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## RECENT WORK ON ALTERNATIVE CONCEPTIONS OF JUSTICE

James P. Sterba

WHILE everyone agrees that justice, almost by definition, is giving people what they deserve, there appears to be little agreement concerning what it is that people deserve. This apparent lack of agreement is no more evident than among contemporary defenders of libertarian, welfare liberal, socialist and perfectionist conceptions of justice. For according to contemporary defenders of libertarian justice, like Robert Nozick and Murray Rothbard, the ultimate political ideal is liberty, and this ideal is said to support a right to private property but not a right to welfare. For contemporary defenders of welfare liberal justice, like John Rawls and Ronald Dworkin, fairness is the ultimate political ideal, and this ideal is said to support a right to basic welfare and a right to equal opportunity. For contemporary defenders of socialist justice, like C. B. Macpherson and Kai Nielson, it is equality that is the ultimate political ideal, and this ideal is said to support a right to self-development but not a right to private property. Finally, for contemporary defenders of perfectionist justice, like Alasdair MacIntyre and John Finnis, the common good is proclaimed to be the ultimate political ideal, an ideal which is said to support a virtue-based conception of human flourishing. In this essay, an attempt will be made to critically evaluate recent work that has been done on each of these conceptions of justice with the hope of resolving at least some of the differences that separate contemporary defenders of these alternative conceptions of what people deserve.

### I. LIBERTARIAN JUSTICE

Presently, defenders of libertarian justice, while strongly united in their support for a right to private property and their rejection of a right to welfare, are deeply divided over whether their ideal supports

a minimal or night-watchman state. Recent debate on this issue has focused on Robert Nozick's attempt to show that a minimal state would emerge from the legitimate exercise of Lockean natural rights. Nozick (1974) argues that market forces and the advantages of monopoly with respect to providing protection would first lead to the emergence of a dominant protection agency. Then this agency, Nozick claims, by legitimately exercising the Lockean natural rights of its members would be morally justified in prohibiting independents from employing certain risky procedures provided adequate compensation is paid by the agency to those independents.<sup>1</sup>

Nozick contends that the risky procedures that can be legitimately prohibited provided adequate compensation is paid are those that meet the following conditions:

- 1) they tend to cause general fear
- 2) either they violate the procedural rights of the members of a dominant protection agency to have their guilt fairly determined or they are an illegitimate exercise by independents of their Lockean natural rights.

According to Nozick, it is by passing on the risky procedures used by independents and prohibiting the use of some such procedures provided adequate compensation is paid that a dominant protection agency comes to possess the two essential characteristics of a minimal state: it maintains a de facto monopoly on the use of force and it protects the rights of everyone in a given territory.

### *Challenges to Nozick's Argument*

Now other defenders of libertarian justice have raised two quite different challenges to Nozick's argument for the legitimate emergence of a minimal state. Some contend that his argument fails to jus-

tify a minimal state while others contend that, if sound, his argument justifies much more than a minimal state.

In support of the first view, Robert Holmes (1977) and Jeffrey Paul (1980) have offered the following dilemma:

- 1) Either the use of certain risky procedures is rights-violating or it is not.
- 2) If rights-violating then its prohibition does not require compensation.
- 3) If not rights-violating then its prohibition would not be morally justified.
- 4) So either the prohibition of the use of certain risky procedures does not require compensation or that prohibition would not be morally justified.

However, it is possible to disarm this dilemma by grasping its second horn. Nozick could admit that prohibiting certain risky procedures is rights-violating but then claim that the prohibition is still morally justified on the grounds that only *prima facie* rights-violations are involved. All things considered, Nozick could argue, no one's rights are being violated by a dominant protection agency provided adequate compensation is paid. From which it would follow that, all things considered, a dominant protection agency would be acting in a morally justified manner.<sup>2</sup>

Yet even granting that a dominant protection agency would be morally justified when prohibiting the use of certain risky procedures provided adequate compensation is paid, Murray Rothbard (1977) and Eric Mack (1978) have argued that this would not suffice to constitute a minimal state. As Rothbard and Mack point out, if independents adopt the approved procedures of a dominant protection agency then the agency could not legitimately interfere with them on the grounds that they were employing unreliable procedures. And in the absence of such interference, Rothbard and Mack contend, a minimal state could not legitimately arise.

But how could independents gain any competitive advantage from adopting the approved procedures of an efficiently run dominant protection agency? Surely such an agency must at some cost to itself develop and maintain a set of reliable procedures for dealing with possible rights-violations.

Yet, at the same time, it normally could charge enough for checking the procedures used by independents to keep them from benefiting from their nonmembership.

Nor would good behavior on the part of independents undercut the claims to statehood of a dominant protection agency any more than good behavior on the part of would-be criminals in existing societies would undercut the claim to statehood of existing political agencies. For whether an agency is a state depends solely on the powers it possesses, and, in the case envisioned, the dominant protection agency would possess sufficient powers to constitute a minimal state.

But does Nozick's argument for the minimal state justify much more than a minimal state? Eric Mack (1981) argues that it does.<sup>3</sup> According to Mack, Nozick's argument justifying prohibiting with compensation turns on a distinction between productive and unproductive exchanges according to which a wide range of economic activities, such as boycotts or refusing to sell at one's lowest acceptable price, would turn out to be unproductive, and, thus, on Nozick's account, capable of being prohibited provided adequate compensation is paid.<sup>4</sup> The prohibition of such economic activities, Mack rightly contends, would lead far beyond the minimal state.

Yet while Nozick's productive/unproductive distinction is clearly objectionable for just the reasons Mack and others have indicated,<sup>5</sup> this distinction is not central to Nozick's account. For the presence of an unproductive exchange does not suffice to justify prohibitions with compensation. There must be some *prima facie* rights violation to require compensation.<sup>6</sup> Nor is the presence of an unproductive exchange necessary for determining the compensation required because that is determined by the degree to which independents have been disadvantaged by the *prima facie* rights violations. Accordingly, while a specification of when someone is disadvantaged by a rights-violation is needed to complete Nozick's account, the productive/unproductive distinction is dispensable, and consequently, that distinction cannot be employed to undercut Nozick's argument for the minimal state.

Like Mack, Gerald J. Postema (1980) has attempted to show that Nozick's argument for the minimal state, if sound, would justify much more

than a minimal state. Postema argues that since the compensation that Nozick justifies in his argument for the minimal state is not a corrective for any rights-violations, it should also be possible to justify compensation in other contexts where rights-violations are not at issue. In particular, Postema suggests it should be possible to show that compensation is due to those who have been disadvantaged in the marketplace by prohibitions supporting Lockean property rights. In this way, Postema contends, Nozick's argument for the minimal state can be extended to support the activities of a welfare state.

There are good reasons, however, to resist this extension of Nozick's argument for the minimal state. For while the prohibitions with compensation that Nozick justifies do not violate anyone's rights, all things considered, they do constitute *prima facie* rights-violations. By contrast, the disadvantages incurred by prohibitions supporting the exercise of Lockean property rights, according to the standard libertarian view, do not result from even *prima facie* rights-violations. Consequently, unless it can be shown that such violations occur, Nozick's argument for the emergence of a minimal state cannot be extended to support the kind of compensation that is characteristic of a welfare state.

#### *Other Challenges to Libertarian Justice*

Other attempts to get libertarians to endorse welfare rights and a welfare state have not focused exclusively on Nozick's work. In my own attempt (1978) I began by accepting the libertarian ideal of negative liberty. I then argued that this ideal, when correctly interpreted, requires us to choose between conflicting liberties affecting the rich and the poor. In such situations, we can either say that the rich should have the liberty to use their surplus resources for luxury purposes, or we can say that the poor should have the liberty to take from the rich what they require to meet their basic nutritional needs. If we choose one liberty, we must reject the other. What needs to be determined, therefore, is which liberty is morally preferable: the liberty of the rich or the liberty of the poor.

To resolve this conflict in a morally defensible manner, I initially employed the fairness standard

of a Rawlsian decision procedure. But since fairness is a contestible notion between defenders of libertarian and welfare liberal conceptions of justice, I later (1980) appealed to a standard of "what each party to a dispute could accept as reasonable" and most recently (1985) to the still more fundamental "ought" implies "can" principle according to which people are not required to do what they lack the power to do or what would involve so great a sacrifice that it would be unreasonable to ask them to perform such an action. Applying the "ought" implies "can" principle, I argue that although the poor have it within their power to willingly relinquish such an important liberty as the liberty to take from the rich what they require to meet their basic nutritional needs, it would be unreasonable to ask them to make so great a sacrifice. In the extreme case, it would involve asking the poor to sit back and starve to death. Of course, the poor may have no real alternative to relinquishing this liberty. To do anything else may involve worse consequences for themselves and their loved ones and may invite a painful death. Accordingly, we may expect that the poor would acquiesce, albeit unwillingly, to a political system that denied them the welfare rights supported by such a liberty, at the same time that we recognize that such a system imposed an unreasonable sacrifice upon the poor—a sacrifice that we could not morally blame the poor for trying to evade.

