, performing the same tasks, then, according to the labor theory of value, each worker's contribution is $1/100^{\text{th}}$ of the output of the firm. According to marginalist product theory, by contrast, the value each worker produces is the added productivity of the 100^{th} worker (how much more the firm would produce with 100 workers rather than 99), which will very likely be less than $1/100^{\text{th}}$ of the output of the firm if there are diminishing marginal returns from employing additional workers, and should be (in an ideally competitive labor market) equivalent to what it would cost to hire the 100^{th} worker. For theorists who accept the assumption, shared by Marx, that everyone deserves to be paid for the value they produce (and is exploited if they are paid less than that value), marginalist product theory supplies a necessary premise to the conclusion that capitalists deserve the returns on their capital investments, since it implies they are making a genuine contribution to society. J. B. Clark summed up this view as holding that "what a social class [viz., workers, capitalists, or landlords] gets is, under natural law, what it contributes to the general output of industry."⁹

Some philosophers writing recently have made arguments that support the view that relatively unregulated markets distribute income and positions in ways that tend to give us what we deserve. Jan Narveson and N. Scott Arnold have both defended the view that capitalists deserve their market-generated profits because their activity contributes to the value of economic activity.¹⁰ Arnold has additionally argued that buying and selling capital goods fulfills an important social function of providing price information, and that this also grounds desert claims to profits from arbitrage.¹¹ Gaus, following Lawrence Becker's interpretation of Locke, has argued members of society have pre-institutional claims to deserve ownership rights

⁹John B. Clark, "Distribution as Determined by a Law of Rent," *Quarterly Journal of Economics* 5, no. 3 (1891): 312-13.

¹⁰Jan Narveson, "Deserving Profits," in *Profits and Morality*, ed. Robin Cowan and Mario J. Rizzo (Chicago: University of Chicago Press, 1995), 48-87; N. Scott Arnold, "Capitalists and the Ethics of Contribution," *Canadian Journal of Philosophy* 15, no. 1 (1985): 87-102.

¹¹Arnold, "Why Profits are Deserved," *Ethics* 97, no. 2 (1987): 387-402.

over things that they have produced.¹² Finally, Schmitz has defended the idea that markets are imperfect talent-seekers that tend to reward people meritocratically on the basis of desert, and that a society that benefits the least advantage will be one that gives them the opportunity to have their merits recognized.¹³

This chapter has two aims. First, I respond to the neoclassical liberal desert-based arguments mentioned in the previous paragraph. Second, I develop an account of desert for egalitarian liberals that both rejects the notion that there are pre-institutional desert claims in favor of significant economic inequalities, and attempts to accommodate what I take to be a credible worry that liberalism requires us to give up our everyday intuitions about economic desert. In the first section of this chapter, I discuss some basic conceptual distinctions from the literature on desert. The important claims that I make here are (i) that desert claims can be bound to deserving contexts such as institutions; (ii) that desert is a kind of relation of fit, as distinct from directed deontic duties such as entitlements and obligations; and (iii) that the concept of desert is not essentially comparative, but that the idea of distributing according to desert is. In section two, I respond to the neo-classical liberal arguments for desert listed above.

3.1. The concept of desert

In this section, I discuss three disputed conceptual features of the concept of desert: its logical structure, the distinction between desert and entitlement, and whether or not desert is an essentially comparative notion. Many authors make unstated assumptions about these contours of our concept of desert, and it is worth making them explicit before considering substantive arguments in the next section.

3.1.1. *The adicity of desert*

Joel Feinberg famously claimed that desert essentially involves a three-place relation between a person who has a desert claim, an object or treatment that this person deserves, and the basis on which they deserve it.¹⁴ Other authors have suggested, following Feinberg, that this means that “deserves” is a triadic predicate, taking three arguments.¹⁵ On this view, all desert claims use the following schema: x deserves y in virtue of

¹²Gerald Gaus, *Value and Justification* (New York: Cambridge University Press, 1990), 409-16.; Lawrence C. Becker, *Property Rights: Philosophic Foundations* (London: Routledge & Kegan Paul, 1977).

¹³David Schmitz, *Elements of Justice* (Cambridge: Cambridge University Press, 2006), 120-25 & 191-94.

¹⁴Joel Feinberg, “Justice and Personal Desert,” in *Doing and Deserving: Essays in the Theory of Responsibility* (Princeton, NJ: Princeton University Press, 1970), 61.

¹⁵Owen McLeod, “Contemporary Interpretations of Desert,” in Louis J. Pojman and Owen McLeod, *What Do We Deserve? A Reader on Desert and Justice* (New York: Oxford University Press, 1999), 61-62; Serena Olsaretti, “Debating Desert and Justice,” in *Desert and Justice*, ed. Serena Olsaretti (Oxford: Oxford University Press, 2003), 4.

z , where y is a *desert* and z is what desert theorists call a *desert-basis*. Much of the literature on desert follows Feinberg in treating desert as a three-place relation, and focuses on the sorts of things—acts, character traits, intentions, abilities—that can constitute appropriate desert-bases for different kinds of deserts: income, grades, prizes, etc.

This issue of how many parameters the relation “deserves” takes is sometimes called the *adicity* of desert. As Fred Feldman notes, however, it is arbitrary to say that desert claims are fully semantically specified by reference to these three places, since often additional factors can be part of the truth conditions of certain desert claims.¹⁶

For instance, we might think that desert claims may be indexed to a particular set of norms or rules that make up a *deserving context*. Suppose that Joe works for an organized crime syndicate. He shows a high degree of dedication, effort, and success at racketeering. Meanwhile, another member of the syndicate, Frank, is uninterested in his duties and performs poorly, but is the boss’s nephew. Intuitively, we might say that if an open position comes up within the syndicate, Joe deserves a promotion, given the context that he and Frank are members of a crime syndicate. He certainly deserves one more than Frank does. The basis for Joe’s deserving a promotion is his hard work within the organization and dedication to its mission. However, outside of the context of a crime syndicate, we do not recognize things such as success at racketeering as legitimate desert-bases. If we take morality or the social or legal norms of his society into consideration, we might say that Joe instead is more deserving of censure or punishment than Frank, in virtue of his zeal and hard work in committing crimes. Being a better racketeer makes Joe less, not more, morally deserving of good things. We can specify the idea of a *desert-context* to make sense of our conflicting intuitions about the use of “desert” in these cases: Joe deserves a promotion within the context of the crime syndicate, and that he deserves criminal penalties in the context of society’s broader moral rules. Adding a contextual parameter would change the adicity of desert; adding it to Feinberg’s schema would make it a four-place relation, instead of a three-place one: x deserves y on the basis of z in context c (or according to set of rules r , etc.).

¹⁶Fred Feldman, *Distributive Justice: Getting What We Deserve from Our Country* (New York: Oxford University Press, 2016), 36-42. A term is fully semantically specified by n places if its truth value is a function of those n arguments. The examples in the following paragraph are supposed to show that some desert claims can require additional arguments to determine its truth value.

There are other possible parameters to desert we may consider that go beyond Feinberg's schematization that I will mention briefly. We may think that desert contains a temporal element, according to which x deserves y at time t in virtue of z . The fact that I've helped you in the past when you've needed it may dictate that I deserve similar treatment from you—not now, when it is not particularly important that I receive assistance, but specifically at a time when I really need help. (So, desert-claims may have the form: x deserves y in virtue of z in context c at time t .) Alternatively, we may think that desert claims are directed toward some particular agent who is charged with fulfilling the desert claim. If you've helped me, you may think that it's not enough that someone else helps you on my behalf in the future. You may think that you deserve *my* help. So the appropriate schema might be: x deserves y from A in virtue of z in context c at time t .

Understood as a semantic claim that the term “deserves” is a three-place relation, Feinberg's proposed analysis of desert is contestable. However, it is useful in characterizing the most commonly contested elements of any desert theory: some way to identify the persons with claims of desert, what these people deserve, and the basis on which they deserve it. Not a lot of morally interesting work will be settled by laying out the semantics of “desert” as a predicate. It is simply useful for my purposes here to flag that, while desert claims mainly involve claims about deservers, desert bases, and deserts, there is room open to think that desert claims may also be referenced to particular contexts, so that it can be true that someone like Joe deserves a promotion in the context of a crime syndicate but false that he deserves a promotion in the context of society at large, or in the context of cosmic justice (karma, divine judgment, etc.).

3.1.2. Desert and entitlement

It is important to distinguish desert and its incidents from the notion of entitlement. It is, however, difficult to do this in a way that is uncontroversial among competing theories of desert and political justice, since these have different notions of counts as an entitlement as well as what counts as an intelligible claim of desert.

To motivate the idea that these notions are distinct, consider the following case. Michelle has been an ideal participator and lab partner in her chemistry class. She frequently shows up at office hours and asks interested questions. On her exam, however, she—uncharacteristically, since she is usually a careful thinker—misreads a question and answers it incorrectly. Her resulting grade on the exam is lower than her

overall performance might indicate. However, there is not much room for interpreting Michelle's answers in a way that would be more favorable to her grade in light of her virtues as an otherwise-deserving student. Suppose, further, that the instructor has instituted a policy that she will apply no discretion to students' grades (because she does not want to open herself up to baseless appeals for changing grades, or for some other good reason).

This case is structured in order to highlight how desert and entitlement come apart. It's plausible that Michelle *deserves* an A in the class. She has satisfied the main desert-bases of being an A-student: she has put in effort, she was sincerely motivated to learn, and she displayed overall competence with the material. One could, instead, think that deserving an A simply depends on whether or not one receives a sufficiently high score on exams. But this is implausible: it is not the case, in the situation as laid out, that Michelle is no more deserving than someone who performed similarly on exams but who was lazy, uninterested in chemistry, and not competent, though who managed to be a lucky guesser for the rest of the course. Michelle is more deserving than that student, and this is in virtue of the characteristics she demonstrated of a successful student. It does not follow, however, that Michelle is *entitled* to an A. According to the rules outlined in the class syllabus, students in Michelle's class are only entitled to the grade they receive when averaging their particular assignment grades. Were Michelle to file a grade complaint, she would probably lose, even if we think that it's a shame her instructor couldn't have been more lenient. If Michelle were really *entitled* to an A, however, it wouldn't be lenient at all to give her that grade. Rather, failing to give her an A would be wronging her.

An unpromising route for distinguishing between desert and entitlement is to look for differences in the adicity of the respective terms. The logical structures of desert and entitlement claims seem to be similar. Deserving makes reference to a person who deserves something, a basis on which they deserve it, and a thing they deserve. Likewise, entitlements involve a person who is entitled and a thing that they are entitled to, but importantly a basis on which they are entitled to it as well. People who are entitled to A's are entitled on the basis of their performance on assignments. Someone who is entitled to money from someone else may be so entitled on the basis of being owed it as income for past work, or for having been legally injured, etc.¹⁷

¹⁷Likewise, entitlement claims are as likely as desert claims to require further semantic information, such as context, time, and obligee. I can be entitled to x according to the law, for instance, but not morally, if the law is unjust. Or, your promising to fix

Some desert theorists think that the notion of entitlement essentially involves reference to a set of rules or institutions. In this way, entitlement differs from desert, which is supposed to be a distinctly moral notion, not a description of some set of institutional facts. According to Feldman, “desert is a more purely normative concept, while entitlement is a largely sociological or empirical concept.”¹⁸ The idea here seems to be that when we say that someone deserves something, we’re making a moral claim about what they should have, while, on the other hand, when we say that someone is entitled to something, we mean only that there is some set of rules that say that they should have it. Feldman’s interpretation of entitlement allows that entitlements may be morally significant, as any sociological fact might be. We may have good moral reasons to follow some institutional rules. For instance, we may have good moral reasons not to take what others lawfully own without permission. But this will only carry normative weight in conjunction with a moral requirement that one should not take what one is not entitled to according to the prevailing law or convention.

Feldman is mistaken that the right way to cash out the distinction between desert and entitlement is to say that the latter but not the former notion is essentially institutional. The basis for entitlement can be a set of positive rules that are defined by an institution; however, this is not the only way of conceiving of entitlements. Nozick famously laid out an entitlement theory of distributive justice. The entitlements he had in mind were, notably, rights of ownership over things that do not depend on any particular institution recognizing them.¹⁹ Nozick needs his notion of entitlement to be valid regardless of whether a person’s entitlements are recognized by any particular institutions or social conventions, because legitimate entitlements on his view tell us what institutions or social conventions ought to be like. Nozick’s theory may be wrong about the pre-institutional nature of property rights as entitlements. I briefly argue against such views in the following chapter. But the point is that, even if he’s wrong, Nozick is still recog-

my roof on Tuesday gives me a (defeasible) entitlement that you fix my roof on Tuesday, on the basis of your promising that you would. Finally, had you promised “I, personally, will fix your roof on Tuesday,” then I would be entitled to have you, and not just anyone, fix my roof that day.

¹⁸Fred Feldman, *Distributive Justice*, 33. Cf. Fred Feldman and Brad Skow, “Desert,” In *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta (Stanford, CA: The Metaphysics Research Lab, 2015), accessed November 3, 2016, <http://plato.stanford.edu/archives/win2015/entries/desert/>; Owen McLeod, “Desert and Institutions,” in *What Do We Deserve? A Reader on Justice and Desert*, ed. Louis P. Pojman and Owen McLeod (New York: Oxford University Press, 1999), 191-93. Feldman’s distinction may only be stipulative, since he prefaces the quoted text with the qualification “[a]s the terminology is used here, ...” But if this way of talking about the concept of entitlement is only stipulated, and it does not match the notion of entitlement in legal and political philosophy, then it will not be a useful distinction for desert theorists who, like Feldman, are interested in weighing in on matters like distributive justice.

¹⁹Robert Nozick, *Anarchy, State, and Utopia*, 150-53 & passim. I briefly discuss such views in the next chapter.

nizably talking about entitlements. He's not misusing the term "entitlement," or talking about a different thing than other political philosophers when they talk about entitlements.²⁰ That we can talk intelligibly of pre-institutional entitlements suggests that entitlement claims are not always merely claims about social or institutional facts, and so the notion of entitlement is not an essentially sociological or empirical concept.

A second reason to reject Feldman's proposed distinction between entitlement and desert is that desert claims are sometimes institutional as well. Recall the case of Joe, the member of the crime syndicate mentioned in the previous subsection. He deserves a promotion, but only according to the rules and norms of the crime syndicate. This is a normative claim, though its normativity is contextually tied to the institution it is embedded within, viz., the crime syndicate. It turns out that the norms of crime syndicates are not morally attractive in a way that they have any genuine moral weight, since we don't have sufficient moral reason to acknowledge or to respect them. This is because the rules for gangsters and the rules of morality have significantly non-overlapping desert bases. This does not prevent morally bankrupt institutions such as a crime syndicate from underwriting desert claims by recognizing certain things as desert-bases. It simply means that those desert claims carry weight in the context of the crime syndicate, but are of little genuine moral import.

One important criterion for an account of how to distinguish desert claims and entitlements is that the distinction should explain why, when the two conflict, we tend to think that entitlements override or trump desert claims. To not give someone what they deserve would be a shame, but to not give someone what they're entitled to is a way of wronging them, of cheating them out of what they are owed. Feldman's suggestion that entitlements are institutional while desert claims are distinctively moral does a bad job at explaining this phenomenon, because it's hard to see why, when the two conflict, we normally think entitlements are more stringent: we normally think the demands of morality are more pressing than the demands of institutional rules—especially the rules of institutions that themselves aren't morally defensible. So if the distinction between desert-claims and entitlements is that the former are moral claims and

²⁰This tracks a distinction, discussed by Rawls and H. L. A. Hart, between concepts and conceptions. Nozick shares a concept of desert with others who write intelligible about the same idea—this is the sense in which they are talking about the same thing. My claim is that it is not a conceptual fact about desert that it must be referenced to a particular set of institutions; it's possible to talk sensibly about *moral* entitlements that are not grounded on any particular set of institutional facts. Different conceptions of when people are entitled to something, though, may or may not rule out having moral entitlements to things owned separate from their legal recognition. See Rawls, *Theory of Justice*, 5-6.

the latter claims on the rules of institutions, it would seem that desert-claims would trump entitlements, and not the other way around.

To motivate the idea that entitlements normally trump desert claims, consider the following three cases:

1. *The race*: Mohammad trained very hard for the race, is normally an excellent runner, and has heartbreakingly lost important races in the past through simple bad luck. Beniam, meanwhile, is simply a talented runner (though not as talented or deserving as Mohammad) who shows up, runs, and then goes home and does something else. There's a race, and Beniam crosses the finish line first. We should say that Mohammad deserved to win in virtue of factors such as his effort, ability, and in order to compensate him for past bad luck. We should say that Beniam, however, is entitled to be declared winner, and to receive along with it any attendant prizes or honors. It would be a mistake to declare Mohammad the winner on the basis of his deserving to have won, in light of Beniam's entitlement. Doing so would wrong Beniam.

2. *The promotion*: Sally and Kendra are competing for a promotion. Kendra has satisfied the desert bases of promotion to a far greater extent than Sally: she's better qualified, has more experience, and has put more effort into her work. The promotion committee, however, simply overlooks Kendra's application by mistake when considering who to give the promotion to, and gives it to Sally. In this case, Kendra deserves the promotion, along with its attendant salary increase and greater authority, in virtue of her qualifications, experience, and past effort. However, Sally is entitled to the new position and its accompanying perks on the basis of having actually been through the interview process and selected by the promotion committee. She is entitled to be treated as the person with the new position and to receive the attached salary. It would be wrong of Kendra to continue to treat Sally as though she had never been promoted, or to try to take the money that makes up the salary increase attached to the new position.

3. *The crime*: Jones has committed a grievous crime. However, he is acquitted on a technicality, despite everyone's having the well-justified belief that he committed the crime. Jones is entitled to move about freely, and to keep whatever property he may have forfeited had he been convicted, on the basis of not having been found guilty in a trial. However, Jones deserves not to have those things in virtue of his having committed a grievous crime. (This example assumes in Jones's case what may not always be the case, that someone who has actually committed a serious crime deserves the punishment attached to it by law.)

In each of these cases, someone has a desert claim that does not match what they are entitled to. In these cases, it seems like the relevant entitlement claim takes priority. In the first case, we should say that it is too bad that Mohammad did not win, that the worthiest competitor lost, or even that the race should be re-run to see whether or not he would win under different conditions. But we would say that it would not merely be too bad, but rather an injury to Beniam, and therefore wrong, to deprive him of being declared the winner (and of receiving any associated prize) of the race. These sorts of conflicts are familiar in the case of competitive activities, and no one thinks of awarding the win or the prize to the deserving person instead of the person who is entitled according to the rules to be recognized as the winner.²¹

In the case of the promotion, Kendra has a complaint of injustice attached to her complaint that she did not get what she deserved: her being passed over was an iniquity, even if it was only an honest mistake on the part of the promotion committee. That may lead us to reconsider Sally's entitlement claim. Perhaps Kendra would win a lawsuit if she filed it against her employer, or could press to get the decision reconsidered. But so long as we imagine Sally's entitlement basis is valid, viz., that she has been duly promoted by her employer, she has a claim to be treated as someone who holds the position that she does and to keep the salary that her employer pays her regardless of being less deserving.

In the third case, Jones deserves bad treatment, namely punishment. He is, however, entitled to the rights of a person who has not been convicted of a crime. It may be unfortunate that the criminal justice system fails to adequately punish everyone who deserves it (or it may not; this is a deep question), but a set of institutional requirements in this case clearly deserve priority over what Jones really deserves.

Someone might object, in Jones's case, that the priority of entitlement over desert would not hold if we imagine the case in reverse: if it turned out that Jones deserved not to be punished, because he was innocent, but he were nonetheless convicted because of a technical error in the trial proceedings. In that

²¹One influential exception to this claim appears in literature. In the *Iliad*, Achilles hosts funeral games for his fallen comrade, Patroclus. Diomedes, Menelaus, Antilochus, and Eumelus compete in the race. Diomedes runs a clean race and comes in first. Antilochus uses underhanded tactics against Menelaus, and beats him. They come in second and third, respectively. Eumelus, who is widely regarded as the best horseman among the Achaeans, but who is handicapped by horses that perform poorly, comes in last. Achilles is disappointed at this result, and considers giving the second place prize to Eumelus instead of Antilochus, an act that would seem to violate the latter's entitlement to the second-place prize in virtue of coming in second. See Homer, *The Iliad*, trans. Martin Hammond (London: Penguin Books, 1987), 371-81.

We shouldn't take this as evidence challenging the intuitive idea that entitlements carry more weight than desert claims. First, Achilles is not a model of good moral behavior, and certainly wasn't above doing wrong when doing so would satiate his desire for vengeance or favor those he takes to be his friends or comrades. Second, in the story, Antilochus immediately recognizes the injustice of Achilles' decision and protests. Achilles sees his point, and resolves the dispute by offering Eumelus a different consolation prize of comparable value to the second prize that had been declared before the race.

case, we might think that we should really give Jones what he deserves, because he is innocent, not what the court has decided that he is due. The response to this worry is that, while we can have negative and positive deserts, we cannot have negatively-valenced entitlements. When you fail to give someone what they're entitled to, you have injured them, according to some legal, conventional, or moral rule. It would be strange to say that someone can be entitled to go to prison, because one cannot normally be injured by not being incarcerated.²² Had Jones been convicted, it would not have been the case that he would have been entitled to prison. Rather, it would have no longer been the case that he was legally entitled to the freedom of a normal citizen. Lacking an entitlement to be free when one deserves to be free is not a case in which one's desert-claims are stronger or more urgent than one's entitlements. Rather, it is a case in which one is not legally entitled to what one deserves because of an error or injustice in the legal system. Since there is no conflict between what Jones deserves and what he is entitled to, it would be appropriate to give Jones what he deserves.

My proposed explanation for the priority of entitlement over desert in these cases is that failing to give someone what they are entitled to is a way of wronging or injuring them. Entitlements, along with rights and obligations, are a species of directed deontic requirements. They are deontic in nature because they define what we're obligated to do for others. Entitlements define what people are owed, and so what those who owe them are obliged to give them. They are directed because failing to give someone what they are entitled to is a way of wronging *them*. They are different than undirected duties, if such duties exist, because, though violating an undirected duty is acting wrongly, it is not wronging any particular person. That entitlements are directed deontic obligations is one reason why Jones, in the reversed variation on the third example, is not entitled to incarceration. It may be right that he be incarcerated, but failing to incarcerate him is not wronging *him*.²³

²²Owen McLeod suggests that one can be entitled to negative things such as punishment, so long as there is some institution that one participates in that prescribes punishment for some feature that one has. He writes: "[A] man convicted of a crime for which the legal sentence is five years in prison ... is 'entitled' by a rule of law to five years in prison." McLeod, "Desert and Institutions," 192. I believe McLeod's resorting to putting scare quotes around "entitled" supports my claim that the term and its associated concept do not naturally admit of this usage.

²³Does failing to incarcerate Jones wrong anyone? Are the victims of Jones's crime entitled to see him brought to justice? I suggest not. What distinguishes the public aspect of criminal law from civil law is that it aims to enforce general laws, not to arbitrate particular claims citizens have between each other. If the obligation of the state is to try to punish criminal wrongdoers like Jones, his victims could not waive their right as they normally could if failing to punish Jones was a way of wronging them. One could draw a different conclusion, though, without rejecting the conception of desert I am offering here. Punishment may be something the state owes Jones's victims. Perhaps, in the absence of a recourse through the legal system, they are even entitled

By contrast, I argue that desert claims are not deontic requirements at all. Rather, desert claims are about the fittingness of giving someone a benefit, a desert, and their desert-basis is supposed to explain what makes this fitting. Fittingness is a good-making feature of some state of affairs. This is a claim about what is good, not about what is right; it is axiological, not deontic. It may be good to give someone what they are fit to have, but it is only wrong not to do so when this is required by a duty, such as a right or entitlement.²⁴

This may seem like a surprising claim. People often act as though they've been wronged, even cheated, when they do not get what they deserve. Can these not intelligibly be interpreted as claims that some directed duty has been violated? My response is that some duties require those subject to them to give people what they deserve. People are sometimes entitled to things because they deserve them; however, in these cases, some further story must be told to go from desert to entitlement. In the second example above, it may have been the case that Kendra was entitled to be promoted rather than Sally on the basis of the fact that she deserved to be promoted.²⁵ One may think this if the hiring committee at Sally and Kendra's firm was under some duty to the firm's employees or its shareholders to promote the most deserving candidate. In that sense, Kendra could say that not giving her the promotion that she deserved involved wronging her, but only because the boss had some separate duty to her to make his decision on the basis of desert.

A similar response may be given to a different route of objection. Many people intuitively think that someone must deserve to be punished in order for them to be permissibly subject to the bad treatment that comes with punishment. One may hold this view without being a hard retributivist. The claim is only that desert is a necessary condition for permissible punishment. Other conditions may also be necessary: that punishment aims to rehabilitate the offender, or that it promotes social utility, etc. Normally, we have moral duties not to subject those who do not deserve it to harsh treatments such as detainment,

to seek redress through self-help, through a form of vigilante justice. If someone has such strong intuitions about victims' rights, however, then one is not likely to have the intuition that Jones is entitled to remain free in spite of his deserving to be incarcerated.

²⁴Other commentators have suggested that desert claims are claims about value, not about duty. George Sher, for instance, has argued that the normativity of desert consists in the value of what someone receives matching their virtue or character. Sher, *Desert* (Princeton, NJ: Princeton University Press, 1987), 132-49. I think the fit between consequences and one's character is a special case of the moral value of fittingness more generally.

²⁵Allowing that Kendra may have been entitled to the promotion does not involve backtracking on the example. There, it was stipulated that Sally was entitled to the position given that she had been promoted. Kendra may have been entitled to the promotion, but she is not entitled to the position given that Sally was (wrongly) promoted. In general, it does not follow that, if you are entitled to x, and holders of x are entitled to y, then you are entitled to y. It does not follow because you may not receive x despite being entitled to it, and then you don't meet the stated sufficient condition of being entitled to y, namely, holding x.

incarceration, or fines. So it seems like, if the view that justified punishment requires desert is right, that desert does some work in overcoming a presumptive duty against performing punishing acts. This puts pressure on the account of desert offered here: it's not merely ill-fitting to punish the undeserving; it seems, rather, wrong to do so. So deserving not to be punished may seem to carry as much force as an entitlement.

My response is that, if this claim is right, then we are under a separate deontic obligation not to punish those not deserving of punishment. Fittingness is particularly relevant in the case of punishment, when juries or judges consider whether or not to visit characteristically harmful consequences on a defendant, actions that would normally be wrong if they were not appropriate responses to the defendant's actions and the state he was in when he committed them. Courts normally consider not only the question of whether or not a statute has been violated, but also questions of whether or not the accused was responsible for committing the crime, whether or not they were subject to any excusing conditions, etc. In other words, they are obligated to consider whether or not punishment is appropriate.²⁶

Owen McLeod has identified what he takes to be appealing features and drawbacks to institutional theories of desert. He suggests uniting the pre-institutional and institutional approaches to desert by considering institutional entitlements as possible desert bases. So, for instance, he thinks that the reason why someone deserves to inherit their estate is that they are entitled to it by law.²⁷ This seems to imply—at odds with our everyday linguistic intuitions about the term “desert,” I suggest—that everyone who rightly inherits something deserves it in some sense. Here, I argue that the dependency is reversed. It *can* be the case that the reason that you are entitled to something is that you deserve it—though, of course, there are other bases for entitlement.

According to McLeod, entitlements often generate *prima facie* moral obligations to treat people a certain way. “If it is *prima facie* morally obligatory for you to treat me in a certain way,” he writes, “then,

²⁶Someone might further object: my view implies that it is good when criminals are deservedly punished. This may seem like a counterintuitive, or at least hard-hearted, view. This implication can be avoided, however. The claim that punishment is deserved, and so permissible, only when it would be good (i.e., fitting) if someone were punished does not, by itself, imply that it is sometimes good that guilty people get punished. If it turns out that it is never or almost never good or fitting that guilty people are punished, then punishment would not in general be deserved, and we should question either the stipulated premise that punishment is only ever permissible when the person punished deserves it, or the moral permissibility of punishment more generally.

²⁷McLeod, “Desert and Institutions,” 191-93. I reject the explanandum in this case. Mere inheritance strikes me as characteristically not a genuine desert basis, except perhaps according to the norms and values of a landed aristocracy. This is why many people sometimes use disdainful terms like “trust fund babies” to describe people who are materially well off because of inheritance and not accomplishment.

in virtue of that fact, I prima facie deserve to be treated that way.”²⁸ I deny this. It can sometimes be prima facie morally obligatory to treat someone in a certain way even if they do not deserve it. A good general example of this is in cases of hypocrisy. Hypocrisy should normally be thought of as a defeater of desert-claims. Someone who routinely violates a moral requirement weakens her claim that she deserves not to be treated that way by others. But hypocrisy does not always, or even normally, defeat one’s moral duty not to treat the hypocrite in the same fashion she treats others. When someone routinely commits a moral breach—e.g., they’re a serial liar and fabulist—we think that, in some sense, it would be fitting for the same thing to happen to them. But one still has a prima facie moral duty not to lie to a serial liar or fabulist even if they deserve nothing better. So, it does not follow that, if it is prima facie morally wrong to do something like lie to someone, then they deserve not to be lied to. The serial liar does not deserve not to be lied to, but it’s still prima facie wrong to do so. The fittingness account of desert can explain cases of hypocrisy better than McLeod’s, because it captures the sense in which it might be appropriate, in some sense, for hypocrites to experience what they do to others without thereby licensing a moral permission to treat them in this way. This is simply a conflict between what would be good and what is morally permissible.

3.1.3. *Comparative and non-comparative desert*

Many of the goods eligible for distribution according to desert are scarce: there are not enough of them to go around for everyone who might otherwise want to claim them. Some are particular goods: if Sally gets the exact promotion she and Kendra are competing for, then Kendra cannot get it. Others are positional goods, and their value at least in part requires others to receive less.²⁹ If everyone received recognition and honors no matter what they have done, then such goods would lose their value, in the way that trophies for merely participating have less value than trophies for outstanding accomplishment. Additionally, some goods are scarce. If we’re concerned with distributing the economic product of a society on the basis of desert, then we’ll have to accept that, however we distribute it, some will not be able to receive as much as they would like.³⁰ When there’s not enough of some desert-bases to go around in order to give people what

²⁸Ibid., 193.

²⁹My suggestion here is not that *all* positional goods are such that equally distributing them would make them less valuable, only that some are. Perhaps civic respect is a good that is positional in a sense—it matters not how much you have in an absolute sense, but relative to other members of your society as well—but one which would be perhaps devalued if distributed unequally.

³⁰This observation holds so long as we are in a condition of moderate or absolute scarcity. Philosophers who deny the notion that distribution according to desert may require tough choices sometimes deny that we’re unavoidably in a condition of scarcity. For instance, Marx’s famous slogan “from each according to his ability, to each according to his need,” was only supposed to

they might like to have, we might wonder whether or not the notion of desert is essentially comparative. If it's really true that I deserve something that you and I both can't have, then must I deserve it more than you do? Could I deserve to have it even if you deserve it more than I do? Would giving the good to me instead of to you be a case of giving one of us what they deserve, or would it violate your desert claim?

Some philosophers have thought of desert as an essentially comparative notion. On this view, for someone to really deserve something, they must deserve it more than anyone else with a conflicting claim to it. (Conflicting claims are claims that cannot be mutually satisfied.) Rawls's widely-discussed position that "no one deserves his place in the distribution of native endowments, any more than one deserves one's initial starting place in society" suggests a comparative notion of desert. Rawls's point is not that nothing can be said of anyone's character or choices such that they might be deserving of any particular income or object. Rather, he is concerned with someone's position in a distribution with respect to others. His point is that, since we don't deserve our talents, social advantages, or disposition to work hard, we do not deserve more than people who lack these dispositions, and that these desert-claims, therefore, do not justify inequalities. (Rawls then argues, further, that no one deserves what they may attain on the basis of their unequally advantageous position with respect to talent, starting point, or disposition to apply effort, and so desert is not an effective basis of distributive justice. I discuss this argument in section 3.2.3.)

Schmidtz rejects the idea that the concept of desert is essentially comparative. Specifically, he argues that desert bases are not fundamentally comparative, so neither are valid desert claims. Desert claims on the basis of hard work and individual merit "ask whether a person has supplied the requisite desert makers, not whether the person has done more than someone else has."³¹ On Schmidtz's view, it can be the case that (i) you can deserve x and some other deserving person can deserve y, (ii) x is less valuable than y, (iii) the other person did nothing to deserve more than you have, and (iv) no one fails to get what they deserve according to justice.

According to the fittingness account of desert laid out in the previous section, Schmidtz is correct to claim that whether or not someone has a valid desert basis is not essentially comparative: to deserve x on the basis of y does not imply that no one has satisfied y. But satisfying a desert-basis (like fittingness) is a

apply in the highest form of communist society, a situation under which society enjoys a superabundance of material goods and so is no longer in a condition of scarcity. See Marx, "Critique of the Gotha Program," in *The Marx-Engels Reader*, 2nd ed., ed. Robert C. Tucker (New York: W. W. Norton, 1978), 531.

³¹Schmidtz, *Elements of Justice*, 67-68.

scalar relation. It's possible to satisfy a desert-basis more or less well. If hard work is a basis for deserving recognition, and you and I have both worked hard, then we both satisfy the desert basis for recognition. But if you have worked much harder than I have, then you *better* satisfy that desert basis than I do. So even though satisfying a desert basis is not *essentially* comparative, conflicting desert claims can be compared. When one person better satisfies a desert basis than someone else, normally, their desert claim is stronger. Unlike Schmidtz's view, the fittingness account of desert I have defended can explain this: it allows that it would be (prima facie) more fitting to give you recognition than it would to give it to me on the basis of your having worked harder. This does not necessarily imply that it is wrong to give me recognition, just that it is less appropriate than to recognize you.

If the claim that desert is not *essentially* a comparative notion means that, when we make desert claims, we don't always intend to say that they supersede other possible desert claims, then that seems correct. We sometimes make desert claims without referencing how deserving other potential claimants might be. But we also quite naturally use locutions such as "he deserves x more than she does," and this indicates that there is a comparative sense in which we talk about desert. We sometimes talk about desert in the non-comparative sense when we discuss distributing scarce resources. For instance, some have claimed that everyone deserves a basic education, internet access, health care, or a minimum level of material subsistence, realizing full well that these resources may be scarce and that, as things stand, there may not currently be enough of them to give each person at least what she deserves. Other times, however, we do use desert comparatively. We say, in the example in the previous subsection, that Sally does not deserve the promotion, not because she is an unworthy candidate who, considered on her own, lacks the appropriate desert basis for recognition as a skilled employee, but because she does not deserve to receive as much as Kendra does, who is also competing for the position.

To capture these senses of "deserves," we can distinguish between *deserving*, which is not a comparative notion, but simply a relationship between a person, a desert basis, and a desert; and *distributing according to desert*, which often involves comparison of the extent to which people satisfy certain desert bases. It is a failure to distribute according to desert to give x to person A and y to person B , where B is more deserving than A and x is better (or otherwise more suitable to give to the more deserving person) than y . This can be the case even if it is not particularly ill-fitting for either A or B , considered in isolation from one

another, to receive either x or y . If distributive justice is even partially based on desert, and if the things being distributed are subject to claims that cannot be mutually satisfied, then we will need a relative notion of desert to decide how those goods ought to be distributed.³²

3.2. Desert and markets

In this section, I consider various arguments that support inegalitarian market-based distributions of income, jobs, and property on the basis of desert. First, it is worth considering what sorts of things might count as desert bases for economic goods. Here are some possibilities:³³

1. *Effort*: Someone is deserving of more income or a better job when they work hard.
2. *Contribution*: Someone is economically deserving of a share of the proceeds of some productive activity on the basis of, and in proportion to, their contribution to it.
3. *Production*: Someone is entitled to own some good or service on the basis of having produced it.
4. *Compensation*: Someone is entitled to a certain level of income, a particular job, or property of some kind in order to compensate them for sacrifices they have made, such as:
 - (a) having withheld consumption (i.e., thrift),
 - (b) having done some task that was particularly onerous, or
 - (c) having trained extensively for a position.
5. *Ability*: Someone is entitled to a particular job or differential compensation on the basis of their having particular abilities.
6. *Moral worth*: The quality of job, amount of income, or overall amount of property someone should have should be proportional to their virtues of character.

Additionally, someone could take the position that several of these are sufficient bases for economic desert. Alternatively, one could think each of them is a consideration that favors or disfavors economic desert, even if only some or none are sufficient to ground desert claims by themselves.³⁴ While Schmidtz seems to think that a wide range of factors may constitute merit or being deserving, Arnold, Narveson, and Gaus defend either contribution or production theories. In any case, it is hard to see how free markets

³²This does not rule out the possibility that we decide that everyone is equally deserving, and that justice requires distributing equally to each person.

³³Some, though not all, of the items on this list can be found in Feldman, 110-12.

³⁴Ibid., 112-17,

do a particularly good job at giving to individuals according to some of these bases, such as hard work or the onerousness of someone's task. Markets sometimes reward individuals more depending on if they, individually, work harder than they otherwise might have, but they do not, in general, pay higher incomes to hard-working people and lower incomes to lazy people. Some lazy people are luckier or more productive than many hardworking people.

