

Beyond Liberty Alone

*A Progressive Vision of Freedom
and Capitalism in America*

Howard I. Schwartz, PhD

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To my wife, Carroll,
who brings out the best in me.

Chapter 8

The Myth of the Social Contract

Time has now come in our discussion to take a hard look at the purposes of what the early moderns called the political “commonwealth,” or what later became “the state” or “nation-state.” Why do we all live in nations anyway? Why bother with political institutions that set laws and have powers to punish us, jail us, and take away our liberty, or even put us to death? Surely people who celebrate liberty should prefer to have no constraints and live with as much freedom as possible. So why choose to live in a state rather than in a state of nature? This paradox has been obvious to modern thinkers in the rights tradition from the beginning. As Locke said, “IF Man in the State of Nature be so free, as has been said; If he be absolute Lord of his own Person and Possessions, equal to the greatest, and subject to no Body, why will he part with his Freedom? Why will he give up this Empire, and subject himself to the Dominion and Controul of any other Power?”¹

According to the early modern thinkers, humans create political commonwealths and states to protect their lives, liberties, and properties as well as take advantage of the range of benefits of social life afforded by peace. If we did not feel insecure, live in a state of fear, or find inconveniences in nature, humans would not have submitted themselves to the power of a government at all.² The purpose of government is thus to protect our properties, construed broadly as including also our rights of life and liberty. In this theory, human beings chose voluntarily to live under the power of the state because it was better than the envisioned

alternative. This is the classic theory of what is typically called “the social contract.”

In the social contract theory of the state, individuals joined together voluntarily in an agreement to live by a set of common laws, which they collectively created in exchange for the benefits of social life and the protection of lives, liberties, and properties. The state’s powers were thus understood to be derivative from the rights that individuals originally held in nature prior to joining the contract. The state’s rights to create and enforce laws and to punish offenders all derive from the contracting individuals’ original natural rights to protect their own lives, liberties, and properties. The state gets some but not all of the rights and powers that belonged to individuals in their natural state.

Liberty-first advocates build on this understanding of the state to criticize the way that the American government is repeatedly overstepping the appropriate bounds of its power and infringing on the freedom of individual rights. In their understanding, government abuses its powers in a variety of ways: by taxing individuals too much, by overregulating business and the economy, and by creating rules to govern individual behavior, an area where government has no business being. The nature of liberty requires government to be as minimalist as possible and to stay out of people’s lives.³

And yet there is something very deeply wrong historically and morally about the conception of the state as a social contract that is rarely if ever talked about anymore.⁴ We will talk about it here. The idea of the state as a social contract is a myth. It hides and trivializes both the actual histories of violence in human history that preceded the formation of any state as well as the inequalities of human life caused by the accidents of history and the violent nature of some human beings. We got here, to the place we are now, in whatever state we now live and with whatever property we now own, through a long series of events that were neither entirely fair nor equitable nor exclusively our own efforts. This is a critical insight that gets buried in the image of the state as a social contract. The idea of a contract carries with it the idea that everyone joins voluntarily and within a framework that is more or less fair to all.

As discussed in the previous chapter, in most cases there was never a clean or clear original contract that founded a state, and most states have some history of violence and conquest in their past by which some people conquered and took land from some other people.⁵ That history of violence itself calls into question the image of the state as deriving its just powers from the individuals who comprised it. For if the state acquired its territories through violence and conquest, rather than through some rightful means, then the properties that it regulates and protects on behalf of its citizens were never theirs rightfully to own.

Neither is it just the violence in the state’s own past that undermines the claim that its duties are only to protect the lives, liberties, and properties of its citizens. Even had there been an idyllic “social contract” in the beginning of the state, as the United States likes to claim about its own past, those who stood at the original social contract did not possess all the rights that they supposedly collected together when the state was created. We live within a framework of a mess that we have inherited from the past, no matter how righteous or ethical any of us is. And even had there been no violence ever, it would still be wrong to say that the properties the individuals bring into the state are exclusively their own, as we have discussed before. We all labor on the backs of thousands of people before us who created the platform on which we all live. There is thus a debt of inheritance to the past of those who contributed to our success. Whether or not a state came about through conquest and violence, the state’s responsibilities cannot be simply summarized as protecting the lives, liberties, and properties of its citizens. To define the state in that narrow way is to ignore history, human nature, and the moral burden of seeing humans as equal in value. Let us dig into these points in more detail to understand why the modern natural rights understanding of the state, and the one that informs the United States’ self-understanding, is flawed, and why it needs to be rethought.

If we take seriously the fact that the use of violence, power, and manipulation have been present throughout the history of the human species, then the social contract crumbles as a valid idea. Here’s why: If the allocation of properties and resources has not been fair in human

history, then the individuals who come to the table to create a social contract cannot have the rights they claim they want the state to protect. It is an invalid contract. If a person contracts with a thief to buy a car that was stolen, the thief does not have the right to enter into the contract to make the deal. The buyer who entered into the contract was thus cheated and entered the contract on false premises. And if the buyer entered the deal knowing the car was stolen, then the buyer is morally implicated too.

The same must be true at the founding contract of every state, since there must be some or many thieves or their heirs standing there participating in the social contract. If the state derives its powers from the contract between the individuals who comprise the state, then the state must have its powers illegitimately, since those who stood at the original contract did not all have the rights they claimed to bring into the contract. So too, the people who were moral and not thieves, or descendants of moral people, stand at the social contract shortchanged by the abuse of others who lived earlier.

It is deeply ironic that the social contract theory of the state actually takes the history of human violence as its own conceptual starting point. In doing so, the theory misses how the assumption of human violence destroys the very notion of the state that it seeks to defend. As noted earlier, modern natural rights theory holds that the state comes about because it is necessary to end violence, create peace, and eliminate the inconveniences of living in a state of nature. The state of nature is thought to be unsatisfactory for human beings because no one is secure from the violence of others and because everyone has the right to judge and enforce the law individually.⁶ In all of these cases, the state plays a key role in ending violence or injustice. In fact, that is why individuals are said to prefer losing some of their rights in nature and living under the power and authority of the state. Individuals relinquish some of their rights so that they get this benefit of the state's power and authority.

As is evident, the assumption is that people took properties and lives inappropriately from one another in nature and that the commonwealth or state as an institution arose as a remediation to this situation. The

state is thus portrayed as a way to transform the human animal into more civilized beings by reducing the power, violence, and partiality that otherwise structure human relations.

