

**Rationality, Welfare, and Liberty:
a Philosophical Reconciliation**

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PhD Thesis

London School of Economics and Political Science

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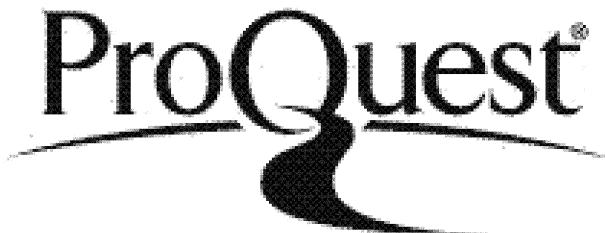


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Abstract

This thesis attempts to amorally defend certain conceptions of rationality, welfare and liberty and to reconcile them in the sense of showing that they need not clash in practice. This is motivated by the social scientific work (particularly in economics) that indicates that liberty and welfare are best promoted by the free market.

There is a cluster of reasons that this defence is needed: there is no clear account of liberty or what it entails; preference utilitarianism (as a theory of welfare) is often invalidly attacked, or misinterpreted in practice; some economist's conclusions that liberty and welfare do not diverge in the free market are often questioned because based on an instrumental rationality which is thought unrealistic or vacuous; the theories of liberty and welfare in this thesis also need the instrumental rationality assumption.

Chapter 1: An Austrian economic interpretation of the instrumental rationality assumption of standard economics (that agents are self-interested utility-maximisers) can be defended as fruitful, compatible with moral values though implying none, and the fundamental tautology that standard economics presupposes.

Chapter 2: The preference-utilitarian conception of welfare as achieving what is spontaneously desired

(desired without the imposition of force or fraud), and maximising overall welfare, withstands criticism and is in practice compatible with the conceptions of liberty and rationality used in this thesis. In practice, preference utilitarianism entails side-constraint libertarianism, which the free market spontaneously provides.

Chapter 3: The voluntarist conception of social liberty as the absence of costs imposed on people by people, and maximising overall liberty, withstands criticism and is in practice compatible with the conceptions of welfare and rationality used in this thesis. In practice, maximising voluntarist liberty entails side-constraint libertarianism, which the free market spontaneously provides.

Coda: A criticism of the presuppositional dismissal of anarchy as a natural setting for liberty and pluralism.

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0 Thesis Introduction

0.1 What this thesis is about

This thesis is about defending certain conceptions of rationality, welfare, and liberty from mistaken criticisms and reconciling them in the sense of showing that they need not clash in practice. It is conceded that maximising both welfare and liberty will not be compatible in all logically possible cases; that does not affect the thesis that they are normally compatible.

This thesis is not about defending welfare or liberty as moral goals, let alone as ultimate moral goals.

The conception of rationality is an Austrian interpretation of standard economic instrumental rationality: *agents are self-interested utility-maximisers.*

It will be argued that this assumption is necessary for the conceptions of liberty and welfare defended here as well as being the fundamental tautology that standard economics (as a social science) implicitly relies on to link its results to liberty and welfare. The relevant social scientific literature is generally taken as background information. However, when dealing with the criticisms and alternative positions it will be used and

cited in specific cases throughout the thesis where it would seem incomplete not to do so.

The conception of welfare is that used by preference utilitarians: *people are better off to the extent that the world is as they spontaneously (without force or fraud being used to engineer their preferences) prefer it to be.* But it is defended as a plausible conception of welfare and not on the basis that it is moral to maximise it.

It will be argued that preference utilitarianism in practice entails rule utilitarianism where that rule will be side-constraint libertarianism. A side-constraint approach here means not allowing that X be done to an individual even to attempt¹ to consequentially prevent more examples of X's being done.

The conception of voluntaristic liberty as *people not having costs imposed on them by other people* will be argued to be a clear, consistent, and comprehensive interpretation of the common notion of social liberty (as not being interfered with, put upon, or constrained by others). Whether such liberty is morally desirable is not the issue. (The three conceptions being defended leave no room for a separate theory of individual autonomy beyond this notion of liberty as not having

¹ As consequentialism is ultimately accepted in principle in this thesis this view differs from Nozick's conception of a 'side constraint' which is absolute in principle (Nozick 1974 p.30).

costs imposed by others. There is no separate section looking at criticisms from alternative views of autonomy. Instead such criticisms are dealt with in all three chapters.)

It will be argued that maximising such liberty will in practice entail rule-libertarianism where that rule will be side-constraint libertarianism.

Thus maximising liberty and maximising welfare are reconciled in practice by both requiring side-constraint libertarianism. This double defence of consequentialism in principle only to abandon it in practice may look unnecessarily complicated. It will be argued that this is the only correct full response to the powerful criticism that there is something irrational about side-constraints that are absolute in principle: they are thereby potentially at odds with the very things they ostensibly seek to promote or protect.

I hope that this thesis clarifies and strengthens the arguments and intuitions of those economic liberals (and their sympathisers) in various schools of social science (not least the economic ones: the Public Choice School, the Chicago School, and the Austrian School) who tend to argue that liberty and welfare seem to go together. In particular I hope this assists the anarcho-capitalist

work being done in these schools (especially as found in the writings of Murray Rothbard and David Friedman²).

0.2 Why are moral issues avoided?

Most people in modern western society, including moral and political philosophers, have moral and political views that either limit welfare promotion for libertarian reasons or override liberty because of welfare considerations. At the extremes of the two views we have natural-rights libertarians (such as Nozick and Rothbard) and utilitarians (such as Hare and Smart). Discussions of distributive justice also generally attempt to limit liberty by welfare or vice versa (with egalitarian considerations usually doing the same tacitly--though usually being pro-welfare).

So if it is possible to effectively defend the congruence of liberty and welfare in practice, then there is no practical need of an ultimate moral defence of either--for there are few left to criticise. A moral defence is required only to the extent that critics have moral ends that trump both human liberty and human welfare. Such critics are few and far between and will be overruled in practical political terms. Therefore, in this thesis on political philosophy, it is possible to avoid any defence

² Though Rothbard ultimately wants a natural rights defence and Friedman, apparently, a more utilitarian defence.

of liberty or welfare, or any combination, as ultimate moral goals while still making a substantial claim.

0.3 An analogical defence of this approach

There are two undiscovered primitive tribes that live in the same region. One tribe thinks that eating any part of animals without hearts is immoral. The other tribe thinks that eating any part of animals without kidneys is immoral. They have heated debates about both the moral issues and the empirical facts of which animals have which organs. They feel moral contempt for each other and continually attack each other in attempts to enforce their moral views. Peaceful association is considerably disrupted.

An anthropologist with some knowledge of biology discovers them. He explains that all animals in fact either have both a heart and kidneys or neither of them.³ This view has been widely tested by biologists and they also have plausible theoretical reasons for explaining that this will always be so (except in the case of genetically engineerable animals, we may suppose⁴).

³ I adapt this example from V.W. Quine's essay "Two Dogmas of Empiricism" in *From a Logical Point of View* (Harvard University Press, 1980, p.21); I assume that it is true though the analogy does not, of course, depend on its truth.

⁴ This is intended to be analogous with the thought-experiment attacks on the compatibility of liberty and welfare.

Therefore, he argues, the bitter disagreements and struggles can cease to the great benefit of all.

It would surely be irrelevant for the tribes to insist that the anthropologist say which side he is really on, and give his tacit moral arguments. He need not be on either side. And if he were then it would probably only cloud the issue of the important claim he is making for him to also bring in moral arguments.

0.4 A critical rationalist method

This thesis is written in a way that is intended to follow critical rationalist epistemology. This theory of knowledge is that developed primarily by Karl Popper⁵ and extended in scope by W.W. Bartley.⁶

The fundamental idea is that all knowledge is conjectural. Because of the nature of universal theories we can never make them more probable by finding new examples that fit with what they predict. We can never give our theories firm foundations of any sort, whether inductive or *a priori*. But any single counter-example is sufficient to show that a theory is false. So the best instrumentally rational approach is to conjecture theories that are as bold as possible and then attempt to

⁵ Especially in Popper 1978 & 1979.

⁶ Especially in Bartley 1984.

test them as rigorously as possible. In this way we can at least have theories that are as large in content as our tests will allow.

We can still be mistaken about such theories, and we probably are; for in an infinite universe it is statistically unlikely that we have stumbled on the truth. But given our apparent success in dealing with the world there seems no reason to suppose that we have totally failed to understand it. And by rejecting falsified theories we might be reaching ones with ever greater truth content. In any case, without this methodological approach we are left with no course of action that is not ultimately arbitrary.

In the philosophical realm criticism is what takes on the role of empirical tests. That this thesis is intended to follow the critical rationalist method is the reason that critics dominate the arguments in what follows. If I were merely to build a castle of consistent theory then that would probably leave these critics, and those with similar opinions, quite unmoved. In fact it seems that, for the epistemological reasons given, one is really obliged to take on prevalent criticisms. One can do this tacitly by writing with the known views of others in mind or by postulating possible criticisms. In some cases I have resorted to this latter method though only in self-criticism or at the suggestion of a reader of a draft. Usually, though, I have tried to explicitly tackle real critics in the literature. This has made it necessary to

deal with a plethora of awkward points in a way that has caused the theory to develop and, I hope, show its strength.

Therefore, this thesis does not start with first principles and then attempt to build up to well justified conclusions.⁷ The approach of the three-part structure is to state the respective theses clearly and briefly and then attempt to defend and reconcile them in the light of major and typical criticisms and alternative conceptions. (It would probably be more confusing and repetitive to discuss each conception of the thesis in strict isolation and only then attempt to reconcile them, given that the philosophers and economists being examined tend to run together their discussions of the nature and practical consequences of rationality, welfare, and liberty.) The idea is to show that the initial thesis can withstand such criticisms and comparisons, and so it is an improvement on them which itself remains as yet unrefuted.

However, in all the writers chosen I am not attempting to give a comprehensive account of their views in the books and articles discussed. These are often subtler and more full of insights than my quotations might suggest. I have merely 'plundered' them for points that seem typical or powerful criticisms (or alternative points of view) in

⁷ Things might seem this way in the 'state of nature' development of the implications of liberty (in chapter 3), but drawing out the implications of an idea is not to attempt to justify it.

order to test the strength of the position taken in this thesis. If, in the process of extracting these points, I have occasionally misconstrued or over-simplified them then that is certainly not intentional. At times I have deliberately taken a fairly small or weakly expressed point and in response developed detailed arguments (possibly out of proportion to the significance the author intended for his point). While I think this is a useful and valid way to develop the argument I am sure that the critic could often have put up a more comprehensive case had he foreseen such an 'onslaught'.

This thesis is in the area of political (or social) philosophy. Problems that are meta-ethical, practical, epistemological, and metaphysical are included in proportion to how far they are relevant to the general political philosophical thrust of the thesis. So, for instance, there is a necessary discussion of weakness of the will, but it is not of a length and comprehensiveness that might be expected in a thesis on pure philosophy (where it might easily be the sole topic).

The breadth of the subject matter that has been involved, and the need to press on, has also inevitably resulted in some first approximations to solutions to important problems that certainly would have to be revised in the light of a more detailed approach and further criticism.

For a fuller and more convincing account of the critical-rationalist epistemology it would be necessary to read

the writings of Popper and Bartley. This brief section will have to suffice here as an explanation of critical rationalism and the use to which it is put.

1. Austrian Economic Rationality

1.1 Chapter thesis

An Austrian economic interpretation of the instrumental rationality assumption of standard economics (that agents are self-interested utility-maximisers) can be defended as fruitful, compatible with moral values though implying none, and the fundamental tautology that standard economics presupposes.

1.2 Chapter introduction

This chapter proceeds after this introduction with an account of the economic assumptions being defended and why they are being defended. Then there is an examination of Israel Kirzner's similar position. The chapter continues to the end by examining criticisms of, and alternative conceptions to, the various parts of the rationality assumption.

1.3 Why defend 'Austrian' economic rationality?

The great schism in economics

This chapter does not defend Austrian economic rationality as normally used by Austrian economists. In particular Austrian economists do not use the concept of utility-maximisation. This chapter is better seen as an Austrian interpretation of the more mainstream economic rationality assumption that individuals are self-interested utility-maximisers.

This chapter (and in some ways the overall thesis) can be seen as an attempt to heal the schism in economics between the subjective, tautological approach and the objective, scientific (falsifiable) approach. The Austrian subjective view of value (building on Menger's theory of value) was developed into a theory of economics as being an entirely tautological theory of action. This probably finds its most extreme statement in Ludwig von Mises' *Human Action*.⁸ The more standard economic view has developed into making falsifiable predictions about economic phenomena whereby the truth of the assumptions (especially about economic agents) is (to say the least) relatively unimportant. This probably finds its most extreme statement in Milton Friedman's introductory essay in his *Essays in Positive Economics*.⁹

⁸ Mises 1966.

⁹ Friedman, M. 1953.

As a consequence Austrian economics has largely fallen out of favour with most economists for not being scientific (falsifiable) while standard economics has fallen out of favour with many non-economists as being insufficiently linked with the real subjective aspects of human values, welfare and liberty. I am generally inclined to view Austrians as correct on a tautological core but thereafter I want falsifiable predictions. But I will not here be attempting the large project of adjudicating between (or, perhaps, marrying the best parts of each of) the two schools of economics in areas other than the rationality assumption.

The problem in more detail

Economics is the social science that has done the most to link the free market with liberty and welfare (particularly in the schools referred to in the introduction). But economics' fundamental assumption (as a social science) of instrumental rationality is sometimes held to be unrealistic or viciously vacuous (depending on how it is interpreted) and this therefore has a tendency to undermine its conclusions. Its conception of economic demand is also fundamental and sometimes seen as biasing economics' results in the direction of market conclusions (this is not so fiercely under attack at the moment though it is just as important, and relevant to the rest of the thesis, so it

is also defended briefly at the end of the chapter). A version of the rationality assumption is also needed for the conceptions of welfare and liberty used in this thesis. So if the rationality assumption (and the concept of economic demand) can be defended, then this should go some way to defending the conclusions of economists along with the conceptions of liberty and welfare in this thesis.

The standard interpretation of instrumental rationality (as found in, say, Hirshleifer's *Price Theory and Applications*¹⁰, discussed later) has people as self-interestedly maximising (over time) their 'utility' as revealed by their preferences. This assumption is often held to be of dubious value because it is thought that people are not always self-interested, are not motivated (at least solely) by utility, do not maximise over time, and their preferences cannot be identified with their interests for a variety of reasons (including weakness of the will).

This chapter is not about defending this standard outlook directly. In particular it is readily conceded that people are not always self-interested in the sense of being egoistic, for it is denied that economics needs to assume this. It is also admitted that people can make mistakes as regards their long-term interests. But the empirical literature can in part be used to show that

¹⁰ Hirshleifer 1984.

people are better off making and learning from their own mistakes than having others control them, and some philosophical arguments can contribute to showing that this is so as well.

Instead, a tautological Austrian (subjective) interpretation of the instrumental rationality assumption is defended. The objections to this can be broken down and examined separately. The following are taken to be the major objections to the idea that agents are self-interested utility-maximisers (critics will later be quoted and discussed in each case¹¹) and economic demand:

- 1) A self and its interests: This assumption provides no good account of the self and its interests: the self is malleable rather than fixed, and one can be mistaken about one's interests.
- 2) Self-interest: People are not merely self-interested for they often consider the interests of others, notably in moral decisions.
- 3) Utility: Utility does not make sense as a single motive or goal, or even as one of many.
- 4) Utility-maximisation: People do not maximise anything in particular, let alone utility.

¹¹ Critics of utility-maximisation are left to the next chapter to avoid repetition.

5) Economic demand: People cannot always afford what they 'demand' (in a more ordinary sense of the word). In particular, those important demands that are known as needs are not, as such, taken account of by this conception. This conception is thus inherently pro-market and anti-welfare.

The first chapter deals with these criticisms in turn. It should help to immediately give a brief account of each of these terms as they will be defended, though their full force should become clearer as the discussion of the critics proceeds.

1) A self and its interests: Any single entity can be seen as a self. The term need not imply anything about the nature of persons or of personal identity. Any entity that has conscious desires has interests in the sense intended.

2) Self-interest: The self-interest assumption is not to be contrasted with altruism (with which it is compatible) but with being an automaton or the puppet of the will of others. Agents, *qua* agents, necessarily follow their own consciously felt interests.

3) Utility: An utterly general feeling of satisfaction (or dissatisfaction in the case of disutility).

4) Utility-maximisation: Agents always aim at the goal the thought of which gives them the greatest utility (or

least disutility) at the time of aiming at it. Utility-maximisation is what motivates people; it is not their goal for they can seek ends the attainment of which do not cause them any psychological state once reached (such as posthumous fame).

5) Economic Demand: The willingness and ability to pay a price for something has no moral import and is not misleadingly pro-market.

Thus I am *more or less* defending the Austrian (or subjective) approach to rationality that is expounded, for instance, by Israel Kirzner.¹² According to this view it is tautological that agents are instrumentally rational in the sense of purposeful maximisers. I prefer to gloss instrumental rationality explicitly as self-interested utility-maximisation instead of keeping the discussion more generally related to purposeful maximisation as (I will show) Kirzner does.

It might seem to even many economists that I am defending a straw man. The literal truth of the rationality assumption is often thought to be unimportant for the general business of doing economics. Milton Friedman is an extreme example of this position. He has argued that testable predictions are all that really matter.¹³ And Gary Becker has argued that with no rationality

¹² Kirzner 1976.

¹³ Friedman 1953.

assumption there would, with a high probability, still be downward sloping demand curves due to limited income.¹⁴ And it might be questioned whether the work of the economists whose work I am wanting to defend can be interpreted using the tautological Austrian conception of instrumental rationality.

But from a purely economic viewpoint, it seems that a defence is necessary of instrumental rationality (self-interested utility-maximisation) as a *descriptive* account of what agents are *subjectively trying to do efficiently*. For if agents are not trying to be instrumentally rational then it is hard to make any real sense of their behaviour. So the *prescriptive* accounts of instrumental rationality (of what people really need to do to achieve certain ends--as given by rational choice theory, discussed later, as well as by economists in their advisory role) must carry very little weight. And so will all the results based on the additional rule-of-thumb assumptions (such as firms being profit-maximisers¹⁵ and individuals maximising preference satisfaction over time) that implicitly build on the subjective instrumental rationality of agents.

¹⁴ Becker 1971.

¹⁵ If it is not true that firms tend to maximise their profits because that tends to benefit the interests of the people involved, then the assumption that they do becomes mysterious in a way that seems to throw doubt on any economic conclusions that are supposed to follow from the assumption.

This is not a defence of *a priori* Austrian economics as an alternative to the more mainstream varieties. The point is that the mainstream varieties cannot entirely abandon the core tautological subjective aspect of their science without themselves becoming mere predictions about patterns of behaviour that are impossible to relate to real human desires, welfare and liberty.

To recap, if this interpretation of the rationality assumption is false, and economics has no use at all for it, then this causes four major problems for this thesis:

- 1) The defence of welfare as having more of what we spontaneously consciously value is undermined.
- 2) The view of being free as other people not causing us costs (as opposed to benefits)--these being ultimately personal and subjective--is undermined.
- 3) Even if economics can still show that we get more of what we want and are less imposed on with the free market and voluntary behaviour, that does not show that 'welfare' and 'liberty' as others might interpret these notions are increased thereby.
- 4) Economics needs to show that it can make sense of altruism as a subset of self-interest for a convincing and comprehensive extension of economic analysis into realms where altruism exists (the family, charity, friendship, love, ideology).

In other words, if people are not rational in the sense defended then both this thesis and standard economics would seem to be (at best) logically consistent but not very substantial.

In the next section this approach is compared with that of a modern Austrian economist, Israel Kirzner, who also argues that economics needs the subjective interpretation of rationality. This is quoted at some length in order to back up the claim that an Austrian interpretation of economic rationality is worth defending and to show the differences between Kirzner's interpretation and that taken in this thesis.

1.4 A comparison with Kirzner's defence

Israel Kirzner has recently written a brief but useful historical survey of the topic under discussion.¹⁶ He tells us that:

the self-interest assumption in economic theory has aroused passionate debate again and again in the history of the discipline. The passions were first ignited in reaction to classical economics, which appeared to assume not only a world of self-interested persons, but one in which they were intent on nothing else except material satisfaction.¹⁷

This is the classical *Homo oeconomicus*.

¹⁶ Kirzner 1990 pp. 27-40.

¹⁷ Ibid. p.27.

For Kirzner (and for this thesis) the opposite of being motivated by self-interest (in the Austrian sense) would not be being altruistic but being an automaton or a will-less puppet of the interests of others. So the assumption still has a very real and important content:

It is one's own purposes which inspire one's actions and excite one's alertness. One's purposes may be altruistic or otherwise; one's interest in achieving one's (possibly altruistic) goals switches on his or her alertness to opportunities for advancing those goals.¹⁸

But it seems that the critics dealt with later in this chapter show that more needs to be said to explain how altruism can be genuine while being one of "one's own purposes".

Today "microeconomics has once again assumed the controlling paradigmatic role in economic theory." Emphasising the contributions that the 'rationality' assumption can make:

microeconomics has proceeded to 'invade' the territory of the other social sciences, placing ever more weight on the constrained maximisation behaviour which the 'rationality' assumption sees as so central.¹⁹

And Kirzner feels that, due to this new imperialism of economics, the old criticisms have resurfaced, and he gives his own examples in the literature (which I shall not repeat here).

In the face of such criticism economists have traditionally taken one of two defences, of which one is

¹⁸ Ibid. p.39.

¹⁹ Ibid. p.38.

"to argue that the rationality assumption ... is never meant as more than a useful first approximation."²⁰

(Kirzner cites Fritz Machlup²¹ as "probably the most sophisticated and careful restatement of this line of defence."²²)

But as a result critics of economics:

have accused economists of ignoring, at least in their policy recommendations, their own fine-print lip-service to the limited actual relevance of their models. ... economists have permitted their models to run away with them, so that they are simply unable to shake off their adherence to these suspect assumptions.²³

By contrast, "the second of the two traditional defenses of economics has been to argue for a highly refined version of the assumption of economic man."²⁴ In this version:

economic man does not need to be materialistic, or selfish; he does not even have to be efficient in any objective sense. *He merely has to pursue goals purposefully*, in the light of his own perceptions of relevant possibilities and constraints. Ever since, in 1932, Lionel Robbins built on the ideas of Philip Wicksteed in the U.K. and a number of Austrian economists of the 20s and early 30s to formulate this rarefied depiction of the economising agent, economists have felt justified in brushing aside much of the standard criticism.²⁵

²⁰ Ibid. p.31.

²¹ In "The Universal Bogey: Economic Man", Peston, M. and Corry, B. (eds) 1972 *Essays in Honour of Lord Robbins* (London: Weidenfield and Nicholson).

²² Kirzner 1990 p.40, footnote 3.

²³ Ibid. p.31.

²⁴ Ibid. p.32.

²⁵ Ibid. p.32.

But various critics (some dealt with later) regard this as reducing the utility theory to a tautology and obscuring the difference between actions done for pleasure and those done for moral reasons.

Kirzner fully endorses the:

Mises-Robbins defence of the role of the 'rationality' assumption, which emphasizes the complete generality of the utility towards which individuals are assumed to be purposefully aiming.²⁶

Here I must partly disagree with Kirzner (for the same reason that I do with Mises); for a more "highly refined version of ... economic man" seems to require the distinction between utility as a motive force and whatever happens to be the goal that we are thereby motivated to aim at. If we do not make this vital distinction then we are open to the criticism that, as we have goals other than mere personal satisfaction, the assumption is at best a rough approximation and all conclusions based on it are thereby suspect: exactly the sort of criticism that Kirzner wants to avoid.

Neither can I agree with Kirzner that "the core of economic theory is the theory of markets"²⁷ The core seems to be the rationality assumption itself for it is needed to make sense of markets and it can be used for analysing non-market choices.

²⁶ Ibid. p.34.

²⁷ Ibid. p.33.

But I largely agree with Kirzner that:

the standard rebuttals offered against the Mises-Robbins defense, denouncing it as turning the micro-theory of the decision into a tissue of tautologies, incapable of explaining important obvious distinctions between classes of decisions under a variety of circumstances, totally miss the mark. This is because the function of the microeconomic theory of the decision is precisely that of providing the tautologous framework required for the subsequent theory of the market process.²⁸

And I defend this point in response to various critics dealt with throughout this chapter.

Throughout his article, Kirzner avoids giving a clear account of "rationality" (keeping it in warning quotation marks). But he was more explicit in his *The Economic Point of View* where he writes, for instance:

Rationality in human behaviour consists ... in the consistent pursuit of one's own purposes; in selecting the means that appear best adapted to the achievement of one's goals; in refraining from courses of action that might frustrate their achievement or promise only the attainment of less valued, at the expense of more highly prized, objectives.²⁹

And this statement seems to be roughly translatable into the account of rationality in this thesis as self-interested utility-maximisation. It is defending this more precise account that I think needs doing and which this chapter attempts.

This thesis may also have a broader account than Kirzner has in mind as I do not agree with the possible

²⁸ Ibid. p.35.

²⁹ Kirzner 1976 p.165.

qualification of the role of rationality when he writes "to the extent that "rationality" plays a role in human decisions ... "³⁰ or that "to reject the scientific demonstration of the power of such systematic learning patterns, on the grounds of occasional or frequent human "irrationality," ... ".³¹ If agents, *qua* agents, are bound to be rational then there seems no room for such "irrationality".

Kirzner rightly admits that:

it has turned out to be those economists (associated very often with the University of Chicago) who have been understood to be the most enthusiastic supporters of free markets (as a consequence of their economics) whose economics appear most heavily indebted to the narrowest formulations of the 'rationality' assumption.³²

But he feels that "the revival of the Austrian tradition has enabled us to extend the classic Mises-Robbins defense with renewed vigour"³³ in a way that complements this work. I agree, but, again, put the emphasis on the greater realism and strength of the rationality assumption itself (which these economists can now use to better underpin their results) rather than Kirzner's 'rationality' which he insists on embedding in market processes as "the controlling principle [of] goal motivated discovery".³⁴

³⁰ Kirzner 1990 p.36.

³¹ Ibid. p.36.

³² Ibid. p.38.

³³ Ibid. p.39.

³⁴ Ibid. p.39.

The interpretation of subjective economic rationality in this thesis is even closer to that of Ludwig von Mises' who focuses on modern subjectivist economics explicitly as a general theory of choice rather than merely being about markets:

The transformation of thought which the classical economists had initiated was brought to its consummation only by modern subjectivist economics, which converted the theory of market prices into a general theory of human choice.³⁵

Another important difference from the standard Austrian economic approach is that here interpersonal comparisons of utility are allowed as a social welfare criterion and as a social liberty criterion. This is necessary for the theories of welfare and liberty and will not be discussed in this chapter.

In the rest of this chapter the philosophers and economists chosen are critics of (or offer accounts incompatible with) various parts of the rationality assumption as distinguished in this introduction. Because the defence of the idea of self-interested utility-maximisation is not only from an economic viewpoint criticisms entirely other than those aimed explicitly at the economic view are often considered (not least in the next section). Their relevance to this chapter and the overall thesis should be apparent (especially where their accounts involve views

³⁵ Mises 1963 p.3.

incompatible with welfare and liberty as used in this thesis).

1.5 The self and its interests

This section considers criticisms of the formal natures of the 'self' and the 'interests' that economics requires. Two philosophical critics, Harry Frankfurt and Gary Watson, are considered. Frankfurt offers an incompatible conception of free will. Watson offers an incompatible distinction between desiring and valuing. As with all other sections, these are considered with an eye to the overall thesis. (The social and historical nature of desire formation, which might also have been discussed here, is left to the next chapter where it is discussed in relation to preference utilitarianism.)

Economists do not need a sophisticated account of the self in the sense of what is to be person as such (or a particular person). Some philosophers (such those discussed next) think there is a problem with the nature of the self in this sense. The idea has its modern origins--though it goes back much further--in the Cartesian dualism of the mind and the body. Descartes introduced this distinction because he thought that there was something certain about one's experiences (at least that one is having them and cannot be deluded about the nature of them) in a way that the physical world is not

certain. Despite having gone on to supposedly prove the non-delusional nature of our clear and distinct experiences (with help from the idea of a perfect being who is no deceiver) he was still left with the dualism of immaterial mind and material body. The self is the mind that just happens to occupy this particular body but which, apparently, could in principle move to a different habitat. This idea remains popular in attenuated form, and causes the identification of the personality (one's behavioural dispositions and conscious states) with the self (what one really is).

'Self' does not need to be used to mean the personality. English does not demand this usage, and it is at odds with modern science. One can speak of the self of an inanimate object as the same sort of self as that of a human being: 'self' can simply be used to mean 'thing' or 'entity' ("the chair itself was missing"). We humans are genetic entities that happen to have (usually) a consciousness that includes interests (or values or desires³⁶). If one claims that Mr Smith himself has an interest in economics then one need mean no more than that physical entity itself, who happens to be the Homo sapiens we label Mr Smith, often desires to understand economic phenomena. But if Mr Smith himself lost his interest in economics then we need not speak of a change

³⁶ No important distinction need be made between these, as what we value we desire (and vice versa) in some sense (this will be argued in more detail in reply to Watson), and the common contrast between interests and desires can be seen as really between the long-run and short-run or between being informed and uninformed.

in his identity. Mr Smith is the same physical self who simply happens to have lost a particular interest. I do think that this is the solution to the problem of personal identity, but whether or not that is accepted the physical conception of the self will do for economics to identify the particular agent.³⁷

So the economic use of the 'self' in 'self-interest' can be seen as an innocuous reference to an entity without any implication as to the nature of that entity. When 'interest' is added to 'self' we are simply informed that we are dealing with the idea of an entity that has conscious interests; there is no implication about the nature or structure of the self or the values. These interests can be understood as the objective interests of the conscious entity in the sense that these are the interests that are actually *felt* (consciously), rather than the interests that would or ought to be felt given more information or greater intellectual insight into how the world is.

³⁷ It might be objected that the body's cells are replaced throughout one's life, so that there is not even a permanent physical self. But people are not as physically different as the body's replacement of cells might lead one to think. The genetic structure remains and one's brain is not renewed at all (though a tiny fraction of brain cells die every day). In any case, the continuing physical process is an adequate 'self' for our purposes.

Critics

The above account is incompatible with that of various philosophers. We deal with two such critics who are typical, and rigorous in their types of criticism: Harry G. Frankfurt³⁸ and Gary Watson.³⁹ Both of these argue for a position that is incompatible with the economic assumption that human beings can sensibly be treated as selves who are simply attempting to follow their own interests out of their own free will.

If their criticisms are sound then paternalism (at least) seems to follow if one is to protect human beings who are not fully persons, or who are confused about their own interests, or who are not always capable of free choice. So these critics merit a serious response from the point of view of the thesis being defended. In the discussion various points concerning welfare, liberty and the free-market will also arise to the extent that they are relevant.

What follows might seem to imply that there is a sophisticated alternative account of moral phenomenology implicit in the rationality assumption being defended. That is not the case. It is simply necessary to develop a more sophisticated defence of the basic assumption when

³⁸ Frankfurt 1982.

³⁹ Watson 1982.

critics take sophisticated positions that are incompatible with it.

Frankfurt on free will and persons

Frankfurt holds that an essential difference between persons and other creatures is to be found in the structure of the will. He defines "first-order desires" as "simply desires to do or not to do one thing or another".⁴⁰ He attempts to show that a creature is not a person unless it is capable of having "second-order volitions".⁴¹ This means the ability to reflect on one's desires critically such that one can come to desire to make some desire into the thing that one wills. What one "wills" is the "effective desire" that one acts on or would act on in the appropriate circumstances, unless that desire changed. Creatures without second-order volitions are called "wantons": "the essential characteristic of a wanton is that he does not care about his will."⁴² This includes all non-human animals, very young children, and perhaps some adults. Apparently, even adult humans may be to some extent wanton for they can often lack second-order volitions concerning certain matters. A wanton "may possess and employ rational faculties of a high order."⁴³

⁴⁰ Frankfurt 1982 p.83.

⁴¹ Ibid. p.86.

⁴² Ibid. p.86.

⁴³ Ibid. p.87.

Narcotics addicts

Frankfurt then gives us the example of two narcotics addicts. He supposes that one is an "unwilling" addict: he has first-order desires to both give up and to take narcotics (both paths have their attractions), plus a second-order "volition" to give up--but his addiction is too strong for this desire and so the desire to take the drugs becomes his first-order volition. The other addict is supposed to have the same conflicting first-order desires but one simply proves stronger than the other without a second-order volition of any kind. Frankfurt says of this latter addict that "he has no identity apart from his first-order desires".⁴⁴

This example seems unfortunate. It looks tendentious in so far as Frankfurt has chosen an emotive subject where he demotes the drug-user to a possible non-person (wanton) status. It seems that we might switch the situation around by supposing that one drug user could have the second-order volition to enjoy his drugs while the other one merely enjoyed them because his first-order volition was stronger. (Frankfurt later deals with this example, as we shall see.)

⁴⁴ Ibid. p.88.

Frankfurt says that the (second-order) "unwilling" addict makes one of the first order desires "more truly his own" such that he:

may meaningfully make the analytically puzzling statements that [1] the force moving him to take the drug is a *force other than his own* [emphasis added], and that [2] it is not of his own free will but rather [3] against his will that this force moves him to take it.⁴⁵

Taken literally, Frankfurt is quite right that these statements are meaningful, for we can understand them and they are apparently false. With 1 it is clearly this addict's first-order volition that makes him take the drugs. *Ex hypothesi* there is no force "other than his own". With 2 Frankfurt introduces the notion of "free will" without any indication that he has a Pickwickian sense in mind. In the ordinary use of 'free will' it is clear that this is a case of someone's exercising free will, for he is not being forced by another. With 3 it follows from Frankfurt's quite ordinary definition of "will" as "effective desire" that the narcotics user takes the drugs as a result of his will. (On the other hand, if Frankfurt meant "meaningfully" in some metaphorical sense then his meaning remains too obscure to reply to.)

So one can allow Frankfurt's two-level structure (and I do) without accepting his view of free will. He rejects the more ordinary sense of 'free will' without showing what is wrong with it or that his is superior.

⁴⁵ *Ibid.* p.88.

Frankfurt goes on to link his view of personhood with freedom of the will and to distinguish this from freedom of action:

Now freedom of action is (roughly, at least) the freedom to do what one wants to do. Analogously, then, the statement that a person enjoys freedom of the will means (also roughly) that he is free to want what he wants to want ... to have the will he wants.⁴⁶

And the congruence between his first- and second-order volitions must not be "only a happy chance" but real choices.⁴⁷

One can accept that one has freedom of action when one's actions are unconstrained. But it would be a better analogy to say that one has freedom of the will to the extent that there is no external agent who is dictating or constraining one's effective desires. As long as someone's will is as it is as a result of his being the creature that he is then we can say that his will is free. If someone had something such as electrodes in his brain that could be stimulated by someone else to create effective desires, then he would thus far be the puppet of the other agent rather than an autonomous or free one himself. Such a set up is possible but only usual with animals in the scientist's laboratory.

This account has the virtue of allowing a compatibilist solution to the traditional free-will-versus-determinism

⁴⁶ Ibid. p.90.

⁴⁷ Ibid. p.90.

debate. One acts as a result of free will as long as one's will is unconstrained by others. But one's will is naturally constrained by the nature of the creature that one is. Without this constraint one's actions would be entirely unpredictable rather than free. The school of thought that demands a kind of free will that escapes both determinism and mere randomness has never given an intelligible account of a third option. It follows from this compatibilist position that animals (not wired for behavioural control) also have free will to the extent that they make choices rather than follow mere instinct. So free will seems only to require choice, and human beings always have to choose their movements except for certain automatic ones (such as the heart beat) and reflex responses.

So what is the idea that Frankfurt is getting at? He tells us that freedom of will consists in a person's "securing the conformity of his will and his second-order volitions."⁴⁸ It seems true that 1) there are often external physical barriers to what we want to do that limit us, and hence we are less free (in one sense of 'free'). It also seems true that 2) there are psychological (and physical) barriers within ourselves that limit us, and hence we are analogously less free than we might be. But to lack the ability to change our effective desires (or personality) is not to lack free will. The glutton who cannot make himself desire fasting

⁴⁸ Ibid. p.90.

has a completely free will--for no one is controlling his will but himself (what he is)--but he does not have complete freedom of desire (any more than he has complete freedom of factual beliefs or moral ones) because he is limited by his nature (what he is).

At any particular moment we find our desires, beliefs and values by introspection. If one finds that one has a desire to change one's effective desire and that one cannot, then one has come up against a constraint on what one is (even if it is only an immediate constraint that might eventually be somehow overcome). One's will can be free in the sense of 'free from external control' but it could never be free in the sense of 'free of any constraint whatsoever'. To be a particular thing is to be a constrained thing. One is bound to have constraints on what one is or one would not be anything at all. An unbounded object made of no particular stuff in no particular shape could not exist. Any real object--including an agent--is logically bound to have limits both physical and psychological (stones are severely limited psychologically; humans less so).

Frankfurt's account then goes on to rule out higher order "volitions" than the second level by "commitment"⁴⁹ at that level. But (as Gary Watson observes, in the next article to be criticised) it is not clear why such commitment could not take place at the first level

⁴⁹ Ibid p.91.

instead. And Frankfurt admits that second-order volitions can be capricious, so the value of having his "free will" is unclear.

There does seem to be something in the idea that self-reflection makes for personhood. But all a person's desires are constrained to some extent. Those who have the will they desire to have are more or less lucky for often they are more or less bound to have it (in the case of sexual preferences, for instance) but they are not obviously thereby to be thought of as limited in some undesirable way. But Frankfurt neglects such examples and picks on a drug user again.

The third addict is a willing one who would take steps to re-acquire the addiction if it should fade. Frankfurt makes this supposition to show that this addict would be morally responsible for affirming it with a second-order volition. But the addict is held to lack free will, nevertheless, for he would not be in a position to stop even if he wanted to.

On the contrary, as has been shown, this addict does have free will, for he is not externally constrained. This would be so even if the addict were as addicted to his drug as everyone is born addicted to air, food, and warmth. It must be wrong to say that we lack free will because we need air in order to live, though this seems

to be what Frankfurt would have to say to be consistent.⁵⁰

Frankfurt seems to have confused free will (a will that is not controlled by another agent's will) with the ability to choose one's motivating desires. Even if we could simply feel any effective desire that we chose to we would still be left with an unchosen desire at a higher level--the desire that made us choose. "Free will" in Frankfurt's sense would seem to require an impossible infinite regress. As mentioned already, to put a stop on the second level by use of "commitment" seems arbitrary, for this could happen at the first level or any after the second. What Frankfurt seems to be trying to do is to find a way to avoid a person's being ultimately a 'slave' to some unchosen desire. But it is impossible to avoid ultimately unchosen desires: some desires must spontaneously arise in us or we would be without initial motivation to make any choice at all.

So what are we left with? Frankfurt's insights are 1) the ability to reflect upon one's desires is part of what

⁵⁰ For the more general purpose in this thesis of reconciling liberty and welfare it ought to be noted that the strength of drug addiction that is here being supposed by Frankfurt is apparently imaginary. Even if we take a drug as addictive as heroin we find the following admission in a Department of Health and Social Security information booklet: "After several weeks on high doses sudden withdrawal results in a variable degree of discomfort generally comparable to a bout of influenza." (*Drug Misuse*, ISDD, 1985.) Giving up narcotics seems made difficult more by the user's circle of friends and daily habits than by the addictive quality of the drugs themselves.

we seem to mean by a 'person'; and 2) we sometimes find that we desire other effective desires than those we have. Do these insights undermine the economic conception of the self and its interests in any way?

1) When the economist uses his conception of a self with interests he can usually be interpreted as meaning a person in so far as he is analysing human behaviour.

But, as explained, if this looks problematical then he can equally well be interpreted as meaning any entity with interests or desires. No theory of personhood is implied.

2) The other economic assumption here is that of selves following what appear to be in their interests. This has not been undermined by anything in Frankfurt's argument. But this raises the topic of 'weakness of the will' that has been hovering around Frankfurt's position, and it now seems appropriate to discuss it explicitly.

On weakness of will

This topic is relevant to all three chapters. A view will be argued for here and then applied to later examples where further discussion seems desirable.

Relatively recently R. M. Hare⁵¹ has argued for the impossibility of weakness of will (at least in moral

⁵¹ Hare 1952 and 1963.

cases) and thereby started a spate of new thinking on the subject. Long before this Socrates held weakness of will to be impossible. For this reason problems concerning this topic are sometimes known as 'the Socratic Paradoxes'. As Charlton shows,⁵² 'weakness of will' can be broken down into various problems. This will not be done here. Instead there will here be an attempt to solve the general problem that people sometimes seem to act other than the way they think best. But this is distinguished from the problem of whether it is possible to do what one believes to be immoral.⁵³ The solution suggested here is explained in terms of Frankfurt's idea of levels of desire. For reasons of space it will not be explicitly contrasted with other accounts.