3.2.1. Deserving profits and the contribution of ownership

One attractive basis for deserving income or ownership is proportional contribution. The idea is simple enough. If you and I cooperate together to bake a pie, then, intuitively, we both deserve at least some of that pie. But suppose that we contributed unequally: you bought all of the ingredients, supplied the oven and the pie tin, and did most of the work, while I mostly stood around and talked, occasionally washing a dish or grabbing ingredients for you. Or suppose I don't know how to bake, I'm your apprentice, and you contributed nearly all of the expertise in baking as well as more than half of the work. Intuitively, perhaps, when we're deciding how to split the pie that we've baked, I might be right in telling you: "You should take more. Most of this pie is your doing, so you deserve more of it than I do."³⁵

It's not always initially clear how we should decide what someone's proportional contribution to something is. Suppose two people's contributions are strictly necessary to produce something, so that there is no way to make it without their particular contributions. Then, should we say that each of them separately contributed the entirety of the thing, since, had either not contributed, the thing would not have been produced? Should we say, alternatively, that neither of them contributed any proportion of the thing, because what they made was entirely dependent on the other's help? It's easy to imagine that, if they both bargained to divide up the thing in question, they would settle on equal shares, since they would realize that they both have a similar bargaining position and wouldn't accept less. But there's no reason to think that what people would agree to in a bargain is proportionate to what they contributed. Rather, the result would be a function of their threat advantage, i.e., what they can hold over the other person. Some third person who is able to threaten to knock the pie off of the windowsill if those who made it won't

³⁵The intuition may be weaker if we imagine instead you insisting that you deserve more of the pie despite my protests, and some may take that to illustrate that something else is going on here other than a desert claim. I suspect I have this intuition because we imagine two people baking to be friends, or at least to have a cordial relationship not entirely grounded on economic activity, and sometimes it is rude or unfriendly to insist on receiving more than your friends even when you deserve it.

agree to give him a share does not contribute by refraining from doing so. He may, however, end up with a share of the pie if the other bargainers see his threat as credible and respond rationally to it.³⁶

Since we're considering the production of economic goods, a natural thought is that someone's contribution to something is measured by the *economic value* of their contribution. But, again, it's not entirely clear how we should decide whose activity contributed more value to something. If workers labor to build something using a machine that someone has lent them, do they contribute all of the value of that thing, or does the person who lent them the machine also contribute to its value?

One proposal for determining someone's contribution to the value of something is to look at the marginal product of their activity. The marginal product of some factor of production (e.g., capital, labor, or land) is the additional output that would result from purchasing an additional unit of that factor. For instance, if ten people labor to produce something, and each provides one unit of labor (i.e., they produce at an average rate given the production method they are using), then the marginal product of the labor of each is equal to what an eleventh person would produce if they were hired to that position. So the value of each person's labor, on this view, depends on the added value of an additional person. It is an extrinsic feature to the relationship between each worker and what they actually produce, because it depends on the value some other person, at the margin, produces.

Price theory predicts that, in a more-or-less free market, employers will purchase units of each factor of production up to the point that the marginal productivity of each is equal. If the marginal product of hiring a new worker is greater than the marginal product of a new investment of the same price, for instance, then a firm will hire someone instead of making the investment.³⁷ So marginalism, an umbrella term that includes marginalist product theory and marginalist price theory, predicts that firms will hire workers until their marginal product is equal to the going rate of hiring a worker at the margin. As long as the value of an additional worker is greater than the cost of hiring a new worker, firms will hire new workers until each worker's marginal product and their marginal cost are equal.³⁸

³⁶He might say, "Nice pie. Shame if something should happen to it." He hasn't made a contribution by not destroying the pie.

³⁷N. Gregory Mankiw, *Principles of Microeconomics*, 5th ed. (Boston: Cengage, 2008), 272.

³⁸In an ideal, frictionless market, wages would be renegotiated in every quantifiable time increment. So not only would *new* workers be paid their marginal product, but worker who already work for a firm would as well. Understood this way, labor could be thought of as auctioned off at the beginning of each time period: if firm *X* pays more than firm *Y*, then workers would work for *X* until its bids decrease (reflecting the diminishing marginal value of adding additional workers), in which case working for firm *Y* would be more attractive. In actual practice, obviously, labor markets are quite different: it's expensive to renegotiate wage

Narveson argues for the view that the value of someone's contribution, and so what they deserve on the basis of their market activity, is more or less equivalent to the cost of hiring another employee at the margin. According to Narveson, when we say that someone deserves something, we mean that they should be rewarded on the basis of some feature that they have or action that they have taken. However, he thinks that whether or not something counts as a basis for deserving some reward depends on the interests of the person doling out the reward.³⁹ When people contribute their labor or the value of the productive resources that they own, the value of this contribution is what it is worth to the person paying them, which will normally be equal to their marginal product, i.e., what it would be worth to pay someone else for the same thing. So, someone who makes very large profits investing deserves the income they receive, since that person "does something with his resources that he or she need not have done, and what he does is useful to those whose enterprises are supported by the investment in question."⁴⁰

There are numerous points in Narveson's argument where one may resist his conclusion. First, we may doubt that the reward model is an adequate account of desert, at least as Narveson uses it. It is true that people are often rewarded according to how valuable some action they have done or feature they possess is to the person rewarding them. But it does not seem plausible to say that people always deserve to be rewarded according to what others find valuable. Someone may get a raise because their cousin owns the firm. That relationship may be valuable to the owner of the firm, but it does not follow that this is an adequate desert basis for a raise. Or, the fact that someone is white, a man, or of a higher social class may be a highly desirable trait to some who want to consider joining a business venture with them. People may sometimes be rewarded for having such traits in a market, but they are not plausible desert-bases.

Second, as Gaus notes, if desert claims are going to do any justificatory work, then they are going to have to be robust with respect to competing value systems—in other words, they have to appeal to moral considerations that are generally thought to merit reward if they are going to settle competing claims of

contracts, and workers exhibit loss aversion (they're more sensitive to pay cuts than they are to potential raises, reflecting both the increased psychological salience of economic losses over economic gains as well as contractual arrangements workers themselves have to pay others, such as lines of credit and mortgages). Some workers may get paid above their marginal product, in the form of efficiency wages, reflecting the costs of employers to find replacement workers. Alternatively, some workers may get paid less than their marginal product, reflecting employers' greater bargaining power in light of the costs of unemployment, as well as the existence of unemployed workers in their field.

³⁹Narveson, 64-65.

⁴⁰Ibid., 84.

entitlement on the basis of justice.⁴¹ Suppose I wonder what capitalists have done to deserve their high incomes. According to Narveson, they deserve to be rewarded because they make contributions that are valuable to some. But that isn't quite a satisfying answer, because their contributions may not have been valuable *by my lights*—if, for instance, I would have been better off had they not made it or had they been rewarded less handsomely. I may accept that the fact that capitalists have done something that is valuable to *someone* gives *that* person a reason to reward them, but I may not see how that counts as a justification for their rewards to me or anyone else.

Third, it is not clear that merely allowing someone else to do something with what one owns counts as “doing” something in the sense that it counts as a contribution. It's true that a capitalist could, if not paid enough, withdraw their productive asset and either employ it elsewhere or withhold it from the market, and the person who needs the asset would then have to pay the marginal cost of replacing it. But it's not clear that the threat that someone may not let you use something counts as a contribution. Imagine that several people have a claim over some collective resource, and one of them wants to use it to produce something of value. One of the collective owners reasons that she could shut the entire operation down for no good reason, other than to extract a profit, by refusing to allow the resource to be used in this way. It's not clear why the ability to leverage credible threats counts as a desert basis. This is illustrated by the case mentioned above of the person who can threaten to ruin the pie by knocking it off the windowsill. Narveson could respond that allowing someone to do what one could threaten not to allow them to do only counts as a contribution when one is legitimately entitled to decide whether or not the thing should happen, as when they own an asset someone else wants to use. But according to this response, we would have to know that it is sufficiently just that people have certain ownership rights before we could know whether or not the fact that they could threaten to withhold these resources counts as a legitimate basis for desert. Such a view could not vindicate market-based distributions; rather, market-based distributions would first have to be vindicated in order to show that they are capable of generating desert claims.

Finally, market-value theories of desert in general seem to be implausible as bases for desert. We normally think of desert claims as being dependent on things that individuals have control over—indeed, this is one motivation for taking desert as a moral notion seriously. But the marginal product of someone's

⁴¹Gaus, *Value and Justification*, 486.

activity can change based on factors outside of their control. The market price for labor can fluctuate, meaning that the replacement costs for someone's contribution will vary based on the work that others are willing to do. Likewise, real interest rates and the average return on capital vary, so what someone is able to receive from the market on the basis of her ability to allow people to use her productive resources varies even if the productivity of those resources or her willingness to let people use them does not. Someone has no control over whether or not labor or capital are plentiful, so it's hard to see how this bears on whether or not they are deserving.⁴²

An alternative strategy for showing that capitalists deserve the profits that they are able to command on the open market is to show that they perform some useful function, and that it is indeed the case that their characteristic investment decisions count as productive contributions and not mere threats backed by a legal regime of property. Arnold argues that investors (including both owners of capital and entrepreneurs who bring together productive assets for some purpose) perform an important social function beyond merely allowing individuals to use the assets under their control. According to Arnold, investors make determinations about the market value of future goods relative to present goods, and withhold some capital from use to satisfy present needs in order to satisfy future ones or to generate capital goods that can be used in future production.⁴³ Arnold writes: "As a supplier of time in the form of (command over) present goods, the capitalist, qua capitalist, makes an essential contribution to production."⁴⁴ That contribution,

⁴²Here, it may be objected that, in section 3.1.3, I noted that distributing according to desert is a comparative notion, because giving to each person in proportion to desert requires comparing how well different individuals satisfy the relevant desert bases. And where one stands relative to others may be outside of one's control, because it is not generally possible to control how deserving others are. So perhaps the market value theory could be reformulated: markets tend to distribute *according to desert* because they tend to reward people on the basis of how valuable their contributions are relative to the value of others'. Variations in the marginal product of labor or capital can be explained by variations in how valuable they are relative to other options, such as changes in the productivity of different production techniques or of expected future returns on investment.

My answer to this objection is that, if what I deny in my first two objections to Narveson were true, and one's marginal product really does constitute an acceptable desert basis, then it would count as distributing according to desert to pay people according to the relative productivity of their actions, even when their productivity relative to others varies because other production techniques become more attractive (e.g., because of technological change). I deny, however, that withholding capital or savings from the market because of, say, high interest rates, is a way of distributing according to relative desert, since there is no other deserving person who would receive it now. It is true that some person in the future may receive it. But I find it implausible to say that I should get less when we are distributing things on the basis of desert because some future person will come to deserve it more than I currently do. If I am right, then at least one of the reasons why the relative demand for capital and labor varies—changes in expected future return, reflected in changing interest rates—does not bear on what would be required by a system that aims to distribute according to desert.

⁴³Arnold, "Capitalists and the Ethics of Contribution," 99.

⁴⁴Ibid.

according to Arnold, is distributing capital intertemporally, by deciding how much capital to put on the market at any given time.

Profits from the return on capital set by anticipated future demand is only part of what investors receive as income. In addition, some investors make more than the average rate of return on capital by making entrepreneurial investment decisions: investing in things they think are undervalued relative to the market as a whole. These investors, Arnold thinks, deserve profits because their activity contributes a useful function of setting the price of different goods relative to each other. On this view, entrepreneurs manage what sorts of production will go on at any given time.⁴⁵

One problem with using Arnold's argument as a basis for a defense of market-based distribution is that it lacks an argument for why investors deserve the *full* amount they receive in the form of profits on an unregulated market. If his argument succeeds, all he has shown is that capitalists make some sort of contribution to production by managing it. This does not show that this contribution is as valuable as it tends to be rewarded in markets. We only get that view if we accept something like the marginal productivity theory as a basis for measuring the value of a contribution, and we believe that markets compensate individuals more-or-less according to the marginal product of the inputs of production they sell (capital or labor). Managers, like anyone else, can receive incomes in excess of what they deserve. So if capitalists would still perform their necessary market functions if they received a smaller income—say, because most of it gets taxed away—then they do not have a claim to deserve as much as they receive under a system that does not aim to distribute income in a more equal way.

Additionally, Arnold's argument is a functional one: it says that capitalist activity counts as a contribution because it fulfills a necessary function in a market economy. But if some activity is meritorious according to the function of something else, this does not mean that it is meritorious *tout court*. In section 3.1.1, I argued that desert claims can be indexed to institutions, so that they are only claims that generate desert claims within those institutions. It may be the case that the rules of capitalism are such that investors play an important role within them, and deserve profits accordingly within that institution. However, this

⁴⁵Arnold, "Why Profits are Deserved," 396-99. It's worth noting that one may think entrepreneurial profits are deserved without thinking that profits purely from allocating capital intertemporally are deserved. Profits earned merely from investing at a given time—the so-called "risk-free rate of return"—is identified by some as economic rents gained from pure ownership of capital, as opposed to entrepreneurial income gained from managing one's property. Maynard Keynes's famous "euthanasia of the rentier" aim reflects the sentiment that investors do not deserve pure rents from ownership, but allows that entrepreneurial profits may be deserved, or at least economically desirable. I discuss this in greater detail in chapter six.

only means that it would be fitting according to the values of existing market institutions for investors to receive what they make on the market, not that they deserve to have such a system in place.

Finally, a general comment on both Narveson's and Arnold's arguments. Both of these arguments aim to show that people who provide certain factors of production—capital or labor—deserve what they receive in a market for doing so. But being an investor or a worker is having a certain role within an economic system. “Investor” and “worker” are descriptions, not rigid designators. It is compatible with the claim that investors deserve the income they receive on the market to think that who gets to be an investor should not be left entirely up to the market. So, for instance, market interventions by the state to encourage a more widespread ownership of capital would not be failing to give capitalists, wrongly interpreted as a *de re* class of individuals, what they deserve. Rather, it would only be ensuring that more people are able to engage in market activity that would allow them to be in a position to deserve income from the means of production as well as from their labor.

3.2.2. Deserving ownership from productive activity

Gaus argues that we have pre-institutional rights over private property, i.e., rights to property that do not depend on the existence of any legal institution or state. If this argument holds, then whoever holds pre-institutional property rights has a claim against the state to respect that right. This could create substantial barriers to achieving a more egalitarian distribution of ownership through institution change, since respecting property rights would constitute a moral barrier to doing so. In the next chapter of this dissertation, I discuss pre-institutional theories of property rights in more detail. Here, however, I want to focus on one part of Gaus's argument: his desert-based argument for property rights outside of social institutions.

According to Gaus, state of nature arguments of the sort given by Locke and Rousseau have moral importance, not because they describe an actual starting point from which original contractors have agreed to rules that will bind members of society, but because they reflect and help clarify our thinking about what our moral duties are independent of the state, and so put limits on the aims we may permissibly undertake with it.⁴⁶ Gaus thinks that we are self-directing agents who have a right to natural liberty outside of social

⁴⁶Gaus, *Value and Justification*, 379-81.

institutions to do what we wish without interference.⁴⁷ This may seem at odds with the idea of natural property rights, because property rights constitute a restriction on natural liberty. If you have a right to something as property, then you are permitted to restrict my use of it. Then it may seem that the only thing that could justify instituting property rights, which restrict our freedom, is to combine them with institutions that are justifiable to each member of society on contractualist grounds.

Gaus's resolution of the tension between the right to natural liberty and pre-institutional property rights is to offer what he calls a *quasi-Lockean* case for property rights. According to one common reading of Locke, property rights are justified because individuals acquire them by mixing their labor with unowned things. Instead, Gaus reads into Locke the view that desert is what explains the link between one's labor and private property, and what ultimately justifies the institution of private property. This reading is influenced by Becker, who interprets the labor theory of acquiring property rights—the idea that property rights in the fruits of one's labor are justified—as ultimately resting on desert. According to Becker, producing contributes to others' welfare, and he accepts the principle that “[a] person who, in some morally permissible way, and without being morally required to do so, ‘adds value’ to others’ lives deserves some benefit for it.”⁴⁸ Gaus disagrees with Becker's specific formulation of the principle of desert. Instead, he thinks that individuals deserve property rights in an object in virtue of *producing* it, not as a reward for benefiting others. This is because Gaus agrees with Marx that it is profoundly alienating to deny that individuals deserve to be in control of what they have produced. He writes:

A moral person who denies that he has some intimate moral claim to control his produce sees his activity as at his beck and call ..., but his conception of his moral agency stops there: as soon as his action manifests itself in the creation of objects, he disclaims moral control.⁴⁹

Now, an obvious objection here, which Gaus considers, is that producing things requires natural resources, which we don't antecedently deserve according to Gaus's view. So at least part of anything we make won't be what we produced, since we relied on natural resources that we acquired undeservedly. So the idea that people deserve what they produce runs into the problem of original acquisition: it cannot explain why people deserve to use something they have no desert claim over (natural resources) in order

⁴⁷Ibid., 381-86.

⁴⁸Becker, 50-51.

⁴⁹Gaus, *Value and Justification*, 413.

to produce anything at all. Gaus concedes that this is a problem, but he thinks that it arises from imagining that the state of nature is a place where people could actually exist, instead of as a heuristic device to determine what our pre-institutional rights are. If we don't imagine that people actually live in a state of nature, then we don't have to imagine how people could get out of it by permissibly acquiring unowned resources.⁵⁰ So Gaus thinks that he has shown, not that people acquire pre-institutional property rights in things that they have acquired separate from institutions, but that "people have a right to a system of private property that recognizes the claims of desert."⁵¹

If it shows anything, Gaus's argument only shows that people deserve to own what they produce. But people also acquire property rights through transfers of property rights, and it's not at all clear that such transfers will preserve deservingness. Some people, after all, get lucky, and have rich uncles who die and leave them vast fortunes. So it may seem that the institution of property, which includes a right of transfer, will result in a distribution that does not correspond to what people deserve.

Gaus's response to this worry is to argue that once we have acquired exclusionary property rights on the basis of desert, we can transfer these rights (because of the right of natural liberty, which is a general right of non-interference) to others without also needing to transfer the desert basis of having produced it. What is important, Gaus thinks, is that any given property right be traceable in its ultimate origin to someone who acquired it through producing it. Now that he's established a pre-institutional right to exclude others and to transfer this exclusionary right, Gaus concludes:

[T]his constitutes a limited justification of market relations. For given (i) that Alf has exclusionary property rights over X such that it is his, and (ii) that Betty has exclusionary property rights over Y such that it is hers, (iii) that each has rights of transfer over their property, then (iv) Charlie's refusal to recognize their post-exchange property rights constitutes a violation of their property rights, and (v) Charlie's demand that they refrain from engaging in the exchange constitutes an interference with their natural liberty and, so, *must be justified to them*.⁵²

⁵⁰Ibid., 414-16.

⁵¹Ibid., 416. Emphasis omitted.

⁵²Ibid., 419.

There are several routes of objecting to Gaus's desert-based argument for pre-institutional property rights. First, he does not provide much in the way of an argument for why producing something is an appropriate desert basis for owning it. His argument is simply that it is alienating to deny that people should control what they create with their productive power. I'm sympathetic to the idea that the human good is tied to individuals' use of their productive capabilities, but deontic constraints like property rights are about finding what would be a permissible way for each person to pursue his or her own good.⁵³ To make this point more vivid, consider cases in which your exercise of your right to exclude me from what you own alienates me, because it limits my freedom to use my productive capabilities. If it is alienating not to control what one creates, then it must be similarly alienating not to have control over one's use of his or her productive capabilities. Such an outcome is not a remote possibility in a world in which owners are able to freely transfer what they own and have a claim against interference for doing so. The quote from Gaus at the end of the previous paragraph (point (v)) seems to allow that interference in property rights might sometimes be justifiable, so maybe he would accept that such interference could be justifiable in order to make sure that everyone has enough opportunities to acquire property. This may be a big concession, however. It is not clear that a system of market relations subject to redistribution to ensure that property ownership is widespread would look like the classical liberal market order that Gaus has in mind.

Second, Gaus's move from acknowledging that desert does not justify original acquisition to the claim that producers have a right to live under a system of private property rights seems illicit. Gaus allows that desert cannot justify any particular set of property rights arising from original acquisition. But what entitles him to take the fallback position that people have a right in a state of nature to live in a system in which their productive activities will be recognized? Here, even the heuristic value of a state of nature seems questionable. On one hand, we're not supposed to imagine that people actually live in a state of nature, so we don't have to worry about how they could acquire rights over unowned things. On the other hand, we're supposed to imagine what rights people have in a state of nature, viz., to have a system of property rights implemented that recognizes desert claims, and we're supposed to consider these rights as binding on us within a society.

⁵³Gaus accepts this claim, at least. See *ibid.*, 380.

Third, it's not clear how to cash out the notion of production on Gaus's account. Setting aside problems with original acquisition, it's easy to see how, if I chop down a tree, process some lumber, and build a chair, that I have some claim to having produced the chair. But imagine an entrepreneur owns a vertically-integrated chair-making company and pays a group of people to do these things. Do the workers produce a chair together, so that each of them co-owns the chair that they make? Or does the entrepreneur produce it, since he used the workers' labor and his capital (things that he acquired through free exchange) as instruments to make it? This is unclear on Gaus's account, but two things favor thinking that he should say the workers, not the capitalist, produce the chair. First, cases in which solitary individuals create things in the state of nature are supposed to be the paradigm cases of production-derived desert claims for Gaus. Such cases are paradigmatic because they involve directly using one's productive capacities. In the example, workers are directly using their productive capacities to produce something, not the capitalist. Since it is alienating for someone to control their productive capacities but not what they directly produce, it's alienating for the workers to freely use their productive capacities to make the chair but then lack control over what they have produced. This is why Marx, whom Gaus cites approvingly on the point of alienation, thought that only workers are engaged in genuinely productive activity, and so have their labor alienated from them when it produces commodities that others own. Second, it's simply a stretch of the notion of a productive capacity to argue that the entrepreneur's ability to hire workers and buy capital constitutes a way of producing something. This is more plausibly interpreted as a way of getting others to produce things. So Gaus should say that workers, and not those who employ them, are the ones who are really using their productive capabilities, and so who deserve property rights. This is a Marxist sentiment, and so would not favor the kind of market economy that Gaus imagines.

An alternative route available for egalitarian liberals is to simply deny that there is a determinate answer to the question "who produced it?" in a society where production is a function of different forms of social cooperation according to rules. But this would undermine the pre-institutional character of quasi-Lockean property rights, since it would only entail that members of society engaged in productive activity have desert claims to what they produce within a system of social cooperation defined by those institutions.

Finally, it's logically possible to imagine that the property rights people deserve for producing something do not include a full array of rights to transfer, waste, or categorically exclude others. Because his

system directly ties owners to property through production, Gaus thinks that his account “supports appeal to something akin to what has been called ‘full ownership’—certainly including rights of exclusionary possession, to use, manage, consume, modify, destroy, and transfer the thing that one owns.”⁵⁴ But he does not explain *why* producing something confers rights of *full* ownership. Why should deserving the fruits of one’s labor include deserving the right to destroy it, to transfer it to someone else who has not produced it, or to exclude others from using it if one does not plan to? It’s hard to see why Gaus thinks that this would be the case, since each one of these rights confers on someone a moral power to restrict others’ natural liberty. It seems that, if we take the idea of natural liberty seriously, then individuals should only have the most minimal set of rights over what they have produced compatible with enjoying the fruits of their labor in a non-alienating way. There’s no reason to think that enjoying the fruit of one’s labor or not being alienated requires an unlimited right to transfer to others or to destroy it. Furthermore, if property rights may be transferred on Gaus’s account without transferring desert, then it’s not clear why property could not be transferred without transferring some of the rights involved in full ownership, given that the justification for full ownership is supposed to be the desert claim of producers. Since most, if not all, existing property rights are partly grounded on transfer rather than purely production, we are not then required to think that people have full ownership rights against the state over much of what they own.

I have raised several criticisms of Gaus’s quasi-Lockean case for property rights that, I think, make it hard to see how it would vindicate a pre-institutional order of property rights, at least one that conforms to market relations more or less like those we find in contemporary capitalist societies. There is, however, something important about the notion that it is alienating that people not control the output of their productive activities. Real freedom does require some productive control. However, I will argue subsequently in this dissertation that, since production is social, it requires that each individual have some control over the production that results from social cooperation more generally. This requires a wide spread of ownership and productive resources, such that each person has resources available to her to pursue her own good in her own way.

⁵⁴Ibid., 419.

3.2.3. *Markets and opportunities to achieve*

The previous two lines of defense for market-based distributions on the basis of desert focused on how market relations can reward people for their past activity. However, Schmitz defends what he calls the *promissory model of desert*. On this view, it is possible to deserve something on the basis of what one does *after* receiving it.⁵⁵ To illustrate this idea, suppose that someone receives a promotion and gains additional responsibility. It's possible to say when this person receives the promotion that they deserve it on the basis of what they will do with it, if we have a reason to think that they will do something deserving on the basis of receiving it. Even if this were not the case, however—suppose there's nothing about the person at the time they receive the promotion that suggests they will do deserving things with it—on Schmitz's view we can still say later, if they have done great things with what they have been given, that they deserved the promotion.⁵⁶ Similarly, often luck more so than desert separates applicants who are admitted to competitive academic programs from those who are not. However, the truly deserving students are the ones who, once they have been admitted, accomplish things worthy of the opportunity they have received. So desert, according to Schmitz, gives us a reason not just to reward people for their past actions, but to give people opportunities to be deserving.

If it turns out that deserving recognition or a reward after the fact is a common way of deserving something, then giving people what they deserve will not generally require roughly equal starting points or opportunities. In the first paragraph of this chapter, I quoted Rawls's argument against desert. According to Rawls, people don't deserve the fact that they are relatively talented or well-positioned socially, or even that they are disposed to develop the talents that they have or to make meritorious choices. One way of reading Rawls is that he concludes from this that people do not deserve what they receive on the basis of employing their talents, social position, and disposition to apply effort. Rawls seems to some to assume that, if there's something you do not deserve, then you also do not deserve anything you receive on the basis of that thing.⁵⁷ Schmitz denies this assumption, because he thinks that it is possible that the chain of dependence relationships between things that individuals deserve can have non-arbitrary links. It may

⁵⁵Schmitz, *Elements of Justice*, 40-42.

⁵⁶*Ibid.*, 46-47.

⁵⁷I'm careful to qualify that this is only *a* reading of what Rawls says. It is not my reading. For one thing, Rawls never says that people don't deserve what they receive on the basis of their choices. He says that they don't deserve a scheme of cooperation according to which they receive such things. However, for the interpretation I mention in the text, see Sher, 22-25.

be morally arbitrary that I have certain character traits as an accident of birth and circumstance, but it is not morally arbitrary that, given that I have these advantages, I cultivate them and achieve the things that I do.⁵⁸ So there are two ways on Schmitz's view of deserving that people can deserve differentially even if they start from radically unequal positions. First, it can be morally arbitrary that they receive some opportunity, but not morally arbitrary that they accomplish something with the opportunity. On the promissory model of desert, these people come to deserve opportunities, even when they accidentally receive them. Second, it can be morally arbitrary that some people are better positioned than others, but it can be non-arbitrary that some, given that they are better-positioned, do something with those advantages.

Schmitz endorse what Rawls denies, that meritocracy is an ideal for social equality. Rawls rejected the idea of meritocracy because he associated it with the notion of rewarding people on the basis of their moral worth or talents.⁵⁹ (The word "meritocracy" was coined by Michael Young in a dystopian work of fiction that imagined a future in which the English education system were reformed to track individuals from birth until death and to allocate opportunities on the basis of intelligence.⁶⁰) Schmitz seems to instead think of meritocracy as a system by which people are rewarded for the merits of their performance.⁶¹ So according to Schmitz's idea of a meritocracy, perhaps one closer to our current use of the word, people are rewarded for what they do, not directly for being talented or having other supposedly worthy traits. Still, such a system has no trouble rewarding talent indirectly, since the quality of a person's performance will vary based in part on features beyond their control.

Schmitz thinks that meritocracy satisfies a kind of moral equality because it satisfies the principle of "equal pay for equal work." He thinks this idea is more attractive than the notion that we are equally worthy regardless of our choices. He writes:

What is the true point of the liberal ideal of political equality? Surely, not to *stop* us from becoming more worthy along dimensions where our worth can be affected by our choices, but to *facilitate* our becoming more worthy.⁶²

⁵⁸Schmitz, *Elements of Justice*, 34-36.

⁵⁹Rawls, 106-08.

⁶⁰Michael Young, *The Rise of the Meritocracy: 1870-2033: An Essay on Education and Equality* (Harmondsworth, Middlesex: Penguin Books, 1961).

⁶¹Schmitz, *Elements of Justice*, 120-22.

⁶²Ibid., 121.

The point of liberal equality, Schmidtz thinks, is not that we all turn out to live equally worthy lives, but that we live in a system that gives us opportunities to live worthy lives.

Schmidtz thinks that markets satisfy the meritocratic ideal because they are imperfect talent-seekers. They are talent-seekers, because they tend to provide people incentives to use their talents in productive ways. But they are imperfect, because they only reward market activities and not achievements outside of the markets. The alternative, however, Schmidtz thinks, is relying on some other systematic means, like the choices of government bureaucrats, to provide people incentives to act in meritorious ways. Planners tend to be more myopic than markets about what counts as an acceptable desert base, because markets aggregate the preferences of a diverse range of people while planners tend to reward people on the basis of, at best, their own sincere but narrow ideas about what constitutes worthiness.⁶³

The upshot of Schmidtz's observations about desert is that a society that distributes according to desert will be one that offers individuals a wide range of opportunities, although not necessarily equally. It will also be one that tends to reward or incentivize achievement and hard work. And the best system we have to sustain this sort of meritocratic arrangement is a market.

It's not clear, on Schmidtz's view, how free or wide-ranging markets have to be to satisfy these criteria. Market socialists believe that the state can own the means of production and direct investment to kinds of activity that it decides (democratically, or with the help of planners) are important. But market socialists still allow that there should be markets for things like setting the price of consumer goods, hiring people for different positions, and trade between firms. These sorts of economic activities generate information that planners running state firms that manage the investment of capital can use to decide what sorts of things consumers want. My proposal is not that market socialism is a good economic system. It may not be, because it may be inefficient at allocating investment so that it matches consumers' desires. But state planners in a market socialist society are not in a position of applying decisions directly to individuals regarding what constitutes meritorious behavior. So it's not clear that they do any less well at tracking the merit of individuals than would a capitalist society. Again, the point isn't to defend market socialism as a meritocratic ideal. The point is to illustrate that it's not clear what sorts of things have to be subject to decentralized market decisions for a society to be meritocratic on Schmidtz's view. If market socialist

⁶³Ibid., 123-24.

societies may also be meritocratic, then meritocracy does not pick out what sort of economic arrangements we should have. Schmidtz has only ruled out centrally-planned systems.

Second, even within capitalist societies, we have institutions that try to track merit without making positions subject to market forces. For instance, you cannot buy a doctoral degree or your place in a degree program.⁶⁴ Universities aim to acknowledge achievement, but they do so in ways that are at least partly insulated from the market. This model of merit recognition can be successful even when it is not subject to market forces, because it considers the views of what is meritorious of its participants and neither what planners nor consumers think is worthy of reward. The point here is not that the university is a good model for society to use to allocate scarce resources more generally or to recognize merit. It is not. The point is that, if we want people to have opportunities to achieve according to a wide range of metrics of merit, then markets are not the only way, or even obviously the best way, to accomplish that aim. Another option, compatible with though not requiring extensive markets, is for society to be a rich canvas of many different kinds of associations, groups that come together to promote some aim and whose constitutive practices, rules, and rewards reflect that aim. A university, for instance, is an association that aims at promoting higher learning and the search for truth, while a church is an association that aims at spiritual development and the glorification of a divine being.⁶⁵ A society composed of associations with a diverse range of different aims and constitutive practices will tend to recognize a wider range of ideas of merit and contain a wider range of different types of opportunities to succeed. Markets, meanwhile, will tend only to recognize worth to others as a basis for merit in proportion to what they are willing to pay in compensation.

Free markets tend to be dominated by a certain kind of association, a corporation, whose primary aim is to make money for shareholders. In a market society like the contemporary United States, a large percentage of the workforce is employed by corporations, so their economic merits will tend to be recognized, or not, by these organizations. For someone who thinks that decentralized free markets best promote merit, corporations are unsettlingly similar to centrally planned economies. Different divisions within a firm do not engage in free competition and exchange in order to determine how the corporation allocates resources. Rather, firms are hierarchical. Their budgets are set by corporate officers (central planners) who

⁶⁴Unless you're a Russian government official. See Leon Neyfakh, "The Craziest Black Market in Russia," *Slate*, May 22, 2016, accessed November 30, 2016, http://www.slate.com/articles/news_and_politics/cover_story/2016/05/the_thriving_russian_black_market_in_dissertations_and_the_crusaders_fighting.html.

⁶⁵This idea of an association borrows from Rawls's idea of a social union. See Rawls, 520-29.

are subject to various kinds of influence from division heads (corporate apparatchiks) who seek recognition and power within the organization. It is true that corporations are subject to selection pressures via market forces, and that gives them an incentive to be relatively more efficient internally than the bureaucracy of a centrally planned state. But the types of merit that they recognize in their employees will still normally reflect the limited ideas of a few people who are in charge of the corporation, in much the same way that central planners tend to have a more myopic idea of merit than a decentralized economy. This is not to say that market economies, since they can be dominated by large firms, tend in the end to do no better at recognizing a diverse range of merit than centrally planned economies do. But it is important to recognize why they might do better. In a market economy, employees generally have exit rights to leave a company if they think that it does not recognize their talents or abilities. If they did not, the corporate authority surely would be sweeping. Someone who thought that their talents would best be recognized elsewhere would have no other option. So what's really doing the work in ensuring that markets recognize a wide range of merit is that they allow, or even encourage, there to be a wide range of a certain type of association, corporations.

The ideal of recognizing a wide range of merit and desert is more clearly satisfied by an open society, in which people are free to experiment with different ways of living, to pursue their own good in their own way, and to form associations with other like-minded individuals. So Schmidtz's defense of markets as imperfect promoters of merit presents a false dichotomy: we either have to choose between free markets or central planning if we want to promote merit. But we need not make a choice about this at all, because it is not the economic structure directly, but the diversity of different kinds of associations within a society, that determine the range of bases of merit it recognizes.

Some sort of decentralized economic decision-making is probably necessary for a society to have a diverse array of associations with economic aims. So markets may be an important component of such a society. But markets also have effects that can limit the range and aims of associations within a free society. Some notions of merit and achievement, such as those sought by universities and churches, may be undermined when they are subject to market pressures. For instance, universities tend to do a worse job at promoting higher learning when they are treated primarily as vehicles for greater economic production, as a sort of subsidized jobs training program. This is not to say professional education is subverting the mission

of the university, or that schools should not aim to facilitate the employment aims of their students. But when universities get rewarded on the basis of how well-paid their graduates are, either by attracting better students or from government subsidies, they tend to make decisions that promote the marketability of degrees instead of learning and truth-seeking for its own sake. This has the potential to erode the distinctive kind of merit and achievement that institutions of higher learning aim to promote. So it's not clear that the best way to promote the consideration of a diverse range of merit bases within a society is to surrender more of its decisions to the market.

There's no reason why egalitarian liberals, even ones who support extensive interference with voluntary market transactions, have to accept a society that will be less innovative or recognize a narrower range of achievements. They only need to support the idea that society needs to be open, a place where a wide range of people can work together in different ways to promote their own idea of the good. In fact, if egalitarian liberal institutions promote a wider range of different kinds of institutions, such as worker-managed firms and consumer cooperatives, and encourage non-marketable forms of achievement, then egalitarian institutions will be more open than societies dominated by markets, and they will provide individuals with a wider range of ways to achieve and to have their merit recognized.

3.3. Conclusion

In this chapter, I have argued that desert claims can be contextually bound to certain kinds of institutions, that desert is best characterized by the notion of fittingness, and that desert accepts both comparative and non-comparative uses. I then argued that defenses of markets on the basis they give people what they deserve on the basis of their productive contributions is difficult to plausibly characterize according to a notion of value tied to the market, and that individuals deserve what they produce does not support an institution of pre-institutional property rights. Finally, I have argued that the ideal of a meritocracy is best realized by an open society, one that we should expect can be realized under a more egalitarian market order, and that there's some reason to think that subjecting all economic decision-making to the market may undermine the diversity of bases of recognition for achievement that may exist under such a society.

CHAPTER 4 : CLASSICAL LIBERALISM AND PROPERTY RIGHTS

In chapter 2 of this dissertation, I examined the argument that egalitarian liberal political institutions are excessively coercive, because they require constant state interference in the market order and, ultimately, in private economic transactions between individuals. There, I noted that an ambiguity regarding how to understand coercion lies at the heart of this argument. According to non-moralized accounts of coercion, coercion involves merely issuing proposal in order to induce compliance with the coercer's will, whether or not the proposal is one the coercer has antecedent moral reason not to make. According to moralized accounts of coercion, only wrongful proposals count as coercive. I claimed that, if the argument that egalitarian liberal institutions are unduly coercive is understood as relying on a non-moralized conception of coercion, then it's unclear why political coercion regarding markets is morally objectionable, especially in light of the enormous coercive pressure property rights bring to bear on those who themselves lack property or the easy means to buy access to it. Conversely, if the argument is understood as relying on a moralized conception of coercion, then coercion itself is does not do the work in the argument that is promised. The argument depends on the premise that it is wrongful for the state to issue proposals that interfere with markets.

One initially promising approach to supply this premise is to argue that it is wrong to interfere with individual property rights. In this chapter, I respond to versions of this claim supplied by classical liberals. First, I discuss some of the conceptual contours of property rights. Then, I motivate focusing on one conception of property rights, which I identify as "bottom-up conventionalism," by responding to natural rights and legal conventionalist theories. Finally, I argue that bottom-up conventionalist theories of property rights fail to constitute a cogent objection to egalitarian liberal institutional arrangements.

