

Liberal Egalitarian Critiques of Libertarianism

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So-called “libertarianism” is a big tent. It includes a motley of views, united by little more than celebration of capitalist economic institutions and affirmation of something close to laissez-faire capitalism. Libertarians also favor strong rights to individual formal freedom. In order to articulate and clarify the liberal egalitarian objections to libertarianism, some narrowing of focus is needed. In this chapter two doctrines will be discussed as targets of liberal egalitarian criticism; the division is between hard and soft libertarianisms. Hard libertarianism is a label for the collection of ideas advanced as Lockean by Robert Nozick in a scrappy but brilliant book that has never been superseded even though it was published in a distant era (Nozick, 1974; but see also Huemer 2013). Soft libertarianism is Nozickian doctrine but with some of its major tenets softened or weakened. Liberals should favor the soft version over the hard, roughly for the same reason that one should favor poison diluted with water or bread as likely to be less bad and harmful than pure poison. But better still would be renouncing the poison even if adulterated.

The plan set for this chapter sets aside the intellectually formidable body of thought usually called “classical liberalism.” Perhaps its foremost exponent in recent times has been the academic lawyer Richard Epstein, a steady advocate of freedom of contract as understood in the American common law tradition before it became corrupted (or reformed, depending on your point of view) in the twentieth century by liberal nostrums (Epstein 1995). The view is also associated with the ideas of Friedrich von Hayek (1976). One fairly common thread among advocates of classical liberalism is robust defense of capitalist market institutions by appeal to an offshoot of utilitarianism that is skeptical to varying degrees of interpersonal comparisons of utility. Liberal egalitarians have objections to classical liberalism, but these objections are left for another occasion.

To complicate matters further, liberal egalitarianism (LE) is itself a family of views, not one monolithic doctrine. LE can be consequentialist or nonconsequentialist (Sinnott-Armstrong 2019). The former holds that what is right is always doing what brings about the best outcome, impartially assessed. LE can be cosmopolitan or noncosmopolitan. The former holds that national partiality is never a moral duty; what we fundamentally owe to others, we owe to them not by virtue of their being our fellow countrymen. The egalitarianism of LE can be distributive or relational. The former holds that what matters is fair distribution (and concern for equality might be concern for helping the worse off). The latter holds that what matters is relating as equals, on a footing of equal status.¹ The liberalism of LE can also be variously construed. This chapter aims to be ecumenical in stating objections to libertarianism. The objections to be pressed are mainly ones liberal egalitarians of different stripes could affirm, and occasionally ones that just one version of LE will advance.

To simplify, I identify liberal egalitarianism with a family of views that holds these three forms of equality are morally desirable: (1) equality of political influence (each has a right to an equal democratic say, and equal opportunity to be as politically influential as anyone else with equal political ambition and equal political talent), (2) equality of flourishing (this might be interpreted as well-being or as some index of resources regarded either as a proxy for well-being or as important in its own right), and (3) equality of opportunity for competitive success (those with the same native talent and ambition should have the same prospects of such success). Different versions will attach different weight and significance to (1)-(3); relational egalitarians might take (1) as primary, while distributive egalitarians might view (2) as primary and (1) and (3) important insofar as they are valuable as means to (2).

The liberal distributive egalitarian is not a fanatic who prefers equality of misery to inequality with everyone flourishing. Her ethic favors greater flourishing and more equal distribution of it. The rock-bottom commitment here is to Pigou-Dalton: a transfer of well-being without any loss from one or more better-offs to one or more worse-offs that does not reverse anyone’s position and does not have any impact on anyone else’s well-being level is always an improvement. Pigou-Dalton might be amended to apply to equally deserving better-offs and worse-offs.²

A complication: as already mentioned, another branch of distributive egalitarians affirms instead greater resources for people and more equal distribution of resources across people (see especially Rawls 1999/1971 and 2001, Dworkin 2000 and 2011, and Nagel 1991). Resource egalitarianism is sometimes thought to be required by responsibility sensitivity on the ground that given fair access to resources, it is up to individuals what they do with their resources and how much if any welfare (well-being or good quality life) accrues to them depending on how they lead their lives. Welfarist distributive egalitarians hold that appropriate responsibility sensitivity is perfectly compatible with assessing people's condition in terms of their welfare levels not their resource holdings for purposes of determining whether they are being justly treated. These intramural disputes among distributive egalitarians, a quarrelsome family, need not detain us.

1. Criticisms of hard libertarianism.

The canonical statement of libertarianism is a sharpening and streamlining by Robert Nozick of John Locke's views on natural moral rights and limited government. These rights are possessed by all adult persons with rational agency capacities at or above a threshold. They obtain independently of (1) anyone's subjective opinions regarding their nature, validity, and content, (2) actual institutions and practices in society, and (3) cultural understandings. The rights are correlative to duties owed to the right-holder; the content of your right not to be harmed is specified by the duties of other persons not to harm you.

