

Justifying Libertarian Rights

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Chapter 1

INTRODUCTION

The signers of the Declaration of Independence affirmed the necessity of the American Revolution by claiming that the sole duty of government is to protect the inalienable rights of men, including those to life, liberty, and the pursuit of happiness, and that when a government becomes hostile to these rights, men have a duty to alter or abolish it. Since the New Deal, many in the modern conservative and libertarian movements have criticized the expanding role of the federal government in our lives by claiming that it represents an infringement of the sacred rights of individuals.

The central premise of these arguments is that persons have a particular set of moral rights, including rights against bodily aggression and over private property. In this paper, I will assess the plausibility of this premise, attempting to discover whether there is a strong intellectual justification for supposing that individuals possess the varyingly defined set of moral rights commonly asserted by past and present natural-rights thinkers, classical liberals, conservatives, and libertarians, what I will call libertarian rights. I will examine a series of arguments for libertarian rights, including those based on theological claims and those based on moral claims, in an effort to determine whether one or more can plausibly be said to imply

libertarian rights. Rather than setting out a positive argument in favor of libertarian rights or some alternative theory, I will critically evaluate each argument, assessing its strengths and weaknesses as a foundation for libertarian rights.

Aims

My object in this paper is to assess whether the claim of libertarian rights is justified. By “libertarian rights,” I am referring to a proposed set of *moral rights*, those entitlements that persons are claimed to have as a fact of morality, as opposed to *legal rights*, which are those entitlements actually guaranteed or recognized by an existing social system or state, whether or not they correspond to what morality prescribes and proscribes. Assessing whether the set of legal rights endorsed by libertarians is justified would require us to investigate the many possible considerations that might lead us to support such a scheme of rights, including utilitarian concerns and self-interested calculations. Instead, in assessing whether the claim of moral rights endorsed by libertarians is justified, I will analyze whether we have good reason to think that persons possess the set of moral rights that libertarians claim that they do.

To illustrate what we are looking for in assessing whether the claim of libertarian rights is justified, imagine that a state announces that it will levy a new tax, requiring each of its citizens to pay twenty percent of their incomes to the tax collector on April 15, under penalty of imprisonment. The day arrives, and the tax collector shows up on Libby Tarian’s doorstep. Libby refuses to pay. She is arrested and charged with tax evasion. At her trial, Libby admits to the crime, but argues that the state may not punish her for breaking an unjust law. When the judge asks her why she thinks the law is unjust, Libby responds that a law requiring her to give up her income is a violation of her moral rights. Her income is her rightful property, and no one,

including the state, may take it away. The judge, however, is not convinced. What reason, he asks, do we have to think you really have the moral rights you claim to have?

In this paper, I will examine the various answers Libby might offer, and see whether any of them is good enough to firmly support her claim.

Relevance

There are at least two reasons why we should care about whether there is a strong basis for libertarian rights.

First, there is sheer intellectual curiosity. Given how central the assertion of something like libertarian rights was to the founding of our country, and how pervasive it remains in our politics, it would simply be interesting to know whether it is well supported. When people make explicit arguments for recognizing libertarian rights, we are led to ask whether these arguments are coherent and plausible; when, more often, they simply invoke the claim of libertarian rights on its own, we are led to wonder if there is anything to back it up.

Second, we might be interested in whether there is good reason to respect libertarian rights so as to guide our own behavior. If we wanted to work toward a more just society, for instance, it would be important for us to learn whether or not there is a moral imperative to respect libertarian rights. Perhaps the existence of these rights would compel us, as citizens or as public officials, to oppose policies that might violate them, such as measures to redistribute wealth.

One might also be motivated by a third purpose: having already been convinced for whatever reason that libertarian rights are desirable, one might wish to find a knockdown argument for them that would appeal to as many people as possible, winning public support for

them as part of a political program. However, this is not our purpose. We are concerned to determine whether there is reason to support libertarian rights in the first place before thinking about how best to promote them.

Examining libertarian rights can also be useful if one is interested in the foundations of theories of rights more broadly. Because the rights guaranteed under different systems vary so widely, one cannot study their foundations in any substantive detail except by focusing on one system at a time, yet such an examination may yield insights that apply to other systems.

Libertarian rights may serve as a good example of conceptions of rights in general because they represent an extreme in three aspects of rights: they hold a position of primacy in libertarian philosophy (under liberal equality, for example, rights may be seen as secondary to or conflicting with other considerations such as fairness), they include only “negative” rights to non-interference, and no “positive” rights to be provided goods or services, and they conceive of individuals as having rights that are more absolute than under alternative conceptions, which, for example, usually have a far more restricted right to property. Their extreme nature may allow us to see more clearly the limits of what certain arguments for rights can plausibly support, and if certain arguments fall short of establishing this extreme conception, we may catch a glimpse of how they might more plausibly support a more moderate conception.¹

Definitions

Before we can examine the arguments for libertarian rights, we must specify what we take these rights to include. Ideally, we would like a precise definition that would encapsulate the views of all of those we might think of as members of the libertarian tradition, from the natural-

¹ The words *extreme* and *moderate* should not be taken as signifying hostility or sympathy toward any conceptions of rights.

rights theorists and classical liberals of the eighteenth and nineteenth centuries to the libertarian and conservative movements of the twentieth and twenty-first centuries, as our evaluation could then vindicate or undermine what is for many the core of libertarianism in one fell swoop. Unfortunately, the significant differences between and within these camps make arriving at such a definition impossible.²

We can, however, develop a working definition of libertarian rights, sketching the rough outlines of what most in the libertarian tradition take the set of individual rights to include. We may think of libertarians and their intellectual relatives as having conceptions of individual rights that vary in the degree to which they are expansive in scope and absolute in strength. If our evaluation finds that a particular argument provides convincing support for at least a minimal conception of libertarian rights, then we may conclude that individuals do possess libertarian rights at least to a certain extent. If, on the other hand, our evaluation finds that a particular argument does not provide convincing support for even a minimal conception of libertarian rights, or that its assumptions justify government actions that even the most statist libertarians take to be inconsistent with their conception of individual rights, then we may conclude that that argument fails to support any conception of libertarian rights.

² In a 2007 dialogue on the website *Bloggingheads.tv*, journalist Robert Wright asked Will Wilkinson, a research fellow at the libertarian Cato Institute, to define libertarianism specifically:

WRIGHT: What is the libertarian position? I mean, can you be a libertarian and say, 'Oh, Social Security's OK,' or can you not?

WILKINSON: I don't know. If there was a central agency that was responsible for accrediting and licensing libertarians, then...

WRIGHT: ... then libertarians would be opposed to it.

Robert Wright and Will Wilkinson, "Libertarian Musk Edition," *Bloggingheads.tv*, web, <<http://bloggingheads.tv/diavlogs/400>>, 24 October 2007.

First, a few preliminary definitions.³ Wesley Hohfeld distinguishes between four specific types of rights: liberty rights or privileges, claim rights, powers, and immunities. I will conceive of libertarian rights primarily as claim rights, which Dudley Knowles defines as those rights following the form, “P has a right to *x*,” and entailing that some Q has the duty not to interfere with P’s *x*-ing or a duty to provide *x*, where *x* is some good or service.⁴ When Q’s duty is that of non-interference, P is said to have a *negative right* to *x*; when Q’s duty is one of active provision, P is said to have a *positive right* to *x*.⁵

Our rendering of libertarian rights will rely on negative rights except in the case of contracts, and we will construe “non-interference” as referring specifically to acts of physical aggression in order to clarify that a person’s having a negative right to something does not exclude others from interfering with it in ways usually considered to be legitimate. For example, the fact that I have right to own my property implies that others have a duty not to steal it, but does not imply that my boss has a duty not to fire me if this means my financial situation will force me to sell my house, even though this would interfere in my ability to own my house.

In addition to claim rights, libertarian rights also involve powers, which enable persons to alter the assignment of rights and duties. In particular, persons are supposed to have the power to acquire property from the common stock and the power to transfer property they own to others, as a result of which third parties become obligated not to take the holdings from them or from subsequent owners. Finally, according to Knowles, rights *in personam* “entail correlative

³ The definitions in this paragraph are adapted from those provided in Dudley Knowles, *Political Philosophy* (Montreal and Kingston: McGill-Queen’s UP, 2001), pp. 135-48. Knowles summarizes Wesley Hohfeld’s widely cited analysis of rights.

⁴ Knowles, p. 139.

⁵ This classification overlaps, but should not be confused, with Isaiah Berlin’s classification of “positive” and “negative” senses of freedom as, respectively, “[t]he freedom which consists in being one’s own master, and the freedom which consists in not being prevented from choosing as I do by other men” (“Two Concepts of Liberty,” *Philosophy: basic readings*, ed. Nigel Warburton (London: Routledge, 2005), p. 239). For example, the things which positive rights compel others to provide need not contribute to one’s self-mastery.

duties on the part of assigned individuals” whereas rights *in rem* may be claimed against any person or institution. Rights *in personam* apply here mainly in the case of contracts, which create obligations for particular individuals; other rights are rights *in rem*.

Our definition of libertarian rights is encapsulated in the following set of statements, which is meant to be read as a unified whole; the order of the items should not be taken to imply any kind of priority.

1. Each person has the (negative) right for his body and property to be free from nonconsensual acts of physical force and coercion by other persons, such as violence, theft, and trespass, subject to the limitations described in items 3, 5, and 6. Coercion is defined as the use of the threat of force against one’s body or property to compel behavior or consent. This will be called the right to nonaggression.
2. A person’s property consists of holdings to which he has laid claim (and to which he has not renounced his claim) that were previously unowned and over which he has carried out some method of initial acquisition, or that were previously owned and have been transferred to him by the previous owner or owners.
3. If a person threatens to violate, is violating, or has violated another’s right to nonaggression, then his own right to nonaggression is limited insofar as nonconsensual acts of physical force and coercion are necessary to defend the victim or would-be victim against the violation, punish the violator, and compensate the victim.
4. Each party to a consensual contract has the (positive) right to be provided any good or service by any other party to the contract that the contract requires that the other party

5. If the party to a consensual contract fails to provide a good or service that that contract compels him to provide, then his right to nonaggression is limited insofar as nonconsensual acts of physical force and coercion are necessary to cause him to provide this good or service.
6. Apart from the limitations described in 3 and 5, each person's right to nonaggression is further limited or superseded *at most* to the extent that the state (defined as the entity with a monopoly on the use of force that is seen as legitimate in a given territory) may use physical force or coercion against him and his fellow citizens to obtain the funds and manpower necessary to establish a police force and courts to determine, prevent, punish, and rectify rights violations within the territory, and to establish a military to defend citizens against violations from external aggressors.

This list is regrettably vague. For example, it does not define personhood, include a theory of the initial acquisition of property, explain rectification, specify what counts as “necessary” in responding to aggressors or establishing state organs, and so on. However, it does give us a sense of what we may take libertarian rights to be. In particular, we can say that libertarian rights prohibit force and the threat of force against anyone's body and the holdings he has acquired from nature or from others, except where necessary to respond to rights violations, enforce contracts, or, perhaps, to provide for certain state functions limited to enforcing rights claims. Our use of the phrase “at most” in item 6 is meant to enable the definition to cover a range of libertarian positions, from anarcho-capitalist views that hold that no other force or coercion is permissible, to classical liberal views that defend such state functions. This

indeterminacy does not, however, prevent us from inferring that certain uses of aggression by the state are impermissible from the point of view of any libertarian who subscribes to our definition, including but not limited to paternalistic measures, measures to redistribute resources, measures to provide public goods (other than peace and security), and measures to force persons to conform to a higher ethical, religious, or ideological standard. Again, if our evaluation found that the assumptions of any given argument could plausibly be used to justify any such measures, then we could conclude that it cannot support libertarian rights.

Method

In order to assess whether the claim of libertarian rights is justified, I will analyze what I take to be the most important arguments that have been offered in its defense. I will conduct a critical survey of these arguments, evaluating them on their own merits rather than presenting alternative theories to compete with them. I will consider two types of arguments, those based on theological assumptions and those based on moral intuitions.

The number of conceivable arguments for libertarian rights is infinite, and I can only assess a limited number of them. This leaves me open to the charge that such a project could never succeed, or that I have not done enough to make it succeed. It would be one thing if we found a knockdown argument for libertarian rights; this would show that the claim of libertarian rights is justified, and no further discussion would be needed. But if one or more of the arguments under consideration turned out to be plausible but not convincing, or if none of the arguments turned out to be plausible, the reader could always wonder if I had missed or ignored a better argument that could firmly justify the claim.

This should provide us with reason to be cautious in our conclusions, but we should not regard the project as hopelessly limited. I have selected the arguments under consideration according to what I judge to be their philosophical and political influence. Thus, we will analyze the arguments that those in the libertarian tradition have used most often and most effectively to defend the claim of libertarian rights. I try to present these arguments in their most persuasive forms, and to improve them whenever possible, adding the necessary steps to make invalid arguments valid and propose alternatives when particular claims fail. In this way, I do my best to ensure that the arguments we consider represent the cream of the crop, minimizing the chances of ignoring a compelling argument.

We will now proceed to the body of the paper. In the next chapters, I will lay out each argument under consideration, discuss the specific character that rights take under each argument, examine the plausibility of its assumptions, and assess the degree to which these assumptions support the notion of libertarian rights. As we will see, although some of these arguments offer plausible justifications for certain elements of libertarian rights, no argument or combination of arguments successfully justifies the conception as a whole. Once we have seen the merits and flaws of the religious and moral arguments, I will conclude with a discussion of the implications of these findings.

Chapter 2

RELIGIOUS ARGUMENTS

Because modern political philosophy is overwhelmingly secular, we might be tempted to mention religious justifications for libertarian rights only briefly before passing on to arguments current thinkers take seriously. However, there are three reasons why we should consider religious arguments carefully.

First, they represent one of the major available sources of moral justification. The notion that God is the source of morality has been a compelling one, and the connection between religion and morality has been seen as so close that many have seen the supposed “death of God” in the nineteenth and twentieth centuries as a cause of a sort of nihilism.

Second, the religious arguments of John Locke played a crucial role in American history, helping to provide intellectual justification for the revolution against Britain. Locke’s religiously grounded ideas inspired the statement of the Declaration of Independence that all men “are endowed by their Creator with certain unalienable Rights,” an idea which came to represent one of the new republic’s core values and to shape key debates.

Third, religion still represents an important force in American politics. Recent countervailing developments notwithstanding, most Americans still believe in a higher power

according to a 2008 Pew poll,⁶ and our political culture still uses religious language.⁷ More significantly, evangelicals and other committed Christians represent one of the leading constituencies of the conservative movement that has done so much in the name of the libertarian cause. As late as the 2008 presidential primaries, candidates were still using a religious justification to explain their principles: Republican Fred Thompson declared in a television commercial, “My friends, we must remember that our rights come from God and not from government.”⁸

In this chapter, then, we will assess various religious arguments for libertarian rights. We will start by considering the fundamental premise of all religious arguments, namely the existence of God, and after rejecting arguments from revelation, we will discuss whether Locke’s arguments can be used to plausibly support the claim of libertarian rights as defined in the introduction. The influence of Locke’s religious arguments, both on American history and in the philosophical literature, makes them the ideal focus of the chapter. We will put forward Lockean arguments for the right to nonaggression and for the property rights set out in *L*, which rely primarily on inferences from natural facts about what God’s purposes for us might be. Next, we will consider alternative religious arguments, including one that involves our moral sense and one that asserts *L* is necessary for us to imitate God’s attributes. Finally, we will deliver our verdict on religious justifications.

⁶ Jacqueline L. Samuelson, “Most Americans Believe in Higher Power, Poll Finds,” *The Washington Post*, 24 June 2008.

⁷ America’s “public religion” is described in Jon Meacham’s *American Gospel*.

⁸ Fred Thompson, “Consistent Conservative (60 sec),” Web, accessed 1 Nov. 2009, <<http://www.youtube.com/watch?v=1AIyfSZht8M>>.