By contrast, it would not be unreasonable to ask the rich to sacrifice the liberty to meet some of their luxury needs so that the poor can have the liberty to meet their basic nutritional needs. Of course, we might expect that the rich for reasons of self-interest might be disinclined to make such a sacrifice. Yet, unlike the poor, the rich could not claim that relinquishing such a liberty involved so great a sacrifice that it would be unreasonable to ask them to make it; unlike the poor, the rich could be morally blameworthy for failing to make such a sacrifice.

Accordingly, if however else we specify the requirements of morality, we assume that they cannot violate the "ought" implies "can" principle, I concluded that it follows, despite what libertarians claim, that the ideal of liberty which they endorse actually favors the liberty of the poor over the lib-

erty of the rich. In this way, the ideal of liberty endorsed by libertarians can be seen to lead to the requirements of a welfare state.

Another attempt to get libertarians to acknowledge welfare rights seeks to determine the distribution of liberties and rights on the basis of what will least frustrate peoples desires or what will minimize their disutility. Ernest Loevinsohn (1977) adopts this standard in arguing against the libertarian's opposition to welfare rights. Loevinsohn claims that when redistribution from the rich to the poor is justified,

...the transfer of property brings about a decrease in the extent of the recipient's unsatisfied desire for items of property, and this decrease outweighs any increase in unsatisfied desires resulting from the transfer. So if the redistributive alternative is chosen then overall there will be less unsatisfied desire for items of property than on the non-redistributive alternative.<sup>7</sup>

But it is unlikely that libertarians would endorse this standard to arbitrate conflicts between the rich and the poor. For even when the standard is limited to acts of commission, as Loevinsohn proposes, libertarians could still object to its utilitarian character.

By contrast, the "ought" implies "can" principle employed in my own libertarian argument for welfare rights does not regard just any eliminable dissatisfaction as a basis for welfare rights: the dissatisfaction must constitute an unreasonably severe sacrifice for at least some members of a society before the "ought" implies "can" principle would support welfare rights. Consequently, while libertarians can reject a standard of minimizing disutility as begging the question against their view, they cannot similarly reject an appeal to the "ought" implies "can" principle.

Yet another attempt to get libertarians to acknowledge welfare rights seeks to deny the moral relevance of the commission/omission distinction on which libertarians standardly rely to support their commitment to an ideal of negative liberty over ideals of positive liberty. Defending this view, John Harris (1974, 1980) claims that any attempt to invest such a distinction with moral significance is doomed to failure because a similar causality underlies both types of actions. In particular, Harris

holds that we are just as much a cause of a person's death when we kill as when we let die. From which it is said to follow that "in whatever sense we are morally responsible for our positive actions, in the same sense we are morally responsible for our negative actions." Hence, according to this view, there is little basis for the libertarian's prohibition of acts of commission but not of acts of omission when they both have the same consequences.

Yet while Harris is correct in pointing out that there is a causal basis for moral responsibility in cases of acts of omission, the view is mistaken in identifying the standard causal role played by acts of omission with that played by acts of commission in the production of consequences for which people are morally responsible. For acts of omission causally contribute to the production of such consequences by failing to prevent a causal condition sufficient to produce those consequences, as in failing to save a person from drowning, while acts of commission causally contribute to the production of such consequences by creating a causal condition sufficient to produce those consequences, as in poisoning a person's food.<sup>8</sup> Thus, to take only the fact that both acts of omission and acts of commission contribute to such consequences to be morally relevant and to ignore the different ways in which both types of acts causally contribute to such consequences is to beg the question against libertarians who want to morally distinguish between these two types of acts.<sup>9</sup> Consequently, only by basing a justification of welfare rights on an interpretation of constraints of liberty which views them in the manner favored by libertarians, as acts of commission for which people are morally responsible can we avoid begging the question against the libertarian conception of justice.

In sum, recent work on libertarian justice would seem

- 1) to have left Nozick's argument for the emergence of the minimal state untouched, and
- 2) to have provided at least one successful argument from libertarian premises to welfare rights and a welfare state.

Obviously, many defenders of libertarian justice can be pleased with (1) but few can be content with (2) because (2) opens up the possibility of achieving a practical reconciliation between libertarians and

welfare liberals which favors a welfare liberal conception of justice.<sup>10</sup>

## II. WELFARE LIBERAL JUSTICE

Since much of the recent work that has been done on welfare liberal justice has focused on John Rawls' theory of justice, I will begin by surveying that work. I will then consider some others attempts to defend the view.

### *Rawls and his Critics*

As is well-known, there are two parts to John Rawls' theory of justice. This first is an interpretation of a morally favored "original position" for the derivation of principles of justice. The second is an argument that certain principles of justice would be chosen in that choice situation. As a consequence, critics of Rawls' theory have tended to group themselves in the following way:

- 1) Those who challenge the very idea of the original position
- 2) Those who challenge one or more of the conditions Rawls imposes on the original position
- 3) Those who challenge Rawls' argument that a particular conception of justice would be chosen in the original position.

In this section, the work of critics from each group will be considered in turn.

In an early challenge to the very idea of the original position, Ronald Dworkin (1973) argues that hypothetical agreements do not (unlike actual agreements) provide independent arguments for the fairness of those agreements. For example, suppose because I did not know the value of a painting I owned, if you had offered me \$100 for it yesterday, I would have accepted your offer. Such hypothetical acceptance, Dworkin argues, in no way shows that it would be fair to force me to sell the painting to you today for \$100 now that I have discovered it to be more valuable. Accordingly, Dworkin holds that the fact that a person would agree to do something in the original position does not provide an independent argument for her abiding by that agreement in everyday life.

But while it seems correct to argue that hypothetical agreement in the painting case does not

support a demand that I presently sell you the painting for \$100, it is not clear how this undermines the moral relevance of the hypothetical agreement that emerges from the original position. For surely Rawls is not committed to the view that all hypothetical agreements are morally binding. Nor could Dworkin reasonably argue that his example supports the conclusion that no hypothetical agreements are morally binding. For by parity of reasoning from the fact that some actual agreements are not binding (e.g., an agreement to commit murder) it would follow that *no* actual agreements are morally binding which is absurd. Consequently, to show that the specific agreement that would result from the original position is not morally binding, further argument is required.

Another challenge to the very idea of the original position is that it requires us to view persons stripped of their rightful natural and social assets. Rawls, of course, explicitly designed the original position to reflect the judgment that "no one deserves his place in the distribution of natural endowments or his initial starting place in society." However, this judgment, when correctly interpreted, does not imply that a person's natural assets or initial social assets are undeserved, but only that the notion of desert does not apply to such assets. Nor does the judgment presuppose that the grounds of desert must themselves be deserved. Yet, according to Rawls, the judgment does imply that natural assets and initial social assets should be regarded, in effect, as common assets. For this reason, Robert Nozick (1974) and Michael J. Sandel (1982), echoing Rawls' own complaint against utilitarianism, have claimed that Rawls' theory does not take seriously the distinction between persons.

Nevertheless, it is possible to interpret Rawls here as simply addressing a question every moral philosopher must address, namely: What constraints, if any, should apply to people's use of their natural and social assets in the pursuit of their own welfare? For example, should people be able to use such assets in pursuit of their own welfare, irrespective of the consequences upon others? Ethical egoists, of course, would say that they should, but most moral philosophers would disagree. Even libertarians, like Nozick, would object

to such unconstrained use of people's natural and social assets. For Nozick, people's use of their natural and social assets is constrained by the moral requirement that they not interfere with or harm other people or at least that they do not do so without paying compensation. For others, particularly liberals, like John Rawls, the use of people's natural and social assets should be constrained not only when it interferes with or harms other people but also when such use fails to benefit others in fundamental ways, for example, by not providing them with an adequate social minimum.

So the charge that a Rawls' view does not take seriously the distinction between persons ultimately comes down to the claim that although some constraints are morally justified, Rawls' view puts too many constraints on the use of a persons' natural and social assets. But to make this charge stick, critics of Rawls' view need to provide an argument that only certain constraints on the use of natural and social assets are morally justified, and this is what Rawls' critics have yet to do.

Thomas Nagel (1973), unlike critics who challenge the very idea of the original position, limits his criticism to the particular conditions Rawls imposes on the choice situation. Nagel argues that these conditions are not neutral between opposing conceptions of the good but in fact favor a liberal, individualistic conception of justice over other conceptions. In an initial response Rawls (1975b) argues for the fairness of the original position on the grounds that it was designed to

- 1) exclude just enough information to secure impartiality and
- 2) include just enough information to make rational agreement possible.

Given this design, Rawls contends that all conceptions of the good, liberal or otherwise, are excluded from the original position, and hence, treated fairly. More recently, Rawls (1980) has pointed out that excluding such conceptions from the original position in no way implies skepticism or indifference concerning their truth or falsity. Rather it is because it is unlikely that we will ever get uncoerced agreement concerning complete conceptions of the good that principles of justice must be based on a partial or thin conception of the good—one which we

already accept or can be brought to accept after a suitable amount of reflection.

R. M. Hare (1973) has also challenged Rawls' formulation of the original position. According to Hare, all that is needed to secure impartiality is "an economical veil" of ignorance that only deprives persons in the original position of the knowledge of each person's particular nature and circumstances (including the knowledge of whether they are contemporaries) while giving them complete knowledge of the course of history and the present conditions of society, as well as unlimited general information. Confident that this economic veil is sufficient for impartiality, Hare sees no justification for Rawls' thicker veil of ignorance, which also deprives persons in the original position of the knowledge of the course of history and the present conditions of society.

