

Liberty, Rights, and Libertarianism

Many people have a passionate commitment to individual liberty. They may object to paternalistic laws (such as those laws requiring the use of seat belts) as infringements on freedom, regardless of whether these laws increase welfare. Many would favor protecting the freedom of those with unusual lifestyles or unpopular religious convictions even if it means diminishing welfare. Social deliberation, unlike welfare economics, often treats protecting freedom and enhancing welfare as independent goals.

It is ironic that normative economics focuses on welfare, because economists value individual freedom very highly. Indeed we would conjecture that economists value freedom more than do most noneconomists. When economists have criticized socialism, for example, they have not only questioned whether it can “deliver the goods,” they have also argued that economic and political power must be kept separate in order to protect individual liberty (Friedman 1962, ch. 1). Economists also value the prosaic liberties that are part of market life, such as the freedom to change jobs, to start a business, or to move from place to place. Thus, for example, many economists favor effluent taxes or exchangeable emission rights over direct state regulation of pollution. They do so not only because the taxes or exchangeable emission rights are purportedly Pareto superior to regulation but also because state regulation limits freedom directly and, by increasing the reach of government, threatens freedom indirectly. Similarly, economists often favor cash over in-kind transfers because cash transfers leave the recipients freer.

The efficiency case has been considered a part of “scientific” welfare economics because it has appeared to rely only on uncontroversial moral premises, while the argument in terms of freedom has been reserved for “unscientific” essays because its moral premises have appeared to be of a more philosophical nature. Contentment with the efficiency standard has

doubtless been fostered also by a belief that the Pareto standard itself promotes liberty because it values outcomes that best accommodate the voluntary choices of individuals. But Pareto optima do not always respect rights or maximize liberty. Consider a problem such as homelessness. Though those with no place to live are almost always badly off, one will not begin to appreciate what is at stake if one does not consider what homelessness implies for individual liberty or the questions it raises about justice.

The concerns about liberty that underpin economists' normative judgments should be incorporated systematically into their methods of evaluation. Doing so raises problems of *definition*, of *moral justification*, and of *weighting*. In other words: (1) What is freedom? (2) How can claims about the moral importance of freedom be defended? (3) How can liberties be incorporated along with other values into a coherent scheme of ethical evaluation?

10.1 Freedom

We find it useful to follow Gerald MacCallum's (1967) suggestion and regard "freedom" as a relation among three things: (1) an agent, (2) obstacles or costs of some kind, and (3) objectives or possible outcomes. An agent is free *from* some obstacles or costs *to* doing or becoming something. An agent is free in some particular regard, when there are no obstacles of a specific kind preventing or discouraging the agent from doing something. For example, though *X* may not be legally free to purchase beer, *X* may be legally free to purchase bread. Yet *X* may not be economically free to purchase either, because *X* lacks money; or, if *X* is stranded on a deserted island, *X* may not be physically free to purchase anything. Rather than thinking of different meanings of the term "freedom," it is helpful to think about different kinds of obstacles to different sorts of states or actions.

People are free and unfree in various ways. Some freedoms are important while others are not, and there are substantive disagreements about which freedoms are more important. In his influential essay entitled "Two Concepts of Liberty" (1969), Isaiah Berlin argued that social policy should aim to protect "negative" liberties rather than to promote "positive" liberty. One protects negative liberties by respecting a protected sphere around individuals and placing few obstacles in the way of their efforts to satisfy their preferences. Negative liberty has nothing to do with natural or internal impediments to action. Promoting positive liberty, in contrast, involves attempting to realize some idealized conception of the self as rationally self-determining.