The Existence of God

The fundamental premise of any religious justification for *L* is the existence of God (or gods, or some other divine or mystical entity or force, but similar logic should apply to them). If God does not exist, then no argument that includes the existence of God as a necessary premise or assumption behind a premise can be sound.

I take the issue of the existence or nonexistence of God to be properly a subject of reasoning rather than mere faith or conviction. As a result, I would argue that we would have grounds to conclude that God exists if and only if either there is convincing direct evidence from observation that He exists or that we can infer His existence as the best explanation of phenomena that we do observe. All things considered, I find all past claims of revelation or miracles to be implausible or phenomena with more credible alternative explanations, taking Ockham's Razor as my ultimate standard of credibility. Likewise, while a creative God was once taken as the only possible explanation of the complexity and diversity of life, overwhelming evidence now shows that the theory of evolution by natural selection can explain this complexity and diversity without the need to posit an intelligent designer. As for phenomena that remain mysterious, such as how and why the cosmos came into existence in the first place (given that all other observed phenomena have causes), positing the existence of an uncaused God who created the cosmos would be less parsimonious than simply positing an uncaused cosmos. Therefore, we have no convincing direct or indirect evidence of God's existence, so we do not have grounds to conclude that God exists, so we cannot assert God's existence, so there is no argument that contains the existence of God as a necessary premise or assumption that we can conclude is sound, so there is no religious justification for *L* that we can conclude is sound.

Of course, the reasons I have provided for denying the existence of God are familiar, and will probably fail to change any religious reader's mind. Thus, we must ask, what if God does exist? Then can we find any good religious justifications for *L*?

The Varieties of Religious Justification

For the sake of argument, then, we will assume that God exists, along with all of the most common predicates ascribed to him – thus, we will assume that there exists a perfect, omnipotent, benevolent, sentient being who created the universe and cares about human affairs. It might seem that the most natural place to start a search for a religious justification would be the Bible, or the Koran, or the Bhagavad Gita, or some other religious text. One would pick out passages about how to treat one's fellow man and property and whatnot and see if they can be plausibly interpreted as sanctioning libertarian rights. However, we will not do this. As I said in the previous section, I find all past claims of revelation incredible. This is not the place to examine each past claim of revelation; the reader may do so for herself and either agree or disagree with my position. If claims of revelation are incredible, then arguments that appeal to revelation, including appeals to scriptural evidence, will contain at least one premise of which we are highly suspicious, and thus we could not be convinced of their soundness. The fact that we are assuming the existence of God (and the truth of various statements about Him) for the sake of argument does not commit us to assuming that claims of revelation are reliable; after all, many serious attempts have been made to prove God's existence (and attributes) without relying on revelation. It might be an interesting and worthwhile exercise to assume the truth of a particular scripture to see if libertarian rights could be derived from it, but we will not do so here. So we will only examine arguments that do not rely on claims of revelation, and will assume that the

existence of God and the attributes described above can be proven using the non-revelation-based arguments of the sort put forward by Thomas Aquinas.

Revelation excluded, what religious arguments might plausibly justify libertarian rights? As far as I can tell, there are two general strategies one could pursue. First, one could attempt to show that libertarian rights are necessary for the fulfillment of God's purposes. In order to do so, one could attempt to determine God's purposes either by making inferences from general facts about the world God has created, which I call "inference from divine remnants," or by asserting that our moral intuitions represent direct evidence of God's purposes. Second, one could attempt to show that since God is perfect, the best (most perfect) regime would be that in which people were most able to be godlike.

Arguments from Divine Remnants

We will start with inference from divine remnants, a type of reasoning that appears again and again in Locke's writings and is necessary to support many religiously based political arguments. This reasoning says that we can conclude something about God's purposes from the natural state of things, in other words, the way He left them for us. To illustrate, let's imagine that Mr. Godfrey, the owner of a small bookstore has just hired a new employee, Sally, and has left her in charge for two weeks while he goes on vacation. He hasn't explained to her anything about how to run the bookstore, and she knows next to nothing about how bookstores are generally run; all she knows is that he is very smart and that when he comes back, he will either give her a raise or fire her depending on how well she has done.

Sally arrives for her first day of work and for a while, things go fine. She is able to figure out how to do things by common sense. She sits at the cash register, customers come up to her

with books that they would like to buy, she sees that they all have clearly marked price tags, so she charges them the marked amount and makes a record of the purchases. But then, in the afternoon, a delivery man shows up with a box full of new books. She panics: where is she supposed to put them? Maybe Mr. Godfrey won't care, but maybe he's a stickler for order and will fire her if he finds them in the wrong place. Thinking quickly, she starts walking around the aisles looking for clues. She notices that a book by Robert Devigne is next to a book by John Dunn, which is next to a book by Ioannis Evrigenis, which is next to a book by Charles Fried. Then she notices that these are all books about politics, while there are books by Isaac Asimov, Arthur C. C. Clarke, and H.G. Wells all near each other on the next shelf. She thinks to herself, *it's possible that these books are all just randomly arranged. But Mr. Godfrey is a smart guy, and anything he did, he must have done for a reason. It looks to me like these books are arranged in a particular order: first, they're grouped into genres, then, they're put into alphabetical order by the author's last name. So that must be the way he wants me to arrange them.* Sally reaches into the package and begins pulling out books, checking genre and author, and placing them on the shelves accordingly. When Mr. Godfrey returns from his vacation, he carefully scans the shelves, muttering, "Mmm-hm!" and announces he's doubling her salary.

Locke applies the same reasoning to divine rules of nature that Sally applies to deduce rules of book ordering. We find ourselves in a world in which things are arranged in a certain way. If we believe that there is a God who created the world, and that God is perfect, then we must conclude that God created each part of the world with some end in mind; He did not create anything by accident, or just for the hell of it. Therefore, observing the facts of nature may provide us with a clue as to what God's purposes are, and since God's purposes determine the moral truths that apply to His creations, observing the facts of nature can inform us about moral

truth. As John Dunn explains, “given in this way the existence of a divine creator, we are supposedly entitled to assume both his benignity and his efficiency; that all that he created was created for some good purpose, that in creating he did nothing in vain, the principle of sufficient reason.”⁹

A Lockean Argument for the Right to Nonaggression

The notion of individual rights, including a right to private property, lies at the heart of Locke’s theory of government. We will leave open the question of whether or not Locke would qualify as a libertarian by modern standards. Instead, we will simply ask whether Locke’s arguments can be marshaled, perhaps with some modification, in support of *L*. Locke presents his arguments for individual rights in two related, but distinct, parts. In the second chapter of his *Second Treatise of Civil Government*, Locke presents arguments for the rights each individual has over his body. We will assess whether these arguments support the first item of *L*, the right to nonaggression. Locke presents arguments for property rights in the fifth chapter; we will examine whether they support the second item of *L*, establishing individual property.

Locke offers two religious claims in support of his contention that all men have a natural right to be free of aggression by others, mirroring our “right to nonaggression.”

The first is that all men are by nature equal in the eyes of God (or at least, that He has done nothing to suggest that He sees them as unequal), and that accordingly they are morally equal, with no one person having any natural moral authority over any other. As a result, no one may claim any special natural moral authority to subordinate any other to his command, such as

⁹ John Dunn, *The Political Thought of John Locke*, (Cambridge, UK: Cambridge UP, 1969), p. 95.

by forcing him to become his slave, or claim any special privilege to injure or steal from another. Everyone must abide by the same moral rules, and these rules must apply to them equally.

We will deal with the plausibility of this claim in a moment. However, taken by itself, even if we assume it is true, it could not establish a right to nonaggression. It could only establish that if there *were* a right to nonaggression, then everyone would possess it equally; no one could claim that another, being his moral inferior, lacked the right, or that he, being morally superior, was exempt from respecting the right in others. Whatever moral rules there are could apply to us equally but not include any such right or injunction against aggression; we could all be equally permitted to aggress against one another. As Eric Mack writes,

But suppose that an enslaving aggressor were to counter in this way: I don't claim to have authority (to have been authorized) to act as I have acted. I claim not any right of domination nor any sovereignty entailing any such right. I do, however, claim that I am at liberty (I am not obligated not) to take control of you. You, of course, are at liberty to resist and/or enslave me. If I were (foolishly) to claim that you are obligated to submit to me *then* you could relevantly point to the absence of any natural sovereignty. But I make no such (foolish) claim.¹⁰

Therefore, Locke supplements this with a second religiously grounded claim: that since human beings are God's creations and thus His property, each of us has a duty to preserve himself and the rest of mankind, and so may not "take away, or impair the life, or what tends to the Preservation of the Life, the Liberty, Health, Limb or Goods of another" except to do justice to offenders.¹¹

We may formalize Locke's basic argument as follows:

1. Each human being has a duty to preserve God's creations unless God has granted him special moral authority not to do so.
2. Human beings are God's creations.

¹⁰ Eric Mack, "Locke's Arguments for Natural Rights," *The Southwestern Journal of Philosophy* 11, 1980, p. 55.

¹¹ John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge UP, 1966), *Second Treatise*, numbered paragraph 6. All future citations of the *Treatises* will refer to paragraph number.

3. Since human beings are morally equal, God cannot have granted any person special authority not to preserve His creations, except the authority to do justice to offenders.
4. Therefore, unless it is to do justice to an offender, no human being may take away or impair the life or what tends to the preservation of the life, the liberty, health, limb, or goods of another.

Even before we examine the plausibility of this argument's premises, however, we can see that it is insufficient for our purposes. For one thing, it is not logically valid, since the relationships between preservation and aggression, and between moral equality and moral authority in what is essentially a sub-argument contained in item 3, are not defined. For an argument to be logically valid, the truth of the premises must guarantee the truth of the conclusion by virtue of the form of the premises and conclusion, without relying on interpretation of the terms involved.¹² Therefore, we must alter it as follows, with all inferences (announced by the word "Therefore") supposed to be drawn from the two preceding items unless otherwise noted, and using the words "aggress" and "aggression" as shorthand for those acts which Locke explicitly forbids. We will refer to this as our "Lockean argument," rather than as "Locke's argument," since it aims to improve rather than simply replicate the argument found in the *Second Treatise*, while refraining from violating the spirit of Locke's reasoning.¹³

1. Each human being has a duty to preserve God's creations, or any subset thereof, unless God has granted him special moral authority not to do so.

¹² For example, one can prove that the argument "All Greeks are mortal, and Socrates is a Greek, so Socrates is mortal" is valid, since one can prove (in ways I won't go into) that all arguments of the form "All F's are G's, and H is an F, so H is a G" are valid, and can simply replace "Socrates," "Greek," and "mortal" with these variables to show that it is an instance of this form. But this argument's success depends not on its conforming to a valid form, but on an implicit understanding of the relationship between preservation and aggression.

¹³ Gopal Sreenivasan uses the term "Lockean" in the same way in *The Limits of Lockean Rights in Property* (New York and Oxford: Oxford UP, 1995), pp. 4-7.

2. If one has a duty to accomplish a certain end, then one may not do anything that would conflict with or undermine that end.
3. Therefore, each human being may not do anything that would conflict with or undermine the preservation of God's creations, or of any subset thereof, unless God has given him special moral authority to do so.
4. To aggress against God's creations, or any subset thereof, would conflict with or undermine their preservation.
5. Therefore, each human being may not aggress against God's creations, or any subset thereof, unless God has given him special moral authority to do so.
6. Human beings constitute a subset of God's creations.
7. Therefore, each human being may not aggress against human beings unless God has given him special moral authority to do so.
8. God has not granted all human beings special moral authority to aggress against human beings, except the authority to do justice to offenders.
9. If God has granted any human being special moral authority differing from the special moral authority he has granted all human beings, then human beings are not morally equal.
10. But human beings are morally equal.
11. Therefore, God has not granted any human being special moral authority differing from the special moral authority he has granted all human beings.
12. Therefore, God has not granted any human being special moral authority to aggress against human beings, except the authority to do justice to offenders. (from 8 and 11)

13. Therefore, each human being may not aggress against human beings except to do justice to offenders. (from 7 and 12)
14. If one may not aggress against human beings except to do justice to offenders, then one may not aggress against any human being except to do justice to offenders.
15. Therefore, each human being may not aggress against any human being except to do justice to offenders.
16. If one human being may not aggress against another human being except to do justice to offenders, then the second human being has the right to be free from aggression, except to do justice to offenders, by the first.
17. Therefore, each human being has the right to be free from aggression, except to do justice to offenders, by any human being.

As far as I can tell, this is a valid argument; all that remains is to investigate whether it is sound by assessing whether all the premises are true.

Moral Equality

The inference from divine remnants plays a large part in supporting what has become item 10 of our revised Lockean argument, the claim that human beings are morally equal. But before we assess this claim, it is worth noting the importance of the premise of moral equality, not only in terms of the logic of the argument but also in refuting rival political theories and setting it in the context of a broader theological worldview. First, the premise is instrumental in showing how a political theory need not accept his rival Robert Filmer's contention that political authority is based on the inequality of men resulting from the God-given dominion of Adam and

his line.¹⁴ Second, it represents a fundamental and, to Locke's readers, non-obvious statement about the place of mankind in the cosmic order. The traditional view of the cosmic order, after all, was founded on inequalities. In medieval times, society was viewed as part of a cosmic hierarchy and was itself hierarchically divided, with authority differentially allocated from lord to vassal, from kings down to serfs. Locke's assertion that all men are morally equal rejects this hierarchy, as well as the more modest forms advocated by the likes of Filmer, while affirming the broader cosmic order within which mankind is subject to the authority of God, while the natural world, including the lower animals, is subject to the authority of mankind.

All right, so how do we know that human beings are morally equal? Locke deduces this from the fact that there is

nothing more evident, than that Creatures of the same species and rank promiscuously born to all the same advantages of Nature, and the use of the same faculties, should also be equal amongst another without Subordination or Subjection, unless the Lord and Master of them all, should by any manifest Declaration of his Will set one above another, and confer on him by an evident and clear appointment an undoubted Right to Dominion and Sovereignty.¹⁵

In this passage, we can interpret Locke as applying the inference from divine remnants in two complementary ways. First, he makes a direct argument based on the claim that since human beings are born with the same basic characteristics: "Creatures of the same species and rank," he asserts, are "promiscuously born to all the same advantages of Nature, and the use of the same faculties." This is a fact of nature, determined by God, so God must have meant for human beings to be born equal. Since God's purposes determine moral truth, it is reasonable to assert, human beings must be born morally equal. Second, Locke makes the indirect argument that a moral inequality such as would authorize the natural domination of some over others would only be shown if "the Lord and Master of them all, should by any manifest Declaration of

¹⁴ Jeremy Waldron, *The Right to Private Property* (Oxford: Clarendon, Oxford UP, 1988), p. 144.

¹⁵ *Second Treatise*, 4.

his Will set one above another, and confer on him by an evident and clear appointment an undoubted Right to Dominion and Sovereignty.”

Let’s start with the direct argument. Can we accept the claim that human beings are “promiscuously born to all the same advantages of Nature, and the use of the same faculties”? The advantages and faculties enjoyed by human beings as individuals find expression in two primary characteristics: mind and body. A cursory survey of society reveals that some people are very smart, some people are very stupid, and that there are people at every point in between. And according to the *New York Times*, “A century’s worth of quantitative-genetics literature concludes that a person’s I.Q. is remarkably stable and that about three-quarters of I.Q. differences between individuals are attributable to heredity.”¹⁶ Environment clearly plays a major role in people’s mental development, but it is simply not the case that anyone could, under the right circumstances, grow up to be Einstein. The connection between physical attributes and genes is even more obvious. For thousands of years, people have known that animals can be selectively bred to produce bigger, stronger, and faster offspring, showing that physical characteristics are in large part inherited, and thus innate. Our species is no exception. There is likewise a genetic component to other traits, such as personality and particular skills. Overall, we have reason to agree with Plato’s Socrates that “no two of us are born exactly alike. We have different natural aptitudes, which fit us for different jobs.”¹⁷ And these jobs may position us to rule or to submit.

Human beings, then, are born unequal in important aspects. Since Locke makes a point of saying that creatures “of the same species” are similar, perhaps he would respond that although we might see differences if we look only at human beings, if we step back we can see

¹⁶ David L. Kirp, “After the Bell Curve,” *The New York Times Magazine*, 23 July 2006.