By implication, this understanding implies that those who enter into the state at a particular moment of time do not have in their possession what they might rightfully deserve, and some may have more than they deserve. At that moment in time, everyone's possessions are the results of a history that reaches back into the past in which violence and power shaped the distribution of property and resources. Thus there are people standing at the original contract who lack what they deserve and others who possess what they did not themselves earn or who inherited from ancestors who took by force, stealth, and power. If the state just imposes fairness and equality moving forward, it essentially freezes in place a structure of inequality that already exists in the history of the human species. And while the state may be increasing fairness going forward, that fairness is already based on a set of inequities that existed in nature or in prior states. However, playing a game fairly from an unfair starting point is hardly a fair game. The modern natural rights thinkers and their "liberty-first" heirs did not see this problem or think it was relevant. They assumed that the past was the past, and all the inequalities and injustices of the past were either wiped clean by the adoption of the social contract or were simply too problematic and complicated to weigh.

The problem is not just that a history of violence and injustice are concretized in the distribution of properties and resources that are brought by individuals into the state. Many states themselves do not come about historically through a social contract but instead are founded on a history of conquest and violence. As discussed in the previous chapter, even the United States, which claims to be one of the first to create a "social contract," had a history of violence and conquest entangled in its formation prior to the social contract on which it was founded. Natural rights theorists were aware of this objection, for critics of the modern natural rights theory, including some in the founding American context, argued that states always came about through conquest and not through a social contract.⁷

In response to such criticisms, modern defenders of social contract theory have argued that even if the state was not really founded through a social contract, the ideal state *should act as if it was*.⁸ In other words, the social contract is an ideal toward which a state should aspire even if it did not begin that way. *The moral or just state acts as if all citizens were at an original contract and gives them equal representation in founding the state's laws*. It was already obvious to the classic natural rights thinkers that not everyone was present at the original contract.⁹ Critics had noted that descendants of the original contractors clearly did not participate in the original social contract. Natural rights theorists responded to the criticism by arguing that the social contract is renewed and reaffirmed by every individual at maturity. Descendants of the original contractors are said to have a choice whether to affirm the social contract at their own maturity by choosing to leave the state or staying within it at their own choice, and no longer at their parents' discretion.¹⁰ The claim is that every person in essence makes a choice at adulthood whether to voluntarily consent to the state and reaffirm the original contract that was originally founded. In making that affirmation at maturity, every individual becomes subject to the same laws and privileges and has the right to shape the ongoing evolution of the social contract.

This view that treats the social contract as an ideal, rather than a reality, tries to rescue the morality of the state by discounting the past and the actual history of human violence that may have founded the state and that structured individual relationships throughout history. It ignores anything that happened prior to the development of the social contract.

Defenders of natural rights and the idea of social contract might respond pragmatically that this ideal state is the best human beings can hope to achieve. We cannot go back and disentangle the inequality embedded in the fabric of human history. The only possible moral stance is to impose fairness moving forward. On this view, the liberal state's purpose is to impose equity and fairness based on the starting point at which the state begins or at the point in time at which it becomes moral. This has been one way for natural rights theorists and their modern

interpreters to "get out of jail free" with respect to the moral problem of human violence.

If we accept such a pragmatic position, however, we are essentially saying we have no moral obligation to the past history of our species and to the uneven distribution of resources both globally and within our own states. It is that position that seems morally untenable and needs to be challenged. For if the whole premise of rights flows from the moral proposition that humans are equal in value and had a right to equal access to common resources at the beginning, then by what right do we say we can take advantage of what we have now, no matter how it came to us? It is an impossible contradiction that no one apparently wants to discuss.

My claim here is that we inherit a moral burden from history that is unavoidable if we rely on the notion of rights. Or, to put it another way, the very notion of a right seems to carry with it a claim from history. The claim that I own or have a right to my property and that the state must protect it rests on a moral proposition that this property has come to me rightfully and that I have an exclusive claim to it. We have seen how natural rights theorists felt this pressure to trace "rightness" back to Adam and Eve and respond to the claim of kings who grounded their right in history and the divine will as well. But the truth is that we have no way of knowing that the property came to us morally or rightfully. We can only see actions one or two generations back at best, and we have no way of knowing how and why the situation of our earlier ancestors came to be the way it was. In fact, there is a great deal of evidence that what came into our hands did so through a long sequence of actions and events that were both moral and immoral in character. There are no "undamaged goods." Everything is tainted. The idea that we own property rests on assumptions that are precisely the opposite. It is a moral claim that pretends as if history has been just. It assumes that no one else has a claim to the very same object or land in our possession. It assumes that anyone else's claim to the same properties can be rejected. There is no moral basis for such a position.

I have talked in earlier chapters about another kind of affirmative moral burden that we inherit from history. Even those of us who try to act morally and who labor hard can hardly claim that everything we have belongs to us alone. The outcome of our efforts is not necessarily directly proportional to our labor, no matter how hard we work or how creative we are. As argued earlier, we stand on the shoulders of many thousands of people before us who gave us the human platform on which we labor. Our labor is not only our own. We have become who we are through the labor of humans before us, and everything we do takes for granted their efforts in history. There is nothing that any of us can claim is ours exclusively. And while many of us work hard and contribute as well, everything that we own is a product of a long history of human labor that preceded us. Nothing is ours alone. This is the affirmative moral burden that we have to the past, to our ancestors who gave us the platform on which we carry out our lives, and to the thousands of inventors who left us with capabilities and inventions with which we build our lives. As I argued previously, we are like the entrepreneur who borrows from the bank or in whom the capitalist has invested. We are obligated to provide a return on the investment they have made in us and the debt we have inherited.

Thus far we have identified several ways in which the idea of the state as a social contract is flawed and simply a myth. Those who join the social contract or affirm the state do not rightfully own what they have in their possession. Human violence and conquest distorted the distribution of properties that would have been based exclusively on the rightful and fair labor of individuals. Some people have what they or their ancestors never earned rightfully. And some people do not have what they or their ancestors should have rightfully. These are the facts that we learn from history. Even apart from the history of violence, no one rightfully owns all of his or her own property. For everyone's labor already assumes the contribution of thousands of others who contributed earlier. And thus when we come to join together in the social contract, or participate in the state, we do not have the complete rights to the properties we own, even if we reaffirm the state on our own at maturity.