Libertarians often hold that the only limitations on freedom that are of social concern are those that violate pre-existing civil and property rights. Consider the difference between parents paying a ransom to a kidnapper of their child and parents paying the same amount to purchase a life-saving operation for their dying child. In neither case are the parents free to keep their money and to have their child live. Yet libertarians would maintain that only the first case involves a limitation of freedom, because the “obstacle” in the second case does not arise from a violation of pre-existing rights. Similarly, libertarians maintain that the obstacles faced by those who are starving are not infringements on liberty unless they are the result of rights violations. Libertarians who see competitive markets as always promoting freedom do not deny that market outcomes sometimes place barriers in people’s way. They deny instead that these barriers, as the unintended consequences of voluntary interactions, are morally objectionable.

As we will discuss further, explaining what rights exist and what makes them legitimate is a large challenge for libertarians. For now, though, we will note that many people, including many scholars of liberty, do not have such a narrow view of which freedoms matter. Berlin himself argued that the barriers unintentionally placed in one’s way by others may be morally significant limitations on freedom. Most would regard *any* obstacle to agents’ pursuit of their objectives as morally significant if it results from the actions of others or if it could be removed by others.

The extent of an individual’s freedom depends on how many possibilities are open to her, how easy they are to attain, how important in her plan of life these possibilities are, how far they are influenced by the actions of others, and how the society at large values these possibilities. Assessing the extent of liberty in a society requires, moreover, that one aggregate the liberties of different persons (Berlin 1969, p. 130). This is a mind-boggling amalgam of disparate elements. Some philosophers have suggested ways of cutting down the complexity. Rawls, for example, distinguishes a relatively short list of “basic liberties,” including for example freedom of conscience and freedom of expression. Then, within this short list, he further distinguishes between “liberty” as a formal notion and “the worth of liberty,” which depends on having the means to exercise the freedom. Billionaires and beggars are both free to vote and to speak freely on behalf of candidates and issues that matter to them, but the worth of their liberties differs drastically. Others have similarly distinguished “formal” from “effective” liberty. Sen’s “capabilities” (see Section 8.5) also correspond to morally significant freedoms. For example, if one is literate then one is free from intellectual obstacles to reading. This use of the term “free” leads to an important

political point: a regime that countenances illiteracy has much in common – from the standpoint of liberty – with one that bans books.

The concept of autonomy or self-determination is important in thinking about freedom. Autonomy can be used to refer to a *capacity* to govern oneself, a *condition* of self-governing, an *ideal*, or a matter of moral *authority* (Feinberg 1986, p. 28). The most important of these notions are the capacity to be autonomous and the condition of autonomy (Raz 1986, pp. 204–5). It is easier to identify factors that may impair the capacity to be autonomous than to list the factors that enhance the capacity. External factors such as poor or deliberately misleading information, insufficient schooling, inadequate opportunity for reflection, and a limited range of alternatives among which to choose threaten the capacity to be autonomous. Internal threats to autonomy include limited abilities, such as illiteracy, and psychological defects, such as an inability to cope with uncertainty.

The condition of autonomy is just as complex. It involves satisfying one's own preferences rather than having them satisfied by others. It involves actively accomplishing things rather than merely enjoying well-being. Autonomy also involves aspects such as self-possession, individuality, authenticity, integrity, self-control, initiative, and responsibility (Feinberg 1986, pp. 32, 40–4). The condition of autonomy may be valued simply as a matter of fact: most people want to possess the traits just mentioned. Alternatively, autonomy can be defended as a partial ideal of the person – as something people should care about even if they don't. This latter view has the potential to pose a threat to negative liberty and political freedom.

Autonomy as an ideal of the person is often connected to some notion of the “real interests” or “true needs” of the person, which governments should promote. In famous passages from *The Social Contract*, Rousseau wrote:

anyone who refuses to obey the general will shall be forced to do so by the whole body; which means nothing more or less than that he will be forced to be free [A]long with the civil state, man acquires moral liberty, which alone makes him truly master of himself; for the impulse of mere appetite is slavery, and obedience to self-imposed law is liberty. (1968, p. 64)

The defender of autonomy in this sense thus sees the agent's significant objectives not as whatever the agent prefers (whether or not it is “the impulse of mere appetite”) but what is truly in the agent's interests. Erecting barriers may actually enhance autonomy by removing subtler obstacles that stand in the way of doing what is truly in one's interests, just as a law against jaywalking may help pedestrians reach their destinations (MacCallum 1967, p. 330). Promoting autonomy (like promoting welfare) may thus, as Berlin warned, conflict with promoting negative liberties and a wide range of choice.