¹⁷ Plato, *The Republic*, trans. Desmond Lee, 2nd ed. (New York: Penguin Classics, 2007), section 370b.

that the differences among human beings pale in comparison to the differences between human beings and other species. In mental and physical attributes, humans can all be identified by having similar traits, as distinguished from pterodactyls and sea anemones. But why is this the appropriate unit of analysis? Couldn't one equally say that primates are more or less the same as compared to other orders, or that animals are more or less the same as compared to plants and bacteria, and so on?

To the contrary, it seems that the innate variations among human beings are sufficiently great that a claim of natural equality is too weak to support the inference that God intended us to be morally equal.

Let us turn, then, to Locke's indirect argument: that we could only conclude that human beings are morally unequal if God set some above others by a "manifest Declaration of his Will" and gave them by "an evident and clear appointment an undoubted Right to Dominion and Sovereignty," and He didn't, so we can't. But if human beings are unequal, and the inference from divine remnants is legitimate, then we ought to be able to conclude that God did set some above others, an act of will made "manifest" in our innate differences. Some are born intelligent and some are born stupid; some are born strong and some are born weak; why can we not infer that God intended for the intelligent and strong to rule and for the stupid and weak to submit? And when historical or natural circumstances allow some to dominate others, why can we not infer that God intended them to do so? Locke might counter that our differences do not constitute enough evidence to show moral inequality, that God's will must be "evident," "clear," and "undoubted." However, this seems to impose a double standard; Locke is setting a higher bar for rival claims than he sets for his own. If rough natural equality would be sufficient to show moral equality, then rough natural inequality should be sufficient to show moral inequality.

Moreover, if Locke held himself to the higher standard, not only would his claim of moral equality be in trouble, but so too would his other inferences from divine remnants, all of which, we will find, are open to doubt.

The premise of moral equality, then, has serious problems. We might try to get around them by cutting items 8 through 11 of the Lockean argument and deleting the word “Therefore” from item 12, converting it from a conclusion to the premise, “God has not granted any human being special moral authority to aggress against human beings, except the authority to do justice to offenders.” After this change, the argument would still be valid, but we would have to assess the plausibility of this new premise. How would we know whether or not God has granted anyone special moral authority to aggress against human beings? If inference from divine remnants is legitimate, which it must be for Locke’s argument for private property to hold, as we will see later, then we may look to the facts of nature for evidence. And as we have seen, some people are better endowed with intelligence and strength than others, and this puts them in a better position to aggress against others. Therefore, no matter how we rework the argument, reliance on divine remnants commits us to take seriously the claim that God intended to give some people special moral authority to aggress against others.

The Duty of Preservation: Active or Passive?

The above discussion cast doubt on the premise of moral equality, as well as an alternative premise. But for the sake of discussion, let’s assume that the premise of moral equality or the alternative premise is true. Does the argument work then?

The first item of the argument holds that “Each human being has a duty to preserve God’s creations unless God has granted him special moral authority not to do so.” If the premise of

moral equality or the alternative premise is true, God has granted no such moral authority except to do justice to offenders, and each human being otherwise retains his duty to preserve God's creations. Locke justifies the duty of preservation as follows:

For Men being all the Workmanship of one Omnipotent, and infinitely wise Maker; All the Servants of one Sovereign Master, sent into the World by his order and about his business, they are his Property, whose Workmanship they are, made to last during his, not one another's Pleasure... Every one as he is *bound to preserve himself*, and not to quit his Station willfully; so by the like reason when his own Preservation comes not in competition, ought he, as much as he can *to preserve the rest of Mankind*, and may not unless it be to do Justice to an Offender, take away, or impair the life, or what tends to the Preservation of the Life, the Liberty, Health, Limb or Goods of another.¹⁸

Now, one can interpret this argument as asserting either a narrow or a broad conception of individual duty, and the choice of interpretation has enormous implications for the rest of Locke's theory of rights.

According to one version of the narrow interpretation, God has made each person and charged him to perform His business. Each person is bound to serve God, but separately; God has given each of us our own work to do, including the work of preserving ourselves, and we need not meddle in one another's affairs. As Locke writes in *A Letter Concerning Toleration*,

Every man has an Immortal Soul, capable of Eternal Happiness or Misery; whose Happiness depends upon his believing and doing those things in this Life, which are necessary to the obtaining of Gods Favour, and are prescribed by God to that end... the care of each Mans Salvation belongs only to himself.¹⁹

Following our bookstore analogy, let's imagine that instead of only hiring Sally, Mr. Godfrey has hired two employees, Sally and Sam. Having spent a lot of time in the economics section, Mr. Godfrey has become a devoted fan of the division of labor. Instead of assigning one or both employees the general task of running the bookstore, he assigns each of them their own particular tasks. He tells Sally to man the cash register, and Sam to stock the shelves. When he returns from his vacation, he will first check the cash register, making sure that Sally has kept a

¹⁸ *Second Treatise*, 6.

¹⁹ Locke, *A Letter Concerning Toleration*, 47.

thorough record of all transactions and that all revenue is present and accounted for. If so, he will give her a raise; if not, he will fire her. Then, he will go through the shelves and see if all of the new books have been stacked in the proper order. If so, he will give Sam a raise; if not, he will fire him. Each employee only has to worry about his own work.

This interpretation suggests that, while each individual has the positive duty to preserve herself, her duty to preserve mankind is only a negative one. In other words, the duty to preserve mankind not only *implies* that one may not “take away, or impair the life, or what tends to the Preservation of the Life, the Liberty, Health, Limb or Goods of another,” but that this duty *consists* solely in not doing so, apart from doing justice to offenders. One may not aggress against others (as long as they have not offended), because they, too, are God’s property, and one has no right to destroy God’s property. In addition, it may be part of the duty God has given each of us not actively to prevent others from doing His work. But this does not mean that one has to do others’ business, or make sure that they are able to do their business. Sally may not set fire to the bookshelves because they belong to Mr. Godfrey and perhaps because Mr. Godfrey has told her not to interfere with Sam’s work; she has no obligation to help Sam stock them. Thus, Eric Mack takes Locke to be saying that “To violate the fundamental law of nature one must make war upon others – not merely fail to contribute to their preservation,” and that at the base of Locke’s political theory lie “claims about the natural, but negative, obligations of each to all.”²⁰

Seeing human beings as God’s servants, each of whom must focus only on his own work, would seem to support the right to nonaggression, but it suffers from three problems. First, as I discuss below in connection with the broad interpretation, it is implausible to hold both that human beings must serve God and that they may be indifferent to his overall purposes. Second,

²⁰ Mack, “Locke’s Arguments for Natural Rights,” pp. 58-9.

if we are charged not to prevent each other from doing God's work, it might seem that this could provide a promising justification for property rights as well as for the right to bodily nonaggression, for doing God's work might well involve the use of external objects. But if it were clear to us that someone was not using the holdings in his possession to do God's work, and that they could assist us in our performance of God's work, then we would be permitted, if not obligated, to take them, despite his property claims over them. Third, I simply do not see what evidence there is to support the claim that our work must be separate.

Another version of the narrow interpretation grounds the passive duty of preservation not in the view that we are each servants of God charged only to focus on our own work, but rather in the view that since others are God's property, one must refrain from interfering with them, for this would violate God's property rights. "For Men being all the Workmanship of one Omnipotent, and infinitely wise Maker," Locke writes, "they are his Property, whose Workmanship they are, made to last during his, not one another's Pleasure." As James Tully explains, Locke grounds man's obligation to God from God's "maker's rights"; that is, God is entitled to the products of his labor, so human beings, being God's creations, are God's property.²¹ A supporter of the narrow interpretation of the duty of preservation might argue that if other people are God's property, then all we need to do is to refrain from harming them, just as we recognize that we must not steal or damage our neighbor's property, but that we have no duty to maintain it.

This argument does commit one to accepting the right to nonaggression. But it is ultimately inconsistent with *L* as a whole, for an injunction against messing with God's property precludes human beings from having property rights. This is so for two reasons. First, if all of God's creations are His property, then it would seem we must be forbidden from using, much

²¹ Tully, *A Discourse on Property: John Locke and his Adversaries*, (Cambridge: Cambridge UP, 1980), p. 40.

less appropriating, any natural resources. Second, even if we are permitted to use natural resources, if the obligations of others toward us merely amount to a duty not to aggress against us as God's property, then they could not have an obligation to respect our own property claims. For if their obligations toward us only extended that far, then they would be permitted to use, take, or destroy holdings we claim as long as they could do so without attacking us.

The broad interpretation agrees that each person has obligations to fulfill, but claims that his obligations to others extend beyond merely refraining from aggressing against them. According to this interpretation, God wants us all to survive and to do His work. As His servants, we have a duty to serve His overall purposes, and we have the ability to recognize that these purposes include not only our own survival and flourishing but also that of others. Mr. Godfrey may have assigned Sally and Sam to different jobs, but they know that his overall goal is to make money. Thus, if Sally sees that the bookshelves are on fire, and the fire extinguisher is stored underneath the cash register, she would be foolish to think, *Well, I haven't done anything wrong, since I didn't set the fire, and as long as I keep it from reaching the cash register, I will have done my job, and Mr. Godfrey will be pleased with me.* On the contrary, she will see that if the books are destroyed, then Mr. Godfrey won't make any money, and will hold her responsible. This would explain why Locke chooses to phrase our duties to others actively rather than passively, asserting an obligation "to preserve the rest of Mankind" rather than simply "to refrain from harming the rest of Mankind."

Again, to deduce what God wants, we must rely on the inference from divine remnants. If God created us, and placed us in a bountiful natural world, then He must want us to live and flourish. The inference from divine remnants compels us to assume God's "efficiency," so we can conclude that God would not create something simply to have it perish, unless its doing so

would serve some other end, none of which is evident; besides, as we will see, the argument for property depends on the belief that God wants us to live and flourish. Each of us can deduce that God wants others as well as himself to live and flourish; God must have the same basic intentions for you as he does for me, having created each of us and placed us in the same environment, at least if we still maintain that human beings are morally equal. Thus, if our duty is to serve God's purposes, and the survival and success of each of us matters equally to God, then we should care just as much about others as we do about ourselves, and our duty to preserve mankind must be positive, not merely negative. We may normally be best placed to serve God's purposes for all of mankind by preserving that portion of mankind over which we always have direct access and control, namely ourselves, and so Locke's priority of the duty of to preserve oneself may be a useful rule of thumb. However, when we are in a position to actively preserve others, we must do so. There is simply no reason to think that God could want us all to survive, but require each of us to wear blinders and ignore the welfare of our fellow man. Ultimately, then, the narrow interpretation fails and the broad interpretation succeeds; the duty to preserve mankind must be an active one.

The Active Duty of Preservation and Aggression for the Sake of Others

This conception of the duty of preservation has serious implications for the success of our Lockean argument. Item 14 states: "If one may not aggress against human beings, then one may not aggress against any human being." This item captures a subtle move that Locke makes. Everyone, he says, is bound "*to preserve the rest of Mankind*, and may not... take away, or impair the life, or what tends to the Preservation of the Life, the Liberty, Health, Limb, or Goods of another." If one is bound to preserve mankind, his reasoning implies, then one must be bound

to preserve each member of mankind, so if one is bound not to aggress against mankind (aggression being deleterious to preservation), then one is bound not to aggress against any member of mankind.

Under the narrow interpretation of the duty of preservation, this move would pose no problem. If one must simply refrain from aggressing against human beings, then must refrain from aggressing against each human being. It does not matter whether the phrase “human beings” is taken to mean “all individual human beings” or “the human race as a collective whole”; either interpretation yields the same conclusion. Aggressing against any one human being would violate an injunction to refrain from aggressing against all individual human beings, and it would likewise represent an aggression, however small, against the human race as a whole.

However, under the broad interpretation, the move becomes suspect. If one has a duty to actively preserve human beings, then it makes a difference whether “human beings” means “all individual human beings” or “the human race as a whole.” If one has a duty to preserve all individual human beings, then one has a duty to preserve each individual human being, and conversely a duty not to aggress against any individual human being. But if one has a duty to preserve the human race as a whole, then this may not translate into a duty to preserve and not to aggress against each individual human being. After all, aggression against certain human beings, such as taking away some their goods to provide for the destitute, conscripting men and women to serve in the military to shore up the national defense, or mandating service on public works projects might allow more of the race as a whole to be preserved than would otherwise be possible.

Since we have chosen to accept the broad interpretation, then, whether item 14 is true depends on what the phrase “human beings” means. And it seems clear that it must be taken to

mean “the human race as a whole.” If God cares about all human beings equally, and wants equally for each of us to survive and flourish, then He must want as many of us to survive and flourish as possible. Therefore, He could not want each of us always only to look out for ourselves and allow others to suffer and perish even when we have the opportunity to save them. So He would allow – in fact, require – some human beings to aggress against others, even apart from doing justice to offenders, to preserve human beings overall.

And when aggression beyond doing justice to offenders is permitted, the whole argument falls apart. If others may aggress against us, then we can have no right to be free from aggression.

Paternalistic Aggression

Before we leave our Lockean argument, it is worth mentioning a final issue that, even if the rest of the argument were rock solid, would prevent it from establishing the first item of *L*. Item 4 of the Lockean argument asserts, and we have been assuming, that aggression conflicts with and undermines preservation; thus, we claimed that aggression against some could be justified only insofar as it was necessary to preserve all as a whole. However, aggression is not necessarily harmful even to those against whom it is done. Although paternalistic measures have often been controversial, in some cases, such as banning or taxing cigarettes to prevent lung cancer, they may be conducive to the preservation of their subjects. More significantly, using aggressive measures to provide public goods and solve collective action problems, such as banning or taxing carbon emissions to prevent climate change, may have similar net benefits. Thus, even the narrow interpretation of the duty of preservation, which forbids harmful aggression, may permit benign forms of aggression.

Divine Remnants and Private Property

We've seen Locke's negative case against aggression and found it to be wanting. Now let's look at Locke's positive case for the necessity of private property. If our Lockean argument for the right to nonaggression indeed fails, then it may be impossible to find a complete argument for *L* in Locke's writings. Even if we were able to produce a sound religious argument for private property, it would be of little use without a functional argument for the right to nonaggression. This is the case for two reasons. First, as *L* is set out, the provision defining a person's property, item 2, is meaningless without item 1, which states that a person's property may not be aggressed against. Second, suppose that we altered *L* to establish distinct rights to nonaggression against one's person and against one's property, respectively, and claimed that while Locke could not establish the personal right, he does establish the property right. For the libertarian, this would represent a rather sour victory. After all, libertarians generally defend property as an extension of and means to personal liberty, not a replacement for it. When Nozick provocatively asserts, "Taxation of earnings from labor is on a par with forced labor," one wonders how favorably he would look on a situation in which taxation was prohibited but actual forced labor was, at least in principle, permitted.²²

Nevertheless, we must press on. For the sake of argument, let's assume that the Lockean argument, or some alternative argument, has established the right to nonaggression as applied to persons' bodies, but not to property. Can we find in Locke a sound argument that extends this right to cover property, under the definition provided in item 2?

Locke sets out what I take to be his main religious argument for private property in the fifth chapter of the *Second Treatise*:

God, who hath given the World to Men in common, hath also given them reason to make

²² Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), p. 169.

use of it to the best advantage of Life, and convenience. The Earth, and all that is therein, is given to men for the Support and Comfort of their being. [And though its fruits are naturally held in common] yet being given for the use of Men, there must of necessity be a means *to appropriate* them some way or other before they can be of any use, or at all beneficial to any particular Man.²³

Locke proposed a similar argument in the *First Treatise*:

God having made Man, and planted in him, as in all other Animals, a strong desire for Self-preservation, and furnished the World with things fit for Food and Rayment and other Necessaries of Life, Subservient to his design, that Man should live and abide for some time upon the Face of the Earth, and not that so curious and wonderful a piece of Workmanship by its own Negligence, or want of Necessaries, should perish again, presently after a few moments continuance: God, I say, having made Man and the World thus, spoke to him, (that is) directed him by his Senses and Reason... to the use of those things, which were serviceable for his Subsistence, and given him as means of his *Preservation*. And therefore I doubt not, but before these words were pronounced I *Gen.* 28, 29. (if they must be understood Literally to have been spoken) and without any such Verbal *Donation*, Man had a right to a use of the Creatures, by the Will and Grant of God... And thus Man's *Property* in the Creatures, was founded upon the right he had, to make use of those things, that were necessary or useful to his Being.²⁴

Clearly, the preservation of mankind is at the heart of Locke's religious argument for private property, just as it was at the heart of his argument against aggression. We can formalize the main points of the argument as follows:

1. God intended for human beings to use the world for their preservation and benefit.
2. A right to private property is necessary for human beings to use the world for their preservation and benefit.
3. Therefore, human beings must have a right to private property.