Reconceptualizing the Moral Purposes of the State

The conception that the state's primary purpose is to protect our rights essentially hides the fact that the state is freezing and protecting a set of property relations that were not fair or right to begin with. Even if fairness is imposed going forward, which is itself debatable, as we see in the next chapter, the very fact that the process must have started from an unjust starting point undermines the rightness of what follows. An analogy might be useful here. Often government is compared to an "umpire" that ensures the game is played fairly by the rules.¹¹ To extend the analogy here, we would be saying that the parties who join the game each come in to the start of the game with different scores, whether they deserved those scores or not. The umpire ensures the game is played fairly by the rules from that point forward. However, since there was not a level playing field to begin with, the enforcement of the rules evenly can hardly justify calling the game fair or moral. Instead, the umpire is in fact unwittingly enforcing an immoral situation by not questioning the starting point of those who join the game. Who would choose to play a football game if one started three touchdowns behind? The football season starts over with no wins and losses every year, making irrelevant the history of wins and losses from previous years. No one wants to play a game that is not fair and that does not give one a chance to win, which is why golfers with different skills give each other a "handicap." What makes a game fair is that competition is fair.

Understanding that the state is essentially immoral when it simply sees its role as protecting the lives, liberties, and properties of individuals as they now exist is a critical insight for those of us who want to move forward morally in this world of late capitalism. This insight both builds on the assumptions of the natural rights tradition and draws out its implicit moral implications that were left unrealized. The notion that we have rights at all, as we have seen, is a modern hypothesis that flows from the conviction that we are all equal in value before some absolute standard, however we may define it. The proposition that human beings are equal

in value is not a fact in nature, but a founding aspiration of modernity. On the interpretation of that aspiration offered here, the purpose of the state is not simply to protect the lives, liberties, and properties of its citizens, but to step toward a vision of human equality and attempt to counteract the unfairness of history, and the immorality of human nature, and pay back our debt to the past. For the truth is that nature never was fair or equal, and power and violence always played an important role in the evolution of the human species. That is our legacy and part of our debt.

What I am offering is a conception of the state that is very different from the one that typically is associated with the idea of rights. In the view here, we bring into the state not just rights of protection, but responsibilities and debts that were incurred before we were born. In both of these conceptions, the state is a human invention intended to improve the human condition and counteract the tendencies of human beings to use of violence and power. Still, there is a significant difference between the two views. On the original modern natural rights view, the state is intended to improve only the lot of those who come together under its contract. Its purpose is to end the violence in nature between those individuals and reduce the power that is used among them. The state has no obligation to any of those people who lived previously or who live elsewhere. States are themselves said to be in a state of nature toward one another and, until they make treaties with each other, they are like individuals in a state of nature.¹²

According to the alternative conception developed here, the ideal state is also a cultural invention of human beings, but its purpose goes beyond helping protect individuals' lives, liberties, and properties. Its purpose is also to help lift us up as human beings, and as a human species, by trying to redeem ourselves and by making improvements and repairs to the human condition. While the traditional modern notion of the state has always recognized its possibility of improving human life for those humans who leave nature, it has not recognized the duty of repair and reparation that goes with it. If as individuals we carry this burden of the past with us, then the states we live in do as well.

We are all debtors to the past in some fundamental way. And we have all been harmed and benefited from the history of the species. None of us are rightful owners of all our properties. And thus if we come together to live under a state, we do so with the recognition that we all bring with us a debt or moral burden that must be paid back and to which we all must contribute. The relative burden or debt depends on our individual and national situations. Our economic situation and our place in the world give us benefits or liabilities that we all carry with us. We are not discrete individuals with no moral obligations when we join a state or when we are born. Unless we were Adam and Eve, we are born into a world that was made by others before us and in which acts of violence and kindness shaped our own destinies. There is no clean slate when we are born. Though we have done nothing morally in the world at birth, we are born into a set of histories and facts that have moral implications because we are human. If we embrace the aspiration that we are all equal before the absolute, then we come into the world understanding the world has not lived up to our ultimate vision of what we want to be as human beings. Indeed, historically speaking, the proposition that we are all equal in value was not an idea that humans had in the beginning of time and for much of human history, and arguably it is one distinctive modern perspective since the Enlightenment. This is a relatively new human aspiration and one that we treat as a moral commitment by which to judge our actions and those of our fellows.

One might attack the above conception of the state as too idealistic and impractical. Indeed, one can reasonably argue that the wrongs and violence of the past are too hopelessly complex to sort through and disentangle. There is no way we can figure out "who harmed whom" and "who owes what to whom." Perhaps my ancestors worked morally and much harder than yours, or vice versa. We'll never know. Therefore, one could argue, the best we can do is impose fairness going forward. Furthermore, one might even argue that the violence used by our ancestors may have arisen because they were acting according to mistaken moral convictions, if not deep tendencies and instincts in the human species. Some might

even argue that humans were living out their natures as God had created them.

All of this could be true. While it is impossible to sort out the history of unfairness that may have existed in the past, this difficulty does not relieve us of all the burden of responsibility for that history. For the question before us is, what is the best we can do moving forward, and should the best we can do take any account of history? If we say history is too complex to sort through, does that mean we simply ignore history altogether? And on what grounds should our states simply protect our properties that we have in our hands now?

This is the heart of the debate with those who say that the purpose of the state is just to protect our lives, liberties, and properties. The alternative is that the state has a debt, both financial and moral in character, which is born from history and inherited from our human predecessors. The financial debt comes from the fact that each individual stands on the shoulders of those who came earlier. As I argued previously in chapter 3, everything we accomplish ourselves assumes the contributions and inventions of those who came before us. We labor on their backs and with their capital investments. Like the entrepreneur who borrows from the capitalist, we all have investments from our ancestors. These investments in us should be thought of as loans on which a return or interest is expected. Though those human capitalists who preceded and invested in us are no longer alive to collect the debt, their beneficiaries and descendants are our peer human beings. Our human peers are at least partly the beneficiaries, as are we, of the growth of whatever capital occurred. This would be the ultimate fulfillment of that vision that we are all the children of Adam and Eve (or, if one prefers, of Lucy) and that we all once owned resources in common. We have a moral debt as well that derives from the nature of our human species. Historically, we have spread across this earth not just laboring and staying constrained in the plots of land and with the properties each of us has rightfully earned. The history of our species is marked by violence and warfare, theft and power.

What would it mean for a state to pay attention to the debt and burden of history? It means that the state bears two kinds of responsibilities

beyond protection, safety, and regulation. One of those responsibilities is inward looking, toward its own citizens, and the other is outward looking, toward the citizens of other nations. Both focus the state and its purposes on values beyond the maintenance of the status quo and the protection of property as it now is. Both rest on an understanding of the claim of history and equality on our moral selves. Both see part of the state's purpose as involved in not the redistribution of wealth and resources, but the payment of debt to capitalist investors.