An analysis of morally significant individual freedoms must take a stand concerning how important various objectives are. It might allow the individual's preferences to determine the importance of actions and states of affairs, but this is as controversial and substantive a moral decision as is any specification of the "true interests" of individuals. In addition to determining what matters and how much, an analysis of morally significant individual freedoms must specify what kinds of obstacles are of moral concern. The freedom that matters is an absence of obstacles of the specified kind to the pursuit of significant objectives.

10.2 What Are Rights?

Though it is difficult to give a precise definition of a "right," either in law or in morality, one might roughly characterize a right as protecting or promoting a way of acting or a way of being treated. A right specifies that a range of actions or conditions open to an individual – such as driving, voting, or being sheltered – should be protected or promoted (see Martin 1993). Such normative direction may be embodied in law or convention, or it may have the status of a moral demand or recommendation.

Rights are often linked to liberties – and for good reason, since one kind of liberty (e.g., the freedom to emigrate) simply *is* a right and since notions of freedom are important in analyzing rights and in making sense of their rationale. Although the details need not concern us, legal analysts following Hohfeld (1923) have recognized that rights involve complex clusters of permissions and constraints regarding the actions of individuals. Rights typically involve both "privileges" for the right-holder and correlative duties for others. Rights that are the flip side of the duties of others are called "claims." For example, the right of workers to strike after their contract expires implies both a privilege to strike and a claim-right – that is, a duty on the part of others not to interfere in certain ways. Rights also involve "powers" and "immunities." For instance, occupational safety and health laws provide workers with immunities from efforts by firms to assign them certain duties, thereby limiting the powers of firms to determine aspects of working conditions. Rights are clusters of claims, privileges, powers, and immunities, though different elements may be central in different rights. Claims are central in what are called "rights," and privileges are central in what are called "liberties." But rights are not just claims, and liberties are not just privileges.

Legal rights are probably the most familiar kind of right. For example, the legal right to strike consists roughly in there being laws permitting workers to strike and prohibiting others from preventing them. Other sorts

of *conventional* rights may be less familiar, but they are equally straightforward. For example, company policy may give workers the right to seventeen days of paid vacation. Parents have (or used to have) a conventional right to their children's respect.

Moral rights are more puzzling. It is tempting but misleading to think of them as analogous to legal and conventional rights: Just as legal rights are determined by legislation, so moral rights are determined by "moral law." Unlike legal rights and conventional rights, some moral rights might not be acknowledged or respected. In what sense can unacknowledged moral rights be said to exist? The reason for speaking of moral rights is to assess legal and conventional rights – for example, to criticize the former legal rights of the white minority in South Africa or to urge that rights to health care ought to be recognized by laws or conventions in the United States. To say that an agent has a moral right is, we maintain, to say that the agent ought to have a legal or conventional right (Mill 1863, ch. 5; Sumner 1987).

10.3 The Importance of Rights

Rights serve the dual roles of safeguarding people's interests and of providing them with control over their choices. Very often these two purposes will coincide, since people usually try to choose what is in their interest and regard themselves as having an interest in controlling their own choices. So, for example, giving an artist a property right in a painting she has created serves her interest in being able to profit from the painting and at the same time gives her control over its disposition.