Once again, this argument is invalid, so we must improve it, but this time we can fix it fairly quickly:

1. God intended for human beings to use the world for their maximal preservation and benefit.

²³ *Second Treatise*, 26.

²⁴ Locke, *First Treatise*, 86.

2. What God intends for one to do, one has a right to do.
3. Therefore, human beings have a right to use the world for their maximal preservation and benefit.
4. One has a right to that which one requires in order to exercise one's rights.
5. A right to private property is necessary for human beings to use the world for their maximal preservation and benefit.
6. Therefore, human beings have a right to private property.

The first item of this argument should be familiar to us from our earlier discussion. Here, Locke claims that God intends not only our preservation, but also our benefit. This is a significant extension, but if one accepts the inference from divine remnants used to establish the original claim, it should not be too difficult to agree to; after all, we do live on a bountiful planet. Apart from this, then, it seems the boldest claim of the new argument is item 5, so that is the one on which we will focus.

Efficient Use of Resources

Is it the case that a right to private property is necessary for human beings to use the world for their maximal preservation and benefit? That is, are humans able to use the world to best preserve themselves and most benefit themselves when they have property and when aggression against this property is prohibited (as in item 1 of *L*)?²⁵

²⁵ My decision to render Locke's argument so as to highlight this question is influenced by A. John Simmons's defense of the interpretive strategy in which "we can derive the specific content of natural law (which includes the rights and duties of natural property) by rule-consequentialist reasoning from the fundamental law of nature. We can ask 'by general conformity to what rules will mankind best be preserved?' and our answer will give us the content of natural law for Locke" (*The Lockean Theory of Rights*, (Princeton, N.J: Princeton UP, 1992), p. 247). I only differ from Simmons in including benefit, which Locke mentions repeatedly, as a goal along with preservation.

To answer this question, it would seem, we must look at how Locke's system of private property is organized. According to Locke, people can acquire property, such as land from the common stock by working on it, mixing their labor with it. "Thus *Labour*, in the Beginning, gave a *Right of Property*, where-ever any one was pleased to employ it, upon what was common."²⁶ A person can acquire as much as he wants, at least so long as there is "enough, and as good" left for others, and so long as he does not allow the holding to spoil or be wasted. The precise implications of the "enough, and as good" proviso have been a subject of contention, but we'll leave the issue aside for the moment. As a result of the so-called "spoliation proviso," property holdings initially remain limited, as any one person has only a limited ability to make use of natural resources without letting them spoil. However, with the introduction of money, a commodity that can represent the value of other goods but does not itself spoil, people are able to acquire much greater amounts of property without violating the spoliation proviso, and an inequalitarian scheme of property rights along the lines of item 2 of *L* becomes justified.

If we focused solely on Locke's labor-based conception of initial acquisition, we might be persuaded that his scheme would indeed go a long way toward preserving and benefiting mankind. Locke spends a good deal of time showing that laboring on natural resources, such as cultivating land, adds enormously to their value. For example, he cites the Native Americans,

who are rich in Land, and poor in all the Comforts of Life; whom Nature having furnished as liberally as any other people, with the materials of Plenty, *i.e.* a fruitful Soil, apt to produce in abundance, what might serve for food, raiment, and delight; yet for want of improving it by labour, have not one hundredth part of the Conveniences we enjoy: And a King of a large and fruitful Territory there feeds, lodges, and is clad worse than a day Labourer in *England*.²⁷

²⁶ *Second Treatise*, 45.

²⁷ *Ibid.*, 41.

Whether or not we accept his judgment in this particular case, the claim that labor greatly increases value, and thus the stock of goods available for human beings to use to preserve and benefit themselves seems to me to be an eminently plausible one.

If labor is such a boon to preservation and benefit, then, a system that encourages labor might best conduce to preservation and benefit. And as Simmons notes, a system in which laborers are rewarded with a title to the products of their labor would encourage labor.²⁸ They would work hard to improve the natural resources they acquired from the common stock, secure in the knowledge that they could keep whatever they produced. Thus, they would produce more, and be better able to preserve and benefit themselves and, through exchange, mankind. Moreover, Locke asserts that under such a scheme, the only people who would not be well preserved or benefited would be those who failed to make the most of the vast bounty God has provided:

God gave the World to Men in Common; but since he gave it them for their benefit, and the greatest Conveniencies of Life they were capable to draw from it, it cannot be supposed he meant it should always remain common and uncultivated. He gave it to the use of the Industrious and Rational, (and *Labour* was to be *his Title* to it;) not to the Fancy or Covetousness of the Quarrelsome and Contentious. He that had as good left for his Improvement, as was already taken up, needed not complain, ought not to meddle with what was already improved by another's Labour: If he did, 'tis plain he desired the benefit of another's Pains, which he had no right to, and not the Ground which God had given him in common with others to labour on, and whereof there was as good left, as that already possessed, and more than he knew what to do with, or his Industry could reach to.²⁹

So far, so good: a system of property based on labor would seem to enable everyone willing to do some honest work to preserve and benefit themselves and one another.

However, this misstates the actual character of Locke's system. The principle, "To each according to his labor," is not a general principle underlying the property system as a whole, but rather determines only initial acquisition from the common stock. Once they acquire property,

²⁸ Simmons, 248.

²⁹ *Second Treatise*, 34.

we must assume that people may do with it as they please (as long as it doesn't spoil), for pretty much any restriction (except perhaps for those that would directly prevent rights violations, such as banning weapons that are used only by criminals) would violate *L*. If this is the case, then once the introduction of money permits inequality by solving the problem of spoliation, many will be able to amass large amounts of property not only through their own labor on natural resources but also as a result of the choices of others, especially the choices of their parents to bequeath property to them and of other market actors. This means that the beneficial incentive structure of the labor acquisition system ceases to affect them.

Those with little property also effectively lose the ability to take advantage of the "To each according to his labor" principle. Locke assumes that those who do not benefit from God's donation must be "Quarrelsome and Contentious," desiring "the benefit of another's Pains," for there is "as good left, as that already possessed, and more than he knew what to do with." In other words, Locke's guarantee that everyone willing to work has the opportunity to preserve and benefit himself is premised on there being an effectively unlimited and accessible supply of common land to acquire. However, today, more or less all arable land is owned, and even in Locke's day much of it was effectively inaccessible to those without means. Locke himself admits that allowing great tracts of land to remain in common "can scarce happen amongst that part of Mankind, that have consented to the Use of Money."³⁰ The poor, therefore, who live in European countries where all land has already been appropriated and do not have the means to travel to America and start a plantation, do not have the option to preserve and benefit themselves by acquiring from the common stock.

Thus, the allowance of bequest and market exchange and the disappearance of accessible common land cause Locke's system of property to quickly lose its initial merits and morph into a

³⁰ *Second Treatise*, 45.

“normal” libertarian property regime. The degree to which both rich and poor are able to preserve and benefit themselves becomes a function not simply of their willingness to cultivate natural resources, but instead to a large degree of the circumstances of their birth and of the market. At the very least, the supposed advantages of a system of private property have become far less clear. Nothing in Locke’s system would prevent a scenario such as that of pre-Revolutionary France, where a small and idle aristocracy held nearly all land, while the great masses of people had no choice but to labor as peasants, barely preserving themselves and hardly attaining “the best advantage of Life, and convenience.” A government in a position to use its coercive power to mitigate these problems, whether by recognizing property in a way different from item 2 of *L*, or by redistributing land³¹ or wealth or carrying out any number of familiar measures in conflict to a right to nonaggression against one’s property, would find that human beings could best use the world to preserve and benefit themselves without a right to property.

Divine Remnants and Time Slices

Before we leave Locke, one final clarification that applies to both our Lockean arguments is worth mentioning. Nozick characterizes his theory of justice as “historical,” meaning that “whether a distribution is just depends upon how it came about.”³² He contrasts this with “current time-slice principles” of justice, which hold that “the justice of a distribution is determined by how things are distributed (who has what) as judged by some *structural* principle(s) of just distribution.”³³ One might be tempted to view Locke as espousing a

³¹ For instance, in A.D. 486, the government of the Northern Wei in China instituted an “equal field” system assigning individual families land according to their available labor to ensure, in its words, “that no land lies neglected, that no people wander off, that powerful families could not monopolize the fertile fields, and that humble people would also get their share of the land” (Patricia Buckley Ebrey, *The Cambridge Illustrated History of China*, 92).

³² Nozick, p. 153.

³³ *Ibid.*

historical theory along the lines of Nozick. For example, we might say that in the beginning, human beings saw that they had been placed in a bountiful world and inferred that God wanted them to use it for their preservation and benefit, and they saw that they could do so by acquiring land through mixing their labor with the common stock. As long as they did not directly violate what they perceived to be God's laws along the way, any resulting distribution of property must be just. Likewise, they might infer that they have a duty to preserve their fellow human beings as God's creations, and if aggression in the state of nature necessarily conflicts with this end, then they might conclude that everyone must inherently possess a right to nonaggression.

However, this conception is out of keeping with the imperative to serve what we believe to be God's purposes at the heart of the Lockean arguments. If in the state of nature, we infer that God wants us to use the world for our preservation and benefit, then that should be our overriding concern. When the economy evolves to a point when we can no longer rely on a labor-based property system to ensure preservation and benefit, we must adjust our rules about what aggression against property is justified and/or about what counts as property in order to return us to our original mission. After all, we have not discovered new evidence indicating that God's purposes have changed; to the contrary, it is we who have changed, and we need to reassess our situation to ensure that we stay on the right path. Likewise, when we come to live in a state of society under a government able to use aggression for the overall good, we must reassess our earlier conclusion that aggression is always detrimental, and thus that we have an inherent right to nonaggression. If one seeks to show that a right is mandated by its usefulness to God's purposes, he must show that its usefulness persists even after the circumstances of a state of nature no longer hold.

Arguments from Moral Intuition

If attempting to infer God's purposes from general facts about the world He created does not lead us to libertarian rights, perhaps inferring them through another means will. Almost all people have convictions or intuitions that certain things are right and wrong, good and bad. Now, to my mind, by far the most plausible explanations for how we have come to have these intuitions are naturalistic, citing for instance the selective pressures of biological and cultural evolution, and not referring either to the truth of the convictions themselves or to any (other?) purported supernatural influences.³⁴ However, if God exists, it stands to reason either that He in fact gave us our moral intuitions directly, or that He created or manipulated the processes that led to us having moral intuitions so that we would at least roughly end up with those intuitions He wanted us to have. And we would therefore expect our intuitions at least roughly to correspond to God's purposes: if God wanted us to do something, He would not have caused or allowed us to develop the intuition that we ought not to do it, and so on. So if our intuitions suggest that we ought to respect libertarian rights, then we ought to respect libertarian rights, because our intuitions are a sign of God's purposes, and we ought to serve God's purposes.

So do our intuitions suggest that we ought to respect libertarian rights? Unfortunately, we must postpone that question until the next chapter. If we accept the existence of God (and the various qualities we ascribed to Him), then whatever we conclude there may double as part of a religious argument either justifying or precluding libertarian rights.

³⁴ *The Moral Animal* by Robert Wright provides an overview of the influence of biological evolution on the development of human morality. Richard Joyce's *The Evolution of Morality* and *The Myth of Morality* and Sharon Street's "A Darwinian Dilemma for Realist Theories of Value" apply this to the debate over moral realism (concerning the existence of objective moral truth).

Arguments from Divine Imitation

Aside from attempting to deduce God's purposes, either from general facts about the situation in which He has put us or from the moral intuitions He has given us, there is a final way in which one could try to justify libertarian rights on theological grounds: to claim that we ought to imitate God, and that doing so requires libertarian rights. Remember, we are assuming that we are able to infer something about God's attributes, such as His goodness and the fact that He created the world, from non-revelation-based arguments like those of Aquinas. The argument would go something like this:

1. Other things equal, we ought to be as good as possible.
2. One is just as good as his attributes.
3. Therefore, one is the best he can be if and only if one obtains the best attributes that he can. (from 2)
4. Therefore, other things equal, we ought to obtain the best attributes that we can. (from 1 and 3)
5. God is the best individual there is.
6. Therefore, God's attributes are the best attributes there are (from 2 and 5).
7. Therefore, other things equal, we ought to obtain God's attributes as much as we can. (from 4 and 6)
8. God's attributes include productive labor and/or autonomy.
9. Therefore, we ought to obtain the attributes of productive labor and/or autonomy as much as we can.
10. A regime of libertarian rights is necessary for us to obtain the attributes of productive labor and/or autonomy as much as we can.

11. Therefore, a regime of libertarian rights is necessary for us to do what we ought to do.
12. We ought to implement that regime that is necessary for us to do what we ought to.
13. Therefore, we ought to implement a regime of libertarian rights.

There are a number of ambiguities and logically questionable moves in this argument. However, we will focus on item 10, the claim that libertarian rights uniquely enable us to productively labor and/or be autonomous as much as possible.

With respect to labor, Tully sees something like an argument for imitating God's workmanship in Locke. He writes that Locke considers man's role as a cultivator of the common stock to be analogous to God's role as the creator of the world. "Locke signals that man is come to have property in his own workmanship by working in a God-like fashion."³⁵ This gives rise to the so-called "imitation thesis," namely "that the best life of man is to act like God in bringing about modes of his own."³⁶ Thus, man ought to productively labor in order to be like God, and since a right to the products of one's labor encourages productive labor, it ought to be respected. However, we have already seen that such a system would only necessarily produce a labor-encouraging incentive structure when individuals first begin to appropriate from a plentiful and accessible common stock, after which it may greatly deteriorate. So again, libertarian rights are not guaranteed to best enable us to productively labor.

Moving on, being omnipotent, God (if He existed) would certainly be autonomous, not subject to any commands or restrictions and thus able to order His life however He saw fit. Perhaps human beings should follow His example, and it might seem that libertarian rights would represent the obvious way to enable us to do so. After all, the right to nonaggression would prevent anyone from being under anyone else's command except when necessary to

³⁵ Tully, 110.

³⁶ Ibid.

punish or deter offenders, and would therefore enable everyone to order his life as he saw fit, given the opportunities available to him. However, God's autonomy represents not merely freedom from constraints by other beings, but freedom from the constraints of circumstances; likewise, He is able to order His life not merely insofar as opportunities happen to be available to him, but rather may do whatever He wants, period. God's autonomy thus represents absolute positive liberty, and not merely negative liberty.³⁷ Therefore, to imitate his autonomy, we should try to secure positive liberty and not just negative liberty as far as we can to as many of us as we can. Since the poor are often poor in part because of the constraints of their circumstances, and have much less of an opportunity to order their lives as they see fit than those who are more fortunate, and because wealth has declining marginal utility with respect to positive liberty (that is, an extra thousand dollars would enable a poor man to gain many more options than a rich man), it stands to reason that redistributive taxation, at least at levels that would not gravely jeopardize market efficiency, could maximize the positive liberty enjoyed by human beings. Thus, a purported imperative to imitate God's autonomy would lead to a regime incompatible with libertarian rights.

One could make one other type of argument for libertarian rights based on a comparison between men and God, and it would look more or less as follows:

1. We should preserve those individuals³⁸ that are best or near-best and should not do anything that would conflict with or undermine their preservation.
2. To aggress against individuals would conflict with or undermine their preservation.
3. Therefore, we should not aggress against those individuals that are best or near-best.
4. God is best.