Yet consider the choice facing persons behind Hare's economical veil. Persons behind Hare's economical veil with their knowledge of the course of history and the present conditions of society could determine when it was possible to secure considerable utility for the overwhelming majority in society by enslaving or denying basic rights to certain minority groups. They could decide when the possibility of turning up as members of certain disadvantaged minority groups themselves would be an acceptable risk in virtue of the high probability of their belonging to the majority. As a result, it would be in the interest of persons behind Hare's economical veil to choose principles that denied the basic needs and desires of certain minority groups when this benefited the overwhelming majority in society. In contrast, Rawls' decision procedure firmly guarantees basic rights to minorities. The thicker veil of ignorance in Rawls' theory deprives persons in the original position of the knowledge that is necessary to assess with confidence the probabilities of their being in particular positions in society, thus making it in their interest to secure a high minimum for each and every person in society.

Most critics of Rawls' theory, it turns out, have not challenged the conditions he imposes on the original position but rather have focused their attention on Rawls' argument that a particular conception of justice would be chosen by persons in the

original position. In its final formulation, the conception Rawls claims would be chosen is characterized as follows:

1) Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.

2a) Social and economic inequalities are to be arranged so that they are to the greatest benefit of the least advantaged and (2b) are attached to offices and positions open to all under conditions of fair equality of opportunity.

Rawls claims that the first principle would be taken to have *priority* over the second whenever the liberties guaranteed by the first principle can be effectively exercised by persons in all social positions. This is called the “priority of liberty.” And when the liberties guaranteed by the first principle cannot be effectively exercised by persons in all social positions, Rawls argues that persons using his decision procedure would favor the following more general conception of justice:

All social values—liberty and opportunity, income and wealth and the bases of self-respect—are to be distributed equally unless an unequal distribution of any, or all of these values is to the advantage of the least favored.

In challenging Rawls’ argument that this particular conception of justice would be chosen in the original position, Brian Barry (1973) and H. L. A. Hart (1973) both focus on Rawls’ attempt to derive the “priority of liberty” from the original position. Barry and Hart question Rawls’ grounds for claiming that beyond a certain point any additional increment of wealth is not worth the sacrifice of the smallest amount of liberty. Hart also questions how this priority is to work out in practice in the absence of any criteria of application.

Now much of Rawls’ recent work (1980, 1982a) responds to just these challenges. What Rawls has, in effect, done is explicitly introduce into the premises of his argument an ideal of a person which was at best only implicitly in his earlier work. This ideal conceives of persons in the original position as having two powers—the capacity for a sense of justice and the capacity for a conception of the good. The capacity for a sense of justice is the

capacity to understand, to apply and normally be moved by an effective desire to act from (and not merely in accordance with) the principles of justice as the fair terms of social cooperation. The capacity for a conception of the good is the capacity to form, to revise, and rationally to pursue such a conception, that is, a conception of what we regard as a worthwhile human life. Persons in the original position are also said to have a highest-order interest in promoting the full exercise of these two powers.

Given the explicit introduction of this ideal of a person into Rawls’ argument for the priority of liberty, together with his elaboration of that ideal, it does appear that persons in the original position would favor the priority of liberty. Of course, critics might now want to argue that this result is attained only by means of premises that are unacceptably strong. In any case, by introducing the notion of fundamental cases and a standard of significance for particular liberties, Rawls seems to have answered Hart’s question concerning how the priority of liberty would apply in practice.

As one might expect, there are many critics of Rawls’ theory who think that choice in the original position does not lead to his principles of justice. For example, David Gauthier (1974) has argued that choice in the original position would lead to a principle which can be formulated as follows:

*The Proportionate Difference Principles*

Each is to receive such benefits as she would expect apart from social cooperation and in addition, each is to receive a share of the social surplus that is proportionate to her potential for benefiting from social cooperation.

In comparison with Rawls’ conception of justice, Gauthier’s Proportionate Difference Principle is designed to provide benefits to the more talented members of a society in two ways. First, it allows the more talented members of a society to receive the greater benefits they could expect to receive over the less talented in the absence of social cooperation. Second, it allows the more talented members of society to benefit in proportion to their greater potential to benefit from social cooperation.

Gauthier rejects Rawls’ conception of justice because he thinks it is founded on the view that natural assets are undeserved rather than, as he



believes, being neither deserved nor undeserved. But, as we noted before, Rawls need not be interpreted to be making so strong a claim. Rawls (1978) has also questioned whether it is possible to determine what persons would receive in the absence of social cooperation in the manner required for the application of Gauthier's principle.

Like Gauthier, I (1974, 1980b) have argued that choice in the original position would lead to a conception of justice different from the one Rawls defends. The conception I think would be chosen in the original position can be formulated as follows:

*The Needs and Agreement Principle*

The results of voluntary agreement and private appropriation are morally justified provided each person is guaranteed the social goods necessary to meet the normal costs of satisfying her basic needs in the society in which she lives.

In support of this principle, I have argued that although persons in the original positions would want to guarantee a basic needs minimum to each person in their society, they would object to providing the highest possible minimum required by Rawls' conception of justice. I claim that persons so situated would realize that there may be a significantly large number of individuals in their society, call them the Free-Riders, who are so satisfied with a lower minimum (e.g., one specified in terms of the satisfaction of basic needs) that although these Free-Riders can attain additional social goods in return for making some contribution to their society, they choose instead to pursue other needs and interests. While the Free-Riders are refusing to contribute to society to receive additional social goods, other members of society, call them the Hard-Toilers, may be contributing as much as they can to society in order to receive their highest attainable share of social goods.

I contend that persons in the original position would choose to favor the Hard-Toilers over the Free-Riders for the following reasons. First of all, the Free-Riders could make up for their smaller shares of social goods resulting from having a lower minimum simply by contributing to their society. On the other hand, if the Hard-Toilers are making their maximal contribution, they would have no

way of compensating themselves for receiving the comparatively smaller share of social goods which would result from having the highest minimum in their society. Secondly, persons in the original position could not discount the conflict between Free Riders and Hard Toilers as unrealistic. For it would be unrealistic to assume that everyone in society would always be willing to support themselves by contributing to society, even when they could derive just the same or more benefit by relying on the contribution of others.

Now there are at least two ways that Rawls might respond to my critique. First, Rawls might explain the preferences of the Free Riders on the grounds that they place a greater value on leisure than the Hard Toilers. Yet even if this were the case, it does not seem to justify allowing the Free Riders to benefit at the expense of the Hard Toilers. For it would seem that an adequate conception of justice would no more allow Free Riders to benefit at the expense of Hard Toilers than it would allow the envious to benefit at the expense of those in society who are legitimately more fortunate. Second, Rawls might argue, as he has in another context (1975a), that to favor the Hard Toilers over the Free Riders is "to favor the more fortunate twice over." But to be favored in the distribution of natural advantages and not in the distribution of social advantages, is hardly to be favored at all. So it is odd to talk about two distributions of advantages—one natural and one social—as though one could benefit a lot from the first, but hardly at all from the second. Rather the issue seems to be best put as follows: To what degree should Hard Toilers be allowed to benefit from the use of their natural and social assets in relation to Free Riders? And here my answer is: As much as possible after basic needs have been met.

*Other Defenses*

There have been various other attempts to defend welfare liberal justice that are not grounded in hypothetical contract theory. One such attempt by Bruce A. Ackerman (1980) appeals to a theory of neutral dialogue to defend the following as requirements of welfare liberal justice.

- 1) Each citizen is to begin her life with the benefit of a liberal education, under the conditions of material equality, and free from genetic domination.
- 2) Each citizen is to be able to freely exchange her initial entitlement within "a flexible transactional network" provided she fulfills her obligation to pass on to the next generation a power structure no less liberal than the one she herself enjoyed.

In defense of these requirements, Ackerman claims that they meet three plausible conditions for political ideals. These three conditions comprise Ackerman's theory of neutral dialogue. The first is a *rationality condition*:

Whenever anybody questions the legitimacy of another's power, the power holder must respond not by suppressing the questioner but by giving a reason that explains why she is more entitled to the resource than the questioner is.

The second is a *consistency condition*:

The reason advanced by a power wielder on one occasion must not be inconsistent with the reasons she advances to justify her other claims to power.

And the third, and most powerful, is what Ackerman calls a *neutrality condition*:

No reason is a good reason if it requires the power holder to assert:

- a) that her conception of the good is better than that asserted by any of her fellow citizens, or
- b) that, regardless of her conception of the good, she is intrinsically superior to one or more of her fellow citizens.

In attempting to justify these requirements, Ackerman claims that the conditions of neutral dialogue requires that we ultimately ground right-claims on the fact that *no one is intrinsically better than anyone else*. Moreover, these conditions themselves, Ackerman claims, can be supported by arguments from personal autonomy, Socratic doubt and general skepticism.