So far, the liberal egalitarian (LE) can go along. At least, some versions of these views can be formulated as natural moral rights and duties. Consequentialist versions assert as fundamental a duty of each person always to do what would bring about best consequences, but the standard for assessing consequences might be moral rights fulfillment, and even if not, the liberal egalitarian consequentialist will assert a derivative morality, for practical guidance for limited agents like us, consisting of deontological do's and don'ts that may translate smoothly into natural rights terminology. Nonconsequentialist LE doctrines can readily be formulated in terms of natural moral rights. Disagreement starts when the Lockean libertarian specifies a view as to what natural moral rights we have and how stringent they are.

Nozick innovates by dropping the divine command morality that Locke posits to explain and justify the asserted rights (Locke 1980/1690; for interpretation, see Simmons 1992). Rights might be forfeitable or not, alienable or not, waivable or not; Nozick asserts that all basic moral rights are forfeitable by bad conduct, transferable by gift or exchange, waivable at the discretion of the right-holder. According to Nozick basic moral rights are all rights not to be wrongfully harmed by others in certain ways; there are no basic positive moral duties to aid or assist others. A distinct but related doctrine is that basic moral rights are side constraints on the choices of other persons and do not posit any moral goals that anyone must to some degree fulfill. A further claim is that side constraints are exceptionless: it is never all things considered permissible to do what a side constraint right forbids, and in particular, side constraints hold come what may, no matter what might be the consequences of one's conforming to the side constraint.³ This implies the side constraint rights must be compossible: conforming to one is compatible with conforming to all the rest in any circumstances.

The core basic side constraint moral right is a right of self-ownership, stateable in two claims. (1) Each person has the sole right to do whatever she chooses with whatever she legitimately owns so long as she does not thereby impose on others in ways that wrongfully harm them. Also, (2) each person is the full rightful owner of herself, and no one else has any property right in the bodies of any other person. Owning herself, and a fortiori her body, each has the sole right to control the movements of her body, and each has a duty not to touch another's body or trespass on or damage physically anyone's person or property without her consent, and a duty not to coerce or force another to act against her will except to prevent rights violations by that person. "Harming" another includes such coercion and forcing even if these acts do not reduce the victim's good or welfare or preference satisfaction. Interacting with another person, one may not cheat or defraud the other, or steal stuff she owns, or fail to fulfill contracts and promises one makes to the other.

This elegant, spare, and austere doctrine is rounded out by argument to the effect that starting with the premise of self-ownership and adding only uncontroversial premises, one can validly derive permanent,

bequeathable full ownership rights over material objects, that is, parts of the Earth. Individuals can acquire such ownership of things by appropriating hitherto unowned objects or by acquiring ownership of some of them by gift or exchange. Prior to becoming privately owned, the Earth is free for the use of any persons on a first come first served basis, taking turns being required when there is crowding. Further details include a doctrine of intellectual property ownership and an account of how children come to be owed nurturing upbringing by the persons, and only those persons, directly responsible for actions that bring the children into existence (for doubts as to whether the libertarian can plausibly explain obligations to children, see Okin 1989).

The liberal egalitarian pretty much rejects all the components of this view. She upholds some inalienable rights, such as rights not to be enslaved, along with rights against other long-term irrevocable alienations of liberty. Perhaps the core disagreement is with the libertarian claim that moral rights are one and all negative rights not to be harmed and never, in the absence of contract or promise or victimization by prior rights violation, positive duties to be aided that imply enforceable duties to aid others. Instead LE affirms a significant legitimately enforceable duty of beneficence, a duty to bring about better states of the world, as assessed by impartial standards. A related but distinct disagreement is with the libertarian claim that rights enter proper practical reasoning only as side constraints which each agent must refrain from acting against and never as goals that each agent ought to promote by choice of action (Sen 1982a). For example, suppose you are lounging by your private pool, safely fenced off and posted with “No Trespassing” signs. Somehow a toddler wanders in and falls into the shallow end of your swimming pool and will drown unless you pull the child to safety. You have not acquired any special duty of care toward the child; the sole basis of a duty to rescue the child is that a person is in peril and you can save the person from peril at reasonable cost to yourself. The libertarian denies there is any such enforceable duty.

An enforceable duty is one such that using force and threats of force when necessary to induce compliance with it, within limits of proportionality, is permissible and may be required. If other people have moral rights to aid from one, one does not have full self-ownership over one’s own body. Reflection on enforceable duties to aid reveals that the libertarian conception of self-ownership is an extreme doctrine that deserves rejection, not a simple consequence of the much weaker claim that persons have some rights of individual liberty to live as they choose (Cohen 1990).