The non-believer in weakness of will should see the issue as follows: though it might be the case that we would like to have desires other than the ones that we really do, we realise that we have to make the best of our existing desires. A smoker might like not to desire smoking so much, but given that he does desire it so much he regards himself as better off by smoking than by not smoking. He might want to cultivate a desire to stop because, for instance, he wants to live a little longer. But if he cannot cultivate the desire to stop then he is unlikely to thank anyone who attempts to deprive him of what he still feels to be, on balance, worthwhile.

⁵² Charlton 1988.

⁵³ This is discussed in relation to Taylor 1982 in the next chapter.

The real point being made here is that we cannot do what we think at the time is not in our interests.

Introspection ought to show that this is simply psychologically impossible, but the point is really logical given the assumption of a unitary conscious self (i.e. without 'hidden' desires⁵⁴) which Frankfurt does not criticise. It would mean feeling that what one is doing is both desirable (or preferable) on balance and undesirable (or not preferable) on balance. We might sometimes feel obliged to say that we are doing something we do not really desire to do--but this admission must be mistaken, for we must desire it or we would not be doing it. The admission is really a sop to our critics or an inaccurate way of expressing the feeling that we would be better off without the desire.

It might be asked why I desire not to have a certain desire other than because in some way or to some degree I do not desire the desired object. It might be felt, for instance, that it is odd but intuitively true that a confirmed smoker might be glad if a world-wide permanent tobacco blight meant that he could never smoke again. He might feel that his 'true' desires were now better met.

⁵⁴ By "unitary conscious self" I mean to include a self that is aware of conflicting desires, of whatever origin. I am merely ruling out such examples of split consciousness as can occur when the mid-brain is cut, or 'unconscious' desires exist (if they really can). Those who accept weakness of will do not usually use these as explanations.

It is fine to say that I desire not to have a certain desire because in some way or to some degree I do not desire the desired object. Decisions are often (always?) made on the balance of costs and benefits. We perceive that some goal has undesirable aspects but think that these are outweighed by the desirable ones. What happens in particular where we desire not to desire X is that we have two quite consistent *feelings* (these need not be put into words):

- 1) We feel that it is better on balance to give into desire X given that we do have the desire to such a degree (it would be too costly not to give into the desire).
- 2) We feel that giving into desire X will have consequences that we desire less than our ability to desire X (in fact we need not at all desire the ability to desire X).

A test for sincerity here would be whether we would take some relatively cheap way of destroying the desire if that were to become possible.

For instance:

- 1) A woman strongly desires chocolate and feels that life without it is too miserable to forgo it.

2) She knows that chocolate makes her fat and feels that being fat is worse than *losing her desire* for chocolate. (She does not feel that under the actual circumstances being fat is worse than giving up chocolate or she would give it up).

A test would be whether she would take a pill to lose her desire for chocolate if an inexpensive one became readily available.

Could the smoker consistently welcome the tobacco blight that stopped his smoking? Of course he could sometimes feel that way, such as immediately after smoking to satiation or often after the blight had occurred. But while his strong desire exists and is felt he will not (on balance) be glad to be deprived of his tobacco. The smoker's so-called 'true' desires are really his desires about his desires.

What we cannot consistently do is sincerely feel that something is on balance undesirable and yet still desire it. When we think we are doing this we are conflating our effective (or strongest) desire (our will) with our desire about our effective desire. Once these different desires are disentangled the apparent contradiction (that is the philosophical problem) disappears.

The fact that people can be unhappy with their desires may be a serious *practical* problem for them--they will continue to be unhappy unless they can change those

desires or come to approve of them. It is a mistake to take this practical problem for a philosophical one. Once one sees that the problem is practical one can go about trying to solve it (for instance, by trying to find better reasons for changing, or attempting slow change, or contracting into a penalty system).

Of course it is *logically* possible that forcing adults into 'good' personal habits will give them (and possibly other people) reason to thank us in the long run. But that is an entirely separate empirical thesis that is not related to the claim that people suffer from genuine 'weakness of will' such that they think X is best while doing Y instead. On the issue of the separate empirical claim I can only here refer to the disastrous history of prohibitions of many voluntary activities, not least those related to drugs, sex, and free speech, some of which are discussed in the literature cited in the bibliography.⁵⁵

Perhaps Frankfurt feels that it is desirable (as his piece seems to hint) to override the free will (or autonomy) of human beings in the name of "free will". He sees an absence of free will in quasi-persons ("wantons") simply because they cannot (or do not understand what it means to) cultivate certain effective desires other than those that they currently have (or that cultivated people

⁵⁵ Should an observer at least care less about desires that the individual does not like having? Not if he is concerned with the person's welfare in the sense of real want-satisfaction as discussed in the next chapter.

feel that they ought to have?). But if that is what Frankfurt wants he needs to give better and more direct arguments.

It is usually other people who appear to need to be protected from themselves (and if it is desirable in one's own case then one can, as suggested earlier, contract into constraints without interfering with other people). I suggest this appearance is commonly based on two mistakes: the conceptual confusion that causes us to think that people can be unwilling victims of their own desires; the failure to investigate the reality of well-considered choice in those activities that are too easily dismissed as "wanton" (or some such pejorative). These things combine to create such an intolerance of (typically minority) activities that people can, like Frankfurt, even question whether these human beings are fully persons.

Watson on desires and values

Watson wants to make a distinction between wanting and valuing such that actions are unfree where the agent is:

unable to get what he most wants, or values, and this inability is due to his own 'motivational system'. In this case the obstruction to the action that he most wants to do is his own will.⁵⁶

This account is thus similar to that of Frankfurt's, except that motivation is supposed to differ because of

⁵⁶ Watson 1982 p.97.

competing sources of desire rather than merely different levels of desire.

Watson outlines the Humean view that reason is purely the instrument of the passions that calculates how to feed them, and contrasts this with the Platonic view that reason can itself determine what has value--where reason itself is a source of motivation (generating desires for 'the good'). Watson sees this latter position as being that of seeing a conceptual distinction between desiring a state of affairs and thinking it to be of value.

Valuing "is essentially related to thinking or judging good."⁵⁷ Wants that are values are rational and provide reasons for action:

The contrast is with desires, whose objects may not be thought good and which are thus, ... blind and irrational ... mute on the question of what is good.⁵⁸

What is desirable (naturally pleasurable) contrasts with what is valuable (rationally best). These are independent sources of motivation, because what you desire to do you do not necessarily have a reason to do.

This distinction seems mistaken. Valuing and desiring do seem to be identical in just the way that R.B. Perry has it (as quoted by Watson⁵⁹). But there is a real distinction in phenomena, and it is this that Watson is

⁵⁷ Ibid. p.99.

⁵⁸ Ibid. p.99.

⁵⁹ Ibid. p.100 footnote 5.

mislabeling as a distinction between desire and value. This distinction is between those things we desire without verbal reflection and those things we desire that we have verbally reflected on. Such is the power of language that it can look as though we have two radically different sources of motivation. This is not so. A reason does not have to be put into words and examined to be a reason. If a creature has an idea why it wants to do a thing rather than not do it then it has a reason for doing it. Ideas or thoughts or propositions do not have to be verbal in form. The hungry dog believes that the substance before it is edible and so it has a reason to eat it, and people often have the same belief without putting it into words.

However, valuing and desiring are not always linguistically interchangeable. Additional words are sometimes required to make the substantive equivalence clear. For instance, it sounds odd to say that valuing some object of natural beauty (such as the lake district) is the same as desiring it (and desiring it now). When we say we value it we must mean that we desire that it be preserved, or that we desire that we (or others) can see it sometimes, or some such desire. The desire is implicit in the claim to value. (We are not necessarily effectively motivated by any particular desire or value, as the price of acting on it might be too high.)

Of course, one can reason about a thing to different degrees in the sense that one can simply consider more

ideas and criticisms about some matter. But here one is doing more reasoning rather than simply reasoning as opposed to not reasoning. The fact that rigorous reasoning often requires the use of language as a tool is what might make it look as though only verbal thought is rational. But the cat that is examining a hole in the floor is using its reason on its various senses (sight, smell, hearing) to test the idea that there may be something worth catching inside it. When it concludes that there is no evidence it departs. (Animals certainly use logic to achieve their ends. No choice can be made without the use of logic. Neither humans nor animals usually find it necessary--or even possible--to make that logic verbally explicit. But without tacit *modus ponens*, or *modus tollens*--the use of if-then structures of thought in some form--an agent, *qua* agent, could not move at all.)

How are valuing and desiring the same? Here is the general answer. Watson is right that valuing "is essentially related to thinking or judging good." He is also right to think that desires may not be thought good. But "good" and "valuable" and "desirable" are here more or less synonymous--or at least Watson is not using any real distinction between them. Watson is, rather, using the terms at different levels (in the manner of Frankfurt, but unwittingly) such that he is misled into thinking that they show different sources of motivation. The grain of truth is the same as Frankfurt's: we do not necessarily value some values, or desire some desires, or

think it good that we think something good. Using different terms in each phrase can cause confusion but it cannot mark a real distinction in terms of source of motivation. The source of motivation is the individual's desire or value.

So a desire or value is always--contra Watson--a *prima facie* reason for action. But there is an equivocation on the use of 'reason'. A reason can be a motivation, or it can be an argument. All desires or values are reasons for action only in the appetitive sense. They are things that we find that we simply want, or would want in appropriate circumstances. Some of these will be natural and some will be fabricated to some extent by argument. But values and desires are always found (even when we find that we have brought them into existence by argument or by cultivation) and not chosen. The thing that we can choose to do is examine these reasons; to argue about them. So when we are 'reasoning about our reasons' we are using 'reason' in two radically different senses. This expression can be translated into 'intellectually examining our desires (or values)'. The fact that 'reason' is used for both ideas might be one of the sources of confusion.

Watson's account is then linked to the idea that people are not always free agents:

The problem of free action arises because what one desires may not be what one values, and what one

most values may not be what one is finally moved to get.⁶⁰

We are given the two ways in principle that desire and evaluation may diverge: 1) one can desire something and assign no value whatever to it; or 2) one's desire for a valued object may exceed the extent to which one values it.

1) The first way is supposed less usual but examples exist:

a woman who has the sudden urge to drown her bawling child in the bath; or ... a squash player who, while suffering ignominious defeat, desires to smash his opponent in the face with the racquet.⁶¹

They are supposed to desire these things but never to value them. Watson insists:

It is not that they assign to these actions an initial value which is then outweighed by other considerations. These activities are not even represented by a positive entry, however small, on the initial 'desirability matrix'.⁶²

The argument is very mistaken here. Watson seems to be doing little more than denying an obvious truth, and then denying an obviously valid criticism. To have an urge or desire is precisely to value (in some way) the thing one feels the urge or desire for. These are (though sometimes with different phrasing necessary) two ways of saying the same thing. But for Watson only a persistent

⁶⁰ Ibid. p.100.

⁶¹ Ibid. p.101.

⁶² Ibid. p.101.

value that has been reasoned about is a "value"--as he explains in a fuller account we come to later (both Watson and Frankfurt seem to need an account of objective values, but they do not give any). And he goes beyond even this here for the squash player's desire is not allowed to register on the "'desirability matrix'" at all. It is not clear how the scare quotation marks can save him from plain absurdity.

2) This "estrangement" from a desire can also supposedly involve a persistent and pervasive one: "a man who thinks his sexual inclinations are the work of the devil"⁶³ will positively disvalue them. But, again, can meta-desires really split desires from values? Watson tries to drive the wedge in with a claim that:

the man who is estranged from his sexual inclinations does not acknowledge even a *prima-facie* reason for sexual activity; that he is sexually inclined toward certain activities is not even a consideration.⁶⁴

"Reason" is again being used in the sense of a value that we have arrived at verbally. This may be a consistent way of talking about things but it is confusing. For in plain language it is absurd to say that someone is inclined to do something yet does not have even a *prima facie* reason to do it. If he can see no reason whatever to do it then he can hardly desire it. Desire is at least a *prima facie* reason to do a thing. Frankfurt's

⁶³ *Ibid.* p.101.

⁶⁴ *Ibid.* p.101.

second-level position on this situation demands no such twisting of the language into absurdity: the man simply has a desire he desires not to have.

Watson then gives some examples of desires that are supposed to be not appetitive or passionate but which can be independent of evaluation. The disinclination to move away from one's family is supposed to be able to be due to "acculturation" rather than "a current judgement ... reflecting perhaps an assessment of one's 'duties' and interests." Or one might be "habituated" to think that divorce is wrong "even though one sees no justification for maintaining one's marriage." These attitudes are supposed examples of acculturation and exist:

independently of the agent's judgement ... acculturated desires are irrational (better non-rational) in the same sense as appetitive and passionate desires.⁶⁵

This looks like the (Hayekian⁶⁶) idea that people follow traditions like automata. But most people clearly perceive certain advantages in traditions *if only* in terms of the benefits granted to those who keep them and the costs imposed on those who break them. It is true that most people do not go in for radical philosophical criticism of all customs or habits they practise; they often give very little consideration to some of these, its being sufficient that they are content with them and

⁶⁵ Ibid. p.105.

⁶⁶ The best criticism I know of Hayek for doing this is in "Spontaneous Order and Traditionalism in Hayek", David Ramsay Steele (unpublished).

see (on occasional reflection) no advantage to mending (at a cost and some risk) what does not seem broken. But it is almost never true that people have not considered alternatives (at least Hobson's choice of taking it or leaving it) in the slightest.

It seems an unstoppable function of the brain to suggest different possibilities to some extent; it seems to be the very process of being conscious. In fact it looks as though the genetic advantage of consciousness is just that it allows us (and indeed obliges us: we cannot be automata even if we want to) to try out different possibilities in our imaginations so that our theories can suffer and perish instead of ourselves.⁶⁷

I must agree that to the extent that we have a tradition or habit of *dogmatism* we are more limited (less free in a personal intellectual sense) than where *criticism* is fostered. But it seems unduly pessimistic to view traditions and habits as by their very natures constraining people. Hayek seems to err in the opposite direction here in his theory of spontaneous order where criticism is seen as a threat to the liberty that only traditions and customs make possible.⁶⁸ But traditions and habits are more like standard *solutions to problems* and *opportunities* that we might well find useful but can ultimately reject if something better occurs to us.

⁶⁷ This is well known as a standard theme of Karl Popper's epistemology, for instance in his 1978 and 1979.

⁶⁸ See particularly Hayek 1948 p.26.

Watson seems, in effect, to be taking a stand for the worth of fairly radical criticism of the things we desire. This is a value that we might expect in a philosopher. Yet it is as though he prefers not to advocate the extremely critical life candidly, but instead to stipulatively define values that have not been scrutinised as not values at all. He writes that:

an agent's values consist in those principles and ends which he--in a cool and non-self-deceptive moment--articulates as definitive of the good, fulfilling, and defensible life.⁶⁹

A free agent is one who weighs up alternatives on the basis of his values and then makes judgements "all things considered".⁷⁰ An agent's "intentional" actions are "free" actions when his "valuation system" is in accord with his "motivational system".⁷¹

Such an account neglects that it does not always pay to consider many things rigorously. Such economy is perhaps the genetic and social evolutionary basis for habit and custom. We cannot ever consider all things fully.

Watson seems to have the gist of the truth about the nature of free will (or agency) in the idea that an agent must "assign values to alternative states of affairs, that is, rank them in terms of worth."⁷² Again, in wanting ranking on the basis of what it is worth

⁶⁹ Watson 1982 p.105.

⁷⁰ Ibid. p.105.

⁷¹ Ibid. p.106.

⁷² Ibid. p.105.

desiring, Watson is implicitly seeking for objective values, but he gives no substantial account with which to argue. And ranking need not be very detailed or long-term. The agent usually realises that certain levels of calculation are simply too fastidious under the circumstances and so to be avoided. Yet there will always be a real choice in cases of free will even if it is in the minimal sense of seeing a Hobson's choice of taking or leaving an option (which a purely instinctive response does not allow).

"All things considered"⁷³ on other occasions it is often seen to be a disvalue (which is a type of value) to consider all things. Research costs have to stop somewhere in any case, and this point is bound to be somewhat arbitrary: simply where the chooser guesses that action is better than further enquiry. Some alternatives must be ranked as among the infinite other possibilities that are not worth further consideration, or we should never get around to acting (or even to thinking). So for a free agent there is always some, at least implicit, assignation of value to alternative states of affairs--it simply falls short of Watson's impossible "all things considered."

Watson has some valid criticisms concerning the fact that Frankfurt's two-level system cannot account for free will (as was acknowledged in the Frankfurt section). But his

⁷³ Ibid. p.105.

own account abandons the insight, that there are levels of desires, in favour of a distinction that makes "values" a subset of "desires" (though not of 'effective desires', or 'will'). His account of free agency is thus even more confusing.

Kleptomania and free will

It might illuminate things to look at the issue that Watson raises at the start of his piece; this is the criticism of Berlin's that if you believe that someone is causally determined to choose as he does then:

what reasons can you in principle, adduce for attributing responsibility or applying moral rules to him ... which you would not think it reasonable to apply in the case of compulsive choosers-- kleptomaniacs, dipsomaniacs, and the like?⁷⁴

Watson answers Berlin with the idea that "compulsive choosers" have desires and emotions "more or less radically independent of [their] evaluational systems".⁷⁵ So, as with Frankfurt, it looks as though we are not dealing with properly functioning persons. In fact all human beings are held to be free agents only in some respects, for their appetites and passions are sometimes in conflict with and overrule their practical judgements. Presumably those who see what people's 'real' values are have moral grounds for coercing them in terms of their own values alone; the coercer would not even be imposing

⁷⁴ Berlin 1984 pp. xx-xxi.

⁷⁵ Watson 1982 p.110.

his values on those he would be controlling. And who is better placed to decide what a person's 'real' values are than those who examine values for a living? This idea of the value of the philosopher-king is the aspect of Platonism that Watson keeps conspicuously implicit.

A better answer to Berlin would be the following. There are no "kleptomaniacs, dipsomaniacs, and the like" in the sense of people's not being in conscious, chosen, control of their own actions. The writings of the psychiatrist Thomas Szasz are an especially good attack on the mental illness industry. His position is that there is no mind to be ill and so mental illness cannot exist (though physical brain disorders are possible). Many so-called mental illnesses are merely morally dubious attempts to medicalise and stigmatise certain types of behaviour, ideas or emotions (each of which it would be a category mistake to label as being 'ill').⁷⁶

A person who finds stealing highly attractive is no more ill than a person born with a large nose. Both of these people might themselves wish to alter these aspects of their lives. The man with the large nose might pay for an operation. The man who enjoys stealing might pay for aversion therapy. But until the thief finds that the thought of theft is less attractive than the thought of restraint, he will choose to do the theft. He might (but certainly need not) find the desire to steal is a

⁷⁶ See especially Szasz 1972.

nuisance, but it would be more unpleasant to stop doing this thing he enjoys. "Kleptomaniacs" often claim to get satisfaction from theft⁷⁷--they do not take a homonculus's eye view and watch in horror as they see themselves stealing.

It might still be thought that there are some obvious cases where people are not acting out of free will. It is not possible to tackle a definitive list but the following might seem to be some typical examples: acts done in circumstances of diminished responsibility due to perception- or emotion-altering drugs, or the consequences of love potions or post-hypnotic suggestions.

Acts done in circumstances of diminished responsibility are still done out of free will in the sense being defended here. Free will does not decline simply because strange circumstances make us act abnormally. Perception- or emotion-altering drugs do not make people act without their following what they see to be their interests. They might even kill a friend owing to a misperception about who he is or what they are doing. True, they would then not have wittingly killed him out of their free will, but they were acting on their free will and simply making a mistake (one does not need to be drugged to make such mistakes: the woman who backs her

⁷⁷ Charlton 1988 p.159

car over her child is freely backing up the car and merely not realising the tragic effect).

If someone gives us drugs, love potions, or post-hypnotic suggestions that we do not agree to take then they do thereby force feelings on us against our will. But we thereafter act on the basis of these things out of free will (though in ways for which we probably ought not to be held fully culpable).

There is an ambiguity about 'diminished responsibility' in these cases. The person who cannot function normally and spontaneously may have diminished responsibility in a factual sense. But perhaps only if he did not deliberately initiate or risk this diminished condition is his moral responsibility for the consequences diminished. In either case, however, he is acting in pursuit of his perceived interests, which is to act out of free will.

1.6 Self-interest & altruism

This section considers the formal compatibility of self-interest and altruism in Austrian economics. Hobbes, Edgeworth, Becker and Sen are given as examples of the common failure to see the compatibility. The formal compatibility is explained and applied to Hobbes. The nature and relevance of moralising is discussed with respect to the views of Kant, Hume, and Butler. Then

Sen, Machan and Broad are shown to be in error for explicitly failing to see this.

It is important to bear in mind in what follows that the compatibility of the subjective, Austrian economic, sense of self-interest and altruism is intended to be a purely logical point about agents' choices. The critics discussed often fall into error by interpreting the issue as necessarily about human nature.

Many early economists (and proto-economists) and most modern economists have assumed that men are egoistic and so have ruled out altruism.⁷⁸ If they use the term "self-interest" they mean only egoism. These are taken to be, at least implicitly, against the Austrian economic idea that economics can use an assumption of self-interest that merely means interests of the self and which coherently embraces both egoism and altruism without thereby being vacuous.

For instance, in *The Leviathan* Hobbes assumes egoism. All apparent acts of altruism are explained as disguised self-seeking. Hobbes found the idea of a person's going against his own interests to be an implausible view of human motivation (for logical reasons discussed later). When a clergyman asked why Hobbes had given alms to a

⁷⁸ Though some of the best economists of their time did not make this assumption: Hume, Smith, Wicksteed, and Marshall.

beggar Hobbes replied that it was to relieve his own distress at seeing the beggar's distress.⁷⁹

Edgeworth states that "the first principle of Economics is that every agent is activated only by self-interest."⁸⁰ Though he later states that in reality "man is an impure egoist".⁸¹ So the assumption is merely a generally useful one for Edgeworth.

Gary Becker is noted for rigorously and consistently applying basic economic assumptions to areas normally considered outside the field of economics.⁸² He admits of the existence of altruism. But even he assumes that this must be a separate motive (with others) from the self-interest as used by economics:

Self-interest is assumed to dominate all other motives, with a permanent place also assigned to benevolence to children . . .⁸³

So Becker follows Edgeworth's 100 years older opinion in finding the self-interest assumption extremely fruitful though not completely true.⁸⁴

⁷⁹ This anecdote is in John Aubrey's *Brief Lives*.

⁸⁰ *Mathematical Psychics* (London, 1881) p.16.

⁸¹ *Ibid.* p.104.

⁸² See especially Becker 1976. As a consequence of such economic work this Professor of Economics at Chicago has now also be made a Professor of Sociology.

⁸³ Becker 1978.

⁸⁴ Interestingly, Becker goes on to give an economic analysis of altruism. He argues that it increases genetic reproduction in various ways, and hence it is really a sort of genetic egoism. In this Becker is going some way to answering the central problem of sociobiology--as posed by its namer, Edmund Wilson--: How can altruism evolve by natural selection? But Becker is

Amartya Sen unhappily states (in Sen 1979, see the later discussion) that a self-interest assumption rules out "commitment" (or it is vacuously true). And as he feels that people obviously do have commitment he rejects the motivational exclusiveness of the self-interest assumption. Sen holds that economics must be supplemented with a richer view of human nature that allows room for ethics in economic analysis.

So (as Kirzner also observed using other examples⁸⁵) it looks logically necessary to many economists and their critics that the economic assumption of self-interest and altruism cannot be compatible. But this is not so.

Let us separate the two false views on altruism:

(1) There is the philosophical thesis (as held by Hobbes) that people are necessarily egoists and hence never altruists. The argument runs: one would not be charitable unless one got satisfaction thereby, so apparently charitable people give up nothing for they are following their self-interest as selfishly as anyone else.

obviously using egoism to undermine the reality of the 'altruism'.

⁸⁵ Kirzner 1976 & 1990.

(2) There is a more popular thesis that the economic assumption of self-interest must be false (or vacuous) because people are often obviously altruistic.⁸⁶

Why are these two views false?

'Altruism' means 'other-regardingness' or 'other-interestedness' in the sense of seeing another as an end in himself. 'Self-interest' is popularly used to mean purely self-regarding or self-interested and so incompatible with altruism. But being self-interested can be interpreted in the Austrian economic sense as merely following whatever interests one has oneself (rather than being an automaton or puppet of another's will). And in this sense 'self-interest' does not have to be understood as excluding altruism, for altruism then means taking others' interests as among one's own interests.

This position can be set out as follows:

Self-interest: in the broad Austrian economic sense, all interests are interests of the self. We cannot have purely selfless interests for we must feel an interest that is ours to the extent that we are proper agents.

⁸⁶ Or as these two views are expressed by Alasdair MacIntyre in "Egoism and Altruism": "philosophers have oscillated between these two positions: the Hobbesian doctrine of altruism as either a disguise or a substitute for self-seeking and the assertion of an original spring of altruistic benevolence as an ultimate and unexplained property of human nature." Edwards 1967.

But such interests of the self can still be intelligibly divided into:

Egoism: an interest in one's own ends and in other people or things (if at all) as mere means to one's own ends.

Altruism: an interest in other people (or even things) as ends in themselves.

Take Hobbes action of giving alms to a beggar as an example for analysis. He claimed that he only gave to relieve his own distress. That Hobbes took any interest in the beggar means that the interests of Hobbes' included the circumstances of the beggar. Thus his action was self-interested in the broad Austrian sense. We can go on to ask whether Hobbes was being egoistic or altruistic.

If Hobbes were merely upset at the ugly sight of the beggar and would rather that the beggar were out of sight, then we can say that his behaviour was egoistic, for he did not view the beggar as a valuable thing in himself but as a nuisance. This is a natural interpretation to put on Hobbes' explanation of his behaviour. But if Hobbes really was taking pity on the beggar as an end in himself (and would wish him to be better off whether or not Hobbes knew about it) then his behaviour was altruistic.

In both cases we have self-interest in that Hobbes himself has the beggar as one of his interests. In reality it might well have been that Hobbes both found the beggar a nuisance and had some sympathy with him. So his gift would be motivated by disgust and pity. Neither feeling would be more real than the other in the sense that the disgust showed him not to be really altruistic at all, or the pity showed him not to be really egoistic at all. Yet both his egoistic interests and his altruistic interests are objectively his self-perceived interests.

There is nothing categorically wrong with using 'self-interest' in a sense that excludes altruism and means what is usually called 'egoism' or 'selfishness'. The point is that it is not necessary to use 'self-interest' in this way, and at times it will cause confusion--as when criticising the Austrian economists' use of the term.

However, it is difficult for some people to accept that altruism can be *innocuously* seen as part of self-interest. Part of the problem relates to a conception of morality that is rather prevalent, but which is here dissented from. This will be explained before looking at some critics.

The structure of a moral sentiment

Morality is correctly seen as having to be impartial in some sense. Yet it seems that morality has to be held as a personal value and thus also partial in some other sense or there would be no motivational explanation.

Kant reacted to the threat to morality that the Hobbesian-type of self-interest argument (at 1 earlier) seemed to pose by trying to make morality a purely logical affair.⁸⁷ He held that a moral act is moral only to the extent that it is done out of a sense of the universalizability⁸⁸ of the act. A will is good only to the extent that it wills an action on the grounds that all can without contradiction will it. There must be no personal desire involved. Thus Kant correctly perceived that morality was impartial in some way, but he opted for a pure impartiality that leaves no apparent room for motivation.

Hume probably was, finally, a compatibilist concerning self-interest and altruism. In *The Treatise* he denied the possibility of "the love of mankind, merely as such."⁸⁹ In *The Enquiry* he conceded that "a tendency to public good" could be a spring of action.⁹⁰ But the

⁸⁷ Paton 1978.

⁸⁸ Though this term was coined by R.M. Hare.

⁸⁹ Hume 1968 III (i) 2.

⁹⁰ Hume 1972.

feeling of paradox is not fully resolved (as it is perhaps in Butler, below). Hume writes that we feel "some sentiment of blame or approbation, whence we pronounce the action criminal or virtuous."⁹¹ And this seems to view moralising as (1) the personal emotional evaluation of behaviour (2) irrespective of the interests of particular agents--thus catching both (1) the partial and (2) the impartial aspects of moralising.

In more detail:

2) We here have the impartiality in that the evaluation is not specific to the agent and his immediate and personal goals. For the agent has to be able to say that he would affirm the evaluation even where he (and those individuals he is personally interested in) were not involved. But the group of persons among whom he is impartial in his judgement might be fewer than that of all human beings. It is not thereby non-moral. It is impartial within the universe of some group that matters to him.⁹² The group might also be more than that of all human beings and include animals (as in some religions) and plant life, or even inanimate matter.⁹³

⁹¹ Hume 1968 (i) 1.

⁹² It might even be only himself that is valued morally, perhaps because he feels that all people should neglect others (moral egoism), or because he feels that he has qualities that simply happen to put him above others, but he would respect anyone who were to come to have these qualities.

⁹³ It is even morally coherent to discriminate against human beings as being immoral or worth less than other species, or some abstract goal.

1) And yet we have partiality in another way. For the very fact that the individual selects a certain general group or type of behaviour as being of worth shows that he is partial to that. This partiality is normally overlooked, or felt to make a moral view somehow less moral--because people often feel that moral views must be somehow completely impartial. But without this partiality we have no motivation.⁹⁴

Thus every moral feeling is group- and behaviour-*partial* but also individual-*impartial*. Each value one has is a personal value, including one's moral values. I am self-interested in that I am bound to want what I value, but some of the things I value are morally valued. Where I have a moral value I am impartial in valuing (or disvaluing) some kind of behaviour within some group--but I must be partial to the behaviour and the group.⁹⁵ Perhaps this is not precise enough to fully capture the nature of moralising⁹⁶ but it is more accurate than most views, and should be adequate for the task in hand.

⁹⁴ How the individual becomes partial to certain groups or types of behaviour is another problem.

⁹⁵ It might be thought that an attempt to respect, say, justice as such would mean that I could not discriminate between my group and other groups. But justice is a formal concept--like desert and impartiality. One needs goals and groups--and that entails discrimination--before one can use the formal concept. Perhaps this is obscured by the popular feeling that the group in moral matters ought to always include all human beings--but that discriminates against non-humans. And if all animals were included that would still discriminate against non-animals, and so on.

⁹⁶ About which more will be said in the second chapter.

Bishop Butler's response to Hobbes seems more or less the correct one.⁹⁷ He agreed that all interests must be interests of the self but denied that this entails that we are self-interested in any narrow sense; that we must be interested in the self alone. He held that Hobbes had overlooked the real distinction we have in our goals.⁹⁸

To recap: people often contrast self-interest with altruism (thereby equating self-interest with egoism). They fail to see clearly that to the extent that people are acting as agents, they must be acting on interests of their own--that they personally feel (that, given the alternatives, it most satisfies⁹⁹ them to pursue). But the agent can still be either interested *in himself* (egoism) or *in others* (altruism).

Sen on rational fools

In his "Rational Fools"¹⁰⁰ Sen appears to conflate the Hobbesian assumption of egoistic self-interest (for he mentions Butler's attack on this) with the revealed preference theory whereby "if you are observed to choose

⁹⁷ Butler 1736.

⁹⁸ Though in Butlerian terminology, only actions done out of self-love (the desire for one's own happiness) are sensibly called 'interested'; actions done for any other motives are 'disinterested'.

⁹⁹ Utility (satisfaction) maximisation as a necessary motive is explained in more detail in the next two sections.

¹⁰⁰ Sen 1979.

x rejecting *y*, you are declared to have 'revealed' a preference for *x* over *y*."¹⁰¹

Sen does not consider that this theory need not be interpreted egoistically. He objects that:

no matter whether you are a single-minded egoist or a raving altruist or a class conscious militant, you will appear to be maximising your own utility in this enchanted world of definitions.¹⁰²

and that:

a person's choices are considered 'rational' on this approach ... if all his choices can be explained as the choosing of 'most preferred' alternatives ...
¹⁰³

Sen apparently believes that we sometimes do what we do not (under the circumstances) most prefer to do. He suggests an alternative approach that takes account of commitment (which includes morality "in a very broad sense"¹⁰⁴):

One way of defining commitment is in terms of a person choosing an act that he believes will yield a lower level of personal welfare to him than an alternative that is also available to him.¹⁰⁵

Well that sounds acceptable at first, for it has been argued that we do sometimes forgo personal welfare to help others for their sakes. But Sen continues:

¹⁰¹ Ibid. pp.91-92.

¹⁰² Ibid. p.92.

¹⁰³ Ibid. p.92.

¹⁰⁴ Ibid. p.97.

¹⁰⁵ Ibid. p.95.

commitment does involve, in a very real sense, counterpreferential choice, destroying the crucial assumption that the chosen alternative must be better than (or at least as good as) the others for the person choosing it¹⁰⁶

How can we make a "counterpreferential choice"? How can we choose to do what we do not in some sense prefer to do? Must not the chosen alternative be better for us in some sense? Otherwise where is the personal motivation? Sen goes further and approvingly quotes a character whose says of his action: "I had no motive and no interest"¹⁰⁷

Sen seems to have replaced an "enriched world of definitions" (where all actions can be seen as in some sense self-interested) with a world without any motives at all. He feels he has to do this because he cannot allow sympathy to be part of "commitment":

It can be argued that behaviour based on sympathy is in an important sense egoistic, for one is oneself pleased at others' pleasure and pained at others' pain ¹⁰⁸

He apparently wants to make sense of a pure impartiality that entirely escapes sympathy. But "commitment" (morality, as analysed above) is being impartial in some way within the group to which one is partial, or sympathetic. One cannot have a commitment that escapes "sympathy" or personal sentiment in some sense.

¹⁰⁶ Ibid. p.96.

¹⁰⁷ Ibid. p.97.

¹⁰⁸ Ibid. p.95.

Sen does not entertain an Austrian-type interpretation of self-interest because he accepts the mistaken conception of morality discussed earlier. He hankers after a 'pure' impartiality in morality that is impossible because, like Kant's system, it leaves no room for the necessary sentimental motive.

So Sen's views on tautological definitions in economics only partly repeat what Butler wrote of Hobbes. For Sen apparently overlooks Butler's insight that Hobbes' tautological position on motivation was essentially correct but still left room for real altruistic goals.

Machan on self-interest

Tibor R. Machan is an interesting critic of the Austrian interpretation of the self-interest assumption in economics.¹⁰⁹ He is sympathetic to the free-market results of mainstream economics, and he is sympathetic to the idea that people should be positively egoistic (he is a libertarian influenced by Ayn Rand). He is familiar with the latest Public Choice School suggestion that it is sensible to include ideological factors to explain politicians' behaviour. Yet he thinks the economic assumption of self-interest cannot include altruism. He knows that the "economic imperialists" are happy with self-interest embracing morality, but he is not. That a

¹⁰⁹ *Economic Affairs*, vol.8 #2.

libertarian philosopher cannot accept this seems to show how necessary is the defence of this broader conception of economic self-interest.

The sticking point for Machan is the idea that a mere definition can be so pervasive. As Machan puts it:

Any factor or model that explains anything whatever--e.g., self-defeating as well as self-serving conduct--explains nothing much at all. If economic man explains the bank-robber as well as the banker, what can be learned from such an explanation? In no science would this kind of approach be admitted, the melting of ice explained by the same factor as the freezing of water--private interest!

In order to avoid this vacuousness the ideological variable has to be seen as adding a dimension--namely, what kind of conduct human beings take to be proper, what they see as binding on them quite apart from what they prefer.

The idea that there could be "conduct human beings take to be proper ... quite apart from what they prefer" has been dealt with in reply to Sen and earlier critics.¹¹⁰ Here the charge of vacuousness is given more consideration.

Is the self-interest assumption tautologous? It depends on how it is interpreted. If it is taken to mean that people are motivated by self-interest then it is not strictly tautologous. We can make sense of a person's behaving (in the sense of moving) in a non-self-interested way, and thus we can conceive of falsifications. For instance, if people's bodies were controlled by the minds of others they would not be

¹¹⁰ But see also, in the reply to Charles Taylor in the next chapter, "The way morals are categorical".

pursuing their own self-perceived interests; nor would they if their bodies spontaneously behaved in ways they could not consciously control (as happens to some extent with epileptic fits, twitching nerves, jerks during sleep¹¹¹). Sustained constructive examples ought to sound far-fetched. The assumption that *people* are motivated by self-interest is supposed to be a fairly obvious truth, but it is not a strict tautology.

But if the assumption is the Austrian economic one that all *actions* are self-interested then it is tautologous. For any action to be an action it must mean that an individual is moving his body as a result of his self-perceived interests. If the body were moving automatically or as a result of another's will then the individual himself would not be *acting*. But this tautology is not viciously vacuous or any kind of a threat to the scientific nature of economics. On the contrary it is, apparently, an enlightening tautology that allows fruitful economic analysis to proceed. So the idea that *people* are motivated by self-interest can be seen as a rule of thumb that is based on the Austrian economic tautology about *agents*.

The fact that an individual is assumed to be self-interested does not in itself tell us anything about the particular values and beliefs of the individual. The hard work of explaining what is going on in some economic

¹¹¹ I guess that sleepwalking is a more or less conscious activity albeit in an unusual mental state.

situation is often in making shrewd guesses and testing them. Having a theoretical framework is not the same as already having an explanation. If an engineer is called in to discover why a bridge fell down then he will already have the theoretical tools for the job, but he will hardly have the specific explanation. Only in an innocuous sense are the theoretical tools of the economist and engineer 'vacuous', because the work of filling in the details of any real problem has not yet been done.

As Kirzner writes:

The description of all human *action* [emphasis added] as rational constitutes a proposition that is, in fact, incapable of being falsified by any experience, yet does, nevertheless, convey highly valuable information.¹¹²

But it ought to be emphasised that this assumption is not specific to any notion of economic man. There is no substantive theory of human nature here. This notion of self-interested motivation is naturally applicable to all creatures capable of action. A Venusian would be included if it were a genuine choosing agent.

Broad on human motives

Broad is right to attack psychological egoism (as held by Hobbes) as a false theory of human motivation in his "Egoism as a theory of human motives".¹¹³ He is wrong in

¹¹² Kirzner 1976 p.172.

¹¹³ Broad 1971.

failing to see that altruism must still be self-interested in the sense under discussion. Like Sen, he appears to opt for altruism without the necessary self-referential motive for he also seems to mistakenly think that Butler refuted Hobbes on this issue.

Broad admits that the desire of a mother for the good of her child "is self-referential, because the fact that it is her child and not another's acts as a powerful motive-stimulant."¹¹⁴ This is fine as far as it goes. Broad is right in seeing that such altruism refers back to the self. He is wrong only in failing to see that all altruism refers back to the self in a similar sense.

Consider Broad's example:

a person who deliberately chooses to devote his life to working among lepers, in the full knowledge that he will almost certainly contract leprosy and die in a particularly loathsome way.¹¹⁵

It can immediately be conceded that the real motive can be that the man simply wants to help the lepers. And it can be agreed that this is an other-regarding motive (he values the lepers for their own sakes). But--to use Broad's terminology against him--we can say that the lepers are indeed acting as an "egoistic motive-stimulus".¹¹⁶ Broad tries to rule this out by stipulating that the lepers are not the man's "relatives

¹¹⁴ Ibid. p.252.

¹¹⁵ Ibid. p.256.

¹¹⁶ Ibid. p.256.

nor his friends nor his benefactors nor members of any community or institution to which he belongs."¹¹⁷ But it seems that the man must view them as members of his (moral) community in some sense--even if this only means the community of mankind--or he would not so act.

Some people are so constituted that they care as much about strangers as most people do only about their immediate family. Unless this individual has such a feeling he would not act as described. So the best answer to Broad seems to be to extend his own notion of the "egoistic motive-stimulus" to cover his otherwise motiveless altruistic actions. The man is motivated by finding the thought of helping the lepers *for their own sakes* more satisfying to *him* than not helping them--or he would not do it. Such self-referential motivation is a necessary part of being altruistic.

1.7 Utility

This section explains the subjective economic conception of utility and defends it from a typical modern economist, Hirshleifer, and some basic misunderstandings.

The nature and criticisms of utility and utility-maximisation arise in detail in the discussion of

¹¹⁷ Ibid. p.257.

preference utilitarianism in the next chapter. To avoid repetition there follows only a brief account of both.

In economics 'utility' was standardly used to mean the satisfaction that people get from things. 'Utility' in that sense is now often seen as, at best, useful rather than true. Many economists became particularly worried that utility is not empirically detectable. But they thought that if someone gets more satisfaction from one thing rather than another we can say that he prefers it; so it is possible to reword the expression in terms of preferences, which are empirically revealed by a person's choices. This is supposed by many to be an advance such that the original sense of utility can be more or less abandoned.

Hirshleifer on utility

For instance, J. Hirshleifer (in his *Price Theory and Applications*¹¹⁸) is aware of the criticisms of utility and dismisses "Bentham's" idea claiming that "what modern economists call 'utility' reflects nothing more than rank ordering of preference."¹¹⁹

This seems to be a mistake. The difficulty of measuring a thing is not a sufficient reason for denying the sense of talking about it. And it seems clear that if one prefers A to B to C then these things are decreasingly satisfying. What is more, one can often say, with great certainty and intuitive good sense, that one prefers A much more than B but prefers B only a little more than C. Without the cardinal notion of utility we are left without the notion of conscious creatures. A machine might have a hierarchy of preference-like goals, but we do not feel that these are like a person's goals precisely because they lack this conscious aspect that utility represents. Thus the idea of allowing economics only behaviourally exhibited preferences not only makes it impossible to discuss the maximising of human satisfaction (with respect to work in economics), but it seems to fail to clearly distinguish conscious creatures from automata.