Consider first the inward-looking perspective. We should recognize that within our states there are massive discrepancies of wealth, education, and opportunities between the individuals who participate in the ideal of the social contract. Inequalities have in fact gotten worse over the last three decades in the United States.¹³ We know that these differences come from many sources: luck, history, self-initiative, persecution, and so forth. The United States has given many individuals the opportunity to overcome their histories and pull themselves up by their bootstraps. Some have “bootstrapped” themselves to the middle or upper class. The bootstrap philosophy, however, doesn't recognize the fact that not everyone has bootstraps, let alone shoes. While a small percentage of people do, it depends on a number of factors beyond self-initiative, including the economic situation at the time, the opportunities and resources available, and luck.

The United States celebrates the bootstrap philosophy because so many immigrants were able to remake themselves in the United States. Indeed, America was a land of opportunity in part because it was relatively unpopulated and undeveloped. In its early history, the United States offered vast resources and opportunities that were not as readily available in their countries of origin for immigrating Europeans. That early European expansion into the Americas, as we noted, was in part built upon a conquest, seizure, and purchase of land from the Indians. Subsequent waves of European settlers could take advantage of a vast continent of resources and what seemed like unlimited opportunity and growth. Now that the United States is fully developed and populated, the opportunities to pull oneself up by one's bootstraps are fewer and far

between, though still possible in certain sectors of the economy, such as high tech, green energy, and so forth. There is always room for some brilliant entrepreneurs who are there at the right time and place to strike it rich. But many are still impoverished, and wealth is concentrated in the hands of an even smaller number. Many are descended from people who were enslaved or marginalized earlier in history.¹⁴ Indeed, inequality has gotten worse over the last thirty years. From the perspective developed here, the possibility of some people bootstrapping themselves does not relieve the rest of us from the duty to the others. They too are descendants of our common ancestors. They too should be beneficiaries of what was built on the backs of their ancestors. My labor and success capitalize on the investments their ancestors made too, and they too should benefit from the results of my labor. My labor is not entirely my own and belongs at least in part to humanity in general.

From this perspective, the state has a duty to return some of my earnings and benefits to those who earn and benefit less. This government action is not theft. On the contrary, it would be theft were I to keep all my earnings. Everyone owns a piece of my earnings. Instead of thinking of this payment as a “transfer of wealth,” it should be thought of more as a payback on a loan or return on an investment that was made to us. It is not charity. It is an obligation born of a loan or investment given to us from the past.

To be sure, this understanding does not relieve any individual from the responsibility to care for his or her basic needs. Every individual has his or her own obligation to take the investments from our ancestors and try to enlarge them for the benefit of all. One cannot take a loan without a commitment to pay it back with interest. Thus a person who is lazy or who does not try hard does not deserve the same benefits as one who does. And the contributions should be in proportion to the resources that one has. The state’s purpose in all this is precisely to help in the monitoring of this intergenerational loan and the responsibility of sharing one’s success that devolves on every individual in proportion to his or her success.

This perspective should not be lumped together with a Marxist socialist vision. In the view offered here, not all capital is the property of

the state or collectively of the people. On the contrary, we are using capitalist concepts of loans, investments, and return on investment to explain this debt we owe to others. In this model, individuals still own private property but have in their assets value that should be paid back to others in the state. With a loan or capitalist investment, the terms of payback are clear. A percentage must be paid back on the loan or a percentage of the company is owned by the investor and the investor’s heirs. A similar obligation arises here.

One of the central purposes of the state is to regulate the management of this intergenerational payback and obligation. Through the liberal state’s democratic process, it should set a target percentage payback that occurs in any year. The state is a bank or capitalist writ large with the fiscal duty to monitor the intergenerational loan and investment. That responsibility should be treated as fundamental as any right that individuals have, including life, liberty, and property. And the duty to repay a percentage of one’s income or wealth should be codified into the Constitution as much as any of the civil or natural rights. In my view, there is no right of a state to exist if its mission is simply to codify the relations that exist at the time of its founding. Such a state, as I have been arguing, is an immoral state, for it imagines that the properties of those who enter the social contract have exclusive ownership of their assets.

We shift now from an internal-looking to an external-looking view. That view starts with the recognition that the boundaries of the state itself are arbitrarily drawn and depend on arbitrary facts of history themselves. If the rightful allocation of resources should have been done via labor and effort only, and had the peoples of the earth spread across the earth in just ways, then there is no telling what the boundaries of states would now be. Thus the first insight is that the state itself is a problematic institution that cannot really justify its existence as a moral entity. This view of the state takes us a further step beyond that early modern realization that God did not pick kings or popes to express the divine will in the form of political power. We go further and acknowledge what everyone has really known all along, namely, that the state within its

current boundaries is an arbitrary artifact of history too. What, then, is the purpose, if anything, of the state?

For those of us who feel a moral burden to the past and to the human species as a whole, for all the reasons that this book has talked about, the state has to be one of the vehicles through which we try to transform and improve the human situation and attempt to respond to our moral burden. We can think of other complementary means to do so, such as religious traditions, nonprofit agencies, transformation of business practices, and our own individual acts of kindness. It is easy too to see how states often fail dismally to be this power for reparation, especially with some of the ideologies that came out of the modern period. States, as well as religions, have all the same possibilities for violence that human beings themselves possess. The original claim that the purpose of the state is to end violence is ironic, since most if not all states have actually perpetuated violence of one kind or another at some time or another.

Still, there are reasons to see the liberal state, somewhat redefined, as offering our one hope as a species that is trying to live morally on this planet. Most people would agree that without some sort of police power that is broader than individuals, those who are more powerful, wealthy, or charismatic will take power into their own hands, and we will end up with a set of relations based on the will of the powerful, the economically wealthy, or both. Getting rid of the state, therefore, does not seem like it will solve the problem of violence, power, or uneven distribution of resources. The liberal theory of the state does not adequately address the financial debt and moral burden we inherit from the past. Instead, the classic liberal theory describes the power of the state as a means to protect the interests and concerns of its citizens only and their lives, liberties, and properties. In conceptualizing power this way, the tradition theory freezes and supports a set of relations that benefit the group of people who already have the resources.