The reader might suspect the LE advocate is speaking with a forked tongue. Aren’t duties of beneficence, if such there be, necessarily imperfect duties, and not directed duties owed by particular persons to particular persons? The answer is No. A limited duty to help others in need or those suffering injustice can reasonably construed as a disjunctive duty: to help either person A or B or . . . —the list including all who might be helped, the duty binding to the limit of required sacrifice, provided the sacrifice is employed maximally effectively and not wasted. A duty to help may also fall on members of an identified group: We at the beach who can help rescue a drowning swimmer may together have a duty to rescue, which is discharged when one of us steps forward. Each person has a duty to help if no one else does. A moral right to be aided might perhaps be more perspicuously stated as a moral right not to be ignored—to have one’s interests counted in an impartial way along with others in the determination of who in particular circumstances owes what to whom.

At the limit, a duty of beneficence becomes the entirety of moral requirement. This is the consequentialist principle that one ought always do whatever would bring about best consequences, impartially assessed. But short of that, a nonconsequentialist morality incorporating constraints and options can include a significant beneficence component. Insistence on significant enforceable beneficence is a key distributive egalitarian critique of libertarianism.

If we acknowledge, as we should, that an outcome in which human lives go better rather than worse, have higher rather than lower well-being, is a better outcome, beneficence requires acting to promote increased well-being for persons. Beneficence can register other values. Consider the natural duty to promote justice or bring about greater rights fulfillment. Since anarchy is a disaster, the natural duty to promote justice straightforwardly implies a duty to cooperate with others to establish states, agencies that claim and effectively maintain a monopoly on the legitimate use of violence on a territory and that

authoritatively and impartially settle conflicts and enforce particular resolutions of them (Waldron 1993, Wellman 1996, Freeman 2001). This posit obviates Nozick's struggles to justify a minimal state or somewhat statelike entity capable of fulfilling something approximating this function.

The natural duty to promote justice can work in tandem with another duty of fairness—a duty to refrain from free riding, that is, from benefiting from the cooperative behavior of others that intentionally provides goods that fall on all members of a group, without contributing one's fair share to the cost of their provision. The goods in question are nonexcludable (If any member of the group consumes some of the good, none can be excluded from consuming some) and might be nonoptional (if any member of the group consumes some of the good, all must consume some of it). Nozick explicitly denies that there is an enforceable duty to refrain from free riding, but some LE adherents find his denial unwarranted (Hart 1955, Arneson 2013, and for doubts that the principle of fairness can bear this load, Simmons 1976).

Whereas one might wonder how from the natural duty to promote justice one can validly derive a particular duty to support a state where one happens to live, the reciprocity duty to refrain from free riding closes this gap in cases in which cooperation to sustain a state is up and running.

If the libertarian right to self-ownership is unjustifiable, for reasons just rehearsed, the argument from self-ownership to the right to acquire full permanent private ownership rights over material objects cannot get off the ground. (The left-libertarian account of world ownership shows that even affirming full private ownership by each person of herself would not necessarily generate a plausible derivation of individual private ownership of parts of the Earth (Vallentyne et al., 2005). According to Nozick (1974, 178-182), your full ownership over an object such as unowned land that you appropriate legitimately or gain by voluntary transfer from someone whose title traces back to legitimate appropriation is weakened only if continued private ownership would make others worse off than would be the case if the object had never been privately appropriated at all. Other libertarians hold that unowned parts of the Earth are there for the taking without the resultant ownership being conditional at all (Narveson 1988).

LE affirms a stewardship conception of ownership, traces of which can be found in Locke. Owning resources, we together have a duty make them useful and to pass them along to future generations so that, with available technology, they enable good lives for an abundance of future people. Be fruitful and multiply, as the Bible affirms (Genesis 1:28 and 9:7). Private ownership facilitates husbanding of resources and uses of them that are widely beneficial, and private ownership with free exchange facilitates people with diverse views cooperating and living together in harmony. But on the stewardship conception, private ownership rights are conditional and defeasible, in the sense that advancing the fulfillment of distributive justice principles over the long run justifies the taking of property. For the same reason ownership, a bundle of rights over a thing, can be disaggregated, so that my ownership of land can coexist with partial ownership rights in that land belonging to others or to the community or humanity at large.

The restrictions on ownership and trade that LE embraces are in the service of principles of justice. Consider distribution. LE distributive justice comprises equal opportunity for competitive positions and some equalizing of outcomes across persons. These equal opportunity norms alone set no limits on the bad quality of the lives that may befall people via fair competition or on the inequality of rewards that accrue to people in fair competition. LE views differ as to how to address this issue. One proposal is that it is unjust and unfair if some are worse off than others through no fault or choice of their own (Temkin 1993). Another is that social arrangements ought to bring it about that the worst off in society are as well off as possible (the "general conception" in Rawls 1999). A third relaxes the second, holding that social arrangements ought to maximize a weighted aggregate sum of benefits summed across people, with greater weight given to obtaining a benefit for a person, the worse off the person would otherwise be over the course of her life (Parfit 1995, and for further development, Holtug 2010 and Adler 2012). The detailed differences between these proposals are important, but as a group they contrast sharply with Nozickean libertarianism. Each holds that there is a fair distributive pattern⁴ to which the quality of people's lives or resource holdings should conform. If Tom or Sally by bad fortune of genetic inheritance or other similar bad luck falls through the cracks of market competition, justice puts special priority on improving their condition.