Ackerman further maintains that his defense of welfare liberal justice is superior to utilitarian and hypothetical contract defenses of the view. According to Ackerman, the main problem with these other defenses is that they require "a higher judge" to compare the satisfactions or primary

goods going to different individuals and to make some determination which allotments are to be preferred. Although Ackerman allows that a hypothetical contract defense of welfare liberal justice is superior to a utilitarian defense in that it takes individualism seriously, he still thinks that both defenses are saddled with what he takes to be an unmanageable weighing problem. Unfortunately, insofar as this weighing problem is unmanageable, it will be unmanageable for Ackerman's defense of welfare liberal justice as well since under nonideal circumstances his view requires that we determine when contending parties have made an *equal sacrifice* of their rights.

Nor does Ackerman's view provide much guidance as to how determinations of equal sacrifice are to be made; he seems content to leave their resolution to the practical manifestations of neutral dialogue. In this regard, a hypothetical contract decision procedure, shorn of any commitment to a maximin strategy, should provide more guidance.

Another interesting attempt to defend welfare liberal justice has been developed by Charles Fried (1978, 1982). In his defense, Fried places considerable importance on the distinction between positive and negative rights. The most fundamental positive right, according to Fried, is a right to a fair share of the resources in one's society, or more recently, a right to a social minimum, and Fried proposes implementing the right by means of a consumption tax. However, for Fried, this right is constrained by categorical and inviolable negative rights.

Yet the priority Fried wants to establish for negative rights would be lost if it were possible to recast positive rights as negative rights. Fried examines this possibility but rejects it too quickly. For example, consider the positive right to have one's basic needs satisfied. Now such a right can be recast as the negative right not to be interfered with when taking from the surplus possessions of others what is necessary to meet one's basic needs. Of course, the recasting is not accomplished without some remainder; the positive right may be violated in cases where the negative right has not been violated, e.g., when the poor are incapable of taking what they need from the surplus possessions of the rich. Nevertheless, much of the moral force of the

positive right is retained as a negative right. Accordingly, any view, like Fried's, which trades on a sharp distinction between positive and negative rights has usually artificially restricted the class of negative rights.

In a series of articles, Ronald Dworkin (1978, 1981, 1983) has attempted to specify the requirements of welfare liberal justice and clarify the moral ideal that underlies them. Unlike Ackerman, Dworkin sees the underlying ideal to be one of equality rather than neutrality. It is an ideal of treating people as equals, and neutrality is said to be required only insofar as is necessary to achieve equality. According to Dworkin, this ideal does not require equality of welfare but rather equality of resources. In attempting to set out more precisely the type of equality of resources that is demanded, Dworkin introduces the idea of a hypothetical insurance market in which people ignorant of the economic rent their talents would attract choose to insure themselves against faring poorly through lack of social and economic opportunities. Payments that would have gone to this hypothetical insurance fund are said to determine the compensation that is due to the less talented members of a society.

Dworkin appeals to a similar hypothetical insurance market to determine the compensation required for the handicapped. In this hypothetical insurance market, the participants are to suppose that they have the same risk of developing physical or mental handicaps in the future (which assumes that no one has developed these yet) but where the total number of handicaps remains whatever it happens to be in the society.

Unfortunately, Dworkin does not work out these two applications of his hypothetical insurance market in parallel fashion. In the talent case, to distinguish his hypothetical choice situation from the original position, Dworkin allows the participants to *know* what the talents happen to be. But with such knowledge the more talented, even when ignorant of their social and economic opportunities, would still have reason to purchase less insurance than those less favored in the natural lottery. Dworkin fails to detect this consequence because he thinks that even with the knowledge provided in his hypothetical choice situation each participant

would still suppose that she "has the same chance as anyone else of occupying any particular level of income in the economy." But there is no reason why the more talented should be this pessimistic about their chances of faring well in their society. Of course, this objection could be answered just by removing the knowledge of talents from Dworkin's hypothetical choice situation, but then his choice situation would be virtually equivalent to the original position. So interpreted, Dworkin would be simply disagreeing with Rawls over what principles of justice would be chosen in that choice situation.

Much of the recent work on welfare liberal justice has rightly focused on John Rawls' theory of justice. As we have seen, even those, like Ackerman and Dworkin, who attempt to set out alternative theories of welfare liberal justice, come very close to Rawls' work in their formulations. Undoubtedly, in the future, Rawls' work will continue to be a major influence. Nevertheless, if theories of welfare liberal justice are to continue to be fruitfully developed, the merits of liberal justice must be set out against its principal competitors. For while it is important to clarify and refine the view among the faithful, it is also important for theories of welfare liberal justice to make new converts.

### III. SOCIALIST JUSTICE

Contemporary defenders of socialist justice who take equality as the ultimate political ideal and support a right to self-development but not a right to private property occupy a contestible place within the socialist tradition. The controversy has its origin in Karl Marx's vehement rejection of conceptions of justice. What is at issue is whether the socialist ideal requires the rejection of all or only some conceptions of justice. Or put another way, does the socialist ideal by postulating a harmony of interests go beyond justice altogether or does it simply mandate a different conception of justice?<sup>11</sup> Contemporary defenders of socialist justice endorse the latter view.

#### *Contemporary Defenses*

Possibly the most well-known contemporary

defender of socialist justice is C. B. Macpherson (1973, 1977). Macpherson begins his defense of socialist justice by criticizing alternative conceptions of justice. Macpherson argues that libertarian and welfare liberal conceptions of justice are defective because they embody a commitment to possessive individualism or utilitarianism. More positively on behalf of socialist justice, Macpherson argues that the right to self-development endorsed by both welfare liberals and socialists is only compatible with socialism. The reason for this is that capitalism encourages people to acquire the power to extract benefit from others and this extractive power is usually acquired at the expense of the self-development of those over whom the power is exercised. Thus under capitalism the extractive power of some is increased at the expense of the developmental power of others, and while those whose extractive power is increased usually do experience an increase in developmental power as well, Macpherson claims, a net loss of developmental power still obtains overall.

Nor is it enough to show that the transfer of power under capitalism allows for greater self-development than was possible under previous politico-economic systems. For the relevant goal is maximal self-development and only with the elimination of all extractive power under socialism, Macpherson claims, can that goal be reached.

More recently, Macpherson (1978) has attempted to defend socialist justice by more broadly construing a right to property. Under libertarian and welfare liberal conceptions of justice, a right to property is narrowly construed as a right to exclude others from the use or benefit of some things. Yet, as the examples of common property and state property indicate, the right to property can be broadened to also include a right not to be excluded by others from the use or benefit of some things. From this broader conception of a right to property, Macpherson thinks that a right to self-development requiring socialism can be shown to follow.

Now a major difficulty with Macpherson's defense of socialist justice is that he does not sufficiently consider whether the right to self-development on which socialist justice is founded might not itself be justifiably limited by a right to liberty.

In his discussion of alternative conceptions of liberty, Macpherson does criticize various formulations of negative liberty, but in the main he simply endorses a conception of positive liberty which entails right to self-development. Macpherson never tries to meet the defenders of negative liberty on their own terms and show that even given a reasonable construal of their own ideal, a right to liberty would naturally lead to a right to self-development.

As one might expect, there have been other attempts to defend socialist justice that appeal more directly to an ideal of liberty. Carol C. Gould (1978) regards socialist justice as rooted in a conception of positive liberty understood as "the fullest self-realization of social individuals." For, according to Gould, socialist justice "refers to social relations in which no agents deprive any others of the conditions of their positive freedom." Since every individual has a capacity for self-realization simply in virtue of being human, Gould argues that no individual has more of a right to the conditions for the fulfillment of this capacity than any other. Thus an equal right to positive liberty or freedom is said to be at the heart of socialist justice. Such a right, Gould argues, requires among other things, an equal access to the means of production, and, hence, is incompatible with capitalism.

Christian Bay (1981) adopts a similar approach to defending socialist justice. For Bay, socialist justice requires an equal right to positive liberty or freedom. Bay divides this freedom into psychological freedom (the degree of harmony between basic motives and overt behavior), social freedom (freedom in relations between people and between people and groups or organizations) and cultural freedom (freedom to outgrow culturally prescribed, conventional or ideological restraints), and he suggests specific strategies for achieving each of these types of positive freedom in contemporary societies.

Unfortunately, neither Gould nor Bay sufficiently take into account the challenge to socialist justice from defenders of negative freedom. Both seem content to point out that defenders of negative freedom usually ignore or misrepresent the ideal of positive freedom. Yet neither gives any compelling reason why defenders of negative freedom

should recognize the requirements of socialist justice.

Still another defense of socialist justice has been recently developed by Kai Nielson (1985). Taking a right to equal self-respect as basic, Nielson argues for the following principles:

- 1) Each person is to have an equal right to the most extensive total system of equal basic liberties and opportunities compatible with similar treatment for all.
- 2) After provisions are made for common social values, for capital overhead to preserve the society's productive capacity, allowances made for differing unmanipulated needs and preferences, and due weight is given to the just entitlements of individuals, income and wealth is to be so divided that each person will have a right to an equal share. The necessary burdens requisite to enhance human well-being are also to be equally shared, subject, of course, to limitations by differing abilities and differing situations.

Nielson's principles obviously point toward a statusless, if not a classless, society in which there is an equality of political and economic power.