Sometimes these two goals – of safeguarding interests and of providing control – will differ. For example, infants and nonhuman animals have interests but cannot make choices, and the point of assigning rights to such beings is apparently to protect their interests. One may, however, want rights in order to recognize the value people attach to controlling their own choices, rather than simply to safeguard their interests. Suppose for example that someone makes use of a vacant private condominium owned by Britney Spears without her permission. When should such a trespasser be said to have violated her property rights? So-called *liability* rules would say that paying Britney Spears a standard rental fee fully respects her property rights. Liability rules protect her interests, but they do not protect her right to control. One may therefore prefer *property* rules, which hold that her rights have been violated unless one obtains her consent. Most theorists argue that either an interest-based ("benefit") or a control-based ("choice") conception of rights is the valid one (Calabresi and Melamed

1972). However, we are attracted to Coleman and Kraus's (1986) view that, depending on facts and circumstances, a particular right may protect interests or choices or both. Among the factors that determine which conception best applies to a particular case are the value for the owner of preserving her choice and the costs to the "invader" of gaining consent. For example, a desperate traveler breaking into a remote cabin on a frigid night might be required to compensate the owner but might be judged not guilty of trespass.

Rights are important in economics for at least three reasons. First, clear definitions of rights, especially of property rights, promote economic efficiency. A familiar result in transaction-costs economics, well illustrated by current problems in the former Soviet Union, is that the absence of clear property rights results in socially wasteful efforts to defend ambiguous claims and discourages investment, because investors cannot be sure that they will reap the rewards of their investment.

Second, rights (and again especially property rights) are often taken as starting points in economic analysis. For example, analyses of the distributional properties of economic arrangements often begin from a given allocation of property rights. In adopting such a starting point, economists may find themselves assuming uncritically that this starting point is morally justified – that the rights recognized in the existing property regime really are the "true" rights in some normative sense. A crucial controversy among rights theorists that is of great importance to economists concerns whether there are "welfare rights" – that is, rights to things such as food, housing, and health care. We return to this question shortly.

Finally, rights may be invoked to limit the pursuit of economic goals. Most people today would recognize that the institution of slavery violates human rights and should therefore be forbidden, regardless of whether it might contribute to economic growth. More controversially, one can criticize socialism on the grounds that it violates people's rights by outlawing "capitalist acts between consenting adults" (Nozick 1974, p. 163) or criticize laissez-faire capitalism on the grounds that it violates people's rights to a job or their rights to minimum subsistence. The legitimacy of welfare rights is a primary issue regarding this third role of rights. Should the public provision of health care to those unable to pay for it be viewed as a matter of a *right* legitimately claimed by the needy, or is it instead best viewed as a matter of *charity* based on and limited by the goodwill of the affluent? Answers to this question will depend on the kind of justification offered for rights. Even if there are no welfare rights, governmental provision of charity might still be justified on the grounds that people prefer that welfare benefits be

provided but need state action to eliminate the temptation to “free ride” on the charitable efforts of others (Friedman 1962; Hochman and Rodgers 1969).

10.4 The Justification of Rights

Why should there be moral rights, and what rights should there be? How can moral rules, which are independent of actual law or custom, have prescriptive force? One traditional answer is that human beings can “perceive” what the correct moral rules are and recognize that they must be followed. John Locke put it this way:

The State of Nature has a Law of Nature to govern it, which obliges every one: And Reason, which is that Law, teaches all Mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his Life, Health, Liberty, or Possessions. (1690, sec. 6)

Similarly, the authors of the American Declaration of Independence regarded their claims concerning rights to be self-evident. The problem with such a view is that it leaves one with nothing to say to those who fail to acknowledge this “plain and intelligible” law of nature except that they must be “biased by their Interest, as well as ignorant for want of study” (Locke 1690, sec. 124). Immanuel Kant gives a second answer: equal respect for rational agents generates moral rules and rights. This view is notoriously difficult to interpret and is tied up with Kant’s metaphysics, which we cannot pursue here. A third answer, which is related to Kant’s, is that rational individuals who are concerned to promote their interests would choose to adhere to some set of moral rules. We will explore this contractualist answer in Chapter 12. A fourth answer is that of the utilitarian: specifying and protecting certain individual rights maximizes total welfare. There are other possibilities, too, but these are the main alternatives in modern Western moral philosophy.