Some versions of LE put little or no weight on these distributive matters. Instead what matters for justice is that people relate as equals, as befits their equal dignity as rational agents. Social justice according to relational egalitarianism requires that each person is continuously able to avoid relations in which some have unreciprocal power over others, de facto authority to command, and hierarchical standing or rank (Anderson 1999, Scheffler 2003, Pettit 2014, Kolodny 2014). The paradigms of injustice are slavery, feudalism, authoritarian political rule, racial and ethnic hierarchy, patriarchy, and capitalist class domination.

The libertarian idea that each individual has equal basic rights that all persons must respect comports with LE relational egalitarianism. From an LE standpoint, the problem lies in the inadequacy of libertarian rights to express a full and nuanced conception of relational equality. The libertarian right of a property owner to trade with anyone she chooses on any mutual terms protects the “right” of the owner of a business to hire blacks only for unskilled jobs or otherwise discriminate on grounds of sex, sexual orientation, race, creed, or color. The ensemble of a large number of free market transactions might result in consolidation of power in the hands of what becomes a dominant group. Beyond some point, excessive inequalities of wealth across persons may prove inconsistent with maintenance of a democracy in which each citizen has a fair share of influence. Feminist liberal egalitarians observe that individual voluntary engagement in hierarchical relationships such as traditional marriage are problematic (Chambers 2017).

Consider the norm that each individual should have equal opportunity for political influence (EOPI). This requires that all those with the same ambition to be politically influential and the same political talent should have the same chances of being political influential (Kolodny 2014). According to the relational egalitarian, EOPI is a requirement of justice because it is a key component of relating as equals with all other members of society, not by virtue of its having distributive effects by way of its having impacts on public policy choice. If inequalities of wealth and income impede sufficient attainment of EOPI, the relational egalitarian has a justification for actions that compress the distribution of wealth and income. Again, a pattern worth achieving conflicts with upholding Lockean libertarian rights to property ownership and freedom of trade.

What all liberal egalitarians share is the conviction that people’s fundamental moral rights include enforceable entitlement to patterns of distribution or status. The entitlement is not absolute, and its imperative has greater reason-giving force as the shortfall between people’s actual condition and what the pattern prescribes becomes greater and greater. As so often, on this point Nozick was insightful. He described “How Liberty Upsets Patterns” (1974, chapter 7). Quite so. The conflict between individual liberty, especially as the libertarian conceives it, and satisfactory maintenance of a desired pattern, does not move the liberal egalitarian to abandon pattern enforcement. The question becomes, how valuable is the pattern in question, and what degree of maintaining it would require what cost in terms of whose individual liberty. In Nozick’s example, maintenance of any particular pattern of money holdings over time looks not to be a pattern that is valuable enough to justify incursions on individual freedom. This does not rule out any and all pattern enforcement. For example, the government massively restricts our individual liberty to drive as we please on roads and highways in the service of maintaining a pattern of tolerably efficient traffic flow, so we can actually get to where we want to go safely. If the balance of speed of movement, safety, and convenience is acceptable, the citizen whose liberty is curtailed has no sound complaint. The same goes for proposed expropriations of private property, taxation beyond what is needed to operate a minimal state, or regulatory curtailment of property rights to advance the common good.

2. Criticisms of soft libertarianism.

Soft libertarians are theorists sympathetic to libertarianism but inclined to sand down its hard and sharp edges. The degree to which this “libertarianism lite” family of theories of justice represents a substantive alternative to hard libertarianism or poses any independent challenge to liberal egalitarianism is open to question. Insofar as the soft libertarian simply retreats from some hard libertarian positions with a view to accommodating some liberal egalitarian insights, the liberal egalitarian can respond, “Fine! Now keep retreating.”

The core weakening of hard libertarianism that soft advocates support is dropping the idea that Lockean libertarian moral rights are absolute and exceptionless and hold come what may, whatever the consequences of adhering to them. If the consequences of respecting and honoring a particular right in particular circumstances would be sufficiently bad, the right gives way, and what we ought to do all things considered is do what would bring about better consequences, perhaps with the overridden right still having an impact on what to do. Judith Thomson (1990) has suggested a way to conceive of this issue: if the ratio of how bad it would be for nonrightsholders if the right is upheld to how bad it would be for rightsholders if the right is not upheld is sufficiently large, we ought not to uphold the right in question. Here I am deliberately amending Thomson's actual position in order to call attention to its uncontroversially sensible component.