On what grounds can we claim that the liberal state's obligation is broader and more complex than protection of its citizens only? If the state just protects us and our properties, the state is in fact aiding and abetting an accidental and immoral distribution of wealth based on past violence

and accidents of history. While the liberal state as traditionally understood has the positive impact of reducing the use of violence and power among its citizens under the rule of law and protecting them from other peoples or states that may harm them, it is also using its power to retain the status quo or expand the territories and power of its citizens. This is why in classic natural rights theory some theorists said states are in a "state of war" or "state of nature" with respect to one another. Seen from inside the state, the protection of citizens and the end of violence inside the state is a moral good. From outside the state looking in, however, the use of the state's power has the effect of hardening the distribution of resources between states as they are, based on their histories of violence and power, and of course in some cases power is used to expand the state's resources.

We all live on the horns of this dilemma. The same balance that we all recognize when it comes to interpersonal relationships also applies to the state that acts in our name. Were we to lay down all powers of the state, then we would have no protection of ourselves and our lives. Were we to focus only on our state and not the rest of the world, then we are for ourselves alone. We would, moreover, be thieves.

The moral liberal state (contrasting it with the immoral liberal state) has an obligation to those beyond its borders. It has a duty to go beyond the interests of its own citizens and attempt to repay the debt and level the playing field, to some extent. The Marxist vision of the state, of course, envisioned a leveling of the playing field within the state through the shared ownership of the means of production. The moral vision here is broader than that, seeing the disparities of wealth and resources across the species, and thus across states, as morally unfounded. What that means practically speaking is now something that we must discuss.

The Moral Liberal State

It is neither practical nor even desirable to completely level the playing field within a state or between states. We know that there are good reasons to link outcomes of individual efforts and talents to reward. When

I am rewarded for my industriousness, I am more likely to labor hard, invent something new, and contribute to the stock of human knowledge. Private property thus helps make people industrious and improves their moral character in some critical respects.¹⁵ We do not want to completely level the playing field and adopt state or communal ownership of the means of production. We have abundant evidence of how that approach has failed in practice.

Still, there is an intelligent position between these two extreme poles, despite the protestations of our opponents. On the one side, we have the instinct for and right to life and self-preservation. And we have the desire to improve our situation. On the other side, we have a moral compass, born from our histories and religious traditions and embedded in our psychologies. In its modern variation, that moral compass says that all human beings are equal in value and, as I have argued, the current distribution of wealth and resources across the human populations is neither fair nor consistent with that proposition. The only way to navigate between those pulls is to recognize an obligation of every individual and every state to shift some of its wealth and resources from those who have plenty to those who have less. As noted earlier, this should not be treated as a “transfer of wealth” but as a “payback of debt,” since the former by its very language makes it sound like it is an act of charity, whereas as we have seen, this is in fact more a return on a debt.¹⁶ When we pay back the bank for a loan on a house or car, or when a capitalist sells his company and returns a hundredfold to his investors, this is not a negative “transfer of wealth.” This is the completion of an obligation and contract. So too with the payback I am describing here. It is all relative, of course. But everyone is better off than someone else, and thus everyone has a duty to pay back some of his or her wealth to others. Let us now see what the basis is for this return of on investment.

The State, Taxes, and the Return of Wealth

We often think of everything that we earn as exclusively our own. If this were true, then why is a government allowed to tax us at all?

Why aren't all taxes defined as stealing our property, which a government is supposed to protect? The following statement from Locke illustrates what appears to be the modern rights conundrum:

Thirdly, The Supream Power [of the state] cannot take from any Man any part of his Property without his own consent. For the preservation of Property being the end of Government, and that for which Men enter into Society...Men therefore in Society having Property, they have such a right to the goods, which by the Law of the Community are theirs, that no Body hath a right to take their substance, or any part of it from them, without their own consent; without this they have no Property at all.¹⁷

Despite this claim that the state cannot take a person's property without his or her consent, taxes have been understood to be a duty and obligation of citizens in exchange for what they receive from the state or as a cost of living in a social community. The assumption has been that an exchange in value takes place. The state offers something to the citizen, and in exchange the citizen owes something to the state. It is not a “taking,” but a payment for services rendered. Many of these early modern convictions about taxes arose against the background of the seventeenth-century conflict in which English monarchs such as King Charles I were at frequent odds with Parliament over, among other things, the issue of raising taxes and revenues. For example, in what was a contentious move and one of the contributing factors to the English Civil Wars, King Charles I tried to make an end run around Parliament by raising revenues for the navy through “ship money,” an old, contentious law that gave the Crown the right to tax communities for the navy without parliamentary approval.¹⁸ The questions of who could raise taxes or revenues, under what conditions, and by what right were at the heart of the growing modern debate over the locus of authority and property in the early modern conceptions of the state.

As an example, one can see all the classic themes of the modern discussion on taxes already in play when Hobbes published *Leviathan* in

1651, after a decade of English civil war and only two years after King Charles I was beheaded.¹⁹ Hobbes positions taxes as a payment for the debt that citizens incur for the safety and protection they receive from the state. Since all subjects benefit equally from such safety and peace provided by the state, Hobbes concludes that taxes should be equal across subjects as well. This in his view is part of the equal justice that by the law of nature must govern the state. “For the Impositions, that are layd on the People by the Sovereign Power, are nothing else but the Wages, due to them that hold the publique Sword, to defend private men in the exercise of severall Trades, and Callings. Seeing then the benefit that every one receiveth thereby, is the enjoyment of life, which is equally dear to poor, and rich: the debt which a poor man oweth them that defense his life, is the same which a rich man oweth for the defence of his; saving that the rich, who have the services of the poor, may be debtors not onely for their own persons, but for many more.”²⁰

Hobbes is saying that everyone benefits equally with protection of his or her life and therefore the debt to society is the same, regardless of one’s personal wealth. And yet by safety Hobbes means more than “bare Preservation, but also all other Contentments of life.”

“Equall taxes,” in Hobbes’s view, however, does not mean taxing everyone at the same rate but based on a person’s level of consumption. “For what reason is there, that he which laboureth much, and sparing the fruits of his labour, consumeth little, should be more charged, then he that living idly, getteth little, and spendeth all he gets;...But when the Impositions, are layd upon those things which men consume, every man payeth equally for what he useth: Nor is the Common-wealth defrauded, by the luxurious waste of private men.”²¹

We see in Hobbes’s position most of the themes that are still contentious today. First and foremost, Hobbes positions taxes as a debt, not only for safety provided by the state but for the benefits of life that accrue from safety. Hobbes argues that taxes should fall equally on persons, since the benefits of safety fall equally to persons under the state. This is consistent with Hobbes’s assumption, discussed earlier, that individuals would never have agreed to be part of the state had the state’s rules not been

applied equally and with equity. Taxes are thus another example of how equality should govern relations in the state.