4.1. Three theoretical approaches to property rights

Most theories of distributive justice are revisionist, in the sense that they do not claim that the status quo gives every person their fair share of whatever is being distributed. Given the vast inequalities of wealth, power, access to capital markets, and ability to extract economic rents from others that exist in most contemporary societies, egalitarian theories of distributive justice are likely to be highly revisionist. Revisionist theories of distributive justice run into a potential problem: the things to be distributed are already owned

by other people.¹ And, plausibly, existing property rights have moral significance. The fact that I own something counts against someone else—including the state—taking it. So it may seem that revisionist proposals for distributive justice, even if well-motivated, will be in tension with a morally significant feature of the landscape of justice, rights of private property.

Broadly, there are three theoretical approaches to property rights. One approach, which is deflationary, I will call *top-down conventionalism*, or, alternatively, the positivist approach to property rights. According to this view, property rights are merely legal constructs. Since the law ought to be accountable to our best theory of justice—including our best theory of distributive justice—top-down conventionalist theories of property rights will deny that existing ownership per se counts as a reason against revisionary redistribution. Since ownership is just a legal fact, and the law ought to be just, if someone owns something that the best theory of distributive justice says they shouldn't own, then the law should be changed. As in any other case, the fact that something is legal does not make it just. Of course, there may be contingent countervailing moral considerations associated with existing property rights: perhaps preserving people's existing legitimate expectations has to be weighed against the requirements of distributive justice. There may also be reasons of procedural justice that limit changing existing ownership rules: it may sometimes violate due process or other norms that regulate how the state may lawfully act to seize someone's property for the purpose of achieving a more just distribution of wealth.

A familiar alternative approach to positivist theories is what I will broadly term *natural rights theories* of property. According to these views, ownership is fundamentally a moral notion which does not depend on any social or legal recognition for its existence. Someone owns something by mixing her labor with it, so that it becomes an extension of herself, or by having it voluntarily transferred to her by someone else who rightfully owns it. Or she undertakes some action to deserve it, or to foreclose others' possible claims to deserve it. Whatever the moral relationship that defines property, according to these views, it is up to the law to recognize that moral relationship. Laws that allow the state or someone else take what someone

¹It may seem that this is only a problem for resource egalitarian theories. Resource egalitarians hold that the *distribuenda* of distributive justice—the things to be distributed equally—are packages of resources. Contrast this with objective wellbeing egalitarian theories, which hold that individuals should be brought to roughly levels of objective wellbeing, such as the capabilities approach; and with subjective wellbeing egalitarian theories, which hold that individuals should be brought to roughly equal levels of satisfaction of their preferences. Even according to these theories, however, the things actually being distributed are packages goods, i.e., resources. Welfare egalitarians hold that we should distribute goods so that each person is brought up to a sufficiently equal level of welfare. These theories will also face the problem that the goods to be distributed for this purpose will largely already be owned.

rightfully owns constitute objectionable violations of her moral property rights. Redistributive taxation involves taking what some own and giving it to others. If what is being taken is rightfully owned, then, according to natural rights theories of property, this constitutes an infringement on the former owner's legitimate entitlements.

Proponents of natural rights theories of property rights often accept revisionist accounts of distributive justice, but do not face the (apparent) problem highlighted at the beginning of this section, that what is to be distributed is itself already owned. This is because many who hold natural rights views of property rights think that the correct account of distributive justice is entailed by the theory of rightful ownership, not the other way around. This is to hold a variety of what Nozick called a historical theory of distributive justice—specifically, one that tracks rightful entitlements.² According to these views, distributive justice requires only recognizing valid property rights (a moral right that may or may not be recognized by law), tracking valid transfers of these rights, and repairing breaches of these rights. Such theories may be revisionist, if they hold that goods are presently distributed in a way that violates prior, morally valid entitlements. For instance, much of the land owned in the present-day United States was wrongfully taken from its proper owners, indigenous Native Americans, and an important causal component in how much of the wealth in the country is distributed is slavery. On any plausible natural rights theory of property rights, these constitute property rights violations, and a historical entitlement theory of distributive justice will either hold that the claims of ownership based on these injustices are either manifestly illegitimate or, at a minimum, give rise to claims of compensation or reparation. According to theories of this sort, distributive justice requires consistently respecting rightful claims of ownership, so there will be no tension between what distributive justice requires and protecting legitimate property rights. One could, however, hold a natural rights view of property rights and a non-historical, revisionist theory of distributive justice. According to these views, realizing distributive justice may sometimes conflict with respecting rightfully ownership, and the fact that someone rightfully owns something will count against redistributing it.

The prior two approaches to property rights sometimes appear to dominate debates about the relationship between property rights and distributive justice. Many egalitarians will find the positivist approach to property rights appealing: property rights are just legal constructs. Justice concerns, among other things,

²Nozick, 153-55.

what the law should be and how it should be used to promote fairness between individuals. So the main question is not, “How should we distribute goods people already have morally significant entitlements to?” but instead, “What sorts of legal entitlements ought people to have?” And this question is answered at least in part by the correct theory of distributive justice. Conversely, natural rights approaches to property rights may seem most consistent with a broadly libertarian account of distributive justice: the distribution of goods at any particular time or among any particular people does not, by itself, matter. Rather, what matters is how the distribution came about, and whether or not this involved violations of property rights.

There is, however, a third account of property rights, also conventionalist, which, while well-entrenched in philosophical discussions of property, is sometimes conflated with the positivist conception of property. I call this *bottom-up conventionalism* about property, or simply *conventionalism* for short.³ According to this view, as with top-down conventionalism, property rights depend for their existence on recognition by others. However, they do not depend solely upon legal recognition for their existence. Instead, they depend on broader social recognition. According to these theories, property is a social convention, or a bundle of social conventions and social (or social-moral) norms, which define what a person can use, what they can exclude others from using, what sort of liability rules they have to follow, what sorts of things can be owned, etc. These conventions, unlike property rights according to the positivist theory, are not stipulated by a legal body. Instead, they evolve over time when property owners interact, or are constituted by an accumulation of small rulings in common law courts. Property rights, according to bottom-up conventionalism, are a kind of social technology that we create, one which has a function: to lower transaction costs, to create a sphere or freedom in which each person can discount others’ interests relative to their own, or to protect individuals’ morally significant interests.

Since conventionalist theories maintain that property rights do not depend on mere decrees issued by lawmakers, according to this view, they can be used to challenge the claims of revisionist accounts of distributive justice. Justice may require giving each person their fair share, but doing so may violate someone

³I call this views “conventionalism” for short because it holds that property rights are merely conventions, in the narrow sense, and that, while the law plays some role in shaping society’s conventions, it may be a bad-making feature of a legal system that it is completely at odds with its fundamental conventions about, e.g., who owns what. In a broader sense, conventions include both formal social rules (laws and explicit judicial rulings), as well as informal social rules (conventions, social norms, social-moral norms, rules of etiquette, etc.). This is why I refer to positivism about property rights as “top-down conventionalism,” to reflect the fact that, on this view, property rights emanate to the legal system to society’s everyday practices and ways of understanding ownership. According to bottom-up conventionalism, property rights just are what they are conventionally understood to be, in the narrow sense of convention referring to society’s informal norms, conventions, and customs surrounding ownership.

else's socially recognized property rights. Whether or not this could be a cogent objection to redistributive proposals depends on whether or not property rights so understood carry any moral weight. Classical liberals often take seriously the moral weight of social conventions and other kinds of decentralized institutions as checks on the power of the state.

The three competing conceptions of property rights can be understood by analogy with competing philosophical theories of the nature of linguistic concepts. According to some theories of the nature of concepts, they in no way depend on recognition by any group or linguistic community. Instead, they are simply there, as something we recognize with whatever faculty we have to grasp them. Plato's theory of the forms is a theory of this sort. Fully recognition-independent theories of nature of concepts are analogous to natural rights theories of property rights, in that neither depends on social recognition for their existence. A competing conception of the nature of concepts is that they are relative to a group that recognizes them: a linguistic or scientific community, for instance, or people who adhere to a particular belief system. According to these theories, concepts are largely conventional, and so this is analogous to bottom-up conventionalist theories of property rights. Stipulative theories of concepts are rarely defended in philosophy. Perhaps Humpty-Dumpty in Lewis Carroll's *Through the Looking Glass* gives an example of a view of this type: Humpty-Dumpty uses words however he likes, and so simply stipulates what his concepts refer to. Constructed languages may also be stipulative accounts of concepts: someone consciously designs a set of linguistic rules that lays out the language's conceptual apparatus. Most constructed languages, such as Esperanto, attempt to track more or less the conceptual schemata common to existing linguistic communities. But we could imagine constructed languages, such as newspeak in George Orwell's *1984*, that seek to lay out a conceptual apparatus, not in order to track the set of concepts most people conventionally recognize, but rather to promote some other end. A theory of concepts that held that they were mainly stipulated, either by individual speakers or by some central body, would be analogous to positivist theories of property rights, since, according to both, they are an act of will by a particular legislator or speaker.

The analogy between theories of concepts and theories of property rights brings out an important feature of bottom-up conventionalist theories of property rights. Even though the meanings of concepts are, in some sense, up to us according to conventionalist theories, we can still discover interesting facts about the nature of concepts and what accepting a particular conceptual schema commits us to. We can

attempt to do this through armchair conceptual analysis, or by collecting linguistic data and by working out what is entailed by these data. Likewise, according to bottom-up conventionalist theories, we can discover interesting things about what our conventions of property commit us to. At least sometimes, a jurist issuing a ruling on property can be understood as an expert working out what a particular conception of property commits us to. According to the Anglo-American conception of property rights, does the state's regulating the use of a particular property constitute a taking, possibly giving rise to a claim of compensation according to the takings clause of the Fifth Amendment of the US constitution? The answer may depend on past rulings in private law, what is taken conventionally to be recognized as constituting part of the value of a piece of property, and perhaps other commitments such as rule of law that places procedural limits on the extent to which regulatory agencies may pass rules substantially limiting the use one may make of one's property.⁴ Contrast this with the ability to discover informative truths according to deliberate-construction accounts of concepts, or with positivist accounts of property rights. There is nothing to learn about the meaning of a stipulative concept that is not contained in its stipulation. Likewise, a theory that holds that what someone owns depends on what the relevant state actor commands does not leave much room open for determining what we are committed to by that conception of property rights. We are committed to just what the relevant state actor says that we are.⁵

Additionally, unlike realist theories of concepts or natural rights theories of property rights, bottom-up conventionalism accounts for the observation that sometimes property rights may be intentionally changed to better fulfill their function. To the extent that concepts, understood as conventions, are subject to the tribunal of experience, we may decide that certain concepts—such as phlogiston, luminous ether, or even folk-psychological concepts such as belief—have no justifiable place in our best conceptual scheme and ought to be eliminated. Certain concepts may also be up for revision, but not elimination, according to our best scientific theories: for instance, the altered meaning of the concept of simultaneity in quantum physics. Similarly, bottom-up conventionalists can allow that property rights understood

⁴For an informative discussion of the regulatory takings doctrine and the rule of law, see Jeremy Waldron, *The Rule of Law and the Measure of Property* (New York, Cambridge University Press, 2012), 1-4.

⁵Sometimes, it is possible to work out thorny logical implications of what is stipulated, as when one attempts to work out what can be deduced underneath the scope of a logical assumption. And some of these deductions may be non-obvious. And there are difficult questions of interpreting statutes, constitutional law, and past rulings, even if one thinks that the rights created by these acts of lawmaking track no underlying commitment. But it is fair to say that there is substantially less room for discovering non-obvious truths about what one is committed to according to positivist conceptions of property rights.

as conventions may sometimes be adjusted to lower transaction costs or to protect people's interests. As David Schmidtz points out, at one time property law in Anglo-American jurisprudence adhered to the *ad coelum* doctrine: "Whoever's is the soil, it is theirs all the way to Heaven and all the way to Hell." In other words, having a property right in a parcel of land means that one owns all of the resources underneath the land and all of the rights of transit above it. Travel in the air above land owned by others was not an issue for most of human history prior to the development of aircraft. However, a system of property rights according to which those wishing to travel by air have to get the agreement of each person whose real estate they pass over would be highly inefficient. Whether or not to apply the *ad coelum* doctrine to air travel represented a choice-point in the development of the law. Jurists had to decide between the rote application of a conventionally recognized doctrine partially defining the property-owner's right of exclusion with changing economic and social circumstances. Since a system of property law that imposes unnecessary heavy coordination costs on individuals wishing to engage in mostly harmless activity such as air travel partially undercuts a major motivation for property rights—to give us a determinate set of rights and liabilities about the use of things in the world so that we're not always infringing on each others' rights or asking for permission to do anything—it seemed clear that the *ad coelum* doctrine needed to be modified. But, of course, modification is not cost-free. The change to the *ad coelum* doctrine removes the right of landowners to charge for travel above their land, potentially lowering the rents they can extract for land ownership from what they would have otherwise been.⁶

4.2. Conceptual contours of "property"

In the previous section, I outlined three theoretical approaches to property rights. But what are they theories of? There are many kinds of theories of property rights, asking different questions. For instance, Wesley N. Hohfeld developed a theory of the logical structure of property rights: that property rights are a bundle of claims, permissions, powers held against other agents with respect to the use of some object.⁷ Further, according to Hohfeld, the idea that property rights are rights *in rem*—rights vested in a thing, against all other persons in general—rather than rights *in personam*—rights held against other particular persons—makes no sense. This is because, on his analysis, all rights have the logical form of rights *in*

⁶David Schmidtz, "Property and Justice," *Social Philosophy & Policy*, 27, no. 1 (2010): 82-83.

⁷Wesley Newcomb Hohfeld, "Some Fundamental Legal Conceptions as Applied in Judicial Reasoning," *Yale Law Journal* 23, no. 1 (1913): 30.

personam. All claims and powers are against persons, not over things. And all liberties are simply the condition of others not having claims against oneself. I am at liberty to use something, on this view, just in case no one else has a claim against me not to use it, or the power to grant me permission or non-permission to use the thing.⁸ Hohfeld's account, part of his overall analysis of rights, is a theory of the logical structure of property rights. It does not tell us what property rights are in a metaphysical sense, their conditions of justification, or the conditions under which property rights arise. A theory like Hohfeld's aspires to answer the analytical question: how can we translate property rights into deontic moral claims? When is *A* permitted to engage in some activity with an object owned by *B*?

Another kind of theory of property rights involves a theory of the justification of property rights. Following Jeremy Waldron, it is possible to distinguish a justification for having property rights in general from the justification of particular property rights.⁹ Why have a system of property rights in the first place, or recognize individuals' right to own private property in general? One theory, defended by Ronald Coase and Harold Demsetz, is that we need property rights to lower the costs of negotiating when and how a person may use a thing. Communal arrangements of property are difficult to scale up, because they either need rules that allow some agents to unilaterally use something without asking for permission (a kind of quasi-property right), or else each individual will be required to solicit permission from others in order to use any thing or ensure that it is available and not being used by others. The costs to negotiating such permission could be quite high when the negotiation involves several people, whereas it would be more efficient simply to have a system in which some individuals could use certain things that they own without asking.¹⁰

⁸Ibid., 17n.

⁹Jeremy Waldron, *The Right to Private Property* (Oxford: Oxford University Press, 1988), 3 & passim. Waldron distinguishes between specific and general rights to private property, not between the justification for specific property rights and the justification for property rights in general. However, Waldron seems to think that asking whether or not someone has a moral right to something (specific or general) amounts to the same thing as asking whether or not "an individual interest considered in itself is sufficiently important from a moral point of view to justify holding other people to be under a duty to promote it," *ibid.*, 3. That is, he seems to think that saying someone has a (moral) right to something is the same as saying that we have good reasons to treat them as if they have a right to that thing, so that the distinction between having a moral right and the justification for that moral right collapse. I think this is a mistake: we can ask what the justification is for a right separately from stating it exists. Additionally, we might have good non-rights based reasons for treating people *as if* they have moral rights to something. Allen Buchanan has forcefully argued that some human rights should be treated this way: not as basic moral rights possessed by all persons at all times, but as rights we have good moral reason for recognizing given the conditions people find themselves in and the standard threats they face to their wellbeing. In any case, though my terminology differs somewhat from Waldron, I do not think much of substance hinges on this.

¹⁰Armen A. Alchian and Harold Demsetz, "The Property Rights Paradigm," *Journal of Economic History* 33, no. 1 (1973): 16-27.

Another example of a justificatory theory for having a system of property rights at all is Hegel's argument that property is necessary for ethical development. People have life-projects that extend beyond the boundaries of their own body. Property is essential, according to Hegel, for allowing a person to make their subjective will objective by embodying it into external objects, extending her moral personality to a sphere of ethical freedom. Some natural rights theories of property rights will hold that property rights are non-derivative moral rights. According to these views, no general justification for having property rights is needed: the reason why one should not violate a person's morally valid entitlements is simply because they are morally valid entitlements.¹¹

Justificatory theories for specific property rights may include conditions on the permissible uptake or transfer of property rights. There are a host of theories inspired by claims Locke makes about the original appropriation of unowned things. According to one metaphysical theory, a person comes to own something that was previously unowned by mixing her labor with it, so that it becomes (in some sense) an extension of herself. According to another theory, also found in Locke, someone comes to rightfully own some previously unowned thing because their appropriation of it makes others better off (in the language of contemporary economics, it has external benefits) and because no other person could possibly have a rightful claim to the product of another person's labor.

The three theories canvassed in the previous section are theories about the nature of property rights. For the purpose of assessing property rights against proposals of distributive justice, what is at issue is whether or not property rights are a part of our moral landscape independently of a broader account of distributive justice. A top-down conventionalist about property rights with an egalitarian theory of distributive justice might hold that the general justification for rights of private property is to help realize justice, and that the justification for specific rights will derive from this general justification. On this view, property rights are not features of our moral landscape independent of a conception of justice (including, *inter alia*, distributive justice), and so the two will not be in tension with each other. The main threat of prior ownership to attempts to realize a more just division of property comes from natural rights theories—according to such theories, even if redistribution would normally be justified, it will always vi-

¹¹Cf. Waldron, *The Right to Private Property*, 343-90.

olate someone's morally valid entitlements—or from bottom-up conventionalist theories, according to which redistributive proposals will risk violating social conventions or norms that carry moral weight.

A theory of the nature of property rights describes the conditions under which someone has property rights. They take the form, “In virtue of *N*, there is a binding rule *R* that says *A* owns *B*.” The content of *N* is spelled out by competing theories of the nature of property rights. According to positivist theories, *N* is legal recognition, so the existence of a property right becomes a question of the nature of the law. According to natural rights theories, *N* is filled out by whatever moral relationship the theory says grounds property rights. According to conventionalist theories, *N* is a kind of social fact that holds for a given moral community or a society.

4.3. The natural rights theory of property rights

The target of this chapter is on the classical liberal conception of property rights. In this section and the following one, I discuss the natural rights and positivist theories of property rights, respectively, pointing to limitations of these views in order to motivate the bottom-up conventionalist approach. In this section, which deals with the natural rights approach, the discussion of its limitations also motivates focusing on bottom-up conventionalist theories as opposed to natural rights theories as a threat to egalitarian theories of distributive justice.

In this dissertation, I associate natural rights theories of property with libertarianism. Libertarianism can be conceived of in a variety of ways, but for the purposes of this dissertation, it entails a commitment to something like the thesis of self-ownership: that individuals have something like rights of property in themselves, and that these rights are held prior to any sort of legal or social recognition. Understood this way, the natural rights theory of property rights does not in any way entail libertarian political conclusions—there is a vast literature on Thomist natural rights theory, which includes theories of property rights, and which is decidedly not libertarian. However, in order to be a libertarian as defined here, one must adhere by definition to a natural rights view of property as I have described it here. Since libertarianism conceives of rights over oneself in the same way as rights over things, and since it conceives of these as prior to political or social life, another related feature of the family of views is that it tends to view political power as private power—that is, power devolved from individuals by consent, and not by upholding liberal requirements

of political legitimacy.¹² For this reason, I will take the Lockean theory of property rights, which has been influential to many libertarians, especially Robert Nozick, and Eric Mack's theory of property rights as representative of the natural rights tradition.¹³

According to Locke general justification for property rights, people have a duty to God to preserve their own existence.¹⁴ In order to do this, they must be able to use objects in the natural world to sustain themselves, and, since they are fulfilling a command by God, this use must be rightful.¹⁵ In his justification for specific property rights, Locke gives three conditions in which an external object can rightfully be appropriated: a person must mix their labor with the object in some way, they must not waste it (since no one has a right to waste what could be used to sustain another person's existence), and they must, in Locke's notoriously ambiguous language, leave "enough, and as good" for others' use.¹⁶ Locke also gives other arguments apparently aimed at justifying unilateral appropriation by parties in a state of nature, including the argument from desert identified by Becker and described in the previous chapter, and an argument from Pareto improvement (that labor generates almost all of the value in any object, so that even those who lose out when others unequally appropriate are compensated by the greater value created by unilateral appropriators).¹⁷ These are supposed to ground the just acquisition of owned things as property.

Locke's account of justice in transfer can be partially gleaned from his comments on the justification for the use of money. Locke appears to think that the use of money, and the ability to transfer property more generally, must meet some higher justificatory hurdle, because with it comes the possibility of substantial inequality. (Contrast this with modern libertarians, who sometimes think that inequality resulting from justified transfer poses no justificatory challenge at all, because they think there is nothing wrong with

¹²See Freeman, "Illiberal Libertarians," 128-31 & 138-49.

¹³I interpret Nozick as providing neither a justification for property rights in general, nor a justification for specific property rights. If he had a justification for specific property rights, it would rest in spelling out conditions for what he calls "justice in acquisition" and "justice in transfer." However, Nozick does not offer a positive theory of the former, on which the latter will ultimately rest. Read carefully, his discussion of justice in acquisition amounts to some critical though sympathetic comments on Locke's theory.

¹⁴Locke, 271 [book 2, chapter 2, sect. 6].

¹⁵Ibid., 265-66 [book 2, chapter 5, sect. 1]. Here, Locke is clear that the duty to preserve one's self entails, straightforwardly enough, a right to do so, along with the means necessary for this end: "[N]atural *Reason* ... tells us, that Men, being once born, have a right to their Preservation, and consequently to Meat and Drink, and other such things, as Nature affords their Subsistence."

¹⁶For the labor-mixing condition, see *ibid.*, 288-89 [book 2, chapter 5, sect. 28]. For the no-waste and as-much-and-as-good-for-others conditions, see *ibid.*, 290-91 [book 2, chapter 5, sects. 31 & 33].

¹⁷For the desert argument, that to claim what another has appropriated something by their own labor would be to desire "the benefit of another's Pains, which he had no right to," see *ibid.*, 291 [book 2, chapter 5, sect. 34]. For the argument from not being set back because of improvements by labor, see *ibid.* 296 [book 2, chapter 5, sect. 40].

inequality.) Even though the use of money, by facilitating trade, leads to inequality, it also benefits each person, because it gives individuals reason to create much more value in the world by mixing their labor with unowned things in the world. Without the ability to barter and to use something as a fixed store of value, acquiring things with one's labor beyond what one can consume immediately would be wasteful, since food gathered in this way would rot over time. The ability to exchange one's excess acquisition for money, a non-perishable good, allows one to store the value of one's excess, giving one a reason to labor beyond what is needed to satisfy one's basic needs. Since Locke thinks a very high proportion of the value of anything is the labor mixed with it, and because he thinks that the wealth of some people in one's community creates external benefits for the less wealthy in that community, he thinks that this shows that the ability to use money and engage in trade, with its attendant inequalities, is generally beneficial. Separately, Locke thinks that we implicitly consent to the use of money by using it ourselves. The justification for the use of money, on Locke's view, can be seen as a general justification of transfer, since the general benefits of having an incentive to work and the external benefits of wealth result from the ability to trade, and not simply from the use of money itself. Money simply facilitates trade. Locke's consent argument for the justification of money is a justification for specific transfers: the person who accepts money for goods or their labor has implicitly consented to the prevailing rules of trade, and the set of entitlements resulting from it.

The Lockean-libertarian theory faces several difficulties, three of which I will discuss here. One problem is that it rests on contentious metaphysical or theological doctrines about which there is no consensus. Locke seems to have thought that the justification for property rights is derived from humans' relationship with God. The labor-mixing account of acquisition is likewise metaphysically suspect. It is difficult to make sense of what this claim even amounts to: why is mixing one's labor with something a special relationship distinct from any other that a person may have with a thing? It is also something that is difficult to draw any normative conclusions from. It is unclear, for instance, why the fact that an object has become imbued with a person's labor give that person any right to exclude others from the use of that thing.

A second problem for a Lockean theory is that it seems to fail as a general justification for full-fledged property rights, which includes the right to exclude others from the use of a thing. For Locke, the justification for having property rights is to allow us to better discharge our duty to God to preserve human-

ity. Perhaps a non-theological libertarian justification for property rights might be that we have a right to preserve our own existence, and that owning things in the external world is necessary for that end. The problem is that property rights aren't strictly necessary to preserve our existence. Rather, mere possession can be sufficient. So the Lockean general justification fails to ground the right to exclude others to own property. Consider the following passage from Locke:

[B]eing given for the use of Men, there must of necessity be a means *to appropriate* [the fruits of the Earth] some way or other before they can be of any use, or at all beneficial to any particular Man. The Fruit, or Venison, which nourishes the wild *Indian*, who knows no Inclosure, and is still a Tenant in common, must be his, and so his, *i.e.*, a part of him, that another can no longer have any right to it, before it can do him any good for the support of his Life.¹⁸

Here, Locke appears to be claiming that, before a person can use something to preserve their own existence, they must appropriate it first so that it becomes an owned thing. But this seems false if Locke has in mind full ownership, which includes a right to exclude others from using a thing. It is possible to preserve one's own existence without having the right to prevent others from using the means by which someone does this. Suppose that everyone possessed a blameless liberty to do as they wish with any object necessary for their basic subsistence. Then, it would be possible to permissibly sustain one's life without also having the right to exclude others from that thing. As Mack points out, this is not enough, strictly speaking, because even in a situation in which each person may permissibly use any object in the world for their own subsistence, it would still, intuitively, constitute a violation of their ability to sustain themselves if persons were prevented from being able to use something by another person exercising their blameless liberty to use it. Suppose that every time a person wished to exercise her blameless liberty to use a thing, a malicious antagonist snatched it away before she could reach for it. A mere liberty to use objects in the natural world, then, does not guarantee that a person's ability to sustain her own existence won't be violated. However, it would be sufficient if each person also had a claim against interference by others in their exercise of their natural liberty to use things. This would prevent interferences like snatching things

¹⁸Locke, 286-87 [book 2, chapter 5, sect. 26].

away to prevent their use, but would not license full liberal ownership, including a right to exclude others from particular things indefinitely, to waste or destroy those things, to transfer them, etc.¹⁹

A third problem for the Lockean account of property is that it is highly revisionist, given facts of historical injustice. Nearly anything owned today will be at least in part the result of violation of the appropriate justificatory account of property rights, at least if it is plausible.²⁰ The history of property is a bloody one of slavery, conquest, and the forcible dispossession of lands held by indigenous peoples. So nearly no existing property rights, as they are conventionally and legally recognized today, will have satisfied the conditions by which someone comes to rightfully own something.

That a view is highly revisionist is not an objection in itself. Justice may require deviating greatly from the present distribution of property rights. However, this is a problem given Locke's general justification for property rights, which is that they are grounded in a person's right to preserve his own existence. Since existing property rights would generally be ill-gotten and so unjustified, no one would be morally entitled to use the things available to them to preserve their own existence. If we take historical theories of distributive justice seriously, present-day "owners"—people who are taken to own things resulting from historical injustice, who are not in fact their rightful owners—would need to first sort out who rightfully owns what they possess instead of using it.

Reparative justice, however, would require a complicated sorting out of historical obligations, impose tremendous information costs, and, in any case, could not be performed unilaterally, as it would require coordination with others that would be unlikely to be forthcoming. To meet this challenge, a Lockean-libertarian might hold that historical claims that have been violated by past injustice decay gradually, and

¹⁹It may be thought that if I have a permission to use something and a claim against others' interference with that use, then this entails that I have a right to exclude them. But this is not correct. Not all incompatible uses of something are interferences, and having a right to exclude others plausibly extends to the ability to exclude any incompatible use of the thing (or any use one disapproves of), not just incompatible uses that interfere with one's use of a thing. To see that not all incompatible uses are interferences, consider the following case: Both you and I may have a blameless permission to use a path, so neither of us has a claim to exclude the other from it. It may not be possible for both of us to pass exactly the same narrow stretch of path at exactly the same time. Our use of the path will in some sense require us to navigate around the other person's conflicting use of it. We do, however, have a claim against interference by the other person with our use of the path: neither of us may try to block the other person from crossing it or run the other person off of the path.

²⁰Locke implausibly seems to have thought that slavery in his own time generated morally binding property rights. Locke appears to have thought that slaves were captives in just wars. Since the victors in a just war have a right to kill those they have defeated (Locke thinks), they have a right to spare their life on the condition that those they have defeated become their slaves. This appears to be how Locke understood slavery as practiced in the 17th century. But he was gravely wrong about the circumstances by which individuals become enslaved. Additionally, Locke's claim that victors in a just military conflict have a right to put to death or enslave those they have defeated is highly implausible.

those who find themselves in possession of a thing once all past entitlements to it are no longer operative rightly owns that thing. This response has the theoretical vice of being at odds with a natural rights view of property, since it seems to legitimate past rights violations in favor of expedience. (If present day holdings can be legitimated by the need to preserve our existence, then what work is the historical entitlement theory doing? Why not say that everyone is entitled to own whatever is necessary to preserve their existence?) But it also has the problem of making the justifiability of our existing holdings depend on who is currently recognized as holding a rightful title over them. And this is to build an element of conventional recognition-dependence into the natural rights view.²¹

Eric Mack defends an alternative natural rights account of property rights. He argues that the specific forms of property rights, including what particular actions count as acquiring or transferring property, are dependent on social practice. However, he argues that each person has a natural right not to be excluded from the social practice constituted by property rights. As Mack acknowledges, there are really two different, closely-related views here. According to one, which he calls a social practice-based account, property rights are conventional, but each person has a natural right not to be excluded from whatever the prevailing social practice of property is in their society. This is just a variety of conventionalism paired with a natural right not to be excluded from the prevailing set of social conventions surrounding property. According to the second interpretation of the hybrid view, which Mack favors, property rights are natural rights, but their contours are filled out by social practice. This is analogous to the right to hold people to their promises. Plausibly, the duty to keep promises is a natural duty and so not dependent on convention. However, what counts as a promise, or the uptake of a promise, is sometimes dependent on social convention. Mack thinks that property rights are more like the natural (i.e., non-conventional) right to hold people to their promises. Both, he argues, depend on what he calls a “normative ur-claim” about persons: that each person has a claim to be allowed to pursue their own good in their own way. In order to

²¹Since Nozick appears to have no general justification for property rights, perhaps his theory could avoid the claim that its revisionist nature is inconsistent with the motivation for going in for a natural rights theory of property rights in the first place (viz., the right to use what is necessary to preserve one’s own existence). But then his theory faces a different challenge: what justifies grounded a theory of distributive justice on property rights? Why not start from an independently plausible conception of distributive justice, and work out from there what system of property rights individuals ought to have? Presumably, Nozick needs some kind of non-question-begging reason for starting from a theory of property rights. But this would likely require him to give a general justification for property rights. Since Nozick seems at best to give an incomplete account of natural property rights, I have read into his view a secularized version of Locke’s general justification for property rights, the right to use what is necessary to preserve one’s own existence. Perhaps these Lockean commitments could be substituted with a different general justification of property rights or a different account of justice in acquisition, but Nozick never provided such a theory.

do this without interference, Mack thinks, persons must be able to acquire rights in objects in the world as well as hold people to their word and count on the promises of others. So the right to participate in a system of property rights and a system of holding people to their promises is a derived natural right, while what counts as satisfying or violating these rights will depend on prevailing social conventions.

On Mack's favored conception of the hybrid view, it's still possible for laws or conventional practices to violate a person's property rights by arbitrarily excluding her from the prevailing social practice, since this violates her natural right to own property. It would not, however, violate any of her natural rights if a society's social practices were to restrict certain incidents of ownership, such as the right to transfer in the form of inheritance or without incurring a tax penalty. The target of this section is the view that property rights themselves are natural rights, not the view that we have a general natural right to own property at all, so Mack's view is a conventionalist in the sense relevant here, namely, what sorts of claims from property rights might be inconsistent with revisionist egalitarian accounts of redistributive justice.

Mack could respond that his normative *ur*-claim, that people have a claim to pursue their own good in their own way, places constraints on what could count as acceptable property rights conventions. Social practices of property that fail to allow people pursue their own good in their own way are disqualified by our natural right to participate in a system of property that would allow us to do this. The *ur*-claim, according to Mack, upholds a strong sense of the separateness of persons, so that no person is required to work for anyone else's end. It may be thought that this constraint could be leveraged to generate libertarian conclusions about distributive justice: social practices that require some, for instance, to work so as to secure the fair value of others' political liberties, or to realize Rawls's difference principle, require some to work toward the ends of others in a way that may seem morally objectionable on this view. However, this argument cannot get off ground if property rights themselves are allowed to be conventional. There is nothing about differential rates of taxation, taxation on wealth, or restrictions on private market transactions that requires anyone to work for others, unless we assume that giving anyone less than what they would be entitled to under a perfectly free market amounts to the sanctioned appropriation of what already belongs to them. But this claim would require further justification without begging the question against egalitarian liberal theories of distributive justice. An appeal to conventional recognition in this case

will not do, since actual prevailing social conventions do not typically recognize that a person is rightfully entitled to whatever they earn on an idealized free market.

4.4. Positive theories of property rights

A second promising strategy for liberals defending revisionist theories of distributive justice is to embrace the positivist conception of property rights, according to which what a person owns depends solely on legal recognition. Liam Murphy and Thomas Nagel take this approach when they argue that “everyday libertarian” theories of tax fairness—that people are entitled to the pre-tax income they can receive on the market—are incoherent, because the tax code partially defines individuals’ property rights. It makes no sense to discuss what someone owns prior to taxation, on their view, because property rights themselves are dependent on legal recognition for their existence. Murphy and Nagel write:

There is no market without government and not government without taxes; and what type of market there is depends on laws and policy decisions that government must make. In the absence of a legal system supported by taxes, there couldn’t be money, banks, corporations, stock exchanges, patents, or a modern market economy—none of the institutions that make possible the existence of almost all contemporary forms of income and wealth.

It is therefore logically impossible that people should have any kind of entitlement to their pretax income. All they can be entitled to is what they would be left with after taxes under a legitimate system, supported by legitimate taxation.²²

From this, they conclude:

[Everyday libertarianism] should be replaced by the conception of property rights as depending on the legal system that defines them. Since that system includes taxes as an absolutely essential part, the idea of a prima facie property right to one’s pretax income—an income that could not exist without a tax-supported government—is meaningless.²³

Murphy and Nagel make two important claims here:

The conceptual thesis: The idea that people have property rights over their pretax income is “deeply incoherent.”

²²Liam Murphy & Thomas Nagel, *The Myth of Ownership: Taxes and Justice* (New York: Oxford University Press, 2002), 32-33.

²³*Ibid.*, 36.

The causal-dependency thesis: The state relies on taxation to enforce and maintain property rights through the legal system, since it enforces and maintains property rights through the enforcement of civil and criminal law as it relates to property.

In Murphy and Nagel's argument, the causal-dependency thesis is supposed to support the conceptual thesis. It is *because* property rights are maintained through a legal system that itself relies on taxation that it makes no sense to talk about taxation interfering with a prior order of property rights.

Here I will take up several challenges to this argument. First, it is not clear why there would be a strong relationship between something's being causally dependent on something else and its being meaningful to talk of it as distinct from its cause. At least initially, the connection seems weak. Suppose, as some have believed at various times in history, that the maintenance and even survival of the legal system requires extra-legal or illegal activity. Suppose that it requires torture to prevent the deaths of millions, or the extra-judicial killing of Nazi war criminals without a legal basis.²⁴ Even if activities like this were necessary for the legal system to exist—so that we could meaningfully say that the legal system causally depends on them—it would not follow that it is meaningless to say, as a conceptual matter, that they are illegal.

Second, as Gaus points out, all that follows from the fact that taxation is causally necessary for sustaining the legal system is that taxation may be justified. It does not follow from the fact that sometimes one is justified in taking what someone else is entitled to that they were therefore not entitled to it in the first place. Entitlements may impose *pro tanto* or defeasible reasons for not taking something from someone. They may impose a high justificatory burden on potential tax collectors. But it does not follow that this burden may not be met, or that if it ever is, the person never owned the thing to begin with.²⁵

²⁴For an example of the first, consider the classic "ticking time-bomb" case, in which a nuclear bomb will detonate in a major urban center such as Manhattan, and the authorities' best, or only, chance to stop it is to use torture to attempt to gather information from a suspect. See, for example, Michael Walzer, "Political Action: The Problem of Dirty Hands," *Philosophy & Public Affairs* 2, no. 2 (1973): 166-67. Regarding the second sort of case, many commentators, such as Winston Churchill, remarked that the Nuremberg trials of Nazi war criminals were not, in fact, legally valid, and that Nazi war criminals should have simply been executed outside of the pretense of a legal proceeding. This is, of course, a controversial interpretation of international law. But it is enough to show that the position is a coherent, if incorrect, one: it could have turned out that extra-legal or illegal retaliation against groups like the Nazis was necessary in order to maintain a system of international law, which shows that not everything the law is causally dependent on it thereby rendered legal.