¹¹⁸ Hirshleifer 1984.

¹¹⁹ Ibid. p.61.

When Hirshleifer continues his account of economics it is clear that the notion of utility as really being satisfaction is implicitly needed for economic analysis to have any practical significance for us. For instance, when he draws utility functions he writes:

The assertion that people experience diminishing marginal utility, as consumption income rises, is an empirical one. ... It corresponds to our commonsense notion that more income makes us happier, but we usually get more of a thrill from our first million than our tenth.¹²⁰

Other objections

There are more-philosophical objections to utility. Some of these objections are responses to the glosses that utilitarians have put on the term. Classically the utilitarians have interpreted 'utility' as happiness or pleasure. But these interpretations are too narrow. Without saying exactly what 'happiness' is, it seems to be a general state that is not achieved by just any gain of a desired thing. And 'pleasure' usually connotes a much more specific state of mind relating to the fulfillment of bodily desires rather than intellectual or moral goals.

'Utility' is better understood as satisfaction of a broad and nebulous sort. All sorts of things can be satisfying in different ways, but in some sense we must be motivated by what satisfies us.

¹²⁰ Ibid. p.64.

Can one speak consistently of someone's being motivated by disutility? Would he give himself physical and emotional discomfort with no other object than so doing? It would seem unavoidable to conclude that, by definition, such a person just found utility (satisfaction) in giving himself pain. To seek pain is not to be motivated by disutility. Being motivated by disutility (being satisfied with being dissatisfied) must be inconsistent.

That one can find utility in 'horrible' ways may seem to undermine the obvious desirability of utility that makes it attractive to utilitarians (discussed in the next chapter). But it might still be argued that more harm than good seems to result when people try to interfere with 'perverse' or 'perverted' objects of utility. Or so the advocates of promoting utility should argue--for the utility of economics is here supposed identical with the utility of the utilitarians.

1.8 Utility maximisation

This section explains an Austrian interpretation of agents as utility maximisers.

It is a logically separable part of the rationality assumption being discussed that people attempt to maximise their utility.

It can be admitted that different things satisfy us at different times. And these things give us different types of satisfying feelings. But when we are deciding whether to opt for one thing rather than another we naturally weigh up which is *more* satisfying at that time. We find that different satisfactions are usually quite commensurable. We are only incapable of making positive choices when the decision is too finely balanced or the outcome is too unpredictable.

This theory is not absolutely unfalsifiable. It is not empirical in the usual shared external sense, but it is 'introspectively empirical'. Introspection shows that this weighing up process is continual. We do not flip from one activity to another without having decided that it would be more satisfying (in the broadest sense) to change to the second, in fact more satisfying than *anything else* we can think of at the time. There does not seem to be a single sort of ultimately desirable sensation that has a homogeneous quality that can be compared, but as we compare possible choices we cannot help but take what feels in some way to be the most satisfying (or least dissatisfying) option *at the time*. This is not to say that we are necessarily attempting to maximise such satisfaction over some time period, though

that might be a good rule-of-thumb assumption for interpreting behaviour.

This leaves the charge that it is more or less a mere tautology that agents are motivated by utility-maximisation. But, as with the idea that self-interest can embrace egoism and altruism, this is, apparently, an unobvious tautology and one required by the fruitful science of economics.

1.9 Economic demand

This section briefly defends the economic conception of effective demand as value-free and without viable rivals.

This is included as a coda to the chapter. The idea of economic demand is not currently criticised as often and as comprehensively as the idea of economic rationality--though it is just as fundamental to most economic analysis. Perhaps this is because this idea is not taken at all seriously by those who have already rejected economic rationality. Here there is simply an explanation and brief defence of the idea partly for the sake of completeness and partly because it will arise to some extent in the following chapter. What follows is really only a version of the defence of market pricing that is sometimes known as the "economic calculation

argument" that can be found in Mises' *Socialism*.¹²¹

In standard economic theory the demand for a good is defined in terms of effective demand: as indicating that the consumer is willing and able to meet the price.

This might look like a tendentious definition of 'demand' that only makes sense in a free market--but that is false. Strictly, the 'price' need not be cash. The price might be another good (and so barter takes place), or a crime (the price for theft is the effort and risks involved), or violence (people can pay for a different political system by having a revolution).

Where resources are scarce people are bound to want (or idly wish for) more things than exist--or resources would ipso facto not be scarce. But this knowledge is not useful when it comes to deciding which ends, among competing ends, to produce. The understanding of 'demand' as willingness and ability to 'pay' (in some way) does provide us with a mechanism for dealing with the problem, though this is not to say that it is perfect.

None of this itself undermines the notion of 'needs' (a welfare hierarchy of wants). From a benevolent point of view these things are important. So could some hierarchy of 'needs' be defined as the 'real' or 'proper' demand

¹²¹ Mises 1981.

that supply can be judged as meeting or failing to meet? This would be very difficult. For one thing, the present standard definition of 'demand' (even if restricted to effective money demand) does not preclude criticism of the results in welfare terms. So any replacement would have to show itself to be more useful. But whilst the standard definition is precise and easily monitored in real situations (we can simply see what people buy), the 'needs' definition would be vague and slippery for several reasons:

- 1) Individual people have different hierarchies, with different weightings, for even the most basic goods, such as security, health, and longevity. A comprehensive non-price ranking system that can determine where people put their ever-changing individual preferences is unknown.
- 2) If the price of one basic good drops sufficiently relative to another, then people would usually rather have more of it at the expense of the other. But without prices how could we even tell that relative resource costs had changed let alone how much re-allocation to make?
- 3) Infinite non-specific resources could theoretically be allocated to any of these basic categories. Ever more could be done to make one live that little bit longer (by researching for new drugs perhaps) or be that little bit more secure (by employing extra police). But we have to stop devoting resources to one of these things at some

point or we will suffer a greater loss with the other.

The price mechanism is the only known system for determining what pattern of such basic resources is generally preferred.

4) The price system co-ordinates all the polycentric (or anarchistic) changes in demand due to the changes in individual circumstances--including price changes themselves--that are undetectable by any known single central mechanism.

Generally, it is the standard economic use of 'effective demand' that makes sense of the price system. And the price system provides the best known method of determining economic (as opposed to technical) efficiency. How with a moneyless approach is one to choose between another hospital and another school? Between more kidney machines and more computers? Between more cakes and more salami? We cannot abolish economic scarcity. Choices have to be made. This is a fact of life and it does not look as though it could change (for more resources create new demands). On these questions a society of benevolent altruists would be unable to answer on the basis of needs alone. Prices, as made sense of by effective demand, are necessary for the calculation.

2. Preference Utilitarian Welfare

2.1 Chapter thesis

The preference-utilitarian conception of welfare as achieving what is spontaneously desired (desired without the imposition of force or fraud), and maximising overall welfare, withstands criticism and is in practice compatible with the conceptions of liberty and rationality used in this thesis. In practice, preference utilitarianism entails side-constraint libertarianism, which the free market spontaneously provides.

2.2 Chapter introduction

This chapter will first explain the relationship of preference utilitarianism to the subjective rationality of the previous chapter. Then the general conception of welfare and its relation to liberty and the market is outlined. There is a brief account and defence of interpersonal comparisons of utility. The chapter continues by looking at discussions about utilitarianism (that overall utility in some sense and in some way ought to be maximised) and what it entails in practice. Detailed discussion of welfare economics, as normally written about, has been largely avoided, as that usually involves what is incompatible with this thesis: either simply presupposing that coercive redistribution can increase welfare and then

trying to give mathematical analyses of the best theoretical rules for such redistribution, or dismissing interpersonal comparisons entirely in favour of a Paretian approach.

The criticisms of preference utilitarianism are divided into four broad sections and put in a logical order: clarifying preference utilitarianism; general criticisms of preference utilitarianism; practical and economic implications; the compatibility of preference utilitarianism and individual rights. There will be some slight overlap of subject matter where the critics in question attempt to apply their general points, though this has been largely avoided unless some new point has been raised.

In much of what follows it might look as though utilitarianism is being morally defended. That is not the intention. It might seem to be so simply because many of the arguments used to defend utilitarianism as a plausible view of welfare (and compatible with liberty and the market) just happen to be arguments that a moral defender could also use.

Throughout the terms 'welfare', 'utilitarianism' and 'preference utilitarianism' are generally used synonymously (to mean preference utilitarianism) unless the context clearly distinguishes them. And such expressions as 'promoting utility' are often used as a shorthand for such, more correct but more cumbersome, expressions as 'promoting

goals in proportion to the degree of utility felt about them'.

2.3 The relation to rationality

The previous chapter defended utility-maximisation as a theory of individual *motivation*. This chapter defends (among other things) the idea of using the extent to which people achieve their spontaneous goals (those arising without fraud or force being used on them) as an account of *welfare*. So this theory is utilitarian in a broad sense, but the discussion concerns this as a *plausible* view of welfare and the consequences of implementing it rather than being a *moral* defence (for one can argue about what welfare is and how it is maximised without drawing moral conclusions).

There is an obvious connection between utility-maximisation as a theory of motivation and as an account of welfare. As a result some arguments in the previous chapter are relevant to this chapter, but repetition has been avoided as much as possible.

2.4 Welfare, liberty and the market

The general conception of welfare and its relation to liberty and the free market needs to be outlined. People are here held to be generally better off (to have improved

welfare) to the extent that they have more of what they spontaneously want. The promotion of this version of welfare is sometimes known as preference utilitarianism.

In the free market the average person has more of what he wants than in any other known system. This is because the free market produces more goods and services while maximising the liberty to enjoy them (some of the literature on the empirical and theoretical evidence that goes beyond the limits of this thesis can be found in the bibliography). Liberty will be discussed in detail in the next chapter. It is sufficient here that negative liberty—not being interfered with—is understood.

In some unusual circumstances welfare and liberty (as these are understood in this thesis) will not be compatible. In some such cases promoting welfare might seem morally preferable to most people (for instance, where a minute loss in liberty would mean a great gain in welfare); in other cases promoting liberty might seem morally preferable to most people (for instance, where the gain in welfare would be due to the mere whim of the mob at the expense of the individual's liberty). But this is not important to this thesis, for it is not being argued that either liberty or welfare is a good at all (let alone that one is always preferable) merely that they are almost entirely compatible in practice.

This point needs emphasis. This thesis is not an argument for the complete compatibility of important values (the

naive belief against which Isaiah Berlin has wisely warned in his *Two Concepts of Liberty*¹), or for a strict hierarchy of ultimate values (that, say, only after liberty is respected should welfare be sought, or vice versa), or for moral monism (that, say, either welfare or liberty is the sole ultimate moral goal). This thesis is merely an argument that the most plausible views of liberty and welfare entail each other in almost all their practical applications.

However, part of the overlap of welfare and liberty is for conceptual reasons. For if people have more welfare to the extent that they have more of what they spontaneously want (as will be defended in this chapter), then welfare is conceptually tied to liberty of desire: fraudulently created desires (say, by bogus advertising) or forcibly created desires (say, by compulsory drug-taking) are ruled out. And if people have liberty to the extent that they do not have costs imposed on them by others (as will be defended in the next chapter), then if something is not spontaneously desired it cannot be an imposition to take it, so by definition liberty is desired. And this means that more liberty in itself is a source of welfare.

Many objections to the conceptions of liberty and welfare (as defined in this thesis) and to their compatibility are philosophical or merely presuppositional, and hence require philosophical analysis to expose them and refute them.

¹ Berlin 1984.

Various criticisms and alternative conceptions of welfare will be dealt with in this chapter. This should elucidate the nature and strength of the conception of welfare and some of its relationships to liberty and the market. The final section focuses on some critics who (from a welfarist viewpoint) specifically reject the idea that there can be a congruency of welfare and individual property rights or individual rights generally.

2.5 Interpersonal comparisons of utility

Here there is a brief account and defence of interpersonal comparisons of welfare. This defence is necessary to be able to argue in this chapter that welfare considerations do not entail illiberal interventionist policies and to make sense of the theory of liberty maximisation in the following chapter.

This section is not as long as its apparent importance might indicate that it should be. This is so for two main reasons. (1) As was argued at the end of the last chapter, it is not practical to compare strengths of utility as a motive directly and in detail and so to construct anything like social welfare functions. But general arguments can show that certain social rules are likely to promote overall want satisfaction. (2) As these rules are those respecting liberty and the free market what follows can be read as a hypothetical argument: granted interpersonal

utility comparisons and utilitarianism, liberty and the free market follow. (The more welfare-oriented can read this the other way round: granted free market libertarianism, welfare will be maximised. This might sound less likely, but it is how many welfarists known to me seem to have come to embrace libertarianism.)

That another is getting any satisfaction from his activity is sometimes hard to understand. Other people's tastes can be so strange to us that we doubt whether they really desire some of the things they get up to. One good indication that they do is seeing that these people seem to enjoy some of the same things as much as we do, but that they are prepared to spend time, and perhaps money, on things which seem strange to us. Generally it is the fact of someone's parting with his own money that convinces us of the reality and intensity of his desire. If this mechanism is disrupted then we make poor guesses at their interests, for 'one man's meat is another man's poison'.

It ought first to be noted that standard economic theory does allow *intrapersonal* comparisons of utility. A person who is prepared to suffer the bother of moving his desk to change the view from his window is probably doing an intrapersonal comparison of utility: he thinks he will feel more satisfied with the new view than he does with the present one (even after the subtraction of disutility for the bother of moving).

Standard economic theory seems to allow that interpersonal comparisons of utility (for welfare discussions) may be possible in a loose, informal way but not with the definiteness that it allows in Pareto comparisons (where overall utility is deemed to have increased if at least one person is better off and none is worse off). But it is accepted by most people that interpersonal comparisons of utility are possible to some degree. A clear case of external utility comparison between persons is where A values x, and B is indifferent about x. It follows that A values x more than B does. It then seems a small step to comparing a case where A strongly values x and B has only a marginal preference for x. And so forth.

Whether utility is literally the same 'stuff' is unimportant in practice except in delicate cases. We rarely doubt that one person gets more disutility from a broken leg (in this case because of the pain, but I am not equating pain with disutility) than someone else does from a small scratch on the knee--in the normal case.²

To save a friend from breaking his leg we would usually consider it a small price to sustain a scratch ourselves. Though standard economics with its Pareto criterion cannot make sense of interpersonally maximising utility, it can still make sense of my choosing to sustain a scratch to prevent a friend's breaking his leg--I simply prefer that

² A macho Rugby player might have great utility due to pride at having broken his leg once (though thereafter diminishing marginal utility might set in rapidly); a beautiful model might have great disutility because she now has a tiny scar on her previously perfect legs.

to the alternative. But *I* would be making such an interpersonal comparison of utility--so such comparisons seem to make some intuitive sense. And economics needs this sense to some extent if it is to determine what maximises utility in the manner of preference utilitarianism (discussed and defended in this chapter). It also needs it to maximise liberty--understood as minimising the imposition of costs (as discussed and defended in the next chapter).

But what are we to say about a person who would suffer a broken leg himself in order to save someone from a scratch (or to inflict a small scratch on him)? He is probably (it depends on whether he cares about how the other person *feels* about the scratch) still making an interpersonal comparison of utility. He simply gets more utility by changing the other's degree of utility than he does by purely self-referential acts (i.e. acts not involving this other). Such things are not unusual with great lovers (or with great haters). Assuming normal supply and demand curves we would expect the lover to, for instance, 'buy' less utility for his beloved if the price went up to, say, two broken legs to prevent a scratch (and the same, *mutatis mutandis*, for the hater). Thus the two utilities (though guessed in the case of the other party's) are still compared by the agent.

Nor can we seriously doubt that the average richer person gets less utility from an extra unit of income than does

the average poorer one (so income and wealth redistribution might look welfare-enhancing at first glance).

Making utility comparisons more precise does become progressively harder, but that problem is a separate issue. The point is that we cannot help making some interpersonal comparisons of utility. We do it all the time. If we did not then we would never forgo any benefit to ourselves on the grounds that others would appreciate it more--we would not help people for their own sake for we would only be sure that we were losing but not know that they were gaining.

Provided that we can make some obvious comparisons, then we can often see whether utility or welfare generally goes up or down with some practices rather than others even when there are some losers (as is normally the case).

Criticisms

In the rest of this chapter it might seem that occasionally the criticisms are wrongly taken to apply to preference utilitarianism (as defended here and by R.M. Hare) rather than some more hedonistic sort of utilitarianism. But in the collection of essays mainly cited,³ the editors, Sen and Williams, themselves claim (in their introductory chapter):

³ Sen & Williams 1982.

It is such a reference to desires which--particularly when they are assimilated to interests--underlies the intuitive justification of utilitarianism There is nothing peculiar about Hare's characterisation of utility as such, and in this respect he has provided new arguments for defending an old tradition rather than reformulating the content of utilitarianism.⁴

So it seems that Sen and Williams, at least, take themselves to be attacking a general position that includes preference utilitarianism, so they are taken at their word. Critics will be dealt with only insofar as they seem to be at odds with Hare's conception of preference utilitarianism and with its compatibility with liberty and the free market.

Many of the points made about utilitarianism are merely 'in principle': this expression often being used to indicate what is logically possible or what seems likely given popular assumptions. As a result many of the criticisms of these points will comprise little more than showing that logical-possibility arguments can often be stood on their heads or some general antithetical theories used to attack the popular assumptions. These replies are not intended to be conclusive. This is a philosophical ground-clearing exercise attempting to make the thesis clearer and more plausible at the abstract level, so that the relevant social scientific evidence can obtain a fairer hearing.

⁴ Ibid. p.11.

2.6 Clarifying preference utilitarianism

Hare does not satisfactorily explain or defend preference utilitarianism in some difficult areas in his contribution to *Utilitarianism and Beyond*.⁵ In this section we look at these as a way of clarifying preference utilitarianism.

These concern the idea of having interests outside our experience, whether preference utilitarianism ultimately collapses into mental-state utilitarianism, this thesis' libertarian interpretation of the structure of Hare's moral theory, and 'utility monster' criticisms.

Interests at a distance

Hare writes that it is:

prudent ... to seek the satisfaction of desires which are important to me, even if I am not going to know whether they have been satisfied or not.⁶

He gives the examples of wanting above all that one's children do not starve after one's death, and that:

a dying man's interests are harmed if promises are made to him and then broken, and ... mine are harmed, if people are cheating on me without my knowing it."⁷

One way in which it is prudent to aim at what we cannot know about is that we will be frustrated here and now if we cannot. If you value, above all, leaving your children

⁵ Ibid.

⁶ Hare 1982 p.37.

⁷ Ibid. p.37.

provided for after your own death then you will feel unsatisfied if you cannot now make the arrangements. But this is not the most important point here.

More important is seeing that a person's *real* interests (the interests he actually has) are harmed if what he wants fails to come about, whether he knows it or not. As Hare sees, the opposite of what he is interested in is against his interests in a fairly clear sense. Though, as Hare insists, to make sense of this we might sometimes need to use superior knowledge to tidy up inconsistent interests and put them in order of intensity. (Hare in fact writes of respecting "perfectly prudent"⁸ desires and there is some doubt as to how far he wants to respect real desires and how far he wants to respect something more ideal. But the defence of *real* preference satisfaction is left to the discussion of others who clearly wish to go further.)

Why should we respect others' interests? Hare says it is because we should like them to respect ours. This is his Kantian (universalisability) conception of morality. But more can be said to criticise this position. And more needs to be said to *amorally* defend it as a plausible criterion of welfare.

It might be thought that at least when someone is dead there is no valuer and so that person cannot have his interests harmed; how can there be a value without an

⁸ Ibid. p.28.

existing valuer? But being somewhere else spatially seems analogous to being somewhere else temporally. If we can allow damage to the interests of a valuer who is not present at some place to observe it then it seems we must allow damage to the interests of valuer who is not present at some time to observe it. We can care about some things that will happen outside our own timespan as much as about some things that will occur outside our spatial region. From a preference utilitarian viewpoint all goals are ranked in terms of welfare according to the strength of desire for them--not because of the psychological state their realisation brings about (except in so far as that is included in a goal).

Preference utilitarians cannot here identify 'interest' with 'utility' without getting into paradoxical situations. But it does not sound too odd to speak of something's being against the interests of a dead person if we gloss 'interests' as 'values': one's values can be said to be eternal, as one's factual theories are: a proposition about what the world ought to be like or what it is like does not require the continuing existence of its original holder. But it must be false to speak of someone's getting unwitting utility or of the dead's getting utility.

Brainwashed preferences?

So preference utilitarianism is apparently very unlike a hedonistic utilitarian view whereby people's interests are simply ways in which they achieve utility. With hedonistic

utilitarianism we should, if we could, brainwash people so that they would have interests that they would find more enjoyable. Preference utilitarianism requires that only the individual himself decides what he prefers to have. And it is often or usually the satisfaction of some external end that he aims at--not some psychological state.

However, it might seem that we could still, in principle, brainwash people against their wills to give them preferences that could be more easily satisfied. For if maximising preference-satisfaction is the welfare criterion then it seems that we should brainwash people so that they have more or stronger preferences that can be more easily satisfied: that would consequentially result in more preference satisfaction than merely satisfying existing preferences. So perhaps preference utilitarianism is not ultimately distinguishable from the more hedonistic varieties. Hare is tacitly appealing to a popular liberal conception of welfare that is narrower than the logical limits of preference utilitarianism.

I am not sure about the validity of this criticism as a theoretical point. But as no one currently wants his wants engineered without his permission such brainwashing cannot get started because satisfying the subsequent wants would not be allowed to count as better than not engineering them in the first place. And, in any case, the idea of such brainwashing is quite fanciful. So preference utilitarianism is not self-undermining in practice, and it

is only as a practical criterion of welfare that it is being defended.

We might defend this position by observing that our desires are not as arbitrary as they might seem. We are complicated individuals knowing ourselves best, and we cannot in fact have our motivations manipulated at will by others (or even by ourselves). Such manipulation of people's desires, supposing it were possible (as do some philosophers dealt with later, such as Elster), would obviously have great dangers. If it really were possible then it would probably be safest for people to choose how they wished their own motives altered. They might well take advantage of this facility to some extent; for people do now sometimes object to their own desires (such as the desire to smoke) and try to cultivate different ones. But this is compatible with preference utilitarianism as respecting the individual's preferences at all stages.

Let me reiterate the nature of preference utilitarianism defended here. Hare (and other preference utilitarians) can see that they accept goals that cannot be made sense of in terms of promoting only end-states of utility, and yet they are still utilitarians in a sense. For it is still possible to attempt to maximise those goals that people have the greatest spontaneous utility-as-a-motive to pursue. People do not want to be given any particular psychological state irrespective of their spontaneous goals (and so will not agree to that as a good conception of their welfare). But they do want to be given the things

they aim at in proportion to the strength of the desire that they have for them (and so will agree to that as a good conception of their welfare). That strength of desire is simply utility as a spontaneously occurring motive (as discussed in the first chapter).

This means that though we cannot interfere with people's actual values we can still attempt to maximise goals by reference to interpersonal comparisons of the strength of utility-as-a-motive. If I find the thought of X more satisfying than you do, then it seems that, *other things being equal*, I ought to have X. This is aiming at giving people as a whole more of what they really value without being limited by the Pareto criterion.

Hare's theory interpreted

Hare makes a good point concerning the fantastic nature of the idea of "fanatics of ... heroic stature" who might, from a utilitarian viewpoint, justify extreme oppression of gentler persons. He correctly sees that the critical force of such an example "depends on appealing to the ordinary man's judgement about a case with which ... his intuitions were not designed to deal."⁹ This distinction between intuitive and considered moral responses goes a long way towards explaining what is wrong with many of the fantasy-criticisms of utilitarianism, in a way that is particularly relevant to this thesis (this criticism of fantasy-

⁹ Ibid. p.30.

criticisms is also used in reply to David Friedman in the next chapter). It cannot be a good criticism of utilitarianism as a practical criterion of welfare that we do not have utilitarian intuitions about certain bizarre thought experiments.

Hare gives the example of the Nazis' desire "not to have Jews around".¹⁰ He is surely right that the Nazis could not be, in reality, fanatical enough to make that the real utilitarian policy.¹¹ Hare's response to the example is somewhat hasty as regards possible 'utility monster' criticisms of preference utilitarianism (discussed next) and its implications (discussed in the section on practical and economic implications). But first we should clarify the structure of Hare's moral theory and what this thesis makes of it.

Hare distinguishes two levels of utilitarian rules. The highly specific rules that are possible only given highly

¹⁰ *Ibid* p.30.

¹¹ Though if it were utilitarian I should abandon the utilitarian solution in favour of respecting individual liberty, while Hare should (to be consistent) agree "not to have Jews around". Where there is a clash between preference utilitarianism and liberty my intuitions vary according to the case. In the case of the thought-experiment concerning a multitude of fanatical Nazis against even a single Jew it seems that Hare (along with hedonistic utilitarians, of course) must (in principle--I do not think he would in fact) opt for killing the Jew. I would want instead to say that in this (merely logically possible) clash of liberty and welfare I prefer liberty, or possibly that I now question the welfare criterion (is it even in the Nazis' interests to have such feelings?). But this logically possible breakdown of congruence between preference utilitarianism and liberty does not affect this thesis, which only requires the practical congruence of the two.

informed and critical thinking, and the general rules that are necessary for everyday use. Both are ultimately act utilitarian because the observance of such rules is the best act to promote utility. That act and rule utilitarianism ultimately collapse is important for this thesis in this chapter and as a structure and argument that can be applied to libertarianism in the next. So the arguments and implications will be given now.

Rule-utilitarianism has the idea that the best way to maximise utility is to follow rules that are the best in the long-run, for without such rules there would be mere chaos. Act-utilitarianism has the idea that it is best to do whatever act we now calculate will maximise utility, for if we are hidebound by rules we shall fail to maximise utility. The distinction seems to collapse in light of the observation that if any rules are best for utility in the long-run (and we know them) then the best act to do now must be to obey them. And if there is any way of telling that a rule should sometimes be waived (and we know it) then that information can be put into a new rule.

The position taken in this thesis is that, except in unusual cases, the best utilitarian act is to follow the utilitarian rule of not interfering with individual liberty (even to attempt to increase liberty thereby). And, analogously, the best liberty-maximising act is to follow the libertarian rule of not interfering with individual liberty (even to attempt to increase liberty thereby). Neither of these propositions can be defended in

comprehensive practical detail. They are simply explained and argued to be coherent and plausible positions by taking on critics who have incompatible positions.

Preference utilitarianism and 'utility monsters'

Hare's problem concerning the fanatical Nazis is a version of the 'utility monsters' criticism of utilitarianism. This is, more or less, the idea that utilitarianism entails that those with less powerful emotions should be used by those with very powerful emotions ('utility monsters'). More needs to be said on the possible applications to preference utilitarianism (though the following arguments seem to apply to utilitarianism generally).

Preference utilitarianism is the view that stronger preferences should trump weaker ones. If this were enforced then this might still seem to entail (in practice) tyranny by utility monsters. Any uncontrollably passionate and immature brutes would get their way in preference to the stoical, gentle, and civilised. As most of us would not like the idea of having to pander to such creatures it seems we could not accept preference utilitarianism as a criterion of welfare.

To see the mistake here it might help to look at the extreme consequences first. Utility monsters would increasingly spontaneously arise (for social and, eventually, genetic reasons) if they were always pandered to. But a society with such creatures would not have more

preferences satisfied when all become like this (as they would be bound to: each must cultivate such a personality or lose to those who do). There would be extreme frustration as one brute tries to 'out-want' another brute in order to get his way. And the break-down of commerce and social dealings that ensue (as people try to get things without working for them, or seeking the consent of others) would cause more frustration still. Given that outcome, it is surely not utilitarian to *always* give into 'utility monsters'. But, much more than this, it seems that any pandering to such a creature will *immediately, partially* undermine the productive system of incentives that exists in a system of respect for private property. So utilitarianism will not *in practice* require that the very passionate should get their own way.¹²

So, just how far should we give into strong preferences? If some particular example would lead to such devastating escalation if made a rule then it ought not to be given its full weight. This has to be a matter of some speculation, possibly entailing the use of the legal concept of the 'reasonable man'. This seems the correct theoretical answer, though it cannot be denied that it might be contentious in practice (at least in marginal cases).

But what, for the sake of argument, if such frustration were not the outcome of the rise in powerful passions? We

¹² A similar type of problem occurs with the theory of liberty as the absence of imposed costs and is discussed in the next chapter.

would then have only satisfied utility monsters (which, according to preference utilitarianism, means more welfare). The previous problem was concerned with the practical problem (for a preference utilitarian) of whether, and how far, to give into unusually strong preferences now. This new problem is another mere fantasy criticism. What the economic system could be like, what such creatures would be like, and whether this outcome would be desirable or undesirable, is very hard to judge. It might be that we would want to reject the preference utilitarian conception of welfare if it really would lead to such an outcome. But even if we would, that does not seem to be a good reason to abandon it now, especially if there is nothing better to be had.

2.7 General criticisms of utilitarianism

This section deals primarily with the defence of preference utilitarianism as a plausible theory of welfare. A variety of general criticisms are included but these are necessarily far from exhaustive given the large literature. Taylor attacks the idea of utility as a motive for persons. Sen and Williams focus on utilitarianism's informational constraints. Scanlon argues for a rationalist contractual view of morality. Hampshire thinks that utilitarianism has no room for conventions. Elster holds that the social construction of wants makes mere want-satisfaction a dubious criterion of welfare. Rawls argues against utilitarianism's sacrifice of the individual and its single

conception of the good but also against 'morally arbitrary' unplanned distributions of goods.

Taylor on evaluations of desire

For Taylor the idea of a person is bound up with the distinction between what he calls weak and strong evaluation of desires. Persons have to be able to evaluate desires in a strong sense. This is supposed in particular to rule out the view that utility ought, or even can, be the motive of persons.

The weak sense of evaluation is where desires are weighed against each other to maximise satisfaction. The strong sense is where desires are qualitatively classified. In the weak sense if something is desired then it is held good. In the strong sense what is desired is not necessarily good. Weak desires are supposed only contingently incompatible: one happens to be stronger than the other, but it could have been the other way round. By contrast, a cowardly act might be shunned not because it makes any other desired act impossible, but simply because it is base. When we use the contrastive language of evaluation the weighing of desires against each other is not supposed to make sense.

Taylor must be mistaken. The cowardly act does make another desire impossible--the desire not to be a coward. And if the cowardly act would save one's life one might do

it, though one might not do the cowardly act if it merely saved one embarrassment. So these 'qualitively' classified desires seem to get more 'points' rather than being strictly incomparable.

Taylor concedes that there can be incompatibility if we also value courageous actions. This incompatibility is supposed to be necessary. It is not contingent that one cannot flee and remain a valuer of the courageous life. However, this incompatibility is only necessary when using language that contrasts ways of life: noble versus base, profound versus superficial, higher versus lower.

But surely the merely 'quantitive' desires can be given a logically equivalent formulation. If I value red wine and not white then in appropriate circumstances it is not contingent that I choose red wine if there is the offer of both. I might choose the white for special reasons (maybe because I see the red is running out and I want to be a good host) but then, as before, I might have special reasons for not doing the brave act (because it clashes with the value of staying alive). Of course I could so value bravery that I would always choose the brave act no matter what, but I could also so value red wine that I would always choose it no matter what (though both seem unlikely).

Utilitarianism is the moral system that is particularly attacked from Taylor's position. Utilitarianism is supposed to be flatly incompatible with strong evaluative

language. This seems rather like supposing that utilitarianism is incompatible with laws. Some laws can make for a valuable stability that enhances utility; so can the promotion of certain values such as bravery and honesty. It is simply that the welfare worth of both a law and a value will be contingent from a utilitarian viewpoint.

Taylor links his quality-versus-quantity distinction to a conception of the self:

we are not beings whose only authentic evaluations are non-qualitative as the utilitarian tradition suggests; ... if evaluation of desires is essential to our notion of the self, it is strong and not just weak evaluation which is in question.¹³

The first thing to reply is that the utilitarian (or the preference utilitarian, at least) can allow people all the "qualitative" evaluations that Taylor wants. One can find utility in all sorts of desires, including desires to live according to certain standards because one believes them to be good. It is a mistake to think that maximising utility means focusing on utility in a way that necessarily excludes a desire for "strong evaluations". People do not consciously focus on desirability and then manipulate the world to maximise it whatever the consequences. They focus on ends that they find desirable and these can include ways of living.

¹³ Taylor, C. 1982 p.116.

There seems to be a stronger claim in Taylor's idea that strong evaluations are necessary for a creature to be a "self" or person. These strong evaluations seem to be predominantly moral ones. It does seem that all human beings have a natural inclination to hold moral values. But suppose that an intelligent and reflective man simply lacked sentiments about how people generally (whoever they are) ought to behave. This looks more like a person without a morality than a non-person.

Seeing way morals are categorical is important for understanding the mistake in Taylor's position. Moral views necessarily override other views. Morals are trumps in the sense that we cannot knowingly do what we think (at that moment) is immoral; this would mean doing an act that we viewed as being categorically undesirable. In this way moral values are mistaken for "incommensurables" when compared with other desires. The moral and non-moral desires are compared by desirability, but the moral are bound to win for they are categorically (absolutely, unconditionally) desirable or undesirable when they are held (though they are subjective and may cease to be held). Strictly, Taylor is wrong to say that one is not calculated to be more desirable. The calculation is there but it is very quick. As soon as we feel that something is immoral we feel that we ought not to do it no matter what the value of the other non-moral desire (even the desire to save

one's own life). This is a controversial position¹⁴ so some elaboration seems desirable.

The way morals are categorical

In more detail, here are two arguments for the categorical (or absolute) nature of moral values; one is logical the other is psychological. It seems easier to focus on actions called 'immoral' because 'moral' is often used to mean merely permissible rather than compulsory.

Logically, what is immoral is what we feel no one ought to do whatever the circumstances (it is a sentiment about a type of behaviour). One cannot at the same time (at least, not without confusion) think that one ought to do what no one ought to do. A prudential belief cannot trump the moral belief as the moral belief is necessarily prudential. The definition of what is moral cannot explain what is moral if it uses a distinctively moral 'ought'. It does not. It uses the prudential 'ought' but uses it categorically. If murder is thought to be wrong then it cannot be prudent to be a murderer whatever the other rewards. Morals must be obeyed whatever the price or they are not really held. If they were not obeyed then they would not be categorical, and all ethicists seem to agree that morals are categorical whatever else they are.

¹⁴ Though Hare argues along the same lines in Hare 1963.

Psychologically, can you recall doing anything that felt clearly immoral at the time you did it? Do not conflate this with knowing that others (maybe everyone you knew) thought it immoral, or that you feared the punishment, or felt shame at the possibility of being caught, or that you felt you had done wrong even immediately afterwards (morals are in flux as are our beliefs and tastes), or that you would not have wanted to argue that you had been moral. A major source of confusion is where our 'official' moral views differ from our real moral views. This seems to occur because morals are usually held *ceteris paribus* (at least tacitly so). Strange circumstances (including very trivial infractions and very great rewards) give rise to genuinely different moral intuitions that are only superficially examples of inconsistency.

That morals are trumps may make it look as though we are dealing with something qualitatively different: trumps are not apparently weighed against other non-trump cards for they automatically beat it. But one can view the lowest trump as effectively one point higher than any ordinary card; and one can view a minimal moral desire as just a point or two ahead of non-moral desires. Moral desires have to have certain logical features (which include making them trumps) to be moral desires, but they are ultimately desires nevertheless. We feel more utility and disutility at the thought, respectively, of moral and immoral actions than we do at the thought of non-moral actions.¹⁵

¹⁵ Perhaps Taylor feels that moral desires are special because when they come into conflict with our other desires they force a sacrifice. But our non-moral desires often

Taylor claims that the strong evaluator does not have to feel the difference in value between alternatives because he can "articulate superiority just because he has a language of contrastive characterisation."¹⁶ But is it not "contrastive characterisation" to say that one option feels more desirable than another? It is merely more articulate to be able to say in what way something is desirable: noble rather than base (or sweet rather than sour? Why are such mundane contrasts missed unless Taylor has moral contrasts in mind?).

We are told that not only mere desires but kinds of life are evaluated by the strong evaluator. But how can he do the evaluation except by how far he feels desire for the (promotion of) kinds of life? He cannot leave desires behind. We can still make sense of Taylor's idea of "shallow"¹⁷ people as those who do not consider the value of different types of life; who do not criticise these things deeply. So perhaps "strong evaluations" refer to deep reflections (as with Watson, in the first chapter) rather than merely moral reflection.

Taylor then says of the position that he is really attacking:

conflict with each other, and the sacrifice for following any desire is the next best alternative forgone: the opportunity cost.

¹⁶ Taylor, C. 1982 p.117.

¹⁷ Ibid. p.117.

The complete utilitarian would be an impossibly shallow character, and we can gauge how much self-declared utilitarians really live their ideology by what importance they attribute to depth.¹⁸

If it is deep criticism of ways of living that Taylor values, then it is not clear why utilitarians should shun this. Such philosophising can be satisfying in itself, and it can also enable one to reach conclusions that make for a more satisfying world.

Taylor outlines the idea that people are to some extent responsible for their evaluations by a radical choice that is not based on reasons. He rejects the possibility of a radical choice of strong evaluations though he accepts that of a radical choice between them. He cites Sartre's example of the young man torn between fighting for his country and staying with his ailing mother.

He is surely right that there would not be a dilemma if we could merely radically choose our values for then we could simply declare one of the values inoperative. And if these values really were incommensurable then the young man could only make a radical choice between them--going one way without a feeling or argument that it is better. But can they really be incommensurable? Introspection seems to show that we must attempt to weigh how we feel about the two options. Our feeling of satisfaction is the common measure. Just because we cannot decide clearly which is the heavier does not refute this. It is merely that our

¹⁸ Ibid. p.117.

satisfaction is sometimes (especially in novel circumstances) a criterion that is vague or slippery when no alternative feels obviously better. We may then be torn between them, but we still feel that they are more satisfying than any other goals.

We can agree that Taylor's evaluations are articulations of what is sensed to be worthy, and so forth. And we can agree that this sense is always open to examination to see whether we have our evaluations right, for they are "initially inchoate, or confused, or badly formulated."¹⁹ But Taylor is wrong to draw a clear distinction between these values and our sensory observations, and claim that seeing "this table as brown, or this line of mountains as jagged, is a simple description."²⁰ Values vary in sharpness just as do (external) observations. I can be sure that murder is wrong; I can be uncertain whether what I see is a shadow or a cat. Perhaps values are "more open to challenge"²¹ (it may depend on the value and the person) but the difference between them and simple descriptions is exaggerated by Taylor. As Popper's epistemology shows,²² all observations are theory-laden (rather than unambiguously factual) and this seems to apply to both introspective observations (including those of simple desires) and extrospective ones.

¹⁹ Ibid. pp.122-123.

²⁰ Ibid. p.122.

²¹ Ibid. p.124.

²² Popper 1978 & 1979.

Taylor has now supposedly led us to see that our deepest evaluations are the least clear but the "closest to what I am as a subject, in the sense that shorn of them I would break down as a person ... ".²³ But--apart from the contrary idea that deep values can be clear and shallow ones can be vague--why should we be identified with our evaluations any more than with our observations? Ideas--whether values or theories--are merely tentatively held things in the brains of the genetic creatures that science now shows us that we are. Taylor seems to be even failing to distinguish between what it means to be a person as such and the values that a particular person has (his 'personality', if you will). It seems quite mistaken to hold that there are "inchoate evaluations ... essential to our identity."²⁴ At best a person might need to have *some* "deep evaluations" to be a person. But if particular evaluations alone identify a person then two people would change into each other if they were to come to completely exchange each other's opinions.

In so far as Taylor feels that "shallow" people ought to be controlled by "deep" ones (and, to be fair, this attitude is not obviously implicit) then the same criticisms seem to apply as those leveled at Frankfurt and Watson (in the previous chapter).

²³ Taylor, C. 1982 p.124.

²⁴ Ibid. p.126.

Sen and Williams on informational constraints

Sen and Williams state that utilitarianism imposes "severe informational constraints."²⁵ What information is neglected? By definition only the information that nobody gets any welfare gain or loss from: the information that nobody cares about. If anybody cares about it then it must be included in the utilitarian calculation. If nobody cares about it then why does it matter? What exactly is supposed to be neglected and why is it important? Sen and Williams restate this criticism in various forms but none seems clear.

Merely looking at overall welfare is supposed to take "a remarkably narrow view of being a person"²⁶ Why? Because "utilitarianism sees persons as locations of their respective utilities."²⁷ It does no such thing. To value someone's welfare is not to say that he is identical with where his welfare is located, nor to say what it means to be a person.

Sen and Williams write:

persons do not count as individuals in ...
[utilitarian calculation] any more than petrol tanks do in the analysis of the national consumption of petroleum.²⁸

²⁵ Sen and Williams 1982 p.4.