³⁷ I am following Isaiah Berlin's classic dichotomy in his essay "Two Concepts of Liberty."

³⁸ I am using the word "individuals" as it is used in formal logic to denote all objects of discourse, whether human, person, creature, god, or otherwise.

5. Human beings are like God.
6. Therefore, human beings are near-best.
7. Therefore, we should not aggress against human beings.
8. If one should not do something against another, then the other has a right to the other's nonperformance of it.
9. Therefore, human beings have a right to nonaggression by one another.

Again, there are some questionable logical moves in this argument that should lead us to doubt its validity, but even if it were valid, we already know that it is unsound. For its item 2 matches item 4 of our first Lockean argument, and we decided that that item was false. Aggressing against individuals *may* conflict with or undermine with the preservation of those being aggressed against, but it may not, as in the case of well-designed paternalistic measures. And aggressing against some individuals for the benefit of the rest may conduce to the overall preservation of all individuals, as in the case of redistributive taxation to provide food or health care to the poor. So this argument fails as well.

It should be clear by now that the weight of evidence suggests that theological arguments do not justify *L*, and if anything imply that we have external reason *not* to recognize *L*. The only exception is that if we accept the existence of God, we have not yet decided whether our moral intuitions provide evidence for us to believe that God wants us to act in accordance with *L*. This issue will be resolved in our discussion of conventional moral justifications, to which we presently turn.

Chapter 3

MORAL ARGUMENTS

While some might have questioned the contemporary usefulness of scrutinizing religious justifications for libertarian rights, few could claim that conventional moral appeals are not worth examining. Libertarians and conservatives, as well as liberals, regularly assert that morality demands that we respect a certain set of rights, whether or not morality has a supernatural origin. Assessing the plausibility of this assertion is our present task.

Reliability of Moral Intuitions

Before we can be convinced by the sorts of moral arguments typically offered in support of libertarian rights, we will have to decide how far to trust what we call our moral intuitions³⁹, our immediate, pre-theoretical judgments that certain things are good or bad, right or wrong, as reliable guides to some objective moral truth. This is because such arguments typically attempt to demonstrate that some moral principle or value that we intuit must be true or sacred commits us to the conclusion that libertarian rights must be respected. If we cannot trust our intuitions,

³⁹ One might object that it is question-begging to refer to our pre-theoretical judgments about the content of morality as “intuitions” in an examination of whether they do in fact inform us about morality, for something is only an intuition if it intuits, or perceives, some external truth. We will nevertheless stick to the traditional language and use “intuitions” to cover what are, strictly speaking, apparent or purported intuitions.

then we need not embrace this principle or value, and so we need not accept libertarian rights.

Note that I am not claiming that all moral commitments depend on moral intuitions, but it would seem that the major conventional moral arguments for libertarian rights do, deriving from intuitions the principles around which these arguments are based.

What reason would we have to doubt that our moral intuitions tell us about morality?

This issue is a well-worn subject of debate in meta-ethics, but here is one argument, versions of which have been put forward by Sharon Street and Richard Joyce, which seems to me persuasive.⁴⁰ We can regard our immediate, pre-theoretical judgments as reliable guides to objective truth, one might claim, if and only if the best causal explanation for why we have come to form them involves their objective truth. That is, the fact that they are true must have played some part in how we came to form them; if they were not true, we would not have come to form them. For example, it is plausible to assume that we evolved to recognize certain types of images as faces because it is true that those images are often those of faces; if these images were not actually faces, the faculty would have conferred no adaptive benefit, so we probably wouldn't have developed it. If we knew that we wouldn't have our judgments if they weren't true, this would provide excellent reason for us to trust them; if we knew that we would have them whether or not they were true, this would cause us to doubt them.

I believe that our best explanations for how we have come to possess our moral intuitions do not involve their objective truth. One plausible source of many of our basic moral intuitions is biological evolution.⁴¹ It is clear that developing an aversion to in-group homicide, for example, could bring major evolutionary advantages. But unlike in the facial recognition case,

⁴⁰ See Sharon Street, "A Darwinian Dilemma for Realist Theories of Value," *Philosophical Studies* (2006) 127: pp. 109-66, and Richard Joyce, *The Evolution of Morality* (Cambridge, MA: MIT, 2006).

⁴¹ For an overview of evolutionary theories about the origins of morality, see Robert Wright, *The Moral Animal: The New Science of Evolutionary Psychology* (New York: Pantheon Books, 1994).

these advantages would not depend on its actually being the case that killing is wrong, so if this evolutionary instinct is the only reason we have to believe that killing is wrong, then we don't have good reason to believe it. The same logic applies to all other evolved moral intuitions. Other intuitions may come from various social sources. Here, the story is much more complicated, but I believe that our most plausible explanations for how we have come to possess non-evolved moral intuitions still does not involve their objective truth, so we have no reason to regard any of our moral intuitions as reliable.

Admittedly, this sketchy argument does not prove that our moral intuitions are unreliable, but it does illustrate the kind of doubts we might have about them, and by extension, about the foundations of conventional moral justifications for libertarian rights. For a justification to be truly convincing, it would have to find a way to overcome these doubts.

Direct Intuitions about Rights

Suppose we accept that our moral intuitions can provide us with access to moral truth. How could we then establish *L*? That is, following the process mentioned earlier, what intuition or intuitions could we use to ground libertarian rights, and how would we establish that anyone who accepts that intuition or those intuitions is committed to accepting libertarian rights in consequence?

The simplest and most direct answer a defender of libertarian rights could give would be the following: My intuitions tell me that each person has the right for his person and property to be free from nonconsensual acts of physical force and coercion, etc., etc. In other words, he could claim intuitive knowledge of *L* itself. As Mack writes (though he does not endorse this

view), “Perhaps, alternatively, rights exist without being grounded in anything. There simply are these deontic claims which are accessible to the morally insightful.”⁴²

It is difficult to tell how prevalent this reasoning or attitude is among libertarians and conservatives. Certainly, it does not have the rhetorical appeal of other arguments, for reasons we will address in a moment. However, one would suspect that many libertarians and conservatives would be hesitant to characterize their belief in libertarian rights as contingent on their perhaps disputable connection to some other moral value, to declare, “I believe in libertarian rights insofar as I believe in X, and if it turned out that libertarian rights didn’t follow from X, then I would jump ship in a heartbeat.” The only way to avoid this contingency is to claim that libertarian rights are not derived from any more basic truth.

What are we to make of this argument? One evident strength is that it fulfils the second task of a moral justification, to show that accepting the given intuition commits one to accept libertarian rights, easily and indisputably. If we trust the intuition that *L* is true, then we must accept that *L* is true. This leaves us to ask whether it fulfils the first task, to convince us to trust that intuition.

The defender of this argument could say that no further evidence can or need be offered that we should trust this intuition. Either we have it or we don’t. If we have it, then the fact that morality prescribes *L* is simply self-evident to us. If we don’t, so much the worse for us that we are unable to see the moral truth, and the fact that we can’t see it doesn’t make it any less true. Moreover, it is silly to ask for reasons to accept what are primitive moral facts. We may justify laws or actions by reference to rights; they function as the axioms of our moral system, and are

⁴² Eric Mack, “How to Derive Libertarian Rights,” in *Reading Nozick*, ed. Jeffrey Paul (Totowa, NJ: Rowman and Littlefield, 1981), p. 288.

not themselves justified by any other part of it.⁴³ We have to start somewhere, and he who is not satisfied with self-evidence as grounds for the starting place is like the child who doesn't know when to stop asking "Why?"

The problem is that libertarian rights are likely only self-evident to a very small number of people, which gives us reason to question the reliability of this intuition. As Loren Lomasky argues in "Libertarianism as if (the Other 99 Percent of) People Mattered," a small percentage of Americans (let alone foreigners) believe that libertarianism is the correct framework for political morality, as indicated, for example, by the "perpetual location in electoral tabulations of the Libertarian Party somewhere between Ross Perot and Mickey Mouse, decidedly closer to the latter than the former."⁴⁴ A 2006 Pew Poll revealed that just 9 percent of Americans professed consistent libertarian positions.⁴⁵ And many of those who do vote or identify themselves as libertarian do so for reasons other than that they intuit the truth of *L*. It is not likely, on the other hand, that a large proportion of non-self-identified libertarians have this intuition (and lack countervailing intuitions). It is one thing to claim that many people have not yet been enlightened so as to understand the logic that compels them to accept *L*; it is quite another to claim they have not yet realized what their own intuitions tell them.

One might reply that the reason most people do not profess a libertarian outlook is not that they lack libertarian intuitions, but that they have been brought under the spell of false alternative theories. If they could only be shown that these theories were mistaken, they would revert to their default libertarian intuitions. But whatever one thinks of the truth of alternative

⁴³ I am grateful to my friend Daniel Waldinger for explaining this perspective to me.

⁴⁴ Loren E. Lomasky, "Libertarianism as if (the Other 99 Percent) of People Mattered," in *Problems of Market Liberalism*, ed. Ellen Franken Paul, Fred D. Miller, Jr., and Jeffrey Paul (Cambridge, UK: Cambridge UP, 1998), p. 352.

⁴⁵ Scott Keeter and Gregory A. Smith, "In Search of Ideologues in America," *Pew Research Center Publications*, web, 11 Apr. 2006, <<http://pewresearch.org/pubs/17/in-search-of-ideologues-in-america>>.

theories, it is pure speculation to claim that people's underlying, unrevealed intuitions are fully libertarian.

If it is true that we have little evidence that more than a relatively small proportion of people intuit the truth of *L*, then we have, on reflection, little reason to accept it as self-evident. How do we know that they are able to see the truth and we are not, rather than the other way around? How do they know that they belong to the "moral elect," to borrow a phrase from Ronald Dworkin? Of course, their intuitions *could* be correct, but we have no reason to think they are. Without special grounds for privileging these intuitions, it would seem more prudent for a person trying to discover the moral truth by way of moral intuitions to rely solely on those intuitions she believes everyone or most people hold. This means that we should ignore the intuition of *L* *whether or not we ourselves hold it*.

To avoid misunderstanding, I wish to emphasize that I am not claiming that the fact that any given proposition is believed only by a minority, even by a very small minority, means it is very likely untrue, that truth is somehow up for a vote. For example, many of the basic theories of modern science have not been believed by most people for most of history, but I do not take this as strong reason to doubt them. Instead, I am claiming that the fact that any given proposition is believed only by a minority, in the absence of evidence to suggest that this minority has superior perceptive powers, means it is likely not self-evidently true, which is equivalent in this case to the claim that minority intuitions cannot be assumed to be reliable, other things equal. If the scientific method were not founded on assumptions that most people accepted as self-evidently true, like the principle of parsimony or the reliability of observation, but rather on assumptions that only a few people viewed as self-evident, then its results would be far less convincing.

In order to persuade us that *L* is true using moral intuitions, therefore, one must demonstrate that intuitions that all or most people hold commit them to accept it.

The Wrongness of Aggression

What intuitions, then, do all or most people hold that might commit them to *L*? While people may not intuit *L* in its entirety, many would find one of its central claims attractive: that aggression, defined as the un-consented use of force or coercion against another's person or property, is wrong. If someone came up to you and hit you, or snatched your wallet, or pointed a gun at you and demanded that you hand him your wallet, you would feel that you had been wronged. And from this, one might argue, you can deduce that you must have a right for your person and property not to be aggressed against.

Now, the intuition that aggression against one's person is wrong is, I think, quite strong and widely appealing. Although its reliability is open to question, it is far less controversial than the aspects of *L* relating to property. So for the remainder of this chapter, we will assume, at least for the sake of argument, that this or an equivalent intuition is accurate, and that people really do have a right for their person not to be aggressed against.

It might be argued that if we agree to this, we have effectively committed ourselves to *L*, even if we do not agree to a separate right for people's property not to be aggressed against. For in order to aggress against one's property, you often have to aggress against his person. Take the income tax, for example, one of the libertarian's greatest foes. The government demands that citizens surrender some of their property, in this case their money, under penalty of imprisonment. In other words, the government threatens to use force against their person, to throw them in jail, so as to compel them to act in a certain way, a clear instance of coercion

against their person. If we concede that people have a right for their person not to be aggressed against, then, although we have not technically derived a right to property, we have done almost as well, and proven that taxation is robbery if not theft.

However, although aggressing against someone's person is often a means to aggress against his property, this is not always the case and is often not necessary. For the most part, one would only have to use force against another's person in order to acquire his property if the latter were actually carrying that property on his person. And although the income tax in its current form does seem to qualify as person-directed aggression, this is a technical truth peripheral to the real issues involved in taxation. People who feel that taxes are unjustified are not generally aggrieved because they feel that the threat of imprisonment is a violation of their rights over their person, but rather because they feel the demand that they surrender some of their money is a violation of their rights to their property. If the government only required people to pay one dollar a year, attaching the same penalty to failure to pay, then most tax discontents would surely feel far less assaulted. Because the aggression to their person would be the same in this case, we can infer that the real issue is the property they must surrender, in contrast to, say, mugging, in which people often care far less about the property they must surrender and far more about the fact that their life is put in danger. In addition, instead of its current coercion-based form, the income tax could simply be altered so that government agents would break into each citizen's house and grab some of their valuables, thus eliminating any complaints of person-directed aggression.

Let's turn, then, to examining whether the intuition that aggression against one's property is wrong can support the right for one's property to be free from aggression as specified in *L*. Suppose we accept for the sake of argument that this intuition is reliable. The problem is that the

intuition does not define what counts as someone's property. Perhaps most goods are the property of those who currently claim, possess, and/or have effective control over them, or perhaps most goods are the property of others, or perhaps all property is held collectively or in common, or perhaps no property is held. Without a definition of what is to count as property, a right for one's property to be free from aggression is meaningless.

It might be thought that the injunction against aggression could itself define what is to count as any given person's property. It would do this by a kind of process of elimination. If we accept that aggression against persons and property is wrong, and that any state of affairs brought about through wrongful actions is illegitimate, then any property claims to goods acquired through non-rectified acts of aggression, either by oneself or by a previous claimant, must be illegitimate. However, if the goods one claims as one's property have not been acquired through non-rectified acts of aggression, then we have no such complaint, and we must consider his claims legitimate.

This argument is invalid. The fact that we have no complaint against the acquisition of a holding does not make the holder's property claims to that holding true. She can truthfully say, "I did no wrong in obtaining this object," but it does not follow that we must recognize her property claims over that object, and therefore that we must refrain from taking or using it, and that she may aggress against us if we do. We cannot infer from the fact that we must not respect certain property claims that we must respect all other property claims.

A negative argument such as those based on the wrongness of aggression, therefore, cannot be sufficient to determine which, if any, property claims we must respect. We must find a positive argument in addition or instead.

Self-Ownership and Labor Mixing

One of the most influential positive arguments describing how people can come to have property claims has been Locke's argument about self-ownership. It should be noted that while we earlier discussed Locke's writings as part of a religious framework, here we will be treating them in a secular moral context.

Locke argues,

Though the earth, and all inferior creatures, be common to all men, yet every man has a property in his own person: this no body has any right to but himself. The labour of his body, and the work of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property. It being by him removed from the common state nature hath placed it in, it hath by this labour something annexed to it, that excludes the common right of other men: for this labour being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, at least where there is enough, and as good, left in common for others.⁴⁶

In other words, everyone owns (has property in) his own person, and therefore owns his own labor, and so when he takes something unowned and works on it, thereby mixing his labor with it, he comes to own it as well. If successful, this would help us to define at least some of the objects that individuals can truthfully claim to be their property. We can render the argument as follows, fleshing it out somewhat to make it transparently valid:

1. Everyone owns his own person.
2. One's labor is a part or product of his person.
3. If one owns something, one owns everything that is a part or product of it.
4. Therefore, one owns one's labor. (from 1-3)
5. If one mixes something he owns with something unowned, he owns the resulting product.

⁴⁶ *Second Treatise*, 27.

6. Therefore, if one mixes his labor with something unowned, he owns the resulting product.
7. When one works on something, one mixes his labor with it.
8. Therefore, if one works on something unowned, he owns the resulting product.