The issue here is not absolutism per se. Any moral doctrine will bottom out in some moral principle that holds without exception. Even a Rossian ethic of prima facie duties will hold that each person ought always to do whatever the overall balance of pro tanto considerations that is applicable in one's circumstances dictates that one ought to do (Ross 1930). The absolutism issue is whether there are moral rules at the level of generality of common-sense norms, such as keep your promises or tell the truth or don't kill innocent nonthreatening people who want to live, that plausibly hold without exception. If the proposed Lockean libertarian rights are roughly at this level of generality, the same issue arises, independently of the substantive plausibility of the rights being proposed.

Whereas Nozick starts by asserting a set of moral rights as foundational and seeks to justify them by coherentist or reflective equilibrium methods, some soft libertarians seek an underlying rationale that will justify both the rights and their limits. John Tomasi (2012) loosely follows a Rawlsian contractualist method of justification. On this approach, the principles of justice to which we should give allegiance are those that persons, committed to living together as free and equal self-authors of their lives, would accept for regulating their common affairs. His major innovation is to propose that, given that justice above all requires respecting the basic liberties, central to those liberties is economic liberty, the freedom to be secure in the ownership of legitimately acquired property and to trade whatever one owns and cooperate and interact with others on mutually agreed contractual terms. The basic liberties are those needed to develop and exercise one's fundamental moral powers to relate on terms of fairness with others and to develop and pursue one's own conception of what is worth seeking in life. These liberties include freedom of thought and expression, being governed under a rule of law, equal citizenship, and thick economic liberties. These fundamental economic liberties sharply limit what the state may do to anyone by way of coercion and control. Economic liberties may not be curtailed except as needed to fulfill other basic liberties. The taking of the property of individuals by the state is presumptively illegitimate on the same basis.

The liberal egalitarian should reject this upgrading of economic liberties to specially privileged status, whether or not a Rawlsian framework for considering this issue should be accepted.

First, the overall upshot of many people's exercises of economic freedom can result in unfair distribution. By luck, or a combination of luck and skillful exercise, some may end up desperately poor, others rich or ultrarich. As Nozick has pointed out, liberty upsets patterns. If there is a distributive pattern that justice demands, liberty cannot take priority over fair distribution. LE affirms fair distribution over individual liberty as the libertarian conceives of it, in cases of conflict between these values.

Second, types of freedoms vary in moral importance. Laws enforcing taxation massively restrict people's freedom to spend the money they gain by gift and exchange as they like. Laws against abortion massively restrict women's freedom to cut short unwanted pregnancies. What kinds of restrictions of what types of freedom violate fundamental moral rights? Substantive argument is needed to settle this question.

In order to be able to carry out any of many worthwhile plans of life, one will need some secure control over certain material objects for extended periods of time. Whether one needs permanent bequeathable tradeable ownership rights in things or in intellectual property is more doubtful, and on the face of it, plainly false. To enjoy a secure home, extended control over some shelter is needed, but this need not involve private ownership of houses. To read books, one needs secure access to particular books, but a public library can satisfy this aim, as can access to books downloadable from the internet onto rented computers. To hike and climb in the mountains, or swim and surf in the ocean, one needs reasonably reliable

access to the mountains and ocean—one does not need to own them, nor does one need a tradeable bequeathable right of access to them. Consistently with securing for all the wherewithal to pursue any of an indefinitely wide array of worthwhile life plans, a society can choose ownership and property arrangements on instrumental grounds, with a view to promoting a range of justice values. This point is quite compatible with its being the case that private ownership has attractive instrumental properties in some ways, in some contexts.

Some sensible life plans require great wealth for their fulfillment. To have any prospect of fulfilling any of these life plans I must have freedom to strive to acquire enormous wealth.

But it is not a plausible requirement of justice that for any conceivable sensible type of life plan, society must allow individuals the freedom to pursue the life plan with some prospect of success. My pursuit of some life plans would be costly to others, and without denigrating my choice, society might fairly place it beyond my reach. High-cost life aims typically have lower-cost substitutes, so a social policy that puts the former beyond reach leaves pursuit of the aim under a broader description possible and feasible. But my heart's desire may be specific and rendered unsatisfiable by policy choice, while yet I retain real freedom to work out what is worthwhile in life and choose among a rich array of diverse ways of fulfilling it.

Administrative achievement such as leading an organization or commanding others to coordinate their efforts toward satisfying worthwhile goals that one chooses are valuable human achievements, getting which would boost anyone's well-being. But administering and commanding persons have effects on other people's lives. Whether it is fair for one to administer and command depends on their impact on other people's lives. There is no basic liberty to pursue administering and commanding for the same reason there is no basic liberty to pursue war (even though skillfully making war can be for the warrior a valuable achievement that in itself boosts her well-being). Economic liberty construed broadly to include the freedom to start and sustain a business employing others to provide goods and services to customers, as the soft libertarian construes it, does not belong among any sound list of basic liberties. This is not a close call.