But equality does not mean everyone pays the same amount. Hobbes argues that taxes should be tied to an individual’s consumption, not based on total wealth. In linking the debt to society to the amount of enjoyment or consumption one has, Hobbes in essence equates debt with the benefits one receives through one’s contentment in life. In this way, the state isn’t “defrauded” by people who live in luxury but pay little, nor are those who have much wealth, but who spend little, punished by the state when they lead moderate lives. Taxes are proportionate to consumption.

Hobbes recognized a second purpose of taxes beyond payback for safety. Taxes were also to be used to care for the poor and indigent who were incapable of working. “And whereas many men, by accident unevitable, become unable to maintain themselves by their labour; they ought not to be left to the Charity of private persons; but to be provided for, (as far-forth as the necessities of Nature require, by the Lawes of the Common-wealth. For as it is Uncharitableness in any man, to neglect the impotent; so it is in the Sovereign of a Common-wealth, to expose them to the hazard of such uncertain Charity.”²² We thus see that the state’s purposes includes taking care of those who cannot care for themselves because of some act of fate, and the assumption is that the state can legitimately tax for that purpose.

While Hobbes acknowledges the responsibility of the state to care for “the impotent,” he insists, in anticipation of still current arguments, that idleness should be prevented and that able-bodied persons should not be supported by the state. Instead, those with strong bodies “are to be forced to work,” though Hobbes does not explain whether he literally means people should be conscripted for labor. But Hobbes does see the state as responsible for helping to make opportunities available, and therefore “to avoid the excuse of not finding employment, there ought to be such Lawes, as may encourage all manner of Arts; as Navigation, Agriculture, Fishing, and all manner of Manufacture that requires labour.” We see here the modern view that the state’s duty is to create an economic

environment that produces jobs and thus gives able-bodied people the opportunity to work and support themselves.

What if those state economic policies do not create sufficient jobs and individuals still cannot find work? Anticipating the view of Locke, who followed him, Hobbes goes on to say, “The multitude of poor, and yet strong people still increasing, they are to be transplanted into Countries not sufficiently inhabited, where nevertheless, they are not to exterminate those they find there.” Unlike Locke, who envisioned “unlimited resources” still available, Hobbes ends with a pessimistic and disturbing vision: “and when all the world is overcharged with Inhabitants, then the last remedy of all is Warre; which provideth for every man, by Victory, or Death.”

It is true that Hobbes endorsed an absolutist view of the state, believing that the sovereign, represented by either the appointed assembly or the monarch, had absolute power to make laws and even decide beliefs. In this sense, he did not take the step of leaving the question of taxes up to the people. But he clearly anticipated all the major contentious themes surrounding taxes and government’s role and posed the questions that continue to haunt us today.

John Locke, writing his *Second Treatise on Government* forty years later, was among those to take the final conceptual step that shifted the power on taxes from the sovereign to the people who comprised the state.²³ Locke provides a similar reason for why taxes are not considered theft. He notes that “governments cannot be supported without great charge, and it is fit every one who enjoys his share of the protection, should pay out of his estate his proportion for the maintenance of it.” Like Hobbes, Locke sees taxes as in part an obligation for the protection offered by the state, though Locke also notes that governments require substantial financing. But then Locke explains why this tax is not theft. “But still it must be with his own consent, *i.e.* the consent of the majority, giving it either by themselves, or their representatives chosen for them: for if any one shall claim a *power to lay* and levy taxes on the people, by his own authority, and without such consent of the people, he thereby invades the *fundamental law of property*, and subverts the end of government: for what

property have I in that, which another may by right take, when he pleases to himself?”²⁴

It is interesting to see how Locke solves the conceptual dilemma of explaining how a government cannot take from anyone “any part of his property without his own consent” yet can forcibly take money in the form of taxes. Locke argues that if the majority or their representatives endorse the tax, it is not considered against an individual’s will. Why not? Because Locke recognizes that taxes are really no different from any other kind of law that a society makes. No laws will be endorsed by everyone in the state. Thus any law adopted by the state will go against the will of some individuals. It would be impossible for the state to act at all if it tries to win the approval of every person. Locke therefore concludes that the conceptual agreement of those who have agreed to live in the state is to accept the vote of the majority or their representatives as the basis for the decision-making process.

And thus every Man, by consenting with others to make one Body Politick under one Government, puts himself under an Obligation to every one of that Society, to submit to the determination of the *majority*, and to be concluded by it; or else this *original Compact*, whereby he with others incorporates into *one Society*, would signifie nothing, and be no Compact, if he be left free and under no other ties, then he was in before in the State of Nature. For what appearance would there be of any Compact? What new Engagement if he were no farther tied by any Decrees of the Society, then he himself thought fit, and did actually consent to? This would be still as great a liberty, as he himself had before his Compact.²⁵

In this sense, there is an interesting similarity between Locke’s liberal state and the absolute state of Hobbes, for Locke’s liberal state also does not make everyone happy either nor give everyone individual consent. “Consent” in the liberal state is the will of the majority, which the individual has agreed to abide by as if it were his or her own consent. Thus

Locke sees compliance with laws and with taxes as taking place with one's consent, even if one does not individually agree.

In Locke's vision, an individual has a choice whether or not to live under the commonwealth. Yet making that choice at maturity, the individual has now bound him- or herself to the will of the majority, whether he or she likes the particular expression of that will or not. And thus the will of the majority by definition amounts to the consent of the individual.²⁶ This is the reason why, for Locke, one who enters society "divests himself of his Natural Liberty, and *puts on the bonds of Civil Society*."²⁷ Because individuals have consented to live in the state and because they have representation, the state is not stealing, even if it forcibly takes taxes that as individuals they do not affirm. The alternative fails, as Locke points out, for if everyone follows his or her own inclination, there is no state and individuals are thrown back into the predicament of the state of nature.

Locke is less explicit than Hobbes about the purposes for which taxes can be raised and leaves that question open ended, suggesting perhaps that the purposes of government can themselves be determined by the majority; the majority themselves can define the way taxes are implemented and for what purposes. Thus in his brief mention of taxes in his treatise on government, Locke does not take a position on how the state should deal with the question of poverty and unequal distribution of wealth. By his silence on the subject, he appears to leave that question up to the majority to decide and does not apparently see a need to set limits on which types of taxes are legitimate and which are not. It would seem to be a decision of the majority.