But why should equality of political and economic power be necessary for equal respect? Surely if "respect" is understood as "regard for power" then equal respect would require equal power. But if "respect" is understood as "regard for someone as a moral agent with certain basic rights" then equal respect need not require equal power unless every moral agent has a basic right to equal power. Unfortunately, Nielson neglects to consider this latter interpretation of self-respect and in fact relies heavily on Rawls' discussion of self-respect where the two interpretations are not clearly distinguished.

### *Human Nature as a Social Product*

One issue that has continued to divide defenders of socialist justice is the degree to which their ideal assumes that human nature is a social product. For example, Bay (1981) relies minimally on this assumption. He grounds his defense of socialist justice on what he takes to be three broad classes of universal basic human needs. First, there are physical needs which include subsistence needs and the need to be protected against violence. Second, there are community needs such as the need for

self-esteem, dignity and social recognition. Lastly, there are subjectivity needs which are the needs we have to develop ourselves to the limits fixed by the material conditions and capacity of the time. According to Bay, physical needs have priority over community needs which in turn have priority over subjectivity needs, yet, when possible, the satisfaction of all three classes of basic needs is required by socialist justice.

By contrast, Milton Fisk (1980) relies heavily on the assumption that human nature is a social product since he recognizes only a narrower class of universal basic needs, those for food, sex, support and deliberation. Furthermore, Fisk claims that these universal basic needs have no priority over those needs which are socially produced because of the groups to which one belongs. It follows that for Fisk principles of justice cannot arbitrate many of the conflicts that exist, for example, between workers and owners, because such conflicts cannot be resolved without curtailing the realization of the socially produced needs of one or the other group.

A basic difficulty with Fisk's view is that it would seem possible for people's socially produced needs to morally require the exploited to submit to their exploiters. To rule out this possibility, Fisk assumes that the group morality of the exploited will always require them to reject any "imposed needs" whose satisfaction would lead to such submission. However, this would only occur if human beings had a universal need to avoid all forms of domination, and this is just what Fisk denies.

One reason that Fisk is reluctant to ground his socialist conception of justice on universal basic needs is that he thinks that principles of justice must be action-guiding in a very strong sense. Thus, in order for there to be a conception of justice grounded on universal basic needs, Fisk thinks that there must be some expectation that all rational agents will act on that conception. Since normally all that we can expect is that rational agents will tend to abide by conventional norms that serve the needs of the particular group to which they belong, Fisk concludes that there is no universally binding conception of justice.

Yet by limiting applicable moral standards to those which are action-guiding in this very strong sense, Fisk's view deprives the exploited of an

important tool for changing their society, namely, the possibility of morally condemning their exploiters. So here again it seems that an ethics without a universally binding conception of justice can work against the interests of the exploited.

### *Critiques of Nonsocialist Conceptions of Justice*

From Marx to the present, socialist justice has been frequently defended by attacking the nonsocialist conceptions of justice that most closely resemble it. The favored strategy has been to show either that nonsocialist conceptions of justice are theoretically inadequate in ways their defenders should have been able to recognize or that they have been incorrectly applied to present circumstances. In recent years, this strategy has been employed with a vengeance against John Rawls' theory of justice.

Fisk (1975) for example, claims that Rawls' conception of justice is theoretically inadequate because Rawls characterizes parties in the original position as mutually disinterested persons. How can an adequate conception of justice, Fisk asks, be founded on mutual disinterest?

This objection, however, rests upon a confusion concerning the motivation persons would have for endorsing a conception of justice when constrained and when unconstrained by the choice conditions of the original position. When persons are constrained by the original position, they would endorse a conception of justice for reasons of self-interest since they would be seeking to further their own self-interest as best they can under the ignorance conditions of that choice situation. Thus, according to Rawls, persons in the original position would be led by reasons of self-interest to choose his two principles of justice. By contrast, when persons are unconstrained by the original position, they would normally not be led by reasons of self-interest to accept Rawls' principles. Rather they would normally only accept those principles if they were genuinely motivated by reasons of concern for the welfare of others.

Now this defense of Rawls' theory might seem to be undercut by the fact that Rawls not only characterizes persons in the original position as mutually disinterested but he also characterizes per-

sons in the circumstances of justice of every day life as mutually disinterested.<sup>12</sup> Fortunately, it is possible to interpret "mutual disinterest" differently in each of these contexts. Mutual disinterest in the original position can be seen to be much more severe and complete than mutual disinterest in the circumstances of justice of everyday life. This is because mutual disinterest in the circumstances of justice of everyday life is limited by certain moral constraints whereas mutual disinterest in the original position is devoid of any such constraints. Even Rawls' recently revised characterization of person in the original position preserves this contrast with persons in the circumstances of justice of everyday life.

Still another challenge to the theoretical adequacy of Rawls' theory has been developed by Richard Miller (1974). Miller argues that if Rawls' ideal choice situation is specified so as to include the knowledge of the general facts of class conflict (especially the knowledge of the fundamental conflict between the proletariat and capitalist classes) then no agreement would be reached, and, hence, no conception of justice would be chosen at all. Miller claims that if persons in the original position are aware of the facts of class conflict, they will know that members of different classes have diametrically opposed interest and needs, with the consequence that social arrangements that are acceptable to members of one class, say the capitalist class, would be quite unacceptable to members of an opposing class, i.e., the proletariat class. for this reason, Miller claims that if persons know that conflicts between opposing classes cannot be resolved without leaving members of one or the other group extremely dissatisfied with the result, they will not be able to derive principles of justice in the original position.

In defense of Rawls, Allen Buchanan (1982) argues that the knowledge of the general facts of class conflict should be excluded from the original position even when the question of what should be done under unjust circumstances is at issue because including such knowledge would involve taking into account the actual needs and attitudes of persons occupying various social positions. But what Buchanan fails to see is that the effect that the inclusion of such knowledge would have on choice

in the original position is crucial to determining whether people in class-divided societies have the capacity for a sense of justice. Thus, if Miller is correct that no conception of justice would emerge from the original position once the knowledge of the general facts of class conflict are included then people in class-divided societies would lack the capacity for a sense of justice required for the application of Rawls' theory.

In order to understand the force of Miller's critique, it is necessary to get clear about the various ways in which persons' needs and interests can be related in a society. One possibility is that the needs and interests of different members of a society are in fact perfectly complementary. If that were the case, there would be little difficulty designing a social arrangement that was acceptable to every member. Nor would the original position be needed to design a fair solution. In such a society, no conflicts at all would arise as long as each person acted in her overall self-interest.

A second possibility is that the needs and interests of different members of a society are in moderate conflict. In deriving his principles of justice Rawls actually limits himself to a consideration of social conditions where only moderate conflict obtains. For such conditions it seems clear that the original position could be usefully employed to design a fair social arrangement. In such a society the more talented members would be motivated to contribute sufficiently to society to support a social minimum, and the less talented would also be motivated to contribute sufficiently to society to reduce the burden on the more talented members. Consequently, persons in the original position would know that the members of such a society when aided by a minimal enforcement system would be able to abide by the principles that would be chosen.

A third possibility is that the needs and interests of the different members of a society are in extreme conflict, and that the conflict has the form of what Marx calls class conflict, Let us consider the case in which the opposing classes are the capitalist class and the proletariat class. No doubt persons in the original position would know that in such a society compliance with almost any principles of conflict resolution could be achieved only by means of a stringent enforcement system. But why should

that fact keep them from choosing any principles of social cooperation whatsoever? Surely persons in the original position would still have reason to provide for the basic needs of the members of the proletariat class, and thus, would be inclined to favor an adequate social minimum. However, would they not also have reason to temper the sacrifice to be imposed on the members of the capitalist class in the transition to a society that accords with the principles they would favor, knowing, as they do, how much less prosperous and satisfied the members of that class would be under such principles? Yet if considerations of this latter sort could serve as reasons for persons in the original position then it could be argued that any principles of social cooperation that would be derived would not constitute a morally adequate conception of justice. A morally adequate conception of justice, it could be argued, would simply not provide grounds for tempering the sacrifice to be imposed on the members of the capitalist class in the transition to a just society.

Fortunately for Rawls' theory, this modified version of the Miller's critique can be avoided. For it can be shown that considerations favoring tempering the sacrifice to be imposed on the members of the capitalist class in the transition to a just society would not serve as reasons for persons in the original position. This is because persons in the original position imagining themselves to be ignorant of whether they belong to the capitalist or the proletariat class, would have grounds to discount such considerations in deciding upon principles of social cooperation. They would realize that members of the capitalist class would have a status analogous to that of criminals who have taken goods that rightfully belong to others. For the members of the capitalist class are not "compelled" to pursue their interest by depriving the members of the proletariat class of an acceptable minimum of social goods. They act as they do, depriving others of adequate social minimum, simply to acquire more social goods for themselves. Unlike members of the proletariat class, the members of the capitalist class could be reasonably expected to act otherwise. Persons in the original position, therefore, would seemingly have no more reason to temper the sacrifice to be imposed on the members of the capitalist

class than they would have reason to temper the sacrifice to be imposed on criminals who have grown accustomed to the benefits provided by their ill-gotten goods.<sup>13</sup>

Defenders of socialist justice who believe that Rawls' theory is not theoretically inadequate but has been simply incorrectly applied to present circumstances have tried in various ways to show that a correct application of the theory would lead to the practical requirements of socialist justice. However, a favored strategy has been to argue from the principles of justice Rawls claims to have derived from the original position. For example, according to Macpherson (1972)

It is not difficult to show...that a socialist system can meet the requirements of his principles of justice. But it can do so not as a "modification" of the capitalist market system, but by its rejection of exploitative property institutions.