Consider a possible basic liberty to select and perform meaningful and satisfying productive work from a wide array of options. This sounds nice, but it elevates "productive" work to a special status that arbitrarily favors some plans of life over others equally reasonable. To see this, imagine circumstances in which social arrangements could guarantee satisfying productive work for all, but alternative arrangements lacking this guarantee would provide other benefits (for example, longer life, better health, sublime experiences and achievements beyond working hours) that all would reasonably value more highly. Provision of this candidate basic liberty in this setting would make all people worse off. Social justice principles might require bringing about outcomes in which all of us are worse off than we might be made, but the case at hand is not a plausible instance of that. What about "meaningfulness"? In a world in which by bad luck people come to be in need and in peril of suffering injustice or blighted lives, the opportunity to engage in activity that is meaningful in the sense of reasonably serving people's morally urgent needs is automatically available to anyone with the agency capacities of a human person.

A complication here is that Rawls himself includes two minimal economic liberties in his proposed list of basic liberties. One is the freedom not to be subjected to a command economy in which others assign the individual to her employment independently of her choosing. The other is the freedom to own personal property. Again, these sound attractive, but at the level of abstraction at which we identify plausible principles of justice, not compelling. The freedom to seek employment from an array of job opportunities is formal. That liberty might leave unskilled Dick with no employment options except in relevant respects identical options of grueling work for bad pay. Alternative arrangements that include elements of a command economy could in some circumstances make everyone better off and should not be ruled out of court a priori as violations of inviolable basic liberty.

Here one notes a feature of a basic liberty as understood by its advocates. Having a basic liberty to X means one has a moral right to X that to a considerable extent holds sway even when fulfilling that right imposes harms or losses of benefit on nonconsenting others. Consider freedom of speech, a paradigm basic liberty. A person who wishes to engage in persuasive speech to a willing audience on matters of public concern has a free speech right to engage in such advocacy even when doing so threatens to impose

significant harm on nonconsenting others. Advocacy of bad ideas can persuade a willing audience to do wrong acts that violate the rights of others. Defending freedom of speech, we should not be indifferent to such harms; we should seek reasonable ways to prevent them or mitigate their damage. Nonetheless, a basic liberty is robust in that it licenses individuals to impose costs on others that would be forbidden but for the fact that one is exercising a basic liberty. We may hope that enforcing freedom of speech will boost overall justice attainment over the long run, but this does not gainsay the point that if free speech is a basic liberty, upholding it can justify allowing what would otherwise be intolerable uncompensated wrongful harms.

Economic liberty as understood by soft libertarians does not pass this threshold test for admission into the category of basic liberties. If Arneson's running his business according to his cherished vision, negotiating with employees one by one to come to agree on terms of employment, would lead to a division of the surplus that could be improved slightly, from the standpoint of distributive justice, by laws requiring overtime pay or a minimum wage, the freedom of contract aspect of economic liberty does not throw a deuce card, much less a trump card, against the introduction of such a law.

The same goes with the freedom of secure ownership aspect of economic liberty. Suppose that Arneson's running his business according to his cherished vision requires that he be left entirely free to do what he likes with the accrued profits, and not suffer their expropriation or their shrinkage beyond (at most) the minimal taxes needed to sustain the minimal state that protects economic liberty and a social minimum. Tough for him! From a liberal egalitarian perspective, justice may well require the more than minimal state and more than minimal taxes. Justice may require takings of property for redistributive purposes.

A state might be more than minimal in many ways, two of which should be flagged in this context. A state might be more than minimal only by maintaining a redistributive apparatus: a state agency collects income or wealth taxes and redistributes the proceeds according to a social justice formula. Another distinct way in which a state might be more than minimal is by comprising many administrative agencies carrying out regulative functions.

To what extent a state ought to be more than minimal, in a redistributive or an administrative role, depends not simply on the principles of justice but on complex empirical issues. To a degree that is hard to determine, debates between libertarians and liberal egalitarians about what institutions and policies to enact swirl around these issues. For our purposes these empirical disagreements are a red herring. If maintaining a minimal state would best bring about achievement of liberal egalitarian principles, then LE in those circumstances would endorse a minimal state.

Here some nonstandard libertarians may protest that the classification scheme in this chapter unfairly caricatures their position (Brennan and Tomasi 2012). They are not merely "Nozick lite." They affirm robust liberal egalitarian norms and affirm strong economic liberty partly as intrinsically morally attractive as well as by virtue of its expected consequences. For example, Tomasi, at least for the sake of the argument, embraces Rawlsian principles—equal basic liberties, fair equality of opportunity, and the difference principle. His twist on Rawls is simply inserting strong economic liberty among the basic liberties and observing that respecting economic liberty will unchain economic growth and in the long run bring it about that those with fewest opportunities for rewarding competitive opportunities have most and those who are least advantaged in terms of primary goods holdings are made best off in these terms, compared to any feasible alternative regime that does not strictly respect economic liberty. This version of libertarianism defeats liberal egalitarianism by accepting a version of it—except with a jiu-jitsu twist that transforms it.