²⁶ Ibid. p.4.

²⁷ Ibid. p.4.

²⁸ Ibid. p.4.

But if an individual were not capable of being better or worse off in terms of welfare (in the broad sense used here) it is not clear why he ought to count: it would not matter to him what happened to him. And to assign equal weight to the welfare of persons, other things being equal, (as utilitarianism does) seems to be one way to respect all persons equally. Not to do this seems to be to neglect some persons to the benefit of others--and sometimes to the benefit of the person who wants to see his views imposed without reference to equal respect for the concerns of individuals.

The petrol-tank analogy is quite inappropriate. Petrol tanks are mere instruments of storage for the use of people. People do not store welfare for others but have it themselves. And utilitarianism gives each individual equal respect as a person capable of welfare.

Utilitarianism is depicted as a combination of "welfarism, sum-ranking and consequentialism". It is claimed that even the combination of welfarism and sum-ranking means that "persons as persons have dropped fully out of the assessment of states of affairs."²⁹

Sen and Williams seem to imply that there is something wrong here. It is not clear what. The ten commandments proscribe and prescribe certain activities without reference to "persons as persons"--at least they don't

²⁹ Ibid. p.5.

mention anyone by name (except God, perhaps) or tell us anything about them "as persons." Is there something wrong with this "impersonality"? It seems that all moral rules have an impersonal (or impartial) aspect. In fact it is sometimes held that a moral rule is more moral to the extent that it is more impartial: extending beyond the family, the nation, the race, perhaps even the species.

A big difference between utilitarianism and some deontological moral rules is that utilitarianism takes account of *more* facts about the welfare of persons. Popular deontological rules tend to protect welfare to some extent, but to the extent that they are inflexible they must neglect some of the welfare of people. It is such deontological rules that must impose "severe informational constraints"³⁰ if one is concerned with welfare.

For the utilitarian-judgement of actions it is held (by Sen and Williams) to be sufficient, but implied to be unsatisfactory, that "the impersonal sum of utilities is known."³¹

This is merely like saying that with a deontological rule it is sufficient to know only which of two alternatives observes the rule to know which is better. In both cases the only way we find out which really upholds our values is by investigation. It is enough to be *truthfully* informed

³⁰ Ibid. p.4.

³¹ Ibid. p.5.

which outcome measures up to our criteria in order to judge it, but we are unlikely to accept it in either case without some observational testing.

The "drastic obliteration of usable information" is supposed to result in the "neglect of a person's attachments and ties."³²

How can this be? A person's attachments and ties will be taken into account by preference utilitarianism in proportion to the importance that the person himself places on them. How could preference utilitarianism neglect them? True, it does not grant intrinsic and sacred value to attachments and ties, but why should it? Sen and Williams complain that utilitarianism regards "attachments, ties, aims, plans, agency, etc. ... as worthless in themselves and valuable only to the extent of their effects on utility."³³ But if no value is placed on a thing then how can it have a value? Things do not have worth in themselves; utility is a measure of how much worth is placed on them by individuals. (I am not, of course, suggesting by any of this defence that it is therefore desirable to expect people to put less weight on personal ties. That is made unnecessary by the 'private vice; public virtue' conclusions of the economists being defended.)

³² Ibid. p.5.

³³ Ibid. p.5.

Sen and Williams assert that even if it is a necessary condition for something to be valuable that it be desired it still does not follow that one ought to equate "the importance of a thing with the extent of the desire for it or with the pleasure generated by it (i.e. utility being the measure of importance)." ³⁴

We have to equate the importance of a thing with someone's desire (or potential desire) for it (or value of it: there seems no important distinction here), or we are back with the paradox of values existing without any valuers ever holding them. And the only alternative to an impartial weighing of desire is a partial one. Whose desires should we be partial to and why--given that overall welfare will fall as a result of partiality? They do not say.

They see as a deeper objection that "something can be valuable even if it is not desired by anyone" ³⁵ at the time. But it is quite compatible with utilitarianism that there are things that are (at least potentially) valuable (things that would satisfy more spontaneous desires) though they are not yet desired. The value of these things is due to the increase in satisfaction of desire that they would bring about. ³⁶

³⁴ Ibid. p.6.

³⁵ Ibid. p.6.

³⁶ But see the discussion of potential desires replying to Elster (later), which Sen and Williams have in mind here.

We are also told that:

a utilitarian society is not simply a society which happens to satisfy utilitarian requirements, but a society which is run in accordance with these requirements.³⁷

This echoes an earlier remark that utilitarianism is:

also a criterion of public action. It therefore must assume a public agent, some supreme body which chooses general states of affairs for society as a whole.³⁸

On page 3 Sen and Williams conceded that some utilitarians "see no need to assume a public agency", but it is not clear that they really accept this possibility, so it seems worth clarifying the point: there is no reason that utilitarianism logically entails that societies must be controlled as a whole, let alone by a "public" agent or body (where "public" is probably intended as a euphemism for 'state'). If anarchy is better at achieving welfare than any known alternative then utilitarianism demands it. Utilitarianism cannot rule out anarchy on purely logical grounds.³⁹

³⁷ Ibid. p.15.

³⁸ Ibid. p.2.

³⁹ More on the inadequate dismissal of anarchy (but mainly with respect to liberty and pluralism) can be found in the coda at the end of the thesis.

Scanlon and contractualism

T. M. Scanlon offers us a form of morality that he calls "contractualism", where:

to believe that a principle is morally correct is to believe that it is one which all could reasonably agree to and none could reasonably reject.⁴⁰

He holds that the worst-off in a utilitarian scheme could "reasonably" reject their miserable lot in favour of more equality. So, unlike utilitarianism, contractualism is supposed to be non-aggregative.⁴¹

This 'rationalist' notion of morality does not capture the logical structure of sentiments that characterise moralising: feeling partial towards the impartial application of some rule about some group (as was explained in the section on self-interest and altruism). This sentiment does not entail any view on the possibility of persuading others in any way. It may be true that people who hold moral views feel that others ought to agree with them (they may also feel that others ought to agree with their views on diet, art, and the nature of liberty), but they need not have any view about the possibility of persuading others. Some might well try persuasion and find that they cannot talk others into their moral outlooks, but they do not thereby need to question their own or others' reasonableness.

⁴⁰ Scanlon 1982 p.122.

⁴¹ Ibid. p.123.

There is a danger that Scanlon's view will lead to intolerance of others on the grounds that they are 'irrational'.⁴² These other people's views might then be ignored and perhaps the people might be coerced (paternalistically or otherwise). So, not only is Scanlon's conception of morality mistaken but the notion of what can be "reasonably" agreed to can result in vague and dangerous intolerance posing as rationalism.

What of Scanlon's application of his principle? In what way could the worst-off people "reasonably reject" their lot even if it meant lower welfare overall? It is certainly "reasonable" (to be expected) that they would complain, but in what way is it is "reasonable" to give in to them? It looks as though the worst-off are simply failing to take an impartial view of welfare for egoistic reasons. I cannot see how that makes it "reasonable" to give in to them.

In any case, how badly off are the worst-off under utilitarianism? If I am right then utilitarianism requires the free market and that results in the rich becoming richer and the poor *catching up* (though never reaching equality). Can it be advisable to disrupt this process? What is the worth of a forced egalitarianism that has the result of impoverishing everyone. The utilitarian anti-

⁴² People are much less likely to doubt their own 'rationality'. One is reminded of the Yorkshireman's observation to his wife: 'All the world's mad except me and thee--and sometimes I'm not so sure about thee.'

egalitarian case cannot be put comprehensively in this thesis (but for some arguments see the later replies to Hare and Elster). The point is that this possibility is ignored without Scanlon's arguing or citing anything to defend his background assumptions.

Perhaps in the back of Scanlon's mind is the idea that utilitarianism can lead to the immiseration of people that could be alleviated *without great cost to some others*. This may be based on a conceptual error: is he tacitly confusing the distribution of wealth with that of utility? For if any loss in utility of those with most would result (overall and in the long run) in a more than proportionate gain to those with least then utilitarianism would sanction any wealth redistribution necessary. If no greater gain would occur then it is hard to see why there ought to be redistribution unless equality is an end in itself. But Scanlon gives us no good argument for that thesis.

Hampshire on convention

Hampshire sees moral claims as "natural" when they are defended by reference to the "universal needs of human beings and to their reasonable calculations"; they are "conventional" when they are defended by reference to "the description of a desired and respected way of life, in which these moral claims have been an element thought essential ...". He holds that ideally utility and justice should converge but feels that:

The one unnatural, and impossible, cry is the consequentialist's 'Away with conventions: anything goes provided that it does not interfere with welfare or with principles of justice.',⁴³

There are next to no universal needs of human beings. Needs are relative to wants and human beings do not, qua human beings, necessarily want anything in particular. It is true that the overwhelming majority are likely to want space, heat, food, and air (though the suicide does not). And after these four near-universals our tastes begin to diverge rapidly. Eventually we reach areas that are grey as regards the nature-convention categorisation and then see that the distinction is itself a convention: everything man does is natural in some sense for he is a natural object, and everything he does is conventional in some sense for he could choose to forgo it.

Even if we grant Hampshire his distinction it is not clear that the consequentialist need have an "unnatural and impossible cry". In as far as conventions contribute to welfare or cannot easily be changed the consequentialist will, respectively, not be against them or will be cautious as regards changing them.

Perhaps there is an insight in the idea that some conventions might be as good as other quite different ones as regards the welfare of the people that have them. But preference utilitarianism can happily acknowledge this.

⁴³ Hampshire 1982 p.156.

Elster on sour grapes

Elster asks why want-satisfaction ought to be the criterion of desirable social states given that some wants "may be shaped by a process that preemts the choice". In particular he questions the value of satisfying wants where "people tend to adjust their aspirations to their possibilities"⁴⁴ supposedly as in Aesop's fable of the fox that could not reach the grapes, so he declared that they were sour.

A case taken to be relevant to this idea of "adaptive preference"⁴⁵ is the industrial revolution: could it have made people worse off if aspirations overtook material gains? If so the cardinal utilitarian is supposed to prefer the pre-industrial state, but Elster feels that this would be an unacceptable infringement of autonomy.

Ultimately all wants must be "shaped by a process that preemts the choice": we cannot choose the creature that we are and the world that we are born into; what we are and what we meet determines the wants we have. Such determinism does not rule out deliberation (or even the deliberate cultivation of some wants), but we deliberate as we must. So any kind of want must ultimately be based on unchosen factors. We cannot have any ultimately freely chosen wants.

⁴⁴ Elster 1982 p.219.

⁴⁵ Ibid. p.219.

Similarly, people are almost inevitably (in practice) going to have to "adjust their aspirations to their possibilities" (though it is logically possible that someone could always get exactly what he wants). The world is rarely exactly as we would like it to be, so we are forced to make the best of things.

But none of this means that we are likely to readily forget what we would have preferred or easily change our attitudes to it, as Elster seems to think. We might add a line to Aesop's fable with which I suspect Aesop--though perhaps not Elster--would agree: "The fox was walking away muttering that the grapes were sour and inedible, when suddenly the grapes fell to the ground. Immediately, he rushed back and devoured them."

If the industrial revolution permanently resulted in leaving people with less welfare than before (for any reason) then it might⁴⁶ have been good from a preference utilitarian point of view to have stopped it if possible.⁴⁷

⁴⁶ It might simultaneously be the case that: 1. the industrial revolution left people worse off than they (i.e. their great-grandparents, or whoever) were before, and 2. any re-arranging of society so that the industrial revolution were prevented from being a possible line of development would have left people even worse off.

⁴⁷ There seems a problem with the fact that some--almost all?--of the later people might not have existed but for any interference: if preference utilitarianism would sanction this type of 'creation' of people, then how could it stop the slide into the wholesale kind found in Huxley's Brave New World? Perhaps it is preference utilitarian that we should not deliberately create people against the spontaneous wishes of the existing people, but we must take account of the fact that some people are bound to be 'spontaneously' engendered. Even if preference

The assumption of a malign industrial revolution seems far-fetched.⁴⁸ Being far-fetched, as Hare might observe, the assumption probably helps to confuse our intuitions. And perhaps this is compounded by thoughts on the difficulty of seeing how this could have been foreseeable, how it could have been stopped without doing more harm than good, why we could not more easily choose to dismantle any of the 'damaging' technological changes and learn that 'less is more', or why the minority who think this way cannot set up an Amish-style community.

It is hard to see why freedom (considered collectively, as Elster does, or individually) should be respected in circumstances where we can be certain that it really would leave people worse off by their own standards. People usually value freedom because it helps them to achieve their ends, and they would not have their interests harmed by interference if it really did help (though it could not help insofar as they have a desire to achieve some end without help).

utilitarianism breaks down in this fantasy case, it is not clear that this need damn it as a useful criterion of welfare in ordinary circumstances.

⁴⁸ It reminds me of an antithetical, real, anecdote: a housewife interviewed in the USSR claimed to pity the poor westerners whose abundant goods meant that they never experienced the great joy of occasionally attaining some hard-to-get commodity like butter or meat--except that she wittingly undermined this claim with a final, "Lucky devils!"

Let me give another far-fetched example to show that preference utilitarianism would not be obviously unacceptable as a view of welfare even if it were to clash with liberty (not that I think it does in practice).

*If I could really know that you were about to blow yourself up as a result of some great experiment (that another would do safely), then I should, say, drug you, if needful to stop you, only if I also knew that you would wish that if only you knew the truth (this being preference utilitarian by respecting your stronger spontaneous desire to carry on living). And more or less the same should, *mutatis mutandis*, apply to the whole human species if it were on course to blow itself up.⁴⁹*

If you or the human species would not wish this, then it would not be the utilitarian thing to do. If you or the human species prefer 'noble and heroic' liberty, then it is not preference utilitarian to stop you. But if you do not, and would wish to be stopped, then it is only I who would value the destruction as 'noble and heroic'.

⁴⁹ There is a disanalogy between you and the many individuals in the human species, especially over generations (as discussed in an earlier note). But I guess that preference utilitarianism would not in practice sanction interference with people now to increase welfare among later people, and I am only finally defending preference utilitarianism as a plausible view of welfare, and its compatibility with liberty, in practice.

Rawls on "justice" and utilitarianism

Much has been written on Rawls' theory of "justice".⁵⁰

Rather than examine Rawls' paper in *Utilitarianism and Beyond*, Rawls' position in his *Theory of Justice*⁵¹ will be sketched and then briefly responded to concentrating on the areas that are relevant to general criticisms of utilitarianism.

Rawls offers us a thought experiment (the "original position"⁵²) in which individuals who are self-interested and generally knowledgeable, but deprived of knowledge of their own attributes and their place in society, have to decide on distributive principles. This set up is supposed to ensure that "fair" principles of "justice" are derived, as there is no arbitrary discrimination possible.

"Rational choice" is supposed to ensure a concern with the worst off (we want to make them as well off as possible for we *might be them*). Rawls feels that sacrificing some to maximise aggregate welfare (the supposedly objectionable aspect of utilitarianism) is avoided in this "original position". It is supposed to yield the principles of justice that we already hold deeply--those of social democracy (more or less). Rawls' notion of primary goods (of which all will want as much as possible) is supposed to

⁵⁰ It seems unnecessarily confusing to use the legal term 'justice' to mean something other than the legal sense unless one is a natural lawyer--which Rawls is not--but that is a side-issue here.

⁵¹ Rawls 1972.

⁵² Ibid. pp. 17-22.

depend on a conception of a person that is compatible with there being many rational conceptions of the good--supposedly unlike utilitarianism.⁵³

Utilitarianism does not *in principle* entail the 'sacrifice' of the individual, to which Rawls *explicitly* objects. That is only required if overall welfare increases thereby (which this thesis denies occurs in practice). Now Rawls is trying to argue at a very basic level, prior to our adoption of assumptions about what property rules ought to exist. But he does, as a matter of fact (by logical implication), advocate sacrifice of the individual--despite his protestations to the contrary--in so far as he allows for the involuntary use of the more-able by the less-able.

This view is disguised as merely choosing rules for the fair allocation of resources. But if X and Y trade without imposing a cost on Z (see the third chapter for more detail on "imposing a cost") and they are then forced to give a share to Z, then their interests are sacrificed to Z's (whether this is morally desirable is a separate issue). Rawls does defend such scenarios, so he is guilty of the very charge (sacrifice of the individual) that he wrongly levels at utilitarianism.

What outcome should Rawls' thought-experiment yield? If the people in the original position knew their economics (as Rawls assumes they do) they would surely opt for

⁵³ *Ibid.* p.24f.

market-anarchy as the best way of getting more of what they value without risking having their interests sacrificed to others or suffering a terrible fate if they are at the bottom of the social system. *Of course* this is a contentious and contingent point, but it ought not to be any more contentious than Rawls' implicit assumption that we can know *a priori* that we need politics (his assumption is examined in more detail in the coda on anarchy, liberty and pluralism).

Does preference utilitarianism necessarily have a single conception of the good, as Rawls states? It might seem to be definitionally true that even preference utilitarians hold satisfying preferences in proportion to the strength of utility(-as-a-spontaneous-motive) to be the good. But this is not so.

Preference utilitarianism can consistently be interpreted as a *modus vivendi* (as it must be if chosen by egoists). Given that people are bound to clash as regards what they think is valuable (goods) they may agree to give equal weight to the values (or welfare) of each person. This does not mean that they must think the values of others' matters as much as their own. It is sufficient that they think that according equal value to individuals' values is likely to achieve a more pleasant world than fighting it out. They will maximise their chances for achieving their ends in this way. It is enlightened self-interest (in the egoistic sense). Thus preference utilitarianism does not have to be a theory of the good. It is not that there then

needs to be a single more fundamental theory of the good; everyone can have their own views on what is valuable. (Though positive moral approval is likely to make for a more stable system in practice.)

Rawls' fundamental intuition is that "a society" that is not ordered by moral principles allows advantages of person and position that are "arbitrary from a moral point of view."⁵⁴ But these things are not morally arbitrary given that welfare and liberty matter morally (not that it is here argued that they do) if the economists this thesis seeks to defend are right. For if we look at the results of interfering with personal and positional advantages that were acquired without imposing costs on others then we see that both welfare and liberty are lowered by forcibly interfering with them (however "just" one's motives). It should be noted that this differs from Nozick's point on this issue where he attacks Rawls' for having too thin a concept of what constitutes a person.⁵⁵ The point here is that economics indicates that welfare and liberty will suffer overall and to almost everyone from such interferences even with a "thin" concept of persons.

⁵⁴ Rawls 1972 p.72.

⁵⁵ Nozick 1974 p.213.

2.8 Practical & economic implications

This section mainly tackles the idea that if preference utilitarianism is accepted it leads (at least implicitly) to all kinds of state-interventions. This includes: Hare's background assumptions on discrimination, obeying government instructions, voting, equality, and integrity; Harsanyi on "preference autonomy" and "anti-social preferences"; Mirlees on redistribution of income; Hahn on problems for utilitarian "public policy".

Hare on discrimination, electricity and voting

It was agreed that Hare is right that the Nazis could not be, in reality, fanatical enough to make it utilitarian "not to have Jews around". But in his 'liberalism' Hare overlooks the mere wish not to mix with certain types of people. This must in practice be tolerated by utilitarians. For the desires of aggressive anti-racialists (or compulsory-integrationists of any sort) are also unlikely to outweigh the desires of people who merely wish to live in peaceful ways that exclude certain types of people.

Compulsory integration is at least as destructive of welfare as is compulsory segregation. We can make a useful distinction here between racism and racialism. Racism in practice (the aggressive imposition of one's racial preferences on others) must be stopped in the interests of

human welfare; racialism in practice (the *peaceful* personal discrimination on grounds of race--in marriage or in employment, for instance) must be tolerated in the interests of human welfare. The black American economist, Thomas Sowell, has argued especially well against various anti-discrimination policies on welfare grounds.⁵⁶ (What exactly constitutes 'peaceful personal discrimination' and what 'aggressive imposition' should become clearer after the development of the theory of liberty in the next chapter.)

Hare also attempts to show how to derive the correct utilitarian rules for some well known problem cases. From the viewpoint of this thesis he fails. On the issues of consuming electricity contrary to the government's instructions and not voting, Hare says that it cannot be correct to allow each individual to calculate that his behaviour will make no difference to the others but benefit him because:

it would be impolitic, in moral education, to bring up people to behave like this ... nearly everyone would consume electricity under those conditions, and hardly anybody would vote.⁵⁷

Here what is of interest is a major presuppositional error from the point of view of this thesis. Hare is supposing that the background assumptions about the political facts are uncontentious and that only utilitarianism's correct applications require to be sorted out. But if electricity

⁵⁶ Sowell 1981 and 1983.

⁵⁷ Hare 1982 pp.36-37.

is in short supply thanks to a state monopoly then there seems no good reason that libertarians or welfarists who recognise the inefficiency of a coercively maintained monopoly should curtail their consumption (they might even care to take the supererogatory act of consuming extra electricity if that will hasten the deregulation of the industry).

Similarly, if politics is an unnecessary evil, it might be better not to vote. Most people stand more chance of being run over on the way to the polling station than they have of influencing the election (and even if someone's vote were decisive he would only get a very crude and mixed package of policies). Statistically, it is not worth anyone's voting for the purpose of changing things. And it might help to undermine the legitimacy of the political system if a large percentage of people decline to vote (though this could lead to something worse if this were not done, and seen to be done, because market-anarchy is preferred). Hare's 'utilitarian rules' of "law-abidingness" and "public spirit" (as he interprets these) have no obvious welfare-merit in these examples of his.

Equality

Hare offers "two important utilitarian grounds for a fairly high degree of equality of actual goods (tempered ... by various advantages that are secured by moderate inequalities)." Diminishing marginal utility means "approaches to equality will tend to increase total

utility" and "inequalities tend to produce, at any rate in educated societies, envy, hatred, and malice." So utilitarians do not need to "fear the accusation that they could favour extreme inequalities of distribution in actual modern societies."⁵⁸

This is a major point as regards the reconciliation of welfare and liberty (as defended in the next chapter). Contra Hare, I would suggest that "extreme inequalities"⁵⁹ (though usually with rapidly diminishing numbers towards the extremes) are defensible on several welfare-maximising grounds: 1) the necessity for some great incentives; 2) the fact that many wealth and income differences are due to past or continuing choice; 3) the fact that forcible transfers do not seem to reach the ostensible targets. I shall expand briefly on these points in order to make them a more plausible position--not in an attempt to provide a comprehensive refutation of Hare.

1) All income⁶⁰-taxes effectively lower the pay for the job taxed.⁶¹ If the highest paid jobs are more than

⁵⁸ Hare 1982 p.27.

⁵⁹ It is not clear what makes an inequality "extreme". If Hare means "extreme" in a pejorative sense, then I would deny that there are "extreme" inequalities with a free market.

⁶⁰ I avoid a technical discussion on the income versus substitution effect here, but concede that it is necessary for a rigorous argument.

⁶¹ Charitable gifts are quite different from forcible transfers: they are a form of voluntary consumption and so do not affect incentives as forcible transfers do (in fact, preventing them would reduce incentives).

proportionally taxed then this means that people will be that much less likely to do those jobs (though all taxes on income will be likely to make working less attractive compared with leisure; I do not mean to imply that the only objection to progressive taxes is their progressiveness).

If equality is a supreme end then perhaps this does not matter much. But this means that jobs that create the most welfare are the most discouraged: for people are generally paid wages in direct proportion to how far others value their product. But it need not be the case that the drop in production and hence welfare will be *bigger* because higher-paid people are affected (though this does seem likely, especially given that they often organise the productive activities of many others or indirectly create many jobs) it is enough to defend their higher incomes that any money coercively denied them, or transferred from them, has no more-productive use. Another thing "diminishing marginal utility ... means"⁶² is that people that are already producing valuable products require a greater incentive to get them to produce more.⁶³

⁶² Hare 1982 p.27.

⁶³ The general point can be put more precisely. The exact character and quality of what people do is just as important as, or more so than, what they are paid. Since taxes can never be neutral, taxation will cause high-income producers to shift from one activity to another--the actual drop in a given person's income might be slight, but the shift in activity might still be of consequence. This is true of any taxation but is likely to be true more often, or with more serious consequences, with progressive taxation, because this will mean a high marginal rate of taxation, which will tend to discourage the seizing of opportunities to move from a lower-valued activity to a higher-valued activity. The key point is that taxes, especially--but not only--heavy and progressive income taxes, will cause some activities to fail to be undertaken,

Another aspect of the incentive-destruction is that information is destroyed: even if someone wants to produce what is most desired, regardless of the effects on his own income, he will not be able to find out what is best if the price-signals have been interfered with by taxation. The informational content of price signals is a particular theme of Hayek's.⁶⁴

2) With many people the wealth and income differences between them is a hopelessly crude indication of how satisfying their lives are. Within any particular market-society people generally (as a rule of thumb) have the material standards that they choose to earn (state barriers to trade and migration lower welfare within societies while maintaining material differences between societies).

Almost anyone can choose to earn a relative fortune by hard work. Common observation shows that long hours in a business producing popular family-items is the most certain way of achieving material riches. The exceptions to this general rule within a society tend to be due to the state's aggressively initiating and maintaining material differences by enforcing restrictive practices or straight transfers to the wealthier.⁶⁵

and these activities are, *prima facie*, welfare-increasing. (I thank David Ramsay Steele for clarifying this point.)

⁶⁴ See, for instance, Hayek 1948.

⁶⁵ For instance, both of these points are corroborated *prima facie* by the annual *Sunday Times Magazine's* list of Britain's wealthiest people.

3) Redistribution from rich to poor is not practical in any case. The evidence suggests that the worse-educated poor are typically manipulated into a worse position by the better-educated rich.⁶⁶ And coercive transfers from the relatively few at the top could not, in any case, add much additional income per person if divided among the rest.⁶⁷

So there is at least a plausible case that the level of inequality has to be left to the market if welfare is not to be lowered.⁶⁸

The "envy, hatred and malice" in the presence of inequality, that Hare writes of, is mainly due to lack of knowledge. Theories that hold the rich businessman to be rich at the expense (in some mysterious way) of the poor are part of the problem. On the contrary, what seems to be the case is the case: on the market there is a tendency for people to earn money in direct proportion to how far they have made themselves useful to others. As those with incomes close to or lower than the mean income together spend more than the rich it is usual for the richest businessmen to serve them. The surest route to wealth seems to be selling in quantity (mass production) and that means catering to a market far larger than a rich elite.

⁶⁶ See, for instance, LeGrand 1982.

⁶⁷ See especially N. Barry's discussion and references on this in Barry 1981 chapter 3.

⁶⁸ On the trade-off between total welfare and equality of welfare see Okun 1975.

In a society where these basic economic facts were better understood there would be less resentment.

So the preference utilitarian need not "fear" that he will be accused of tolerating "extreme inequalities"--for he can boast that he does.⁶⁹

⁶⁹ Though the welfare-enhancing free market itself is only incompatible with equality in the same sense that it is incompatible with an *infinity of inequalitarian outcomes*: imposing a particular income distribution--of any kind--is inimical to the free market.

Hare on Williams

Hare makes an interesting point about Bernard Williams' views from the viewpoint of this thesis. For criticising it brings out the unusual position taken here. Hare objects to Williams' persuasively defining "the self-centered pursuit of one's own projects as 'integrity'".⁷⁰ Hare seems to overlook the utilitarian personal and "invisible hand" reasons for respecting a person's integrity (or wholeness); for not interfering with someone's voluntaristic plans and projects in any coercive way, whether in isolated cases or institutionally. It would be better to object to Williams' inconsistency, for Williams advocates in practice the (welfare-destroying) disruption of innocent lives and voluntary associations ('integrity') to the extent that he advocates any state interference that does more than defend people from the imposition of costs by others. Thus Williams' position is very similar to Rawls' own-goal attack on sacrificing the individual to others (discussed earlier).

Harsanyi on morality and rational behaviour

Much of what Harsanyi writes on morality and rational behaviour⁷¹ is very abstract, and he says little about the practical implications by way of elucidation. He seems to

⁷⁰ Hare 1982 p.29.

⁷¹ Harsanyi 1982.

confuse and conflate stipulative definitions, factual claims, and value judgements in an attempt to combine philosophy and mathematics rigorously. At points he becomes less abstract, and his meaning becomes a little clearer. Such points will be criticised.

"Preference autonomy"

Harsanyi claims to be a "preference utilitarian". He sees it as fundamental that this version of utilitarianism is the only one "consistent with the important philosophical principle of *preference autonomy*" whereby "in deciding what is good and bad for an individual, the ultimate criterion can only be his own wants and his own preferences." The only sense in which someone can want something that is bad for him is if "his own preferences at some deeper level are inconsistent with what he is now trying to achieve."⁷²

This seems fair enough so far: we can imagine the simple case of someone who wants to drink water without realising that it is poisoned.

Harsanyi continues that "social utility" must be measured in terms of people's "true preferences" rather than their "manifest preferences". A person's "true preferences" are defined as:

the preferences he would have if he had all the relevant factual information, always reasoned with the

⁷² Ibid. p.55.

greatest possible care, and were in a state of mind conducive to rational thought.⁷³

This notion of "true preferences" builds on the idea of the possibility of persons' wanting what they would agree (in ideal circumstances) is good for them.

Now the edifice begins to look a bit unstable. First, it looks like a (perhaps unintentional) persuasive definition to write of "true preferences" here. Even if something is what someone would truly prefer in certain ideal informational circumstances the fact is that he does not truly prefer it now. If we are using plain English then it is simply false to say that someone truly prefers what he does not prefer as a matter of fact. It would make more sense to refer to people's 'ideal preferences' or, more simply, 'general interests'.

Then, is Harsanyi intending to go very far beyond such examples as that of our poisoned water? In the water example the person only has to be told about the poison to not want to drink it, or the poison can be later tested for and he will thank us even if we forcibly prevented him from drinking it at the time. Does Harsanyi intend to include preventing people from smoking if they understand the likely damage and insist that they are willing to take the risk? If so then we do not seem to be dealing with the preferences of real people at all but rather the ideal people that Harsanyi wished existed instead.

⁷³ Ibid. p.55.

There are several other problems with Harsanyi's position. There is a problem about "all the relevant factual information": as we cannot know everything and cannot know what information might affect our preferences the critic or philosopher-ruler (for one of these seems implied by the notion of measuring "true preferences") of an actual preference is only trying to come up with a better guess. He cannot be sure that he has "all the relevant factual information" either. Is he really likely to be better placed to guess than the individual whose life it is?

Reasoning "with the greatest possible care" we often still make mistakes. And it is often a mistake to invest "the greatest possible care" in a decision when there are other things to be done in one's own life. So how can any real critic hope to achieve this for others?

Is there much 'rationality' left to people in this view? For if all wants are irrational unless they live up to the high standard of being Harsanyi's "true preferences", then perhaps most people are 'irrational' most of the time.

So if "social utility" is defined in terms of "true preferences" it becomes a highly subjective and impractical goal. "Preference autonomy" looks as though it would be a highly contentious idea and of little use as a criterion of what is happening to welfare. In fact, it does not look as though autonomy has any real force in Harsanyi's system, despite his praise of the idea. For Harsanyi seems to be advocating paternalism, and paternalism just means ignoring

people's autonomy in order to rule them in their (supposed) interests. The idea of "true preferences" looks bound in practice to cause rule by a self-perceived (and probably self-serving) elite. Harsanyi later mentions the idea of voting in a favourable context, so perhaps he thinks that the elite should be elected, but he gives little explicit indication of "preference autonomy" in action for us to give a clearer judgement.

"Anti-social preferences"

Harsanyi goes on to say that he wants to exclude some "antisocial preferences" that even he concedes are "true" by his definition. These are "sadism, envy, hatred and malice." He argues that these things are inconsistent with the "general good will and human sympathy" which utilitarianism has as "the fundamental basis of all our moral commitments".⁷⁴

It seems quite un-utilitarian to exclude these things from our calculations. We will surely not allow them to decide matters except where they give greater satisfaction than they cause dissatisfaction (and utilitarianism entails taking any long-run effects into consideration, of course). Where this is so there will be less welfare (from a utilitarian viewpoint) if they are ignored. How can utilitarianism sanction a lower amount of utility

⁷⁴ Ibid. p.56.

promotion? Harsanyi has no proper utilitarian reason for asserting that these emotions should count for nothing.

It should also be noted that there are many non-aggressive ways of catering to "sadism, envy, hatred and malice." Boxing, satirical magazines, and career success can be (but need not be) tools for some of these. In any case, how are we to know whether someone's motives for doing one of these are "antisocial" (so count for nothing according to Harsanyi) or 'social' (so add to welfare)?

Harsanyi holds that Rawls was right to point out that traditional utilitarianism is unreasonably strict in requiring us to choose every action to maximise social utility. This strictness might well be a misinterpretation. Harsanyi partly sees this when he acknowledges the great value that people put on having free personal choice rather than having "unreasonably strict moral standards." If this is so then the awfulness of being the servant of everyone else's desires always ought to have been included in the utilitarian calculation. The interpretation of utilitarianism was wrong rather than utilitarianism itself.

We can go much further than this and question how much good one could do with greater "general good will and human sympathy".⁷⁵ Aggressing against others in their person and property is an incomparably great source of the destruction

⁷⁵ Ibid. p.56.

of people's welfare. If this alone stopped then the world would be a demi-paradise. Going beyond non-aggression to extremes of benevolence would have a relatively minute effect on the welfare of others. In fact it might often be less useful to be benevolent than to be a peaceful profit-seeker. In terms of welfare-creation Mother Teresa is a far less useful individual by comparison with Mick Jagger (the singer), or Edison. (This is, of course, the fundamental insight of Adam Smith and the early economists.)

Even if we suppose that we were to become hyper-benevolent it is hard to think what we could do that would do that much good to others. Give large sums of money to people in one's own country regularly and you simply encourage them not to work (as state unemployment benefit does). Send regular food to people who are being starved by the policies of their governments and it will undermine the indigenous farms, or feed the government troops, or reduce discontent at the policies of the government and thus enable them to carry on in power a little longer and do still more harm (Lord Bauer's writings, for instance, are full of evidence and arguments along these lines⁷⁶).

If the average person were to spend *more than a small proportion* (I am not claiming that charity does no good at all) of his income or time on general charities then there would be a very real loss of welfare felt by him and his

⁷⁶ See, for instance, Bauer 1971.

family and only a drop in the ocean to help some (possibly uncertain) cause such as cancer research.⁷⁷

Charity that is not based on personal acquaintance is much overrated. It certainly does not provide significant welfare by comparison with the market. And the creation of a freer market (by scrapping aggressive immigration and import controls, and work regulation, and taxation, and the state monopoly of the money supply, ...) would do more good than a thousandfold increase in the income of charities.

As in the reply to other critics throughout, none of this is intended to be a definitive exposition of this position. The economic theory and evidence in detail has to be found in the relevant books, only a few of which are indicated throughout the text and in the bibliography. The point is merely that there is a coherent and plausible position that utilitarianism is best served by liberty and the market. This is usually argued in this thesis in at least as much detail as the opposite is argued (or merely supposed) by those being criticised.

Mirlees on redistribution

An interesting question is how much income ought to be redistributed from those with high wages and salaries to those with low wages.⁷⁸

⁷⁷ Further utilitarian arguments for this general position can be found in the replies to Mirlees (next) and Ryan (in the next section).

⁷⁸ Mirlees 1982 p.63.

This is a question that Mirlees considers in his defence of the economic uses of utilitarianism. He obviously does not seriously consider the possibility that there ought to be no such redistribution--let alone the possibility that there ought to be a redistribution from the low-waged to the high-waged in order to reward productivity and punish lack of productivity (which may sound as plausible as its opposite).

Unlike Hare and Harsanyi, Mirlees seems to be a pristine hedonistic utilitarian for he says, "what is good for me can be analysed into experiences in different states ... tied to time and circumstance."⁷⁹ If this is so then most would side against him in favour of having their values respected even when they range beyond experienceable time and circumstance.

Mirlees makes a plethora of points that are hard to evaluate as they stand. Then he suddenly puts his hand into a footnote-hat and pulls out a state-rabbit: "I want government ministers to try to maximise utility".⁸⁰ So he is defending utilitarianism on the assumption that, if his defence is successful, it is uncontentious that state intervention follows (and that state actions will be successful in their aims).

⁷⁹ Ibid. p.66.

⁸⁰ We should have noticed the rabbit's ears when, just before, he mentioned evaluating "public [a common euphemism for state] policy".

Using a simplified model of society, Mirlees makes some supposedly uncontentious assumptions that he argues lead to radical conclusions for utilitarians. He assumes a society of two (egoistic) individuals who get the same utility from income and disutility from work. Incomes are spent on output from their labour. One of the two can produce twice as much in an hour as the other can. The law of diminishing marginal utility is assumed, so:

more income makes extra income less valuable, and less work makes extra leisure less valuable. It is also reasonable--because apparently realistic--to assume that more income would make them more eager to substitute leisure for income.⁸¹

Assuming utilitarianism, it supposedly follows that the more productive worker should work more than the other, be paid less, and get less utility. For the more productive worker can be more productive at less disutility in terms of work--but he needs a lower, per hour, income to tempt him to do more work, and must receive lower utility than the other or he would underproduce (relative to maximising overall utility). Mirlees sums this situation up as "from each according to his ability, to each according to his need."

Mirlees then introduces two factors that begin to make the account more realistic: the probability of dissembling by the more productive worker; the situation when the government can identify them only by the amounts they

⁸¹ Mirlees 1982 p.75.

produce. He shows that these assumptions entail different treatment. He concludes that the example "emphasises that utilitarianism can lead to all kinds of inequality".⁸²

First, some points about the basic model's assumptions.

Money is normally so useful (because of all the different things we can buy with it) that the diminishing marginal utility of it sets in relatively gradually (compared to most goods and services), and can be hard to detect over relatively long ranges.

Also, a low level of income can make it hardly worth working at all, while a high income can make one keen to work a great number of hours. Generally, high-income people are not noted for their short working hours. They certainly do not usually perceive each pay rise as a chance to take more time off. And given that leisure does become more attractive after a certain point it is usually necessary to pay them even more than normal to get them to continue to be productive.

So Mirlees' view that in the basic model the more productive worker should be paid less and get less utility is not as plausible as he asserts even before his additional realistic assumptions.

⁸² Ibid. p.76.

What Mirlees' basic model comes down to saying is that if welfare is interpersonally comparable (as it is here accepted it is, in a rough and ready way) then from the viewpoint of an impartial welfarist there is no purely logical reason that more productive individuals should not be forced to share their good fortune with less productive ones.

I accept that there is no purely logical reason--but there are plenty of empirical reasons, and Mirlees mentions only two of them. Mirlees could continue adding realistic assumptions to his model until he reached reality, but this would probably be much more cumbersome than simply stating what policies the government could supposedly take that would increase welfare, and seeing whether they stand up to criticism. Until Mirlees does this there is no purely logical reason to think that utilitarianism does not lead to many more kinds of inequality than are dreamt of in his philosophy. In fact, there is no purely logical reason to think that state-coerced transfers are likely to increase welfare rather than lower it. (For more on whether the forcible redistribution of wealth is likely to increase welfare see the reply to Ryan.)

Mirlees is typical in thinking that if utilitarianism is accepted then radical state policies follow uncontrollably. The result of this mistake is that the work of many welfare economists is mostly mere scholasticism as far as libertarian utilitarians are concerned.

Hahn on utilitarian economics

Hahn makes the general points that utility cannot yet be aggregated in any unique way (because of the problems of cardinalisation and interpersonal comparisons) and that it seems wrong to think that utility alone--and not, say, also liberty--is an intrinsic good.

Hahn considers three utilitarian problems for the "economic theory of public policy":

(a) is it reasonable to insist that the utilities of agents depend only on the consequences of public actions? (b) how are we to evaluate actions designed to change the utility functions of agents? and (c) how are we to treat the fact that the consequences of actions are uncertain?⁸³

In answer to (a) he holds that "my utility may not only depend on the consequences of policy but on the policy itself."⁸⁴ He supposes various voluntary acts becoming compulsory even though we had no intention of not doing them. He feels that we could lose utility merely by resenting their now being compulsory. He concludes that welfare economists have often overlooked the loss of utility due to people's attitudes to their rights being infringed.

On (b) Hahn asks:

⁸³ Hahn 1982 p.187.

⁸⁴ Ibid. p.188.

Why should preferences over preferences be immune to changes through policies? ... There seems no compelling reason to suppose that there is a 'real' and ultimate preference system over a large enough domain which is immutable under economic (and social) change.⁸⁵

On (c) he discusses the problems of deciding between *ex ante* and *ex post* measures of utility; in particular, how much weight ought to be given to the beliefs of the possibly ignorant agents.

On Hahn's general points:

The lack of a unique aggregation thanks to the problems of cardinalisation and interpersonal comparisons is not such a big issue for the anarchistic approach to utilitarianism. These things are big problems only for the welfare economist who requires detailed information in order to construct a central plan for the economy. Here this possibility is rejected because of the economic calculation argument. Instead of this approach the free-market anarchist can give theoretical economic and empirical arguments as to why anarchy is likely to make a better job of welfare in its polycentric way. I cannot, of course, rehearse all the relevant economic literature here. As an introduction to this topic, the welfare superiority of the market is fairly comprehensively covered in David Friedman's *The Machinery of Freedom*.⁸⁶

⁸⁵ *Ibid.* p.192.