Similarly, David Schweickart (1978) and Gerald Doppelt (1981) view Rawls' practical recommendations as inconsistent with his principles of justice. According to Doppelt,

If Rawls had taken up his own problem of how the "worst-off" can be raised up, in terms of "power and prerogatives of authority" as well as income, he would immediately have confronted the problem of capitalism—or socialism—in different terms.

Jeffrey Reiman (1981) has even proposed "a labor theory" of Rawls' principles of justice which he claims requires socialism "when historical conditions are such that incentives are no longer necessary to maximize the share of the worst off."

The basic problem with this socialist critique of Rawls' theory of justice is that it relies on the correctness of Rawls' derivation of his principles of justice from the original position, and this is generally recognized to be the weakest link in Rawls' theory. For, as I and others have argued, principles of justice requiring the highest possible social minimum would not emerge from the original position.<sup>14</sup> Unfortunately, it is just the "maximin" character of Rawls' principles that critics have appealed to when arguing that his principles would lead to socialism. So it would seem that this approach to criticizing Rawls' theory is doomed to fail.

Yet there is a related critique of Rawls' theory that should be of some interest to defenders of socialist justice. Suppose we admit that principles of justice supporting a lower social minimum would be chosen in the original position and then extend the application of these principles to distant peoples and future generations. As a consequence, even if we allowed that only a basic needs minimum would be chosen in the original position, the provision of that minimum not only in our own society but also to distant peoples and future generations as well would put severe limits on the permissible inequalities of wealth and income that could obtain in any society.<sup>15</sup> It might even be argued that the provision of an adequate social minimum both worldwide and into the future would require something close to the socialization of the means of production desired by defenders of socialist justice. Consequently, by extending the application of a welfare liberal conception of justice to distant peoples and future generations, it would be possible to at least reduce the practical differences that separate defenders of welfare liberal and socialist conceptions of justice.

#### IV. PERFECTIONIST JUSTICE

As one might expect, contemporary defenders of perfectionist justice regard their conception of justice as rooted in Aristotelian moral theory. Yet, according to Alasdair MacIntyre (1981), who is the most well known contemporary defender of perfectionist justice, Aristotelian moral theory, if it is to be rationally acceptable, must be refurbished in certain respects.

First of all, MacIntyre claims that it must reject any reliance on a metaphysical biology. Instead of appealing to a metaphysical biology, MacIntyre proposes to ground Aristotelian moral theory on a conception of a practice. A practice, for MacIntyre, is "any coherent and complex form of socially established cooperative human activity through which goods internal to that form of activity are realized in the course of trying to achieve those standards of excellence which are appropriate to and partially definitive of that form of activity, with the result that human powers to achieve excellence, and human conceptions of the ends and



goods involved are systematically extended.” As examples of practices, MacIntyre cites arts, sciences, games, and the making and sustaining of family life.

The virtues are then partially defined in terms of practices. For MacIntyre, a virtue, such as courage, justice or honesty, is “an acquired human quality the possession and exercise of which tends to enable us to achieve those goods which are internal to practices and the lack of which prevents us from achieving any such goods.” However, MacIntyre admits that the virtues which sustain practices can conflict (e.g., courage can conflict with justice) and that practices so defined are not themselves above moral criticism.

Accordingly, to further ground the perfectionist account MacIntyre introduces the conception of a telos or good of a whole human life conceived as a unity. It is by means of this conception that MacIntyre proposes to morally evaluate practices and resolve conflicts between virtues. For MacIntyre, the telos of a whole human life is a life spent in seeking the telos; it is a quest for the good human life and it proceeds with only partial knowledge of what is sought. Nevertheless, this quest is never undertaken in isolation but always within some shared tradition. Moreover, such a tradition provides additional resources for evaluating practices and for resolving conflicts while remaining open to moral criticism itself.

MacIntyre’s characterization of the human telos in terms of a quest undertaken within a tradition marks a second respect in which he wants to depart from Aristotle’s view. This historical dimension to the human telos which MacIntyre contends is essential for a rationally acceptable perfectionist account is absent from Aristotle’s view.

A third respect in which MacIntyre’s perfectionist account departs from Aristotle’s concerns the possibility of tragic moral conflicts. As MacIntyre points out, Aristotle only recognized moral conflicts that are the outcome of wrongful or mistaken action. Yet MacIntyre, following Sophocles, wants to recognize the possibility of additional conflicts between rival moral goods that are rooted in the very nature of things. At the same time, MacIntyre wants to distinguish choice between such rival moral goods from choice between incommensur-

able premises which he claims characterizes contemporary moral philosophy. According to MacIntyre, the difference is that choice of one rival good does “nothing to diminish or derogate” from the claims of the other upon the agent. The tragic chooser must simply recognize that she cannot do everything that she ought to do.

Yet once we have refurbished Aristotle’s view in the ways MacIntyre suggests, how does this help us avoid the interminable arguments and incommensurable premises which he claims characterize contemporary moral philosophy? MacIntyre says little about the particular practices and the tradition that are to ground his perfectionist account. But without a specification of these practices and tradition, how are we to avoid the radical disagreements and interminable arguments which MacIntyre claims characterize contemporary moral philosophy?

Of course, MacIntyre does explain how the perfectionist account he defends avoids choice between incommensurable premises by continuing to recognize the force of the rival moral good not chosen. But why is that option not also available to contemporary defenders of libertarian or welfare liberal justice? Surely libertarians can show some regard for meeting basic needs provided the requirements of just appropriation and exchange have been taken into account. For example, they can recognize the goal of meeting basic needs as a requirement of supererogation. Likewise, welfare liberals can show some regard for previous appropriation and exchange at least after everyone’s basic needs have been met.

Furthermore, why isn’t it possible to go further toward remedying the deficiencies MacIntyre finds in contemporary moral philosophy? For many contemporary moral philosophers endorse various moral and political ideals from which they then attempt to derive specific practical requirements. In addition, these moral and political ideals, unlike MacIntyre’s refurbished Aristotelian moral theory, are usually substantive enough to support relatively specific practical requirements.

The major problem with these ideals is that they appear to support quite different practical recommendations. Yet the derivation of their practical requirements is rarely worked out in much detail,

and at least in the case of the conflict between welfare liberals, like Rawls, and libertarians, like Nozick, there is reason to think that the differences are grossly overstated. For while Rawls argues that the ideal of fairness represented by his original position would favor the choice of the highest possible welfare minimum, many contemporary philosophers including myself have argued that only a considerably lower welfare minimum can be derived therefrom.<sup>16</sup> Likewise, while Nozick believes that his libertarian ideal does not support a welfare minimum, I have argued that such a minimum can be derived from the ideal.<sup>17</sup> For these reasons, it would seem possible to reduce to a considerable degree the practical differences that separate defenders of welfare liberal and libertarian conceptions of justice.

Nevertheless, it might still be argued that the possibility of practically reconciling opposing contemporary moral and political ideals, like libertarianism and welfare liberalism, does not eliminate the rationale for reviving Aristotelian moral theory since there are still other reasons for wanting to revive the theory. Thus, it might be argued that the theory, as MacIntyre defends it, should be revived because it both aspires to provide a complete conception of the good and renounces any attempt to limit the enforcement of morality. Yet what is the advantage of an aspiration to provide a complete conception of the good, if the good so far specified, is relatively formal when compared with the conceptions found in rival contemporary moral and political ideals? And in the absence of a fuller specification and defense of the requirements of morality, how can we be sure of the wisdom of a policy of unlimited enforcement of those requirements? In addition, although most contemporary moral and political ideals only purport to provide a partial conception of the good, few are in fact opposed to a fuller conception provided that such a conception can be adequately justified.

John Finnis (1980, 1983), another contemporary defender of perfectionist justice, regards justice as a practical willingness to favor and foster the common good of one's communities. For Finnis, this common good is a set of conditions which enables the members of communities to attain for

themselves the basic goods for the sake of which they have reason to collaborate with each other in communities. Finnis characterizes these basic goods as life, knowledge, play, aesthetic experience, friendship, religion and practical reasonableness. According to Finnis, any other goods we might recognize and pursue will turn out to represent or be constituted by some or all of these basic goods.

In pursuing these basic goods, Finnis claims that we must adhere to a number of requirements of practical reasonableness, the most important of which are the following:

- 1) No arbitrary preferences among these basic goods.
- 2) Consequences should have limited relevance in moral decision-making.
- 3) Every basic good must be respected in every act.

In large part, Finnis defends these requirements by attacking utilitarianism. Once utilitarianism is seen to be defective as a moral theory, Finnis seems to think that the merits of his own view become apparent.

Finnis contrasts his own account of basic human goods with Rawls' thin theory of the good. In Rawls' theory basic human goods are generally useful means for the pursuit of whatever ends one may have.<sup>18</sup> For Finnis, basic human goods are the ends for which we strive. But while this contrast does exist, there seems to be no reason why both Rawls and Finnis could not incorporate each other's account of basic human goods without affecting any substantial change in their conceptions of justice.