Each of these ways of justifying rights provides guidance concerning what set of conventional and legal rights agents ought to be granted. The four are unanimous in defending some rights, such as a right not to be killed or a right to enter into contracts. But these moral theories do not always agree. A full theory of moral rights cannot be developed without taking sides on fundamental questions in moral philosophy. From the perspective of those who would hope to employ the moral vocabulary of rights and liberties when evaluating economic institutions and outcomes, the indeterminacies within each of these theories concerning exactly what rights agents have are even more challenging.

10.5 Weighing Rights, Liberties, and Welfare

The remaining problem concerning rights and liberty is incorporating them systematically into schemes of moral evaluation. This problem takes different forms given different accounts of why liberty or rights are valuable. According to instrumental or consequentialist views such as utilitarianism, the problem of rights articulation can be formulated as one of selecting rules that maximize good consequences. This is straightforward in principle, although difficult problems of strategic coordination may arise in devising effective rules.

What about cases where rights protections are viewed as intrinsically valuable? One option here is simply to include the protection or violation of rights and liberties among the consequences, weighting them according to some scheme that reflects their moral importance. For example, other things being equal, a murder would be worse than a natural death, because the murder would involve a rights violation in addition to the welfare losses attached to a death. When a job applicant loses out because of employer discrimination, the bad consequences include not only the welfare loss entailed by the worker's unemployment but also the violation of the applicant's right to equal treatment. Yet this approach seems to capture only part of the value of rights protection.

When we discussed the rationality of duty or rights-based moral systems in Chapter 7, we touched on some of the difficulties associated with incorporating such factors into an overall moral evaluation. Recall the example of a witness who considers committing perjury in order to ensure a conviction in the Rodney King beating case. In this situation, committing one serious wrong will most likely not only increase total welfare but also prevent others from perpetrating more serious wrongs. If the police officers accused of beating Rodney King at his first trial had been convicted, then Reginald Denny would not have been dragged from his truck and severely beaten, and hundreds of store owners would not have suffered theft and arson. But many would say that perjury violates people's right to a fair trial and that it is simply wrong, regardless of how many rights violations it might prevent. Even those who would not go so far as to rule out perjury regardless of the consequences would maintain that the moral pressure on an individual not to "do evil" goes beyond an impersonal weighing of the consequences. The consequentialist view does not capture the sense that the moral imperative on me is that *I* should not commit perjury.

One way to preserve a more thoroughly nonconsequentialist version of rights protection is to adopt Robert Nozick's view of moral rights as absolute "side constraints" on action (1974, pp. 28–35). On this view, an individual's

obligation is not to strive for a minimum of rights violations or for a maximum of any social welfare function. Rather, agents may do as they wish within the constraints imposed by rights. If everyone acts morally then there will be no rights violations. It is not, however, permissible for anyone to violate rights in order to prevent other rights violations. Rights are simply not to be violated. This absolute prohibition on trade-offs has been found disturbing by many philosophers (e.g. Nagel 1983), and we suspect most economists would agree. Indeed, Nozick himself seems to blanch before the full implications of his own view and suggests that, in the unlikely event that the consequences of respecting rights were catastrophic (as they might be in case of a famine), it might be permissible to violate them after all (1974, p. 30).

As we discussed before, it is possible to permit rights to have an important role without accepting the extreme side-constraint view that Nozick defends. One can allow the evaluation to vary with the perspective of the person doing the evaluating. Hence individuals can justifiably demur when offered the prospect of violating the rights of others, even if doing so would minimize overall rights violations. Furthermore, quite rigid constraints may be justifiable even from an explicitly consequentialist perspective. Although utilitarians and Kantians offer markedly different stories about *why* rights are necessary, they join in defending a set of rights that sharply constrain individual action and social policy.