Is it true that everyone owns his own person? One might assume we have already agreed to this in effect, since we have already agreed that one has a right for his person not to be aggressed against, and *L* makes no distinction between one's right for his person to be free from aggression and his right for his property to be free from aggression, so the right one enjoys over his person is practically identical to that he enjoys over his property. However, we might intuit that aggression against one's person is wrong for very different reasons, and with very different implications, than those for which we intuit that aggression against one's property is wrong. We might intuit that aggression against one's person is wrong, for instance, because such an action would cause that individual direct harm. However, item 3, which might appear natural with respect to one's property, would imply rights over one's person that have nothing to do with forbidding direct harm. For if I own my person as a whole, then it would be natural to say that I own every part and product of my person as well, just as most people would agree that if one owns a book, then one owns all its pages. But if I clipped my toenails, and you came along and took them, this would not physically injure me or endanger my life, so we would seem to have extended our intuitions beyond their proper scope.

Nevertheless, the intuition that our labor belongs to us and that we are entitled to its products is strongly and widely held. That we own our selves, and thus our labor may not follow from the personal right to nonaggression, but it is a compelling one. So again, at least for the sake of argument, we will agree to it.

Even with this concession, Locke's argument as it stands is surely unsound, because item 5 is surely false. There is no reason to think that ownership over a given object automatically spreads to objects to which it is mixed, like a virus or a cancer. It is more natural to assume that one either retains ownership over that part of the resulting product that he owned separately, or that he loses his ownership. As Nozick puts it, "If I own a can of tomato juice and spill it in the sea so that its molecules (made radioactive, so I can check this) mingle evenly throughout the sea, do I thereby come to own the sea, or have I foolishly dissipated my tomato juice?"⁴⁷

Later, however, Locke emphasizes that laboring on something vastly increases its value.

He writes,

Nor is it so strange, as perhaps before consideration it may appear, that the property of labour should be able to over-balance the community of land: for it is labour indeed that puts the difference of value on every thing; and let any one consider what the difference is between an acre of land planted with tobacco or sugar, sown with wheat or barley, and an acre of the same land lying in common, without any husbandry upon it, and he will find, that the improvement of labour makes the far greater part of the value. I think it will be but a very modest computation to say, that of the products of the earth useful to the life of man nine tenths are the effects of labour: nay, if we will rightly estimate things as they come to our use, and cast up the several expences about them, what in them is purely owing to nature, and what to labour, we will find, that in most of them ninety-nine hundredths are wholly to be put on the account of labour.⁴⁸

We could take this as signifying that we ought to think of the resulting mixture as effectively dominated by that which one owns, namely one's labor, for it is responsible for nine tenths or ninety-nine hundredths, or as he later suggests, over 999 thousandths, of the value of the product.⁴⁹ We would consider it absurd to claim that Nozick owns the sea now that he has spilled his tomato juice into it, but it would be absurdly nitpicking to claim that Nozick did not fully own a drink he made by mixing his tomato juice with a drop of seawater. Of course, the

⁴⁷ Nozick, p. 175.

⁴⁸ *Second Treatise*, 40.

⁴⁹ *Ibid.*, 43.

value of a product is not the same as the product itself, so this analogy is imperfect, but it seems a sensible criterion for judging ownership.

There are at least three problems with this argument.

First, even if we accept that in certain cases labor makes objects much more valuable than they were before, increasing their value, say, a hundredfold, it may not be correct to say that labor is responsible for ninety-nine percent of their value. This is because without the object, or an equivalent object (more on this in a moment), the labor itself would be valueless. As David Gauthier explains, even if two people make differing contributions to a product, each is equally responsible for the surplus that results from their cooperation as long as both of their contributions are necessary to produce the surplus.⁵⁰ The same principle applies here, so if the object used is indeed a prerequisite for the production of value, then we might only be able to say that labor is responsible for half the value. And it is a much bigger leap to say that one owns a mixture if one owns half its ingredients than to say that one owns a mixture if one owns ninety-nine percent of its ingredients.

Second, there are obvious cases in which it is doubtful that nearly all of the value of an object is attributable to the labor used on it. For example, precious metals and minerals, oil, and coal are highly valued even before they are improved by labor. Mixing one's labor with such objects could not, it seems, entitle one to property in these major areas of the economy.

Third, Locke's argument depends on the assumption that the objects with which one mixes his labor are not scarce, and this is not true even for his standard example of an appropriable object, land. As we said a moment ago, the labor on a given object is valueless without that object or an equivalent object. Locke would be correct to say that labor was responsible for ninety or ninety-nine percent of the value of an improved object if that particular

⁵⁰ David Gauthier, *Morals by Agreement* (New York: Oxford UP, 1986), pp. 152-4.

object were not necessary for the creation of the value because equivalent objects were readily available, if, as he puts it, “there is enough and as good left in common for others.” But land, and especially fertile land, is a scarce resource, so one cannot assume that enough and as good will be left in common for others. Even though it might have seemed effectively unlimited in Locke’s time, the fact that nearly all land has now been claimed belies that view. Because land is scarce, one cannot treat it merely as a medium through which one can create value, as one might treat the air used to carry the sound of one’s violin, in which case we have no problem saying that the music is entirely the creation of the violinist. No one would refuse to grant that the violinist’s labor was effectively responsible for the music on the grounds that she used air to create it that she did not previously own. The fact that she used this air is immaterial because in doing so, she did not deprive anyone else of air, so no one could have reason to complain that he has been wrongfully excluded from the possession or use of air. However, even if one adds value to land through labor, by taking control of it, one is still depriving others of the opportunity to do so. As a result, it is misleading for Locke to say that “he who appropriates land to himself by his labour, does not lessen, but increase the common stock of mankind.”⁵¹ The scarcity of land, like that of other unowned resources, implies that one cannot claim to be responsible for the objects one produces by mixing his labor with them.

Locke’s labor-mixing argument, then, can generate property claims only to products one has improved through labor whose previously unowned ingredients were not the predominant source of its value (as with precious metals, etc.) and that were not scarce (as with land). It should be noted that this does allow us to recognize claims to intellectual property. After all, an original idea has value independent of other ideas from which its creator may have drawn inspiration, and these other ideas are not scarce, since control over the new idea does not deprive

⁵¹ *Second Treatise*, 37.

anyone of the opportunity to use the older ones. And one cannot deny that intellectual property represents a significant element of the economy, particularly in the current information age. But the labor-mixing argument still leaves most claims to physical goods and wealth unsupported.

Desert

As we said above, the belief that we are entitled to what we create is strongly and widely held. One reason we might have this belief is because we intuit that those who produce something own their labor and reason that this labor is mixed into what they produce, so that their right to self-ownership expands to cover the products of their labor. But another reason could be that we intuit that people deserve what they produced as a just reward for their efforts. This leads us to another argument for how people can come to have property in external things, namely that people are entitled to what they deserve as a result of their efforts.

References to a desert-based argument are often found in libertarian and conservative rhetoric. In his 2009 speech to the Conservative Political Action Conference, for example, radio host Rush Limbaugh asserted that the inequality of wealth under capitalism, which we can take to be very roughly equivalent to a libertarian rights regime, is the product of an inequality of effort:

Admittedly over on the right side capitalism there will be unequal outcomes because we're all different. And some of us care more and have more passion and we know what we want to do and others are still struggling for it. Some people are just going to work harder than others. Okay. You get what you work for.⁵²

Likewise, conservative politicians have frequently denounced taxes that take away the “hard-earned” income of working Americans and give it to lazy welfare recipients.

⁵² Rush Limbaugh, “Rush’s First Televised Address to the Nation: Conservative Political Action Conference (CPAC) Speech,” *The Rush Limbaugh Show*, web, accessed 1 Mar. 2010, <http://www.rushlimbaugh.com/home/daily/site_030209/content/01125106.guest.html>.

Holdings, they might argue, ought to be distributed according to desert, and when they are done so, they ought to be recognized as the property of their holders. People deserve the holdings they acquire without unrectified acts of aggression. Therefore, item 2 of *L*, stating that a person's property consists of the holdings he claims that he has acquired without unrectified acts of aggression, is correct.

The first premise of this argument is controversial, but let's assume it for the sake of argument. What, then, are we to make of the claim that people deserve the holdings they acquire without unrectified acts of aggression?

This claim could be motivated by any of a number of causes, but one way of showing that people deserve these holdings might be through the following argument.

Apart from taking them forcefully from others, people acquire holdings either directly from the common stock or from other people through market exchanges.

People acquire holdings from the common stock by enclosing and laboring on the common stock à la Locke. If one puts in the effort of working on the land, one deserves to reap the rewards, so to speak. And desert, one may claim, generates property rights, so that which one acquires from the common stock ought to be considered one's property. As Locke writes, God gave the world "to the use of the industrious and rational, (and labour was to be his title to it;) not to the fancy or covetousness of the quarrelsome and contentious."⁵³

In the market, people exchange these holdings, either for other such holdings or for others' labor (or labor-power), and either directly or through the medium of money. In what follows, I will broadly be following Karl Marx's analysis of value, commodities, and exchange in *Capital*. We will assume for the sake of simplicity that these exchanges are carried out according to market prices, such that if the market price of one coat is twenty yards of linen or

⁵³ *Second Treatise*, 34.

two days' labor, then in any particular case a coat will be exchanged either for twenty yards of linen or for two days' labor, though market prices themselves can vary over time.

Those who trade in their holdings for other holdings or for labor deserve what they end up with. After all, if they deserved their initial holdings, they must deserve anything of equivalent value to their initial holdings. The market price sets the exchange-value both of the holdings and of those things for which they are exchanged. Since exchanges are done according to market prices, people who trade in their holdings will receive something of the same exchange-value. Likewise for those who exchange their labor. What people deserve for their labor is that labor's value, set by the market price, so what they receive in market exchanges is their just desert. If either type of exchange is mediated by money – for example, *A* sells an apple to *B* for a dollar, then *B* pays this dollar to *C* in return for a half-hour's labor – the same principles apply, for money, like all commodities, merely reflects the exchange-value of that for which it is exchanged.

Therefore, when people acquire holdings through non-aggressive means, they acquire what they deserve as a result of their efforts in laboring on holdings from the common stock or in laboring as part of an exchange.

There are at least three problems with this argument.

First, initial acquisition from the common stock and market exchanges are not the only possible non-aggressive sources of holdings. People can also acquire holdings by other means, including by receiving them as gifts, inheritance, or charity.⁵⁴ Since those who acquire these holdings do not have to work for them, they could not be said to deserve them as a reward for

⁵⁴ There are also some borderline cases, such as gambling and organ donation, where it is arguable whether those who acquire holdings labor in some sense for their acquisitions. When I gamble, or submit myself to an operation to remove my kidney in order to sell it, I may undergo an effort of some sort, but these activities could also be labor free, as when I play poker for fun or allow someone to cut off my hair in exchange for a fee.

their efforts, so item 2 of *L* may define some holdings as property even though they are undeserved.

Second, the argument makes two potentially contradictory claims about how desert is determined. On the one hand, it claims that the just reward for the labor that one devotes to improving holdings from the common stock is the product of that labor; on the other, it claims that the just reward for labor is its exchange-value as set by its market price.

We can see that these claims can be in conflict by imagining two scenarios, one in which I enclose a plot of land from the common stock and improve it, the second in which I own a plot of land and hire you to improve it. In the first scenario, I acquire all of the produce of the land; in the second, since manual labor is in plentiful supply, the market sets the price of labor low enough that you agree to work for only half of the land's produce. But surely the same labor merits the same reward.

Third, neither of these accounts of desert is plausible, as I will presently explain.

The just desert for labor on holdings enclosed from the common stock could not always be that which the labor produces, for again, the same labor might yield different produce depending on the holdings enclosed. One person might enclose the most fertile plot of land in the region, cultivate it, and produce bountiful and profitable tobacco crops, while others might be left to grow meager beets on the infertile land remaining, despite using the same amount of labor. In addition, one might happen to enclose an oil reserve and get rich by using only the most minimal labor to extract the oil.

We cannot identify the just desert for labor with its market price, either. Labor generates desert, our intuitions tell us, as a result of the effort put into it, but market prices are not necessarily correlated with effort. Instead, they are determined by the levels of supply and

demand that happen to be present in the economy in which a laborer participates, and she can rarely materially affect these levels. Kobe Bryant makes far more money as a result of living in a country where basketball is popular than he would if he were stuck in a country where it was not, even if he trained just as hard.

Likewise, just as market prices are not necessarily correlated with the effort involved in the labor being exchanged, neither are they correlated with the amount of effort any given individual had to exert in order to be able to perform that labor. A child who is not provided with an education may be unable to train to become a highly paid professional, while a child who is provided with a top-class education may do so, even though they exert the same amount of effort.

The definition of property set out in *L*, then, does not guarantee that holdings acquired without aggression will be deserved. The defender of the desert-based argument might reply, however, that although it is *possible* for holdings acquired without aggression to be undeserved, in practice this rarely happens, so *L* is still a quite accurate moral guide to the real world. As Limbaugh also said, “But, seriously, the people who have achieved great things, most of it is not inherited. Most wealth in this country is the result of entrepreneurial, just plain old hard work.” In order to claim that holdings acquired without aggression do in practice track aggression, then, we must look to empirical evidence.

If the wealth acquired under the American system roughly approximates a libertarian rights regime, as Limbaugh might be implying, and inequality of wealth is mainly a product of differing effort, we should expect social mobility – that is, the degree to which the children of poor parents become rich and vice versa – to be consistently high. After all, if we do not believe that effort is determined by genetics or upbringing, then we should expect it to be distributed

randomly in each generation rather than correlated with social class, and for the children of rich people therefore to be just as likely to acquire any given amount of wealth as adults as the children of poor people. And if we believed effort *were* determined by genetics or upbringing, then it would be difficult for us to say that people deserved their wealth as a result of their efforts to attain it, since they were not really responsible for their efforts.

However, this is not the case. As *The Economist* reported in 2004, a study comparing the incomes of father-and-son pairs from 1979 to 1998 found that nearly seventy percent of sons in 1998 were at the same social level as their fathers were in 1979.⁵⁵ In contrast, the assumption that income is distributed according to randomly distributed effort would lead us to expect only fifty percent would be. The study also found that just ten percent of men born in the bottom quarter would reach the top quarter, whereas we would expect twenty-five percent to do so. This leads us to conclude that the American system does not distribute income according to desert.

One might object that the American system does not in fact approximate a libertarian rights regime, and so we cannot use it as the basis of an empirical claim about whether the property defined in *L* would in practice track desert. But the ways in which the American system differs from a libertarian rights regime are mostly ways that we would expect to *strengthen* the link between desert and property. For example, we would expect taxes on inheritance and gifts to reduce the amount of wealth acquired in ways other than initial acquisition from the common stock and market exchanges, and public funding for education to help to equalize opportunity so that hardworking poor children can grow up to become highly paid professionals just like hardworking rich children. Of course, libertarians and conservatives have criticized some government programs for inadvertently exacerbating social stratification, as they criticized

⁵⁵ “Ever higher society, ever harder to ascend,” *The Economist*, 29 Dec. 2004. The fifty percent figure in the next sentence is mine.

welfare prior to its 1996 reform for creating a culture of dependency. Still, common sense suggests that they should have the burden of proof in showing that on balance, government programs inconsistent with libertarian rights have reduced rather than increased social mobility, and thus broken the link between desert and property, in the United States. I am not aware that convincing evidence to this effect has yet been offered, though this could change.

As a final alternative, the defender of the desert-based argument could say, fine, the moral principle, “Holdings ought to be distributed according to desert,” cannot justify *L*. But one need not claim that *all* holdings ought to be distributed according to desert. Instead, one could propose the following claim: “If a person has acquired a holding without aggression, and deserves this holding, then it is his property.” This would justify the property claims to *some* of the holdings defined as property in *L* without casting doubt on others, since it does not insist that only desert can justify property. Along with the labor-mixing argument, which might justify certain types of property such as intellectual property, this limited desert-based argument could help to justify the property claims endorsed by *L* piece by piece rather than in one fell swoop.