Unlike Hobbes, Locke does not here explicitly mandate that the state is to focus on job creation or how it should deal with the indigent and impoverished. Of course, we do know that he put tremendous emphasis on the value of labor and work. Thus it is not surprising that he would see the role of government to be the art of making people industrious:

This shews, how much numbers of men are to be preferred to largeness of dominions, and that the increase of lands, and the

right employing of them is the great art of government. And that Prince, who shall be so wise and godlike as by established laws of liberty to secure protection and encouragement to the honest industry of Mankind, against the oppression of power and narrowness of Party, will quickly be too hard for his neighbours: But this bye the bye.²⁸

And yet there is another side of Locke's statements on inequality that makes it more difficult to say what his own position on poverty would be. For Locke also thought that the unequal distribution of wealth came about in part because of the invention of money, as previously discussed. Prior to the invention of money, Locke assumed that the relative balance of wealth was more naturally maintained, because the natural tendency of things to spoil prevented people from hoarding more than they could use. In the state of nature, "it was useless as well as dishonest to carve himself too much, or take more than he needed."²⁹

Locke never says that the state has the responsibility to level out the inequality that humans had created. But one could construct a position around his views that does lead in that direction. Indeed, he does imply that ultimately extreme poverty overrides and suspends the law of property. For the ultimate purpose of resources as they were given by God in nature is for humans to sustain themselves and increase and multiply. In a discussion in his *First Treatise on Government*, in an argument about the nature of Creation and whether God had given Adam property over all the world, Locke had this to say:

But we know God hath not left one Man so to the Mercy of another, that he may starve him if he please: God the Lord and Father of all, has given no one of his Children such a Property in his peculiar Portion of the things of this World, but that he has given his needy Brother a Right to the Surplusage of his Goods; so that it cannot justly be denied him, when his pressing Wants call for it: and therefore no man could ever have a just Power over the Life of another, by Right of property in Land or Possessions;

since “twould always be a Sin, in any Man of Estate, to let his Brother perish for want of affording him Relief out of his Plenty. As *Justice* gives every man a title to the product of his honest Industry, and the fair Acquisitions of his Ancestors descended to him; so *Charity* gives every man a title to so much out of another’s Plenty, as will keep him from extream want, where he has no means to subsist otherwise.³⁰

Locke does not draw out the possible conclusions of his position here for the obligations of the state. But one could argue, based on his position, that the right to the surplus of goods by a needy brother is brought into the state and is part of the state’s obligations. This becomes all the more imperative when we realize that Locke’s foundational assumption guiding his faith in industriousness was that land was limitless, and those who applied themselves could find ways to support themselves.

Original Debt and the Return of Wealth

To return to the argument I have been making, individuals in the state, and thus the state itself, carry an obligation to pay back a debt to humanity and the human species. The notion of debt or payback, as I said in the previous section, is already present in the natural rights tradition in the form of the idea of taxes. But it is a notion that was conceptualized as a debt between the individuals and the state. Individuals owed the state a debt for their safety and contentment. The state had a responsibility back to its members. The notion of debt I am insisting on in this discussion, however, is broader and wider than that between the state and its members. It is a debt to the human species as a whole, both past and present. This notion of debt exists prior to the creation of the state and thus is not limited by the relationship of the state and its members.

This expanded notion of debt derives from the revised notions of property and labor that we have uncovered in the course of this analysis. Property is never exclusively my own, since my investments already

encode the investments and labors of thousands before me. Thus I carry a debt to the past and all those who contributed to the platform on which humans operate. That debt should be paid back to their living heirs, who are my contemporaneous human fellows, both those within my state and those without. This debt to my fellows thus arises as a responsibility on each individual and is handed off to the state, which carries the debt and helps execute its payback. Taxes are the mechanism by which this return on investment should be paid. Since the word “tax” has become synonymous with a bad word, it is worthwhile renaming this as a repayment on a debt.

I realize that the position I am articulating can be criticized as too idealistic and vague. What makes it vague, however, is only the fact that it has not yet been institutionalized. The very notion of a debt to society for safety and contentment is just as vague until it is quantified in some political and moral process that defines what that debt should be and how it should be paid off. Indeed, the very idea of a society founded on rights was a vague and idealistic idea when it was originally being developed. What transformed it from an idealistic conception to an institutionalized reality was a set of social transformations that changed the structure of government. It was equally vague to say society must defend us until we specified in some social and political institutions what that defense amounts to and should be. By the same token, all that is needed to take the “idealism” out of this conception of human debt is a transformation of practices by which we govern ourselves. To be sure, there is no loan document or terms of investment for our debt to the past as there would be between a bank and a borrower or a capitalist and an entrepreneur. And thus one of the responsibilities of the state is to forge a consensus on what this debt implies, based on the wealth of the nation.

We know, of course, that any decision-making process that is social and political in nature, like any discussion of taxes, will invariably be fraught with politics, debate, and power. So what else is new? If, however, we ensure that the ideas of “payback” and “debt” are part of our conceptual framework that founds our constitutions and shapes our institutions, then we have shifted the debate from concern with government

“stealing my property” to the question of “my responsibility as a human being.” Imagine that.

If we do not embrace this conception of the state as carrying and executing our collective individual duties to pay off our historical obligations, then the state is nothing but a power for defending and expanding the properties and wealth of its citizens. It is nothing more than power and violence writ large. This conception of the state as seeking to develop a nation’s wealth has in many ways been the guiding idea that has been aligned with the modern philosophy of rights and properties. While the political philosophy of rights was once a transformative and radical notion that subverted the power of the monarch, it has now been tamed and transformed into ideas that now support the status quo of violence. The idea that states have moral duties to mend the world, therefore, corresponds to the idea that individuals carry their own debts to the past.

For this conception of the state to win, or to have some influence, it will have to be taken up and become part of a political platform that adopts it and makes it a coherent position. In some ways, these ideas are already embedded in leftist and progressive notions of justice that point to moral obligations beyond ourselves and our states. What I have done, however, is ground such commitments in the very concepts of liberty, labor, and property, the key concepts in the political philosophy of the Right and the owners of wealth. The Left has made the mistake in the past of not taking on and contesting the conceptions of liberty and property of both those on the Right and of libertarians, and thereby weakened its own position. The Left thus looks like it does not embrace these seemingly important values and thus appears to abandon both the liberal traditions of modernity and of America. As I have been suggesting throughout this book, however, there is another and better way of understanding liberty that does not end up endorsing the view that everything for which I labor is mine and that the state is the institution of power that protects those rights.