⁸⁶ Friedman, D. 1989.

On the issue of whether utility alone is a unique good see the earlier section on Rawls.

Criticisms of Hahn's answers:

(a) One of the consequences of a policy is how people feel about it--as Hahn acknowledges himself. So this ought to be included in utilitarian evaluations of policies, as he suggests. This solves the problem.

(b) The idea that Hahn apparently has here is that the malleability of people's preferences means that there is no reason to be limited by any chimerical "real" or ultimate preference system." He seems to be implying that we could have more coercive state manipulation ("changes through policies") to 'improve' preferences.

But the limits on what is practicable, with even hedonistic utilitarianism, is considerably restricted by the fact that, contingently, state coercion seems to have malignant effects on welfare (the more extreme, the worse the effects: the USSR, China, Cambodia). However, non-coercive methods of seeking more welfare-enhancing goals means that we can use the efficiency of market competition to help us make individual choices.

And the preference utilitarian position of this thesis goes beyond this and rejects interference in spontaneous preferences even if more preferences could thereby be satisfied. People would not want to be forced to have non-

spontaneous preferences just because they are easier to satisfy. They would see no good reason to prefer mere preference satisfaction (let alone mere psychological pleasure) to the satisfaction of their *spontaneous preferences*, so they would not accept that as increasing welfare.

(c) Here again, Hahn is supposing that it is a real possibility that the welfare economist can systematically be in a better position to judge than can autonomous individuals. This seems a mere logical possibility that is mistakenly held out as real.

2.9 Welfare and individual property rights

This section defends, from explicit attack, the idea that individual property rights are compatible with welfare in practice. Hammond argues that individual property rights and the "right to take risks" constrain welfare maximisation. Raz argues that the existence of "inherent public goods" are incompatible with individual rights. Ryan argues that utilitarianism provides a better account of property than individual rights can, that there is a presumption in favour of equality, and then examines four property problems concerning self-ownership, original acquisition, taxation, and slavery.

I do not mean to defend the idea of rights morally, let alone the idea that there are natural rights. I am merely asserting that particular individual property rights (those compatible with liberty--as used in this thesis--and the free market) considered merely as *social rules* do not need to clash with preference utilitarianism (also considered as a general social rule: maximise the satisfaction of spontaneous preferences). This is done by responding to three writers who more explicitly deny this possibility (though the previous writers examined were also at least implicitly against this). Any moral slant that these writers exhibit in the quoted passages is ignored as irrelevant to the central issue.

Hammond on private risks versus welfare

Hammond is another "utilitarian" who is not interested in people's utility but, rather, in what people have "good self-interested reasons" for doing. On this basis he denies that utilitarianism conflicts with "rights" except when correcting for externalities.⁸⁷ We are not given a clear account of what a "right" is or where it comes from. The example of an externality that he uses is that:

if everybody cuts down all their trees, this may create problems of soil erosion and landslides as well as having adverse effects on the local climate.⁸⁸

⁸⁷ Hammond 1982 p.90.

⁸⁸ Ibid. p.89.

It does not occur to Hammond that, in reality, this problem could be the result of state restrictions on the private ownership of forests (which would allow the owners to husband their resources). In fact he suggests that:

the ethical significance of generalised property rights has been greatly exaggerated ... with good governments ... insistence on [property] 'rights' may often be little more than a selfish ploy to influence the political process unduly.⁸⁹

"Good governments" and good fairies sound like wonderful things. If they exist then we are to be grateful. But do they (or could they) exist just because welfare economists and story tellers talk about them? Like many welfare economists and utilitarians, Hammond starts with a theoretical defence of his basic stance (which is not disputed at the moment) and then, before one can blink, concludes that some detailed aspect of state policy is thereby obviously desirable.

A welfarist who is more familiar with the economic literature accepted here might be inclined to paraphrase Hammond like this: 'The welfare efficiency of private property rights has been greatly neglected; with any government the insistence on the "public good" may often be little more than a ploy by vested-interests to interfere with private activity unduly.'

⁸⁹ Ibid. p.90.

Hammond suggests, disapprovingly, that Milton Friedman:

views the right to take risks as a kind of property right which acts as a constraint on maximising the expected value of the ex-post utility function.⁹⁰

There are two important things that Hammond overlooks here.

First, the "right to take risks" is not a kind of property right but part of any property right: one owns a thing to the extent that one has the right to use it without external constraint. If people have the right to dictate the level of risks that we take with a thing, then thus far they are the owners of it. To dictate any rules of usage about things in themselves (i.e. when they are not being used to affect the property of others) is to claim to have some ownership rights over the things in question. The people who think that you do not have a right to sell your kidneys must be claiming that you are infringing their rights by so doing (or they would not have the right to stop you) and so they are claiming a particular ownership right in your kidneys (they are not claiming a partial share in your kidneys, only a particular ownership right). This is ironic where the objection they give to someone's selling his kidneys is that it is immoral for anyone to have ownership in another's body.

Second, it must at least be logically possible that property rights do not act as constraints on welfare so much as promote welfare in the most efficient way possible. Hammond cannot rule out this possibility without argument.

⁹⁰ Ibid. p.95.

Hammond's claim sounds as peculiar to the libertarian welfarist as the following claim would to Hammond: 'Hammond views the right to do welfare economics as a kind of property right which acts as a constraint on maximising the expected value of the ex-post utility function.' And though I do not think that Hammond ought to be censored (for free speech seems the best long-term strategy for welfare) I do think that, overall, welfare economists have hitherto been a constraint on welfare. So as usual we cannot usefully do much more here than point out that he is mistaken in his background assumptions. But we can point out some of the more obvious flaws in those few areas where these background assumptions are occasionally thrust forward, as in the following example.

Hammond continues to mock the right to take risks on the grounds of its entailing:

if one is to be consistent, that the failed capitalist has the duty to meet all the consequences of his failure, including discharging all his debts, if he can, and even selling himself and perhaps his heirs too into slavery if necessary.⁹¹

He notes that, in fact, the right to go bankrupt exists in "modern capitalist societies" and that this undermines the "supposed property rights of other capitalists".⁹²

It might have been mentioned on the previous point that risks as such are not really a right so much as an inevitability in this uncertain world. The only difference

⁹¹ Ibid. p.95.

⁹² Ibid. p.95.

with the enterpriser is that he often takes risks with large amounts of money. Now, one can insure oneself against these risks--in a variety of ways--without violating the private property of anyone else. Limited liability, for instance, is for the most part a contractual and voluntary device (the state is involved, but only because of its monopoly of the legal system). So logical consistency does not require, as Hammond states, that the right to benefit from risks implies an enterpriser's duty to meet "all the consequences of his failure" (in the sense Hammond implies).

It is not a free-market phenomenon that businessmen can take risks at others' non-contractual expense. Bankruptcy law was brought about by pressure on the state by powerful vested interests: the rising business class.⁹³ That UK travel agents can close down at any time without liability, is another non-contractual example. Such things are, for the most part, due to state intervention in the market. If an enterpriser has not insured himself by contractual and voluntary means, then it would seem a free-market outcome and prudent utilitarian rule to make everyone completely liable for his enterprise's losses.

Selling oneself into full slavery sounds unnecessary. But being obliged to become bonded labour for some period sounds a possibility. This would probably often involve

⁹³ It is not only the "other capitalists" who bear the cost of bankruptcy: the price of bankruptcy has to be mostly passed on to the customers, in higher prices, or worse or fewer goods.

the person's working in a similar occupation to before (if that would be legitimate and where his general expertise lies) and going home to his family at night. It is unlikely to involve working on a plantation and receiving regular whippings, or whatever fanciful notion Hammond might have in mind. Given the welfare loss that the destruction of vast wealth can cause this should not seem too terrible a penalty to a hard-headed utilitarian.

The idea that with extreme enough losses strict private property rules might entail that one's heirs should become slaves is absurd: the risk is the individual's not his offsprings'.

Hammond concludes by admitting that, apart from any other problems, there is little empirical evidence to help us make the interpersonal comparisons necessary to construct a social welfare function. That this can eventually be done in the detail required to have central planning seems to be a presupposition that the economic-calculation argument (discussed briefly at the end of the previous chapter) shows to be impossible. But we can look at economic theory, and the before-and-after welfare effects of different policies in a country, and the general welfare of societies that try different economic policies. And here the evidence (some of which is in the books in the bibliography) is that state interference is a spanner in the works.

Raz on "inherent public goods" versus individual rights

Joseph Raz calls "inherent public goods 'collective goods'."⁹⁴ He argues that:

given the intrinsic desirability of some collective goods, it is reasonable to conclude that morality is not right-based.⁹⁵

An immediate reply is to note that even if (and it is a big 'if') there are significant intrinsically public goods this does not automatically entail that a state is necessary to provide them (a private trust could be set up in some cases) or that they could be provided at all. A further reply is to point to the literature arguing that there are few if any significant public goods.⁹⁶

Having, of necessity, referred away the details of that enormous economic topic we can look at some typical examples of illiberal assumptions in Raz that can be more easily dealt with.

Raz tells us:

It is a public good, and inherently one that this society is a tolerant society, that it is an educated society, that it is infused with a sense of respect for human beings, etc.⁹⁷

⁹⁴ Raz 1985 p.47.

⁹⁵ Ibid. p.53.

⁹⁶ T. G. Palmer's *A Student's Guide to Classical Liberal Scholarship* has a useful list. (Published by The Institute for Human Studies, at George Mason University.)

⁹⁷ Raz 1985 pp.46-7.

When "society" is tolerant, educated, and has respect for human beings this only means that the individual members are generally this way. "Society" is not an individual moral agent or organic whole; some such view seems to be partly causing Raz's position. And 'public' goods are often considered non-excludable when produced. But the individual members of any society are quite capable of withholding their personal tolerance, education and respect from those whom they do not wish to benefit from these. If these things are public goods in any significant sense then it is not obvious and Raz ought to argue the case.

Raz also holds the apparently oxymoronic view that "the ideal of personal autonomy is incompatible with moral individualism"⁹⁸ This becomes explicable when we see that for Raz "the ideal of personal autonomy ... requires not merely the presence of options but of acceptable ones."⁹⁹

Raz obviously has some idea of autonomy as getting your own way in things that really matter (or ought to matter) to you. Such an approach is not unusual. But self-rule (autonomy) cannot sensibly entail "acceptable" options, especially where these mean the right to do things at the expense of others. If I am not being imposed on by anyone (and I am alive) then I must be ruling myself (however bad a ruler others may think I am).

⁹⁸ Ibid. p.52.

⁹⁹ Ibid. p.51.

A more sensible use of 'autonomy' would seem to make it synonymous with 'liberty' in the sense of this thesis (developed in the next chapter): of not having costs imposed on one. With his "autonomy" Raz is taking a term with a clear etymological meaning and twisting it to mean something that, in practice, will require coercive interference with people that are not imposing on anyone: his "autonomy" is really an *attack* on autonomy (not that Raz is alone in defining autonomy this way). He explicitly says that "it would be wrong to postulate a right against coercion, for example, as a right to autonomy ...".¹⁰⁰

Raz continues:

At least some of the social conditions that constitute such options are collective [inherently public] goods. The existence of a society with a legal profession or with recognised homosexual marriages is a collective good, for the distribution of its benefits is not voluntarily controlled by anyone other than the potential beneficiary.¹⁰¹

How is the legal profession a public good? How is it that people cannot (admittedly with Legal Aid some do not) be made to pay for the services of lawyers? It is (unfortunately) true that we have state courts (if that is what Raz has in mind), but there is nothing in principle to stop their charging people individually. Perhaps he has in mind the statist (Hobbesian) argument that the only way we can enjoy the benefits of law and order is by subjection to a coercive state. But Molinari, Rothbard and Friedman¹⁰²

¹⁰⁰ Ibid. p.54.

¹⁰¹ Ibid. p.52.

¹⁰² Molinari 1977, Rothbard 1978, Friedman, D. 1989.

(to name but three) have made out plausible cases that private provision is not only possible but far superior.

It is also true that a state monopoly of the law means that the state alone decides whether to institute homosexual marriages, but there is nothing about this that means that if instituted they must be provided free for to all who ask for them (as would definitionally be the case if they were really public goods).

Raz adds that "self-determination is not merely a public good but a collective one."¹⁰³

It is a statist assumption that "self-determination" is good at all. When statists use this term they, again, do not mean what the words seem to literally mean: 'the right of an individual to determine his life for himself'. They mean the right of a nationally defined state (rather than any foreign state) to impose its will on the population. So this understanding of 'self-determination' (though popular) looks just as tendentious and perverse as Raz's view of 'autonomy'.

Ryan on ownership

Ryan argues for the superiority of utilitarianism over rights in defending property. He gives his general position and then analyses four hard cases.

¹⁰³ Raz 1985 p.53.

Ryan does not see how property rights can flow from the nature of liberty. For him the law merely gives us legal claims that can be removed without doing wrong provided there is due compensation:

Suppose a mine owner buys his mine in good faith, and some years later has to give it up upon nationalisation. There is no injustice in this and no important loss of liberty ... what the coal-mine owner cannot fall back on is any cry equivalent to 'it's my coal mine'.¹⁰⁴

The general theory of liberty and how property is derived from liberty is best left to the next chapter where it is explained in detail. But we can proceed on the assumption that general account is not essential for applying the conception of liberty (as non-imposition of costs) to Ryan's more specific examples. On the coalmine example I merely observe here that Ryan may be presupposing that there is no great practical problem about nationalisation in terms of efficiently producing welfare--a view that has generally gone out of favour and would require considerable argument.

The immediate effects of equality

Ryan goes as far as holding it to be obvious that:

At any given moment, there would be an increase in welfare if we were to divide up everything equally; but to do it would set at risk the environment ... we rely on to create the wealth¹⁰⁵

¹⁰⁴ Ryan 1985 p.182.

¹⁰⁵ Ibid. p.183.

It is good that Ryan's egalitarian preference is at least modified by some grasp of the wealth-creating aspects of the free market; but would equality even be *immediately* ("at any given moment") welfare-enhancing? In what follows we examine this specific claim that equality could realistically increase welfare at least "at any given moment", as that seems to be the thin end of Ryan's egalitarian wedge.

Even if we suppose that the proportion of any given population with more than average wealth could be forced to accept such a redistribution without bloodshed (a considerable supposition), would the remaining people really be likely to gain as much as the losers lose?

Wealth transfers are not the same as utility transfers. Property is usually tied up in personal ways that are of particular value to the owner. It seems likely that thieves (plus their eventual customers, if any) usually gain a value smaller than the value of the object to the original owner. Theft would increase the 'national product' if this were the other way about. Overall wealth (in the general sense of what is of value to people) is usually destroyed by taking things by theft (but increased by trade, where both sides gain). So it is not at all obvious that there would be even an immediate gain in utility in the event of mandatory equalisation.

Ryan might say that such forcible property redistribution is unnecessary for money could be given to people in proportion to their lack of wealth. This could not be practical. If this were done by printing money this policy would merely create a great price inflation. Those with above-average wealth would not sell their real assets to the new 'rich'. Prices would rise to take account of the inflated currency. (I assume that taxation of income would be impracticable as it could not be high enough to achieve the immediate equality Ryan has in mind.)

It is true that some would still be able to buy (for this immediate period at least) somewhat more than they would otherwise have had the money to do. They would enjoy some windfall gain. But what of the 'windfall loss' (which by definition cannot be anticipated) of the proportion who lose by this redistribution? Windfall gains are usually a small source of utility in anyone's normal lifestyle. A similar loss is usually a more than proportionate disaster. The things we normally budget for are threatened. We have to tighten our belts uncomfortably to cope with the loss. If this were not so then we would expect people to regularly gamble large amounts when the odds were even. For instance, the two of us (on equal incomes) would think it a good bet to allow the toss of a coin to decide who gets both monthly salaries. This is not normal behaviour.

Imagine a single fairly extreme example. Take a professional person undoubtedly above the average income for even the UK and imagine suddenly merely taking a

month's salary from him and giving it to someone as poor as an alcoholic beggar sleeping rough.

All the wealthier person's normal financial arrangements will be in disarray. He will have to drastically juggle with his bills and go without many of the items he usually buys. Beggars often choose to live rough and look down on those who work all day to pay for a house to sleep in. The beggar could get a job day-labouring if he chose and sleep in a Salvation Army hostel (where there are usually empty beds). He does not so choose and he is unlikely to change his ways. He will probably do with the windfall what he normally does when he collects his fortnightly Department of Social Security cheque (at least, the homeless used to be able to get this state benefit): he will spend it on expensive drink and not bother to return to begging until it is spent. He might drink more than usual and go without begging longer--that is all. Without this transfer the beggar would have continued drinking on the income from his begging that people give without resentment or feeling a great loss. It is hard to see any overall gain in utility in this forcible transfer. (I do not mean to sound censorious about begging and drinking away the money as such.)

What if we took half the wealthier man's property and gave it to the beggar? The beggar would stay drunk much longer. Meanwhile the poor devil who has lost half his house and possessions is having his normal life utterly disrupted. Can an impartial utilitarian really see this as even an

immediate increase in overall utility between the two? It is at least not obvious here that the immediate effects of equality must increase utility.

The beggar example was chosen because it seemed that if a forcible transfer of income were not utilitarian in such an extreme case, then the argument against milder cases must be stronger still. But perhaps the example of the beggar has peculiarities. Suppose, instead, one took a small proportion of the income of a very rich man and divided it among 50 factory workers. Would there be a likely increase in immediate utility? Perhaps. But on a society-wide scale (which is what Ryan is supposing) there are certainly not enough very rich men for every fifty workers to make this obviously the case.

It is not as obvious as Ryan supposes that more equal wealth on a society-wide scale would "at any given moment" increase welfare; in fact, it seems quite plausible that it would decrease welfare. Perhaps the largest factor preventing the increase is people's expectations. This was seen by David Hume.¹⁰⁶ People are more upset by failing to receive that which they are expecting, relying on, and think is properly theirs, than the reverse. Of course, if people did not have such expectations, then total utility might go up initially (provided that the price of redistribution did not itself destroy too much wealth). But in reality they do, and Ryan was writing of reality.

¹⁰⁶ Hume 1968 Bk III p.219.

So Ryan is not being cautious enough when he suggests that it is "wrong to attempt anything more than slowly operating methods of redistribution."¹⁰⁷ If there is no good reason to think that equality at "any given moment" will raise welfare then Ryan has not given us a good reason that equality is any kind of ideal welfare goal to be cautiously approached. In fact he has not given us any reason to think that libertarian private property rights are incompatible with property based on the promotion of welfare.

Four property problems

Ryan goes on to look at four fundamental problem cases for rights and utility (his order is changed in order to answer them in a more convenient sequence, though there is still some unavoidable overlap in the topics): 1) whether we own our own bodies; 2) original acquisition of property; 3) taxation; and 4) the legitimacy of slavery. All of these are dealt with generally in the following chapter, but here I deal with Ryan's specific points about why these are supposedly more of a problem for a rights theory than for utilitarianism.

1) Whether we own our own bodies

Rights over our own bodies come as close as anything can to being natural rights. Even to walk down the street presupposes that I have the right to move my

¹⁰⁷ Ryan 1985 p.184.

legs in the appropriate fashion. It's hard to see what rights would be like at all if they did not include rights over one's body--but it's not hard to see how there could be such rights and no property rights.¹⁰⁸

How "rights over our own bodies" are derived from the principle of liberty is explained fully in the following chapter. Briefly: liberty is the absence of imposed costs, and people impose a cost on us if they try to control us without our consent. Here we focus on other points Ryan makes.

First we ought to note that *moral* rights do not need to be thought of as *natural* rights and so--unlike natural rights--can easily be made sense of (not that we are here defending them as *moral*, of course): if I say someone has a right to use his own body as he sees fit I need only mean that it seems immoral to interfere with his body without his permission. This need be based on nothing more than a moral sentiment: such interference feels wrong; nobody should do that. Ryan implicitly believes in at least one moral individual right himself: the right to equal consideration in the production of welfare. This is ultimately based on a moral sentiment too. (And this moral right to equal consideration in the maximisation of want-satisfaction--irrespective of its content--looks like the sort of "abstract right" Ryan later dismisses in 2 [below].)

¹⁰⁸ Ibid. pp.192-193.

Having property can just be having rights (whether legal or moral) of use and control over things. To the extent that we have the right to use and control we have property rights. So, contra Ryan, it is impossible to see how there could be such rights and not property rights. To the extent (I am not arguing here how far, if at all, that is) that I have the right to use and control 'my body'--the body that *is* me--it is also 'my body' in a propertarian sense. (Though property can also exist in the objective sense that someone has the use and control of something whether or not he has a legal or moral right to that use and control. See the next chapter on this point.)

We are then told that compulsory transplant surgery "treats people as a mere means to an end ... *I do not think utilitarianism can do very much to accommodate the idea that this is intolerable* [emphasis added]" though it can "do a good deal to embrace the same conclusions as the theorist of the right to respect as a person would reach. If people just do passionately mind .. that launches the utilitarian case ...".¹⁰⁹

Here Ryan seems at odds with his general theme that utilitarianism is clearer than rights in the defence of the issues he focuses on (perhaps he thinks that utilitarianism goes at least some way to defend self-ownership while rights are really hopeless because 'mysterious' or

¹⁰⁹ *Ibid.* p.193.

'irrational'). So perhaps we can also defend utilitarianism on this issue better than Ryan does.

The practical hazards of, and passionate objections to, making transplant surgery compulsory do seem to make it 'intolerable' from a *practical welfare* viewpoint. Ryan more or less sees this but seems to be asserting merely that it is logically possible that utility could tolerate this compulsion. Even if compulsion really would help people live longer, they could still freely opt into a system of compulsion that, say, contractually bound them to the results of a spare-part lottery but guaranteed them a better statistical chance of a longer life. It would probably not be necessary, or utilitarianly possible, to include people that passionately wanted to take their own risks. Ryan certainly offers no *practical* conflict between utility and property rights derived from liberty here--so there is no challenge to the practical compatibility thesis.

2) Original acquisition of property

Ryan writes that with original acquisition there is a temptation to think that the first user:

has mixed what was his with what was nobody's and thereby made it his too. It should not be a strong temptation, though, since the sense in which our actions are ours is not much like the sense in which a car is ours.¹¹⁰

¹¹⁰ *Ibid.* p.187.

By using unowned resources we use our actions to invest in them in a fairly plain sense of investment: we make an effort with the hope of reaping the rewards of that effort. The labour is obviously 'ours' in the attributive sense: we are labouring, not someone else. Ryan sees this sense. But the labour is also 'ours' in a propertarian sense if we are self-owners and have not contracted to work for another. By contrast, the employee's actions are 'his' attributes though the investment made with them is no longer 'his' property. This ambiguity is not apparently seen by Ryan as he rejects (in the previous example and the one about slavery, later) any plain sense in which people can be seen as owning themselves (so this answer must be supplemented by the replies to those problems).

If we are self-owners then our actions are ours in the sense that we have a right to make them and no one else has a right to dictate them. From a liberal perspective, we do own the right to freedom of movement as part of owning ourselves in *just the same way* that we own the right to do what we like with our cars as part of owning our cars: we can do what we like with what is ours in so far as we do not impose undue costs on others.

Ryan writes that the other idea in this issue is seeing that people intend to become owners and respecting this intention. He thinks this approach is more or less based on "respect for persons" which "is altogether too like the doctrines of 'abstract right' that Mill deplored."¹¹¹

¹¹¹ Ibid. p.187.

"Respect for persons" is vague. The liberal idea is the more precise respect for their liberty. This is not vague in the account given in this thesis. Ryan is right to see that utilitarianism can also go a long way to defending original acquisition as a good property rule; he merely fails to see how this property rule is compatible with liberty as the non-imposition of costs (as defended in the next chapter).

3) Taxation

Ryan writes that "taxation is a forced contribution to social costs".¹¹² It would be clearer to write that taxation is a forced contribution to the state. What the state spends the money on is immaterial to whether or not the forced contribution is taxation. The expression "social costs" (in Ryan's usage¹¹³) seems a collectivistic euphemism that is intended to imply that taxation benefits society.

We are 'reassured' by Ryan that:

viewed in the utilitarian framework, there is no particular anxiety about the status of taxation generally; it is not that we have a property right to our incomes and then reluctantly hand over some portion to the government. *Morally*, as opposed to *legally*, there is no reason to think that we have that sort of right to our pre-tax incomes; rather we are

¹¹² Ibid. p.191.

¹¹³ In economics 'social costs' means the sum of all private costs.

entitled to some share in the net proceeds of social collaboration¹¹⁴

We are again dealing with mere logical possibility. There is no logical inconsistency in being a utilitarian and advocating taxation, but the new laissez-faire economists provide plenty of practical reasons for thinking that taxation destroys welfare. And Ryan again fails to see that ownership is an aspect of liberty. So from practical utilitarian and libertarian positions we do have reasons "to think that we have that sort of [property] right to our pre-tax incomes".

Consider Ryan's collectivistic description of the sum of individual wealth in a society as "the proceeds of social collaboration". In one sense this is not nonsense: one can aggregate "the proceeds of social collaboration" if one wishes. But society is not the single enterprise that Ryan seems to be implying with this expression. It might seem to an alien from another planet that humans are like termites in their interactions, but this is not so. There is not a single goal but a different goal for every single interaction between people. If there are trades between persons A and B, B and C, and C and A they do not sum to a single arrangement. None of them ends up thinking of himself as having a share in the "proceeds of social collaboration" for at any stage each has the fruit of a trade between particular consenting individuals.

¹¹⁴ Ibid. p.191.

Ryan's implication--that anyone who ends up with less than anyone else might have been short-changed in a single process--might look more obviously questionable given a non-financial example. Suppose someone claims that sleeping with women is part of the "proceeds of social collaboration" and that he is not sleeping with his share. It is true that no one would have any profits or sexual intercourse without social interaction. This does not obviously imply that voluntary trade and voluntary sexual encounters should be supplemented by compulsory redistribution of money or sexual partners. It is, again, logically possible that utilitarianism might require both, but it seems to be prejudicing the issue in a strange (and horrible) way to describe such ultimately individualistic utility gains as the "proceeds of social collaboration".

Finally, Ryan rejects the position of the rights-theorist who asserts:

people just are originators of value, creators of moral worth in the world, and begetters of their own projects" though "this is what with luck and good social design they may become¹¹⁵

As Ryan does not cite any specific opponents it seems best to try to make sense of what he says and give only a brief reply. He is apparently denying that people have any spontaneous values, and morals, and know what they want--so state-engineering ("good social design") should decide which values, morals, and projects to create in people.

¹¹⁵ Ibid. p.192.

But let us take the extremest example of someone in the power of another: a slave. A slave is not the psychological puppet of his master: he cannot value, or moralise, or want to achieve something because his master tells him to; he can only make his actions conform with his master's demands. It seems a fact of human nature that people have to value, moralise and act for themselves--even when their options are severely limited by the threats and coercion of others.

And the history of this century is a testament to the unintended welfare-destruction that is caused by attempts at the state-engineering of these things.

4) The legitimacy of slavery

The defence of leaving people to do as they choose is not based on the thought that they 'own' themselves ... There is no natural ownership, whether of ourselves or of others¹¹⁶

Perhaps the only or best defence of "leaving people to do as they choose" is not that people think of themselves as self-owners. But the idea that people own themselves might well be what causes *most* people to think we should leave people alone, and Ryan seems to be denying this. A philosophy lecturer at the LSE once asserted that self-ownership is a strange idea and no one thinks that he owns himself. I suggested that any student at the lecture who thought that he owned himself should raise his hand. As

¹¹⁶ Ibid. p.189.

far as I could see, every student raised his hand. I cannot be sure what arguments the students would have put for their self-ownership, but the following is a simple one that they might have assented to. Most would accept that slavery is where one person is owned by another. By natural extension, the abolition of slavery must result in the slave's coming to own himself--as all free persons do.

What people do not usually do--with adults at least--is a welfare calculation to defend their self-ownership.

(Though this presumption of self-ownership may well be the result of previous, socially absorbed and largely overlooked utilitarian effects. If we thought we would be happier as slaves then we might take this to be the most natural thing.¹¹⁷) Most philosophers are probably not that different from other people in this respect.

There may be no 'natural right' to self-ownership in any God-given or morally objective sense, but slavery is 'unnatural' in the sense that it is statistically rare, usually takes a state to enforce it, and people usually see themselves and others as unquestionably self-owners.

Ryan then writes that a person "cannot be a real slave in the absence of a legal system that recognises the servitude".¹¹⁸

¹¹⁷ I thank Jon Le Cocq for this Hayekian idea.

¹¹⁸ Ryan 1985 p.189.

In the news in the 1980s there were several accounts of men (usually in the backwoods of the USA) who had kidnapped women and made them completely subservient to them until detection by the police, or the death of the women. These women were *de facto* slaves. There seems no good reason to think that one need be a *de jure* slave to be "real slave". A *de jure* slave may actually be living free despite his being legally owned and so he looks more like someone who is not a "real slave".

Ryan asserts that if someone contracts into slavery:

we ought not to side with his 'owner' if he [the slave] changes his mind ... it is not that we stop people doing what they naturally can, but that we decline to provide institutional sanctions¹¹⁹

I shall not attempt to make out a comprehensive practical utilitarian case for respecting slave contracts. I would expect voluntary slavery to be entered into very rarely (the history of slavery is overwhelmingly one of non-contractual coercion of even the poorest people) and very circumspectly (with legal limits on the treatment of the slave). To disallow any such rare contracts would leave both parties worse off in their own opinions (or they would not seek to make the contract). And to prevent the continuing enforcement of the contract would stop other welfare-enhancing slave contracts from being made. This argument might well not sound convincing to those not convinced of the general welfare effects of strict libertarian property rights. But I do not think slavery

¹¹⁹ Ibid. p.189.

would be a big issue in practice and Ryan himself supplies no utilitarian argument for his view (that "we ought not to side with his 'owner'") for me to argue with.

Ryan also seems to be presupposing a monopolistic state legal system. If the state leaves people to themselves they will "naturally" (i.e. it is absurd to think they would usually behave in any other way) pay for the legal sanctions that are necessary to protect their property (including any slaves) on the free market. So what Ryan's state would do (or does do) is positively prohibit people from providing the private legal protection they would otherwise buy. The state does not merely "decline to provide institutional sanctions"; it aggressively disrupts the spontaneous market-provision of these sanctions.

Ryan concludes:

there may be some rights ... for which utilitarianism cannot offer a very compelling rationale. But such rights are not property rights. Of those rights that are genuinely property rights, utilitarianism gives the plainest and most compelling account we have.¹²⁰

The above replies to Ryan should show that he has offered no rights (at least from a libertarian viewpoint) for which in practice "utilitarianism cannot offer a very compelling rationale", and that all rights logically must be property rights: all rights are (legal or moral) claims to certain uses of things--and to have such claims is to have property.

¹²⁰ Ibid. p.193.

Ryan's arguments have not shown that the abstract principle of maximising utility is (compared with the principle of respecting individual liberty) clearly the "plainest and most compelling account" of property rights. The literature discussed in this chapter and the next, shows that both utilitarian and libertarian arguments about property rights are complex and highly debatable, but that the conclusions may be the same in both cases.

3. Voluntarist Social Liberty

3.1 Chapter thesis

The voluntarist conception of social liberty as the absence of costs imposed on people by people, and maximising overall liberty, withstands criticism and is in practice compatible with the conceptions of welfare and rationality used in this thesis. In practice, maximising voluntarist liberty entails side-constraint libertarianism, which the free market spontaneously provides.

3.2 Chapter introduction

This chapter will first give a brief account of the conception of voluntarist liberty. Then there is a discussion of two general criticisms of the idea of 'imposed costs'. There follows an examination of some current basic unclarities in the libertarian camp as to the nature of liberty. Then the conception of liberty will be applied in a state-of-nature manner to show how property rights can be derived from liberty in a variety of situations. I regard this derivation as essentially Lockean¹ but clearer and more explicitly about human liberty, with a clearer account of initial ownership than mixing labour, and shorn of any theological aspects.

¹ Locke 1966.

Much of this derivation is only intended to show that the conception of liberty makes sense and can give determinate solutions in principle to various problems. This is important because it shows that the sophisticated free market (with its fairly strict private property rights) is not inherently entailed by the definition of liberty and that extra conventions are not needed to arrive at determinate liberal solutions to problems.² That this derivation may sometimes have the air of amateurish jurisprudence is to be expected, for this is an attempt to apply a controversial interpretation of the liberal principle instead of some well-established legal principle.³ There is no attempt to build up to a realistic picture of society (and many state-of-nature problems will be left until they are posed by critics) though realistic analogies will sometimes be obvious or spelled out. Mainly where the situations have a more realistic aspect will the issue of the compatibility with welfare be raised.

After this the problems and criticisms of two writers will be used to further elucidate and test the strength of the conception of liberty. The compatibility with welfare will again arise but to a far lesser degree than in the previous chapter as the real issue here is making the theory (the

² Though conventions can arise liberally (such as eating a restaurant meal without explicitly contracting to pay) and it can then become illiberal to flout them (say by eating and then not paying).

³ There are various difficult cases, and I am not at all convinced that I have always applied this liberal principle correctly.

conception and applications) of liberty clear. The first writer is David Friedman who, though an anarcho-capitalist, cannot see how liberty itself can entail the solution to a list of problems in his book *The Machinery of Freedom*.⁴ Then there is John Gray who seems to have been a classical liberal until he finally decided that various philosophical problems with liberty make this position untenable. His book, *Liberalisms*,⁵ provides a comprehensive list of philosophical problems about liberty that complements that of Friedman's.

No distinction is made between 'liberty' and 'freedom' and the various words having the same linguistic routes. And 'liberal' and 'libertarian' are used synonymously (though historically many ideas associated with 'liberalism' do not fit the account of liberty in this thesis).

3.3 Voluntarist social liberty

The idea of social liberty that we want to capture is that people are free to the extent that they interact voluntarily: without the imposition of coercion, fraud, theft, and such like; without being interfered with or put upon by other people. This sense of liberty is supposed to be the opposite of tyranny or totalitarianism. This is supposed to be the liberty that libertarian ideology is

⁴ Friedman, D. 1989.

⁵ Gray 1989.

concerned with.⁶ We want a clear way of expressing this idea that is capable of dealing with difficult cases. As far as I can tell, no one has hitherto provided an adequate account of liberty in this sense. This failure is particularly striking and ironic among those calling themselves 'libertarians'.

A contrast with this sense of social liberty as the opposite of tyranny is liberty as a mere zero-sum game whereby any loss in my social liberty must be exactly balanced by an increase in the social liberty of others: if I lose the liberty of free speech then this must mean that others gain the liberty to keep me quiet. This position is even reached by the libertarian philosopher Hillel Steiner.⁷ Such 'liberty' cannot be defended or promoted; it can only be fought over. Unfortunately, many people unwittingly use 'liberty' in a way that entails this vacuous sense (the expression 'liberty to ...' is often used this way) and as a result people's substantive liberty and welfare tend to suffer.

'Liberty' signifies the absence of some sort of constraint on something. The topic here is *social liberty*: the absence of constraints on people by other people. We are not interested in constraints that were accepted voluntarily. These have to be regarded as really being

⁶ As found, for instance, in the writings of Murray Rothbard, David Friedman, Thomas Szasz, the Libertarian Party in the USA, and the Libertarian Alliance in the UK.

⁷ Steiner 1983.

self-constraints. We are only interested in constraints that were imposed without consent. There are many different types of constraint that people might impose on each other. We want to cover as many types as possible. The economic use of subjective *cost* (as opposed to *benefit*) seems to catch this broad meaning.⁸ So we can define 'liberty' as 'the absence of imposed costs'. The idea of costs is here relative to the person's spontaneous desires, and so this is linked with the conception and defence of welfare in the second chapter. This rules out conceptions of 'positive liberty' that involve 'paternalism'. The idea of not imposing costs is obviously something like J. S. Mill's principle of not causing others "harm".⁹ In what follows 'costs' should prove a clearer concept.

Such liberty admits of degrees: we can say that someone has liberty to the extent that costs are not imposed on him. And the libertarian policy will be to minimise imposed costs. This may now sound rather obscure and unlike the common view of liberty we are attempting to capture. That should be due only to the language needed to make that common view more precise. The common view of liberty given above should be visible throughout the following chapter as this definition is applied and then defended in dealing with criticisms and alternative conceptions.

⁸ Those economists steeped in the idea that 'cost' means 'opportunity cost' may prefer to translate 'cost' as 'burden' throughout.

⁹ Mill 1974.

It should be noted that no particular system of property rights is necessarily entailed by this view of liberty. Neither is it logically necessary that voluntarist liberty maximises welfare (in the sense defended). However, this does not show that these things are purely 'empirical' matters, and so ought to be left entirely to the social scientists. We already have much of the requisite social scientific evidence. The task is to establish links between such evidence and the conceptions being defended. There are logical relations among these conceptions and the evidence that are not obvious and which need defending; and there are some putative logical relations which are mistaken and need attacking.

3.4 Two criticisms of minimising imposed costs

The idea that the libertarian policy is to minimise imposed costs may be unclear, so some further elaboration before applying this seems desirable. This will be done by looking at two important criticisms: that this notion is impractically unclear and value-laden; and that it could entail partial mob rule.

Impractically unclear and value-laden?

In many cases cost is ranked intrapersonally. The individual alone decides what he finds to be a greater or lesser cost to him. Only when there is a clash of

interests with two persons being a cost to each other might interpersonal comparisons of cost be required. And should the people involved come to an agreement about a solution then there is no imposition in any case (see the later section on contracts) so, again, no problem of the objectivity of interpersonal comparisons arises.

But if the parties involved disagree about what is a satisfactory solution to a cost claim then there is a problem about assessing costs interpersonally. Arguments in favour of the sense of such comparisons are then required (and were given at the start of the chapter on welfare) though the aim with liberty is to do this in order to minimise imposed costs rather than, as with the theory of welfare, to maximise benefits.

The theory of liberty seems to require the notion of imposed cost in this subjective sense. In a similar way economics uses the notion of individual subjective values. But in neither case does this mean that they become hopelessly vague and relativistic. It is logically possible that they could do so but they do not seem to be so as a matter of fact. Arguments about whether one course of action imposes on people more than another course are likely to be more about the reality of the feelings of the people involved (and the history and validity of any agreements, and so forth) rather than any philosophical objection to the incommensurability of the feelings of different parties. Such philosophical criticisms are unlikely to be a practical problem.

It should not be surprising or inherently objectionable that a theory about what it means for agents to be free with respect to each other must make some reference to the values of the agents. But this does not entail that the theory is value-laden in any moral sense. To think that person A is more of an imposed cost to person B than vice versa does not imply that anything ought to be done about it.

Is the definition of liberty (as the absence of costs imposed by others) to be interpreted to mean that people are to be counted as *equal* in comparisons of costs (the same intensity of cost to two people means they are equally imposed on)? Yes (other things being equal¹⁰). Again, does this not make it an inherently moral notion of liberty? No. This is an objective definition that anyone could use without thereby affirming the value of liberty as here defined, or even of thinking that liberty is correctly defined. This is analogous with welfare economics where the definition of welfare, once given, can be used by anyone regardless of whether he thinks that welfare ought to be promoted or whether he thinks the definition really captures the notion of welfare.

¹⁰ But see the discussion of 'utility monsters' from a libertarian viewpoint at the end of the next criticism.

Partial mob rule?

Suppose that many people find one particular person a cost to them all by his very existence. There is something about that person which he cannot change but which others find objectionable in some way. Given our theory he seems to be infringing the liberty of others by his very existence. What is more, given enough people who find him objectionable enough it would seem to follow that the libertarian policy could be that they kill him to stop his nuisance value to them. Some might feel that this is obviously 'illiberal', so there must be something wrong with the theory of liberty.

To see what is wrong with this criticism we have to make it more specific. It should clarify matters to take two examples for examination: a typhoid carrier and an Islamic blasphemer.

A typhoid carrier is unaffected by the disease but cannot help giving it to others. It is obviously a great cost imposed on others if they die because of the proximity of this person. There is also a *small* cost imposed on him if he is forced not to use areas where he might infect people. That cost is not very great given that the real attraction is the people and their creations. He is not having a cost imposed on him by merely being *denied the benefit* of their company and artifacts. The *cost imposed* on him by keeping him away from people is only how much he would have enjoyed the uninhabited and uncultivated land. This is clearly

trivial compared to the cost to others if he does not stay away. Requiring him to stay away from people must be the liberal solution. (So, at least in such an extreme example, "preventive restraint" does not, as Nozick argues on compensation, seem to libertarily require a detention centre "luxurious enough to compensate someone for the disadvantages of being prohibited from living among others in the wider society."¹¹)

Now assume (however unrealistic it may seem) that the carrier is so infectious that people could catch the disease from him wherever he might be. The carrier would then be bound to impose a cost on others so great that it would be liberal to kill him if that is the only way to stop his being the cause of others catching and dying from the disease. The cost imposed on the carrier is still but a minute fraction of that imposed on the others if he were to live. Though much more drastic and unfortunate, killing him must be the liberal solution. So this far-fetched case fits the vague account given above but should not intuitively seem merely intolerantly illiberal (nor does it seem very likely, and perhaps there are no realistic examples).