There is less here than meets the eye. Taken for itself, strong economic liberty does not merit the nearly absolute priority the soft libertarian accords it. With wide economic liberties identified as Rawlsian basic liberties, the instrumental argument that securing economic liberty boosts all manner of further justice values is easier to support—these values only have to be advanced up to the constraint set by the highly constraining priority of economic liberty. Suppose economic liberty includes the freedom to contract with anyone on any mutually agreeable terms and the security of property ownership against government takings except those needed to maintain the rule of law and other basic liberties. Then a policy that even slightly diminishes economic liberty so construed to gain even very large increases in substantive equality of opportunity or very large increases in resource shares going to the very worst off will be ruled out as unjust.

The soft libertarian embraces this implication. The liberal egalitarian will reject the creeping libertarianism that generates it.

The relational egalitarian who accepts the Rawlsian framework will see a further problem with adding thick economic liberties to the set of protected basic liberties. Rawls includes equal opportunity for political influence (EOPI) among the equal basic liberties. Restricting a basic liberty is acceptable only when necessary to protect and advance the overall set of basic liberties. So including the thick economic liberties in this set will imply that refraining from doing more to promote EOPI is acceptable in circumstances in which the relational egalitarian will protest that this is not so.

So far I have urged that the broad libertarian idea of economic liberty should not be upgraded to the status of a basic liberty in a Rawlsian framework. A basic liberty here is one that may be limited only to protect the full set of basic liberties. Whatever exactly is the eligibility criterion of a liberty's being basic, Lockean liberties of self-ownership and private ownership do not qualify.

But a liberal egalitarian might eschew the Rawlsian framework, and maybe the best LE theories do so. For Rawls, a basic liberty is one necessary (or extremely useful?) for developing and exercising the fundamental moral powers to develop, revise, and pursue a conception of the good and to cooperate with other persons on some conception of fair terms.

Why single out liberties that are necessary for the development and exercise of the moral powers for the good and the right and give them strict lexical priority over all other components of social justice? There will be other conditions needed to get a sufficient set of conditions for this development and exercise. No doubt the conditions will vary from person to person and will vary with circumstances, but will generally include education and nurturing upbringing (for development) and adequate resources (for exercise). It seems fetishistic to focus on some necessary conditions rather than on what would be sufficient (Sen 1982b and 1992). And anyway it is implausible that one should give strict lexical priority to the conditions that enable the power to develop and pursue a conception of good (as opposed to actually being successful in pursuit of a rational plan of life) or to develop and pursue a conception of right (as opposed to actually being successful in conforming one's will and conduct to the correct conception of right (or the best one on current evidence)).

The idea of a basic liberty as Rawls formulates it, I suggest, may not be a useful building block for a theory of justice. It retains a vestige of the idea of absolute natural rights that must be obeyed come what may. LE might drop that idea and instead seek to identify intrinsically valuable moral goals and constraints and correct weights on them that tell us how to trade off these values we should care about against each other when they conflict, as they do, in circumstances we face. The LE advocate should resist trying to squeeze even qualified Lockean libertarian rights into her theory.

In order to justify elevating the moral status of Lockean libertarian economic liberties, the soft libertarian besides asserting their great intrinsic value, and their particular utility for developing and exercising Rawlsian moral powers, the soft libertarian also appeals to their great instrumental benefits across the board. Unregulated or very lightly regulated Lockean liberties bring about rising prosperity and the benefits that accompany rising prosperity. I have already said the choice of LE versus soft libertarian principles does not turn on such empirical disagreements. In passing I simply record my opinion that their examination does not vindicate but rather undercuts the soft libertarian embrace of an unregulated market economy. If you paint in broad brush strokes and contrast capitalism with Soviet-style Communism, the claim that economic liberty delivers instrumental advantages is—to put it mildly—plausible, but the libertarian's "economic liberty" presses toward laissez-faire capitalism, and this ideal type fares poorly in comparison with heavily regulated high-taxing market economies complemented with accepted socialist norms that embrace the regulation and taxation.

If the soft libertarian were to rely entirely on empirical claims about what would ensue if we acted as if libertarian moral rights assertions were correct, the normative dispute would be ended. The LE advocate should concede that if adhering to libertarian norms turned out to be an empirical magic carpet that brings about maximal conformity with LE principles, adherence would be warranted.