Where Finnis and Rawls do fundamentally disagree is not with respect to the nature of basic human goods themselves but rather with respect to the principles that apply to the pursuit of such goods. In particular, Finnis's principles rule out the sacrifice of any basic good to achieve a greater total of basic goods. By contrast, persons in Rawls' original position would surely sanction some such sacrifices provided there would be a sufficiently large and widely distributed gain in basic human goods.<sup>19</sup>

Another defender of perfectionist justice who does not rule out such trade-offs of basic human goods is William A. Galston (1980). According to

Galston, the basic human goods are life, development and happiness, and the relative priority of these good varies with the circumstances. Yet, in general, Galston endorses the priority of life over development and happiness. Or putting this priority somewhat differently, Galston claims that only after needs have been satisfied does desert become the basis for the distribution of goods.

Galston does not balk at applying his conception of perfectionist justice to distant peoples and future generations, and he recognized that significant sacrifices are required of the members of economically developed societies if justice is to be done in these contexts.

Despite the fact that the practical requirements of Galston's conception of justice are quite similar to those that others have defended from welfare liberal and even libertarian starting points, Galston rejects any such foundation for his view. He rejects Rawls' theory because it makes justice the outcome of a choice, but he fails to see that this feature of Rawls' theory in no way is opposed to regarding justice as a natural duty that is independent of choice in everyday life. Galston also rejects Nozick's theory because neither rights nor an ideal of liberty is an independent moral notion, but he fails to recognize that those who appeal to such notions to ground their conceptions of justice rarely claim such independence for these notions. Consequently, Galston's theoretical grounds for rejecting those conceptions of justice with which he shares the same practical recommendations are not at all persuasive.

## V. CONCLUSION

The goal of this essay has been to critically evaluate some of the recent work that has been done on alternative conceptions of justice with the hope of resolving at least some of the differences that separate contemporary defenders of libertarian,

welfare liberal, socialist and perfectionist justice. Without attempting to review the critical evaluations that have been made, it does seem appropriate to comment briefly on the degree to which these evaluations have helped resolve the differences that separate contemporary defenders of these alternative conceptions of justice.

Now it seems clear that these evaluations have not led to the resolution of the differences in theoretical foundations upon which these various conceptions of justice are grounded; negative liberty, fairness, and equality just are theoretically diverse ideals. nevertheless, at the level of practical recommendations, these evaluations have helped resolve some of the differences that separate defenders of these alternative conceptions of justice. First of all, libertarian justice was shown to require a social minimum not unlike the social minimum that would be chosen by persons in the original position, but one that is considerably lower than the social minimum that Rawls thought would emerge from that choice situation. Secondly, we have seen that once the social minimum provided by welfare liberal justice is extended to distant peoples and future generations, the practical differences separating defenders of welfare liberal and socialist justice tend to diminish. Providing a basic needs minimum to distant peoples and future generations as well as the members of one's own society would seem to require something very close to socialization of the means of production. Thirdly, we have noted that recent defenses of perfectionist justice either, as in the case of MacIntyre, have not been developed to the stage where they support practical recommendations, or, as in the case of Galston, support much the same practical recommendations that are endorsed by welfare liberal justice or even by libertarian justice when this view is correctly interpreted. What remains to be seen therefore, is whether future work in this area will provide additional support for this practical reconciliation of alternative conceptions of justice.<sup>20</sup>

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## NOTES

1. According to Nozick, the compensation provided by the dominant protection agency is said to typically consist in supplying independents with protective services and is limited to only compensation for any disadvantages incurred by the prohibition.

2. Admitted, Nozick's own argument here is not very clear on this point, but it does seem possible to interpret the "border-crossings" he rejects as all things considered rights-violations.
3. It is a bit surprising to find Mack arguing both that (1) Nozick's argument (although proceeding from sound premises) fails to justify a minimal state and (2) that if Nozick's argument were sound, it would justify much more than a minimal state. One way to preserve consistency, assuming that Mack has not changed his mind about Nozick's argument, is to interpret (1) as proceeding from the legitimate (i.e., the libertarian) part of Nozick's argument and (2) as proceeding from the illegitimate part of that argument. Personal conversation with Mack has confirmed this interpretation.
4. Unproductive exchanges being those with respect to which purchasers would have been better off if sellers had had nothing whatever to do with them or had never existed at all.
5. See Murphy (1980).
6. Joshua T. Rabinowitz (1977) ignores this requirement in his critique of Nozick. Rather than viewing Nozick's theory of compensation as a theory that presupposes what basic rights people have and then shows how prima facie violations of those rights can be morally justified, Rabinowitz views the theory as one that establishes what basic rights people have. See, especially, pp. 85-6, and see Nozick, p. 67n.
7. Loevinsohn, p. 234.
8. Of course, sometimes a person who performs an act of omission which contributes to the production of consequences for which the person is responsible may do so as part of a larger act of commission which is a sufficient causal condition for the production of those consequences. And sometimes a person who performs an act of commission which contributes to the production of consequences for which the person is responsible does so as part of a larger act of omission which simply fails to prevent those consequences. On this point, see Green (1980).
9. A similar failure to attend to the omission/commission distinction is found in Scheffler (1976). Here Scheffler ignores the libertarian's use of this distinction with regard to the ways that a person can contribute to the meaningful lives for others.
10. On this latter point, see, in particular, Mack (1977).
11. For a sample of the debate, see Cohen, Nagel and Scanlon (1980) and Campbell (1983).
12. See Rawls (1971), p. 128 and Rawls (1975b), pp. 542-543.
13. For further discussion of Miller's critique, see Sterba (1982).
14. See the previous Section.
15. For the relevant arguments, see Sterba (1981).
16. See Section II.
17. See Section I.
18. In his recent work Rawls no longer wants the list of such goods to depend *solely* on any psychological, statistical or historical inquiry. Rather they are defined as the goods necessary for pursuing our highest order interests in realizing and exercising our capacity for an effective sense of justice and our capacity to revise and rationally pursue some conception of the good. See Rawls (1980), pp. 525-527.
19. For further argument, see my contribution to my anthology *The Ethics of War and Nuclear Deterrence* (Belmont: Wadsworth Publishing Co., 1985).
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## BIBLIOGRAPHY

### I. LIBERTARIAN JUSTICE

- Green, O. H. (1980) "Killing and Letting Die," *American Philosophical Quarterly*, pp. 195-204.
- Harris, John (1974), "The Marxist Conception of Violence," *Philosophy and Public Affairs*, pp. 192-220.
- Harris, John (1980) *Violence and Responsibility* (Routledge & Kegan Paul: London).
- Holmes, Robert (1977) "Nozick on Anarchism," *Political Theory*, pp. 247-256.
- Hospers, John (1971), *Libertarianism* (Nash Publishing Co: Los Angeles).

- Loevinsohn, Ernest (1977) "Liberty and the Redistribution of Property," *Philosophy and Public Affairs*, pp. 226-339.
- Mack Eric (1977), "Liberty and Justice" in *Justice and Economic Distribution*, ed. by John Arthur and William Shaw, Prentice Hall: Englewood Cliffs.)
- Mack, Eric (1978) "Nozick's Anarchism," in *Anarchism: Nomos XIX*, ed. by J. Roland Pennock and John W. Chapman (New York University Press: New York), pp. 43-62.
- Mack, Eric (1981) "Nozick on Unproductivity: the Unintended Consequences," in *Reading Nozick*, ed. by Jeffrey Paul, Rowman and (Littlefield: Totowa), pp. 206-231.
- Murphy, Jeffrie (1980), "Blackmail: A Preliminary Inquiry," *The Monist* pp. 156-171.
- Nozick, Robert (1974), *Anarchy, State and Utopia*, (Basic Books: New York).
- Paul, Jeffrey (1980), "The Withering of Nozick's Minimal State," *Philosophical Research Archives*
- Postema, Gerald J. (1980), "Nozick on Liberty, Compensation, and the Individual's Right to Punish," *Social Theory and Practice*, pp. 311-337.
- Rabinowitz, Joshua T. (1977), "Emergent Problems and Optimal Solutions," *Arizona Law Review*, pp. 61-157.
- Rothbard, Murray (1977), "Robert Nozick and the Immaculate Conception of the State," *The Journal of Libertarian Studies*, pp. 45-58.
- Rothbard, Murray (1982), *The Ethics of Liberty*, (Humanities: Atlantic Highlands).
- Scheffler, Samuel (1976), "Natural Rights, Equality, and the Minimal State," *Canadian Journal of Philosophy*, pp. 59-76.
- Sterba, James P. (1978a), "Neo-Libertarianism," *American Philosophical Quarterly*, pp. 115-121.
- Sterba, James P. (1978b), "In Defense of Rawls Against Arrow and Nozick," *Philosophia*, pp. 293-303.
- Sterba, James P. (1980), "Neo-Libertarianism" (expanded version) in *Justice: Alternative Political Perspectives* ed. by James P. Sterba (Wadsworth Publishing Co: Belmont), pp. 172-186.
- Sterba, James P. (1985), "National Defense vs. Social Welfare" in *Social Conflict* ed. by R. G. Frey (Bowling Green University Press: Bowling Green).