The Islamic blasphemer is quite a different type of case. A popular novelist is supposed to have greatly offended many millions of Muslims by his blasphemy. Is his presence now so great a cost to so many Muslims that those offended

¹¹ Nozick 1974 p.144.

have a libertarian (imposed-cost-minimising) claim to take his life?

How much have the Muslims had a cost *imposed* on them? For one thing, they can always choose not to read and listen to views they dislike. If they do so choose then it looks as though they have chosen to take the risk of being offended and that they are not thereby directly imposed on.

Let us suppose that the novelist had hijacked a popular television show and broadcast his wicked ideas to people before they could switch off their televisions. He would certainly have imposed a cost on them but even then not that much, because people more or less chose their emotional responses to mere opinions--especially in the long term. The angry Muslims more or less chose to react angrily. What is more, it even looks as though they are enjoying their anger (righteous indignation can be great fun) for they show little sign of attempting to control it.

Liberals could similarly chose to work themselves up about the illiberal intolerance of the leaders of Islam. And by the same argument they would then have a claim to the death of any Islamic leader they chose to get angry about. Such a practice must in the end impose greater costs on people than not having it, so it cannot be liberal.

It might still be felt that there is nothing good or bad but thinking makes it so and that such peculiar consequences just do follow from this odd theory of liberty

as minimising imposed costs. If we are to expect the Muslims to control their feelings about this cost then why not expect a raped woman to control her feelings as a solution to what has happened to her? Or a mutilated victim to feel indifferent about what others have done to him?

But we *cannot* choose to be so indifferent to such personal physical things. In such cases the imposed costs are palpable and effectively unignorable. The raped woman and mutilated victim have been physically abused. It is not at all the same with *choosing to think about* the possibility that someone somewhere is telling people things you disagree with, however strongly.

And, if generalised, this policy would mean that no one must express any opinion to anyone else at which too many others might choose to take great offence. No one would be able to speak his mind and be safe in such a world. This would be a tremendous cost to all from the point of view of personal safety, free speech, and the discovery of truth by open debate (as argued for, for instance, in J S Mill's *On Liberty*¹²). But it should be noted that this is not to defend liberty on these grounds (as Mill did) but merely to show what this conception of liberty *entails*.

So in this blasphemy example it would be illiberal to even censor the person who is merely conveying his ideas to

¹² Mill 1974.

those willing to know them. The libertarian solution must be that those who choose to take offence must continue to suffer (or enjoy) their largely self-caused anger.

However, people who express their disapproval of a person or shun him for his views or behaviour are not thereby imposing a cost on him. They are merely denying him the benefits of their approval and society. So, by this conception of liberty, Mill was quite wrong to see such things as illiberal. The outspoken or unorthodox individual would be imposing a cost on others if he were to force his opinions or society upon them.

More generally, it might still be objected that people are not always equal in their passions. A 'utility monster' criticism is possible. By this conception of liberty people cannot impose costs on others (as they can, in principle, with utilitarianism). But the more passionate people can, apparently, still stop others doing what would otherwise be innocuous things, or possibly demand vast compensation if they do them. This sounds as though the passionate and uncivilised might thereby be restricting the 'liberty' (in an intuitively valid sense of the word) of the stoical and civilised. So this seems to show that the theory of liberty is unacceptable.

First, there would not be any real incentive to want to be uncontrollably passionate as all that the theory of liberty entails is compensation (this is discussed in more detail later). So people would not be better off by really being

more passionate. It would pay people to pretend to have had greater costs imposed on them by others than is really the case. That is often the case in the law courts now. A libertarian legal system could also take this possibility of fraud into account.

Second, a society of passionate brutes demanding great compensation or blocking normal activities would undermine the efficient long-run minimising of imposed costs. So there is a good libertarian reason not to give way to such people to the extent that they exist. As with preference utilitarianism, the idea of the reasonable man must limit such claimed impositions.

I suggest that all putative examples of the important general 'mob-rule' criticism under discussion fall into the same two categories on closer inspection: of being probably implausible but acceptable after all (as in the first case), or of not being liberal at all (as in the second).

3.5 Two basic unclarities in libertarian thought

This section examines two basic but muddled concepts in libertarian literature: coercion and liberty. Coercion is dealt with generally and swiftly comparing the common usage with that of some libertarians: Nozick, Narveson, David Friedman, and Rothbard. Then Rothbard's view of liberty is quickly dismissed and Friedman's approach to liberty discussed.

Libertarians on coercion

'Coercion' is a term that is often used by libertarians in discussing and defining liberty. The *Concise Oxford Dictionary* tells us that 'coercion' means "controlling of voluntary agent or action by force". This meaning seems plain enough. But libertarians often employ Pickwickian definitions of 'coercion', and of 'liberty' as defined in terms of 'coercion'.

Nozick analyses 'coercion' in his paper of that name.¹³ This paper shows the sort of unnecessary complications one can get into if one diverges without good reason from the plain usage of a word. There seems little point in going through the details of the paper, but here is an obvious example of improper usage on the first page:

You threaten to get me fired from my job if I do A, and I refrain from doing A because of this threat and am coerced into not doing A.¹⁴

There is no mention of force here. Other philosophers use coercion to include even such things as moral censure. These are probably better described--following Kant--as 'influence'.

What seems to be happening here is that people are using the word 'coercion' in a loose, analogous, or metaphorical

¹³ Nozick 1969.

¹⁴ Nozick 1969.

sense without fully realising it. One reason for objecting to this practice--apart from the fact that it is confusing--is that it sometimes implicitly uses the undesirable aspect that real coercion often has to blacken the activities being mistakenly called 'coercive'. This seems to be an example of the fallacy of equivocation.

Narveson¹⁵ accepts that 'coercion' is "not necessarily unjustified" but he claims that it is:

a matter of bringing it about that the coerced person's alternatives are considerably worse than in the status quo ante ¹⁶

Apart from anything else, this definition might apply to competition between businessmen that results in one losing heavily.

In *The Machinery of Freedom*,¹⁷ David Friedman defines 'coercion' relativistically as:

the violation of what people in a particular society believe to be the rights of individuals with respect to other individuals.¹⁸

Taken strictly, this entails that the Aztec citizen who runs away from the Aztec priest who wants to cut out his heart is thereby coercing the priest. And when the priest catches him and cuts his heart out that is not coercion. Earlier Friedman came closer to the idea of force when he stated that:

¹⁵ Narveson 1988.

¹⁶ Ibid. p.34.

¹⁷ Friedman, D 1989.

¹⁸ Ibid. p.112.

someone who forcibly prevents me from using my property as I want, when I am not using it to violate his right to use his property, is coercing me.¹⁹

But if the person had *in self-defence* forcibly prevented Friedman's use of property that would still, in plain English, be coercion. Coercion does not cease to be coercion simply because it is used in self-defence.

Throughout *The Ethics of Liberty*²⁰ Murray Rothbard uses 'coercion' to mean any act that violates individual liberty (he identifies liberty with private property that has been "legitimately" acquired). There are two mistakes here. First, in the ordinary usage of the word, 'coercion' is not necessary for the violation of property rights: theft and fraud violate private property rights without being coercive because they do not use force against the individual himself. Second, plain coercion is not necessarily an invasion of liberty (in the libertarian sense): boxers give prior consent to the possibility of coercion in the ring; and coercion can be used to protect one's liberty rather than invade someone else's.

Rothbard wants an antonym for 'liberty', but 'coercion' is not a good choice. Attacks on individual liberty are better described as 'unlibertarian' or 'illiberal'--as opposed to 'liberal' in the classical sense. It is clearer and better English to stick to the sense of 'coercion' as "controlling of voluntary agent or action by force".

¹⁹ Ibid. p.XVIII.

²⁰ Rothbard 1982.

Rothbard on liberty

According to Rothbard:

freedom is a condition in which a person's ownership rights in his own body and his legitimate material property are not invaded, are not aggressed against. ... Freedom and unrestricted property right go hand in hand.²¹

The trouble with this typical libertarian definition of freedom is that it is not specific enough: what constitutes "legitimate" property's being "aggressed against" is quite unclear. It is not enough to insist that "freedom and unrestricted property go hand in hand" for this does not tell us which system of property ought to be unrestricted. We know that Rothbard intends to mean the system that arises from homesteading and free trade because he tells us this. But he has not given any clear conceptual account of freedom that shows how this system realises it. This is the great philosophical limitation of Rothbard's otherwise usually excellent economic and historical defences of the free market.

Friedman on liberty

David Friedman sees the philosophical problems of defining libertarianism in terms of property rights and gives a useful list of them in chapters 41 and 42 of his *The*

²¹ Rothbard 1978 p.41.

*Machinery of Freedom.*²² In chapter 43 he gives an economic approach to these problems and concludes:

economic analysis of law can answer questions about what the law ought to be that I cannot answer--that I believe cannot be answered--on the basis of libertarian principles.²³

There follows a list of some problems Friedman cites with some immediate responses as to where he might be going wrong. Only after the general development of the theory of liberty will we come back to the rest of his list and attempt to give the principled answers Friedman believes impossible. (The point made about the meaning of 'coercion' will not be repeated though it occurs in some quoted passages--such as the next one.)

In order to define coercion, we need a concept of property ... some way of saying what is mine and what is yours. The usual libertarian solution includes property rights in land. I have an absolute right to do what I want on my land, provided that I refrain from interfering with your similar right on your land.²⁴

Friedman then points out that turning on a light or striking a match can send photons onto the property of others, so--given absolute property rights--one ought not to do even such trivial things without the permission of everyone affected. It is obvious that "under these circumstances, my 'ownership' of my property is not worth very much."²⁵

²² Friedman, D 1989.

²³ Ibid. p.199.

²⁴ Ibid. p.168.

²⁵ Ibid. p.168.

This seems to be the wrong approach. As with Rothbard, libertarianism is being interpreted in terms of property without any clear account of why property is relevant to liberty. Surely the libertarian ought to give a more abstract conception of liberty first and then show how property is related to this notion. If this were done then it might well appear that the absolute control of property really conflicts with the goal of liberty. It might be true that my liberty is slightly lessened by the immediate effects of some actions on nearby property, but this might allow me to have more liberty overall if I have similar rights. The libertarian need not be advocating perfect liberty: it is consistent to demand as much liberty as is practically possible.

Friedman continues with a similar example:

Carbon dioxide is a pollutant. It is also the end product of human metabolism. If I have no right to impose a single molecule of pollution on anyone else's property, then I must get the permission of all my ²⁶ neighbours to breath.

He rejects the obvious response that only significant violations of property must count, because:

if I have an absolute property right then I am the one who decides what violations of my property matter. If someone is allowed to violate my property with impunity as long as he does no significant damage, we are back to judging legal rules by their consequences.²⁷

²⁶ Ibid. p.168.

²⁷ Ibid. p.168.

It is a good point that people should be allowed to decide for themselves what counts as violations of their property, but this is not followed up to see where it leads. Even with the definition of libertarianism that Friedman is examining it is clear that people would happily allow all sorts of things to affect their property if they could get similar agreements. It is true, though, that one person could, by this theory, have the property right to choose to stop the rest of us breathing (presumably if he were prepared to suffer retaliation). Some attention ought to be paid to the individual owner's assessment of what is affecting his property, but Friedman seems right to suggest that, in the extreme, a non-absolute system of property is necessary to avoid such conclusions.

Friedman finally rejects the idea of ignoring violations that do "no significant damage" because it is "judging legal rules by their consequences." This is not a good reason: surely it is consistent with libertarianism to judge legal rules by their consequences to liberty. Friedman must be thinking of consequences for matters other than liberty; looking at consequences as such cannot be the real objection; he obviously thinks of the consequences in only utilitarian terms. The problem is that he cannot look at the consequences for liberty expressed more generally as he has no explicit conception of liberty independent of absolute property rules.

We are then given an interesting variation on the above problem:

A similar problem arises if we consider effects that are small not in size but probability. ... If doing something to someone is coercive, then so is an action that has some probability of doing that something to him.²⁸

Playing Russian roulette aiming at another person is "coercive":

But what if the revolver has not six chambers but a thousand or a million? The right not to be coerced, stated as an absolute moral principle, should still apply ... it seems to imply that I may never do anything which results in some probability of injuring another person without his consent.²⁹

So as flying a plane always involves some chance of crashing:

It seems to follow from libertarian principles that before taking off I must get permission from everyone living within a thousand miles of my starting point. ... [The] point is that simple statements of libertarian rights taken literally lead to problems of this sort.³⁰

Here Friedman again claims that the idea of qualifying the statements to speak of:

'significant' violations of my rights, or violations that 'really injure' me ... [mean that] ... one can no longer use rights arguments to draw clear conclusions about what should or should not happen.³¹

Arguments about fundamental moral principles are held to:

not provide answers to enough important questions ... how, in principle, do you decide where along that continuum the rights of the property owner stop?³²

²⁸ Ibid. p.169.

²⁹ Ibid. p.169.

³⁰ Ibid. p.169.

³¹ Ibid. pp.169-170.

³² Ibid. p.170.

These examples do show serious faults with the purely propertarian definition; they do not show that all "simple statements of libertarian rights" (by implication this includes *non-moral* definitions; so all discussions will be interpreted this way) are so thoroughly inadequate. That assertion is not a logical consequence of Friedman's arguments but a conjecture. I hope to show that it is a false one.

3.6 Property derived from liberty

This section develops the theory (conception and applications) of liberty with respect to the derivation of private property, various general issues (including contracts, compensation, and intellectual property), and paradoxical problem cases (answering some of Friedman's questions on the way).

Liberty is the absence of imposed costs. More precisely, social liberty is the absence of costs (in the subjective sense that is opposed to benefits) imposed on people by other people. This definition of liberty does not refer to property. In order to see how property rights are entailed by maximising liberty (or minimising imposed costs, which is the same thing) we need to start with the simplest of cases and then gradually build up to more difficult ones. The convention of starting in a 'state of nature' is used to do this. Analogously with the treatment of welfare in

the previous chapter, the intention is only to show which property rights the maximising of liberty entails and that these are in practice compatible with maximising welfare. It is not morally argued that liberty ought to be maximised.

If I am the only person in the universe then I am not having any effect on any other person. I cannot be imposing a cost on (or constraining) anyone except myself. If I jump into a deep pit that I cannot escape from I am certainly constrained but not by anyone else, so there is no loss of social freedom.

As soon as another person exists near me we will have effects on each other (if only in the sense that we change the gravitational field by being there and moving about). If these effects are of no consequence to us then both of us are entirely at liberty socially (this does not entail that there is a *society* of any kind). If these effects leave us feeling less satisfied overall (the benefits could cancel out the costs) then the other person is a cost--we are no longer perfectly at liberty.

Libertarian genocide?

It might seem that perfect liberty is only certain to be achieved in a universe with at most one person in it. In fact the more people that there are the more that liberty will suffer as more costs are bound to be imposed. So if such liberty is seriously to be taken as a goal to be

maximised we ought to aim at minimising the population. In fact this theory entails that genocide (if successful) would be a relatively small imposed cost compared to the costs that are bound to occur if the species continues indefinitely--even in terms of only the greater numbers of future murders that would otherwise have occurred.³³ This makes this an implausible view of liberty and one that cannot be compatible with maximising welfare.

I think this fantasy criticism overlooks the fact that, as people would not agree to voluntary genocide and so would have reproduced indefinitely, such a policy would also impose a still greater cost on the people who would have existed but for the genocide. So genocide is not entailed and this criticism cannot undermine this as a plausible conception of liberty that is compatible with maximising welfare. But even if it could, that need not prevent this conception of liberty from being acceptable and welfare maximising for all practical purposes--which is what we are interested in.

The desert island

Suppose that we are both on an unowned desert island of frugal resources. We have both been washed up there. If I am a complete misanthropist I might detest the idea of sharing the island. I want you as far away as possible.

³³ This criticism is similar to that often used against a strict interpretation of Popper's 'negative utilitarianism', which is another 'bad'-minimising theory.

You dislike me for disliking you and so would prefer to be alone as well. But if we both agree to respect each other's liberty as far as possible we shall attempt to keep out of each other's way. Each finds the other a cost but neither is deliberately imposing a cost on the other.³⁴

Now suppose there is only one natural fresh water supply on the island. If neither of us likes having to share it then each of us is less free as a result of the other's existence: each is a cost to the other. But for either of us to deny the other use of the water would constitute a much greater imposed cost--death.

If, instead of being already available, the water had been found by digging a well, then whoever created the well could find the use of it without his permission to be a cost to him when he was not thereby causing a cost to anyone else--provided that the other person had other places where he could dig a well (this is Locke's idea of leaving "as much and as good"). Others benefits cost us nothing except insofar as we feel covetous, envious, or suchlike *through no choice of our own*. But people are usually largely responsible for such feelings themselves by choosing to inspect others' fortunes instead of going about their own business, and sometimes they deliberately cultivate such feelings. Of any minute residual amount of

³⁴ And even if you wanted my company you would be infringing my freedom (imposing a cost on me) by following me around merely because you wanted company. I do not impose a cost on you by merely existing and failing to benefit you with my delightful company.

such feelings that are unavoidable it would surely be more of an overall imposition of costs on those involved--at least in the long run--to forcibly transfer or destroy goods on the basis of them.

To the extent that I monopolise a natural resource which you would otherwise have had the use of I am constraining you without your permission (imposing a cost on you: you are worse off than you would have been thanks to me, and you did not agree to the change) and so I would be limiting your liberty. But (even if you lack the wit or the strength to dig your own well) you would be infringing my liberty (imposing a cost on me) if you were to use my well without permission (if I do object or would object). I do not impose a cost on you by creating the well and denying you access (you are not worse off than you would have been even though you did not agree to the change), therefore I have not lessened your liberty.³⁵

It might still seem unclear that this result follows without moral import simply from the application of the definition of liberty. This will be discussed further as some find this quite unconvincing,³⁶ but it is crucial to

³⁵ Though if I had explicitly given you, rather than lent you, some of the water, I would be lessening your liberty if I took it back without your consent. For I impose a cost on you by taking from you without your consent that which you have acquired without imposing a cost on me. Liberty entails that water is no longer mine.

³⁶ In particular my supervisor, John Charvet, and possibly Cohen in Ryan 1979.

the thesis that this is not a moral point and so cannot be rejected because one holds 'different' moral views.

Consider again, 1) my being forced to share a natural supply of water and 2) my being forced to share a supply I have made possible. If I think that enforcing liberty is incompatible with 2 am I not tacitly claiming a *right* to exclude you from the products of my labour? And does this not therefore fail to be an analysis of liberty without regard to morality?

First, recall the definition of social liberty: we have social liberty to the extent that other people are not imposing costs on us; that is, causing us to have less of what we value without our consent.

Another person cannot be a cost to us by simply denying us the benefits he is responsible for. Those benefits would not have existed but for him, and so they need cost us nothing. Though if we have a contract with him for such benefits then they have become *our* benefits and he would not be "*simply* denying us the benefits he is responsible for" if he reneged on that contract. (Contracts are given a libertarian analysis next.)

Now, with 1 you do lessen my liberty (impose a cost on me) to *some* degree (if I do not enjoy sharing the water) by turning up and forcing me to share the natural supply of water. But I would be lessening your liberty (imposing a cost on you) to a *far* greater degree (you will die) by

denying you access to the sole supply of water that you could have had if I had merely not been there. In the normal case of 1, liberty will be maximised (the imposition of costs minimised) by sharing the natural supply of water.

With 2, I am doing nothing that takes benefits or imposes costs on you by creating and monopolising something of value that would not have existed but for me. But you are making me worse off if you force me to share my creation with you when I do not choose to. So 2 is incompatible with liberty in the sense used here (which seems to be merely a clearer and more comprehensive way of expressing the idea of social liberty as not being interfered with, put upon, or bothered by others).

It might well be entailed by some other definition of 'liberty' that forcing the creator of the water supply to share does increase overall liberty. For instance, 'liberty' in the sense of '*the absence of any kind of constraints on people*' might entail this (though this example seems to me to be confusing the notion of social liberty with individual power). Or it might well be that there are good welfare or moral arguments for enforced sharing in the second case (this is not yet intended to be the *realistic* picture where welfare and liberty overlap). But that 1 is libertarian and 2 is not libertarian clearly follows from the definition of liberty used here without mention of rights or morals.

And this means that liberty (as defined), if maximised in this situation (I do not say that it *ought* to be), entails that in 2 the creator *owns* the water supply--liberty entails property--for to have use and control of something is to own it *de facto*.

It might be thought that ownership (or property) is either a legal or moral notion: that one can own something only to the extent that one either has a legal right or a moral right to the control of that thing. But legal and moral ownership are not exhaustive categories of ownership. One can simply say what the application of some rule for acquiring control entails without believing that there are real legal or moral claims to such a system. The application of the rule that liberty (as defined) be enforced (perhaps by chance or even due to some strange law of nature, it matters not how) will mean that the creator of the supply will *own* the water merely in the sense that it logically follows that he shall have control of it--or liberty could not be reigning as supposed. Law and morals do not need to be mentioned. (Or, to make the same point a different way, one can agree that such ownership would logically follow while knowing that such a system does not legally exist and believing it to be immoral.)

It might help to set out all the important parts of the above argument more simply:

Social liberty exists to the extent that people do not impose costs on each other (which includes worsening people's conditions without permission).

I make object X without imposing a cost on you.

If you use X against my wishes you impose a cost on me.

If liberty exists (how, or whether it ought to, is immaterial) then you cannot use X without my consent.

What you cannot use without my consent I have control over.

What I have control over I own in a *de facto* sense.

If liberty exists then I own X.

Therefore the existence of social liberty (without needing to invoke law or morality) logically entails the existence of libertarian property in certain circumstances.

The idea has been mentioned that contracts (if honest) are not imposed costs. As contracts will arise again in what follows it seems best to deal with them now. But this will be done by approaching them through the related (as we shall see) but more basic topics of honesty and promises.

Honesty

Is it illiberal (unlibertarian) to lie? It will be illiberal only if there is an imposed cost. An analogy might illuminate the problem.

If I give you a glass of water that you have asked for I do not impose a cost on you. If I deliberately put any extra substance into the water that you would object to then I am imposing a cost on you (if you would not object even if you knew then there is no imposition; for instance, if the substance is a water-purifying tablet where this is needed for safety). If the water is impure unbeknown to me then that would be mere bad luck on your part; I would not have imposed by merely aiding you in your choice to drink.

By analogy, I do not impose a cost on you if I give you information that you have asked for. If I deliberately put any falsehoods (that you would object to) into the information then I am imposing on you (if you would not object then there is no imposition: for instance, if I lie in order to keep secret a surprise party that is planned for you). If the information that I give is false in any way that I do not know of then that is mere bad luck on your part; I do not impose on you by giving you my honest opinion (provided that you want to hear it) even if it is mistaken (unless it comes with a contractual guarantee of some sort).

It would only be illiberal to give a gift that is known to be not what we represent it to be (whether that be pure water or pure truth) if this trick imposes a cost on the recipient: if he would be worse off (if he has less of what he values) as a result of *that aspect of our unconsented-to behaviour towards him*. (It cannot be liberal simply because he benefits overall by his association with us. Benefits freely given cannot be then set against costs.)

As we cannot always be sure of the reasons and values of other persons it is better to avoid such fraud if we wish to avoid being illiberal. As most people would rather be told nothing than convinced by a lie it is almost always at least *slightly* illiberal to successfully lie to people. And if we deliberately tell someone that a particular fungus (that he would not otherwise have eaten) is edible when we know it to be deadly, and he consequently eats it, then we have obviously imposed an extreme cost on him. This is murder and murder is quite illiberal by any standards.

So, to *convince someone of a lie* is usually to impose on him at least slightly, and to *fail to convince* is to fail in an attempted illiberal act (though a successful lie might be liberal if one does it in liberal self-defence--or other defence, for that matter). If such impositions are to be rectified we shall have to compensate (if possible) others for such costs imposed on them (this is not to suggest that it would be practical to enforce compensation in trivial cases). But others have no libertarian claim

that we tell them anything, even on a matter where they find out we have previously lied to them (unless this is the only adequate compensation). One does not impose a cost on others by merely not giving them the benefit of information.

Promises

Is it illiberal to break a promise?

If I promise to meet you somewhere or to give you something and you are inconvenienced by my (possibly deliberately) breaking my promise then I have imposed a cost on you. People often alter their plans in expectation of having promises kept that were made to them. If we break our word we impose a cost on them that they would not otherwise have had to bear. Even if someone has not altered his plans significantly he might feel let down and so would be worse off than if there had been no promise made to him. So breaking promises is almost always at least slightly illiberal. And if we promise to help someone learn to swim and when he is in deep water we deliberately leave him there to drown, then we have obviously imposed an extreme cost on him. This is, again, murder.³⁷

If we want to rectify the imposition, is it enough that we give someone compensation equal to what he has lost (if

³⁷ This is therefore at odds with Rothbard's account of promises (in Rothbard 1982 p.134 ff.) where people rely on promises entirely at their own risks.

possible), or does he have a libertarian claim to the thing promised (or its value to him)?

The promisee was not *given* the property claim to the thing promised. He was only promised (given an assurance) that he *would be* given it. We have let him down but he is only imposed on to the extent of the inconvenience.

This being understood it is sufficient, from a libertarian viewpoint, that such broken promises are compensated for (as with lies) to the extent of the *imposed* inconvenience we cause others by not keeping them. (Again, this is not to suggest that it would be usually practical to enforce compensation.)

It might seem that one could make a promise but stipulate, or imply, that the other person relied on it entirely at his own risk, and so there is *no imposed cost* if the promise is broken. I do not think that this really would be a promise as a promise seems to entail giving the other person *some* claim against us--if only a moral claim to an apology--if we let him down.

Gift-contracts & exchange-contracts

Only explicit gifts of a future property claim give others the claim to that property at some future time. Such gifts usually need to be recorded (possibly in formal circumstances and in front of reputable witnesses). It seems that this is understood because of the importance,

and practical difficulty otherwise, of proving future-claim property transfers. And this understanding means that casual statements of such property transfer do not count.

But if we explicitly state and record that we give our future claim to X away, then the act of gift is thereby done. This is not merely promising at time T0 that we will give someone X at time T1; we actually give him the property right to X at T1 now (at T0). Unless the other person imposes costs on us that require compensation, we must surrender X at T1--for it will then no longer be ours.

The other person always has a libertarian claim to what we explicitly give him a future claim to or contract to give him (if he keeps his side of the contract and if we have acquired our property by libertarian means). We cannot libertarianly insist he accept compensation merely for any inconvenience instead. The thing in question is not ours. It counts for nothing that it might happen be in our possession.

Rothbard considers that specific performance and slavery cannot be libertarianly possible because he thinks this requires the person to alienate his will, and that is logically impossible.³⁸ It does no such thing. The claim that we perform some action or be the property of another need make no reference to our will. (More argument on the libertarian nature of contractual slavery and why allowing

³⁸ Rothbard 1982 p.135.

the rare examples of such things might increase welfare was given in reply to Ryan in the previous chapter.)

And the contractual rule of *entail* is also quite libertarian³⁹ provided that we specify to whom or how the property is to be dispersed in the event of the inheritor's breaking the conditions of accepting his inheritance. Not to allow this interferes with the 'liberty' of the dead person.⁴⁰ Such 'liberty' can be understood in the way that preference utilitarianism can (as we saw in reply to Hare in the previous chapter) allow 'welfare' to extend beyond one's bodily spatial and temporal limits.

So forcing someone to stick to a contract or to buy his way out at our price (either will do) is not imposing a cost on him at all. It might look like the imposition of a cost, but so might (if you do not understand the circumstances) the recovery of any debt from a complaining debtor. From a libertarian viewpoint (provided that they do not clash with the liberty of a third party in some way) explicit and honest contracts are absolutely binding.

³⁹ Contra Rothbard 1982 p.144.

⁴⁰ This might sound more acceptable with other examples such as the dead's property claims (obviously to be made on their behalves, as the claims of unconscious living persons must be) to be buried in the way they have contracted for when alive.

Back on the island

You build a hut in a clearing. What follows as regards liberty? It always depends on the background circumstances. Locke's position is about right. If the trees you felled were plentiful and the clearing you choose as good as many others then you would probably not have imposed a significant cost on me and so not lessened my liberty. But you would now have a continuing strong interest (we may reasonably suppose) in the hut that you have constructed. Therefore I would be significantly lessening your liberty (imposing a large cost on you) if I were to now take the wood you have used in your hut, or create a footpath through the area that entails knocking down your hut. By so doing I would be interfering with your valuable creation and thereby simply lessening your liberty rather than defending my own liberty. *Under the circumstances, you own the hut and the site it is on.*

If there were very limited wood available and you had chosen the only suitable site for the hut (assuming that I wanted to build on that site) then you would be imposing significant costs on me (I would be much worse off thanks to you, and without my having consented to the change). I would have a libertarian claim to a share of the hut myself, though we might negotiate some other arrangement. The imposition of costs is not all one way here and some compromise is needed to maximise liberty. (It might be wondered in what way side-constraints are being respected if there is to be a trade off in such clashes. The answer

is that minimising the imposition of costs in a clash is not violating side-constraint libertarianism at all, it is respecting it as far as possible.)

The island floods and your hut is on the highest and only dry ground. Would I be infringing your liberty by occupying it against your will? Again, this depends on our values and the history of our interactions. If I had merely ignored your hut in the past then, come the flood, I would be imposed on greatly if I were denied the high ground that I would have gone to anyway if no hut had been built. You would be constraining me greatly by denying me access to the only dry area when I had never agreed with you not to go there. I would be imposing a relatively trivial cost on you by using the high ground to save myself. But if I had agreed (perhaps in return for some similar undertaking by you) to never enter the hut without your permission, then I would have bound myself voluntarily and you would not be imposing a cost on me by denying me access.

Compensation

Suppose that we agree to live on separate halves of the island. Is any action I take on my half to be disallowed if it effects you on your half in a way you dislike? It may be that what I do to some extent imposes a cost on you but that to prevent me from doing it would be an even greater cost to me. If we are interested in avoiding imposing costs on each other as far as possible (that is,

respecting each other's social freedom as far as possible) then the person who is imposed on least must (if liberty is to be observed) give way to the activity, but the person doing it must (if liberty is to be observed) pay compensation for the nuisance. Again, the notion of an imposed cost has an unavoidable subjective element that may make the calculation complicated but which seems to make theoretical sense.

For example, suppose that the smoke from my fires sometimes blows your way but your smoke never blows my way. It seems a greater imposition on me to prevent me from lighting fires for warmth and cooking than it would be an imposition on you for you to tolerate some occasional smoke drifting onto your land that you do not care to smell. In the interests of minimising our involuntary effects on each other you should allow the smoke provided that I pay compensation for the degree of cost to you. (So we can now see a relatively trivial example of the mistake of defining liberty as involving absolute property rights.)

Similarly, the idea that *risks* of invasion of property ought to be absolutely proscribed does not follow from the conception of liberty as minimising the imposition of costs. For we must not ignore the cost imposed on a person who is prevented from doing some activity he could have done but for our presence. In the interests of minimising interference with others' lives (imposed costs) risks must be allowed provided the potentially damaged party receives compensation proportional to the risk.

But where the amount of risk multiplied by the full damages is a sum that would cost more to send out than the sum itself then it ought not to be compulsory to send it: that would be more of an imposition on the person engaging in the slightly risky activity than on the person minimally at risk.

This goes some way to solving Friedman's problem of how, in principle, the regulation of risks to others' property can follow from libertarianism. Nozick has a roughly similar, though more detailed, account but (as with his similar account of intellectual property, discussed later) it is based on rights rather than an explicit theory of liberty.⁴¹ One disagreement with his conclusions was mentioned in the section on the 'mob rule' criticism. I only further suggest here that Nozick needs the liberty principle for clarity of libertarian solution and sometimes goes wrong because of the lack of it, as in his calculation of compensation based on "the normal situation".⁴² (For more on this general area see the section on Restitution in reply to Friedman.)

New arrivals

It is possible to generate some interesting but unrealistic problems that show that the liberty principle can give

⁴¹ Nozick 1974 chapter 4.

⁴² Ibid. p.82.

determinate solutions that are sometimes quite at odds with the fairly strict private property rights that liberty would entail in more normal situations.

If I had been washed ashore on the small and poorly resourced island before you then this should not much alter the situation. I would be using things that I did not create and which would have been there for you to use had I not been there. When you arrive we are a cost to each other in terms of scant natural resources (*however they are shared*) and enforcing liberty entails that such costs be minimised.

Because of the diminishing marginal utility of goods, and as we had no prior contract, I should have to allow you about half of all the natural resources if I were to avoid imposing costs on you *in excess of the rule of liberty*. There is certainly no libertarian claim to equal shares as such--it just works out that way in this strange context (sparse natural resources, equally valued by people without prior agreements). Of course if you were to take more than this you would also be imposing costs on me *in excess of what minimising cost-imposition (maximising liberty) entails*. Again, none of this is due to defining liberty in terms of moral rights, or to asserting the equal moral right to liberty.

If a third person is washed ashore we must similarly share what natural resources are available if we are interested in respecting liberty. The fact that the original two

occupants have an agreement as to the division of the island cannot be binding on those who are not part of the agreement. The third person, who is there through no fault of his own, would have had the island to himself had the first two not been there. Their presence is an uncontracted cost to him (at least as regards the scant natural resources) which therefore lessens his social liberty. He similarly lessens the liberty of the original two, of course, so all must share if they are to minimise the social imposition.

What if a third person were saved from drowning by one of the original two? Would the saved person have the same libertarian property claims? It might seem that because he could no longer truly state that he would have had the island to himself but for the original two persons, he would have no libertarian claim to any part of the island unless it is freely given to him. But this does not follow. If I save a man's life without first making a contract then I have given him a free gift. I might be worse off in the long run as a result of my charity (if I save someone's life in a city he would not be infringing my liberty by then going on to out-bid me in the purchase of a house). Charity gives us no libertarian claim over the people we benefit. If we have made no prior agreement with the third man it would still be imposing a cost on him to deny him a share of the island.

It might seem a mistake that my saving someone should result in the other person's losing a third of his share of

the island. It might be thought that here I impose on him and that only I, the person doing the saving, should (from a libertarian viewpoint) give up my land. But until we know who there is and their history of associations we cannot know who has a libertarian claim to what. Suppose I save a man off the coast of the UK and he turns out to be your long-lost brother; as a result you lose half your inheritance. You have no libertarian claim to created wealth that you did not produce except on the conditions that it is given to you. You might be worse off as a result of the rescue (if you do not value your brother highly) but you have not had a cost imposed on you. You have merely been denied a benefit you now have no libertarian claim to.

A bizarre but libertarian contract is possible: I could agree to save the drowning man on condition that he gives me his share of the island (i.e. what liberty logically entails in the circumstances is his share, not mentioning what he is morally or legally entitled to). This would mean that he ends up with nothing while I both keep the third of my half of the island--that I would otherwise have had to give to him--and gain a third of the other half that the other person has. This should sound more plausibly the correct libertarian solution if we again analogously suppose the saving of the long-lost brother but add that I make it a condition that he gives me his fortune, so that his brother will thereby lose half of his inheritance to me.

Woman and children

Suppose that the third person is a woman whom we both desire, but she prefers you as a lover. If it were not for you I would have more of what I value, so does it follow from the definition of liberty (as people not imposing costs on each other) that you interfere with my liberty?

No. It was never open to me to have this woman as a lover if she did not wish it, as that would be imposing a cost on her. Therefore it is no *imposed cost* at all to me (loss of what I owned, or could own, without imposing a cost on another) to fail to win her. And if she changes her mind and leaves you then I have imposed no cost on you either. She cannot become your property (without her consent at least) however much you invest in her or rely on her, for that would impose a cost on her, and that is not compatible with liberty. Unowned resources can become yours because you impose no significant cost on anyone by controlling them, unless you are monopolising a uniquely valuable natural resource. So monopolising the sole water supply by obstructing my access does impose a cost on me. But 'monopolising' the sole woman by being *chosen by her* cannot impose a cost.

There might still be a feeling that because I am so obviously worse off as a result of your having the sole woman that there must be an imposed cost here. Let me give two further, analogous, cases. I am worse off as a result of your presence but only in the same way that I would also

be worse off if you murdered a friend of mine. The benefits that accrue to me as a result of his existence would then stop (just as they would have if he and I had fallen out over something). But nothing that I libertarianly owned (controlled without imposing costs on others) would have been taken from me. The murdered person would have his life taken from him and that is the only imposed cost in the libertarian sense. Similarly, a business competitor does not impose a cost on us by winning away our all our customers. We could never (non-contractually) own custom without imposing a cost on the customers and so we merely lose a benefit of their custom rather than have a cost imposed on us.

Suppose that you have a child by this woman. Is the child in a position analogous with someone who is washed ashore or charitably saved and so has a libertarian claim to a share of the island's natural resources?

First, what does a child have a libertarian claim to with respect to his parents? Normally, only what his parents give him. There was no prior contract. Everything that a parent gives a child is a gift that social liberty does not entail. This means that a parent does not impose on the child by neglecting him unless the neglect is such that it would have been better for the child not to have been born (for that would be an imposed cost on the child). But as respecting the liberty of persons implies that the child (if a person) is not a mere chattel of the parents, it would usually be an infraction of the child's liberty if

the parents were to abuse him and prevent him from leaving them (to find better care elsewhere).

On the island the child who is no longer in need of support from his parents has the same libertarian claim to natural resources as the saved man (while he was being supported he was more or less *ipso facto* not being prevented from using natural resources but simply failing to use them). The parents did not create the island and they would be imposing a cost on anyone if they denied him access to a share.

More paradoxes

This gives rise to a strange 'paradox'. If the parents have irreplaceably destroyed many natural resources by their carelessness (and not created new resources of at least equal value) then they can be said to have imposed a cost on whoever would have later used those resources: this is to constrain others by imposing costs on them without their permission, which is to lessen their social liberty. But the others may include their own children. The children might have a libertarian claim for damages against the parents. The children's lives were gifts but being alive they now have a claim to as much and as good natural resources (or created resources of equal value)--if social liberty is to be respected. The 'paradox' is that (assuming the parents now are on their own on the island) the parents are only guilty of an illiberal destruction of what they did not create if they have children. The

parents' gift of life is necessary to make their previous waste illiberal.

One possible solution is to say that the parents always were illiberal in their destruction because one of the resources they inherited, and are libertarianly bound to leave as much and as good of, is their own lives. In other words there is a duty to reproduce. For it looks somewhat inconsistent that it is illiberal to unnecessarily waste all natural resources except the natural resource of one's life as a person. But this solution is at least as troublesome as the problem that it seeks to solve. For the idea of a duty to reproduce must be counter-intuitive to those who normally value liberty in the sense of the opposite of totalitarianism. I do not think this is the correct solution.

The correct answer must be to accept the 'paradox' and explain it like this: the parents are in a situation analogous with my saving a long-lost brother who then is in a position to sue me (despite my good deed) if I have squandered his share of his inheritance. And that does not sound so inconsistent (though it does sound just as ungrateful). So the parents are only illiberal if they needlessly destroy the island's resources (without creating equal wealth) and then have children who cannot enjoy them.

In practical terms this seems to imply that we must not so destroy the world's resources that future people are left

with a lower standard of living than nature could have provided (and I do not think that this is happening).

Therefore, it also seems that respecting liberty implies that the family can gradually take over the island by reproducing. The single man will slowly lose libertarian claims to his land. (It would be different if he had, say, saved the land from complete erosion: the land would not then have been there for the new people to claim and they would be imposing on him if they took it.)

Again I would hold that this 'paradox' is, strictly speaking, the correct libertarian solution. It might look at odds with welfare, but I am not defending liberty as desirable and compatible with welfare in all logically possible circumstances. By looking at such cases we see that the conception of liberty is fairly comprehensive (it makes sense in extreme cases outside modern industrial society) and precise (it does not have to rely on legal, moral, or social conventions to come up with tolerably clear answers). And this general state-of-nature account can throw light on the correct application of the libertarian principle in more sophisticated circumstances to be dealt with later.

Relevance

It ought to be emphasised just how disanalogous these circumstances are from normal ones. Usually there are plenty of natural resources (in fact they are increasing

and becoming cheaper⁴³⁾ but some have been worked on to produce wealth at little expense to anyone else--and usually greatly to their benefit in terms of the goods they can now trade for. Land, in particular, is not especially scarce--only land worked on, or land near valuable markets. Newcomers seek the fruits of industry and civilisation not mere space; the world is full of uninhabited areas they could have gone to instead.

On the island the situation is reversed so that there is a profound shortage of land and natural resources and no significant working of them. Thus no simple radical conclusions about redistribution of the world's natural resources or land follows from the idea of respecting liberty. In practice the libertarian solution with land and resources is almost always to respect priority and buy out the existing owner provided that his property was libertarianly acquired. How do we know that people have acquired their possessions in a libertarian manner? In the absence of evidence to the contrary people have to be presumed to have done so. 'Innocent until proved guilty' is libertarian given that any other policy is likely to result in insecurity and violence that would be disastrous to liberty (and, of course, welfare).

⁴³ Simon 1981.