This argument does not appear inconsistent, and since there are clear cases in which people do deserve their holdings, it would seem to be able to justify some property claims consistent with *L*. However, the restrained moral claim it makes does seem intuitively weak. If one accepts desert as a relevant consideration for property, why should it make a difference whether someone happens to have acquired a holding he deserves or not? Desert does not seem amenable to playing such a subordinate role. If we are to respect the property claims of some on the grounds that they deserve what they have acquired, we cannot say to others that although they also deserve holdings, the fact that they have not, or have not been able to, acquire them

means that we need not respect their claims. Either property claims are justified by desert or they are not, and if they are, then we cannot accept *L*.

Thus far, we have been considering desert as a product of one's efforts. But some philosophers have proposed an alternative view of desert as a product of one's "contributions."⁵⁶ Locke's emphasis on the fact that "he who appropriates land to himself by his labour, does not lessen, but increase the common stock of mankind" might be related to this view.⁵⁷ According to the view, people deserve a fair reward from society for what they have contributed to society. One could therefore argue that some or all of *L*'s property claims are justified on the grounds that they represent a fair reward for the contributions they have made to society; society in some sense owes them, and it can repay them by respecting their property claims. For instance, Stephen Kershnar argues that capitalists generally deserve their profits because their economic activities generally make society better off. Thus, one could claim, since market exchanges generally benefit society, participants in those exchanges should be given rights over the goods they acquire from them as a reward for their contribution. Even if we accept the contribution view of desert, however, this argument suffers from two major weaknesses.

First, while it is certainly arguable that market exchanges generally benefit society for various economic reasons, these do not apply to holdings acquired outside market exchanges, such as by gifts or inheritance, which seem more exclusively to benefit the recipient. So, like the effort view, the contribution view could only justify some of the property claims set out in *L*.

Second, while one could demonstrate that society as a whole generally benefits from economic activities, it would be ludicrous to claim that any given market exchange benefited

⁵⁶ Stephen Kershnar defends such a view and argues that it supports capitalism in "Giving Capitalists Their Due," *Economics and Philosophy* 21 (2005), pp. 65-87. David Alm criticizes it in "Desert and Aggregation," *The Journal of Political Philosophy* 18:2 (2010), pp. 156-77.

⁵⁷ *Second Treatise*, 37.

every member of society. As a result, many, if not most, individuals, not having received any benefits, would not owe the traders anything, and in particular would not be obliged to respect their property claims.

Liberty

Perhaps libertarian rights are justified on the grounds that we ought not to interfere with individuals' liberty. One could argue this in a number of ways, many of which Will Kymlicka has analyzed.⁵⁸ Libertarians are traditionally seen as advocates of negative liberty, which the *Stanford Encyclopedia of Philosophy* defines as “the absence of obstacles, barriers or constraints,” especially obstacles, barriers, or constraints imposed by force by other persons.⁵⁹ A commitment to negative liberty might plausibly help to support the right to nonaggression, for aggressors often impose their control over victims, the most obvious example being slavery. However, negative liberty alone could not justify property rights, for you need not impose obstacles, barriers, or constraints on me by force in order to take away my holdings. Simply being without the holdings I used to have does not make me unfree in the negative sense.

As a result, to find a liberty-based justification for property rights, we have to turn to positive liberty, which the *Stanford Encyclopedia of Philosophy* defines as “the possibility of acting – or the fact of acting – in such a way as to take control of one's life and realize one's fundamental purposes.” According to one such argument, which is inspired in large part by John T. Sanders⁶⁰, adult individuals ought to be allowed to lead their lives and realize their

⁵⁸ Will Kymlicka, *Contemporary Political Philosophy: An Introduction* (Oxford: Oxford UP, 2002), pp. 138-53.

⁵⁹ Ian Carter, “Positive and Negative Liberty,” *Stanford Encyclopedia of Philosophy*, web, 8 Oct. 2007, <<http://plato.stanford.edu/entries/liberty-positive-negative/>>.

⁶⁰ See John T. Sanders, “Projects and Property,” in *Robert Nozick*, ed. David Schmidtz (Cambridge, UK: Cambridge UP, 2002), pp. 34-58. Sanders credits Loren Lomasky as having first developed this argument in detail in Lomasky's *Persons, Rights, and the Moral Community* (Oxford: Oxford UP, 1987).

fundamental purposes insofar as they are able to do so, as long as they do not violate the rights of others. They are rational and separate creatures, and ought to be treated as such. They and they alone are responsible for their own lives; no one else may run their lives for them and they have no enforceable right to demand the active aid of others. But others must not prevent them from pursuing a meaningfully free life. Ayn Rand seems to share this view of the importance of taking control of one's life and of realizing one's fundamental purposes when she writes that "[I]f life is a process of self-sustaining and self-generated action; the right to life means the right to engage in self-sustaining and self-generated action."⁶¹

As a result, using force against someone is not merely wrong in and of itself, but it is also wrong in many cases, especially serious injury and killing, because it deprives the victim of his ability to lead his own life and realize his fundamental purposes. Threatening force against someone in order to compel her behavior is also wrong for the same reason. Thus, one's right for his body to be free from aggression gains still further justification.

People must be accorded property claims and associated rights because people need property to be able to have control over their lives. We are material beings living in and depending upon a material world, and we must be able to gain exclusive control over material objects in order to lead meaningfully free lives. For one thing, if others were permitted to take away any and all holdings from us, including bare necessities, we could be prevented from surviving at all, much less taking control of our lives and realizing our fundamental purposes.

Private property also enables us to shape our lives in a number of ways. Unlike non-exclusive use-rights, the right to private property affords the security of expectation necessary to undertake long-term projects, and unlike collective property rights, the right to private property enables the individual to acquire his own goods and do with them as he pleases without

⁶¹ Ayn Rand, *The Virtue of Selfishness* (New York: New American Library, 1964), p. 93.

depending on the approval of his countrymen. Whether I wish to build a house or start a plantation by enclosing a plot from the common stock, start a business or a humanitarian organization, or save up my earnings to buy the goods and services that fit my liking from the market, I need to be able to have exclusive control over holdings lest others seize or destroy them and ruin the projects in which they play a vital role. Thus, this argument proposes a principle of initial acquisition similar to that of Locke, in which the property claims of individuals over holdings they enclose from the common stock are respected. In addition, it proposes principles of transfer similar to that of Nozick, in which the property claims of individuals over holdings they have acquired by non-aggressive transfer are respected. These are proposed on the grounds that if an individual attempts to acquire holdings without violating others' rights, others should respect his claims to those holdings, since he should be allowed to pursue the life plans that suit him and it is to be presumed that such property claims may be necessary to those life plans.

To be clear, this argument does not claim that positive liberty is a good that everyone ought to actively promote or maximize, for this would mean that one would be permitted, indeed required, to redistribute holdings from the rich to the poor if that would marginally increase the poor's ability to take control over their own lives and realize their fundamental purposes more than it would decrease that of the rich. Instead, individuals are simply to respect the independent moral status of others by refraining from interfering in their control over their own lives, whether by aggressing against them or by seizing or destroying holdings they have begun to incorporate in their projects.

There is one important problem with this argument: If people are required to respect property claims because of the importance of property to individuals' positive liberty, then we have every reason to believe that people ought to respect property claims whenever they would

most conduce to the claimants' positive liberty. But this could justify a set of property claims different from those backed by item 2 of *L*.

To illustrate, suppose Rich has inherited seventeen plantations and several billion dollars from his grandfather, who spent his life cultivating them. Let's assume that his grandfather's property claims over the land were legitimate. Rich spends all of his time cruising the South China Sea on one of his yachts. He has no taste for farming, no plans to visit the plantations or even to hire farmers to cultivate them, but retains his claim over them. Meanwhile, Poor lives next to one of the plantations. He works six days a week at the only business within a thousand miles (and there is no common land left in this area), a factory that pays him just enough to survive. Every Sunday, his day off, he walks around Rich's plantation, dreaming of the radishes he could grow there. He spends his nights analyzing market data and drawing up business plans, imagining how he could use the land to support a family, become a successful farmer, and develop succulent new breeds of radishes. The respective situations and lifestyles of Rich and Poor are common knowledge. And one Sunday, Poor decides to enter the plantation and start planting seeds, and declares that he now claims property in the land.

According to *L*, Poor has violated Rich's property right. Yet it seems obvious that having exclusive control over the plantation plays next to no role in Rich's ability to live as he chooses, to shape his own life and undertake long-term projects, whereas it would play a crucial role in that of Poor. There is *prima facie* evidence that Poor's claim and not Rich's ought to be respected. And since Poor has not acquired the land in a manner sanctioned by *L* (he has aggressively seized a holding that was legitimately transferred to Rich by someone who rightfully acquired it from the common stock), the principle that property claims ought to be

respected because of their importance to positive liberty does not justify *L*, but instead is in conflict with it.

Of course, this is an exaggerated example, and it could be objected that such cases are so rare that the principle may still justify almost all of the property claims supported by *L*. However, it is not too much of a stretch to argue that, because of the declining marginal utility of wealth, a given amount of money would quite often increase a pauper's range of options and thus his positive liberty far more than it would decrease that of a rich person. Therefore, if each poor person simply claimed a sum of money held by a rich person that was insignificant to the latter but would be very significant to the former, the principle would support a large number of these claims and thus significantly conflict with *L*.

Appropriation and Transfer

One issue that has come up in our discussion is that of whether a proposed moral principle must directly justify all property claims under *L* in order to be successful, or whether it can justify only some of them, and leave the rest of the work to be completed by other principles in piecemeal fashion. We cast some doubt on whether the desert and living-as-one-chooses arguments could be used in this way, since accepting plausible desert and living-as-one-chooses principles commits one to reject many property claims supported by *L*, but suggested that it might be kosher to do so with the labor-mixing argument.

Let us suppose, contrary to our analysis, that labor-mixing, desert, and living-as-one-chooses arguments could all be used to justify particular types of property claims without ruling out others. Taking them together would not seem sufficient to justify all of the property claims set out by *L*. The inherited, unused fifth mansion of a rich kid would be defined as his property

under L , and aggression against it would be forbidden, yet no one could reasonably claim that he had made it his own by mixing his labor with it, that he deserved it, or that respecting his freedom to live as he chooses required respecting his claims to it.

One could claim, however, that we do not need these principles to *directly* justify all of the property claims under L . Instead, we simply need to accept that *at one time or another*, all or almost all of the holdings defined as property under L were justified as someone's property, and that they reached their current holders through an unbroken chain of non-aggressive transfer. When these holdings were non-aggressively transferred, their status as property, and the concomitant right of their holder for them to be free of aggression, went along with them, invalidated neither by wrongdoing nor by the holder's abandoning their property claims and returning the holding to the common stock. Therefore, they are the property of their current holders, and we must respect their rights over them.

On its face, this claim seems entirely reasonable. If something is mine, and I give it to you, then it is yours. After all, no wrong is done in a transfer like this; I am at liberty as the legitimate owner of property to alienate it, and you are at liberty to take it as long as I consent to your doing so. This is true not only on L but on most reasonable theories of justice, which would prohibit consensual transfers only in special cases like that of giving a gun to an unstable friend. The legitimacy of your holding is guaranteed by the legitimacy of my holding and of its transfer to you.

Nozick makes a similar point in his famous Wilt Chamberlain example, in which he supposes that a given distribution of property D_1 is just, such that current holders are entitled to their holdings by whatever principle of justice you wish:

Now suppose that Wilt Chamberlain is greatly in demand by basketball teams, being a great gate attraction... He signs the following sort of contract with a team: In each home game, twenty-five cents from the price of each ticket of admission goes to him... The

season starts, and people cheerfully attend his team's games; they buy their tickets, each time dropping a separate twenty-five cents of their admission price into a special box with Chamberlain's name on it... Let us suppose that in one season one million persons attend his home games, and Wilt Chamberlain winds up with \$250,000, a much larger sum than the average income and larger even than anyone else has. Is he entitled to this income? Is this new distribution D_2 unjust? If so, why? ... If D_1 was a just distribution, and people voluntarily moved from it to D_2 , transferring part of their shares they were given under D_1 (what was it for if not to do something with?), isn't D_2 also just?⁶²

Now, we might take issue with Nozick's claim that D_2 is necessarily just and with his formula, "Whatever arises from a just situation by just steps is itself just," as G. A. Cohen does, arguing that for this to be true, "just steps" must be not merely free of injustice but "justice-preserving."⁶³ But even if we accept that D_2 is just, we need not accept that Chamberlain's wealth is his rightful property. The problem with Nozick's argument is the same problem we faced earlier when addressing the claim that the fact that a holding was not acquired aggressively by itself justifies a property claim over that holding: the fact that we have no complaint against someone's holding a particular object does not require us to recognize his property claims over it and to refrain from aggressing against the object, and does not entitle him to aggress against us if we do. We need a positive reason to say that something is one's property and that he has rights over it, rather than simply the lack of an objection to his possessing it.

All right, one might say, the idea that property and its associated rights transfer doesn't follow from the fact that the transfer of holdings is unobjectionable. Yet we still know that property and its rights do transfer; the fact that something you own becomes something I own when you give it to me is something we know intuitively.

Suppose Timmy is the rightful owner of a toy truck, having earned it by doing his chores. Tommy is jealous and says he'll trade him some marbles for it. Timmy agrees and gives his truck to Tommy. Tommy plays with the truck for a while, then puts it down. D.W. comes over,

⁶² Nozick, pp. 160-1.

⁶³ G. A. Cohen, *Self-Ownership, Freedom, and Equality* (Cambridge, UK: Cambridge UP, 1995), pp. 19-66.

sees the truck, and takes it. “Hey, that’s mine!” Tommy complains. “Who says?” asks D.W. “It was Timmy’s truck, but he gave it to me.” D.W. could reply “So what?”, but if she’s reasonable (and not interested in philosophical questions about property), she’ll probably think this is a satisfactory answer and leave the truck alone. So it would seem we do have an intuitive notion of property transfer.

Fair enough. And this might well be a primitive moral fact, in which case we can accept it as is, and can use it to establish the property provisions of *L* as long as we can show that all or almost all holdings acquired through an unbroken chain of nonaggressive transfer were at one time justified to be someone’s property by one of the piecemeal arguments.

But reasonable people, I think, may not accept this intuition, and ask why they must respect the property claims over a holding of someone who has not by his own actions or other characteristics generated such claims merely because someone who did own the holding gave it to him.

One could answer such people by arguing that we must respect the claims of the recipient because to do so is required by the rights of the donor. This assertion could take two forms.

First, one could assert that the power to transfer ownership over a holding to whom one chooses is part and parcel of ownership, just like the ability to use and possess the holding free from aggression. Of course an owner must have the liberty to alienate, or give away, her property, surrendering her own claims to it, but this is not the same as making it the property of another. If one imagines the possession of property rights as a kind of immaterial substance or property (so to speak) that one carries in oneself or one’s holdings, it is natural to think of giving the property rights one has over one’s holdings to others, and of them giving it to still others, just as easily as one can alienate the holdings themselves. However, property rights are not, or not

only, something one possesses internally to oneself or one's holdings, but rather also a moral relation between oneself and other people.⁶⁴ And while the fact that I mixed my labor with, or earned, an object might make it so that others must not use it or take it from me as long as I claim it, it seems less plausible that this could make it so that others must not use or take it from whomever I choose as long as he claims it, and from whomever he chooses, ad infinitum. Labor mixing, desert, or the ability to live as one chooses might support claims I could make against others not to interfere with my own life, but how could they possibly be strong enough to give me the power to alter the moral relations between people I have never met or heard of, and for centuries after my death?