²⁵Gerald Gaus, "Coercion, Ownership, and the Redistributive State: Justificatory Liberalism's Classical Tilt," *Social Philosophy & Policy* 27, no. 1 (2010): 259.

4.5. The classical liberal approach: robust bottom-up conventionalism

Classical liberals typically do not embrace highly revisionist accounts of distributive justice, much less egalitarian ones. This is because a significant feature of classical liberal thought has been skepticism of top-down appeals to economic or social justice. Classical liberals may disagree with revisionist accounts of distributive justice on purely moral grounds—that it is not morally desirable to promote equality of any *distribuendum*—or because they deny, as an empirical matter, that attempts to bring about social justice will not turn out to be self-defeating or otherwise bad, by, for instance, disrupting the spontaneous order of activity among cooperating individuals. In this section, I will focus on this second kind of objection. This line of objection presupposes a bottom-up conventionalist conception of property rights, because it assumes that legitimate property rights are not simply generated by the laws of a legitimate state, but are instead products of a spontaneous order of human practices and common law that legal and political institutions ought to respect.

Suppose it would be possible to design an ideal tax code or a system of legal liability rules that, were they to function perfectly, would prevent individuals from imposing external costs on others. Many classical liberals would nevertheless eschew planning-based solutions to property rights conventions in order to realize these aims. One reason to reject such solutions is skepticism that they will succeed at their aims without great costs. As Hayek observed, our knowledge of social dynamics is limited, and many well-intentioned policies are likely to be self-defeating. On the other hand, rule-governed processes such as markets, but also systems of common law and arbitration, allows social decisions to be made using widely-dispersed knowledge not accessible to any one person. It may be that the optimal set of property rights is one an economist's model says is the correct one. However, it is more likely, Hayek thinks, that the result of iterated judicial decisions throughout the development of common law arrived at a set of property laws that are better at facilitating orderly social cooperation. Legislators attempt to change these rules by fiat at their peril. Alternatively, some classical liberals may reject attempts to design an optimal system of private property for moral reasons. Hayek also argued that there is no Archimedean point from which to evaluate the social-moral rules of a society. To say that a given property rights rule is unjust would be to occupy a position Hayek thinks none of us has, of knowing what the true set of moral rules are and evaluating these

against the prevailing conventions of a society.²⁶ Similarly, Gaus has argued that existing moral rules that define property rights occupy a privileged moral status in the order of justification for a system of social morality.²⁷ One of the first set of justifiable social rules we need to arrive upon, after rules against coercion, is how to divide the world into spheres in which particular individuals have a more or less complete say over what can be done with them.

To say that property rights are conventional is to say that there is some behavioral regularity or set of shared expectations by members of society that underwrites them. They are not products of legal fiat or legislative command, but are rather grounded in the attitudes of people who follow them. In David Lewis's classic treatment of convention, a behavioral regularity is a convention if and only if, within the relevant reference network, (a) everyone conforms to it; (b) everyone expects everyone else to conform to it; and (c) everyone prefers to conform to it as long as they expect everyone else to do so, since conforming to the regularity provided that others do so is in each person's best interest.²⁸ Traffic rules are a classic example of conventions. In the United States, everyone drives on the right side of the road, everyone expects everyone else to do this, and it's in each person's best interests to drive on the right side of the road provided that this is what they expect others to do. The purpose of traffic rules is to facilitate movement without vehicles crashing into each other. To do this, what is important is that there exist shared expectations on the part of drivers regarding what others will do, and priority rules for how to adjudicate apparent conflicts, such as who gets to go first at a four-way intersection. Understanding property rights as Lewisian conventions is to treat them as traffic rules: what matters is that they generate shared expectations on the part of agents and that they provide some means of adjudicating apparent conflicts, such as competing claims of ownership or liability rules.

Coordination games can have multiple equilibria, including some equilibria that are better from each agent's point of view, or according to some independent standard, than others. Suppose we have to coordinate on simple rules governing rights over office supplies in our shared workspace. What is most important to both of us is that we do what we think the other person expects us to do (in order to minimize conflict or sanctions, while preserving our expectations under the rules). Of the two rules we are considering, we

²⁶Hayek, *Law, Legislation, & Liberty*, vol. 1, 85-88.

²⁷Gaus, *The Order of Public Reason*, 374-81.

²⁸David Lewis, *Convention* (Malden, MA: Blackwell Publishers, 2002), 42. A reference network, in this sense, is the group of people to whom the norm or convention applies.

both prefer *A* to *B*. However, if we both expect the other person to do *B*, then we have most reason to stick with the suboptimal rule, *B*. This problem may seem easy to solve, because we could communicate and agree to follow our most preferred rule, *A*. But this may be much harder in an office with so many people that they remain mainly strangers to one another. In this case, if we expect *B* to be the generally followed social rule, then we have most reason to conform to *B* ourselves even if *A* would clearly be better by everyone's standards. So it is possible through spontaneous cooperation to arrive at a suboptimal solution to a coordination problem: we wind up with suboptimal rule *B*—granted, better than no rule at all—instead of a better rule such as *A*. The same could be the case for a system of property rights. Suppose that changing the tax law, or the legal liability law, would be better for each person. Or suppose it would be better from the point of view of what justice requires, or from the point of view of a representative person (such as the least advantaged person) whose perspective is referenced in our best theory of distributive justice. Still, what is more important is that we all share the same system of property rights. If we expect everyone else to embrace the suboptimal status quo, then each of us has most reason to continue following that rule even if we would all like to change to the better rule.

Far from vindicating bottom-up approaches to property rights, the possibility of suboptimal equilibria leaves open a substantial role for top-down interventions to guide the rules to a more just outcome. If we're stuck coordinating on a suboptimal set of rules related to property rights, then the state or some other powerful actor can solve this problem by changing our empirical expectations of what others will do. Legislation can be a kind of focal point, to borrow terminology from Thomas Schelling's classic treatment of coordination problems. We were stuck with the suboptimal rule, *B*. However, when the state passes a law that we should now follow *A*, we might reasonably expect most people to shift over to *A* shortly, and we can begin to do the same.²⁹ This approach might be generalized to vindicate top-down design of property rights systems to promote justice: any time we've arrived at a set of property rules that is suboptimal from the point of view of justice, we could expect well-meaning legislators to change the rules to ones that are optimal from the point of view of justice.

This observation seems to significantly reduce the threat the classical liberal, bottom-up conventionalist theory of property rights appears to pose to revisionist theories of distributive justice. The dialectic

²⁹See Gaus, *The Order of Public Reason*, 395-97 & 409-13.

up to this point goes as follows: revisionists about distributive justice propose a change in economic policy. The classical liberals says that, even if otherwise well-motivated, changing the existing distribution of property rights will violate conventionally recognized property rights. The rejoinder here is that there's nothing about a set of property rights, understood as social conventions, that favors them over some alternative scheme of property rights. It could well be that we've arrived at a conventional system that is unjust or otherwise suboptimal, and so ought to be revised.

To be a cogent response to revisionary accounts of distributive justice, the classical liberal response must include an objection to revising conventional property rules once they are established and widely-recognized in a society. There are two forms this argument might take. One, the *non-instrumental argument*, holds that changing existing property rules is wrong because the fact that an existing set of rules is recognized in society gives it moral weight which counts against its being changed. The second, the *instrumental argument*, holds that well-meaning legislators' efforts to design better property rights that lead us to an apparently better equilibrium will often be self-defeating, because of lack of adequate social knowledge. In the next two sections, I sketch these objections and respond to them.

4.5.1. *Non-instrumental arguments for the normative import of property conventions*

In this section, I discuss the non-instrumental argument that hold that existing property rights rules and convention hold moral weight against legislative attempts to revise them in virtue of being the rules we currently recognize. I will respond specifically to the account of the social rules governing property outlined by Gaus in *The Order of Public Reason*.

According to Gaus, a law is only justified if it is acceptable to each person subject to it according to the evaluative standards they use to weigh laws and social rules, given its coercive costs. "All laws are to be justified," Gaus writes. "This justification occurs against a background of one's already justified rights, what I have called the order of justification. Now property rights, if not the most basic rights in the liberal order of justification, are certainly prior to many state laws and policies such as, say, funding museums."³⁰ Or, we might add, funding public goods or providing benefits to the least advantaged through redistributive taxation. Of the idea of an order of justification, Gaus writes:

³⁰Gaus, *The Order of Public Reason*, 510-11.

All moral orders suppose an order of justification: some things are more or less settled, and that settlement provides a background for further justification. Of course “settled” does not mean that we cannot go back and rethink the answers we have given; if we see that further up the order a basic principle or rule is precluding too much, or giving really unacceptable results, we are apt to go back and rethink the basic principle in this light.³¹

The idea here seems to be that free and equal persons, deliberating on the rules they will use to govern themselves, first settle on a set of fundamental rules which concern their agency, such as rights not to be coerced along with freedom of conscience. Then, because property rights are necessary for social cooperation, they agree to a system of moral rules governing property. Then they deliberate about particular legislation in their society against the background of their rules against coercion and rules protecting property rights. On this view, the fact that a set of property rights are the set that we have agreed upon early in the order of justification gives them moral weight against legislation that might alter them, and so limits the degree to which a revisionist account of distributive justice would be morally acceptable

There are three problems for Gaus’s order of justification argument. First, it is unclear what the theoretical motivation for having an order of justification is in the first place. Gaus claims that all justification happens against a background of existing rights, but it is unclear why this would be true. Gaus’s principle of public justification does not make reference to individual agents’ background rights, but just their evaluative standards. Plausibly, where a particular rule sits along an agent’s preference-ordering will depend on what other rules are agreed to. For instance, what sorts of tax laws I might accept might depend in part of the prevailing rules of liability that make up property rights. But the converse is true as well: what sorts of liability rules I would accept may depend on what the tax law is. Since Gaus’s view depends on treating particular issues in isolation, instead of an entire system of social rules, particular rules could be justified by holding all other rules fixed. It is unclear why, when evaluating each social rule or law, *all* of the other rules or laws could not be held fixed.

Perhaps Gaus has the idea that if free and equal persons were to agree to an entirely new set of social-moral rules where none existed, they would need to do this sequentially, and they might first start with the rules that are most important for social cooperation, such as rules protecting agency and (he contends)

³¹Ibid., 275.

rules of private property. If so, this seems to be mistaking the purpose role of an account of public reason, which is to establish a criterion for testing whether or not a social rule or a set of social rules is publicly justifiable to persons as free and equal, not to establish a procedure for generating a brand new system of such rules. The actual societies to which Gaus's theory applies already have rules, and it's unclear why we need an order of justification for evaluating each of these already-existing rules. We could just take any of the rules of that society and ask whether or not they are publicly justifiable given the background of other rules that are publicly recognized in that society.

A second problem for Gaus's view is that it is unclear why property rights should come especially early in the order of justification. Gaus's idea seems to be that settling the conceptual contours of property rights—when they can be transferred, how stringent they are, etc.—is essential to social cooperation. But so is having a set of rules governing the distribution of property. The first concerns what it means to have a property right. The second concerns how we distribute those rights: do we distribute them equally, to whoever created the thing over which the right is held, according to need, or according to some other standard? Both questions seem important to securing social cooperation: we need to decide what to do in, e.g., cases of conflict over property rights, but also who gets to own what. The former question does not seem particularly more urgent than the latter. So an alternative order of justification might be to first settle on some way of distributing goods, and then adjudicating the actual contours of property rights gradually over time.

This is, in fact, how the Anglo-American conception of property rights seems to have evolved. Common law ownership developed from the Medieval conception of *seisin*, or rightfully coming to possess of a piece of property. Early property rights decisions by common law jurists primarily concerned arbitrating competing claims for whether or not a person rightfully came to possess a piece of property. Gradually, over time, these rulings evolved into conditions on what ownership actually entails: Do owners have the power to dispossess others who have wrongly become seized of a property? Do beneficiaries of property have rights to those benefits that must be respected when property is transferred? Can landowners decide who may fly above their land? The conceptual details of what ownership actually involves were, historically, details, while the question of who owns what—the question of the allocation and distribution of

resources, about which much of egalitarian justice concerns—were obviously much more urgent matters to address for people actually engaged in forging a system of social cooperation.³²

A third problem for Gaus’s account is that his qualification on the order of justification—that “if we see that further up the order a basic principle or rule is precluding too much, or giving really unacceptable results, we are apt to go back and rethink the basic principle in this light”—seems to limit the force of the argument substantially. It’s hard to tell how expansively Gaus intends us to interpret “precluding too much, or giving really unacceptable results.” But we could imagine legislators or the public observing that, given a sufficiently expansive conception of private property rights being used to defeat proposals for introducing justice in society’s tax code, those property rights preclude too much, or are producing unacceptable results. If so, it seems we’re free to revise our conception of property rights whenever it would produce acceptable results from the point of view of justice, which limits the currency of this argument as a critique of legislative interference into existing property rights.

If we do not treat property rights as occupying a particularly privileged place in the order of justification, then we should not think that their recognition in our existing social order counts strongly against revisionist accounts of distributive justice, or immunizes them from being revised in ways that would promote justice.

4.5.2. The instrumental argument against interfering with existing property rights conventions

In this section, I discuss the instrumental argument that legislators should avoid making decisions that substantially alter the order of property rights, since they lack sufficient knowledge to know whether or not doing so will not be unjust or self-defeating. This sort of objection is developed most forcefully by Hayek, although Gaus has also developed a version of this argument in his more recent work.

Like other legal and social rules, property rights exist at least in part to facilitate social cooperation. Social cooperation itself implies a kind of order. Hayek helpfully points out that it is easy to conflate the idea of order with intentional design: for something to be ordered on this naïve conception is for someone to have ordered it. However, as Hayek and others have pointed out, a social order can also be spontaneously ordered. It may be that order emerges out of the actions of individual agents not intentionally coordinat-

³²Maitland, *The Forms of Action at Common Law*, edited by A. H. Chaytor and W. J. Whittaker (New York: Cambridge University Press, 1936), lectures 1 and 3.

ing with one another, but instead applying a heuristic such as pursuing their own self-interest. The market is one example of a spontaneous order, and Hayek's important contribution to economic thought is that markets self-order by directing resources to productive uses that any one market participant lacks complete knowledge of. Through interacting in markets, individuals can mutually satisfy their preferences the ranking and intensity of which no legislator could possibly be aware of.

The set of social and legal rules that prevail in a society is also, at least in part, a product of a complex social order. According to Hayek, property rights and other rules develop spontaneously over time through the decisions of individual jurists adjudicating relatively minor disputes. As the comparison with linguistic conceptions in section I highlighted, these decisions are not the result of intentional design, but rather emerge through decisions made by people trying to follow the relevant conventions. Just as it is very difficult to engineer a system of language and linguistic concepts from the top down, it would also be difficult to engineer an entire scheme of social and moral rules for adjudicating disagreements about property. Legislators, according to Hayek, lack sufficient information to know whether or not decisions they make—including decisions about the distribution of property, when doing involves violating or changing presently-accepted conventions of property—will actually be desirable.

A challenge for egalitarian liberals wishing to respond to Hayek is to preserve his insights about markets while rejecting his pessimistic conclusion that revisions to existing social rules surrounding matters like property are likely to be justified. It is a shared belief of nearly all present-day liberals, and it seems abundantly clear from the historical record, that markets tend to be more efficient at allocating resources than central planners. At least part of the reason for this seems to be lack of knowledge on the part of planners: the Soviet Union maintained a costly and mostly ineffective system for deciding how to allocate capital between different state-owned firms and whether or not to produce, say, consumer appliances or housing. Production over- or under-runs led to complicated systems of rationing, such as lines for purchasing goods in state stores. So a useful strategy for responding to Hayek's argument is to point to relevant dissimilarities between the allocative function of markets and the rule-making function of repeated social interactions which suggest that problems with intentional design in the former case will not translate into problems in the latter case.

One major relevant dissimilarity between interfering with the market and the modification of social rules of property is that, in the former case, the information required is economic information, while in the latter case, the information required is practical information about the design of social institutions coupled with moral knowledge. There is good reason to think that economic information, which involves knowledge of people's preferences, trade-offs, discount rates, will not be widely dispersed. Much of this information is private and not widely accessible. Knowledge of institutional architecture, however, is public and often is widely accessible. It is one thing to know how a particular market should allocate resources given people's diverse preferences. It is another to know, for instance, that markets are better at allocating resources than central planners, or that property rights regimes that require individuals to acquire permission from others or to compensate them for minor costs their choices impose on them will impose burdensome and inefficient transaction costs.

Another kind of knowledge involved in determining how social-moral rules such as property rights ought to be organized is moral knowledge: whether or not, for instance, it would be just or equitable to limit the use of property through regulation without compensating owners for the loss in value of their property (so-called regulatory takings cases). Again, we should expect that moral knowledge is generally public. As in the case of institutional design, some people might be better at reasoning morally than others, but the reasons they use are publicly accessible. And since the information available to legislators (or to jurists, for that matter) is in principle public, we shouldn't expect the relevant kind of knowledge legislators or members of the public would need to revisit property rights rules to be widely dispersed or inaccessible in principle.

Gaus has argued, to the contrary, that information about the nature and desirability of other social worlds is likely to be elusive and widely dispersed in the same way that each person's preferences and trade-offs are likely to be. When considering how to reach an ideally just social arrangement (Gaus claims), we should consider how just the ideal is, how costly it would be to get there and forego local improvements that might move us away from the ideal, and how likely we are to be able to reach the ideal. This information may not be available to any particular person. "If we had comprehensive knowledge of the entire landscape of justice, we would at least know, when we turn our backs on local improvements, just where the idea lies, and how ideal it really is. Perhaps the main worry then would be the feasibility of getting to the ideal."

Gaus, however, dismisses the idea that we have this kind of comprehensive knowledge of social worlds different from our own as “sheer delusion.” Instead, he thinks, “no single perspective on justice could ever have a complete knowledge of the justice of all social worlds. Every perspective is always learning, searching the landscape, trying to find better optima—better utopias.”³³ Knowledge of the justice and feasibility of some distant social proposals will not be possessed by any particular person. Instead, this knowledge will be held by a diverse range of different social perspectives.

Gaus’s discussion on this point is highly abstract. He schematizes different social worlds as “distant from” each other, and some as “more just” than others, but these are abstractions that group different ways in which a society can be unlike another or more or less just. It’s not clear the extent to which the problem is our lack of knowledge of how alternative institutions would work or our lack of adequate moral knowledge to assess those institutions. Perhaps a slightly more concrete gloss on his point would be that we lack sufficient knowledge about how radically different social institutions would work to know whether or not, through their normal operation, they would be just (or how just they would be). According to this reading, the problem is not so much that we lack knowledge about what justice requires, but rather that we lack adequate knowledge about how very different kinds of social institutions would actually work. Moral philosophers often reason about radically different counterfactual circumstances without too much trouble. One may have doubts about the degree that such reasoning can generate moral knowledge, but the issue behind those doubts is less that they are about counterfactual circumstances, but rather that the kinds of justifications given in moral philosophy—intuition pumps, speculation about human nature, etc.—are good means to attain moral knowledge. As long as philosophers (or anyone else) have some way of arriving at justified moral principles, applying these principles to far-off social worlds seems to pose no great epistemic difficulty.

The real difficulty that Gaus seems to highlight is the problem of assessing how very different institutions would operate and what sorts of unintended consequences they would have. There is certainly grounds for epistemic modesty in such cases. The principle that we should be reluctant to impose radical change given our lack of knowledge regarding the consequences of such a claim is plausible. However, there is little reason to think that this information will be widely dispersed. It is not generally known what

³³Gerald Gaus, *The Tyranny of the Ideal: Justice in a Diverse Society* (Princeton, NJ: Princeton University Press, 2016), 105-06.

effect, for instance, eliminating the ownership of all private property would have on liberal capitalist societies. It is not that some people have knowledge that bears on this question, but what they know is widely dispersed and needs to be aggregated through a process that preserves diversity of opinion. Instead, it is that this information is not readily available to anyone—and, to the extent very modest observations might bear on the question (generalizations about the history of private property and knowledge of the economic role of property rights), it is information that is public and generally available.

The kinds of revisions egalitarians might propose to property rights are also not widely distant from the kinds of societies we currently live in, and so are unlikely to require exotic or difficult to obtain social knowledge. If we wish to speculate about the effects of a high tax rate on inheritance designed to eliminate large concentrations of wealth across generations, we can evaluate the economic arguments about the incentive effects of doing so or examine societies with much higher inheritance taxes than presently found in the United States. Or, more radically, egalitarian liberal revisionists may wish to eliminate, as much as possible, what Rawls (following Joan Robinson) calls “rents from pure ownership,” i.e., returns from merely owning a thing separate from managing how it is used or employing it in entrepreneurial activity. This may require implementing Keynes’s proposal to “liquidate the rentier”—to limit as much as possible the risk-free rate of return, which corresponds to returns on investment that do not accrue from entrepreneurial risk-seeking. Effectively, this would mean offering very low interest rates on so-called “gilt-edged securities,” i.e., the treasury bonds of stable governments. This would lead to very different economic circumstances which may or may not be desirable from the point of view of justice or other considerations such as economic efficiency. But the problem of estimating the effects of this kind of case is not intractable. Most societies have had experience with very low interest rates designed to spur investment in the past. The short- and long-term effects of these policies are, to some extent, part of the historical record. And economic models also provide some theoretical guidance in how to interpret that record.

4.6. Conclusion

In this chapter, I have argued that the classical liberal conception of property rights, that a stable system of property rights is the product of a spontaneous order and so counts against top-down legislative interference with the market, fails as an objection to egalitarian liberal institutions. Chapters 2-4 have been focused on responding to critiques of egalitarian liberal social justice by classical liberals. These critiques

constitute a classical liberal conception of what it is to have thick economic liberties. In the next chapter, I discuss and defend a rival conception of economic liberty that, I argue, is more amenable to egalitarian liberal political institutions.

CHAPTER 5 : ECONOMIC FREEDOM AND EGALITARIAN LIBERALISM

Freedom is an important moral ideal. We care not just about what we consume or our overall level of comfort and security, but also the range of options available to us. Economic activity, broadly construed, is also an important dimension of human life. People engage in productive activity not only to satisfy their material needs, but also to pursue projects that give their lives meaning. Even if people only worked for the purpose of securing goods for their own consumption, most adults spend a large portion of their lives working, and the options available to them when doing so and the degree to which they have a say in their working conditions can be as important to many as the degree to which they have freedoms that characterize liberal civil societies. As Elizabeth Anderson notes, workers in traditional workplace management structures are essentially subjects to private governments, which are often arbitrary in the control they wield over workers' lives.¹ An authoritarian manager can often wield as much influence in a person's life, and be as terrifying, as authoritarians in other domains of human life.

How best to conceive of economic freedom once loomed large as an area of concern among political philosophers. Early 19th century socialists like Pierre-Joseph Proudhon took note of how the institution of private property is a limitation on the liberty of every person by the property-holder.² Marx argued that humans are essentially productive beings: the nature of humans is to create their own social conditions.³ Marx's ultimate social ideal was that of a free association of producers, where humans spontaneously exercise their productive capacities. In such a society, Marx imagined, one could fish in the morning and be a critic after dinner.⁴ According to Marx, the only way for people to achieve the ideal of living in a free association of producers would be to abolish private property, and the corresponding coercive claim it gives capitalists over the labor of workers.⁵ Defenders of capitalism were also concerned with showing how the rights to freely contract one's labor or to engage in voluntary exchange are fundamental freedom, and that laws which restrict these freedoms are illegitimate.⁶ The debate between defenders of capitalism and so-

¹Elizabeth Anderson, *Private Government: How Employers Rule Our Lives (And Why We Don't Talk about It)* (Princeton, NJ: Princeton University Press), 37-71.

²Pierre-Joseph Proudhon, *What is Property?*, ed. Donald R. Kelley and Bonnie G. Smith (Cambridge University Press, 1993), 37-42 & 168-69.

³Karl Marx, *Economic and Philosophic Manuscripts of 1844*, in Tuck, 75-78.

⁴Marx, *The German Ideology*, in Tuck, 160.

⁵Marx, *The Communist Manifesto*, in Tuck, 485-86.

⁶Jean-Baptiste Say, *A Treatise on Political Economy* (New York: Augustus M. Kelley, 1880), xv-lx; Herbert Spencer, *Social Statics, Abridged & Revised, together with The Man versus the State* (London: Williams & Norgate, 1892), 54-57 & 63-65.

cialists in the 19th century can be understood as, in part, one regarding how best to characterize economic freedom: are we economically free when we can freely accumulate capital and transact away our labor, or are we only when others are not allowed to own our labor?

For much of the 20th century, the dominant strand of liberalism has been less full-throated in its endorsement of capitalism and markets as a means of promoting freedom. It has focused instead whether capitalism or its alternatives best promotes overall welfare or equality. Defenders of capitalism such as Hayek have favored capitalist societies primarily because they tend to promote overall welfare or the satisfaction of individuals' desires.⁷ Liberal opponents of capitalism, such as Rawls, object to it on the grounds that capitalism is incompatible with the fair value of *political* liberties, since even capitalist societies bolstered by a significant welfare state are subject to an erosion of political equality presupposed by democratic societies.⁸ Even 20th century socialists have primarily defended socialism on grounds that it promotes *equality*, rather than the freedom of members of society to utilize their productive capacities or to escape coercion by owners of capital.⁹

Recently, classical liberals like Gaus and John Tomasi have defended a market-friendly conception of economic freedom. According to Tomasi, to be free is to be the author of one's own life. Instrumental to achieving this is to be able to engage in robust projects, many of which can be characterized as forms of economic activity: saving for important life goals, owning a home, or being an entrepreneur.¹⁰ Gaus argues that a society structured according to his conception of public reason only coerces individuals to act in accordance with the reasons they have.¹¹ According to this approach, friends of capitalism need not concede the point that capitalist labor relations make us less free. In addition to making us better off, the economic relations characteristic of capitalist societies make us freer to pursue our own projects and to be authors of our own lives. This ideal of economic freedom is an example of a positive conception of liberty: economic freedom, on this view, is the ability to be the author of one's life, to set one's life's goals

⁷Hayek argues that liberty is important because it allows individuals' to put their information to the most beneficial overall use. Hayek, *The Constitution of Liberty*, 71-80. Though he rejects utilitarianism, which he understands as a procedure for deciding on policy, Hayek endorses a restricted version of rule utilitarianism. Hayek, *Law, Legislation and Liberty*, vol. 2, 22-23; Hayek, *The Constitution of Liberty*, 226-27.

⁸Rawls, *Justice as Fairness*, 135-38. Cf. Rawls, *A Theory of Justice*, xiv-xv.

⁹Cf. Cohen, *Self-Ownership, Freedom, and Equality*. For a notable exception, see Cohen, "Freedom and Money," 1-27.

¹⁰Tomasi, *Free Market Fairness*, 94-95; Brennan and Tomasi, 120-22.

¹¹Gaus, *The Order of Public Reason*, 30-36.

for oneself and to pursue. This is in contrast to the traditional approach to liberty defended by classical liberals, that to be free is merely to not to have one's choices interfered with or restricted.

In this chapter, I defend a *quality and availability of options* conception of economic freedom. This view, which—I argue, is implicit in Isaiah Berlin's later writing on freedom—is a negative conception of liberty.¹² According to this view, how free one is depends on how many high-quality options are available to them (i.e., that they are not prevented from engaging in). Since, according to this view, a person can be made freer both by giving them additional options as well as by increasing the quality of the options they have, some coercive restrictions on economic activity, such as limits to the right of freedom of contract and exchange, can make people freer. Lowering the cost of exit from firms is an especially effective way to enhance economic freedom.

In the first section of this chapter, I discuss some preliminaries about freedom, distinguishing liberty as an ideal from particular liberties. In the second section, I outline three conceptions of liberty: positive and negative liberty, as Berlin distinguishes them, and the conception of freedom as antipower (of which I take the republican ideal of freedom as the absence of domination or subjugation as an example). In section three, I motivate pursuing a negative conception of economic freedom by discussing some of the limitations of positive liberty and antipower conceptions of liberty as a political ideal. In section four, I outline the quality and availability of options view. Finally, in section five, I argue that we have reason to expect egalitarian liberal institutions would do a better job of realizing the ideal of economic freedom I outline in this chapter. In the following two chapters, I will discuss this last claim in greater detail by examining Rawls's idea of property-owning democracy.

5.1. The concept of liberty

In this section, I distinguish the kind of liberty this chapter is concerned with—what I call practical freedom—from metaphysical and legal freedom. Additionally, I distinguish between reductive and non-reductive conceptions of liberty.

¹²In this chapter, I will primarily focus on Isaiah Berlin, "Two Concepts of Liberty," in *Liberty*, ed. Henry Hardy (New York: Oxford University Press, 2002), 166-217; and Berlin, "From Hope and Fear Set Free," in *Liberty*, 252-79.

5.1.1. *Metaphysical, legal, and practical freedom*

There are many different senses of the concept of liberty. One idea sometimes associated with liberty is the idea of metaphysical freedom: are individuals' choices their own, or are they determined by outside factors that bypass their apparent deliberation? Are people morally responsible for the outcome of their choices? Metaphysical freedom is largely orthogonal to the discussion in this chapter. If people are in no sense metaphysically free to make choices or decisions—so that their “choices” are not attributable to them, but rather to external causes—then perhaps political or legal freedom are not very important. But many other moral ideals may also be in doubt if the lack of metaphysical freedom poses a threat to freedom, such as moral responsibility or distributing according to desert. I will bracket the problem of metaphysical freedom, and assume that there is some meaningful sense in which we can say that a person is free to do something and that this can sometimes be morally important. More specifically, I will assume that normally-constituted persons in normal conditions are metaphysically free in the sense that, from the point of view of a deliberating agent, having more available options to choose from can be, and normally is, better than having fewer.¹³ This idea of metaphysical freedom is compatible with denying the justifiability of backwards-looking assessments of responsibility: perhaps, because individuals could not have chosen otherwise than they did, it is inappropriate to blame or punish them for their choices. Nevertheless, as long as they experience having options as good, it's possible to speak meaningfully of freedom as a moral ideal.

Another sense of freedom is legal freedom: a person is legally free to do something when they have a legal right to do it, as well as possibly a legal protection against others interfering with the exercise of this right. For instance, *Obergefell v. Hodges* enhanced Americans' legal freedom by interpreting the Constitution as granting them the legal right to marry a partner of the same sex. However, merely being legally free to do something does not imply that one is effectively able to do it: it may be the case that agents of the state

¹³One way to further cash out what I mean by “normally-constituted persons in normal conditions” would be to appeal to Stanley Benn's conception of *autarchy*. According to Benn, a person is autarchic with respect to some action just in case (i) they exhibit continuity of their personal identity over time; (ii) their aims are subject to concern for the truth (e.g., they would take learning that an aim is based on a false belief as a reason to give up that aim); (iii) they must express the commitment to act on their beliefs; (iv) changes in their beliefs must be capable of changing their practical deliberation; (v) their belief structure must yield a ranking of preferences or commitments to certain actions; (vi) they must be capable of formulating plans to act on their preferences or commitments. Stanley I. Benn, *A Theory of Freedom* (Cambridge: Cambridge University Press, 1988), 163-64. My claim is that, in order to think freedom is an important normative ideal, one need only think that persons who satisfy (i)-(vi) can and normally do experience additional choices as good.

do not comply with the laws, or it may be the case that having a legal right to do something in some cases does not imply that others do not have a legal obligation not to interfere with its being done (or the ability to flout the law and interfere anyway). For instance, workers in most societies have the right to unionize and to engage in collective bargaining. But they may still not be effectively able to do so. Agents of the state, such as administrative agencies, may flout the intent of the law or simply refuse to enforce workers' claims. They may fail to prevent companies from engaging in illegal union-busting activities. Or, the laws against interference with collective bargaining may not be strong enough to prevent employers from interfering interference. For these reasons, focusing exclusively on legal freedom would be inappropriate for the scope of this chapter.

In this chapter, I am concerned with what I will call *practical* freedom. A person is made practically unfree to do some act ϕ , when they are practically unable to ϕ . What constitutes being “practically unable” to do something is somewhat vague. Different conceptions of liberty—the positive, negative, and antipower conceptions—disagree about what kinds of restrictions and enabling conditions are necessary in order to be practically able to do something, viz., whether it involves having resources available to do something or protections against others interfering with one's choices.

5.1.2. *Liberty and liberties*

A second distinction to highlight in this chapter is the distinction between liberty as a general condition (“liberty” in the mass noun sense) and particular liberties (“liberty” in the count noun sense). Sometimes, we're concerned with how free a person is overall, whether they are made freer by extending certain rights to them, etc. This is distinct from whether or not, for some acts ϕ , they are free with respect to ϕ -ing. Chattel slavery is a paradigmatic condition of unfreedom: any plausible theory of freedom should hold that slaves are not free, i.e., that they lack liberty in the mass noun sense. But even slaves are normally free to do *some* things. For instance, a slave may be free to choose how they go about following a command, what they eat for dinner, how they wear their clothing, or even whether they save money. So while being a slave makes one unfree, this does not necessarily imply that they have no particular liberties, i.e., that there is no act ϕ with respect to which they are free.

According to some theories, whether a person is free in general depends just on the range of particular liberties accessible to them. I will call these views *reductive theories* of general liberty, since they hold that

being free just consists in having a range of particular freedoms.¹⁴ According to reductive theories, a person is free just in case they possess a sufficiently wide range of liberties to $\phi_1, \phi_2, \dots, \phi_n$.

The idea that freedom in general merely consists in the freedom to do particular acts may seem intuitive, but it is in fact controversial.

The distinction between liberty in general and particular liberties is important, because it is easy to fall into assuming that reductive theories of economic freedom are correct. But this is not obvious. We may wonder whether freedom as a morally attractive ideal is best realized by having a maximal set of options to perform particular acts. It's conceivable that having additional particular liberties to make one less free overall. For instance, the freedom to free ride without consequence—to not pay union dues for collective bargaining, for example—may make one less able to solve collective action problems or to demonstrate one's sincerity in attempting to do so.¹⁵ The freedom that is restricted when one enters into a binding contract, by giving others an enforceable claim against one's actions, may not be compatible with having the ability to engage in certain kinds of meaningful exchanges or to pursue one's long-term projects.

Some of the theories of freedom considered in the next section do not aspire to be theories of when someone is free with respect to some particular action at all, i.e., they are not theories about when it is true to say that "*S* is free to ϕ ." Additionally, some theorists seem to have different theories that pertain to overall liberty and particular liberties. For example, the ideal of self-authorship is closely tied to Tomasi's ideal of general freedom. However, he thinks the best way to promote this idea is to give individuals a robust range of particular negative liberties, what he refers to as a "thick conception of economic liberties."¹⁶ I am concerned primarily in this chapter with explicating an attractive ideal of overall freedom, but that necessitates some discussion of when one is free to engage in particular actions and the relationship between particular liberties and overall liberty.

¹⁴Technically, one could distinguish genuinely reductive views—views which hold that there is nothing more to being free in the overall sense—from possible theories that hold that being in an overall state of freedom supervenes upon having certain particular freedoms. But it seems this distinction would be of little consequence. Importantly, theories that hold that whether one is free in the general sense is ground upon whether one has a range of particular freedoms (i.e., that particular freedoms are the truth-makers for general freedom) are not reductive theories on this taxonomy, unless they are reductive in one of the two ways already mentioned.

¹⁵Jon Elster, *Ulysses Unbound* (New York: Cambridge University Press, 2000), 34-45.

¹⁶Cf. 2.1.

5.2. Three conceptions of freedom

Berlin's "Two Concepts of Liberty" is a touchstone for discussions of the idea of freedom. Berlin identifies two broad conceptions of liberty: negative liberty and positive liberty. A person is free in the negative sense to the degree that no one may interfere with their activities.¹⁷ A person is free in the positive sense, according to Berlin, when they are their sovereign over their own lives: this is the ideal of freedom as self-mastery.¹⁸ To be one's own master is to act on one's authentic good: either some subset of the desires one has—e.g., only those that conform to the general will, or only those that do not oppose one's will to that of other members of society—or the desires one *would* have were one under appropriate conditions, such as being free of ideology, or not under the yoke of adaptive preferences or preferences one does not rationally endorse. Berlin and later authors associate the negative liberty tradition with thinkers such as Hobbes and Mill; while they associate the positive liberty tradition with Rousseau, German Idealists like Fichte and Hegel, Romantic thinkers, and the Marxist tradition.¹⁹

According to Berlin, the positive conception of liberty has the unappealing theoretical consequence that a person can be forced to be free. By requiring someone to act on their authentic preferences, or to not act on preferences that interfere with their self-mastery, they are made better able to act on their "true" desires or aims. In addition to having the air of paradox, Berlin thinks the notion that a person can be forced to be free euphemistically licenses totalitarian politics: that by completely controlling citizens' lives and structuring them according to what it takes to be the correct ideological position, totalitarian regimes can claim according to this view that they are making citizens free. Berlin associates the idea of positive liberty in politics with the ideal of political participation: instead of having restrictions on what the law can do, the law instead reflects each person's genuine will. According to this view, political liberty will involve acting on the desires that each person shares—what Rousseau identifies as the *general will*. Therefore, laws that accord with the general will, even if they restrict a person's options, restrict them in a way that expresses their own will.²⁰

¹⁷Berlin, "Two Concepts of Liberty," 169.

¹⁸Ibid., 179-80.