Soft libertarians tend to deny that inequality, whether of income, wealth, well-being, or along any other significant dimension of assessment of individual lives, is bad in itself. They tend to be sufficientarians. (Brennan 2012). The problem of poverty is not that the poor are worse off than others, but rather that they lead lives that are grim and miserable in absolute terms. The aim of poverty relief, whether the task is assigned to government or private philanthropy, is limited to providing poor people access to lives that achieve the good enough level on scales of grimness and misery. Above this good enough level, inequality in the quality of lives people lead is from a moral standpoint a strict “don’t care.” If you disagree, you are vulnerable to the leveling down objection. We could achieve equality in wealth and income across persons by destroying resources so that all better off persons drop down to the level of the current worst off individual. Many people would be made worse off and no one would be made better off, but equality would be achieved, so if you think equality is in itself morally valuable, you must judge that in one respect at least leveling down achieves something morally valuable.

In reply, one might hold that even if how one’s condition compares to that of others is not in itself morally significant, it might be closely connected to something that is morally important: how well or badly off one is in absolute terms. Rejecting equality as not in itself valuable, one might embrace the related thought that obtaining a benefit (preventing a loss) for a person is morally more valuable, the greater the size of the benefit, and the worse off the person would otherwise be over the course of her life. This is the priority ideal as articulated by Derek Parfit (1995). If justice includes a significant beneficence requirement, priority says beneficence should be interpreted not as maximizing the sum of benefits, but as maximizing a function of benefits that gives extra weight to securing gains for people, the worse off they would otherwise be. If the priority weight that ought to be assigned is trivial, the justice beneficence requirement hardly differs from utilitarian beneficence. If it is significant, then in practical terms priority can require us to secure more equal benefit levels for people rather than a larger sum.

Moreover, as Marc Fleurbaey (2015) has shown, for any moral requirement to secure some balance of more equal benefits and greater benefits across a set of people, one can always find a priority weighting that delivers exactly the same implications for what one ought to do as the equalize/maximize balancing. In this sense, equality and priority are logically and not merely contingently linked.

Finally, the egalitarian might simply accept that when leveling down occurs, even though all things considered the shift to a situation that is worse for some and better for none is bad, in one respect the shift can represent improvement: equality is after all achieved to a greater degree (Temkin 1993).

So the liberal egalitarian need not be embarrassed by her egalitarian commitment. She should affirm it as necessary for justice. How should the liberal egalitarian respond to the proposal that we should be sufficientarians not any sort of egalitarians? This question raises issues this essay will not try to settle. In this context, the egalitarian should respond that a lot hinges on where one sets the sufficiency threshold. If sufficiency is a level of resource provision such that it is possible for one to pursue projects, then the bar seems to be set very low. Starving to death and in severe pain, people can and in fact do pursue projects. But if the standard of sufficiency should set high, we are back to the liberal egalitarian complaint that assigning special privilege and anything close to lexical priority for the economic liberties to contract with others on any mutually agreed terms, to have permanent bequeathable ownership of productive assets, and to use ownership of these assets to increase one’s wealth without being subject to takings by the state or another agency of society for redistributive purposes will drastically and wrongly constrain the advancement of social justice.

A larger point lurks in this train of thought. The character and ultimately the plausibility of a political ethic depend not only on the distinctions it recognizes as salient and the principles it accepts, but also and importantly on the comparative weight given to the principles and the thresholds that indicate a norm has been satisfactorily met. A soft libertarian might uphold a sufficiency-for-all principle that justifies welfare state provision, but set the standard of sufficiency at a stingy level. She could reject absolute and exceptionless moral rights, but just by a whisker. Accepting priority for the worse off, one could favor putting a tiny finger’s pressure or a huge weight of priority on the scales whose balance determines what ought to be done. She could accept that not only are rights to be respected, but also their fulfilment is to be promoted—

but to what extent, at what personal cost or cost to other values? This remark has in itself no force of reason to show that liberal egalitarian weightings are right and soft libertarian ones wrong. It just highlights the fact that these determinations are high stakes issues.

3. Conclusion.

This chapter states liberal egalitarian objections to libertarianisms. Arguing conclusively for these objections would be a further matter. At this point there seems to be little recourse beyond the long march through reflective equilibrium or coherentist methods—what set of moral views taken as a whole matches our considered convictions after sustained argument? This seems to have been Robert Nozick's view, and this is yet another point on which his writings, whatever one should make of them, have proven to be prescient.

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¹ . John Rawls is both a prominent distributive egalitarian and relational egalitarian. See especially (Rawls 2001). On the relational egalitarian view, see (Lippert-Rasmussen 2018).

² . On Pigou-Dalton and other components of prioritarianism, see (Adler 2012). On combining priority for the worse off and for the more deserving, see (Arneson 2007).

³ . In a single footnote, Nozick wobbles on absolutism, stating he neither affirms nor denies that a moral right might be overridden in the face of catastrophic moral horror (Nozick 1971, at 30).

⁴ . I am speaking of patterns in a wider sense than employed by Nozick. I count equal distribution and giving priority to the worse off as exemplifying distributive patterns. According to Nozick, a patterned conception of justice says that holdings of resources across persons should be set and sustained so they are proportionate to their individual scores registering the degree to which they possess some feature. The general formula of patterned justice is "To each according to her ____."