Second, one could argue that in order for the initial owner to enjoy the full value of his property, transferees must be granted rights over the holding. This is because owners must be able to enjoy not only the use-value of their property, but also its exchange-value, and in order to make use of its exchange-value, they must be able to exchange it. But no one would agree to an exchange if one did not expect to enjoy rights over the holding one would receive; people enter into exchanges to enrich themselves, not the common stock. So the people to whom owners transfer their holdings must at least enjoy the right to nonaggression over the holdings. That is not enough, though, for these subsequent holders would not be willing to pay the initial holders the full exchange-value for the holdings unless they too were able to exchange them later, at least for long-lasting holdings like land, which people often buy under the assumption that they will be able to resell it later. Therefore, those to whom they transfer the holdings must also enjoy the right to nonaggression over the holdings, and those to whom *they* transfer the holdings, etc., ultimately justifying the property claims of all subsequent holders by a kind of bootstrapping.

⁶⁴ Marx says similar things about the tendency to confuse relations among people to relations between people and objects that occurs in commodity fetishism.

However, this argument faces at least three problems.

First, it implies that people have a positive duty to enable property owners to enjoy both the use-value and exchange-value of their property by respecting the claims of transferees rather than just a negative duty not to aggress against the initial owners' property, and this is both unreasonable and in conflict with the spirit if not the letter of *L*. As Jeremy Waldron writes,

If [the transferor] is not in a position to pass onto others an entitlement at least as strong as his own, then his ways of dealing with the object and the advantages he can derive from it will be limited. But distressing though this is from his point of view, it is hardly compelling for the rest of us. We do not assume that when a person acquires an object he should acquire an absolutely unlimited right to derive whatever advantage could conceivably be derived from dealing with that object.⁶⁵

If property owners are supposed to have a positive right to the full enjoyment of their property that is enforceable by aggression like the rest of their rights on *L*, or that trumps other rights, then this would conflict with *L*. For this would permit property owners to aggress against people and/or their holdings in order to better enjoy their own property, either by way of enforcing their right against those who failed to do their duty to him (as one would do in the case of a breach of contract) or because the third parties' right to nonaggression and/or property claims had been limited or superseded by the positive right. Either way, the description of rights defined in *L* would fail to hold. Alternatively, property owners might not have a positive right to enjoy their property, but nevertheless third parties might still have a positive duty to enable them to enjoy it (rights imply duties, but duties need not imply rights). This would not conflict with *L*, for the third parties could, for instance, simultaneously have rights over their property and the duty to surrender it to another property owner. Still, one wonders whether the principles of labor-mixing, desert, or respect for the ability to live as one chooses could require third parties not only not to interfere with one's property rights but also to actively assist in one's enjoyment of them.

⁶⁵ Waldron, *The Right to Private Property* (Oxford: Clarendon, 1988), pp. 261-2.

Second, this argument only applies to exchanges, and therefore fails to justify the property rights of holders who acquired their holdings through other forms of non-aggressive transfer. After all, one can only enjoy a holding's exchange-value by exchanging it. Most notably, the argument does not cover inheritance.

Third, owners could still enjoy much of the exchange-value of their property by licensing use-rights without a principle of property transfer, so the principle is not called for. That is, if *A* is an owner and *B* wants to use *A*'s holding without fear of aggression, *A* and *B* could sign a contract in which *A* consents to *B*'s use of his holding (perhaps with restrictions) without *A* having to forfeit his property claim over the holding. The contract could even allow *B* to effectively resell his use-rights if in it *A* consented to the use of the holding by anyone *B* chose, stipulating that *A* would then revoke his consent to *B*'s use of the holding; *A* could also consent to the use of the holding by anyone this new user chose, etc. And by the way, this mechanism could also enable owners to license use-rights even in transfers other than exchanges, for it does not require the owner to enjoy his property's exchange-value.

It might seem that this contract-based bootstrapping simply arrives at the original argument's conclusion by different means, but there are crucial differences. For one thing, in such a scenario, aggression against the holding would still be prohibited, but as a violation of the rights of *A*, not of *B* or any subsequent user; thus the argument justifies no real property rights beyond those of initial owners. This might seem a technical point, but it has real practical consequences, the most important of which being that the property rights most likely die with the owner. In *L*, after all, rights are held by persons, not by their bodies (though they may be held by persons *over* their bodies). And when one dies, one ceases to be a person, a conscious, rational agent. Even if one does not define "person" in this way, it is still clear that rights must be

restricted to the living: it could not be a wrongful use of force to bury the body of someone who had not left a will consenting to the burial, and we could not be required to leave his house and other possessions as is until the end of time. Therefore, when *A* died, no one could claim ownership of *A*'s former property, so property claims could only be justified by this mechanism during the lifetime of someone whose claims over it were justified directly by one of the piecemeal arguments. The mechanism would not allow current property claims to be justified on the basis of some initial acquisition lost to the mists of history; nor would it allow inheritance.

Thus, moral arguments do not succeed in justifying *L*. Those that appeal to moral intuitions must explain why we should believe that these intuitions provide us with access to moral truth. Appeals to direct intuitions about *L* are not plausible because they are held by so few. While the principle that aggression is wrong is widely shared and might thus justify *L*'s injunctions against aggression against persons, it cannot by itself justify *L*'s property rights. The argument based on self-ownership and labor mixing does not succeed, for most purported initial acquisitions cannot plausibly be said to produce mixtures dominated by the labor of the would-be appropriator. Neither does the argument from desert, for the property claims sanctioned by *L* include many that are not deserved. Likewise for the principle that we ought to respect individual rights on the grounds that they enable their holders to live as they choose, for this would direct us to respect many property claims that are not sanctioned by *L*. Finally, even if any of these arguments were to succeed in justifying certain of *L*'s property claims without invalidating others, they could not be bootstrapped into justifying the rest of them using the principle of transfer, for the mere fact that a holding that was *A*'s rightful property was non-

aggressively transferred to *B* gives us no reason to recognize *B*'s claims to it. The evidence from our moral intuitions does not give us sufficient reason to accept *L*.

Chapter 4

CONCLUSION

If my method and analysis have been for the most part sound, then I have shown that the claim that persons have a certain set of rights, specifying among other things that no one may use force or coercion against them or against any holdings they have taken from the common stock or received in transfer, is not supported by the major arguments that have been marshaled in its defense. Some arguments have shown elements of this set of rights, including the right against bodily aggression and special types of property claims, to be plausible. But no argument or combination of arguments has justified libertarian rights as a whole, and in particular, no argument or arguments have justified the broad and absolute protection of property claims that represent a primary point of contention between libertarianism and other liberal theories, including liberal equality and left-libertarianism.

Of course, as I noted in the introduction, there are an infinite number of conceivable arguments in support of libertarian rights, and no critical survey of this kind could assess them all. So we cannot say for certain that no argument supports the thesis of libertarian rights. We have, however, looked at the most popular and influential arguments for the thesis, and these arguments, I contend, fail. Therefore, unless and until a successful alternative argument is

presented, we must conclude that we do not have good reason to think that persons possess libertarian rights.

It is important to state clearly what the failure of these arguments to support the claim of libertarian rights does and does not imply. It is true that a person committed to libertarianism as a political philosophy because of her belief in libertarian rights (and I would speculate that this describes a great many, if not most, libertarians) should, if she is convinced by my analysis, reconsider her allegiances. But the questions of whether one has reason to believe that persons possess libertarian rights and of whether one has reason to support libertarianism are not in fact equivalent. This is so for three reasons.

First, there are other arguments in support of a libertarian regime. These seek to establish legal rights along the lines of the rights described in *L*, but do not claim that these are also moral rights. The most prominent of these are arguments of a utilitarian bent, such as those contained in F.A. Hayek's *The Road to Serfdom* and Milton Friedman's *Capitalism and Freedom*, stressing the purported efficiency of capitalism as opposed to alternative regimes in maximizing welfare or some other purported good or mix of goods. Likewise, moral skeptics or moral nihilists, who deny that we can know objective moral truths or that such truths exist, might reject utilitarianism as a moral theory, but argue that a libertarian regime is the only sensible regime for self-interested rational calculators seeking to organize society so as to promote mutual advantage. Jan Narveson takes this line in *The Libertarian Idea*, building on the moral nihilist framework set up by David Gauthier in *Morals by Agreement*. In addition, one could simply favor a libertarian regime, say, for self-interested reasons, even without accepting moral skepticism, moral nihilism, or Gauthier's framework, as long as one did not have conflicting moral beliefs.

Second, even if we had found strong evidence for libertarian rights, this would not necessarily have meant that everyone had reason to support a libertarian regime. It might be argued that although individuals are born with a certain set of moral rights, they tacitly consent to surrender some or all of these rights by choosing to live in a society under the rule of a state. In the *Crito*, Socrates advanced an early form of such arguments when he claimed that by declining to emigrate, he had effectively agreed to live under Athens's rules. Thus, a regime that aggressed against its citizens or took away their non-aggressively acquired holdings could be justified so long as its citizens consented to its rule. To accept this argument, it should be noted, one would have to disagree with Thomas Jefferson's claim that individual rights are "inalienable."

Third, one could have reason to support libertarianism as a political movement even if one did not favor a libertarian regime as an end-state. Politics is usually concerned with incremental changes rather than wholesale attempts to institute ideal regimes. As a result, one could deny libertarian rights, and even favor an alternative moral theory such as liberal equality, but find that in present national circumstances, proposals that would reduce the use of force or coercion against individuals or the taxation of their incomes would best serve his preferences and/or values.

It is important, then, to distinguish libertarian rights from libertarianism, and to recognize that the failure of the major arguments to justify libertarian rights does not in itself show that there is no reason to support libertarianism. Nevertheless, if my analysis has been correct, then a crucial purported reason to support libertarian policies, a claim that has exercised enormous influence over politics and political philosophy, is, as far as we know, baseless. And when we support taxes to provide for the common good and to improve the welfare and increase the

opportunities of the poor, we have one fewer reason to fear that we are acting as tyrants, slave masters, or thieves.

BIBLIOGRAPHY

- Alm, David. "Desert and Aggregation." *The Journal of Political Philosophy* 18:2 (2010), pp. 156-77.
- Becker, Lawrence C. *Property Rights: Philosophic Foundations*. London: Routledge & Kegan Paul, 1977.
- Berlin, Isaiah. "Two Concepts of Liberty." *Philosophy: basic readings*, ed. Nigel Warburton. London: Routledge, 2005.
- Boaz, David. *Libertarianism: A Primer*. New York: Free Press, 1997.
- Boaz, David. *The Libertarian Reader*. New York: Free Press, 1997.
- Carter, Ian. "Positive and Negative Liberty." *Stanford Encyclopedia of Philosophy*. Web. 8 Oct. 2007. <<http://plato.stanford.edu/entries/liberty-positive-negative/>>.
- Cohen, G. A. *Self-Ownership, Freedom, and Equality*. Cambridge, UK: Cambridge UP, 1995.
- Dunn, John. *The Political Thought of John Locke*. Cambridge, UK: Cambridge UP, 1969.
- Ebrey, Patricia Buckley. *The Cambridge Illustrated History of China*. Cambridge, UK: Cambridge UP, 1996.
- "Ever higher society, ever harder to ascend." *The Economist*. 29 Dec. 2004.
- Feser, Edward. "There Is No Such Thing as an Unjust Initial Acquisition." In *Natural Rights Liberalism from Locke to Nozick*, ed. Ellen Frankel Paul, Fred D. Miller, Jr., and Jeffrey Paul. Cambridge, UK: Cambridge UP, 2005.
- Friedman, Milton. *Capitalism and Freedom*. Chicago: University of Chicago Press, 1962.
- Gauthier, David. *Morals by Agreement*. Oxford: Clarendon Press, 1985.

- Hamowy, Ronald, ed. *The Encyclopedia of Libertarianism*. SAGE Publications, 2008.
- Hayek, F. A. *The Road to Serfdom*. Chicago: University of Chicago Press, 1944.
- Joyce, Richard. *The Evolution of Morality*. Cambridge, MA: MIT, 2006.
- Joyce, Richard. *The Myth of Morality*. Cambridge, UK and New York: Cambridge UP, 2001.
- Keeter, Scott and Gregory A. Smith. "In Search of Ideologues in America." *Pew Research Center Publications*. Web. 11 Apr. 2006. <<http://pewresearch.org/pubs/17/in-search-of-ideologues-in-america>>.
- Kershnar, Stephen. "Giving Capitalists Their Due." *Economics and Philosophy* 21 (2005), pp. 65-87.
- Kirk, David L. "After the Bell Curve." *The New York Times Magazine* 23 Jul. 2006. Web. 6 Nov. 2009. <http://www.nytimes.com/2006/07/23/magazine/23wwln_idealab.html>.
- Knowles, Dudley. *Political Philosophy*. Montreal and Kingston: McGill-Queen's UP, 2001.
- Kymlicka, Will. *Contemporary Political Philosophy: An Introduction*. Oxford: Oxford UP, 2002.
- Lacey, A. R. *Robert Nozick*. Princeton and Oxford: Princeton UP, 2001.
- Limbaugh, Rush. "Rush's First Televised Address to the Nation: Conservative Political Action Conference (CPAC) Speech." *The Rush Limbaugh Show*. Web. Accessed 1 Mar. 2010. <http://www.rushlimbaugh.com/home/daily/site_030209/content/01125106.guest.html>.
- Locke, John. *A Letter Concerning Toleration*. Ed. James H. Tully. Indianapolis: Hackett Pub. Co., 1983.
- Locke, John. *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge UP, 1966).
- Lomasky, Loren E. "Libertarianism as if (the Other 99 Percent) of People Mattered." In *Problems of Market Liberalism*, ed. Ellen Franken Paul, Fred D. Miller, Jr., and Jeffrey Paul. Cambridge, UK: Cambridge UP, 1998.
- Lomasky, Loren. *Persons, Rights, and the Moral Community*. Oxford: Oxford UP, 1987.
- Mack, Eric. "How to Derive Libertarian Rights." In *Reading Nozick*, ed. Jeffrey Paul. Totowa,

- NJ: Rowman and Littlefield, 1981.
- Mack, Eric. "Locke's Arguments for Natural Rights." *The Southwestern Journal of Philosophy* 11, 1980. 51-60.
- Meacham, Jon. *American Gospel: God, the Founding Fathers, and the Making of a Nation*. New York: Random House Trade Paperbacks, 2007.
- Narveson, Jan. *The Libertarian Idea*. Philadelphia: Temple UP, 1988.
- Nozick, Robert. *Anarchy, State, and Utopia*. New York: Basic Books, 1974.
- Plato. *The Republic*. Trans. Desmond Lee. 2nd ed. New York: Penguin Classics, 2007.
- Rand, Ayn. *The Virtue of Selfishness*. New York: New American Library, 1964.
- Salmon, Jacqueline L. "Most Americans Believe in Higher Power, Poll Finds." *The Washington Post* 24 June 2008: A02. Web. Accessed 1 Nov. 2009. <<http://www.washingtonpost.com/wp-dyn/content/story/2008/06/23/ST2008062300818.html>>.
- Sanders, John T. "Projects and Property." In *Robert Nozick*, ed. David Schmidtz. Cambridge, UK: Cambridge UP, 2002. Pp. 34-58.
- Simmons, A. John. *A Lockean Theory of Rights*. Princeton, N.J: Princeton UP, 1992.
- Sreenivasan, Gopal. *The Limits of Lockean Rights in Property*. New York and Oxford: Oxford UP, 1995.
- Street, Sharon. "A Darwinian Dilemma for Realist Theories of Value." *Philosophical Studies* (2006) 127: pp. 109-66.
- Thompson, Fred. "Consistent Conservative (60 sec)." *YouTube - Broadcast Yourself*. Web. Accessed 1 Nov. 2009. <<http://www.youtube.com/watch?v=1AIyfSZht8M>>.
- Tully, James. *A Discourse on Property: John Locke and his Adversaries*. Cambridge: Cambridge UP, 1980.
- Waldron, Jeremy. *God, Locke, and Equality*. Cambridge and New York: Cambridge UP, 2002.
- Waldron, Jeremy. *The Right to Private Property*. Oxford: Clarendon, Oxford UP, 1988.
- Wright, Robert. *The Moral Animal: The New Science of Evolutionary Psychology*. New York: Pantheon Books, 1994.
- Wright, Robert and Will Wilkinson. "Libertarian Musk Edition." *Bloggingheads.tv*. Web. 24

Oct. 2007. <<http://bloggingheads.tv/diavlogs/400>>.