Intellectual Property

Intellectual property is an important general issue for the theory of liberty and ought not to be neglected. There has been no mention of it on our desert island examples, but that is not because this topic is a mere matter of social convention. The maximisation of liberty has fairly clear implications as regards intellectual property without reference to the laws or customs of any particular society. However it seems easier to discuss this issue without using the desert island. This is a vast and complicated area that poses novel problems. All that will be attempted here is to show very briefly and approximately that the theory of liberty (as the absence of imposed costs) can come up with general answers and that these are likely to increase welfare.

Copyrights and patents appear to be similar in that they are designed to protect the expression of ideas from common ownership. It is debated by libertarians whether one should protect neither, one, or both of these. Rothbard accepts copyrights in perpetuity, but then rejects patents.⁴⁴ I argue very generally here that both should be protected from a libertarian and welfarist viewpoint. We first tackle copyright and the general argument for intellectual property. (Nozick has a similar position in his *Anarchy, State, and Utopia*, though not flowing explicitly from a theory of liberty but of rights.⁴⁵)

⁴⁴ Rothbard 1977 p.71.

⁴⁵ Nozick 1974 p.182.

Copyright

The creators of the ideas in a book, music score, and so forth, have produced a resource that would not otherwise have existed, and they would thereby be regarded, by people who respect liberty, as having automatic ownership of that resource: they have imposed no cost on others by their creation but would themselves be imposed on (as their objections would show) if their creation were used without their consent. And they impose no cost on others by passing their product on to their descendants (or anyone else). If someone builds a stately home and that passes down to his descendants it would be an imposed cost to force the owners to hand it over to the National Trust after any time period. An intellectual edifice seems to be in an analogous position.

It is a good thing from a welfarist viewpoint that such creations would be protected for otherwise we should have a case of the tragedy of the commons in the realm of ideas. If people could not own the physical expressions of the intellectual products that they took some time and energy to come by, create, or cultivate (without imposing costs on others) then the incentive to produce new intellectual products would be destroyed to a considerable extent.

Many people choose to give their ideas freely: perhaps they do so because they enjoy discussing ideas; or they are

altruistic; or they value status or popularity more than cash; or they need the idea to catch on if it is to be valuable at all. But if people had *no chance* to sell the fruits of their efforts in the intellectual realm, then many efforts would surely not be made.

In the interests of overall welfare could there be a limit on copyrights to increase production? There might be a fear that some dynastic drones could live off the intellectual output of some ancestor without at least the UK's fifty-years-after-death limit on copyright. But the fact that his work could make for some security for his children and grandchildren might well be part of the work motivation of the original copyrighter.

And if works are compulsorily allocated to the public domain then the incentive to revive some copyrighted piece might well be destroyed (thus has much great music been neglected for centuries). If others might step in as soon as one had paid for the revival of a piece, it might be uneconomic to initiate the revival in the first place. As long as there is some owner it would be possible to buy it from him in order to exploit it. If there is no traceable owner, and no act of donation to the public domain, then the property might libertarily be held to be owned by whoever first claims it or invests in it by using it (as it would be imposing a cost on him for others to reap the rewards of his investment).

Patents

Similar libertarian and welfare arguments support the existence of patents. Patents present extra problems, but these are soluble in a non-arbitrary fashion that is compatible with liberty and welfare.

Nobody re-invents so much as a poem or a song, let alone an entire book or symphony. The main problem with technical innovations and full inventions is that, unlike almost all copyrightable material, if one person did not come up with them then others might very likely have done so eventually. Does the first group have the libertarian property right to the patent in perpetuity as with copyright?

In almost all cases, no. If someone arrives at an idea that would probably have been arrived at by another in about a year then he ought only to have a *full* patent for about a year. This is based on the idea that we want to follow the general libertarian (and welfarist) rule of internalising externalities as far as possible. To allow the individual to keep a longer patent would clearly be to allow him to receive more value from his creation than he is responsible for. His monopoly would then impose costs on others: on those who would have come up with the same idea and on consumers who are denied the lower prices that competition would have brought. At the end of a full patent the idea should gradually enter the public domain (in proportion to the likely speed--determined by

professional experts--of independent invention and competition by others).

There are bound to be hard cases when it comes to deciding the length that a full patent ought to run (and its period of decline), but approximations are far better than nothing; they are also better than some fixed patent. This is bound to give certain inventions undeservedly long patents, and others undeservedly short ones: the time period might not be enough to encourage some of the potential research where more is required to make it pay; as long the fixed period for a relatively unimaginative item or for one likely to be soon independently invented keeps the price up for no libertarian or welfare reason.

Patent decisions need not be final: any judgement could be challenged in the courts at any future time if new evidence came to light.

3.7 Friedman's problems

This section tackles the rest of the list of Friedman's problems for a theory of liberty, and includes the following topics: land acquisition, rectifying illiberal acts, libertarian consequentialism, and the relation of economics to libertarianism.

Some idea has already been given of what liberty entails where others' property effects our property, whether the effects be certain or merely probable. Next some more needs to be said about the libertarian acquisition of land that Friedman thinks is unclear in Locke.

Land acquisition

Friedman spies a problem in Locke's account of acquisition:

If we knew how I acquired ownership of land, we might also know what that ownership consists of. Unfortunately, we do not know ... John Locke ... suggested that we acquire land by mixing our labor with it, but he did not explain how, when I clear a piece of forest, I acquire not only the increased value due to my efforts but complete ownership over the land. How, in particular, do I acquire the right to forbid you from walking across the land--something you could have done even if I had never cleared it?⁴⁶

Friedman then writes of another libertarian idea, that of claiming land or marking its boundaries:

no one, so far as I know, has presented any convincing reason why, if land starts out belonging equally to everyone, I somehow lose my right to walk on it as a result of your loudly announcing it is yours.

⁴⁶ Friedman, D. 1989 p.170.

It is easy enough to show why the conversion of common property into private property is a good thing--why it makes us better off--but it is very much harder to derive property rights in land from some a priori theory of natural rights.⁴⁷

First, from a libertarian viewpoint land must start out belonging to no one in particular given that it is not invested in or relied on, rather than "equally to everyone" (or we should be able to do nothing liberally without the consent of everyone). If liberty is to be maximised, then the reason that initial labouring on virgin land should entail that the labourer must have control over its use (or why the land must be his property, which is the same thing) is that any attempt to take it from him when there is "as much and as good" would clearly be imposing a cost on him by interfering with his voluntary projects, and so limiting his freedom. (There is, of course, no cost imposed on others by denying them use of the labourer's products as they are no worse off as a result of their creation.)

The libertarian reasons that allow me to exclude others entirely from the land I occupy include avoidance of the following imposed costs: it is an imposed cost to be interrupted, dogged, spied on, and pestered when not in public places where this is explicitly allowed; trespassers are likely to have no particular reason to wander around our used land unless they are up to no good--they put people in fear whatever their intentions; they may well do some damage, if only by wear and tear, to what we have

⁴⁷ Ibid. pp.170-171.

invested in; they would probably have little reason to walk there unless we had produced something of interest (if they are enjoying our gardens they are gaining from our labour without our agreement and, as this is not a public place, are stealing a free show); the trespasser usually wants his own privacy respected despite not respecting ours and we are usually happy to reciprocate such respect if that is the price for our own privacy.

All these facts are contingent on the nature of the world and man. In a small world of natural nomads a handful of 'perverted' settlers could be as great (or greater) an imposition on the nomads by blocking their travels. In such a world it might be a lesser imposition to require people not to settle than to require the nomads to avoid their settlements forever. In our world the lesser imposition is to require the wanderers to respect private property. It is a loss of freedom (an imposed cost that people cause each other) that we cannot just walk where we like, but it would be a greater imposed cost if we had to allow everyone to walk into our homes whenever they chose to do so.

Claims to property that are based on liberty are not absolute, for the same principle sometimes implies that such claims be set aside. The case of the hut on the hill during the flood (discussed earlier) was one such example, but a classic libertarian problem should make the case clearer. The problem assumes the right to trespass is absolutely proscribed on libertarian grounds. It then

assumes that someone buys up all the property surrounding some innocent person. That person can now be a held as a prisoner by a purely libertarian principle. Surely there is something wrong with the 'libertarian' principle if such an illiberal consequence is derivable.

There is something wrong with this principle: it is not inherently libertarian. Where maximising liberty clashes with private property rights, there private property rights must be set aside in the interests of liberty. It is obviously a terrible imposition on someone to imprison him when he has done no particular wrong. And relative to this it is a small imposition to walk across someone's land though the owner would rather people did not. Liberty entails reasonable rights of access. When liberties clash (when we get in the way of each other's voluntary projects) the lesser imposition has to be preferred on the grounds of liberty (though, as in the smoke-pollution example, some compensation might be obligatory).

What if someone--for whatever unlikely reason--makes explicit and witting agreements to be imprisoned? This someone would then have bound himself voluntarily and could not be freed without violating the liberty of those with whom he had contracted. Respecting social liberty must usually include the respecting of contracts be they never so onerous. The observation of contracts is always *prima facie* liberty-maximising because you impose a cost on me if you try to deny me what you have already ceded ownership

of, but I impose no cost on you by merely keeping what you freely contractually gave me.

But suppose a world drought. And that the last natural water supply in the world would have been there whether or not the current 'owner' controlled it. Probably few people (no one?) would have contracted with him to allow his exclusive use (and contracts may have implicit *ceteris paribus* clauses to cover such things anyway), so he has no absolute right to the water. He would be imposing costs on others (denying their liberty) if he were to keep from them this uniquely valuable natural resource that they would have had access to without him. Only if he really had explicitly contracted for his absolute ownership with everyone would they have voluntarily constrained themselves and so have no libertarian claim to the water. (Again, this interpretation of the Lockean proviso is more or less in accord with Nozick's.⁴⁸ But here we use an explicit theory of liberty that is supposed to be clearer than Nozick's theory of rights.)

This example is logically possible but quite unlikely. Some might reply that the extraction of fossil fuels really are an imposition on a continuum with monopolising a uniquely valuable natural resource. To the extent that a state monopolises them by force this may be so. But otherwise they are worthless underground and anyone can go prospecting and labouring for them if he wishes. As

⁴⁸ Ibid. pp.178-182.

technology advances it is often effectively increasing the supply of these things faster than they are being used. And some of them are already becoming redundant due to new sources of power and new technology (for some empirical data see Julian Simon's *The Ultimate Resource*⁴⁹). There is no strong libertarian reason that those who produce these things should share the fruits of their labours except voluntarily.

We do not necessarily need to "mix labour" with unowned land in order to have some libertarian property claim to it. We can use land without investing labour in it (and water too, see the later reply to Gray's "fisher folk" problem). If it is already right for our purposes as it is, then it would be perverse to say that we have to change it to make it ours. If (in a state of nature) we want pasture for a cow (to take Hume's example of the problem when he criticises Locke⁵⁰) then we might need do no more than have the cow in a suitable spot on a long lead. If others do not then keep away they will be imposing more of a cost on us than we do on them by requiring them to go elsewhere. (But if our use is not frequent and obvious others might come to establish stronger libertarian property claims by their greater use and reliance on the resource.)

⁴⁹ Simon 1981.

⁵⁰ Hume 1968 Bk III p. 234.

So the idea of liberty as not imposing costs on others is the principle that can tell us what constitutes libertarian acquisition of property and what does not. We have derived property in land from a coherent and consistent meaning of (social) liberty (which was the gist of Friedman's challenge) but this is not to claim that there is a natural right to liberty (which Friedman thought would be the type of principle to which those advocating liberty must adhere).

Rectifying illiberal acts

Next, Friedman poses questions about rectifying illiberal acts. How "do libertarian moral principles tell you what degree of proof should be necessary for conviction and punishment?"⁵¹ And "in order to prevent theft, you must be able to take back more than was stolen. But how much more?"⁵²

The brief answer in each case is that, first, any honest contractual arrangements would be automatically libertarian and, second, in the absence of contractual arrangements the correct method is to implement whatever system minimises the imposition of costs. The application of libertarian theory does require much clarification and elaboration which I can only begin to give in outline here. I use this opportunity for a general discussion of the correct way, in

⁵¹ Friedman, D. 1989 p.171.

⁵² Ibid. p.171.

libertarian principle, to calculate restitution, and then look at the libertarian implications for punishment and proof.

Restitution

I do not impose a cost on you by merely taking restitution for your imposition on me. For instance, if you steal what I have created and I take it back I am merely undoing an imposed cost and not imposing a cost myself. If I take damages as well then you will certainly be worse off than before your theft but the damages have to be seen as part of the cost of what you freely chose to do. I am merely not allowing you to pass that cost on to me.

A simple case is dealt with first. On our desert island we do not discover each other until after you pick and consume fruit from a tree I have grown. You have unwittingly stolen the literal fruits of my labours. Those fruits would not have been there without my growing them. You have interfered with my personal projects in a way I object to. That is a constraint on my freedom. Had I not cared about the fruit or been happy for you to have it then you would not have imposed on me. As it is I do care. Can this imposition be rectified?

The imposition would normally be made roughly good if you were to give me something of equal worth to the value (to me) of the fruit. But damages ought to be limited by the fact that my presence on the island partly imposes a cost

on you and caused you to impose on me by mistake. We have both slightly interfered with the other's projects by being there. We can only minimise the imposition by the one who has been more imposed on being compensated with the difference by the other.

Individual values are relevant here. Assuming I wanted only to eat the apple for its food value, compensation might be easy. You could either give me a replacement or something of equal worth to me. As I was imposing on you--also unwittingly--by putting you in the situation of having eaten another's apple, a replacement would normally seem to be a maximum.

But as our values determine the extent of the imposition unusual values could alter the situation. If you had a religious aversion to eating fruit grown by infidels (such as I am) then you might well feel that you had been more imposed on and seek some compensation from me. (There are obvious practical problems with these subjective assessments but these do not concern us here where we are looking at the possibility of solutions *in principle*.) Let us take three similar examples to clarify the situation.

You have an item with a sentimental value of about a thousand pounds to you (you recently offered a reward of that much when you lost it, and would do so again): a lock of your dead wife's hair which you keep in your hat band (the old hat is worth only a few pounds). This item has negative market value for anyone but you (as you are part

of the market the market value including you is a thousand pounds; a point usually overlooked in compulsory purchases of property by the state).

First, suppose you are walking in the park one day when a spiteful acquaintance, aware of the value of the contents, takes the hat and throws it onto a bonfire where it is immediately consumed. Second, suppose a youth takes your hat--innocent of its valuable contents--and throws it onto the fire as an illiberal jest. Third, suppose someone accidentally knocks your hat into the fire while pointing his walking stick. What is the correct libertarian restitution in each case?

In the first case someone knowingly does at least a thousand pounds worth of damage. This would seem a minimum sum for which he should be liable in order to rectify the imposition.

In the second case someone does you much more damage than he intends to. It can be argued that if someone treats property as though it were his then he should suffer for the damage as he would do if he had damaged his own property. I disagree. It seems more plausible to me that as this damage was not reasonably foreseeable you would be imposing on the youth by putting him 'at risk' of such damage and then taking a thousand pounds from him. He intended to see you lose something worth a few pounds; he might never have destroyed something that plausibly might be worth a thousand pounds. He would have been more

culpable had he broken into your house; you had clearly taken a risk by taking such a valuable good to a public place where some such incident is more likely. Under the circumstances the youth ought to be treated as having destroyed only the hat.

A fortiori, the stick-pointer can only be held responsible for the price of the hat at most--for you choose to put yourself at risk of such innocent accidents by being in a public place. Suppose someone with bones as brittle as glass went out and were deliberately knocked over. Unless the ensuing broken bones were reasonably foreseeable, by the person who knocked him over, the risk of venturing out would have to be largely that of the delicate person. Any restitution should be proportionate to knocking over a person of more ordinary health.

If the costs associated with risks are not the responsibility of those most in control of them then people are tempted to take more and greater risks knowing that others will have to bear the costs. For instance, making health care free at the point of consumption is a way of allowing people to pass the costs of their health risks onto others. Standard economic analysis predicts that this must increase the number and severity of risks that people take with their health.

What if people benefit you by a thousand pounds in analogous circumstances? By attempting to damage you by a thousand pounds someone saves you a thousand pounds. Such

a person would not have imposed on you and you could not therefore claim restitution. But it may seem that it must still be libertarianly permissible to punish the attempted imposition of costs to some degree, or there will be more impositions due to lack of deterrence. We deal with punishment next.

Is punishment necessary?

From a libertarian viewpoint, punishment has to be calculated to result in minimising the imposition on, or expense to, everyone without their consent. If the parties to any dispute are contractually bound then that would sanction as liberal any contractual procedure and forfeit due to a breach; that this is libertarian should follow fairly clearly from the earlier discussion of contract (but see the later point on contractual judicial procedures that punish the wrong man). This means that after restitution (including damages) has been effected any punishment of the criminals must aim at minimising the imposed costs that comprise the criminal activities *plus* any impositions on the criminals themselves. Unless we allow punishment of the criminal that is greater than the imposed costs caused by the crime it seems that there will *sometimes* be more overall imposition than need be tolerated. But anything done to the criminal that is a greater imposition on him than restitution demands can only be *liberally* sanctioned on the *consequential* grounds of maximising liberty by deterrence.

Could the liberal nature of contract enforcement include the idea of the criminal's tacitly contracting into any punishment his victim demands and so possibly avoid such consequentialism? The argument is that the criminal is in a position analogous to the diner in a restaurant who by convention has a tacit contract to pay the bill. In the same way that any intention not to pay from the outset does not invalidate his obligation to pay, the criminal's intention to get away with his crime does not invalidate the penalty that is the price set by the victim.

I think that this is a bad analogy. The restaurant owner is trying to sell his meals so will, more or less, set a price at a level limited by this goal. He is imposed on to roughly the price of the meal if the customer leaves without paying. A vindictive victim is tempted to set his 'price' as high as he can to completely deter criminal 'customers'. But too high a price might not only exceed restitution but can even result in a greater imposition on the criminal than imposed-cost-minimising deterrence can sanction (for instance, as it would to hang people for petty theft).

And yet--the fact that a criminal undertakes a crime knowing the punishment if caught does seem to put him in a quasi-tacit-contractual position. He does not have a proper tacit contract to be punished (as the diner has to pay the bill), but if he is punished beyond the level of restitution (for deterrence purposes) he cannot claim that he is *simply* an innocent person being used illiberally for

others' purposes (though if consequentialism is compatible with libertarianism--as argued in more detail later--use of the innocent cannot be absolutely ruled illiberal in any case). So we might say that the illiberal criminal has a quasi-tacit-contract to be punished and that this puts him in quite a different position from an entirely innocent person.

However, if the degree of restitution are high enough then that will act as a deterrent without having to resort to the consequentialist argument. Once the proportion of the costs of insurance, security devices, policing and judicial procedure (that the criminal makes necessary) are included in the restitution (for these will all be private) it may well be that there is no need to resort to liberal consequentialism. And there are also punishments that are quite liberal such as giving the criminal unwelcome publicity and the discrimination against him that may then ensue. Private policing should also make for a much greater chance of being caught. If this is correct then side-constraint libertarianism need not be abandoned here. But the literature on libertarian punishment in theory and practice is as yet too thin for even a libertarian to be sure.

Proof

The degree of proof that should be necessary to convict in principle is also that which minimises the infractions of freedom. Technology will constantly alter the

circumstances but in the absence of infallibility the important point is that an imperfect system must allow the chance of the punishment of the innocent in order to deter even greater imposition by criminals. The degree of proof that minimises the imposition of costs on people, by whichever source, is to be preferred.

But, again, the degree of proof necessary for conviction need not necessarily be defended only in this libertarian consequentialist way. There might be real contracts involved. If this is so then any outcome will be ultimately libertarian in the sense that the criminal had voluntarily accepted the system in the first place and thereby bound himself. In particular, anyone freely contracting to abide by a particular judicial procedure in the event of, or during, criminal charges will not be having costs imposed on him to the extent that the procedure takes place as agreed.

This might sound wrong. Of course the accused person might suffer a great personal loss if he, for instance, suffers the death penalty, but this would be like flying with an airline when the plane crashes: in both cases someone is dead as a result of a fault in the system he contracted into, but the airline does not impose a cost (though he suffers a cost) by mistakenly killing him (unless it was negligent in contractual terms) and neither does the judicial system impose a cost by mistakenly killing the wrong man. This might seem more like an imposed cost only because in one sense they deliberately kill him, but that

cannot follow from the definition of liberty and the analysis of contracts (if correct).

Those who are tried without their agreement (they are arrested and taken to a court they have no contract to recognise) would clearly be having a cost imposed on them if the judgement were wrong (and against them), and thereby entitled to restitution on libertarian grounds (though, to please its customers, any private system is bound in practice to offer compensation if it discovers an error in sentencing). The 'entitlement' is, of course, merely hypothetical--if liberty is to be the rule observed--and not a moral claim that it ought to be the rule observed.

So, to the extent that there is punishment to deter the illiberal criminal (and others) from similar offences, and to the extent that non-contracting persons are wrongly convicted, there are costs imposed on people in excess of any cost they imposed on others. This can only be libertarianly defended consequentially as minimising the impositions of costs across society (anything beyond overall deterrence of illiberal acts would be illiberal). This is a very important point for it seems (to me) to be the only area where libertarianism *might* in practice be applied 'consequentially' (albeit only to deter illiberal crime) to maximise liberty instead of as a side-constraint (it is taken as obvious that deterrence is also necessary to maximise welfare). Such libertarian consequentialism is discussed in the reply to Friedman next.

Liberty, utility and consequentialism

Instead of offering more problems for which the "natural rights approach" offers no solution, David Friedman then offers the criticism that "the usual statements of libertarian principles imply conclusions that almost nobody, libertarian or otherwise, believes in."⁵³

A madman is about to shoot at a crowd. The owner of the only rifle available for shooting the madman (which is all that could stop him) would not allow us to borrow it. Libertarian rights theory, as Friedman understands it, implies that people have no right to take the rifle, even for this purpose. Is it desirable to take the rifle and shoot the madman? Friedman says it is desirable.

He suggests:

One solution to the problem is to reject the idea that natural rights are absolute; potential victims have the right to commit a minor rights violation ... [or] ... natural rights are convenient rules of thumb.⁵⁴

And he later suggests that a better principle than inviolable private property might be something like:

do whatever minimises the total amount of coercion ... both seizing the rifle and imposing a draft ... [can be] ... not only consistent with libertarian principle but required by it.⁵⁵

He then gives what he feels to be a counterexample: it seems wrong to steal a hundred-dollar rifle to prevent only

⁵³ Ibid. pp.171-172.

⁵⁴ Ibid. p.172.

⁵⁵ Ibid. p.175.

two hundred dollars from being stolen from me (assuming that "coercion"--illiberalism--is measured by the amount of value of what is stolen).⁵⁶

Friedman's suggestion that liberty might be interpreted consequentially fits with the position that has been outlined so far; unfortunately he conflates this insight into the logical implications of respecting liberty with his moral reactions to some examples.

His intuition that it would be wrong to steal a hundred dollar rifle to prevent the theft of a mere two hundred dollars in cash can be answered along the lines of one of Hare's defences of utilitarianism. We are tacitly aware of the impracticality of a rule's allowing such small differences to justify the supposed consequential justification of theft. Friedman is supposed to be accepting that the dollar values are the only measures of "coercion" and that no other factors are involved. But perhaps he has a strong suspicion that such a rule would, in reality, be open to abuse and have all kinds of side-effects apart from the dollar value of the possible thefts. And having this thought in the back of his mind might be affecting his intuition.

If we are to implement the rule of liberty as much as possible then we must prefer a situation where there is

⁵⁶ Ibid. p.175.

less overall imposition on individuals, whatever else thereby occurs. In other words, respect for liberty as such (just like the respect for utility as such) must ultimately be consequentialist. Any limit on the consequential promotion of liberty shows that there must be another principle in operation.

It could be that Friedman has conflicting non-libertarian principles here (as he does in the next example) but he does not call on any alternative principle. So it seems he must be using his practical intuition as to how liberty is normally best respected to misjudge an artificial thought-experiment. This is just the sort of thing that Hare feels that people often do when criticising utilitarian consequentialism (if that is not a pleonasm).

Friedman later makes an interesting remark about libertarian consequentialism compared with utilitarianism:

One would face very similar problems in defining and measuring the amount of coercion [illiberalism] and in judging the trade off between increased coercion for one person and decreased coercion for another.⁵⁷

This seems to indicate that he does not consider the possibility that there can be convincing arguments that side-constraint libertarianism can maximise liberty *in practice*.

⁵⁷ Ibid. p.180.

Friedman continues:

A second problem with this approach is that it is of no help when we must choose between a small cost in coercion and an enormous cost in something else.⁵⁸

He feels that it is right to steal a hundred dollars worth of equipment if by so doing he can save the world from a natural catastrophe, but this cannot be justified as minimising total "coercion". So "our response to such questions demonstrates that we do not really believe in single simple values."⁵⁹ The "claim that we put individual rights above everything else is, for most of us, false."⁶⁰

The example of saving the world by stealing some cheap equipment is different because Friedman offers a genuinely powerful competing principle: choosing "between a small cost in coercion and an enormous cost in something else."⁶¹ In the example of saving the world by a small theft Friedman does demonstrate that liberty is not plausibly always the supreme value even to 'libertarians'. Moral pluralism is psychologically unavoidable for almost everyone. Almost every general moral principle (as opposed to a specific moral response to particular circumstances) is held *ceteris paribus* so that we could think of extreme or unusual circumstances where we would prefer another principle. This thesis does not need to deny this. What is being attempted here is a philosophical reconciliation

⁵⁸ Ibid. p.175.

⁵⁹ Ibid. p.176.

⁶⁰ Ibid. p.176.

⁶¹ Ibid. p.175.

of liberty and welfare in practice. It is admitted that they both can diverge in theory. As long as one is happy with the principle of liberty in practice one can concede Friedman's point and still sensibly call oneself a 'libertarian'. Again, this practical possibility seems to have been overlooked.

We are then given an example that is particularly interesting as regards the reconciliation of liberty and welfare. Friedman wants to give some weight to happiness (rather than preference satisfaction) but rejects utilitarianism because he can also construct situations where he feels strongly that the utilitarian solution is the wrong one. He cites the example of the sheriff in the small town being able to prevent a riot in which three or four are going to be lynched if he frames and hangs an innocent person. Utilitarianism is supposed to entail framing the innocent man, but Friedman thinks this wrong.

The interesting point here is that not only utilitarianism but also libertarianism--interpreted consequentially--entails that it is better to hang the innocent man. For four lynchings are (other things being equal) four times the imposed cost of one hanging. Again, Hare's analysis of this type of situation as applying practical intuitions to a highly artificial case might explain Friedman's response. Friedman seems to corroborate this analysis when he admits that he might frame the man to save a million lives, but not to save one or two. But if we seek to respect liberty or utility then it must be better that only one is forcibly

hanged rather than two. In the absence of a competing moral principle Friedman can only be influenced by strong intuitions that have there basis in the practical dangers of such a policy.

Nozick does not seem to extricate himself from the irrationality charge of absolute side-constraints. He ultimately concludes that absolute "side constraints upon action reflect the underlying Kantian principle that individuals are ends and not merely means"⁶² But if we want to respect people as ends as far as possible then surely it is better that fewer are used as means (or that people are used to a lesser degree). This Kantian approach still does not seem to rule out libertarian consequentialism in principle.

Thus we see that (analogously with utilitarianism) what we might call act- and rule-libertarianism also collapse under analysis (though showing that it first makes sense to separate them is more of a problem for most libertarians). But this does not prevent its being the best libertarian (consequentialist) rule to practice side-constraint libertarianism (for similar economising and moral-hazard reasons to those that apply to its utilitarian defence).

⁶² Nozick 1974 pp.30-31.

Libertarianism and economics

It seems desirable to criticise Friedman's loose account of libertarianism and the role of economics with respect to it. He concludes:

libertarianism is not a collection of straightforward and unambiguous arguments establishing with certainty a set of unquestionable propositions. It is rather the attempt to apply certain economic and ethical insights to a very complicated world.⁶³

Libertarianism is not even "the attempt to apply certain economic and ethical insights to a very complicated world." It is clearer to say that *libertarianism* is the view that *people should have liberty* (one could even think this for misanthropic reasons). Economic, ethical, philosophical, and any other types of insights can only be used to explicate and defend this view.

Friedman later asserts that the superior development of economics to moral philosophy means that "economics is not only a better way of persuading others. It is also a better way of finding out what I myself am in favor of."⁶⁴ And he holds that (as quoted at the start) "economic analysis of law can answer questions about what the law ought to be that I cannot answer--that I believe cannot be answered--on the basis of libertarian principles."⁶⁵

⁶³ Ibid. p.176.

⁶⁴ Ibid. p.182.

⁶⁵ Ibid. p.199.

Important though economics is, it should now be clear that economics cannot be an alternative to the libertarian principle but can only be one tool for examining it.

Philosophy is necessary to show what liberty is and what it generally entails (in all areas, including that of law).

Economics can only then fill in the details and show the utilitarian advantages of liberty. I am sure that the theory of liberty requires more defence, correction and elaboration. But without the libertarian principle and its philosophical elaboration there can be no general

libertarian framework at all for economics to work on.

There can only be a utilitarian defence of the free market.

This only escapes taking liberty as a moral principle by taking utility as a moral principle (as Friedman implicitly does). So that is what (apart from his criticisms, discussed here, of the clarity of the principle of liberty) Friedman's book must be about despite his claim to be a 'libertarian'.

3.8 Gray's criticisms

This section criticises Gray's views on a variety of liberal issues focusing on liberal democracy, restrictivist theories of liberty, the free-slave paradox, whether there is a single libertarian principle, Locke's principle of acquisition, the liberal problem, and the future for liberalism.

John Gray is currently one of the main philosophical critics of liberty. His academic background is in political philosophy. Gray has analysed various conceptions and defences of liberty and liberalism and found them all wanting; as he puts it in the preface to his *Liberalisms: Essays in Political Theory*⁶⁶:

The upshot of the arguments developed in these essays is that the political morality that is constitutive of liberalism cannot be given any statement that is determinate or coherent and it has no claim on reason.⁶⁷

Many of Gray's arguments seem sound; here we criticise mainly those of his arguments that are incompatible with this thesis which have not been dealt with in the reply to Friedman or elsewhere (there will be some repetition where clarification seems desirable). It is convenient to take them in the order in which they appear in *Liberalisms*.

Many of Gray's points include or have in the background many of the other points he raises. In replying it is necessary to focus on one at a time but the result is that this section needs to be read as a whole to get a comprehensive answer to any apparently single issue Gray raises--in fact the thesis as a whole is needed to fill in further details.

⁶⁶ Gray 1989.

⁶⁷ Ibid. p.vii.

Liberal democracy

Of Popper's defence of liberal democracy Gray writes:

So far as I know, there is no plausible counter-example to Popper's conjecture that the conditions of scientific criticism (and so of successful problem-solving) are most closely approximated in liberal democracies, and are inescapably disrupted by revolutionary upheavals in which a non-violent adversarial exchange of ideas is no longer a real option. Until Popper's theory is decisively falsified, and a better one is forthcoming, we are entitled to conclude that Popper's theory of piecemeal social engineering has resisted the attacks of its critics.⁶⁸

Gray apparently approves of the "non-violent adversarial exchange of ideas". But this is not quite what happens in a liberal democracy. A liberal democracy is a sort of substitute for all-out civil war. The winning side imposes its rules on the others by force and the threat of force. The taxation and regulation of people who are not imposing on anyone is itself a form of aggressive coercion rather than peaceful persuasion.

When Popper was writing *The Open Society and its Enemies*⁶⁹ he was contrasting the workings of democracies with totalitarian regimes of the kind with which the allies were at war. He considered the book to be his war effort. By such a contrast, democracies are certainly more conducive to individual freedom and welfare, and I do not intend to contradict the general thesis for which Popper was arguing. I am happy to agree with Winston Churchill that democracy

⁶⁸ Ibid. p.22.

⁶⁹ Popper 1945.

is the worst form of government--apart from any other, I should merely wish to add that anarchy is not as bad as democracy.⁷⁰

A far better analogy with the conditions of scientific criticism is the anarchistic working of the free market. Here people have to be persuaded to buy a good or service, or try a different religion or lifestyle. When they do so it is done only at their own expense. It is a similar individual approach that works in science. Liberal democracies coercively ban and enforce various practices in a way that tends not to happen in science--unless the state intervenes.

In the free market new goods and services offered by the individual enterpriser are analogous with the bold new theories of the individual scientist. Analogous with having scientific theories aimed at truth these consumer goods are aimed to satisfy demand. So such things as state subsidies to failing businesses and imposing import restrictions to protect 'domestic' production, are analogous with *ad hoc* defences of a theory (here in the form of a product) instead of accepting the 'falsification' that is the absence of consumer demand.

⁷⁰ Mises and Ricardo have argued that the market can itself been seen as a sophisticated and fair form of democracy (rule by the people), but that cannot be literally true as there is no rule in the market, only voluntary cooperation. The consumer is sovereign over only himself and his purchases.

Social planning that is imposed by force has the objectionable character of a revolution even if it is written small because done piecemeal. Genuinely peaceful persuasion along libertarian lines completely avoids the problems of "social planning".⁷¹

This is but a sketch of the similarities between a free scientific community and a genuinely free society. Between a free scientific community and the coercive impositions of a "liberal democracy" the disanalogies are glaring. The trouble is that a 'liberal democracy' is more or less a contradiction in terms (at least, to the extent that 'liberal' means having respect for individual's liberty): the more liberty individuals have the less they can be ruled by the 'people' (or anyone else). The scientific community is more or less a liberal anarchy in that anyone can form a theory, test it, and offer the evidence to anyone interested.

My conjecture is that if the scientific community were democratically run it would be as great a disaster for the discovery of truth as democracy is a disaster for the promotion of liberty and welfare.

Restrictivism

In arguments about liberty Gray objects to what he calls the "restrictivists": those who think that "disputes about

⁷¹ Ibid. p.22.

the nature of freedom may be resolved conclusively and to the satisfaction of all reasonable students of the subject." Various approaches include the "stipulative definition of freedom backed up by weighty arguments about its operational utility", and an appeal to ordinary usage or that of classic texts. In all cases "what restrictivists have in common ... is a rejection of the claim that freedom is what has been called an essentially contested concept."⁷²

Gray tells us of typical secondary positions: viewing freedom as "a descriptive concept" without evaluative aspects; tending to "affirm that a rational consensus on the proper uses of the concept of freedom can be reached in the absence of any prior agreement on broader issues in social and political theory"⁷³; and being "disposed to reject the claim that metaphysical views about the self and its powers are germane to disputes about the nature of social freedom".⁷⁴

Gray concludes:

restrictivist theses about freedom demonstrably endorse naive and superseded positions in the philosophy of mind and action and in the theory of our knowledge of the social world.⁷⁵

⁷² Gray 1989 p.45.

⁷³ Ibid. p.45.

⁷⁴ Ibid. p.46.

⁷⁵ Ibid. p.46.

The view of liberty in this thesis is undoubtedly what Gray would label "restrictivist". Gray offers a more or less dissuasive definition of "restrictivism". His position is hard to criticise on the basis of this definition alone and the full criticism must include all the other replies to Gray in this section. But it seems necessary to criticise this definition to some extent or it will seem to have some of the dissuasive force that is intended for it.

Though this thesis offers an account of freedom intended to be the correct one it is not held that the account is obvious or without problems in practical applications.

Also, to aim at resolving a debate conclusively and thinking that others ought to agree is quite consistent with the idea that one might be wrong and being certain that the debate will continue indefinitely. Gray seems to be unfairly implying that people that offer bold sweeping solutions are automatically dogmatic and naive.

In this thesis there has indeed been an attempt to refine ordinary usage to make it consistent and clear so that problem cases can be dealt with decisively. But even if what is called 'liberty' in this thesis is not, as intended, a refinement of ordinary usage but something quite new, the claim that it solves the problems it is applied to is a separate issue, compared with which the 'essence' of common usage is quite trivial.

In some sense all concepts are open to being contested because everything is conjectural (as Popper has conjectured without refutation, as far as I can see). But concepts such as truth and freedom are here conjectured to be less contestable than *moral* concepts. It is at least partly because Gray thinks that freedom presupposes a moral position that he thinks it is "essentially contestable". If this thesis shows (as is intended) this not to be the case, then the contestability is much weaker.

This will mean that freedom can be a descriptive concept. In which case "agreement on broader issues in social and political theory" is not obviously necessary. And to think that "views about the self and its powers" (in any detail, at least) are relevant to an understanding of freedom of the self is as mistaken as thinking that problems in epistemology affect the metaphysical concept of truth (as in the idea that unless you can give an account of how to discover truth you cannot make sense of the notion of truth).

Gray partly thinks that the restrictivist position is naive because he is himself conflating what it means for a person to be free with what it means to be a person. In fact his final statement above (that "restrictivist theses about freedom demonstrably endorse naive and superseded positions in the philosophy of mind and action and in the theory of our knowledge of the social world") seems to show that he may be conflating a variety of metaphysical,

epistemological and sociological issues (but we cannot profitable guess at what these all are).

The free-slave paradox

Gray first explains the free-slave paradox (as I call it) as it is to be found in Isaiah Berlin's *Two Concepts of Liberty*⁷⁶:

Since the degree of a man's negative freedom is the extent to which his desires are not frustrated by the interferences of others, he may always increase his freedom by trimming his desires. As he recognises, Berlin's original account has the consequence ... that it precludes our characterising as unfree a wholly contented slave.⁷⁷

Berlin's new account of freedom (Gray quotes):

ultimately depends not on whether I wish to walk at all, or how far, but on how many doors are open, upon their relative importance in my life The extent of my social or political freedom consists in the absence of obstacles not merely to my actual, but to my potential choices, to my acting in this or that way if I choose to do so. Similarly, absence of such freedom is due to the closing of such doors or failure to open them, as a result, intended or unintended, of alterable human practices, of the operation of human agencies. . . .⁷⁸

After examining various criticisms of this position Gray suggests that:

the problem of the contented slave can be resolved by supplementing the bare notion of autonomy with an account of human nature that is bound to have a disputable character, but which is in no way beyond criticism or rational support.⁷⁹

⁷⁶ Berlin 1984.

⁷⁷ Gray 1989 p.69.

⁷⁸ Ibid. pp.69-70.

⁷⁹ Ibid. p.83.

Accordingly Gray holds that:

confronted with a man who cared nothing for natural beauty, parental affection or sexual love, who sought no satisfactions in the life of the mind, in the development of his bodily powers, or in religious devotion, we would be disinclined to qualify him as autonomous and the source of our disinclination is not any logical property of the bare formal notion of autonomy, but rather our invocation of the concept of a human life.⁸⁰

He concludes that:

such considerations deriving from the notion of a happy human life frame boundary conditions within which the concept of autonomy is at home ... the concept of human life enters into any judgement we make about the autonomy of human beings ... It is by invoking those considerations ... that we override the avowals of the slave that he is content with his lot, and dismiss the claim that there could be a 'truly contented' slave.⁸¹

It will help to separate two issues here: What is the correct solution to the paradox? What is wrong with Berlin's and Gray's accounts? The answers will develop during an analysis of the above accounts.

The theory of liberty here defended is a version of Berlin's original conception of negative liberty as (as Gray expresses it) existing to the extent that one's "desires are [not] frustrated by the interferences of others".⁸² An "interference" is here glossed as imposing costs on people. So if you were not to mind the thing they

⁸⁰ Ibid. p.84.

⁸¹ Ibid. p.84.

⁸² Ibid. p.69.

are doing (do not to lose value from your own point of view) then there would be no imposition and so no loss of freedom. If there is an original imposition and you later find you feel no resentment that does not alter the fact that you did lose some freedom. If you freely forgive them this merely means that no compensation is necessary to rectify the imposition. (It is, of course, logically possible that depriving someone of liberty can increase his welfare in the long term.)

But there are two difficulties with the idea that you can simply choose not to mind an imposition. First, people do not seem psychologically capable of simply choosing their desires (though they can have desires about their desires, as discussed in the first chapter). If I don't like parsnips and do like potatoes then I cannot simply choose to reverse my tastes. Some tastes can be cultivated but it usually takes time and effort. And fundamental values are much harder to alter.

Second, suppose I could choose not to mind your causing me a loss of liberty (by expropriating the fruits of my labours or physically assaulting me) by my taking an apathy pill. Even if I judge it best to take an apathy pill after the imposition, that does not alter the fact that you have imposed on me without giving me restitution. You have imposed on me (for I would rather not have needed to take the apathy pill) and by the principle of liberty as minimising impositions, you have to compensate me to negate the imposition. If the mere absence of a continuing

objection by the person imposed on is sufficient to show that there is no longer a loss of freedom then we have an even more absurd paradox than that of the 'free slave': we have to say that a murdered man was not imposed on (made less free) given that he does not now (for he cannot) resent his being murdered.

So impositions that frustrate a man's desires must be looked at in the context of the continuing individual. A change or loss of desire does not mean that a past loss of freedom ceases to be a loss or need not be rectified (if liberty is to be respected).

The above account explains part of the confusion in Berlin and Gray but it does not get to their central error. The contented-slave paradox is really due to Berlin's and Gray's conflation of two different (but equally unobjectionable) senses of freedom.