¹⁹Ibid., 187-91. Berlin suggests that Locke and Montesquieu, by holding that the law is no limit to freedom at all when it serves the general interest, adopt an assumption shared by positive liberty theorists. Cf. *ibid.*, 193-94.

²⁰Ibid., 196.

The idea that a person can be forced to be free seems, intuitively, to be implausible, even if one accepts that overall freedom can be promoted by putting some limits on particular choices individuals make. Berlin, approvingly citing Mill and Benjamin Constant, points out that it is possible for society, through expressing majority rule, to oppress some subset of its members.²¹ If we accept the view that political participation according to the interests each member of society shares is exhaustive of political freedom, then we can't say that someone is oppressed by society, since there is little light between the authentic desires of one person, *qua* member of a political community, and the interests of the political community as a whole.²²

Motivating Berlin's rejection of the positive liberty tradition is his commitment to value pluralism. According to Berlin, freedom is best understood as one value among many, not the single value to be realized in societies or political communities. Self-mastery, political participation, and social equality might be important values, Berlin thinks, but they can be and often are in tension with freedom. Achieving social equality might require limiting people's freedom through economic regulation, and allowing people to act on their authentic desires may require coercive interferences such as restrictions on advertisement. This is a case of conflict between values, Berlin thinks, and a virtue of the negative conception of liberty is that it makes this clear: sometimes worthwhile political ends require the state to limit individual freedom.²³ Berlin associates the positive liberty tradition, by contrast, with the effort to advance freedom (or a similar ideal, such as the spontaneous use of one's productive capacities to shape one's social world, in the Marxist tradition) as the single fundamental political value. According to these views, freedom presupposes what we sometimes take to be other final ends, such as a degree of social equality: people can only will the law for themselves if they play a role in legislating it, and they can only act on their authentic desires if they

²¹Ibid., 208-9.

²²Berlin is not entirely clear about what he thinks is involved in a person's being "forced to be free." Given his target, I interpret him to mean that a person is forced to be free just in case she is restricted from acting on some of her occurrent desires in order to enhance her overall freedom. In the case of positive liberty theories, restricting her ability to act on her occurrent desires makes her freer overall by allowing her to act on her authentic desires.

It is plausible that one may have their particular freedoms enhanced by, e.g., making their stated commitments more credible. Suppose one would like to ϕ , but would be unable to ϕ if it were known that one would accept some bargain in exchange for not ϕ -ing. By removing the option to take the proposal in exchange for not- ϕ -ing, one may have their bargaining position, and so overall range of options, enhanced. For instance, limits on freedom of contract prevent individuals from accepting bargains that they otherwise might. But this makes their threat that they will not accept certain offers credible, since it would be illegal for them to do so. Sometimes, this will just allow them to arrive at bargains that would otherwise have been impossible were they to lack a credible threat of exit. I do not interpret Berlin to be claiming that this would be an example of forcing someone to be free.

²³Ibid., 212-17.

live in conditions that are free of alienation or oppression. On this approach, apparent conflicts between freedom and values such as equality or self-realization are not conflicts at all: they are either not presupposed by the positive conception of liberty, and so are not political values at all; or else possessing freedom requires them.

Berlin's distinction between negative and positive conceptions of liberty has been highly influential in political philosophy in the 20th century. But recently, republican theorists—most prominently Philip Pettit and Quentin Skinner—have identified what they take to be a distinct third conception of liberty: freedom as antipower. While a person is free to ϕ in the negative sense just in case no one interferes with their ϕ -ing, according to the antipower conception of freedom, a person is free insofar as they are not subject to interference by others.²⁴ Someone is subject to interference with respect to some action, ϕ , if others could, were they to choose to, interfere with their ϕ -ing.²⁵ In other words, others must lack the power to interfere with one's ϕ -ing.

The distinction between negative liberty and the antipower conception of freedom can be illustrated by the case of the slave with a permissive master.²⁶ A slave whose master places no limits on their behavior is free in the negative sense, since the master does not interfere with their choices. *Were* the master to choose to interfere with the slave's choices, however, the slave would not likely to be able to do other than his master wishes. This subjunctive condition is important, because a central idea of freedom as antipower is what Christian List and Laura Valentini call the *modal robustness* condition.²⁷ According to this condition, one's freedom to ϕ is not subject to interference must be true across a wide range of counterfactual conditions, including those in which others do not choose to interfere with their ϕ -ing.

Pettit outlines three ways in which individuals can be protected from interference.²⁸ First, those at risk for interference can be protected from the resources of those who might interfere with them. For instance, the criminal justice system protects members of society from certain kind of interferences. Even if, as some believe, people would in general be peaceful and non-violent without an effective system of legal restrictions and punishments, it is the case that were people to choose instead to interfere with others' choices,

²⁴Philip Pettit, "Freedom as Antipower," *Ethics* 106, no. 3 (1996): 577; Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford University Press, 1997), 21-27.

²⁵Pettit, "Freedom as Antipower," 578-88.

²⁶Cf. Pettit, *Republicanism*, 31-35.

²⁷Christian List and Laura Valentini, "Freedom as Independence," *Ethics* 126 (2016): 1046.

²⁸Pettit, "Freedom as Antipower," 588-95.

they would be able to without a system of adequate legal protections. Second, the resources of potential interfering parties can be limited. If, as Rawls thought, it is infeasible to restrict the domination of the political process by the wealthy through regulating the use of money in politics—i.e., using the first strategy mentioned of regulation—then another way to prevent their interference with the political process would be to limit their overall wealth through redistribution. This would be an example of employing Pettit’s second strategy. Third, those liable to interference could be given resources to insulate them from potential interference. For instance, workers are liable to interference in many of their choices from employers. But if they are given a basic income, or if the state works as an employer of last resort, then the ability of employers to interfere with their choices would be limited.

It is sufficient for a theory’s being an antipower conception of freedom that it includes a modal robustness constraint.²⁹ Republican theories of freedom are a special subset of antipower theories that also include a *nonarbitrariness* (or *non-subjection*) criterion. According to Pettit, “[a]n act is perpetrated on an arbitrary basis ... if it is subject just to the *arbitrium*, the decision or judgment, of the agent; the agent was in a position to choose it or not choose it, at their pleasure.”³⁰ An act is nonarbitrary, he claims, “to the extent that it is forced to track the interests and ideas of the person suffering the interference.”³¹ These definitions, especially the claim that nonarbitrary interferences track the interests of the person who is experiencing the interference, are ambiguous. The idea may be that, for an act to be nonarbitrary, it has to actually track what they would wish. But this means that persons who are justly imprisoned, or addicts who are forced to enter into rehabilitation, are free, since these actions by the state are consistent with their interests in the sense of what they will for themselves. Few criminals wish that the state would incarcerate no one, and many addicts do not endorse their addictions and would like to be free of them. Nevertheless, it seems inadequate to how we use the term “freedom” to say that someone is free when they are justly imprisoned or otherwise held without their consent.

Elsewhere, Pettit responds to this interpretation of his view, claiming that nonarbitrary interferences track “the avowed or avowal-ready interests ... regardless of whether or not those interests are true or real

²⁹In his earlier work, “Freedom as Antipower,” Pettit does not include a moralized or interest-tracking condition for what it is for someone to have power over someone else. In order for *A* to have power over *B*, *A* must (1) have the capacity to interfere (2) with impunity and at will (3) in certain choices that *B* is in a position to make. See *ibid.*, 578.

³⁰Pettit, *Republicanism*, 55.

³¹*Ibid.*

or valid[] by some independent moral criterion.”³² Here, Pettit seems to be saying that what counts for an interference’s being arbitrary is not whether it is actually in the agent’s interest, in some expansive sense, but only if it’s in their avowed (or avowal-ready) interests. The justly imprisoned inmate or the addict forced to undergo rehabilitation will rarely avow their treatment on the part of the state, so their incarceration would not track their interests, and so would be arbitrary. But Pettit also thinks that properly-functioning and properly-conceptualized democratic institutions guarantee freedom by ensuring that the laws of the state track the interests of those who are subject to them. Democratic societies are unlikely to track the avowed or avowal-ready interests of each of their members. So, in order to treat interest-tracking in a non-moralized sense, Pettit would have to give up the corollary he thinks follows from the republican conception of freedom, that we are made maximally free under laws that are the result of democratic procedures.³³

Regardless of whether the nonarbitrariness condition can be interpreted without importing substantial assumptions about morality, the condition makes republican conceptions of freedom, such as Pettit’s ideal of freedom as non-domination, a special case of a more general idea, that of freedom as antipower (or, as List and Valentini call it, “freedom as independence”). Freedom as antipower includes only the modal robustness condition, while republican theories of freedom include both the modal robustness as well as the nonarbitrariness conditions.

5.3. Motivating a negative conception of economic freedom

In this section I will attempt to motivate the negative conception of economic liberty I advance in the next section—the quality and availability of options theory—by pointing to inadequacies with positive and antipower conceptions of economic liberty as ideals worth pursuing. It is worth clarifying that the arguments in this section and the next are specific to these theories as conceptions of *economic* freedom. It is an open question whether the most normatively attractive ideal of economic freedom is a good general conception of practical freedom. Indeed, some observations I make in these sections suggest that it would not be.

³²“Republican Freedom: Three Axioms, Four Theorems,” 117.

³³Cf. List and Valentini, 1060-65.

First, I will give some desiderata for an adequate conception economic liberty as a normatively attractive ideal. In the following two subsections, I will discuss, respectively, problems with going in for a positive or antipower conception of economic liberty.

5.3.1. *Desiderata for an ideal of economic freedom*

A conception of economic freedom as an ideal is satisfactory insofar as it satisfies the following desiderata:

A. *Extensional adequacy*: We use terms like “freedom” and “liberty” to describe different conditions people experience in life. For instance, we normally say that those who are imprisoned, justifiably or not, or the hypothetical slave with the permissive master, are not free. These are relatively stable judgments regarding the attribution of the term “freedom”: they are not something an otherwise-plausible conception of freedom would likely lead us to revise. If a theory says something different than our relatively stable judgments about what conditions makes someone free, then this counts as a reason to reject a theory.

This is not to say that the purpose of a theory of freedom as an ideal exists merely to standardize or make explicit our commitments regarding uncontroversial judgments we already hold, or that a successful theory cannot have any controversial or seemingly counterintuitive implications. A good normative theory of freedom provides guidance in contested cases where it’s unclear what to say about whether individuals are free: for instance, whether people living under non-democratic institutions can be politically free, or whether individuals are free if they lack a basic income or other adequate means to turn down coercive proposals from their employer upon risk of termination. But there are limits to how revisionary a theory about a feature of our moral landscape we use in everyday language, such as liberty, can be while remaining a theory about the feature at issue.

B. *Normative attractiveness*: An adequate theory of freedom as an ideal for some domain should pick out conditions that we find normatively attractive or valuable. A theory of freedom according to which it is hard to see how it is better to be free rather than not, or at least why rational individuals might wish to be free, is not a good theory of freedom as a moral ideal. Of course, one is open to maintain that liberty is best understood as mere license—to do as one wishes—or that liberty is compatible with unlimited levels of coercion (although this may also run afoul of the extensional adequacy condition). Hobbes famously maintained that, to be free, one must merely not be held by chains or walls, nothing more, so that subjects

coerced by an all-powerful tyrant remain free so long as they are not incarcerated.³⁴ These are, however, not attractive conceptions of liberty. They are not conceptions of liberty *as an ideal* that political societies ought to aspire to. I will simply assume that it is a worthwhile task to find a suitable ideal of liberty within domains that the political and legal system regulate. Perhaps if attempting to do so is a failure, one may be tempted by deflationary conceptions of freedom that are not morally attractive.

Note that it does not follow from this desideratum that it counts against a theory of economic freedom as an ideal that it is not suitable as the sole or master value within a domain. Both pluralism and monism about political value (see section 5.2) are fully compatible with seeing whatever ideal is offered as a normatively attractive one. Even if freedom sometimes comes into conflict with other morally attractive ideals, such as equality, autonomy, security, or welfare, and we decide to accept less freedom in exchange for one of these other morally important values, a theory of freedom as an ideal should entail that there is some loss involved in sacrificing freedom.³⁵

C. *Consistent with the interdependence of economic activity*: Economic and productive activity has a function: to satisfy needs and wants of human beings, or to realize their long-term projects. One thing that has been understood, at least since Aristotle, is that the ability to exchange with others is necessary in order to satisfy a person's needs. Individual *autarchy*, the view that individuals should strive, as much as possible, to be self-sufficient, and completely independent of others in satisfying their needs and wants, is not a viable candidate economic theory. A theory of economic freedom as an ideal should be compatible with the notion that persons engaged in economic activity are essentially interdependent: they rely on one another to satisfy their needs and desires. This is not to say that any one person relies exclusively on a single other person, only that a theory of economic freedom which implies that individual autarchy is a viable economic ideal is likely to be inadequate for the domain of actions it ranges over.

³⁴Thomas Hobbes, *Leviathan*, ed. J. C. A. Gaskin (New York: Oxford University Press, 1996), 139 [pt. 2, ch. 21].

³⁵This desideratum *is* incompatible with a strong form of political monism that holds that some other political value is the sole or master value to be promoted by political institutions. To be inconsistent with this desideratum, the view would have to hold that whatever conception of economic freedom outlined here is practically inert, so that promoting it is never a worthwhile political aim. If a version of consequentialism which says that political actions ought to be evaluated solely on the basis of the extent to which they promote overall human welfare is correct, it would have to further hold that whether political decisions realize economic freedom is neither instrumental nor constitutive to promoting welfare.

5.3.2. The positive liberty conception of economic freedom and its limitations

According to the positive conception of economic freedom, individuals are free insofar as they are masters of themselves, or authors of their own lives, within an economic sphere. Conversely, one is unfree insofar as one's economic preferences and choices are pulled around by others: if one is advertised to, if one is addicted to certain consumer products, or if the productive activities one can engage in are dependent on democratic deliberation of government planning rather than products of one's own rational reflection. One is potentially less free when one has fewer resources available to pursue one's projects: excessively high marginal tax rates on the wealthy, for instance, make it more difficult to engage in entrepreneurial activity or to pursue one's conception of the good. Socialist conceptions of economic freedom, such as Marx's ideal of spontaneous productive activity, appeal to a positive conception of economic liberty, as does Tomasi's ideal of economic freedom as the use of robust economic liberties to pursue one's chosen plan of life. I will focus on Tomasi's view, since the overall target of this dissertation is the classical liberal conception of economic freedom, but the considerations I raise apply to socialist theories as well.

First, the positive conception of economic liberty is extensionally inadequate because it under-generalizes. Self-mastery or being the author of one's own choices is compatible with a great deal of coercion—indeed, coercion in order to make one the master of one's choices. Marx's ideal of spontaneous productive activity is compatible with having relatively few options, including limited opportunities to trade with others. It is also consistent with requiring the approval of a community in order to use its productive resources. Marx's own ideal of freedom was in part collective: part of being at home with one's species-being is cognizance with a person's social nature. But this just explains why Marx has an extensionally inadequate view: because he does not accept the intuitive observation that the person who has to seek collective approval to use their own productive powers is not free—or, at least, that being required to do so makes one less free—his is an apparently extensionally inadequate theory of freedom. This response is unlikely to satisfy the Marxist: theirs is a revisionist conception of social morality. But the fact that it gets our commonplace judgments wrong at least counts against it.

Similarly, Tomasi's ideal of being the author of one's life is consistent with substantial degrees of unfreedom. A person may make clear-eyed but risky choices, finding themselves in a substantial degree of material deprivation. Because property rights are essentially coercive, they will therefore find themselves

liable to coercion if they lack sufficient alternative means to satisfy their needs and desires. They will be free to sleep under bridges, but not on a property-owner's door-stoop or in a local park. But because their condition results from choices that they are the authors of, Tomasi cannot appeal to the ideal of self-authorship to explain why they are made less free under these conditions. Self-authorship, taken by itself, is extensionally inadequate as an ideal of economic liberty.

Tomasi has an easy rejoinder here. His theory requires a degree of distributional adequacy.³⁶ If it turns out that respecting robust economic liberties deprives someone materially enough to constrain their freedom, then it will turn out to be unjust according to market democracy, Tomasi's term for his Rawls-inspired classical liberal conception of justice. But this rejoinder misses the mark. The objection is not that Tomasi lacks resources to explain why this condition is unjust, but that his conception of economic freedom as self-authorship lacks the resources to explain why a person is less free. There is also nothing about Tomasi's view that prevents him from appealing in part to a negative conception of freedom as well: he suggests elsewhere that negative liberty is also an important dimension of overall freedom. But then negative economic liberty does at least some of the work in getting the right judgments in the case of the person who lacks resources and is forced to sleep underneath bridges. Furthermore, in order to allow individuals to exercise self-ownership, the robust economic liberties Tomasi describes must accord individuals a wide array of high-quality options. But, as I discuss in section 5.4, this idea can be subsumed under the quality and availability of options conception of economic liberty. So an implied negative conception of economic liberty may be doing a great deal of work in Tomasi's theory.

A second problem with positive liberty theories of economic freedom is that they are normally perfectionist conceptions of freedom, and so fail to satisfy reasonable pluralism. Perfectionist theories identify a conception of the human good that is morally desirable, and uses the state to structure society so as to enable people to acquire that good or to otherwise guide them to it. Not all conceivable means of pursuing perfection involve coercion. For instance, Mill's conception of individuality was a perfectionist conception of the political good, but he argued that, in order to promote it, society should allow individuals a wide sphere of liberty to pursue their own good in their own way. Nevertheless, using society to promote a controversial ideal of the good is objectionable in one way, in that a justification for doing so cannot be

³⁶Tomasi, 123-27.

given in terms that those living in society can rationally endorse. Marx's ideal of spontaneous productive activity is one example of this: some people want to engage in market activity, or want to be wealthier rather than be able to change occupations throughout the day. It is *prima facie* objectionable to dismantle market societies in order to promote a good that these people cannot rationally endorse.

Relatedly, Tomasi's ideal of freedom as self-authorship is controversial, and requires substantially shaping society in ways that some people might reasonably reject. Not everyone wants to be the author of their own life. Some people voluntarily choose communal or thick familial relationships which substantially constrain the extent to which they can be said to be the authors of their choices or option-sets. Some people may adhere to a more spontaneous ideal, eschewing long-term projects: they may see their lives as a volume of found poetry rather than a well-crafted novel. Structuring society so as to favor capitalist ways of life, such as entrepreneurship, is not justifiable to these individuals if they are not rationally mistaken in having the values that they do. So this is one way in which promoting self-authorship is deficient as an ideal of economic liberty.

Tomasi may claim that his conception of self-authorship is not more ambitious than Rawls's conception of the two moral powers—the ability to form and revise a conception of the good and the ability to endorse and act on a conception of justice. Since Rawls thought that these powers can be explicated in a freestanding manner, without appealing to controversial metaphysical assumptions about the nature of humans as such or an independent conception of the human good, Tomasi could claim that his ideal of self-ownership does likewise. But Tomasi puts his ideal of self-ownership to much more ambitious use than Rawls does with the two moral powers. For Rawls, the two moral powers determine which particular liberties are basic: a right or liberty is basic if it is essential to the development or exercise of the two moral powers. This use of the two moral powers does not prejudge between capitalist and non-market ways of arranging one's life, and is compatible with a wide range of pursuits and conceptions of the good. Tomasi's ideal of self-authorship, by contrast, pre-judges that certain ways of life which exhibit greater degrees of self-ownership are better, and that society ought to be structured along capitalist lines so as to

facilitate them.³⁷ This is an ideal that some can reasonably reject, and so is deficient in one way as an ideal of economic liberty.

5.3.3. *Problems for antipower conceptions of economic liberty*

Antipower conceptions of economic liberty hold that economic freedom requires not being subject to interference by others. A benevolent monopsonist employer (the only employer in town) who does not explicitly threaten employees or interfere with their work activities still could interfere with its employees if it chose to. So, like the slave-with-a-permissive master, being subject to the whims of an employer or a single buyer or seller makes one economically unfree.

A challenge for antipower theories is that they are subject to a dilemma: non-dependence either involves a vicious and perpetual regress, or the theory has to halt at some arbitrary point, and so risks being objectionably *ad hoc*. First, the regress horn of the dilemma: if there is some activity I wish to engage in that might be threatened by a third party, I need protection against this threat in order to not be subject to their will. But in order to gain that protection—resources to limit the power of the threatening party, or the assistance of an administrative agency to prevent interference—I need to be able to count on the protector to act as they should and to protect my interests. But then I am subject to the will of the protector. I could seek recourse to some higher power to ensure that the protector’s actions track my interests or are consistent with my will, but then I would be subject to the will of *that* power in order to not have my freedom threatened, and so on. Suppose my employer could arbitrarily interfere with my work conditions as his discretion. I could seek to limit his ability to do that by trying to organize a union. But then I would have to trust that the very same employer not interfere with unionization, and whoever ends up running my union to take my complaints seriously. I could rely on an administrative agency, like the National Labor Relations Bureau in the United States, to enforce existing laws to stop union-busting or to dismiss corrupt

³⁷Rawls’s conclusion that capitalism, in both its *laissez-faire* and welfare state forms, is incompatible with justice, is likewise controversial among reasonable persons, and so a friend to Tomasi may charge that if Tomasi’s conception of free market fairness is insufficiently respectful of reasonable pluralism for making controversial assumptions that favor capitalism, then so is Rawls’s overall political project for making assumptions that ultimately cast the justifiability of capitalism in doubt. However, Rawls’s rejection of pluralism is an output, not an input, of the method of construction he uses to generate the principle of justice and, ultimately, prescriptions about how society ought to be structured. Rawls does not assume in advance anything controversial in laying out the two moral powers—they are compatible with any conception of the good found in capitalist societies. Rawls’s rejection of capitalism is the result of his complete system and his reasonable empirical conjectures about political economy: since capitalism has no limits on the inequality of wealth, it does not attempt to preserve the fair value of political liberties, and so it is not feasible to generate a fully capitalist society that preserves the fair value of the political liberties in order to secure the development and exercise of the two moral powers.

union officials. But decision-makers in the NLRB are political appointees, and relying on them makes me subject to their will. I could perhaps seek recourse with judges, or, ultimately, with a codified constitution. But judges are people to whom I would be subjecting myself, and constitutions have to be interpreted and enforced by agents who would, in their official capacity to enforce my rights, have power over me. If, in order to not be subject to another's arbitrary will, I need to either be provided with resources or I need a protector to interfere with the actions of another, then I am reliant on the protector or the entity that is to provide me with resources.

Antipower theories of freedom do not so clearly run into the same problems in other domains of human activity, because, in those domains, the default condition is often to not be in a state of dependence or potential domination with respect to others (at least, for adults integrated into civil society in modern liberal democracies). In those domains, protecting me from arbitrary interference often involves simply not allowing me to be placed in a condition of dependence in the first place. For instance, one way for republican societies to secure freedom in the slave-with-a-permissive-master case is to not allow slavery at all.³⁸ Marriage contracts and occupation agreements could likewise be restricted in advance to prevent the most likely ways in which people might enter into a condition of dependency. This is just to structure background legal conditions so that members of society never enter into a condition of dependence in the first place. Economic activity is, however, as per desideratum C, essentially interdependent. The default condition with respect to economic activity is dependence on one's employer or those one has contracted with to perform their side of the bargain. To regulate this condition of dependence is just to transfer one's dependence to the regulator. (My aim here is not to argue against regulation and resource provision as a means of securing economic freedom, only to point out that this does not satisfy the stringent antipower conception of economic liberty.)

On the other horn of the dilemma, antipower theories could hold that one is free insofar as there are sufficient options of appeal in cases where one is subject to another's will. Perhaps having a union and the NLRB is sufficient for me to be free with respect to my employment conditions. But it is unclear what

³⁸ Aren't I subject to the arbitrary will of the magistrate to enforce laws against slavery? Not necessarily. If it is a convention that slavery is not allowed here, and that convention is common knowledge, then no one will seek to enslave me or enter into contracts the terms of which amount to slavery regardless of what the magistrate wills. So slavery's not being allowed does not depend on the will of the magistrate. The existence of the convention may depend on the law, the constitution, or on behavioral regularity of agencies with police powers, but it's not clear that it depends on any one person's will the way enforcing employment law against powerful corporations likely will. We are not always able to will others' expectations into or out of being.

would entitle an antipower theory of economic liberty to say this. I am still subject to *someone's* will, even if it is to a regulatory agency a few steps up the hierarchy. If what is important is the likelihood of being interfered with, or the degree of options available, then it is not liability to interference that makes me unfree, but lack of an adequate array of options or the likelihood of actual interference, both of which, I argue, can be captured by the quality and availability of options conception of economic liberty.

My aim in this section has been to motivate the negative conception of economic liberty I present in the next section, not to provide totally decisive responses to the other two views. The primary aim of this chapter is only to sketch an ideal, show that it is well-motivated, and show that egalitarian liberal institutions are likely better able to satisfy it, not to argue that this is the only viable conception of economic liberty, or that all other theories necessarily fail, or anything else so ambitious.

5.4. The quality and availability of options account of economic freedom

According to negative liberty conceptions of economic freedom, a person is free in economic matters insofar as others do not interfere with their choices. This is a conception of overall freedom: to be free in this sense is to not experience a wide range of economic interference. But how do we decide what constitutes an interference? It is not clear that formal legal rules against activities I was in no way able to take in the first place count as interferences with my action. A law requiring investment banks to disclose their financial interests in a product does not limit my freedom at all, because not doing so was never an option I could consider, since I am not an investment bank or the policy-setter for one. Whether or not something constitutes an interference with liberty, and the extent to which it undermines freedom, depends on how costly the interference is. Likewise, interfering with options that I place a low value on, relative to my option set, are either not interferences, or are only mildly so. Suppose Sally, who lives in Australia, is not sure if Budapest is the capital of Hungary or Romania. When Hungary increases its immigration enforcement, this does not constitute much of an infringement against Sally, because she places a fairly low value on living there. However, it constitutes a major infringement to someone who may place a high value on living in Hungary: a refugee seeking asylum in the European Union, for instance. Finally, the extent to which something constitutes an infringement depends on how difficult it is to overcome or how costly the interference itself is. My employer's threat to dock my pay if I take my legally allotted break is

less of an infringement of my liberty if they intend to only dock a nominal part of my wages than if they threatened to reduce it drastically.

The lesson from the above cases is that the extent to which an act of interference constitutes a genuine threat to my liberty depends on (a) the other options available to me and (b) the value relative to the option being restricted, and (c) the costs imposed on taking the option in light of the interference. As Berlin noted in a less well-known presentation of his conception of negative liberty: “When we speak of the extent of freedom enjoyed by a man or a society, we have in mind, it seems to me, the width or extent of paths before them, the number of open doors, as it were, and the extent to which they were open.”³⁹ Overall freedom depends on the number of one’s options, but also on the quality of those options and the how difficult interferences with those options are to overcome. Call this the *quality and availability of options view*.

The quality and availability of options theory satisfies the three desiderata presented in the last section. First, it is extensionally adequate with respect to the domain of economic liberty. It accurately tracks our stable judgments that persons subject to a wide range of interferences, who have relatively few options, such as the person with few resources forced to sleep underneath a bridge, is unfree. The theory may seem to do poorly as a negative conception of liberty with regard to the slave-with-a-permissive-master case: suppose that the permissive master does not interfere with the slave at all, but also ensures that the slave has a wide range of high-quality options available when he is subject to interference. One response to that case is that our stable judgment in the case depends on attitudes we have about the condition of chattel slavery: that slavery is a kind of social death, that the options available to slaves to, e.g., move, own real property, take up other jobs, or vote is significantly curtailed even by a permissive master.⁴⁰ To hold otherwise on the grounds that the available options depend on a single other person’s will is an extensionally inadequate conception of freedom. In any case it would be an exotic case, and not one we should expect our intuitive judgments to be well-suited for. The idea of a slave with a non-interfering master is not so difficult to imagine, but the idea of a slave with a wide range of high-quality options with respect to economic activities is. A second response to the case would be to note that not being a slave is a precondition for having any economic freedom. If one is a slave, one is in neither socially nor politically free. It is possible that the quality-and-

³⁹Berlin, “From Hope and Fear Set Free,” in *Liberty*, 271.

⁴⁰For the claim that slavery is a form of social death, see Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Cambridge, MA: Harvard University Press, 2018).

availability-of-options conception of economic freedom does not work well as a conception of freedom in other domains. If it could not explain why the slave with a permissive master is not free, then it would fail as a general conception of liberty. But as a theory of economic liberty, it is compatible with another different of political or social liberty, which could explain the fixed judgment that the slave-with-a-permissive-master is unfree.

The view satisfies the second desideratum, since it is a normatively attractive notion. The normative attractiveness of the view can be explained by the desirability of having additional options and by their quality. Generally, individuals are made better off when they are able to engage in more high-quality economic activities.

Finally, third, this conception is consistent with the observation that economic activity is essentially interdependent. Unlike antipower or self-mastery theories, there is nothing automatically suspect about being in relations of economic dependence with others. Sometimes, this is just what it is to engage in economic activity, as when one is employed. What is important is that, in entering a state of dependency, one does not foreclose entirely one's available options. It may be that one has the options one does in a state of economic dependence because of an effective legal system or regulatory body, or because one has general all-purpose resources such as stock coupons or an unconditional basic income. So long as one's option-set is robust, this does not constitute a state of economic unfreedom.

5.5. Economic freedom and egalitarian liberal institutions

The economic liberties elevated in a classical liberal constitution are usually understood as negative liberties—freedom from interference when, for instance, acquiring property or transacting with others. But as classical liberals such as Brennan and Tomasi have observed, what makes this conception of economic liberty attractive is that it accords individuals positive liberty: freedom to pursue projects central to their plan of life and to have a wide array of means to do so. Conversely, having general all-purpose economic resources, such as wealth, accords one a kind of negative liberty against interference from property owners with one's choices, since it gives one a wider range of high-quality options to avoid a condition of unfreedom resulting from having a weak bargaining position vis-à-vis others with whom one transacts. It is essential to the classical liberal explanation for why their robust account of economic liberties promotes positive liberty that they allow individuals to avoid economic dependency by removing barriers to transactions.

This suggests that having a favorable and legally-protected bargaining position allows one to avoid being in a condition of unfreedom, since it gives one options to avoid the coercive economic threats of would-be monopolists or rent-seekers so as not to be subject to their arbitrary demands. According to this conception of economic freedom, one is economically free if, and insofar as, one has numerous, high-quality options, since this allows one to avoid coercive economic threats. Since it underlies the classical liberal narrative for why its conception of economic liberty enhances individuals' positive liberty, this conception does not beg the question against a classical liberalism or its institutional recommendations.

But the conception of economic freedom developed has potentially radically egalitarian implications. The elevation of economic liberties in a classical liberal constitution subjects those with limited options to a high degree of coercion. In order to reduce the coerciveness of a classical social order, wealth would need to be widely distributed. A society in which some people are subject to a great deal of coercion and others have a wide range of high-quality options is not very free, because many of its members experience a condition of unfreedom. The degree of egalitarian economic distribution on this view depends on what level of inequality of economic freedom is morally acceptable. Since economic freedom depends on one's array of options relative to others, it is a relational good. Applying a maximin rule to how economic freedom is distributed may push the distribution of non-relational goods such as wealth closer to equality, since inequality of wealth tends to make individuals potentially liable to economic domination by others. On the other hand, a sufficientarian conception of economic freedom would require only that each person have an adequate array of options available to prevent economic domination. This may still require a substantially more equal distribution of resources than guaranteed by a classical liberal constitution, since the bargaining power of market participants cannot be too great if those with the least amount of bargaining power are going to have many options at all.

That a satisfactory conception of economic freedom requires a substantially more equal distribution of economic resources than is guaranteed under a classical liberal constitution does not automatically show that this constitution should be rejected. It is possible that relatively free markets in which a thick conception of economic liberty is guaranteed actually does best at ensuring a wide range of high-quality options are available to the least advantaged. Additionally, it is not clear that redistributive taxation or protections against monopoly power really constitute violations of one's economic liberties. If that is the case, then

a classical liberal constitution coupled with robust economic redistribution and some means of limiting inequalities of market power might do an adequate job of protecting economic liberty. But this brings a classical liberalism closer to high liberalism, and undercuts the motivation for arguments that attempts to redress inequalities of income are excessively coercive.

5.6. Conclusion

In this chapter, I have outlined a distinctive theory of economic liberty, and have argued that it is favored relative to competing alternatives. I have also given reason to think that this conception would have radical implications, and that it would favor egalitarian liberal institutional arrangements over those favored by classical liberalism. In the next chapter, I discuss the institutional recommendations of egalitarian liberalism in greater detail.

CHAPTER 6 : PROPERTY-OWNING DEMOCRACY AND PREDISTRIBUTION

Though accused by some critics of being an apologist for capitalism or the welfare state, Rawls's later works made clear his view that what he conceives of as welfare state capitalism is incompatible with his two principles of justice.¹ In *Justice as Fairness*, Rawls instead considers two "ideal types" of institutional arrangements that he thinks are candidates for satisfying his two principles of justice: property-owning democracy and liberal socialism.² Rawls thinks that which one of these two forms of institutional arrangements is appropriate in a given society depends on its history and its political culture.³ Perhaps because academic attention to Rawls is more heavily concentrated in the United States, Canada, and the United Kingdom, which have histories and political cultures that favor relatively free markets and strong protections for private property rights, or perhaps because of general skepticism regarding the feasibility of socialism following the end of the Cold War, Rawls and his subsequent commentators have primarily focused on developing the idea of property-owning democracy.

Unlike many permutations of socialism and capitalism, however, property-owning democracy remains a city constructed in thought. No example of such a social arrangement has been attempted, at least self-consciously, by political reformers or revolutionaries. So it is not possible to examine real-world examples of property-owning democracies to see how they work or what sorts of problems they will eventually be required to address. Theorists therefore have had relatively wide latitude to contest what sorts of institutional arrangements are actually involved in a property-owning democracy and how exactly it differs from welfare state capitalism more familiar among existing wealthy democracies. Contemporary property-owning democrats such as Alan Thomas, Martin O'Neill, and Gavin Kerr,⁴ as well as critics including William Edmundson and Kevin Vallier,⁵ have suggested that property-owning democracy is distinguished from welfare-state capitalism by the allegedly redistributive character of its economic policies.

¹For discussion of misinterpretations of Rawls as favorable to a kind of welfare-state capitalism, see William Edmundson, *John Rawls: Reticent Socialist* (Cambridge: Cambridge University Press, 2017), 5-6. Rawls laments this misunderstanding in the preface to the revised edition of *Theory of Justice*. See Rawls, *Theory of Justice*, xiv-xvi.

²John Rawls, *Justice as Fairness*, 135-52.

³*Ibid.*, 139.

⁴Thomas, *Republic of Equals*; Thomas, "Are Pre-Distribution and Property-Ownning Democracy Mutually Compatible?" unpublished m.s.; Martin O'Neill, "Piketty, Meade and Predistribution," *Crooked Timber*, December 17, 2015. <http://crookedtimber.org/2015/12/17/piketty-meade-and-predistribution/> (accessed October 23, 2017); Gavin Kerr, *The Property-Ownning Democracy: Freedom and Capitalism in the Twenty-First Century* (New York: Routledge, 2017).

⁵Kevin Vallier, "A Moral and Economic Critique of the New Property-Ownning Democrats: On Behalf of a Rawlsian Welfare State" *Philosophical Studies* 172, no. 2 (2014): 283-304.

Traditional welfare-state capitalist societies, as ideally conceived of by Rawls, tend to allow markets to work more or less freely, and then attempt to correct for poverty or extreme inequalities through taxation and transfers. Property-owning democracies, by contrast, are supposed to be predistributive in the sense that the prior allocation of control over wealth and other productive resources, as well as the rules that structure market transactions, ensure that the end result of people's free economic choices under such a system will turn out to be just.

In this chapter, I argue that the distinction between supposedly predistributive, market-shaping interventions by the state and redistributive policies through taxes and transfers is based on a conceptual confusion that these approaches are mutually exclusive. One of the main sets of rules regulating the normal operation of markets is the system of taxation and economic transfers. While a plausible and morally attractive conception of property-owning democracy relies heavily on progressive taxation of wealth and inheritance, such policies should not be construed as ongoing interferences by the state with normal market operations but as instead compatible with a wide range of economic freedom. I also discuss how property-owning democracy can promote the economic freedom of workers by providing them with independence from coercive employment relationship.

In the first section of this chapter, I discuss property-owning democracy as it is conceived of by Rawls and James Meade, as a response to limitations both thinkers saw in the political economy of alternative forms of capitalism. In the second section, I discuss the idea of predistribution as put forward by Jacob Hacker. In the third section, I discuss three proposals for how to best to understand the putatively predistributive character of property-owning democracy: time-periodization (i.e., transfers occur at the beginning instead of the end of each time period), limits on the market power of firms, and the elimination of rents from pure ownership. All three, I argue, are inadequate. In section four, I consider objections raised to the idea of property-owning democracy from the right (Vallier) and the left (Edmundson). In the final section, I discuss how tax supports for worker-managed firms and the wide distribution of wealth give workers exit rights to leave exploitative employment relations, thus ensuring an expansive notion of economic freedom beyond what is available in a *laissez-faire* or welfare-state capitalist society.