## II. WELFARE LIBERAL JUSTICE

- Ackerman, Bruce A. (1980), *Social Justice in the Liberal State*, (Yale University Press: New Haven).
- Barry, Brian (1973), *The Liberal Theory of Justice* (Oxford University Press: London).
- Dworkin, Ronald (1973), "The Original Position," *The University of Chicago Law Review*, pp. 500-533.
- Dworkin, Ronald (1978), "Liberalism," in Stuart Hampshire (ed.) *Public and Private Morality* (Cambridge University Press: Cambridge), pp. 113-143.
- Dworkin, Ronald (1981), "What is Equality? Parts I and II," *Philosophy and Public Affairs*, pp. 185-246, 283-345.
- Dworkin, Ronald (1983), "Why Liberals Should Believe in Equality" *The New York Review of Books*, pp. 32-34.
- Fried, Charles (1978), *Right and Wrong*, (Harvard University Press: Cambridge).
- Fried, Charles (1982), "Is Liberty Possible? in Sterling McMurrin (ed.) *The Tanner Lectures on Human Values*, Vol. III (University of Utah Press: Salt Lake City) pp. 89-136.
- Fuchs, Alan (1982), "Fairness to "Justice as Fairness," in Harlan Miller and William Williams (eds.) *The Limits of Utilitarianism*, (Univ. of Minnesota Press: Minneapolis) pp. 115-127.
- Gauthier, David (1974), "Justice and Natural Endowment," *Social Theory and Practice*, pp. 3-26.
- Hare, R. M. (1973), "Rawls' Theory of Justice—I and II," *Philosophical Quarterly*, pp. 144-155, 241-252.
- Hart, H. L. A. (1973), "Rawls on Liberty and Its Priority" *The University of Chicago Law Review*, pp. 534-555.
- Nagel, Thomas (1973), "Rawls on Justice," *Philosophical Review*, pp. 220-234.
- Nozick, Robert (1974), *State Anarchy and Utopia*, (Basic Books: New York).
- Rawls, John (1971), *A Theory of Justice*, (Harvard University Press: Cambridge, MA).
- Rawls, John (1974a), "Some Reasons for the Maximim Criterion," *American Economic Association*, pp. 141-146.
- Rawls, John (1974b), "Reply to Alexander and Musgrave," *Quarterly Journal of Economics*, pp. 633-655.
- Rawls, John (1975a), "A Kantian Conception of Equality," *Cambridge Review*, pp. 94-99.

- Rawls, John (1975b), "Fairness to Goodness," *Philosophical Review*, pp. 536-554.
- Rawls, John (1978), "The Basic Structure as Subject," in A. I. Goldman and J. Kim (eds.) *Values and Morals* (Reidel Publishing Co: Dordrecht), pp. 47-71.
- Rawls, John (1980), "Kantian Constructivism in Moral Theory," *The Journal of Philosophy*, pp. 515-571.
- Rawls, John (1982a), "The Basic Liberties and Their Priority," in Sterling McMurrin (ed.) *The Tanner Lectures on Human Values*, Vol. III (University of Utah Press: Salt Lake City), pp. 1-88.
- Richards, David A. (1971), *A Theory of Reasons for Action* (Oxford University Press: Oxford).
- Sandel, Michael J. (1982), *Liberalism and the Limits of Justice*, (Cambridge University Press: Cambridge).
- Sterba, James P. (1974), "Justice as Desert," *Social Theory and Practice*, pp. 101-116.
- Sterba, James P. (1976), "Prescriptivism and Fairness," *Philosophical Studies*, pp. 141-148.
- Sterba, James P. (1978), "In Defense of Rawls Against Arrow and Nozick," *Philosophia*, pp. 293-302.
- Sterba, James P. (1980a), "Abortion, Distant Peoples and Future Generations," *The Journal of Philosophy*, pp. 424-440.
- Sterba, James P. (1980b), *The Demands of Justice*, (University of Notre Dame Press: Notre Dame).
- Sterba, James P. (1981), "A Rawlsian Solution to Arrow's Paradox," *Pacific Philosophical Quarterly*, pp. 282-292.
- Sterba, James P. (1982), "How Best To Critique Utilitarianism," in Robert Almeder (ed.), *Praxis and Reason: Studies in the Philosophy of Nicholas Rescher* (University Press of America: Washington, D.C.), pp. 212-225.

### III. SOCIALIST JUSTICE

- Bay Christian (1981), *Strategies of Political Emancipation* (University of Notre Dame Press, Notre Dame).
- Buchanan, Allen E. (1982), *Marx and Justice* (Rowman and Littlefield: Totowa, New Jersey).
- Campbell, Tom (1983), *The Left and Right* (Routledge & Kegan Paul: London).
- Cohen, Marshall, Nagel, Thomas and Scanlon, Thomas (1980), *Marx, Justice and History* (Princeton University Press: Princeton).
- Doppelt, Gerald (1981), "Rawls' System of Justice: A Critique From the Left," *Nous*, pp. 259-308.
- Fisk, Milton (1975), "History and Reason in Rawls' Moral Theory," in *Reading Rawls* ed. by Norman Daniels (Basic Books: New York).
- Fisk, Milton (1980), *Ethics and Society* (New York University Press: New York).
- Gould, Carol C. (1978), *Marx's Social Ontology* (The MIT Press: Cambridge).
- Lukes, Steven (1980), "Socialism and Equality" in *Justice: Alternative Political Perspectives* ed. by James P. Sterba (Wadsworth Publishing Co.: Belmont, California).
- Macpherson, C. B. (1973), "Rawls's Models of Man and Society," *Philosophy of the Social Sciences*, pp. 341-347.
- Macpherson, C. B. (1973a), *Democratic Theory* (Clarendon Press: Oxford).
- Macpherson, C. B. (1977), *The Life and Times of Liberal Democracy* (Oxford University Press: Oxford).
- Macpherson, C. B. (1978), *Property* (University of Toronto Press: Toronto).
- Miller, David (1976), *Social Justice* (Clarendon Press: Oxford).
- Miller, Richard (1974), "Rawls and Marxism," *Philosophy and Public Affairs*, pp. 167-191.
- Nielson, Kai and Pattin, Seven C. (1981), *Marx and Morality* (Canadian Association for Publishing in Philosophy: Guelph, Ontario).
- Nielson, Kai (1985), *Equality and Liberty* (Rowman and Littlefield, Totowa, New Jersey).
- Reiman, Jeffrey H. (1984), "The Labor Theory of the Difference Principle," *Philosophy and Public Affairs*, pp. 133-159.
- Schweickart, David (1978), "Should Rawls be a Socialist?" *Social Theory and Practice*, pp. 1-27.
- Schweickart, David (1980), *Capitalism or Worker Control?* (Praeger Publishers: New York).
- Sterba, James P. (1981), "The Welfare Rights of Distant Peoples and Future Generations: Moral Side-Constraints on Social Policy" *Social Theory and Practice*, pp. 99-119.
- Sterba, James P. (1982), "A Marxist Dilemma for Social Contract Theory," *American Philosophical Quarterly*, pp. 51-59.

## IV. PERFECTIONIST JUSTICE

- Downing, Lyle and Thigpen, Robert (1984), "After Telos: The Implications of MacIntyre's Attempt to Restore the Concept in After Virtue," *Social Theory and Practice*, pp. 39-54.
- Finnis, John (1980), *Natural Law and Natural Rights* (Clarendon Press: Oxford).
- Finnis, John (1983), *Fundamentals of Ethics* (Georgetown University Press: Washington, D.C.).
- Frankena, William (1983), "MacIntyre and Modern Morality," *Ethics*, pp. 579-587.
- Foot, Philippa (1978), *Virtues and Vices* (California University Press: Los Angeles).
- Galston, William A. (1980), *Justice and the Human Good* (University of Chicago Press: Chicago).
- Geach, Peter (1977), *The Virtues* (Cambridge University Press: Cambridge).
- Haskar, Vinit (1979), *Equality, Liberty and Perfection* (Clarendon Press: Oxford).
- Harman, Gilbert, (1983), "Human Flourishing, Ethics and Liberty," *Philosophy and Public Affairs*, pp. 307-322.
- Hauerwas, Stanley and MacIntyre Alasdair (1983) *Revisions* (University of Notre Dame Press: Notre Dame)
- Lowden, Robert B. (1984), "On Some Vices of Virtue Ethics," *American Philosophical Quarterly*, pp. 227-236.
- MacIntyre, Alasdair (1981), *After Virtue* (University of Notre Dame Press: Notre Dame).
- McInerney, Ralph (1982), *Ethica Thomistica* (The Catholic University of America Press: Washington, D.C.).
- Schneewind, J. B. (1982), "Virtue, Narrative and Community," *The Journal of Philosophy*, pp. 653-663.
- Schneewind, J. B. (1982), "Moral Crisis and the History of Ethics," in *Midwest Studies in Philosophy* (University of Minnesota Press: Minneapolis), pp. 525-539.
- Wachbroit, Robert (1983), "A Geneology of Virtues," *Yale Law Journal*, pp. 564-576.
- Wallace, James (1978), *Virtues and Vices*, (Cornell University Press: Ithaca).