10.6 Libertarianism

Libertarians defend political liberty, property rights, and economic freedoms. Some libertarians do so because they believe that defending rights and liberties most enhances welfare. However, we shall mainly discuss the work of “philosophical libertarians,” who maintain that freedom, which depends on the protection of rights, is the overriding moral consideration (Lomasky 1987). As Narveson puts it, “the only relevant consideration in political matters is individual liberty” (1988, p. 7; see also Machan 1982, p. vii). In libertarian writings, liberty – the fundamental value – is linked to a rights-based view of justice, and the liberties with which libertarians are concerned should be regarded as rights. Philosophical libertarians maintain that acts and policies are just if and only if they do not violate anyone’s rights.

What distinguishes philosophical libertarianism is this identification of justice with respecting rights as well as a distinctive view of the content of rights and of the duties that rights entail. For example, most libertarians hold that redistributive inheritance taxes violate individual property rights

and are morally impermissible. But this presupposes both that rights must be respected and that property rights include the right to bequeath one's property without any encumbrances. If property rights did not include the right to bequeath one's property then there would be no rights violation, just as the "entailments" on landed estates requiring that they be willed entirely to the eldest son did not violate the legally recognized property rights of the English gentry. Libertarians defend strong and encompassing property rights. It might appear that property rights could conflict with such welfare rights as subsistence or health care and that to judge whether redistributive taxation is morally impermissible would require adjudicating among these conflicting rights. But libertarians deny that such conflicts among rights will arise because, they maintain, the duties that rights imply are almost exclusively "negative" duties not to interfere.

Libertarians typically deny that there are any welfare rights. For example, libertarians hold that right to life is a right not to be killed, not a right to be given subsistence. In propounding such a view, libertarians are not necessarily endorsing selfishness – although some, such as Ayn Rand's "objectivist" followers, do espouse egoism (Rand 1964). Most libertarians, like other people, value beneficence and charity as virtues. They only insist that individuals must not be forced to be beneficent or charitable. The libertarian need not admire Mr. Bumble and the other officers of the Parish who (in Dickens's *Oliver Twist*) allow paupers to starve to death. Like other readers, libertarians will find Mr. Bumble a hard-hearted hypocrite. But libertarians who accepted the legitimacy of existing property rights would see no injustice in the wretched treatment of the indigent. The indigent have no welfare rights to food or shelter. On the contrary, insofar as the workhouse relies on taxation to provide its miserable relief, it is violating the rights of taxpayers and unjustly taking their property. Justice requires that one not interfere with the pursuits of individuals unless those pursuits violate rights.

Although generally supportive of small government and low taxes (which are not synonymous and need not coincide), consistent libertarians would not readily endorse the slogans of those who criticize taxation on the mistaken grounds that people are entitled to all of their pretax income and wealth. There are three reasons. First, while a strong case can be made that private property is an essential element in any scheme that maximizes liberty, the legitimacy of the current distribution of property rights is dubious because it has been influenced by property rights violations in the course of history. Second, since libertarians support taxation for purposes such as defense, police, and courts, they cannot maintain that individuals are entitled to all their pretax earnings. Third, the actual income and wealth of

individuals depend heavily on social and political institutions. Without a framework of law, a regulated money supply, and a variety of public goods from vaccinations to highways, there would be little wealth or income to protect from the “encroachments” of government. Even if many of these services were supplied privately rather than by the government, people must still pay for them; and to suppose that one’s gross income measures one’s own contribution and entitlement finds no support within libertarianism.