6.1. Property-owning democracy in the works of Rawls and Meade

As Ben Jackson has documented, property-owning democracy has a surprisingly long history for an institutional regime that rarely gets discussed outside of political philosophy and economics.⁶ The idea of widely distributing property is older than the socialist proposal of eliminating it and was favored by classical republicans such as Jean-Jacques Rousseau and Thomas Paine. In *Agrarian Justice*, Paine argued that widespread access to productive property is a moral imperative that is “not charity but a right, not bounty but justice,” and argued that each person should receive an endowment of capital upon reaching the age of majority and receive an annual pension, both paid for by taxes on inheritances.⁷ In response to utopian and Marxian socialism as viable political movements in Britain and elsewhere, the proposal to widely distribute property was taken up by British liberals and conservatives in the early twentieth century as a middle way between the immiseration of the poor under industrial capitalism and the elimination of private property. Hilaire Belloc, a Catholic social reformer and MP, argued that, in response to widespread inequality in private property, “you can alter that factor in the problem *either* by putting property into the hands of the many, *or* by putting it into the hands of none.”⁸ In practice, putting property in the hands of none required collective administration, i.e., socialism, of which Belloc was critical.

The phrase “property-owning democracy” was coined by a conservative MP, Noel Skelton, in the 1920’s in response to what he considered to be the dialectical advantage socialist reformers held in being able to question the entire basis of the social and economic system, private property, over liberal and conservative parties. Skelton believed that it was a core conservative commitment that only those who own property ought to ultimately decide how a society ought to be run. Unlike other conservatives, however, he did not draw from this the conclusion that the franchise should be restricted to a few inheritors of landed estates and lucky entrepreneurs. Rather, he argued that since the expansion of political rights that had occurred in the past century was likely inevitable and probably permanent, justice according to conservative principles required extending property rights to the entire adult population that held political rights, to ensure that those rights could be meaningfully and responsibly exercised.⁹

⁶Ben Jackson, “Property-Owning Democracy: A Short History” in *Property Owning Democracy: Rawls and Beyond*, ed. Martin O’Neill and Thad Williamson (Malden, MA: Blackwell Publishing, 2014), 34-36

⁷Thomas Paine, *Agrarian Justice*, in *Political Writings*, ed. Bruce Kuklick (Cambridge: Cambridge University Press, 1997), 331. Cf. Jackson, 35.

⁸Quoted in Jackson, 37.

⁹*Ibid.*, 38.

Rawls draws his discussion of property-owning democracy directly from James Meade, an economist and British public intellectual in the 1950's and 60's during (which Rawls studied at Oxford). In his essay, *Efficiency, Equality and the Ownership of Property*, Meade is concerned that the complete and efficient use of productive resources and capital and the equitable distribution of income and wealth will come into conflict in many cases.¹⁰ One challenge facing wealthy nations, Meade thought, was that increasing automation makes labor more productive, but also increases the marginal product of capital inputs relative to labor. Extensive automation ensures that a great deal of work can be done by relatively unskilled workers that was once done by skilled workers, which means that workers will only be able to command a low wage since they are interchangeable to their employers. Meanwhile, since most productivity depends on expensive machinery and other capital investments, returns on capital in the form of income paid to owners for allowing others to use their capital will be high since demand for capital will be high. This, Meade thought, would lead to a condition in which an increasingly large share of national income, and ultimately wealth in the form of saved or invested income, would become concentrated in the hands of those few who are already rich.¹¹

Meade considered four broad types of economic arrangements to address this problem: a “trade union state,” according to which labor unions would possess expansive collective bargaining rights in order to ensure that they receive high wages even for unskilled work or else lobby the government for a high statutory minimum wage; a welfare state with a progressive income tax and a generous social minimum; a property-owning democracy with progressive wealth taxation and widespread state investment in public goods such as education; and a socialist state, which Meade somewhat idiosyncratically considered as realized without significant loss of economic efficiency by the state simply running a very large budget surplus, becoming the sole effective lender to private firms which would see corresponding liabilities on their balance sheets.¹²

¹⁰Meade, *Efficiency, Equality and the Ownership of Property*, 22.

¹¹Ibid., 23-26.

¹²Here, Meade is relying on a well-known static accounting identity, that in an economy with a neutral current accounts balance (money leaving or entering the country to or from abroad), public savings will be equal to private deficits, and vice versa. That is, if the government is running a positive balance, that money must come from somewhere. If not from abroad, then it must come from the private sector, i.e., households and private firms. So on Meade's envisioned form of socialism, the state would “own” the means of production in the form of debt obligations owed by private firms, and on the dependency of private firms on the state for future investment. This is in contrast to states such as Great Britain in the 1960's and most wealthy net importing countries today, which hold substantial public debt and often run large annual deficits. According to Meade, these are anti-socialist societies, since private balance sheets are expanded to assets such as debt owed by the state to individuals and firms. Effectively, Meade maintained, the state is subsidizing the existence of private wealth. Cf. *ibid.*, 66-74.

Meade notes serious deficiencies with the first two proposals he considers. A minimum wage high enough to actually address significant inequalities in national income would reduce the overall demand for labor relative to capital investment, causing involuntary unemployment. This means that available labor would be utilized inefficiently, and the motivation for Meade's theoretical exercise was to see how efficiency and equity might be resolved, not how one might be compromised for the other.¹³ Meade is also fairly dismissive of the welfare state as he conceives of it, which focuses entirely on redistributing income through taxation. Meade thinks that transfers sufficiently large enough to approach equalizing incomes between capitalists and laborers would have to be financed progressively in a way that leads to significant economic inefficiency. Also, since such a scheme only aims to equalize income, not wealth, it fails to meaningfully address the division of workers and capitalists into separate classes. According to Meade,

A man with much property has great bargaining strength and a great sense of security, independence, and freedom; and he enjoys these things not only *vis-à-vis* his propertyless fellow citizens but also *vis-à-vis* the public authorities. He can snap his fingers at those on whom he must rely for an income; for he can always live for a time on his capital. The propertyless man must continuously and without interruption acquire his income by working for an employer or by qualifying to receive it from a public authority. An unequal distribution of property means an unequal distribution of power and status even if it is prevented [*sic*] from causing too unequal a distribution of income.¹⁴

In other words, inequalities in ownership lead to differential degrees of economic independence and thus freedom. They also allow the wealthy to leverage power and status when dealing with the state and its administrative agencies. This creates pernicious conditions in a society's political economy, in which those with wealth—and, therefore power and status—will constantly be able to lobby the state to reduce the social minimum paid to the propertyless as much as is politically feasible, meaning that welfare states of this sort are likely to become less equitable over time.

¹³Ibid., 35-37. Meade considers that perhaps technological unemployment could simply become an accepted fact of life, and that the technologically unemployed might be compensated through transfers. Alternatively, he considers that the maximum number of hours worked be significantly curtailed, a form of "unemployment sharing" among workers, who would reap the benefits of a legally mandated high minimum wage and high leisure time.

¹⁴Ibid., 39.

Meade devotes most of his attention to property-owning democracy as a form of political economy. Unlike the trade union state, Meade takes for granted that a property-owning democracy would have some sort of full-employment policy to prevent mass unemployment during recession. (This would have been a standard feature of most serious economic proposals under the Keynesian orthodoxy of postwar economics in the U.S. and the U.K.) Beyond this, the institutional reforms of property-owning democracy aim at reducing the relative inequality of holdings of wealth, primarily by increasing the rate at which small holdings grow relative to the rate that large holdings grow. This necessitates correcting for favorable economies of scale for the wealthy, which allow them to receive favorable rates of returns for their investments. In order to do this, Meade proposes that property-owning democracies make heavy use of progressive taxes on inheritances and other intergenerational transfers at the point of receipt, along with annual taxes on existing wealth to disincentivize further savings on the part of wealthy property-owners.¹⁵ He also favors substantial state investment in public goods such as education and healthcare funded progressively. Meade suggests that considerations of equity further favor devoting more educational resources to less talented students, since they will need more support to have equally marketable skills as more talented students.¹⁶ Finally, his discussion of property-owning democracy contains a long digression into how family planning policies might equalize wealth between households. He favors tax incentives that encourage wealthy families to have more children and discourage poorer families. If successful, these policies would cause large holdings of wealth to be divided among a greater number of offspring, while the wealth of poorer households, when transferred intergenerationally, would be concentrated in their relatively fewer children.¹⁷ Meade also thinks that this policy would be non-coercively eugenic: he thinks that wealthier people tend to be more intelligent and have more intelligent offspring, so policies that encourage more intelligent, well-off people to have children will lead to higher average intelligence in future generations.¹⁸

¹⁵Ibid., 41-46.

¹⁶Ibid., 59-63.

¹⁷Ibid., 46-58.

¹⁸Ibid., 63-65. Though controversial even when Meade was writing, eugenics are held in much lower repute today. Meade's discussion depends heavily on data showing a correlation between the average IQ of the children and their father's income. But the effectiveness of IQ as a measure of general intelligence is controversial, as is imputing from a correlation between one independent variable such as social class or race and IQ some form of causal dependency. It is unclear whether or not Meade considered these types of methodological challenges to eugenic policies. In any case, he was clear in opposing coercive or mandatory eugenic programs, such as forced sterilization.

In *Theory of Justice*, Rawls draws on Meade's idea of property-owning democracy to describe a just state, but outside of the preface to the revised edition of the work, it is less than clear that Rawls intends to be describing an alternative economic and political regime to capitalism. He uses the phrase "property-owning democracy" in reference to Meade, but he seems to consider the main contrast class to property-owning democracy to be a form of liberal socialism without a right to private property in productive resources.¹⁹ Rawls proposes four "branches" of government to that are supposed to secure distributive justice within the market: an allocative branch, which polices firms and ensures that they are unable to exercise undue market power; a stabilization branch, which aims at ensuring full employment (analogous to the role central banks play in many countries); the transfer branch, which sets the overall level of social minimum to be transferred; and the distribution branch, which is tasked "to preserve an approximate justice in distributive shares by means of taxation and the necessary adjustments to the rights of property."²⁰ The distribution branch has two functions: to set inheritance and wealth taxes that break up large estates, and to set the overall rate of taxation to finance the social minimum in a way that aims to reduce relative inequalities between those more and less advantaged. So, familiar from Meade's discussion, Rawls's conception of property-owning democracy in *Theory* includes taxes on wealth and inheritance, a provision for full employment, and wealth transfers, but also an allocation branch that attempts to limit corporations from attaining too much market power.

Rawls also considers a fifth branch of government, the exchange branch, which is responsible for setting the appropriate level of funding for public goods. Public goods are goods that, because they are non-rivalrous and non-excludable, would be insufficiently provided by a free market. So there is some level of state provision of such goods that would make each person better off, or at least some better off and no one else worse off, if it were provided by the state. Rawls endorses the Knut Wicksell's unanimity criterion on justifiable public goods expenditure: public goods should be financed only up to the level that each person would agree to be taxed to pay for them (assuming they are not misrepresenting their own position when bargaining in order to get better terms).²¹

¹⁹Rawls, *Theory of Justice*, 242.

²⁰Ibid., 243-49.

²¹Ibid., 249-51.

The Wicksellian criterion, however, would lead to a relatively low level of funding for public goods, since it requires that no good should be funded beyond the point acceptable to the person who least wants it is willing to pay for it. For example, the public financing of mass transit would be justified only up to the point that the person who is least willing to pay for it would be willing to levy a tax to finance it—possibly quite a low level if we assume that many people do not rely on trains or buses to get around, live close to their place of work, etc. Rawls assumes that the exchange branch operates only after distributive justice is guaranteed through the other four branches. It may be that people in a more egalitarian society may have more interests in common when it comes to financing public goods. For example, few will be so much richer than their neighbors that they would be substantially better off without public transit funding. Nevertheless, Rawls is clear that “the basis of [the exchange branch] is the benefit principle and not the principles of justice”—in other words, the exchange branch aims to provide benefits to members of a society efficiently, by using a Wicksellian criterion of efficiency, once distributive justice is already realized.²² This means that the branch is not itself charged with ensuring distributive justice.

This discussion seems to imply that, unlike Meade, Rawls does not think that publicly-financed public goods have a role to play in ensuring economic equality and distributive justice. Rawls would likely have maintained that access to healthcare and education—the two state-financed public goods Meade considers to be an integral part of property-owning democracy—are necessary for fair equality of opportunity, though he may not have wanted, when he wrote *Theory*, to commit to a view regarding the degree to which they should be publicly funded. One way to provide healthcare and education would be through a national health service or state-maintained public schools. Another way to do so would be to ensure that each person, or each household, has adequate resources to purchase private insurance or to privately educate their children. Whether the public or private provision of these services is superior is largely a matter of efficiency, so long as economic shares are distributed in such a way that each person has adequate resources to ensure fair equality of opportunity for themselves and their children.

In *Justice as Fairness*, Rawls is much more explicit that he sees property-owning democracy as an integrated set of social and economic arrangements that constitute an alternative to capitalism. He considers five ideal types of institutions: laissez-faire capitalism, welfare-state capitalism, state socialism, property-

²²Ibid., 250.

owning democracy, and liberal socialism. For Rawls, an ideal description of an institution is a description “of how it works when it is working well, that is, in accordance with its public aims and principles of design.”²³ Rawls assumes that what a set of institutions does not aim to do it will not in fact do. Since welfare-state capitalist societies do not aim to limit dramatic inequalities of wealth, they will not in fact do so. Welfare-state capitalist societies permit “very large inequalities in the ownership of real property ... so that the control of the economy and much of political life rests in a few hands.”²⁴ This observation corresponds with Rawls’s increasing pessimism later in his career that political power might be insulated from inequalities in economic power, since the wealthy are able to donate to political campaigns and hire lobbyists. If it cannot be, then those less wealthy are apt to be politically dominated and society cannot truly be described as democratic since political power is not distributed equally except in the very minimal sense that universal suffrage is available

Rawls’s discussion of property-owning democracy in *Justice as Fairness* largely mentions the same institutional arrangements as in his earlier discussion in *Theory*. It still includes a progressive tax on inheritance and wealth. Rawls is clearer that publicly financed education has an important role to play in equalizing access to one kind of productive resource, human capital, and elsewhere in the work he suggests that some universal access to healthcare is important for ensuring fair equality of opportunity.²⁵ He does not, in his later work, mention Wicksell’s criterion of efficiency when discussing these two public goods, suggesting plausibly that they may be funded above the consensus level to promote justice. But Rawls mainly distinguishes property-owning democracy from welfare-state capitalism by discussing what both institutions aim at doing. Both systems allow private property in productive resources such as economic capital. But “the background institutions of property-owning democracy work to disperse the ownership of wealth and capital, and thus to prevent a small part of society from controlling the economy.”²⁶ While “[i]n welfare-state capitalism the aim is that none should fall below a decent minimum standard of life, one in which their basic needs are met, and all should receive certain protections against accident and misfortune

²³Rawls, *Justice as Fairness*, 137

²⁴Ibid., 138.

²⁵Ibid., 173.

²⁶Ibid., 139.

... [i]n property-owning democracy, ... the aim is to realize in the basic institutions the idea of society as a fair system of cooperation between citizens as free and equal.”²⁷

As Samuel Freeman points out, Rawls saw capitalism in general as closely associated with utilitarianism. The theoretical justification for capitalist markets—their “aim” in the sense of the rational justification one would most likely provide for having them—is that they tend to promote the greatest overall happiness or satisfaction of preferences by allowing individuals to freely transact in whatever way benefits them. Welfare-state capitalism attempts to correct for the great inequalities that would be generated by such arrangements by providing a social minimum.²⁸ It is analogous to a mixed conception of justice that Rawls has the parties deliberate about behind in the original position in *Theory*, according to which overall happiness ought to be maximized so long as no person is below a certain minimal threshold (in the case of the welfare state, the level at which the social minimum and the provision for social insurance is set).²⁹ Property-owning democracy, by contrast, aims to limit overall levels of economic inequality to only those that could be justified when conceiving of society broadly as a fair system of social cooperation.

6.2. The case for pre-distribution as part of property-owning democracy

Intriguingly, Rawls also suggests that property-owning democracy uses a somewhat different approach to arrive at a more equal distribution of wealth than does a welfare-state capitalist society:

Property-owning democracy avoids [control of the economy and of political life by a small part of society], not by the redistribution of income to those with less at the end of each period, so to speak, but rather by ensuring the widespread ownership of productive assets and human capital (that is, education and trained skills) at the beginning of each period, all this against a background of fair equality of opportunity.³⁰

Here, the contrast between redistribution after the fact and distribution in property-owning democracy prior to market transactions have led some commentators to understand the system Rawls describes here as somehow fundamentally departing from traditional tax-and-transfer schemes familiar from contemporary welfare states.

²⁷Ibid., 139-40.

²⁸Samuel Freeman, “Property-Owning Democracy and the Difference Principle,” *Analyse & Kritik* 35, no. 1 (2013): 18.

²⁹Rawls, *Justice as Fairness*, 278-79.

³⁰Rawls, *Justice as Fairness*, 139.

These theorists have suggested that property-owning democracy may be distinguished from the welfare state by its reliance on predistribution (distributing “at the beginning of each period”). *Predistribution* is a term coined by Jacob Hacker, used to describe the way the state shapes markets through its rules and laws. In describing predistribution, Hacker writes:

When we think of government’s effects on inequality, we think of redistribution—government taxes and transfers that take from some and give to others. Yet many of the most important changes have been in what might be called “pre-distribution”—the way in which the market distributes rewards in the first place.³¹

Here, Hacker’s language evokes temporal priority (“in the first place”) similar to quoted passage from Rawls above. Predistributive policies are, notably, those “that encourage a more equal distribution of economic power and rewards *even before government collects taxes or pays out benefits*.”³² This presents a sharp apparent contrast between two different policy options. One approach is to let markets operate efficiently, with the state periodically using taxation and transfers to correct for the maldistributive results of markets. Another is to use predistributive policies to distribute control of productive resources prior to the operation of markets, in a way that will ensure that the outcome of the market will tend to be just. Reading this distinction back into Rawls’s idea of property-owning democracy suggests associating the first approach with welfare-state capitalism and the second with property-owning democracy. This point is urged by contemporary property-owning democrats such as Kerr and Thomas.

We might pause and wonder what makes predistributive policies more attractive as a target of reform than traditional ex post taxation. Hacker offers two reasons. First, predistribution is “where the action is,” in the sense that the power of the state to shape markets, such as the effects labor laws have on the bargaining power of workers or regulation has on the market power of firms, has, Hacker alleges, significant distributive importance.³³ Second, predistributive policies may be more politically feasible, since, as Murphy and Nagel urge, many people are “everyday libertarians” who hold fast to the questionable assumption

³¹Jacob S. Hacker, “The Institutional Foundations of Middle-Class Democracy,” in *Priorities for a New Political Economy: Memos to the Left* (London: Policy Network, 2011), 35.

³²Ibid., emphasis added.

³³Ibid., 35.

that what they earn on the market prior to taxes is theirs, and that taxation is some sense always a taking of the property that they own.³⁴

Two additional reasons related to the motivations for supporting property-owning democracy in the first place may also favor focusing on predistribution. One is that the reliance on ex post taxation and transfers seems to embody an imperfect form of procedural justice. In *Theory*, Rawls distinguishes between three conceptions of procedural justice: imperfect, perfect, and pure.³⁵ With imperfect and perfect procedural justice, there is an antecedent fact of the matter what a just outcome of a procedure would look like. With perfect procedural justice, the procedure in question (possibly with plausible but contingent assumptions) guarantees that it will arrive at the antecedently just outcome. With imperfect procedural justice, by contrast, the procedure only tends to have just outcomes according to the antecedent standard of justice (i.e., a fair criminal trial, where there is some antecedently determined fact of the matter such as the guilt or innocence of the accused against which its outcome could theoretically be measured). For pure procedural justice, there is no antecedent standard of what is just prior to the operation of the relevant procedure. The procedure is such that, whatever its outcome, that outcome is guaranteed to be just owing to the nature of the procedure. Who should win a sporting event, for instance, is exactly the team that scores the most points, and there is no fact of the matter about who this is independently of actually playing the game. In *Theory*, Rawls suggests that the distributive conception of equality is an example of pure procedural justice: economic transactions are structured according to whatever rules satisfy the two principles of justice, and then the just outcome is simply whatever results from free choices according to those rules. Rawls contrasts this with an allocative conception of equality, an example of imperfect procedural justice according to which there is a prior standard such as equality or maximizing each person's (antecedently-given) utility function that economic redistribution tries to approximate.³⁶ Relying on taxes and transfers at the end of each period seems like it may be treating a certain standard of equality implied by the fair value of political liberties and the difference principle as an antecedent standard against which we can measure the outcomes of a market, correcting for it with taxes and transfers when it inevitably deviates from this goal.

³⁴Ibid., 36; Murphy and Nagel, 15 & passim.

³⁵Rawls, *Theory of Justice*, 74-75.

³⁶Ibid., 77.

Finally, relying on taxation as opposed to the market-shaping power of the state to ensure economic, and so, ultimately, political equality potentially leaves less advantaged citizens subject to the possibility of political domination. Normally, it is not institutionally difficult to change the statutory tax rate. There are strong incentives on the part of firms and those with large incomes to seek to lower the taxes they pay. So the statutorily-defined tax rate will always be a potential source of political conflict between people earning higher and people earning lower incomes. The market-shaping function of predistributive policies, by contrast, are more difficult to influence politically. First, such rules would likely be complex, and so their implementation would depend significantly on complex decisions by administrative agencies. Second, the benefits and burdens of market-shaping rules will often cut across class lines economically. For instance, in the case of rules that limit the market power of firms in a particular industry, some firms may lose if they would otherwise be able to extract monopoly rents from consumers, but other firms are likely to benefit by competing on a more level playing field. So it may be that such policies would be more difficult to manipulate through the influence of wealth and social standing on politics than would a legislatively mandated statutory tax rate.

6.3. Predistribution three ways

The previous section discussed the idea of predistribution in general, as policies directed that shaping the way the market operates. In this section, I consider what sorts of actual proposals could fall under this approach and while also being compatible with the aims of property-owning democracy. I consider three approaches: time periodization, limiting the market power of firms, and the elimination of rents from pure ownership. I argue that no one of these views is both coherent and consistent with the motivations for endorsing property-owning democracy in the first place.

6.3.1. *Time periodization*

Recall Rawls's claim that, in a property-owning democracy, resources are distributed before each period, not at the end, and that, according to Hacker, predistributive policies occur before any sort of taxes and transfers take effect. This might be taken literally, as the claim that predistributive policies supposedly characteristic of property-owning democracies actually take place at an earlier moment in time than traditional *ex post* taxation. This interpretation, however, would be uncharitable. Time is continuous, and

the end of one period is always the beginning of another. So any distribution that takes place at the end of, say, time period t_1 , will occur at the beginning of the following time period t_2 . Taxation, like the march of time, is constant. Its occurrence is ongoing while other choices are being made, and the expectation of future taxation influences those choices.

Perhaps a better interpretation of Rawls's language of before and after each period is to construe these terms as referring to logical, not temporal, priority. According to this reading, to say that property-owning democracy distributes prior to an economic exchange just means that the exchange somehow conceptually depends on the prior distribution. We have to know what someone rightfully owns before we can know what they rightfully exchange. This is in contrast with redistribution at the end of each period, in which what is to be distributed somehow depends on the exchange's already having taken place. This avoids problematic talk of temporal ordering.³⁷ But if this is taken as an interpretation of predistribution, then taxes and transfers are redistributive strategies much the same as shaping the fundamental structure of ownership or reducing the market power of firms. Taxation and transfers may be used redistributively, to correct for deviations from whatever baseline standard of equality is required by justice. But they may also be used prospectively, to ensure that each person has suitable access to wealth and productive resources in order to ensure that future transactions, however they may fall, will be just. Taxation may be used to correct for exchange after the fact, but the tax code also partially defines the overall structure of ownership in society. To think otherwise, and to insist that taxes are always after-the-fact interferences with otherwise orderly markets, is to commit the fallacy of Nagel and Murphy's everyday libertarian, to assume that markets that exist in some sense prior to taxation fully determine what people own and that taxes are always interferences with and takings of these holdings.

Here, it would be open to Hacker to respond by pointing out that the "everyday libertarian" is so-named because it is, in fact, a common view in Western societies, particular in the United States, and that a major motivation for encouraging progressives to embrace predistribution as an idea is because it offers a possibly more strategic path for implementing egalitarian measures to stop wealth inequality. This point is well-taken as a claim about what it might be prudent for reformers to focus on, but it does not vindicate

³⁷O'Neill, 3-4.

the view that taxes and transfers fundamentally differ from other distributive policies because taxes are for some reason always (temporally or logically) posterior to some prior set of economic exchanges.

6.3.2. *Limiting the market power of firms*

Recall that one of the four branches that Rawls considers when discussing property-owning democracy in *Theory* is an allocative branch that, among other things, limits the monopoly power of firms. On this conception of predistribution, a policy is predistributive if it shapes the market power of firms in such a way as to promote a more widespread distribution of wealth among members of society. The market power of a firm is its ability to raise prices without a corresponding drop in demand for its product. A classic example of the exercise of market power is through monopolies. The point at which a monopolist can raise prices to maximize profits is often much higher than the price would be in a competitive market. It is limited only by consumers' willingness to substitute the product sold by the monopolist with something else. But firms may also exert market power even if they are not monopolies, if it is simply difficult or costly to purchase the same good or service from a competing firm—through, e.g., lock-in contracts, lack of information about available alternatives, convenience costs, or simply because there are too few competitors and firms compete as an effective duopoly. The extent to which firms are policed from growing too powerful, or from commanding too great of a share of their consumer base, is an application of the rules of a market, and so may operate independently of the tax code.

Jan De Loecker and Jan Eeckhout have argued that the dramatic rise of markups from the 1980's to the present can account for a decrease in the share of the income of firms that goes to labor, a decrease in the share that goes to capital, a decrease in wages for low-skilled labor, and a decrease in labor force participation rates.³⁸ A markup is the premium an individual pays for a given commodity at retail over the marginal cost to produce it.³⁹ De Loecker and Eeckhout find that markups increased from 18% in the 1980's to 67% in 2014, meaning that today consumers pay, on average, 67% more for a product than it cost

³⁸De Loecker and Eeckhout

³⁹As De Loecker and Eeckhout note, a rise in markups does not necessarily entail a rise in market power, because an increase in market power implies that a firm becomes more profitable simply by setting prices in a way that maximizes revenue, while it's possible for markups to increase even while a firm becomes less profitable. For instance, the marginal cost of producing some product may decrease even as the total investment a company has to make to produce it increases. This may happen, for instance, when a firm buys a very expensive machine in order to make individual units of the product in question very cheaply. The firm's markups may increase simply to recoup the cost of its initial investment, without reflecting a rise in its profits or a change in its competitive position vis-à-vis other firms.

a firm to produce it.⁴⁰ Using a series of accounting identities, they determine that companies with large markups are paying less on average for inputs from capital and labor, with a greater share of the profits remaining with the firm and increasing its overall book value.⁴¹ Their model can be studied empirically, and the authors find a tight connection between the average markup across the economy and both the percentage of firms' incomes going to labor and to investors. Correspondingly, since high markups make companies more financially healthy, they correspond to a significantly higher valuation in the stock market and a 1% higher levels of inflation than would otherwise be the case.

De Loecker and Eeckhout suggest several possible causes for the rise of markups and the increasing market power of firms: the increase of merger and acquisition activity, deregulation, an increase in whole-sale transactions, and the influence of private equity.⁴² If they are correct, then some ways for the state to shape the market power of firms, and so their ability to pay a lower percentage of their earnings to productive inputs like labor, would include more heavily regulating mergers and acquisitions, restricting whole-sale transactions by businesses, or restricting the activity of private equity. These sorts of interventions correspond to the role Rawls seems to have envisioned for the allocative branch of government: ensuring that the market power of firms is limited so that it does not have maldistributive implications.⁴³

⁴⁰Ibid., 3.

⁴¹Ibid., 17-21. Accounting identities cannot establish retrospective attributions of causation. That I save a higher percentage of my income entails, because of an accounting identity, that I consume a smaller percentage of it. But this does not establish that my spending a smaller percentage of my income causes my savings rate to increase, since it could equally well be said that my saving a higher percentage of my income causes me to spend less. (Here, I assume that tight explanatory circles—that *A* causally explains *B*, but also that *B* causally explains *A*—are inadmissible.) Or, in the markups case, it may be that the increased ability of firms to leverage markups caused labor's share of a firm's earnings to decline, or that markups increased because labor's ability to command a higher share of a firm's earnings decreased, perhaps because of a loss of collective bargaining rights on the part of workers. Relevant for the practical political context, however, accounting identities can establish prospective causation. If I decide to save a higher percentage of my income, then I know this necessarily means that I will spend a lower percentage of it. Or, if firm markups continue to increase, this entails that the costs of inputs, including labor costs, will decrease relative to the firm's earnings. The money must come from somewhere. Whatever the past dependency between a decrease in labor's share of a firm's earnings and the rise in markups, De Loecker and Eeckhout's model tells us that if markups continue to rise without policy intervention, we should expect to see a further decrease in labor's share of the earnings of firms.

⁴²Ibid., 32.

⁴³Here, I am assuming that if a higher percentage of income goes to labor, then income inequality will decrease and gains will be felt mostly by the least advantaged. This was certainly true in the highly class-stratified societies envisioned by classical economists such as David Ricardo and Karl Marx, where each person either lives wholly off of the (usually low) wage she can command on the labor market, or else entirely off of profits from owning capital. Of course, conditions in present-day wealthy societies are somewhat more complicated: workers often own capital in the form of stock portfolios held by their retirement funds, and many independently wealthy people also draw large incomes as executive officers in firms. Still, it remains the case that the wealthy tend to earn a higher percentage of their income from profits that accrue to them through owning capital, while many low-wage workers own no capital at all. In any case, the rise in markups also correlates with lower wages for workers on the lower end of the income spectrum.

Another way to shape market power to promote economic equality is to increase the bargaining power of workers. A higher statutory minimum wage makes more credible workers' threats not to work for below a wage substantially higher than the market-clearing wage, since it legally prohibits them from doing so.⁴⁴ Publicly financed goods such as healthcare ensure that workers are not dependent on otherwise undesirable work conditions in order to receive basic benefits. A basic minimum income, funded through taxation, lowers the cost of not working and requires firms to make more appealing offers to attract workers. Similarly, as Meade points out in his discussion of property-owning democracy, when each person owns a significant share of capital, they are more able to refuse to work and instead earn an income on what they own, meaning that employment offers will have to be financially more attractive to entice them to work.

Shaping the market power of firms and workers may substantially equalize the distribution of income and wealth in society. It is not clear, however, that this approach provides a clear and morally attractive alternative to traditional tax and transfer mechanisms. First, many interventions aiming to limit the market power of firms or expand the market power of workers may best be implemented through taxation and transfers. For instance, one way to limit the influence of mergers and acquisitions or private equity on firm behavior would be for the state to heavily police economic decisions in these areas. An alternative would be to simply end tax policies that favor them. Firms often merge to take advantage of large-scale corporate deductions in the tax code, and one reason private equity flourishes is simply because it is treated favorably by the tax code. Similarly, the bargaining power of workers may be increased through increasing the statutorily mandated minimum wage, but also by public financing of healthcare or a basic income, a form of taxation and transfer.

Second, interventions aimed at influencing market power that do not take the form of taxes and transfers are often more coercive and so less desirable, and are potentially less efficient. For instance, the minimum wage makes it illegal for workers to voluntarily work for a lower wage than set by a statutory mini-

⁴⁴Critics of higher minimum wages sometimes assert that an increase in wages paid to workers above the market-clearing rate will automatically be passed on to consumers, since a rise in the price of inputs for firms will require them to raise prices on what they sell. But the entire increase in wages would normally only be passed on to consumers under conditions of perfect competition, where prices are not set arbitrarily high by firms who do not face competitive pressures that bid them down. The rise in markups suggest that most firms operate very far from a state of perfect competition, and are already charging consumers rates significantly above what it costs to pay for labor and other inputs, meaning that some of the increased cost of paying workers a higher minimum wage would be paid for by corporate profits instead of by consumers.

mum. Though critics sometimes worry that this means that a higher minimum wage will necessarily result in widespread unemployment, evidence in countries like the United States tends to show that increases below a certain point do not have a great effect on overall unemployment.⁴⁵ But this does not show that no particular person becomes unemployed because of an increase in the minimum wage. After an increase in the minimum wage, there may be some particular workers for whom it is in no employer's interests to pay more than the minimum wage, but for whom it would be in the interest of at least some employer to pay less than the minimum wage. Even if other workers benefit from the minimum wage being set at the high rate, these workers are made worse off than they would have been without it, since it causes them to be involuntarily unemployed. This is, all things being equal, an undesirable side effect of an increased minimum wage. These same potential workers would not, on the other hand, be made worse off by wage subsidies or a basic income provision that raised everyone's post-transfer wage up to the proposed minimum, since this would not involve a coercive restriction on their working.

Likewise, the state could carefully manage merger and acquisition activity or private equity, creating a branch of the government with the mandate to determine when companies should be allowed to merge or where private investment should be directed. This would, however, require a significant degree of interference by the state directly on the economic choices available to firms, possibly leading them to make less efficient decisions. Additionally, as I will discuss in section 6.4.1, the direct regulation of corporate decisions by administrative agencies raises the substantial possibility in practice of regulative capture by firms, which would have enormous incentives to ensure favorable regulatory treatment. It also opens up other possibilities for political domination. For example, some critics have suggested that the Securities and Exchange Commission's attempt to block the merger of AT&T and Time Warner may have been politically-motivated retaliation by the president of the United States in response to perceived negative media coverage by CNN, one of Time Warner's subsidiaries.⁴⁶

To recap the points in this subsection: the market power of firms and workers has substantial distributive importance. But this does not serve as a basis for predistributive policies may be understood as distinct from traditional tax and transfer policy options, since taxation and transfer can significantly influ-

⁴⁵See David E. Carr and Alan B. Krueger, *Myth and Measurement: The New Economics of the Minimum Wage* (Princeton, NJ: Princeton University Press, 1995).

⁴⁶See "Mr. Trump Casts a Shadow over the AT&T Time Warner Deal," *New York Times*, November 15, 2017, <https://www.nytimes.com/2017/11/15/opinion/att-time-warner-deal-trump.html> (accessed November 30, 2017).

ence market power. Alternative means of influencing market power often raise prima facie objections of coerciveness or feasibility. They require people, often those less well advantaged, to forgo taking opportunities that might otherwise benefit them. They may also open the possibility of legislative capture. This is not to say that policies aiming to influence market power ought always, wherever possible, to take the form of changes to the system of taxes and transfers as opposed to direct state intervention. The objections considered to the former are only prima facie, and will sometimes be overridden by other concerns. But this discussion suffices to show that direct state intervention in the economic choices of private actors, as opposed to its use of the tax code, is not generally more desirable or just as a strategy for promoting equality.

6.3.3. *Reducing rents from pure ownership*

One of the motivations for property-owning democracy, as in the case of liberal socialism, is to ensure that society is not divided into separate classes of owners and workers. Socialism does this by making it illegal to earn an income from owning productive resources (or some substantial subset of productive resources, such as the means of production or the “towering heights of the economy”). Property-owning democracy attempts to eliminate class division by widely distributing wealth and capital so that it is not concentrated in a few hands. Instead, each person has some share of ownership in the productive resources of a society.

One approach to eliminating class division is John Maynard Keynes’s proposal at the end of his *General Theory of Employment, Interest and Money* to “euthanize the rentier,” i.e., to eliminate pure profits from ownership. Here, it is helpful to distinguish two ways in which a person may receive an income from owning capital. One way they may receive an income is from entrepreneurial profit: by noticing inefficiencies in the market and taking risks, they invest in certain productive activity or withhold investment as a form of arbitrage. In the long run, this leads to more efficient pricing of assets: if too few people are investing in production method ϕ , then some entrepreneur will take the chance that she can receive a higher return on investment than is typical in the market by investing in ϕ , making more capital available for this purpose. Another way individuals and firms receive an income from capital is through pure profit, or what Rawls calls rents from pure ownership.⁴⁷ This is the risk-free rate of return that an investor can expect to receive simply from allowing others to use his wealth. Since entrepreneurial profits are compensation for

⁴⁷Rawls, *Lectures on the History of Political Philosophy*, ed. Samuel Freeman (Cambridge, MA: Harvard University Press), 351.

decisions by entrepreneurs about how to invest scarce resources, their income may plausibly be seen as a form of management income, and of compensating them for the risks inherent in investing. Rents from pure ownership, by contrast, are what capitalists can extract from the market from the mere fact of ownership, without taking on any economic risk at all. This corresponds, Keynes thought, with roughly the real rate of return on “gilt-edged” treasuries, i.e., treasuries with practically no default risk, such as bonds issued by the United Kingdom. In a notorious passage in the *General Theory*, Keynes writes:

Thus it is to our best advantage to reduce the rate of interest to that point relatively to the schedule of the marginal efficiency of capital at which there is full employment ... There can be no doubt that this criterion will lead to a much lower rate of interest than has ruled hitherto ... I feel sure that the demand for capital is strictly limited in the sense that it would not be difficult to increase the stock of capital up to a point where its marginal efficiency had fallen to a very low figure ... Now, though this state of affairs would be quite compatible with some measure of individualism, yet it would mean the euthanasia of the rentier, and, consequently, the euthanasia of the cumulative oppressive power of the capitalist to exploit the scarcity-value of capital.⁴⁸

Here, Keynes is proposing lowering the interest rate the government pays on default-secure treasuries to the level of inflation, so that the real return on these instruments will be zero. This means that if capitalists wish to profit from their wealth, they will have to take on risk by investing it in firms that may default, or decline in value, instead of simply collecting the return on bonds. The idea is that this will lead to substantially greater investment in the short run, and since capital available for productive use will not be scarce, returns on investment will be lower. Meanwhile, since capital investment in, e.g., machines, computers, and other forms of technology, tend to increase worker productivity, real wages will increase either because workers command higher salaries or because the price of consumer goods declines, increasing real wages.