A slave is owned by someone else even if he does not at all mind being owned (perhaps because his master lets him do what he likes). In the same way a prisoner is a captive even if he does not mind being a captive. A slave and a prisoner are not 'free men' (whatever their feelings on the matter) in one clear and common usage of the term 'free'. But if we define 'social freedom' in another sense as 'not being imposed on' then people who have contracted into slavery or imprisonment have not lost any of *this kind* of social freedom even if they do later object to what they have got themselves into.

The idea that a slave or a prisoner need not have lost his freedom only looks paradoxical until one realises that "freedom" is being implicitly used in two quite distinct senses: 1) not being captive or owned; 2) not having costs imposed on one. If I wittingly sell my car or my living body and later regret it, I cannot truly state that others impose costs on me by not returning what is no longer mine. The situation is partly obscured by the improbability of supposing someone's choosing slavery or imprisonment. But once these two perfectly acceptable senses of 'freedom' are clearly distinguished the paradox is seen to be based on an equivocation.

This is the central solution to Berlin's paradox of freedom. However, it is as well to go on to criticise Berlin's and Gray's putative solutions as they are mistaken in ways that are not unusual and which cloud the nature of liberty.

Berlin's new account of freedom is roughly one equating it with valuable opportunities (though he does include the freedom to make wrong choices) whether or not these are eventually taken. Presumably Berlin would see a society as more free to the extent that people have more of such opportunities.

Berlin is now in a somewhat ironic position. In his original essay he told us, quoting Bishop Butler, that "a

thing is what it is and not some other thing"⁸³ and that we cannot expect all valuable things to overlap. With this new definition of liberty Berlin has apparently abandoned the value-free problem of finding what liberty is in favour of an axiological definition that makes liberty very broad and inherently valuable to the individual: each individual is more or less bound to like the idea of his having as many valuable opportunities as possible.

Admittedly, 'liberty' as used in this thesis is also desirable by definition, but reasons were given that it captures the common intuition, and it is not as hopelessly broad as Berlin's idea of liberty as the degree of valuable opportunities due to other people. It is part of this thesis that maximum opportunity and maximum liberty are contingently highly congruent, but it is logically allowed that liberty could have disastrous effects for opportunity, and vice versa. Berlin has now so linked these concepts that he cannot make sense of such possibilities. He has not given us a good reason for regarding opportunities (due to others) and liberty as the same thing. So that linkage seems arbitrary or tendentious in just the way that Berlin had previously objected to.

Gray has praised Berlin for his view that we should not expect all desirable things to be co-possible. But in his attempt to solve the free-slave paradox Gray seems to ignore this advice as much as does Berlin: it looks no

⁸³ Butler 1736.

better than merely defining the problem away by giving an account of autonomy that excludes certain 'inhuman' ways of living. Gray's account is only a sketch and so hard to tackle comprehensively and precisely. Here only a few points from his sketch are dealt with briefly.

Gray's solution is to deny that a slave can be truly contented or happy. Even if this were so, why should autonomy be necessary for contentment? Why should certain human norms be necessary for the possibility of contentment? Gray is trying to tie together contentment, autonomy and proper human nature such that contentment is only possible in a range of autonomous human norms.

To deny that someone is autonomous because he does not fit into our list of approved lifestyles is little more than an arbitrary insult. How can the notion of autonomy be tied to the notion of any concept of human nature? What Gray calls the "bare notion of autonomy"⁸⁴ is just what autonomy is (lexicographically) and he is trying to adulterate it (but things are what they are and not some other thing). It seems merely by fiat and an appeal to popular opinion that Gray attempts to exclude certain ways of living from human autonomy. There need be nothing more peculiarly 'human' about "human autonomy" than there is something peculiarly 'human' about 'human death'.

⁸⁴ Gray 1989 p.83.

It is revealing that Gray includes, as a happy form of autonomous life, religious devotion while excluding (on the same page) the cocaine addict. It is at least possible that some religious devotees are vacant, miserable, life-denying people while some cocaine addicts are getting at least a little contentment from their drug. Even if the religiously devoted are content it might be argued that at least some of them are so only by slavishly following the teachings of a charlatan and so hardly autonomous by critical standards. By similar standards, cocaine addicts who continue their addiction in the knowledge of what else they might be doing are not obviously without autonomy. So to include the religiously devoted whilst excluding cocaine addicts seems based more on Gray's conventional views rather than any sophisticated view of human nature.

In a biological sense, a human life must include any type of life a human being happens to lead. Gray seems to be trying to use human nature to argue from an 'is' to an 'ought'. The reason he gets to the 'ought' is that his conception of a human life is already value-laden.

Gray claims that in the uses of autonomy in moral and political contexts there is always some account of human nature.⁸⁵ That is not the case in this thesis. Here one is autonomous to the extent that one is not ruled by others. Slaves are ruled by others and so not autonomous (but that does not entail that their autonomy was

⁸⁵ Ibid. pp.83-84.

illiberally interfered with if we allow for the possibility of contractual slavery). So none of this is to argue that a slave can be autonomous (or that he is likely to be contented with his lot).

The single libertarian principle

The boldest among the rights theorists aim ... at a structure in which all rights are derivations from a single aboriginal right ... but there are serious obstacles facing such a project. Consider in this connection how obscure are the relations between a liberal right of initial self-ownership (as postulated by Nozick) and the right of initial acquisition. There appears to be no relationship of derivability between the latter and the former ... Even in the Lockean and Nozickian frameworks, then, it appears there may be two basic rights, not one, and insofar as they have independent justifications, a competition among their demands cannot be ruled out.⁸⁶

It seems worthwhile to reply to Gray by giving a brief recapitulation of the account of the position developed in some detail in the response to Friedman. This thesis does not take a rights-theoretical approach to liberty but, nevertheless, the principle of liberty is a single one that gives answers without ancillary principles.

Initial self-ownership follows quite easily from the idea of individual liberty as not imposing costs on individuals. If I use (only) myself I do not thereby impose a cost on anyone, but if someone else were to use me without my permission he would (usually) be imposing a cost on me. So liberty entails that I ought to have the use of myself--and that just is self-ownership. So self-ownership is not

⁸⁶ Ibid. pp.147-148.

itself part of the principle of individual liberty for it flows from it (in normal circumstances).

Though if I were to freely contract into slavery then the principle of liberty entails that I would be doing the imposing by, say, running away from my owner. And there are cases where it would be libertarian (at least, consequentially so) to non-contractually deprive an individual of his self-ownership. For instance, where killing someone (for surely that is one way of depriving someone of self-ownership) is necessary to stop his killing others. These show that self-ownership is neither a separate libertarian principle nor necessarily entailed by (or part of) the libertarian principle (of minimising the costs individuals impose on each other) in the sense of being one of its theorems.

Initial acquisition then follows from self-ownership because to deprive a self-owner of the (previously unowned) resources he is using (given that these are not uniquely valuable natural resources) is to impose a cost on him, which just is to infringe his social liberty.

So here there is only one basic principle: individual (social) liberty. Only from this is initial self-ownership derived, and only given self-ownership (and the use of previously unowned resources) is initial acquisition derived.

Locke seems to have a single principle as well in his *Second Treatise*, and it more or less amounts to the same account. Locke first argues that no one has any right to set themselves above others (for God has given no sign that anyone has such rights). He then attempts to show the consequences of this equality of men in terms of what social interactions are allowable. In effect he has roughly the same theory of liberty as non-imposition of costs (though with a theological backing). Everything about self-ownership and property acquisition (including Locke's famous 'proviso') follows from this idea of men's not setting themselves above each other.⁸⁷

Locke also argues, as is done in this thesis, for the happy coincidence that respect for liberty is conducive to human welfare. For Locke this is not a matter of mere coincidence but the design of a benevolent Christian God. In this thesis it is no mere coincidence either, for philosophy and economics can explain the systematic connection.

Thus the theory of liberty in this thesis is more or less Lockean but stripped of its theological underpinning, made more consistent, and extended to new areas. (Nozick's

⁸⁷ Strictly speaking, we are owned by God (perhaps because he created us and the labour theory of property acquisition also applies to him) and this is one reason that we are not allowed to commit suicide: this would be damaging another's (in this case, God's) property. But because God has set no one above anyone else we are effectively self-owners with respect to each other.

theory, however, is less explicit and not so easily defended as flowing from a single principle.)

Fisher folk

Gray continues:

The point is that we have no theory of acquisition which contains definite criteria for adjudicating the scope of apparently conflicting property rights. Consider the following example. A family of fisher folk has since time immemorial trawled a given strip of coast. Now, because of industrial activity further along the coast, the catch which it had always brought in falls substantially. What are the fisher folk entitled to demand according to the Lockean theory? May they veto the industrial activity as a direct invasion of their property rights, demand compensation for loss suffered, or are they without property rights of any sort in their customary catch? ... taken by itself, the Lockean theory has no definite answer to these questions. ... It is not just that there are hard cases for Lockean principles, but rather that in their applications in the state of nature they contain vast indeterminacies. The guidance they appear to offer in civil society is, for this reason, delusive, and we rely in reality on convention to settle boundary problems of the sort I have mentioned.⁸⁸

Again, a general theory of libertarian acquisition was given in reply to Friedman, but it should be illuminating to tackle the specific problem that Gray poses.

The general liberal approach is to determine how much each party is imposing a cost on the other so that the one imposing the greater cost can compensate the other or cease the activity--whichever minimises the costs people cause each other. To get a grip on Gray's example it should help to start with a simpler case.

⁸⁸ Ibid. p.148.

The fisher folk are clearly using the fish for their livelihood. First, suppose another group of fishermen were to come into the area and fish to the extent that the catch of the indigenous group fell substantially. For the new fishermen to take a resource that the others were already relying on would normally be a great cost to the original group. It would normally be a small cost to the new group to require that they find some other way of making a living (or pay the first group to allow them to fish). Only if this is impossible--perhaps due to some unusual circumstance such as a famine on the land--would the new group have a claim to share the fish (because there would not be any alternative way of making a living and they would have been able to fish had the original group not been there).

The case is the same with the new industrial activity. The fisher folk should be paid roughly the cash value of their losses or the industrial activity should cease. This compensation could either continue for the duration of the effects of industrial activity or be settled by a lump sum.

The fisher folk should not have an absolute power of veto if full compensation is possible for it would be a great imposition on people not to allow them to carry on their projects, whatever they are, provided they can fully compensate others for any external cost caused thereby. But it would be libertarian for the fisher folk to have the power of veto up to the point that full compensation is

possible. If their power of veto were absolute they could impose illiberal costs on the other group if only by using it to bid up the compensation beyond the level of any real cost to themselves (any disputes about the correct level would best be tried by disinterested arbitration agencies; that is not a theoretical but a practical problem).

If the fisher folk were itinerant and living in caravans which they could easily move to other sites then little or no compensation would be due. That they probably have substantial buildings and a love of the general area means that it would be a great imposition to allow the damage to go uncompensated.

If the fisher folk were new and the industrial complex were traditional then the situation would be more or less reversed. The new fishermen should put up with the smaller catch or pay the industrialists to stop their pollution.

So the general solution is that the fisherfolk *do* have libertarian property rights in the fish, though the law may not reflect this. From a libertarian point of view it would be better if the law explicitly recognised these libertarian property rights in order to facilitate compensation or trade and to help to avoid unnecessary disputes or unintentional imposition. But if liberty is to be respected the claim to the fish is valid whether or not the law recognises this. If any convention is used which has a result that is different, and not freely agreed to by the parties involved, then the outcome is illiberal.

This does not look like a Lockean position because the fisher folk do not do anything to the fish or the sea apart from rely on them (and they are different individual fish each time). But the fisher folk are clearly using the fish considered as a whole and the industrial activity clearly interferes with their use at a great cost to them. The fisher folk's use of the fish imposes on no one significantly (given that there are other places to fish and other ways to make a living), and the new industrialists are causing them a serious cost just as surely as they would if they were to try to claim the land on which the fisher folk had built their houses. This solution to the problem is within Locke's general theory of liberty and Locke was merely mistaken to think that labour-mixing could catch all the property acquisition that his theory of human equality required.

Granted this thesis' interpretation of the *spirit* of the Lockean theory, this answers Gray's questions and so refutes his claim that Lockean theory has no definite answers to the questions he asks. He has not shown that Locke's theory of property acquisition contains "vast indeterminacies" in a state of nature.

"The liberal problem"

Despite criticising various conceptions of liberty and concluding that they are all to be rejected, Gray does not think that developing a robust theory of liberty as such is

the fundamental liberal problem. He calls "the liberal problem--the problem of finding fair terms of peaceful coexistence among persons with different conceptions of the good."⁸⁹ Perhaps this is the 'modern liberal' problem. It has nothing in particular to do with liberty (liberty is not even mentioned). This modern view of liberalism matters for it would seem to indicate that even if confronted with a coherent account of a society that is based on liberty Gray (and modern 'liberals') might deny that it is liberal on the basis that it is not a "fair" system. Liberalism apparently has fairness built into it--again, in just the way that Berlin objects to.

So it is somewhat disingenuous of Gray to write:

For Hayek, then, liberty is a moral notion. Nor is there anything objectionable to that: for, despite great and subtle efforts, no convincing conception of freedom that is value-neutral has yet been articulated.⁹⁰

For even if a value-neutral account is possible Gray is going to reject it as solving the liberal problem unless the consequences are "fair".

Gray later gives an alternative account of the nature of liberalism:

in his conception of civil association Oakeshott has isolated and identified the very kernel of 'liberalism', which is a mode of associations constituted by adherence to rules that are as non-instrumental--that is to say, as little substantive and as much procedural--as is attainable.⁹¹

⁸⁹ Ibid. p.166.

⁹⁰ Ibid. p.97.

⁹¹ Ibid. p.199.

First, there is not even any obvious connection between this understanding of 'liberalism' and the previous account of "the liberal problem". Second, is this account even coherent? The notion of non-instrumentality looks similar to the notion of pure impartiality (dealt with in the first chapter). The kindest thing that can be said is that there seems to be some idea here that people should be allowed to carry on their lives with as little interference by others as possible; and this meaning is compatible with the theory of liberty in this thesis. But if that is a false interpretation then it can only be said that as it stands Gray's form of words is too obscure to be criticised rigorously.

It is later stated:

liberalism as a doctrine implicitly presupposed, what contemporary cultural pluralism destroys or diminishes, a single cultural tradition as undergirding the institutions of civil society."⁹²

It is hard to know what Gray's 'liberalism' presupposes given the obscurity of his account of it; but it is clear that liberalism as used in this thesis does not presuppose "a single cultural tradition". Liberalism is compatible with any number of different cultures provided only that they are voluntary affairs that do not impose costs on others. Given the fairly uncontentious character of the definition (that it ought to be fully *implemented* is contentious) of liberalism just mentioned (that 'people

⁹² *Ibid.* p.214.

should be allowed to carry on their lives with as little interference by others as possible') it seems utterly mistaken to claim that cultural pluralism as such, or as found in the UK, is incompatible with liberalism.

"After liberalism"

Gray reviews his objections to liberalism and looks to the future in the book's "Postscript: after liberalism". The postscript is particularly marked by a new approach whereby Gray has abandoned critical rationalism and consequently demands new and impossible demonstrations of the value of liberalism. This new approach is focused on here, but a few additional points are also tackled.

Liberalism, which in its application to personal conduct aims for toleration and even pluralism, is in its political demands an expression of intolerance, since it denies the evident truth that many very different forms of government may, each in its own way, contribute to an authentic mode of well-being ... No liberal can accept (without thereby ceasing to be a liberal) that liberal practice expresses and embodies only one among many ranges of often conflicting and sometimes incommensurable varieties of human flourishing.⁹³

The only thing which liberalism demands is freedom; the only thing it is intolerant of is tyranny. Liberalism does not call for mere 'toleration'. Mere 'toleration' cannot be practised; one needs to specify what is to be tolerated. What liberalism demands is toleration of the individual's doing what he likes (however much that seems disgusting or

⁹³ Ibid. p.239.

useless) provided he is not interfering with (imposing costs on) others: toleration of individual liberty.

Liberals should be intolerant of politics because the state is (empirically) the greatest enemy of liberty. So there is no strange inconsistency in liberal toleration here.

It is certainly true that different forms of government are compatible with some types of well-being. The state does not destroy all wealth and welfare (especially for those who know how to use the state to their own advantage). If Gray is making the serious claim that political systems are often at least as good as libertarian systems he ought to give an example rather than rely on the apparent implication that liberals are merely dogmatic or naive. If his gun is loaded why does he not fire it? He pleads "incommensurability" as though it is an excuse, but if he gave an example it would be possible to test this.

Gray claims that he has:

examined and found wanting all the major justificatory strategies in the project of constructing a liberal ideology.⁹⁴

Gray no longer accepts Popper's epistemological theory of falsificationism; if he did he would see that the liberal idea that it is desirable to respect individual liberty does not need to, and logically cannot, be justified. This idea does not require any theoretical underpinning. It can be a bold conjecture that remains plausible until it is

⁹⁴ Ibid. p.240.

destroyed by criticism. Gray is right to think that he has deflated many attempts to justify liberalism; he is wrong to think that this means that liberalism has to be abandoned. (It is true that it cannot operate if no theory of liberty is coherent, but the quasi-Lockean theory in this thesis remains unrefuted by any of Gray's criticisms.)

Later Gray writes, of Mill's and Popper's accounts:

If it is unclear that scientific knowledge grows best in a scientific community devoted to unencumbered criticism and self-criticism, it is just as doubtful that the progress of science depends upon the institutions of a liberal society.⁹⁵

But doubts are not criticisms. And even if Gray had criticisms and these were refuted he would now still want an impossible justification of liberalism while inconsistently resting his own position on nothing.

Gray writes of Mill's experiments in living:

We do not know what is to count as a criterion of success in an experiment in living ... how are we to know when the relevant evidence is before us? How are we to know when the experiment has been completed?⁹⁶

Liberally, the individual is to decide, and he is bound to use tentative conjecture to guide him. So any "criterion of success" will be personal and conjectural. It would be illiberal to impose someone else's criterion. Falsificationism shows us that it is impossible to guarantee any criterion.

⁹⁵ Ibid. p.243.

⁹⁶ Ibid. p.243.

Gray continues:

What reason is there for according further freedom of action in a respect of a form of life which experimentation has shown to be disastrous? There is here an irresolvable conflict between the claim of individuals to live as they please and the defence of that freedom in terms of cumulative moral knowledge of the conditions of human well-being.⁹⁷

Who knows that some form of life is disastrous? Who can best judge but each individual for himself? Gray surely wants to decide for himself, as do I. If he has a reason to deny others the same liberty he ought to state it for criticism. It is logically possible that there is a conflict between individuals' living as they please and their failing to learn from their own mistakes and others' mistakes concerning what increases welfare. Is there a real conflict? We are not told so. Apparently it is enough for Gray that there is no guarantee of harmony. He has no real evidence of conflict to offer. (If Gray thinks, as seems plausible, that Popper's falsificationism is refuted by Feyerabend's arguments, then that explains his position, but that epistemological debate is too far off the subject for explicit discussion here.)

Gray repeats his justificationist mistake by asserting:

the fundamental insight that there is no pre-ordained harmony and no inevitable connection between human well-being and the promotion of truth.⁹⁸

⁹⁷ Ibid. p.244.

⁹⁸ Ibid. p.248.

The conjecture that there is a connection between human well-being and the promotion of truth (and that liberty allows for both) is but one bold conjecture that can be defended (and thereby give a defence to liberty). It does not and cannot be given unshakeable *support* and it cannot and should not be offered as *support* (especially the main support) for liberty.

So Gray is completely correct in his claim that "the epistemological route to the *justification* [emphasis added] of liberalism is a failure."⁹⁹ He merely fails to see that the epistemological route can nevertheless be held out as but one among many *defences* of liberalism.

Gray links his criticism of the growth of knowledge with his earlier point about competing forms of life when he writes:

the epistemological strategy neglects the real possibility that the growth of knowledge (even if it does proceed fastest in liberal orders) is only one human good and may come into conflict with others that are sometimes weightier.¹⁰⁰

He gives the example of "the interest we have in reproducing our cultural traditions."¹⁰¹

Again, as one defence among others, the epistemological strategy does not need to come into conflict with other goods than knowledge. It might just be that one can have

⁹⁹ *Ibid.* p.248.

¹⁰⁰ *Ibid.* pp.248-249.

¹⁰¹ *Ibid.* p.248.

more of many valuable things in a free society. It might be that there is no significant clash between knowledge and other desirable values (that is, values that are morally defensible). Gray specifically suggests a clash between knowledge and cultural traditions. Unfortunately he does not indicate the form such a clash might take; we can only guess. The growth of knowledge might well undermine such things as traditional religion, opinions and authority when these are based on error. I see no good reason to think these mistaken things are worth preserving. But it would probably be fruitless to argue on the basis of what Gray might think. If Gray had real criticisms instead of logically possibilities it might be that he could make a powerful point here. Without these we can attack only straw men of our own devising, so we had better move on.

Finally Gray gives us some substantial examples to criticise:

It is obvious ... that many virtues and excellencies are weak or absent from liberal societies. The virtues of a courtier, of a warrior, or of a pious peasant, presuppose a social order which cannot coexist with a liberal society. We may go further. It may well be ... that a liberal order undermines important virtues, including virtues upon which that order itself depends. The hedonism characteristic of market societies may threaten the martial virtues that are indispensable to it, and individualism may weaken the familial virtues on which an individualist order rests. The connection between liberal freedom and the virtues is a contingent and sometimes delusive one

....
¹⁰²

Let us grant that the occupations listed have their particular 'virtues' (and so do those of a customs officer

¹⁰² Ibid. pp.260-261.

and a torturer, no doubt). The question is: Are they worth the loss of freedom that makes them possible? Either Gray thinks that a society with such things is genuinely preferable or at least as good (in which case he ought to tell us why we are mistaken to prefer liberty) or (more plausibly) he is merely complaining that a liberal society is not better in every imaginable way. But obviously this point can be conceded without impugning the general superiority of liberalism. This is another indication that Gray has turned from being quite a good critic of liberalism into a rather feeble one.

It logically might be that the liberal order undermines the virtues on which it rests, but Gray's brief examples are not very convincing. Even if we grant that hedonism is characteristic of market societies it can be replied that good wages might motivate some poorer hedonists to go into the army and other richer hedonists to pay to protect their continuing hedonism. Gray is supposing that free market defence is impractical without argument (admittedly there is not much literature on this¹⁰³). But the state is both a machine for initiating wars and is itself a vulnerable target of control for other states. Statesmen are responsible for war and they are relatively safe in the current system of state military machines, so they are not adequately deterred. Why would it be worse, for instance, for public subscriptions to pay for spies, assassins, or

¹⁰³ Though Rothbard 1978 makes some good points.

mercenaries to deal with (or merely threaten to deal with) any dangerous foreign statesmen?

How may individualism weaken family virtues? It is difficult to be sure what Gray might mean. Is individualism supposed to be inherently egoistic? That might cause trouble for families (and hence welfare). But respect for individual liberty has no such implication and that is the only kind of individualism being discussed here. That an individual should not simply be forced to do things for the good of others does not entail that individuals will be selfish or that they cannot bind themselves contractually in marriage. More detailed responses to Gray are difficult without more sophisticated accounts of what seem, in any case, mere logical possibilities.

What is wrong with a "contingent" connection between liberty and the virtues? Gray again wants a logical guarantee that liberalism is the best system. This is too demanding. And he has not, in any case, given a good example of the "delusive" nature of the connection between liberty and the virtues.

Gray continues:

The spurious universality of liberal principles is a consequence of the self-deception of liberal philosophy, which is bound to deny the particularistic character of all genuine moral and political reasoning.¹⁰⁴

¹⁰⁴ Gray 1989 p.262.

Of course people will tend to have different moral and political views in non-liberal societies. The liberal merely thinks these other societies would be better if they liberalised. Which illiberal practices does Gray support in such societies but declines to state for criticism? We cannot answer his criticisms more thoroughly unless he makes them more specific. There is a moral clash with illiberal aspects of other societies but it is not a 'moral imperialism' to want to change them. That is to think collectivistically. The liberal wants the liberty of each *individual* respected.

Gray denies that there is "anywhere a compelling demonstration of the priority of liberty over other political values."¹⁰⁵ Again, he wants a justification and a guarantee (a "compelling demonstration"). But he also holds out the 'insight' that "philosophy as a search for foundations" ought to be abandoned¹⁰⁶, so why is the lack of a compelling demonstration a failing for liberalism? It looks as though Gray must return to bold conjectural epistemology in political philosophy.

Instead he thinks philosophy ought to be abandoned in favour of "theorizing":

In the wake of philosophy, the object of theorizing is the attainment of self-understanding as practitioners

¹⁰⁵ Ibid. p.262.

¹⁰⁶ Ibid. p.263.

of the historically contingent and specific forms of life we inherit or adopt.¹⁰⁷

It is as though Gray is bored with philosophy and so he declares it to be a Philistine activity when used in the realm of politics. "Theorizing" seems to be inherently conservative and require a grasp of cultural matters rather than deeper philosophical issues. If Gray thinks he can maintain a comfortable conservative and cultural approach to politics that rules out of court troublesome philosophy, then he is wrong. He can only turn a blind eye to the philosophy that is bound to change the world in ways that those that decline (or cease) to study it will fail have an influence on.

Gray concludes:

For the political Pyrrhonist, by contrast with the liberal, there are few universal political dilemmas and no universal solutions. ... Whatever he does, he will not engage in the vain project of constructing a liberal doctrine. Indeed, if his enquiries have any practical aim (and they need not), it will be to protect the historical inheritance of liberal practice from the excesses of an inordinate liberal ideology.¹⁰⁸

Gray's new cultural relativism, skepticism and pragmatism are implied to be examples of hard-won wisdom. But given the failure and degeneration of his criticism this looks more like an old soldier who has become too tired for philosophical battles so is making excuses in order to retire and tend a quiet cultural garden.

¹⁰⁷ Ibid. p.263.

¹⁰⁸ Ibid. p.264.

4. A Coda on Anarchy, Liberty and Pluralism

This section analyses the relationships between pluralism, liberty and anarchy as misunderstood in a typical but sophisticated way in some recent writings of one prominent political philosopher, John Rawls.

'Anarchy' means 'no rule' (its literal etymology) in the sense of 'no rule of persons by the state or other institutions or persons'. In a society where people interact without imposing on each other no one is ruling. Anarchy is thus linked to liberty as voluntarism in an *a priori* way: to the extent that we have liberty we approach anarchy; to the extent that we lack liberty we approach totalitarianism.

I generally agree with the free-market anarchist economic arguments of Murray Rothbard and David Friedman. I have nothing in particular to add here to their practical economic arguments except what qualifications are explicit or implicit in the foregoing chapters.

Nozick is not an anarchist but does not dismiss anarchy out of hand in his *Anarchy State and Utopia*. I more or less agree with Rothbard's criticisms of Nozick's argument for the minimal state.¹⁰⁹ I will not repeat those here. Nor

¹⁰⁹ Rothbard 1982.

will I tackle David Miller's rejection of free-market anarchy at the end of his book on anarchism.¹¹⁰ I do not think he seriously considers the market-anarchy explanations of public goods, policing, and nationalism to be found in Rothbard and Friedman (though he cites them in his bibliography), but there would be no point in merely repeating their general economic or moral arguments, and this is not the place to elaborate on them. What I am interested in here is the merely *presuppositional* dismissal of the anarchistic route to maximising liberty and welfare and allowing for pluralism. We look at some recent writings of one erudite but politically moderate philosopher, John Rawls. He is chosen because his presuppositions are so typical, and his writings influential.

Rawls against anarchy

In some recent writings by Rawls that are intended to clarify his position in *A Theory of Justice* we can see his presuppositions against anarchism brought out clearly. We here cite and respond to several examples. First we look at "Justice as Fairness: Political not Metaphysical".¹¹¹ In this article Rawls is trying to show that:

in a constitutional democracy the public conception of justice should be, as far as possible, independent of controversial philosophical and religious doctrines.¹¹²

¹¹⁰ Miller 1984.

¹¹¹ Rawls 1985.

¹¹² Ibid. p.223.

What Rawls is really looking for is a clear and robust moral system of basic social rules that support constitutional democracy. To be the more clear and robust these rules are to avoid controversy in philosophical and religious doctrines.

Even if we grant that Rawls can achieve this goal it is clear that he has merely side-stepped the clash of some political possibilities by simply refusing to consider anything outside some form of constitutional democracy. If there are no proper arguments against alternatives, and he is really only trying to preach a clearer understanding to the converted, then why should this thesis criticise his writings? Because he muddies the water (albeit unintentionally) on the natures of liberalism, liberty, democracy, society and justice in ways that are quite typical and which help to sustain popular views against anarchy.

Rawls states:

A deep disagreement exists as to how the values of liberty and equality are best realised in the basic structure of society. To simplify we may think of this disagreement as a conflict within the tradition of democratic thought itself, between the tradition associated with Locke, which gives greater weight to what Constant called the liberties of the moderns, "freedom of thought and conscience, certain basic rights of the person and of property, and the rule of law, and the tradition associated with Rousseau which gives greater weight to what Constant called the "liberties of the ancients", the equal political liberties and the values of public life. ... Justice

as fairness tries to adjudicate between these traditions"¹¹³

The "liberties of the moderns" as listed do seem to refer to people being free from interferences by others (with the possible exception of "the rule of law", which seems to merely amount to the state's interfering without any exceptions). The "liberties of the ancients", on the contrary, seem to be the right to have a hand in interfering with the individual freedoms of others. For politics always practically entails imposing costs on people. Democracy is a political process that interferes with liberty. It is confusing to place liberty within the tradition with which it must be at odds (it is merely logically possible that democracy might increase overall liberty despite the initial curtailment). So "justice as fairness" seems to be more about striking a balance between individual liberty and democracy rather than adjudicating competing claims within democracy, as Rawls states.

Rawls drops into holistic views of society and justice without argument:

A society is viewed as a more or less complete and self-sufficient scheme of cooperation A sense of justice is the capacity to understand, to apply, and to act from the public conception of justice which characterises the fair terms of social cooperation.¹¹⁴

Society is not a "scheme" in the sense that it is a systematic arrangement or single plan. One of Hayek's most

¹¹³ Ibid. p.227.

¹¹⁴ Ibid. p.233.

important ideas is that what might look like the product of a systematic plan is often really a "spontaneous order" that has arisen polycentrically (or anarchistically). And to the extent that we try to impose a systematic plan on such things the result can be chaos. A society is more like the outcome of individual interactions in some geographical region. To view this outcome of individual interactions as a "scheme" might tempt one to feel that one can be justified in imposing a 'better scheme' despite the real schemes or plans of the many individuals that this might override.¹¹⁵

The same holism is assumed in defining a sense of "justice" as something that must be derived from the "public conception". But there is no agent who is the public; there are only individuals with their own views on the matter. Perhaps Rawls is referring to the majority. But it is not clear why the majority's view ought to be regarded as the correct view by definition.

"Social cooperation" is also an expression that seems designed to lump together what are really quite distinct acts of cooperation. This suspicion is confirmed by what Rawls writes about "the fruits of social cooperation." (Ryan's similar misleading expression, "proceeds of social collaboration", was analysed in the previous chapter).

¹¹⁵ This mistaken collectivist view of society is epitomised by the story of the young boy who saw a large gentleman walk by and asked his mother: "What's that man for?"

We are told that:

one of the deepest distinctions between political conceptions of justice is between those that allow for a plurality of opposing and even incommensurable conceptions of the good and those that hold that there is but one conception of the good which is to be recognised by all persons, so far as they are fully rational.¹¹⁶

Plato, Aristotle, Augustine, Aquinas and Classical Utilitarianism are said to be in the singular category. Liberalism is in the plural category. This is supposed to be because in liberalism:

the concept of justice is independent from and prior to the conception of goodness in the sense that its principles limit the conceptions of the good which are permissible.¹¹⁷

In fact, all systems of basic social rules (systems of "justice") set limits on the conceptions of the good but also allow some leeway for individualism. Constitutional democracy might allow for more diversity than most religions but this seems to be a contingent difference and a matter of degree: within most religions many kinds of lifestyle are possible as long as they don't flout the religion; within a constitutional democracy many kinds of lifestyle are possible as long as they don't flout constitutional democracy itself--but that is just what I want to do. And the reason is that I believe that market anarchy would be more liberal in the sense that more activities and ways of living would be possible and tolerated as long as they do not impose costs on others. People would not have the state to use as a tool of

¹¹⁶ Rawls 1985 p.248.

¹¹⁷ Ibid. p.249.

repression at the taxpayers' expense. Rawls seems to feel it axiomatic that there would be the maximum tolerance of different lifestyles under some form of constitutional democracy. It is not, as Friedman and Rothbard show.

The piece concludes on a similar note:

in a society marked by deep divisions between opposing and incommensurable conceptions of the good, justice as fairness enables us at least to conceive how social unity can be both possible and stable.¹¹⁸

Again, Rawls is overlooking the economic anarchist's arguments that the state is a cause of strife by creating the conditions for predation by a host of vested interests; that constitutional democracy is a way of setting people against one another in a negative-sum game. Intolerance and the destruction of wealth are the effects of this system. Social unity could be better achieved by (as far as possible) respecting everyone's rights to do what he wishes as long as he does not impose on others (and paying compensation for any imposed costs). This anarchistic possibility is left unconsidered, and positively obscured by Rawls' account of the relevant concepts.

In "The idea of an overlapping consensus"¹¹⁹ Rawls combines a tacit dismissal of anarchy (among other possibilities) with several of the moral and social ideas that are fundamental to defending it; instead he claims these ideas

¹¹⁸ Ibid. p.249.

¹¹⁹ Rawls 1986.

for liberal democracy. I shall criticise several such examples.

Rawls holds that within a constitutional democracy a "political conception of justice" that rests on self- or group-interests will be a mere *modus vivendi* and hence unstable. Stability comes with:

a regulative political conception of justice that can articulate and order in a principled way the political ideals and values of a democratic regime, thereby specifying the aims the constitution is to achieve and the limits it is to respect. In addition, this political conception needs to be such that there is some hope of its gaining the support of an overlapping consensus, that is, a consensus in which it is affirmed by the opposing religious, philosophical and moral doctrines likely to thrive over generations in a more or less just constitutional democracy, where the criterion of justice is that political conception itself.¹²⁰

The anarchist can agree that a conception of basic social rules will not be as stable if it is based on pure self- or group-interests. There is nothing about this idea that is peculiar to democracy rather than any other basic rules of social interaction, whether another kind of archy or even anarchy. Both extreme authoritarian regimes and extreme voluntaristic regimes will only tend to persist in so far as the general populace feels moral approval of them or loyalty towards them.

While authoritarianism obviously limits the pluralism that Rawls feels unavoidable, it is not clear how democracy defends it better than anarchy. Rawls writes of having

¹²⁰ Ibid. p.1.

clear aims and limits to a constitution, as though this is some guarantee of their being respected. But in the USA the constitution has been eroded from the time of its inception. The very democratic mechanism has enabled interest groups to subvert rights that might have been more stable left to unregulated, polycentric support.

The liberalisms of Kant and Mill are rejected:

their doctrines of free institutions rest in large part on ideals and values that are not generally, or perhaps even widely, shared in a democratic society. They are not a practical public basis of a political conception of justice, and [Rawls suspects] the same is true of many liberalisms besides those of Mill and Kant.¹²¹

They are held to be too comprehensive to be practical for Rawls' purpose. What is needed is "implicitly shared fundamental ideas and principles."¹²² He recognises that it might not be possible to avoid comprehensive doctrines entirely but sees the question as:

what is the least that must be asserted; and if it must be asserted what is its least controversial form?¹²³

The fact of pluralism makes this necessary if we are to reach a consensus.

Here Rawls is not merely rejecting "many liberalisms" that do not fit his purposes; he is rejecting extreme liberalism because he sees it as conflicting with other ideals, including that of democracy. From the anarchistic point of

¹²¹ Ibid. p.6.

¹²² Ibid. p.6.

¹²³ Ibid. p.8.

view Rawls is really wanting to *limit pluralism* here with his own comprehensive view of how society should be organised. Pluralism does make it desirable that we reach a consensus on liberal social rules. But the anarchistic answer to Rawls' question of the least that must be asserted, and in its least controversial form, might well be '*Live and let live*' i.e. 'You let me live without interference and I shall not interfere with you.'

This would seem to be far more pluralistic than Rawls' implicit answer which to the anarchist looks rather like '*Regulate and let regulate*' i.e. 'Let us share in the regulation of everyone'--a Rousseauian travesty of individual freedom. Of course, most people do currently see democracy as desirable and so, strictly speaking, '*Live and let live*' is controversial. But this is because people do not see, or do not mind, that democracy is the enemy of liberal tolerance and wealth creation. Were Rawls to see this (in his "original position"?) he would surely agree that we should not pander to the prevailing conception of "justice" but, instead, argue for the anarchistic liberalism that is a better option.

Rawls deals with the criticism that an overlapping consensus is itself a mere *modus vivendi*. In the example of states he says that any two of them with a treaty "are ready to pursue their goals at the expense of the other,

and should conditions change they may do so."¹²⁴ Hence the situation is unstable. He claims:

a similar background is present when we think of social consensus founded on self- or group-interests, or on the outcome of political bargaining: social unity is only apparent as its stability is contingent on circumstances remaining such as not to upset the fortunate convergence of interests.¹²⁵

But with an overlapping consensus "the political conception of justice, is itself a moral conception. And ... it is affirmed on moral grounds ... ".¹²⁶ Only where people are prepared to continue to give support to the system despite changes in the balance of power is there stability due to an overlapping consensus rather than a mere *modus vivendi*.

Here it seems quite right to see that moral support is different from, and more stable than, a mere *modus vivendi*. But this would apply equally to an anarchistic society. Surely I can morally affirm voluntary association at least as sincerely as Rawls can morally affirm state intervention. And it can be the very existence of a democratic system that constantly tempts and makes possible political actions at the expense of others--which must undermine social unity.

The "method of avoidance"¹²⁷ is Rawls expression for attempting to come up with a view that is maximally acceptable to all citizens from "religious, philosophical

¹²⁴ Ibid. pp.10-11.

¹²⁵ Ibid. p.11.

¹²⁶ Ibid. p.11.

¹²⁷ Ibid. p.12.

or moral" points of view. He thinks of "basic rights and liberties as taking certain questions off the political agenda."¹²⁸ Because:

Faced with the fact of pluralism, a liberal view removes from the political agenda the most divisive issues ¹²⁹

Rawls is logically bound to be doing the opposite of what he claims here. Politics is about what states do. To use the state to enforce certain so-called "basic rights and liberties" come what may is precisely to attempt to permanently politicise them. Rawls is really trying to rule other social systems out of (the state) court. One of the systems is anarchy with its greater tolerance of pluralism--the very thing he claims to be wanting to preserve.

It might still be asked whether there is any difference in terms of pluralism between a privatised system of enforcing libertarian rules and a state system which enforces the same rules. But this presupposes that the state can tolerate the liberty which seems to naturally result in pluralism. States usually do two main things: they tax and they forcibly monopolise the legal system. Vested interests then compete to milk the state of tax money and to universally regulate others in various ways (in business and private life). This is bound in practice to destroy voluntary pluralistic alternatives. It would not be

¹²⁸ Ibid. p.14.

¹²⁹ Ibid. p.17.

appropriate to go into detailed theoretical and empirical economic evidence here. I can only refer again to the libertarian economic literature especially the writings of Rothbard and David Friedman.

We are told that citizens may not be able to fully explain their agreement with each other:

They view the political conception as itself normally sufficient and may not expect, or think they need, greater political understanding than that.¹³⁰

They may start out thinking of the system as a mere *modus vivendi* but they can then come to affirm it for its own sake, achieving the "overlapping consensus" that makes for stability.

Again, this is just what the anarchist would expect to happen. Initially, people would probably accept anarchy on the prudential basis that it is *safer* to 'live and let live', for to interfere with others is to invite retaliation. Eventually, people are likely to become more tolerant of freely chosen lifestyles and feel that it is *positively immoral* to interfere with them. Such tolerance would seem to be a vain hope in any political system as this entails the initiation of impositions by a monopoly agency. And this, further, naturally invites involuntary exploitation, privilege, and retaliation instead of mutually beneficial co-operation.

¹³⁰ *Ibid.* p.16.

5. A Modest Conclusion

Is the supposed congruence of liberty and welfare too much of a coincidence to be true? Not when you examine the conceptual and practical relationships of plausible views of liberty, welfare, and rationality and remember that all the great classical economists implicitly testified to a considerable congruence and that many modern social scientists (especially economists) go still further (Mises, Rothbard, Hayek, Milton Friedman, David Friedman, Becker, Buchanan, etc.).

This thesis has covered a lot of ground. Each chapter, or even many of its parts, could have involved sufficient major literature to make for a separate thesis, and, consequently, there is not the exhaustive approach that leaves me feeling all the important problems have been dealt with. But to have taken a smaller area would have been to abandon the overall theory (and perhaps I would still have felt that I had missed much out), and this theory is the way that I believe that the social scientific work in question must be defended if its full significance is to be seen.

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