Even if one grants that existing property rights are legitimate, how can the libertarian defend the claim that protecting them serves freedom better than violating them in order to prevent starvation? The answer lies in distinguishing coercion from disutility. Taxing people to feed the starving involves coercion, while starvation (unless intentionally inflicted on someone) does not. A crucial step involves adopting a “moralized” definition of coercion, which states that *A* is coerced only when *unjustified* force is used against *A*. This means that the enforcement of justified property rights through legal authority – even when the result is starvation – does not involve coercion. If one thinks of negative liberty as the absence of coercion of this kind and if one takes existing property rights to be legitimate, then a system that enforces existing property rights maximizes negative liberty.

This argument is questionable because it is doubtful whether existing property rights are justified and because the moralized definition of coercion is dubious. To claim that coercion exists only in the context of unjustified force would imply, uncomfortably, that putting a convicted criminal in prison involves no coercion. More generally, linking coercion and liberty conceptually to the definition of rights makes it impossible to conceive of rights as maximizing liberty or minimizing coercion, for to do that one needs conceptions of liberty and coercion that are independent of rights conceptions (see Martin 1993).

Some libertarians, such as Loren Lomasky and Hillel Steiner, defend some rights to positive assistance, such as a right to be given a fair trial or an infant’s right to nurture (Lomasky 1987, pp. 164, 260). But even libertarians who grant the existence of such rights want to limit them narrowly. Libertarians are concerned to ensure (1) that the duties to provide these particular benefits, like the duties not to interfere, be easy to comply with and not compromise the character of an individual’s projects, and (2) that the benefits be crucial to the possibility of pursuing any projects at all. But some rights to positive assistance, such as children’s right to nurture (which is certainly crucial), impose serious burdens on others. Libertarians are uncomfortable about imposing such burdens, because they insist that value lies in the

separate endeavors of individuals and that justice lies in not interfering with those endeavors unless they threaten the rights of others.

Taking freedom to be the fundamental value does not automatically commit one to a rights-based view of morality, to a particular view of the content of rights, to the view that rights rarely obligate others to give positive assistance, or to the view that enforcing existing property rights necessarily maximizes liberty. Joseph Raz, for example, argues at length that valuing autonomy commits one to an extensive role for government in providing the public goods that facilitate the achievement of autonomy (1986, ch. 8). Raz's argument depends unsurprisingly upon an interpretation of liberty that most libertarians would reject.

In Nozick's well-known version of libertarianism, natural rights – rights whose justification does not depend on consequences – secure individual autonomy. Justice is respecting rights. According to Nozick's entitlement theory of justice, an outcome is just if it arises from just acquisition of what was unowned or by voluntary transfer of what was justly owned. Just acquisition is acquisition of unowned resources that makes no one worse-off and violates no rights. Transfers are, in the relevant sense, voluntary if and only if none of the limitations on individual choices arise from rights violations. Only remedying or preventing injustices can justify redistribution or other interferences with voluntary action. A view such as Nozick's clearly places heavy demands on a theory of rights, which Nozick unfortunately leaves undeveloped (see Nagel 1983). Justice is entitlement and depends on the actual history, not on the resultant pattern. Since the past is, as a matter of fact, full of injustices, Nozick's libertarianism in practice requires extensive redistribution, though how to bring about the state of affairs that would have obtained if there had been no past injustices is anybody's guess. Whether Nozick's entitlement theory rules out redistributive taxation as unjust depends on what particular view of the content of rights one adopts. If just acquisition gave one the right to transfer only 80% of one's property, then a 20% transfer tax would violate no rights. Even if Nozick is right that justice is determined by entitlement – that is, by respecting rights – and not by “pattern,” patterns might re-enter the story at a higher level when one is deciding what the content of rights should be (Pogge 1989, ch. 1).