Some theorists have seen the policy goal of eliminating rents from pure ownership as consonant with the aims of property-owning democracy. For instance, Thomas writes that property-owning democracy “seeks to build up the assets of those who lack them as much as it seeks to break up concentrations of

⁴⁸John Maynard Keynes, *The General Theory of Employment, Interest and Money* (New York: Harcourt, Brace & World, 1965), 375-76.

capital. It seeks to encourage productive activity, investment, and risk-taking while discouraging rentier forms of capitalism,” before going on to cite the passage from Keynes quoted above approvingly.⁴⁹ But the idea that property-owning democracy is about eliminating rents from ownership is a puzzling one. Part of the motivation for accepting property-owning democracy is to ensure that the ability to earn an income from owning wealth is widely distributed. But if that ability is also highly constrained, then this will be a wide distribution of effectively nothing. Recall that one of the advantages of property-owning democracy is that it provides workers with economic independence to escape exploitative working relationships and helps them avoid economic domination. This ability is only possible if these workers actually earn an income from the wealth they possess.

In any case, eliminating rents from pure ownership is more in keeping with the idea of socialism than of property-owning democracy. Rawls’s point in distinguishing income from pure ownership from income of managing productive resources was to argue that it is possible for socialists to distinguish between income merely from allowing others to use one’s productive resources and income from managing productive resources, and that they could coherently propose eliminating only the former. While serving the British Treasury, Keynes managed to convince the Chancellor of the Exchequer, Hugh Dalton, to pursue loose monetary policy in order to promote the Labour party’s explicitly socialist economic platform.⁵⁰ Meade, who served alongside Keynes, expressed concern that Keynes’s ideas were too radical and theoretically ambitious, and did not take up discussion of them when describing property-owning democracy later in his career.⁵¹ While it is possible that eliminating rents from pure ownership is a good idea, it should probably be treated separately as one way that liberal socialism might be brought about instead of as a feature of property-owning democracy.

6.4. Objections to property-owning democracy

In the previous section, I argued that attempts to characterize property-owning democracy as relying on predistribution are misguided. This is not, however, to suggest that property-owning democracy is really just a more expansive form of welfare-state capitalism. What is important in Rawls’s characterization of

⁴⁹Thomas, “Are Predistribution and Property-Owning Democracy Mutually Compatible?” 15.

⁵⁰Tony Aspromourgos, “‘The Functionless Investor’: Keynes’s Euthanasia of the Rentier Revisited,” in *History and Political Economy: Essays in Honour of P. D. Groenewegen*, ed. Tony Aspromourgos and John Lodewijks (London: Routledge, 2004), 203.

⁵¹Ibid.

the idea is not that distribution occurs at the beginning of each time period rather than at the end, or by what policy means wealth is distributed, but rather that policies under a property-owning democracy aim at reducing overall inequalities of wealth, while welfare-state capitalist societies aim only and providing a sufficiently high social minimum.

In this section, I respond to two sets of objections to property-owning democracy: a criticism from the right that property-owning democracy is less efficient than a welfare state and more subject to legislative capture; and a criticism from the left that it fails to secure the fair value of political liberties by making economic equality subject to legislative power.

6.4.1. Vallier and the Rawlsian welfare state

Vallier argues that property-owning democracies are less economically efficient in many ways than the welfare state, and so less likely to benefit the least advantaged than a traditional welfare state, and that property-owning democracy is likely to do a worse job of securing the fair value of political liberties than a welfare state. Many of his objections depend on conceiving of property-owning democracy as relying on a large-scale bureaucratic apparatus that manages firm behavior, limits market power, and tries to set relative prices. On this point, he is responding to contemporary authors such as O'Neill and Thad Williamson, who characterize the policies levers of property-owning democracy to be distinctively pre-distributive in contrast to the tax-and-transfer policies that characterize the welfare state.⁵² In the previous section, however, I argued that this idea rests on the mistaken assumption that taxes and transfers are not predistributive, and that there are good reasons to avoid using those policies to shape overall market behavior. So some of Vallier's arguments do not apply to property-owning democracy as developed in this chapter. Additionally, following his interlocutors, Vallier conceives of property-owning democracy as essentially involving worker-managed firms. I will return to the issue of worker-managed firms in section five, but for now I will leave it off as it is not essential to the idea of property-owning democracy as developed here.⁵³

Vallier divides the problems for property-owning democracy that would make it less efficient than welfare-state capitalism into two categories: incentive problems, where individual agents lack sufficient

⁵²Martin O'Neill and Thad Williamson, "Beyond the Welfare State: Rawls's Radical Vision for a Better America," *Boston Review*, October 24, 2012, <http://bostonreview.net/us/beyond-welfare-state> (accessed November 20, 2017).

⁵³In *Justice as Fairness*, Rawls brings up worker-managed firms as a possible arrangement that would avoid Marx's criticism that labor under market economies is essentially alienating. He does not endorse the idea there, and says that the appropriateness of worker-managed firms is an empirical issue that he does not wish to prejudge. See *Justice as Fairness*, 178-79.

rewards for making efficient economic decisions; and information problems, in which information such as price signals are distorted by interferences with the market. Relatedly, some of the objections he raises concern the overall availability of capital in an economy, while others concern the degree to which property-owning democracy allegedly interferes with the market performance or profitability of particular firms or particular sectors. Since, as I have argued in the previous section, property-owning democracy should not be understood as relying essentially on the idea that individual firm or sector-level profitability should be regulated by the state, the latter form of objection misses the mark.

The major incentive problem that Vallier identifies is that the ability to accumulate capital is good for the overall market. He gives two arguments for this. First, the ability to accumulate an unlimited amount of capital creates an incentive for individuals to save in an economy. Since “effective accumulators will only seek to accumulate capital up to the point where doing so exceeds the legal maximum,” Vallier argues, the fact that property-owning democracy (allegedly) sets a limit to the overall amount of capital that can be accumulated undermines individuals’ choices when determining whether or not or how much to save.⁵⁴ This is a concern regarding the effects of overall capital accumulation on the market.

Second, Vallier argues that overall capital accumulation in particular industries is a public good, because they signal (through the profitability of different economic sectors) where capital is most needed. Restricting access to capital weakens the signal profits send to investors about where best to invest their money to satisfy the needs of consumers, and this makes markets less efficient. According to this objection, property-owning democracy distorts the market by interfering with the market at the level of particular sectors or firms.

The first objection Vallier raises assumes that property-owning democracy places a sharp cap on overall levels of capital accumulation. But this is not a suggestion either Rawls or Meade makes, and it’s at odds with taxation and transfers being the primary means by which property-owning democracies redistribute wealth. A high top marginal tax rate, either on income or on holdings of wealth, does reduce the incentive to earn or save more. But it does not eliminate it by setting a sharp cap on how much someone may accumulate. In this way, property-owning democracy does not differ in kind from welfare-state capitalist regimes, since it uses the same kinds of policy mechanisms to eliminate inequalities of wealth. There is

⁵⁴Vallier, 289.

always a marginal benefit to earning or saving more. It is just that the marginal benefit decreases more sharply the more one earns or saves.

Furthermore, all possible tax regimes make decisions concerning the relative benefits of earning money, spending, and saving. Income taxation favors leisure over work, since foregone income “spent” not working is not taxed. Consumption taxation favors saving over spending. Taxes on wealth favor spending over saving. For any remunerative activity, a person can either perform it or not, and for any unit of currency a person earns, they can either spend it or save it. There is no totally neutral tax scheme that keeps the relative incentives a person has to make these kinds of decisions fixed. All possible tax schemes favor some economic activity over others. Insights from classical liberals like Hayek suggests that there is no way to answer, from the outset, and prior to setting any sort of tax code, how much people should save or spend. That question is impossible for policy-makers to answer because it requires knowledge about people’s preferences that are highly dispersed and not publicly available (or even known to consumers or savers prior to participating in markets). This is often taken to be an argument against government interference with markets, but it also applies to Vallier’s point here. The idea that property-owning democracy discourages saving or earning assumes what we cannot know without a market process, which is how much people in general ought to save or earn. The best we can do, consistent with having both high and low tax rates, is to set general rules of taxation that we think best approximate political justice, and allow market participants to determine how best to distribute their time between work and leisure, and how best to distribute their incomes between spending and saving.

A final problem for Vallier’s first incentive problem is that other policy mechanisms besides taxation are available to encourage (or discourage) saving. Contemporary welfare states tend to use fiscal and monetary policy to encourage or discourage saving in the short run in response to macroeconomic conditions. For instance, when there is a recession, central banks and governments tend to try to discourage savings and encourage spending by cutting interest rates and running budget deficits. To fight inflation and encourage savings, they tend to raise rates and run a government surplus. Because property-owning democracy is not ideologically committed to reducing real interest rates as far as possible as a matter of fiscal policy, these

options remain available to the state to encourage capital accumulation as it sees fit without tax policies that encourage the concentration of wealth.⁵⁵

Vallier's second incentive problem, that capital accumulation within specific industries is a public good, since it notifies investors of where their capital may be best put to use, misses the mark, since property-owning democracy need not, any more than welfare-state capitalism, regulate the profitability of particular industries or firms. There is simply no reason why a regime aimed to break up large concentrations of wealth needs to break up large firms or regulate profitable industries. Doing so may also be worthwhile policy goals, but they are worth considering on their own merits. Whatever the overall structure of industrial policy should be, property-owning democracy only seeks to promote greater equality of ownership in a given society. Whether or not the state should use anti-trust policy to regulate or break up Amazon or Google, property-owning democracy only requires that shares in these firms not be excessively concentrated in the hands of few investors.

Vallier also raises a third, inventive problem: that property-owning democracy decreases the incentive to work, because it provides generous public goods for free along with capital grants.⁵⁶ It is somewhat misleading to call this an efficiency problem, so much as a wealth problem, because it's not clear that the most economically efficient outcome is necessarily one in which each person has maximized their lifetime income or overall wealth. This would only be economically more efficient if doing so better satisfies their preferences.

The way property-owning democracy is supposedly less "efficient" is that, by instituting progressive taxation on wealth and inheritance, it makes certain options people would otherwise choose less attractive. Someone might choose to work more in order to save a great deal of money if they could do so tax-free, but not if what they save is liable to be taxed. This would be a substitution effect, since making work

⁵⁵It would be uncharitable to Keynes's proposal to imagine that the state would have no way to correct for insufficient demand in a permanently low interest rate environment. Keynes's proposal was to keep real interests rates as low as possible through central bank policy and then to use fiscal policy to control inflation. Meade suggests, in the chapter on socialism from *Efficiency, Equality and the Ownership of Property*, that this sort of policy would amount to a subsidy to capital ownership, since state deficits translate into private household savings and vice versa according to accounting identities (holding the balance of payments between societies fixed). An alternative proposal would be to run large fiscal surpluses, effectively making the state a lender to indebted private households, and increasing the proportion of the economy it owns, while using monetary policy to control inflation. The point is that hybrid approaches exist that involve using either fiscal or monetary policy to control demand and inflation while using the other to promote policy aims like euthanizing the rentier or decreasing subsidies to the private ownership of capital.

⁵⁶*Ibid.*, 290-91.

less remunerative would favor substituting time spend working and earning an income with time spend not working, pursuing non-remunerative projects one may value. On the other hand, under higher rates of taxation, wealthy individuals may choose to work more, because they may have to in order to reach whatever their income goals are given the rate of taxation they are liable for. This is an income effect, since it influences individuals' choices by affecting their overall income. But the idea that substitution effects and income effects are distortions of a person's economic choices assumes what is not the case, that there is a neutral, non-distorted baseline according to which the most efficient use of someone's time is maximizing their wealth. As noted above, all tax systems favor some economic choices over others. The complaint that a person who would wish to work more if their wealth were never taxed has with living in a property-owning democracy is that working harder to accumulate more wealth is less attractive than they would like it to be under an alternative tax scheme. But under an alternative scheme of taxes and transfers, a person to whom wealth accumulation does not matter very much, and who values leisure or the freedom of less costly exit from exploitative working conditions, would have a complaint that their tax regime favors work. At worst, the disincentive effects of wealth redistribution lowers overall economic output, because less labor is available for productive activity. But leisure is also a good that people enjoy consuming, and a society with less pressure to work may have that in abundance. Vallier is clear that his claim is not that younger or less skilled workers will stop working *en masse*. Rather, his point is that, at the margin, people will work less if they receive wealth transfers.⁵⁷ But this need not be a bad thing! Such a society may be poorer in consumer goods, but it may be richer in leisure time and non-economic goods. People may take more vacations, but they may also raise children, volunteer more, be more politically active, or pursue other vocations that are not highly remunerative.

Vallier might offer the rejoinder that the disincentive effects of working might turn out to be so great in a property-owning democracy that overall output is low enough that it does not provide an adequate degree of other social goods to the less well off. This seems unlikely, since people often engage in non-maximizing behavior when choosing careers, preferring work that is higher in non-economic status or that best suits their interests. Even if this would happen with a guaranteed capital grant or basic income, a property-owning democracy might also condition receipt of such benefits on being available to

⁵⁷Ibid., 290.

work. Rawls envisioned distributive justice as maintaining between individuals understood as engaged in a scheme of mutual cooperation. Those who voluntarily refuse to engage in any sort of productive activity are not cooperators in this sense, and so may not be entitled to receive transfers of social goods.⁵⁸ In this dissertation, I do not try to determine whether or not those who choose not to work are owed economic transfers as a matter of justice. If they are not, then it would seem open to property-owning democracies to choose politically whether to provide them with the social minimum anyway (in order to enhance the economic freedom of all, avoid job scarcity, or simply to lower the bookkeeping costs to determine who is eligible for transfers), or whether the risk of disincentive effects to work are high enough to justify excluding them.

A fourth disincentive effect that Vallier mentions is that property-owning democracy frequently disallows certain types of market exchanges “en masse through enormous regulation of the economy.”⁵⁹ But here Vallier seems to be considering predistributive proposals that go beyond taxation and transfers to directly regulate market behavior. As I argued in section 6.3, property-owning democracy should not be construed as relying heavily on direct state control of economic activity over taxation. Often, taxes and transfers will be an effective way to limit market power or to equalize wealth, and this will not need to be accompanied by enormous economic regulation. This is not to say that an effective property-owning democracy will not have a substantial regulatory aspect, but simply that regulations will have to earn their keep in light of considerations such as economic efficiency.

Vallier raises several informational problems for property-owning democracies. He argues that they rely heavily on bureaucratic decisions and administrative law instead of the market to acquiring information on things like relative prices.⁶⁰ But again, Vallier is mistaken that property-owning democracies need to rely extensively on fixing relative prices between industries and firms or directly regulating private economic activity over taxes and transfers. He also argues that “income inequality in itself is a market signal, as those who make money in a particular economic sector will grow relatively wealthier than others.”⁶¹ But this seems to miss the point that property-owning democracy attempts to solve. It does not attempt

⁵⁸Or rather, their share of the social good would be declared as equivalent to the amount of leisure time they consume. See *Justice as Fairness*, 179.

⁵⁹Vallier, 291.

⁶⁰Ibid., 293.

⁶¹Ibid., 293-94.

to decide that wages across economic sectors will be the same. Inequalities in wages are countenanced by Rawls's principles of justice if they are to the benefit of the least advantaged, and this will sometimes justify paying workers in certain economic sectors such as health care or technology more than other sectors. The signal it dampens, but does not eliminate entirely, is the possibility that one may be much more likely to become wealthy working in one economic sector rather than another. Again, there is nothing about the motivations for property-owning democracy or egalitarian justice more generally that rules out, for instance, doctors tending to be wealthier than industrial workers. It only rules out dramatic inequalities of the sort that would erode the value of political liberties or that would not be justified as benefitting the least advantaged.⁶²

A separate sort of objection against property-owning democracy that Vallier raises is that such a society would encourage regulatory capture. Firms and relatively wealthy individuals would find their economic positions substantially affected by the economic policies of a property-owning democracy, and so would have substantial incentives to attempt to use wealth to influence bureaucrats for favorable treatment. This may lead to inefficiency, since using regulation to out-compete rival firms allows producers to avoid economic competition that tends to drive down prices and promote overall welfare. It can also erode the fair value of political liberties, both because it creates a powerful incentive to seek political and bureaucratic influence, and because the power of the state is expansive and able to control a greater degree of its citizens' daily lives.⁶³

The problem of bureaucratic and administrative capture is a potential problem for the stability of a property-owning democratic society, or of any society that does not simply aim to protect the interests of the powerful. There is no reason, however, why property-owning democracy requires a more expansive regulatory or administrative state than that found in a welfare state. Many policy aims of property-owning democrats can be accomplished through the statutory tax code, without charging bureaucrats with making fine-grained decisions about permissible economic decisions.

⁶²Presumably, all of Vallier's points regarding efficiency, if they are directed at Rawlsians who accept something like the difference principle, should have the upshot that the least advantaged representative wage earner would at some point be made worse off by that inefficiency. If doctors need to be made wealthier for enough people to pursue medicine to ensure that an adequate level of medical services are available to low income workers, then this inequality would be permitted in a property-owning democracy organized around Rawls's two principles, provided that this inequality in wealth also does not allow significant differences in political power and influence between the two groups.

⁶³Ibid., 294-96; 302.

6.4.2. The constitutional versus legislative strategies for promoting equality

Edmundson has argued that the aim of stably promoting the fair value of political liberties tells in favor of liberal socialism over property-owning democracy. According to Edmundson, liberal socialism and property-owning democracy differ primarily according to whether or not, constitutionally, they allow for the ownership of private property in the means of production, which for Edmundson includes ownership in firms in large industries such as the financial sector, energy, transportation, etc. In a socialist society, the possibility of owning property in these productive resources is taken off of the table for legislative consideration.⁶⁴ In a property-owning democracy, by contrast, private property is permitted by the constitution, and dramatic differences in wealth are prevented legislatively through the tax code and through other means of regulating economic activity. Edmundson thinks that this poses a significant problem for the stability of property-owning democracy, since the very means by which inequalities in wealth and, ultimately, political power are supposed to be limited is itself subject to influence.⁶⁵ It will always be a point of political dispute between the relatively better and worse off precisely what level of taxation is necessary to prevent excessive economic inequalities, and both sides will likely occupy different positions in part on the basis of the competing interests. This opens up the possibility for a kind of class conflict over the statutory tax rate within a property-owning democracy, and that the wealthy will successfully lobby for policies that entrench inequalities to the degree that they erode the fair value of political liberties.

One general worry for Edmundson's line of argument is that the problem he identifies for property-owning democracy overgeneralizes, and so would likely affect any viable political system. The reliance on legislation to implement constitutional measures is likely unavoidable. While the question of private property in the means of production may be "off the table" for legislative consideration in a liberal socialist society, in fact, legislative matters will significantly determine the effectiveness of a constitutional ban on the private ownership of capital. For instance, legislators in a liberal socialist society as Edmundson conceives of it will have to address what forms of productive wealth constitute the means of production. This is a complicated question, and many without substantial financial interest in the answer to the question may not be sufficiently well-informed to participate politically in answering it. Edmundson reads into

⁶⁴Cf. Edmundson, 139-69 for his views on the "property question" as it relates to constitutional choice. For his definition of the means of production, see *ibid.*, 40-41.

⁶⁵155-58.

Rawls, and endorses, an interpretation of “public ownership in the means of production” which “does not permit a private rent to accrue from pure ownership of major productive assets, ever, at all.”⁶⁶ Which assets count as “major productive assets,” and so means of production, Edmundson writes:

[do] not have a fixed designation. They, like ‘the least advantaged’ members of society, are not Kripkean ‘rigid designators.’ Scale, natural resources, existing infrastructure, and comparative advantages, and technological development would be relevant to applying the concept in particular places at particular times.⁶⁷

A written constitution will not be adequately specific to bind legislators to fall one way or the other on whether a particular set of firms or industries count as means of production according to these criteria at any particular time or place. For instance, socialist legislators in a society facing the widespread adoption of personal computing or the Internet, as in the 1980’s or 90’s, would have found it difficult to determine whether early small firms in this industry employing dozens of people are major productive resources that ought to be nationalized. In part, this is a question that may be vexing even for experts, since it is difficult to predict what industries will turn out to be major parts of the economy in the future. So how to treat new industries or firms will be legislatively contested, and mistakenly allowing large firms to arise in these industries opens up the possibility of economic and political domination by those who profit from illicitly owning and collecting rents on what will become an economically consequential sector of the economy.

Second, when a new firm or industry is nationalized, legislators in a liberal socialist society will have to decide how much, if at all, to compensate their former owners. Since there will not be a market in owning capital-intensive industries, legislators cannot simply compensate owners at the market rate for the firms they expropriate. On one hand, since the aim of nationalizing the means of production is, at least in part, to reduce inequalities in wealth, compensation for industrial takings would be counterproductive. On the other hand, seizing firms directly from entrepreneurs if their small firms become too large, and become part of the “towering heights of the economy,” creates perverse incentives against developing new and potentially very useful innovations in the private sector. It also seems unjust to penalize owners through seizing their assets without compensation simply because they are unlucky to find themselves among firms that the state counts as essential according to whatever standard it uses to determine who to

⁶⁶Ibid., 40.

⁶⁷Ibid., 41

nationalize. However the compensation question gets decided—uniformly, on a case-by-case basis, or applying some sort of discount to balance equality with efficiency—the owners of firms being nationalized will have strong reason to lobby for favorable terms for themselves. The degree to which they are compensated again opens up a substantial legislative question that may systematically favor the powerful and well-connected, and this raises an analogous stability problem for liberal socialism as Edmundson alleges it does for property-owning democracy.⁶⁸

Finally, there are reasons to doubt that legislative disputes about the rate of wealth taxation and transfers will be as politically destabilizing and subject to political capture as questions of which industries to nationalize. Tax and transfer policies are general rules, in the sense that they are publicized in advance and affect people equally. This is in contrast to decisions that target particular firms or industries for nationalization. Public policies that shift the tax burden from the less well-advantaged to those better off are usually easy to identify. Even in the United States, which has a much less egalitarian political culture than theorists might reasonably hope would flourish under a property-owning democracy, tax reforms that are perceived to heavily favor corporations and the wealthy quickly become unpopular.⁶⁹ There are also ways of structuring legislative debate in order to bias legislative procedures in favor of a political economy that makes it difficult to cut taxes on the wealthy or the level of transfers to others. One option is to have tax brackets that are not indexed to inflation, so that the real marginal rate of taxation is always rising unless taxes are periodically cut by legislators, a condition that persisted in the United States after the Second World War through the 1980's.⁷⁰ This changes the default from not increasing taxes to increasing taxes, and requires those who wish to reduce marginal tax rates on the wealthy to exercise political capital in do-

⁶⁸A significant *idée fixe* of the Lenin and Stalin regimes in the Soviet Union was the idea that those who managed to enrich themselves under the New Economic Policy—which imposed precisely what Edmundson is proposing, viz., limited private economic activity in firms deemed too small to be part of the “towering heights of the economy”—would actively work to destabilize the Soviet state and re-entrench capitalism. One of the reasons the Soviet Union was ideologically opposed to political contestation or free political rights was precisely in order to prevent political capture by the wealthy. But this approach is obviously not compatible with *liberal* socialism.

⁶⁹For instance, the tax reform bill recently proposed by Congressional Republicans dramatically distributes the tax burden away from wealthier individuals and corporations and to middle- to upper-middle income wage earners. It is also widely unpopular, and its political viability likely depends on the influence of wealthy donors with legislators. See Harry Enten, “The GOP Tax Cuts Are Even More Unpopular than Past Tax Hikes,” *FiveThirtyEight.com*, November 29, 2017, <https://fivethirtyeight.com/features/the-gop-tax-cuts-are-even-more-unpopular-than-past-tax-hikes/> (accessed November 30, 2017).

⁷⁰For a favorable treatment of indexing tax brackets to inflation to end “bracket creep,” and so to avoid increases in tax rates to be the default condition, see Edwin J. Feulner and Stephen Moore, “Reagan’s Supply-Side Genius,” *National Review*, July 6, 2015, <https://www.nationalreview.com/nrd/articles/419954/reagans-supply-side-genius> (accessed November 30, 2017).

ing so, rather than the other way around. Another option is to include super-majoritarian legislative rules to change the overall tax rate once an adequate level is reached. Transaction costs for reaching an agreement on tax and transfer schemes quickly rise when more legislators have to agree to the proposed changes, since those who do not particularly wish to see the changes made can request greater concessions in other areas from those proposing them.⁷¹ Once locked in by statute, a super-majority rule for amending the tax or transfer rate may pose significant problems for attempts to influence legislators to pursue inegalitarian policies.

Efforts to insulate legislative disputes from inequalities of wealth or social status are not perfect. If they were, then the case for property-owning democracy would be weakened, since it may be possible to secure the fair value of political liberties in the first place without addressing dramatic inequalities of wealth. But it is difficult to imagine how any society might avoid legislative questions that could, under some conditions and handled poorly, be destabilizing and allow for the domination by the relatively well-off. It would be an implausibly stringent standard to show that there is no way that certain legislative matters in a society could not descend into class conflict. The bar for establishing that a society like a property-owning democracy is stable is rather whether or not it is likely to approach potentially destabilizing legislative questions in a way that will depart from an initial position of relative equality to descend into a system of class conflict. Edmundson's critique of property-owning democracy is primarily devoted to showing that this could happen, not that it likely would.

6.5. Quality work options

As noted in the discussion of Meade's conception of property-owning democracy, one advantage to the widespread distribution of wealth in a society is that it gives its members the option to earn an income from capital, and so to retain some independence from coercive or exploitative working conditions. Not being economically dependent on the will of an employer is a value that even classical liberals like Hayek think of as an ideal. Those who do not need to please their employers are free to pursue unpopular opinions or alternative lifestyles, engaging in experiments in living that may demonstrate to others that other appealing

⁷¹See the external cost function in James M. Buchanan and Gordon Tullock, *The Calculus of Consent*, vol. 3 of *The Collected Works of James Buchanan* (Indianapolis, IN: Liberty Fund, 1999), 64-73. As the number of voters required to make a political decision rises, decision-making costs increase exponentially and the external costs each voter is likely to face (measured as deviations from the status quo, which in a property-owning democracy will be the initially high tax on wealth and inheritance) is significantly lower.

ways of life may be possible. Hayek thought this was a vindication of the existence of a class of wealthy individuals who are freed from the necessity to work, and whose idleness and income from economic rents might otherwise seem like parasitic on the productive activity of others.⁷² But property-owning democracy attempts to realize this ideal by broadening the class of independent persons, to ensure that those less well-off have an adequate amount of wealth available to them so that they are not dependent solely on the actions and attitudes of the employer who is willing to hire them.

It would be unrealistic to imagine that the amount of wealth redistribution in a property-owning democracy would be great enough to allow each person, if she wanted to, to live independently of the need to work at all. The dependency of someone on an arrangement is always relative to what the person would have to give up in order to leave the arrangement. Each person in a property-owning democracy may not be dependent on any one job in order to have their basic needs met. They may, however, be dependent on their particular employer to live comfortably beyond the level of basic income provided by a society, or for the kinds of social prestige conferred by being employed. In this way, they are unlike the class of idle rich that Hayek considers, whose ability to live in material comfort and social status is independent of their degree of employment.

The widely dispersed ability to earn some income from wealth may allow some slack in the dependency members of a property-owning democratic society have on any particular work arrangement. But they will not be able to live independently indefinitely. If every alternative work arrangement available to them is similar in quality and scope—if, for example, they are only able to choose between entry-level unskilled positions—then they may ultimately depend on having some work arrangement of this type for any income they wish to earn beyond the social minimum available to them.

One proposal to further enhance the work options available is to expand the conception of property-owning democracy to include alternative work arrangements, such as worker-managed firms. Unlike some other writers in this debate, I have so far put off discussing worker-managed firms, mostly because the idea does not appear to be essential to the aims of property-owning democracy, which are to equalize holdings of wealth in a society. In the next section, I discuss worker-owned firms as a viable strategy for granting workers a portion of capital's share of the national income.

⁷²Hayek, *The Constitution of Liberty*, 190-96.

6.6. Worker ownership and property-owning democracy

One way to distribute wealth more broadly in an economy is to use redistributive taxation to break up large holdings of wealth and to ensure more widespread private ownership of capital (through stock options, savings, home ownership, etc.). An alternative and possibly complementary approach would be to encourage the collective ownership of wealth. In capitalist societies, most firms are owned by investors who are drawn largely from a class of wealthy capitalists who own most of society's productive resources. One alternative corporate structure would be to ensure that the equity in firms is held entirely or primarily by workers.

In *Justice as Fairness*, Rawls briefly considers the idea of worker-managed firms as an alternative to wage labor.⁷³ Property-owning democracy aims to secure political democracy, even though it is sensitive to the observation that economic inequalities erode political equality. It is potentially subject to the Marxist critique that it ignores a more fundamental form of economic emancipation of workers by maintaining the wage-labor relationship between owners of firms and workers. Rawls's response to this objection is brief: there is nothing about property-owning democracy that rules out something like John Stuart Mill's idea of an economy dominated by firms managed by workers. Mill thought that there is significant demand among workers for participation in the governance of firms. Because of this, companies that offer workers the opportunity to participate would be at a competitive advantage relative to firms that do not. They would be more desirable places to work, and so would be able to offer lower wages to attract employees. Mill seems to have thought that worker-managed firms would gradually displace traditional, entrepreneurial firms in an economy, and Rawls thought this would be one way of meeting the Marxist critique.⁷⁴

Of course, as Rawls acknowledges, Mills' prediction was not borne out in practice. There has not been a spontaneous shift toward worker-management among corporations in market economies, as one might expect if worker-managed firms tend to have a competitive advantage over competing firms. Proponents of worker-management must address why such firms do not tend to proliferate under competitive market conditions. One possible explanation is that they are less efficient than firms with hierarchical management structures, and so are at a competitive disadvantage with respect to them. It is also possible that they do

⁷³Rawls, *Justice as Fairness*, 178-79.

⁷⁴John Stuart Mill, *Principles of Political Economy, with Some of Their Applications to Social Philosophy: Books III-V and Appendices*, vol. 3 *The Collected Works of John Stuart Mill*, edited by J. M. Robson (Toronto: University of Toronto Press, 1969), 758-96.

not exist simply because workers lack adequate access to capital or financing to make cooperative management possible. Rawls notes that these are open empirical questions, remarking that they “call for careful examination,” since “[t]he long-run prospects of a just constitutional regime may depend on them.”⁷⁵

Meade thought of worker ownership of firms as an important expansion of the idea of property-owning democracy. Building on his lectures in *Efficiency, Equality and the Ownership of Property*, Meade developed an ideal economic structure for a society that promotes equality and protects labor’s share of society’s income, which he called *Agathatopia*.⁷⁶ (The term means “a good place” in Greek—Meade’s attempt to distance the project rhetorically from the charge of utopianism.) In an agathatopian society, the state encourages a wide range of ownership structures for firms. In addition to investor-owned firms, Agathatopia also has fully worker-owned cooperatives as well as labor-capital partnerships, which involve a mixed ownership by capitalists and workers. In order to sustain worker-owned firms and labor-capital partnerships, Meade imagined the state running persistently large surpluses, effectively becoming a net-lender to the private sector.⁷⁷ It could use its lending capacity, or its power to tax the income of corporations, to favor worker-owned firms and labor-capital partnerships over large traditional investor-owned firms.

Notably, the role worker-owned firms play in Meade’s vision for Agathatopia is not to provide workers with a say over how firms are managed, but rather twofold. One, noted in the preceding paragraph, was to ensure that workers retain a share of the national income devoted to returns on capital.⁷⁸ The second, somewhat surprising function of worker-management according to Meade’s vision for Agathatopia was to reduce mass unemployment as a result of economic downturns.⁷⁹

The reason this is surprising is that one major economic criticism of worker-managed firms is that an economy dominated by them would, according to critics, would tend not to reach an equilibrium of full employment, in contrast with an economy dominated by traditional firms. Management at a traditional firm has incentives to maximize the firm’s profits. Labor is an economic input into whatever the firm sells,

⁷⁵Ibid.

⁷⁶James Meade, “Agathatopia: The Economics of Partnership,” in *Liberty, Equality, and Efficiency* (New York: New York University Press, 1993), 100-88.

⁷⁷This is because of accounting identities: when the state runs a surplus, it does so by taxing the private sector. A public surplus translates into a lower or negative net savings for private individuals, assuming this has no effect on the economy’s foreign accounts balance. So if the state runs persistently large surpluses from year-to-year, it does so by taxing the private economy. If private individuals then need capital to start firms, they have to go either to the remaining holders of private capital or to the state itself. See *ibid.*, 157-62.

⁷⁸Ibid., 134.

⁷⁹Ibid., 147-48.

and when the marginal product of hiring an additional worker is greater than the market wage that worker requires to work for the firm, it's profitable at the margin for a firm to hire another worker. It's profitable, then, for traditional firms to hire as many workers as they can up to the point where the marginal product of an additional worker is equal to what they would have to be paid. Workers at worker-owned firms, by contrast, have incentives to maximize the income of workers who retain an ownership share in the firm. To acquire new labor for a worker-owned firm, paying the worker also dilutes the share base of existing employees, providing a disincentive to hire additional workers that traditional firms do not have. When a cooperative of five worker-owners is considering to hire an additional employee, it will only increase their individual incomes if the marginal product of that worker exceeds both the rate they are paid out and the degree to which each worker's shares are diluted (since each will own 5/6th as much equity in the firm). An Illyrian firm is a theoretical worker-owned firm that aspires to maximize investment income for its workers.⁸⁰ Standard models of worker-ownership predict that Illyrian firms will tend not to hire workers up to the point their wages are equal to their marginal product, but rather substantially fewer workers. An economy dominated by worker-owned firms, then, would seem to have substantial underemployment.

Meade's response to this problem is to reject the equal-pay principle.⁸¹ The equal-pay principle is the principle that each worker who does the same work gets paid the same amount (or owns the same rights to residual income from the firm) as others who perform the same work. Instead, Meade thinks, worker-owned firms would overcome the disincentive to hire if they only have to give new workers shares (equivalent to a claim on the firm's income) equal to their current marginal product, regardless of what other members of the firm are already making. Suppose a firm is founded by five workers. Their firm rises in value, and so the incomes their shares entitle them to increase. Instead of being required by their charter to give each new worker (who, suppose, performs identical work as the other five) an equal share in the firm, they are only required to give each additional worker a fractional share that entitles them to an income equal to their marginal product as a worker at present market rates. If worker-owned firms seeking to maximize revenue for their shareholders are not required to give each worker an equal share, but instead are free to pay new members the market value of their work (roughly, their marginal product),

⁸⁰This idea was developed in Benjamin Ward, "The Firm in Illyria: Market Syndicalism," *American Economic Review* 48, no. 4 (1958): 566-89.

⁸¹Meade, "Agathatopia," 118-24.

then insiders at such firms will have incentives to hire as much labor as would be profitable for the firm, rather than hiring less in order to maximize incomes for insiders.

Rejecting the equal-pay principle only explains why an economy dominated by worker-owned firms would not tend to have widespread under-utilization of available labor (i.e., unemployment) compared with an economy dominated by investor-owned firms. It does not explain why Meade thought that worker-owned firms help prevent unemployment. Like most economic theorists in the period following the Second World War, Meade accepted nominal wage rigidity as an explanation for cyclical unemployment. Nominal wage rigidity is the phenomenon that workers tend not to accept cuts in their nominal wages when their real wages rise or when demand for their labor decreases. If a firm needs to reduce its labor costs by 5%, it could do so either by laying off 5% of its workforce, or else cutting the wages of every employee by 5% (or some combination of both approaches). Firms tend to respond with the latter approach, since workers normally do not accept pay cuts to their nominal wages (their wages denominated in currency, rather than in buying power). Even if deflation causes a worker's real income to increase, workers still tend to experience cuts to their nominal wages as wage cuts, and so are resistant to them.

One way to decrease the unemployment-causing tendencies of macroeconomic shocks, such as recessions, would be to make nominal wages less rigid. Since nominal wage rigidity is a function of individual choices, however, it is normally not something policy-makers can influence. If workers are paid in shares of a firm's profits, however, then they will automatically take a nominal pay cut when firms are less profitable due to an economic downturn. The system is self-stabilizing in a way that an economy dominated by wage-labor is not, since nominal wages automatically adjust when shares in firms become less remunerative.⁸² The blow to workers' incomes that would inevitably result from such a system could be cushioned by generous unconditional benefits funded by a large state surplus, such as basic income and public goods provision. It's also possible for workers to elect, in mixed labor-capital partnerships, to receive a portion of their wages in shares with the company and a portion in direct income, meaning that they would only experience a reduction of part of their wages.

Additionally, Meade thought, worker-owned firms and labor-capital partnerships reduce the opposition between management and workers to make difficult decisions affecting profitability. In a traditional

⁸²Meade, "Agathatopia," 147.

firm, workers and owners have a partial opposition of interests: investors tend to value the firm's overall financial health and so the firm's share-value, while workers tend to want the firm to pay them higher wages. Sometimes these aims are in opposition: for instance, if a firm is considering reducing its payroll or investing in capital- rather than labor-intensive production methods. Workers organize to prevent firms from making these decisions, possibly leading to suboptimal (from the point of view of the firm's overall financial health) economic decision-making. If workers are the owners of a firm, however, their interests are aligned with those of management attempting to promote the firm's profitability. This may help prevent the misallocation of investment by firms, as well as policies that contribute to unemployment, such as laying off some workers while real wages rise.