Some of Nozick's most striking arguments in favor of this “entitlement view” show that even minimal efforts to regulate the pattern of distributive outcomes involve extensive interference in people's lives. In a much-discussed example, Nozick argues that taxing the income of a star basketball player like Wilt Chamberlain interferes with the choices of Wilt's fans, who

would happily pay a premium to see him perform (1974, pp. 161–3). Since the point of rights is to secure liberty and to permit individuals to pursue their own projects, considerations of welfare never justify interference with individual rights. Since, in addition, Nozick takes rights to be absolute side constraints, even efforts to protect rights cannot justify infringements of rights. Thus Nozick argues that only an extremely minimal state can be justified. Notice that accepting the priority of liberty and rights over welfare does not by itself force one to accept the libertarian political program, since a more-than-minimal state might serve liberty better than a minimal state.

The philosophical libertarian's commitment to liberty is in principle independent of any welfare consequences. But libertarians would like it to be the case that protecting freedom also makes people better-off, and libertarians need to show that some of their more extreme proposals, such as privatizing all streets and highways (Block 1982), would not lead to disastrous consequences. Jan Narveson puts the point vividly: "those who toil in the libertarian fields devote the lion's share of their efforts to persuading us that the alleged benefits of the State are illusory" (1988, p. 183). Moreover, many who support libertarian policies are motivated by welfare concerns. Friedrich von Hayek, for example, argues that economic prosperity, social innovation, and political democracy are best advanced by keeping government to a minimum (von Hayek 1967, 1976). Most libertarian economists are less influenced by distinctive philosophical commitments than by specific reasons for doubting the efficacy of government intervention to improve efficiency or redistribute income. For example, the literature on property rights and transaction costs that derives from Ronald Coase's arguments in "The Problem of Social Cost" (1960) usually reaches libertarian policy conclusions, but philosophical libertarians would reject Coase's consequentialist view of rights as welfare-enhancing devices to reduce transaction costs and to alleviate the suboptimalities caused by externalities.

Rights and liberties are central elements in the European and American moral and political heritage. They are complex and controversial, but so are conceptions of welfare. Normative economics should undertake more explicitly the responsibility of investigating how well economic arrangements serve liberty and to what extent they secure rights. Welfare economics should be only one part of normative economics, not the whole of it.

Suggestions for Further Reading

Isaiah Berlin's celebrated essay, "Two Concepts of Liberty" (1969), has provoked much discussion. A valuable collection of essays inspired by Berlin's

work is Ryan (1979). MacCallum (1967) is a valuable commentary on Berlin. For discussions of autonomy, see especially Feinberg (1986, pp. 31–2), Raz (1986), Dworkin (1988, ch. 1), and Christman (1989).

On the definition of rights: Hohfeld (1923, p. 38) regards claims as “the limited and proper meaning” of “right.” Wellman (1985), Sumner (1987), and Thomson (1990) follow Hohfeld terminologically, though none of them is committed to construing pure claims as the paradigm cases of rights. See also Feinberg (1973, chs. 4–6) and Waldron (1984). For a defense of a “choice” construal of rights see Hart (1955); Raz (1986) defends a benefit construal. For general discussions of rights see Dworkin (1977), Sumner (1987), Thomson (1990), and Martin (1993); and for a sustained discussion of the difficulties of defending libertarian property rights see Waldron (1990).

Amartya Sen (1982b) discusses the option of including rights violations among the consequences that a consequentialist should take into account. Thomas Nagel, on the other hand, has argued powerfully for preserving a nonconsequentialist component in rights evaluation (1986, ch. 9).

Machan (1982), Lomasky (1987), Narveson (1988), and Steiner (1994) – as well as Nozick (1974) – provide systematic accounts of a libertarian viewpoint. Friedrich von Hayek’s treatise (1960) argues that a variety of consequentialist considerations support the case for limited government and wide protections for negative liberty. Schmidtz (1994) makes an eloquent case for the importance of property rights to human flourishing, which draws on the work of Coase (1960) and Demsetz (1967); see also Cowen (1988). For a critique of the “vulgar libertarianism” that holds that people are entitled to their pretax holdings, see Murphy and Nagel (2004). Von Mises (1941) is the classic libertarian discussion of economics.