Richard Krouse and Michael McPherson have defended what they call a mixed property regime, which incorporates both worker-managed and traditional entrepreneurially-managed firms.⁸³ Such a regime avoids disallowing Pareto-improving transactions between consenting adults by disallowing wage-labor relationships entirely, as would a system that mandates worker ownership of firms.⁸⁴ But, they argue, it would also satisfy basic egalitarian arguments for worker participation in the management of firms. Worker cooperatives confer substantial external benefits to non-worker-managed firms, since they improve the bargaining position of workers at traditional, entrepreneurially-managed firms. If traditional firms were to attempt to subject workers to harsh conditions they would not choose for themselves, or use their bargaining position to command a greater share of a firm's profits, then workers in a mixed economy would be able to seek alternative employment at a worker cooperative instead. This potentially disciplines the behavior of traditional firms regarding how they treat their employees, but also means that worker cooperatives produce social benefits that they would receive in the form of profits in a competitive market, since part of the benefit they create is a positive externality.⁸⁵

Additionally, Krouse and McPherson argue that worker-owned firms ensure participation rights of workers, so that they are not subjected to the authoritarian rule of a firm's founders or investors. Critics of traditional entrepreneurially-managed firms such as Michael Walzer and Elizabeth Anderson have com-

⁸³Richard Krouse and Michael McPherson, "A 'Mixed'-Property Regime: Equality and Liberty in a Market Economy," *Ethics* 97, no. 1 (1986): 119-38.

⁸⁴Ibid., 120-23.

⁸⁵Ibid., 127.

pared capitalist firms to “private governments.”⁸⁶ It is widely (though not universally) accepted among liberal political theorists that, for political power to be legitimate, it must be subject to democratic accountability: those subject to it must have a decisive say in its exercise and in the scope of legislative power. But most adults spend a substantial portion of their lives engaged in some kind of work, often accountable to managers and the firm’s owners without any rights of participation in how they are governed. If worker participation in a firm’s management is a necessary condition for the legitimacy of a firm’s business decisions, then it may seem that this requires *all* firms to be subject to worker ownership. But, as Krouse and McPherson point out, participatory rights in employment, unlike participatory rights in a democracy, need not be inalienable.⁸⁷ There may be good reasons for preserving traditional managerial control at some firms. Some workers may prefer higher incomes over participatory rights, and firms may sometimes find it desirable to offer workers more pay in exchange for consolidated control over how the firm is run. Additionally, some tasks such as bureaucracies and government services would be difficult to make worker-owned. Certain types of private businesses may also see substantial efficiency gains in management that is not accountable to workers, and it seems questionable, at least in a system with substantial options for workers to seek cooperative labor terms if they value them, to make such arrangements illegal.

Some form of worker ownership, then, has been associated with property-owning democracy by theorists in this literature. In the next three subsections, I explore the role of worker-owned firms in the institutional structure of an economy and their relationship to economic freedom. First, however, it is worth drawing an important distinction between worker residual ownership and worker management as forms of worker ownership.

6.6.1. Worker-management and rights of residual income

Recall from chapter 4 that property rights have two roles: allocative and distributive. Property rights allow owners to decide how to use their property in a productive fashion. Classical economic theory predicts that, in general, robust private property rights will lead owners to put their property to the most profitable, and so economically efficient, use. Another function of property rights is distributive: property rights determine the distribution of income and wealth in a society. Though obviously connected, analytically,

⁸⁶Michael Walzer, “Town Meetings & Workers’ Control: A Story for Socialists,” *Dissent* 25, no. 3 (1978): 325-33; Anderson, *Private Government*.

⁸⁷Krouse & McPherson, 127-31.

these functions can come apart. It's possible for owners to retain control rights over their property without having very strong rights to a residual income over that property. For instance, capital gains might be heavily taxed precisely for the purpose of reducing capital's overall share of national income. It is also possible for individuals to retain a residual right of income from the use of their property without having some rights to determine how it is used or to deny its use to others. For example, individuals may not have rights against the state to determine whether their property is used for the public good, through eminent domain or regulation, but they normally compensated are for the loss of those control rights.

Worker control of firms refers to workers having at least some say over how resources are allocated within a firm. This may include a say over their own working conditions, or a say over the economic direction of the firm or its future investments. This can range from standard union negotiations familiar in the United States, to *Mitbestimmung* or co-determination policies in countries like Germany or Denmark, which mandate elected positions for workers on the boards of directors of firms. This is a form of worker-ownership in the allocative sense of property rights, since workers retain at least partial control rights over the firm. Alternatively, worker ownership of firms can refer to workers' *rights of residual income* resulting from the profits of the firm. On this model, workers are shareholders of the firm, and their "wages" are at least partially comprised of dividends paid from the firm's revenue stream. This is a form of worker-ownership in the distributive sense of what it is to own something: the economic gains from the firm's profitability go to workers, while in traditional firms they would go to investors.

These forms of worker-ownership are analytically distinct. It's possible for workers to have a say over their working conditions or how a company is run without having a right to income from any of the profitability of the firm. In practice, however, managerial rights may translate into the ability to extract economic rents, since employees could direct investment decisions to increase or maximize their wages. For example, employees could encourage their firm to invest in labor-intensive instead of capital-intensive production methods, even if that decision would be sub-optimal from the point of view of the profitability of the firm. Conversely, workers could retain a right to an income from the firm's profits without having much, if any, managerial control over how the firm is run. Workers could contract professional outsiders to manage its affairs, or only a small subset of workers could specialize in managing it while other workers retain as much say as they would in a traditional firm. In practice, however, it may be that managers cannot

be trusted to make decisions that would benefit the firm's owners—workers, in this case—without some kind of control over them, so workers at large may have to retain some control rights over the hiring and firing of managers.

This distinction is important when assessing the desirability of proposals for worker-owned firms given egalitarian political aims. One possible rationale for worker-owned firms, defended by Nien-hê Hsieh, is to give workers a voice in their working conditions. This proposal is for a firm of worker management of firms.⁸⁸ Meade's proposal, by contrast, is only to give workers rights of residual income over the profits of a firm. Meade lumps worker-management—along with various proposals to nationalize the means of production by bringing them under state or worker control—as “topsy-turvy nationalization,” since they depart from using markets to allocate resources and investment and instead direct them democratically.⁸⁹ Since we have reason to think that markets tend to allocate resources efficiently, this approach may leave open the possibility of inefficient investment decisions. It also does not (directly) address the distribution of income and wealth in society, since investors retain the right to residual income under a system of worker-management.

6.6.2. *Exit, voice, and economic freedom*

In chapter 5, I argued that economic freedom depends on the quality and availability of options available to workers, which is in turn highly dependent on their ability to exit economic relationships to seek better-quality options elsewhere. This is an individualist, negative conception of economic freedom. An alternative approach, which I have not taken, would be to develop a conception of *collective* freedom on the part of individuals to have a say, democratically, in their own working conditions. Such a conception could be a form of positive liberty, according to which workers should be free to act according to their “genuine” collective class interests, or a republican form of freedom according to which workers should have a say in their employment conditions to avoid domination by managers and investors.

In *Exit, Voice, and Loyalty*, Albert Hirschman noted two institutional mechanisms that affect the overall quality of outcomes for customers or other participants, such as workers: exit and voice.⁹⁰ Exit

⁸⁸Nien-hê Hsieh, “Rawlsian Justice and Workplace Republicanism,” *Social Theory & Practice* 31, no. 1 (2005): 115-42.

⁸⁹James Meade, “Can We Learn a ‘Third Way’ from the Agathatopians?” in *Liberty, Equality, and Efficiency*, 94-96.

⁹⁰Albert O. Hirschman, *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States* (Cambridge, MA: Harvard University Press, 1970).

is a mechanism by which individuals stop doing business with a firm if what the firm offers declines in quality. Voice is a mechanism by which those doing business with a firm express their dissatisfaction with the declining quality of options (or improvements foregone), and raise the costs for decision-makers not to take their interests into account. Hirschman offered this as a theory of factors affecting a decline in the quality of outcomes of an institution, but the mechanisms he points to, exit and voice, correspond to two aspects of freedom that agents can have within institutions as well: the ability to avoid certain kinds of interferences or constraints, and the ability to express one's interests and have them taken into account.

A central dynamic Hirschman discusses is the possible tension between the exercise of exit and voice. Sometimes, a firm's behavior may make it rational for individuals associated with it to leave given their dissatisfaction with the firm's behavior. In so doing, however, they compromise their ability to exercise voice over the firm's decisions.⁹¹ Often, those who are prone to leaving first may be precisely those who are most sensitive to a decline in their conditions, so widespread exit from an institution may bring about a spiral of decline, as quality-conscious workers or customers leave, limiting the ability of those remaining to exercise a voice over management, which in turn may lead to a further decline and greater exit.

Recall Meade's observation, from section 6.1, that one of the primary motivations of property-owning democracy is to give workers a measure of independence from coercive working conditions. This is an intervention centered on improving their exit options. Property-owning democracy, so conceived, may then be subject to a Hirschmannian critique: by making it easier for workers to leave bad institutions, they may precipitate decline in those institutions by making it harder for those who remain to exercise their voice regarding the nature of that decline. A set of economic institutions focused on lowering the cost of worker exit may result, not in a bidding war among employers to increase the quality of options open to workers, but in an economy of firms that provide mostly indistinguishable, low-value options. In some economic sectors, such as the "gig" economy in which people engage in part-time contracted work, this sort of situation pervades, in which workers have limited options to influence the decisions of managers and the options available to them, though often numerous, are not of particularly high quality.

There is reason to doubt, however, that focusing on improving workers' exit options will lead to a decline in institutional quality, or that this should be a major concern in maintaining an economic system

⁹¹Ibid., 44-54.

with robust economic freedom. First, as Hirschman notes, exit itself is a means of exercising voice with respect to a firm. Ceasing to do business sends a signal—one recognized even by economists—that the firm has failed to provide a worker or consumer with an adequate deal. The problem with exit as a means of exercising voice is rough-grained signal. Consumers, for example, may stop purchasing a product because its quality has declined, its price has increased, they have found customer service deficient, they have come to prefer a competitor's product, the prestige of the brand has diminished, or for any other of a number of reasons. Managers will not, generally, know why it is that particular consumers are leaving, and are instead left to act on their theories of why this is the case to make business decisions. Quality-conscious consumers, then, may better influence firms by remaining and voicing their concerns about quality rather than ceasing to purchase from the firm. In the case of employment, however, there are relatively fewer factors influencing widespread employee exit. Generally, workers might be expected to leave a firm if they are pursuing higher wages or better working conditions. Information on competitors, and even where employees go once they have left, is often available to firms conscious of their difficulty in retaining quality staff. It does not take detailed knowledge of employees' preferences or rare managerial genius to surmise that wage increases or material improvements to working conditions—more reasonable hours, better benefits, etc.—will improve employee retention.

Second, unlike in the case of the decline of political institutions, the decline of firms does not pose a grave risk of creating an economy filled with low-quality options. Recall that Hirschman's is a theory of institutional decline, not of workplace freedom. In a competitive economy, firms that decline tend to be replaced by those that do not. Firms that have trouble retaining workers with access numerous high-quality options may lose access to a major input of their overall product, and be less competitive as a result. This would only pose a problem for the overall quality of options available to workers if we could expect a stable outcome of firms with problems retaining quality workers. But there is no reason to suspect this would be the case. Even businesses in the so-called "gig economy" have trouble maintaining workers given poor working conditions, and are largely sustained through infusions of venture capital funding that may be less available in a society in which capital is not concentrated in the hands of a relatively small class of private individuals.

Property-owning democracy, then, should be understood primarily as relying on the exit mechanism, by offering workers high-quality exit options from coercive or otherwise undesirable terms of employment. This does not rule out worker-ownership, either in the form of worker-management or workers' rights to a share of a firm's residual income, but it does suggest that only the latter, insofar as it promotes a greater share of a society's social product going to workers, is particularly favored by a property-owning democratic regime.

Hsieh has argued that the right to exit does not provide adequate protection for workers, because it leaves open the possibility that managers may arbitrarily interfere with their working conditions. Instead, he argues, workers should have a recognized right to have a say over their working conditions. There are substantial barriers to exit for workers when they experience exploitative working conditions. First, workers have firm-specific skills, meaning at least part of their productivity (and so expected wages) would be foregone when moving to a different firm. Second, workers are paid efficiency wages: because of the costs associated with turnover, managers pay workers more than the market-clearing rate for their labor in order to encourage them to remain at the firm. Finally, workers also experience frictional costs when attempting to find a new job. Finding a new job can be costly and time-consuming, and workers may find it rational to accept sub-optimal working conditions in order to avoid the costs of relocation.⁹²

The problems Hsieh points to are real issues with relying on exit to secure economic freedom for workers. And there is nothing incompatible per se with property-owning democracy and workers having voice within institutions. The position here is just that the primary way worker freedom is secured is by having numerous high-quality exit options. However, there are four reasons to think that securing high-quality exit options for workers will be more effective than worker participation in corporate governance at ensuring workplace self-determination.

First, the aim of property-owning democracy is to more widely distribute wealth, allowing workers to have access to more attractive exit options. The aim, in other words, is to decrease the influence of the factors Hsieh identifies as protections for workers from arbitrary interference. Having a reserve of financial wealth, for instance, from which one can draw an income makes it easier to weather financial uncertainty associated with economic displacement. Basic income or other targeted wage subsidies can also make this

⁹²Hsieh, 128-29.

easier, as would securing full employment in an economy. Worker-owned firms that reject the equal pay principle, as proposed by Meade, would also not pay efficiency wages, since they would entitle workers to a share of the firm's profits.

Second, it is not clear that collective forms of worker organization will accord individual workers with a voice over their working conditions. As Brian Barry points out, like in democratic political systems, exercising voice within a firm is a public good, and producing it creates a collective action problem.⁹³ Each worker benefits to whatever extent voice increases the quality of working conditions, but democratic participation within a workplace may be costly. Trade unions attempt to address this problem by creating closed shops, effectively taxing potential free riders on the benefits of collective bargaining. But even within a trade union, some workers may be tempted to free ride on the participation and effort and participating in union activities of other workers.⁹⁴ Just as there are open and serious questions regarding the effectiveness of corporate governance operating in the interests of shareholders at disciplining managerial decisions, there is some room for skepticism over whether institutionalized methods of worker participation are likely to discipline management.

Third, it is unclear what role the collective right of workers collectively to have a voice in their working conditions will actually have in securing individual worker freedom. Just as democracies can restrict the individual freedom of their citizens, a firm with democratic participation by workers still may not guarantee that individual workers are free to have a say over their working conditions. It may be the case, depending on how broadly or narrowly drawn the bargaining class of workers is, that workers share substantial similarities of interests, perhaps unlike democratic societies marked by substantial pluralism about what would be good for their members. But this will often not be the case. Many firms hire workers for dramatically different roles: investment bankers, office clerical workers, and building maintenance staff, for example, or engineers and factory-line workers. What might be good for one of these groups—increasing wages for highly skilled workers by, for example, investing in capital- rather than labor-intensive production methods—may directly conflict with the interests of others. Having one's working conditions changed

⁹³Brian Barry, "Review Article: 'Exit, Voice, and Loyalty,'" *British Journal of Political Science* 4, no. 1 (1974): 92.

⁹⁴This situation can be compared to that of democratic elections: having taxpayer-financed elections and salaries for elected officials prevents free riding on democratic rule at a very basic level, since everyone to some extent contributes to the functioning of democratic government. But some people participate in democratic elections and some do not. Since democratic participation can be costly, both in terms of the effort required to gather information about candidates as well as standing in line to vote, those who do not free ride on whatever benefits result from democratic participation by others.

because of the will of a majority of workers when one is in the minority does not, at least directly, preserve one's individual freedom any better than being subject to the will of the majority when one is in the minority. It may be that firms with a substantial voice for workers, as with democratic societies, are instrumentally more effective at securing individual worker freedom, but this is just to acknowledge that what is important is the quality of the quality of options individual workers have available to them.

Fourth, by distributing capital more broadly, a property-owning democracy should expect to see more firms in which workers, whether or not they have substantial control over the managerial decisions of a firm, retain at least a partial right to their residual income. Worker-owned firms need not be worker-managed: just as states are often inefficient at controlling assets they own, worker-owned can avail themselves of professional managers and retain much the same corporate governance structure that firms in traditional capitalist societies have. While this would not secure a direct path for a voice for workers in the management of a firm, managers would ultimately be accountable to workers in the way that they presently are to shareholders. Implementing partial worker control of firms ratifies contestation at the level of corporate governance. Workers and investors compete to best promote their diverging interests: workers tend to want more pay and superior working conditions, while investors may desire to increase short- or long-term profits to the firm. Under a system in which workers make up a large percentage of shareholders, however, workers and owners have aligned interests—in fact, there is substantial overlap in both classes. Traditional management then will tend to promote workers' interests under a system in which workers are part-owners of the firms they work at, even if they do not have specified democratic rights to influence managerial decisions at firms.

6.6.3. Are worker-owned firms viable?

As I noted at the beginning of this section, one problem advocates of worker-owned firms face is why such firms are uncommon in competitive capitalist markets. The explanation for the dominance of traditional investor-owned firms may turn out to be vindictory, in the sense that it points to a set of problems that traditional firms do uniquely well at solving.

An adequate answer to this question may also support the legitimacy of investor-owned firms. Following the analogy between corporate governance and political governance pressed by Walzer and Anderson, one strategy for defending the legitimacy of states is to explain why they solve some general problem facing

humans in social life. They may, as Hobbes argued, solve a collective action problem: each has reason to put down the sword and seek peace, but only insofar as they can be assured, through the operation of a sovereign, that others will do likewise. If Hobbes's argument is sound, this at least puts pressure on anti-statist political theories. If it were to turn out that only certain types of political arrangements, such as political power vested in a single, all-powerful and undivided artificial sovereign, tend to do an adequate job of solving the kind of collective problems that we need states to solve, then this would call into question the viability of alternatives and would seem to get at least part of the way toward vindicating the legitimacy of such arrangements (as Hobbes thought it did).

The existence of firms within competitive market economies itself calls for an explanation. Competitive markets tend to be more efficient at allocating resources than command economies. Many contemporary economists would accept that this is because competitive markets have price signals: when the demand for a good or service increases, the price tends to increase, increasing the incentives entrepreneurs have to provide it. Firms exist in competitive markets utilizing price signals, but resources within a firm are centrally planned the way any socialist economy would be. Managers engage in long-term economic forecasting and direct resources to where they think would be most profitable within the firm. They do not compete with one another, as one might expect given the apparent advantages to efficiency that come along with using market competition to allocate resources. Firms are, as one commentator notes, "islands of conscious power in this ocean of unconscious cooperation."⁹⁵

The theory of the firm is the area of economics devoted to explaining why firms, which have a non-competitive internal structure, exist within competitive markets. In this section, I discuss three theories for why firms exist, and argue that none of them pose principled problems to the viability of worker-owned firms. I will consider three theories: Ronald Coase's transaction costs theory, Armen Alchian and Harold Demsetz's monitoring costs theory, and Frank Knight's uncertainty-management theory.⁹⁶

Modern discussions of the theory of the firm tend to follow the same framing that Coase used in his groundbreaking paper, "The Nature of the Firm." According to Coase, firms exist to reduce transaction costs. "Transaction costs" is a somewhat amorphous concept, in the sense that the term is used to cover a

⁹⁵D. H. Robertson, quoted in Ronald H. Coase, "The Nature of the Firm," *Economica* 4, no. 16 (1937):388.

⁹⁶Coase, "The Nature of the Firm"; Armen A. Alchian and Harold Demsetz, "Production, Information Costs, and Economic Organization," *American Economic Review* 62, no. 5 (1972): 777-95; Frank H. Knight, *Risk, Uncertainty and Profit* (New York: Houghton Mifflin Company, 1921).

wide range of seemingly different kinds of costs. Coase defines the term functionally: transaction costs are the costs of using price signals.⁹⁷ Examples of transaction costs Coase draws on include the costs of finding a buyer or seller, negotiating on a rate, managing long-term contracts, and paying sales taxes. Instead of thinking of the efficiency of competitive markets as univalent—so that the more an economy relies on price competition, the more efficient it will be—there are both gains and costs from the point of view of allocative efficiency to the use of the price signal. Coase claims that transaction costs and the efficiency gains from market competition diminish at the margin: complicated production processes completely devoid of price competition would become dramatically more efficient with the introduction of competition somewhere in the production chain, while saturated markets would not benefit very much from the introduction of an additional competitor.⁹⁸ Firms will tend to exist, then, when transaction costs exceed the potential efficiency gains from price competition. The size of individual firms will also tend to be mediated by the same dynamic: the larger a firm grows, the more whatever economic activity it is involved in would benefit from price competition, while the smaller a firm is, the more it might benefit from expanding to reduce transaction costs. The tipping-point in this case would likely vary by the nature of the production process in question.

Coase's theory is elegant, but it turns on how "transaction costs" should be specified. To the extent that transaction costs are understood as simply the absence of market competition, there is no reason to expect worker-owned firms to have greater transaction costs than traditional firms. But transaction costs might be understood broadly, to include costs such as decision-making costs. And it may be thought that worker-owned firms, given their ostensibly democratic character, experience greater decision-making costs. But this is, at most, an objection to worker-*managed* firms, where internal contestation may paralyze a firm's managerial decisions. Recall the distinction, from section 6.6.1, between worker-managed firms and firms in which workers retain only residual income rights from a firm's profits. The latter proposal is a form of worker ownership, but it is compatible with professional managerial control over a firm's business decisions.

Here, it is helpful to draw on another analogy with democratic political theory. Democracies also sometimes experience high decision-making costs. Political contestation can, in some cases, paralyze polit-

⁹⁷Coase, 392.

⁹⁸Ibid., 404-5.

ical institutions. Because modern states face very high managerial demands, in cases where decision-making costs are high and the value of democratic deliberation appears to be low, democratic societies can hire professional bureaucrats to manage areas of the state such as business regulation, environmental protection, or the maintenance of infrastructure. While there are fair questions about the legitimacy of the operation of administrative agencies, some bureaucratic management is likely unavoidable in modern states. There is no incompatibility, in principle, between a society's democratic character and its reliance on bureaucratic management, so long as it cultivates a political economy according to which bureaucratic decisions respect a fiduciary duty to act in the interests of members of the public and not the private enrichment of bureaucrats.⁹⁹ This offers an answer to Anderson's worry that firms without worker management act as authoritarian private governments: what is important is not, necessarily, that workers play a role in making management decisions, but that the democratic character of workplaces can be preserved by ensuring that managerial decisions are undertaken, at least substantially, in order to benefit a firm's employees.

A second explanation for the prevalence and nature of firms is Alchian and Demsetz's monitoring costs theory. According to Alchian and Demsetz, many economic activities take the form of team production. Team production occurs when each individual's contribution to a project is not easy to either measure or monitor.¹⁰⁰ Consider two individuals loading a truck. If each worker is responsible for loading boxes that can be lifted individually, this is not an instance of team production. To determine the degree of each worker's contribution to the task, it is necessary only to count the number of boxes they each lifted into the truck. If, on the other hand, the workers are lifting heavy objects that require two people to lift, their individual contributions are difficult to measure. It is hard to determine whether each is, literally in this case, carrying their own weight.

In cases of team production, monitoring each employee's contribution becomes costly, because it cannot be measured simply by the number of pieces they have produced. In the absence of effective monitoring, each employee has an incentive to shirk, since they could contribute less effort to the overall product

⁹⁹Though this treatment is cursory, I do not mean to suggest that ensuring bureaucrats act in the public interests is an easy or merely technical problem. Public choice theory in economics is devoted to analyzing the behavior of government institutions and actors using economic models, assuming that political actors are more or less self-interested rather than being civically minded. I only mean to suggest that, while challenging, this problem does not appear to be wholly insoluble. There are successful bureaucracies that act, largely, in the public interest, much as managerial decisions at firms are sometimes done for the benefit of owners, to whom managers owe a fiduciary duty.

¹⁰⁰Alchian & Demsetz, "Production, Information Costs, and Economic Organizations," 779-81.

without seeing a corresponding drop in the value of the overall product.¹⁰¹ Since monitoring workers in team production is costly, there are gains made from specializing in this task. Professional managers will, presumably, be better than amateurs or workers themselves at determining how much each has contributed in a team project. But managers are, ultimately, also employees of a firm, and also have an incentive to shirk. If managers put in little effort to monitor employees, this may lower the profits enjoyed by a firm's investors, but it will not affect the managers themselves so long as the firm stays in business and their shirking goes unnoticed.¹⁰²

Essentially, Alchian and Demsetz have identified a layer of agent-principal problems between workers and owners of a firm. The owners of a firm are the principle beneficiaries of its successful operation, but workers and professional managers are the ones responsible for carrying out their wishes. As long as the interests of agents and principals are not aligned, one might reasonably expect workers to act in their own interests by shirking rather than in the interest of owners. Alchian and Demsetz think that this is an explanation for the traditional hierarchical management of firms: the agent-principal problem can be mitigated when ultimate control rights over a firm are retained by those entitled to receive a residual income from the firm's profits. If the owners of a hierarchically-managed firm wish to receive greater profits, they are empowered to replace the firm's top executive officers. This, in turn, gives corporate officers an incentive not to shirk when managing their subordinates, and generally aligns the incentives of a firm's management to those of its owners.

There is no reason, however, why workers at worker-owned firms cannot hire professional managerial consultants to act in their interests and monitor the behavior of workers. It is also true that managers who are themselves worker-shareholders to a worker-owned firm do not have as strong incentives to shirk, since the firm's profitability directly affects their income.

Alchian and Demsetz consider the way that they call "socialist firms"—here, worker-owned firms—might confront the problem of monitoring costs.¹⁰³ In large firms, they suggest there is another collective action problem. Since each worker only receives a small share of the firm's profits (for simplicity, $1/n$, where n is the number of worker-owners associated with the firm), then each worker will only experience

¹⁰¹Ibid., 781-82.

¹⁰²Ibid., 782-83.

¹⁰³Ibid., 787.

a small loss when their shirking potentially causes a large loss in a firm's profitability. Each worker then faces a collective action problem with respect to participating in corporate governance or monitoring other workers: since doing so itself involves effort, often the best course available will be to shirk such responsibilities while experiencing only a small loss resulting from a firm's reduced profits. If every worker-owner responds this way, though, collectively-managed firms may tend to be poorly managed and inefficient.

While Alchian and Demsetz point to a potential problem of corporate oversight when many owners are involved in overseeing managerial decisions, this problem does not uniquely affect worker-managed firms. It is also a problem for traditional, investor-owned firms. Publicly-traded firms, for instance, involve several investors who need not necessarily know each other, be similarly invested in a firm's long-term success, or who recognize any duty to one another to contribute to good corporate oversight. If Alchian and Demsetz's theory predicts that worker-owned firms face a serious collective action problem in overseeing a firm's management, then it would predict the same for publicly-traded firms. Yet experience suggests that the existence of large, publicly-traded firms is not under grave threat, suggesting that this is not an insuperable problem. It is not the case that all firms are owned by individual bold entrepreneurs who get rich if their firm is successful or goes bust if it does not. It might be the case that some kinds of firms lend themselves to individual entrepreneurial control than others, and in such areas we may not see the widespread proliferation of investor-owned businesses. The need for individual entrepreneurial control over some kinds of firms may be a reason not to ban private corporations altogether, but it seems unlikely that all firms require such an ownership structure.

The final major theory of the firm I will consider in this section is, chronologically, the first: Knight's theory of uncertainty management. According to Knight, firms exist to allocate risk and uncertainty between workers and owners of capital within an economy.¹⁰⁴ Workers tend to be paid according to a fixed pay schedule, while owners experience market risk: if a firm is profitable, they make a lot of money, and if it is unprofitable, they lose money. Given that individuals have different risk-tolerance, one would expect that some would tend to prefer fixed pay schedules while others would seek the uncertainties associated with entrepreneurial activity. Wage-labor contracts give people the opportunities to act on these preferences in a market.¹⁰⁵

¹⁰⁴Knight, 244-47.

¹⁰⁵Ibid.

Coase, in his criticism of Knight's view, points out that managing risk tolerance does not, by itself, explain why firms exist. Instead of integration inside a firm, individual worker-owners, or small groups of worker-owners, could purchase insurance contracts against potential losses. Workers could determine their level of risk tolerance, and insure themselves against potential losses exceeding this amount, in much the same way that investors purchase options contracts on potential economic losses from equities they own. So workers need not, at least when they have access to sophisticated insurance markets, resort to incorporation and wage-labor contracts.¹⁰⁶

However, Knight draws a distinction between risk and uncertainty. In Knight's conceptual scheme, uncertainty is risk that cannot be insured against, since there is no way to attach principled probability judgments to such outcomes. Examples of uninsurable risk include events that are subject to the knowledge problem of economic forecasting Hayek famously raised, such as the risk of future macroeconomic downturns, the development of new technology, changes in consumer tastes, or the systematic failure of financial markets (including firms that insure against risk). At a minimum, individuals may have different tolerances for income uncertainty, and so individuals specializing in taking on economic uncertainty may specialize in doing so by undertaking entrepreneurial activity. It may also be the case that some people are better predictors of events such as changing consumer tastes and the possibilities of new technology, even if there's no way to translate that insight into actuarial tables. It may be that entrepreneurs like Steve Jobs have a comparative advantage at navigating certain kinds of uncertainty, but that such skills are not accessible to the market as a whole.

Differential tolerance of uncertainty may explain why worker-owned firms do not proliferate under capitalist markets. But the effect of uncertainty management is something that a property-owning democracy can better enable workers to manage. First, one reason some individuals are willing to experience economic uncertainty is that they have access to wealth and other means to meet their basic needs if their choices have poor results. A property-owning democracy aims to distribute wealth more broadly, meaning that individuals will tend to have a cushion against economic hardship. Additionally, access to public goods and a basic income may also act as an insurance scheme to workers who wish to take on uncertainty.

¹⁰⁶Coase, 401.

A second, related point is that individual preference for uncertainty is endogenous with respect to a scheme of social institutions. Individuals have a preference for taking on uncertainty because they live in a society that praises a certain kind of behavior, or because they grow up with certain social expectations based on how their society is structured and what options are available to people in their social class. Knight treats differential tolerance for taking on uncertainty as an exogenous feature of markets: individuals' preferences for taking on uncertainty are simply taken as a given, and the division of economic roles between workers and entrepreneurs is simply a way of managing those differential preferences. There is no reason to expect that the distribution of tolerance for uncertainty that we see in capitalist societies would replicate itself under a more egalitarian basic structure.

Third, even if entrepreneurs are a special class of individuals uniquely well-equipped with a set of incorrigible dispositions to take on and manage firms under conditions of economic uncertainty, they do not comprise the entirety, or even a majority, of investors in modern capitalist economies. Even if Knight's analysis is a good explanation for why entrepreneurs tend to found firms, it does not explain why firms must continue to operate with a sharp divide between owners and workers once their market share has stabilized.

Again, a political analogy here is helpful to illustrate this point. Many states were in fact founded non-democratically, by single individuals or small groups. But it does not follow that states or political institutions must continue to operate in this way. Walzer recounts a fictional parable of J-town, a town established by a charismatic founder, J. J. At first, J. J. owns most of the property of the town, and most of its public goods come at his largesse. However, even if he is an effective and good-natured leader, this is not a reason to allow him to continue to run the town without democratic accountability indefinitely. At some point, as they do in Walzer's parable, members of the town insist that its government has a fiduciary duty to them, that J. J. cannot appoint family members to key positions, and they take responsibility for political decisions that affect everyone.¹⁰⁷

Similarly, it may be that many entrepreneurs have an important role to play in founding new firms and institutions, and even that they should be honored insofar as they perform this role. But this view of entrepreneurial activity is compatible with the idea that there should be limits on entrepreneurs' ability to

¹⁰⁷Walzer, 329-30.

“cash in” on a profitable firm by selling it wholesale to private individuals. A property-owning democracy may make it easier to workers to gradually accumulate shares of an established firm, allowing workers to acquire at least partial rights over the residual profits of firms. If Knight is correct that entrepreneurial activity plays an important role in managing uncertainty, then this may also be a reason to prefer a mixed economy, as expanded upon by Krouse and McPherson, over a political system that seeks to eliminate as far as possible traditional, investor-owned firms in favor of worker ownership.

6.7. Conclusion

In this chapter, I argued that property-owning democracy that does not rely on the idea of predistribution. I responded to objections that property-owning democracy is inefficient and that it is subject to political capture. Finally, I defended a role for partial worker-ownership of firms to secure economic freedom for workers, and sketched how such a system might operate.

CONCLUSION

This dissertation has two primary aims. The first is to take a moral concept that classical liberals and libertarians find salient, economic liberty, and to inquire whether the classical liberal conception of it is defensible in a way that could serve as a cogent critique of egalitarian liberal institutions. I argued that it is not. I did this by examining three possible bases for a classical liberal conception of economic liberty: avoidance of coercion, matching economic rewards to individuals' economic choices, and the maintenance of a stable system of property rights. I argued that none of these serves as an adequate normative basis for a conception of economic liberty, and that there is reason to think that egalitarian liberal political institutions will do a better, or at least not worse, job at addressing the underlying concerns raised than classical liberal ones.

In chapter 2, I considered the argument that classical liberal economic institutions do a better job at avoiding coercion than egalitarian liberal institutions. The problem with drawing normative political conclusions from a concept like coercion is that the concept requires a baseline: a conditional proposal counts as an instance of coercion only if it gives people less than what they would be entitled to according to some baseline distribution of options. But what baseline should one use? One approach would be to count proposals as coercive if they deviate from what the coerced already has, or what accords with their empirical expectations. On this view, a wide range of actions would count as coercive, including economic practices that are familiar from market economies. It is also difficult to see what, if anything, is wrong with coercion in general on such a view. An alternative approach would be to say that only indecent proposals—those that are morally impermissible to make—count as instances of coercion. While this approach would do a better job of explaining why coercion is normally wrong, it pushes the problem back to what makes proposals indecent. Government intervention in the economy or high rates of taxation would only count as coercive, on this view, if they were morally impermissible, but then classical liberal critics would need to furnish an independent reason to think that they are. Regardless of one's conception of coercion, the degree to which an individual experiences a proposal as coercive depends on the overall quality of alternative options available to them. Egalitarian liberal institutions promise to widely distribute the means to avoid forms of economic coercion. Therefore, at least the presumptive case that egalitarian liberal institutions accord less economic freedom because they are coercive is weak.

In chapter 3, I considered the claim that lightly-regulated markets of the sort favored by classical liberals tend to give people what they deserve—in other words, that they tend to reward individuals fairly in proportion to their choices. I first considered and rejected two widely-articulated claims, that investors or entrepreneurs deserve their profits on account of managing their property, and that each person deserves (more or less) their marginal product. Neither approach is a satisfactory basis for distributing rewards according to desert. Furthermore, I noted that even if we think that it is a virtue of an economic system that it distributes rewards on the basis of deserving, and even if markets tend to do that, markets may nevertheless unfairly allocate the bases of desert by failing to secure equality of opportunity or widespread access to capital (if we think investors do deserve profits from their activities). Egalitarian institutions have the potential to more broadly distribute the bases of desert.

I also briefly considered the idea of a meritocracy. While there may be grounds for skepticism that markets tend to reward people on the basis of merit, one thing free markets do well is recognize a fairly wide range of meritorious activity, since people with different ideas of what kinds of behaviors are meritorious can all participate in markets and make consumer decisions accordingly. While markets do tend to recognize a wide range of meritorious activity, they tend to reward economically productive forms of merit at the expense of recognizing other forms of meritorious activity that are harder to market, such as voluntarily contributing to public goods, raising children, being a good member of a community. Providing members of society with all-purpose means to pursue non-economic forms of merit potentially allows for a more broadly meritocratic society.

In chapter 4, I considered the claim that a thick conception of property rights—full rights of liberal ownership—is the only stable system of property rights for liberal societies, and that these rule out or otherwise count against egalitarian liberal policies such as high tax rates or wealth taxation. Specifically, I considered a general approach to property rights I called bottom-up conventionalism, the view that property rights spontaneously emerge as conventions and social norms within a society, and that they nonetheless have moral weight. I argued that even if full rights of liberal ownership are the product of a spontaneous set of social conventions, this does not count against efforts to alter them when doing so would promote a more just distribution of ownership.

The second major aim of the dissertation is to develop a rival conception of economic liberty, and to show how egalitarian liberal institutions might realize this. In chapter 5, I defended the quality and availability of options account of economic liberty. This is a conception of negative freedom, the idea that liberty involves the absence of interference with one's actions, but one that is sensitive to the overall quality of the options one has. Economic resources and access to capital should be understood as a means to avoid interference with one's life and to diminish the cost of exiting undesirable economic arrangements. I also distinguished the quality and availability of options conception of economic liberty from republican conceptions of economic liberty—that economic liberty consists in being subject to the arbitrary wills of others—and positive conceptions of economic liberty that hold that it requires participatory rights in economic institutions.

In chapter 6, I considered how best to conceive of the idea of property-owning democracy in light of this conception of economic freedom. I argued that property-owning democracy does not essentially on distinctly redistributive economic policies. Instead, it aims to widely distribute wealth and opportunities through familiar means such as taxes and transfers. By widely distributing access to wealth and capital, a property-owning democracy promotes a wide range of high-quality options to members of society. I also considered the role of worker-owned firms in this policy regime. I argued that there is reason to be skeptical of pure worker-management. While some worker participation is often desirable at firms, the point of worker ownership is not to give workers a role in allocated intrafirm resources, but to ensure that they retain rights to a share of the firm's profits.

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