If we succeed in this reunderstanding of liberty and learn to shift our focus to our responsibilities as much as our rights, and we understand our responsibility as arising from our obligations from the past, then

we create a new kind of politics that can transform at least some of the purposes of our state. The state exists not solely for our protection and contentment, but also to enable us to live up to our moral obligations and our aspirations to be humans who live with the vision of equality. If the state is solely defending the rights of property as they exist today, then it is hardening a set of distributions of wealth and resources that came about unfairly and through violence. So too, if it simply taxes to protect and make better the lives of its members, it does not go far enough in contesting the formations of the past. It simply perpetuates the violence of the past. Part of letting us live human lives, in contrast to the lives of animals that live more by instinct, is to let us live out and attempt to fulfill our moral sensibilities.

Part of the state’s purpose, I am arguing, should be cultural and moral, not just economic. This moral commitment is one that we posit as a foundation of the liberal state. It is one of the commitments that the liberal state should make and through which it should understand itself. While any set of values can be contested from some religious and political perspective, this commitment should be constitutional. It should be as deep in our foundation as free speech and the protection of lives and property. It should be one that we put in our founding constitutions and on which we erect our liberal states, were we to do it again or revise the one we have.

To return to the point I was making, if we have a different notion of property and of the obligations that come with being human and living in the state, then it stands to reason that we can and should reconceptualize what it is that taxes are and should be. I have argued that the property that individuals have in their possession cannot be thought to be strictly their own anyway and that at least a portion of what we have is in trust or on loan from those who invested in us. This means that some benefits of our labor, which stands on the human platform bequeathed to us, belong to human beings in common.

What this amount should be is difficult to say. Ideally, this “equity” repayment on our human debt would be most fair if it were a percentage of gross domestic product. As a percentage of GDP, the larger a country’s

82. Jefferson, *Notes on Virginia*, 497; see Banner, *How the Indians*, 50, on Jefferson's deleted note.

Chapter 8

1. Locke, II § 123.
2. Hobbes, *Leviathan*, 13:3–4, 83; Locke, II §§ 21, 94, 101, 123, 137, and see the longer summary above in chapter 7, note 4.
3. Our position on what the state or government should be and how it should act is thus tied deeply into and rests upon prior notions about our rights and property that were articulated in the early modern period. Indeed, in many ways the modern understanding of the state is really nothing more than an extension or expansion of the core ideas of individual rights and property that serve as its conceptual foundation. Since we have already questioned both the self-evidence of natural rights and the modern understanding of property that came with it, it stands to reason that the very conception of the state has to come under some serious scrutiny too.
4. In “The Original Contract,” for example, David Hume calls the notion of a social contract a political myth analogous to the myth of divine right of kings.
5. The idea that states were founded on conquest, and not on consent, was a persistent theme prior to Locke, was familiar to many of the American founders, and was mentioned by some of the early American colonists. See, for example, the discussion in chapter 7.
6. See note 2.
7. I discussed this point in the previous chapter.
8. As discussed earlier, Locke actually waffles on this point, sometimes arguing that there is an actual state of nature and an actual social contract and at times suggesting it is an ideal state only. For Locke's reflections on the question whether there ever was a state of nature and a contract that created a nation, see Locke, II §§, 14–15, 100–105. See Hobbes, *Leviathan*, 13:11, where he asks the same question. Modern interpreters who still embrace something like a notion of social contract tend to portray it as an ideal for which liberal states should strive. I take this to be part of the thrust of Rawls's work and also the way that Laslett, 93, makes Locke intelligible.
9. See doubts among the American founders about the social contract theory in my *Liberty in America's Founding*, 85–128, including summaries by James Otis, 100–101, on typical critiques of the idea of a social contract.
10. Locke, II § 59, 61, and discussion of how natural freedom and “subjection to parents” can subsist together.
11. See, for example, Locke, II §§ 75, 87, and Friedman, *Freedom and Capitalism*, 15, on the use of the umpire analogy.
12. On the view that states are like individuals in a state of nature with respect to each other, see, for example, Locke, II § 183; Hobbes, *Leviathan*, 13.12, 85, and discussion in Tuck, *Rights of War*, 8–9.

13. According to Alan Krueger, chairman of the Council of Economic Advisers, “Land of Hope and Dreams,” “An astonishing 84 percent of total income growth from 1979 to 2011 went to the top 1 percent of families, and more than 100 percent of it from 2000 to 2007 went to the top 1 percent.” For additional discussions see also Stiglitz, *Price of Inequality*.
14. For inequality falling unevenly across races and genders, see Stiglitz, *Price of Inequality*.
15. This link of property, industriousness, and fairness is evident already; see Pufendorf, *Law of Nature and Nations*, book 4, chap. 4:7, 367–368, as a justification of property. The importance of property to the self was developed most intensely in the modern period by Hegel. See Waldron, *Right to Private Property*, 129, 343–389.
16. A thoughtful critique of how conceptualizing payments to the disadvantaged as “charity” impacts self-esteem and self-value of recipients is offered by Munzer, *Theory of Property*, 110–119.
17. Locke, II § 138. [italics in original]
18. Tuck, *Hobbes*, 30.
19. See Skinner, *Hobbes and Republican Liberty*, 124; Tuck, *Hobbes*, 30.
20. Hobbes, *Leviathan*, 30:17, 229.
21. Ibid.
22. Ibid., 30:18, 230.
23. On dating of Locke's *Second Treatise*, see Laslett, *Two Treatises*, 45–66, which dates the *Second Treatise* to the period of 1679–81.
24. Locke, II § 140. [italics in original]
25. Ibid., II § 97. [italics in original]
26. For a more detailed reading of Locke in this way, see Kendall, *Doctrine of Majority Rule*.
27. Locke, II § 95. [italics in original]
28. Ibid., II § 42. [italics in original]
29. Ibid., II § 51, and see also II §46 and 50.
30. Locke, I § 42 [italics in original]. See also Grotius, *Rights of War and Peace*, book 2, chap. 2:6, 4.

Chapter 9

1. Friedman, *Freedom and Capitalism*, 15, 8.
2. See, for example, Boaz and Crane, *Market Liberalism*.
3. Friedman, *Freedom and Capitalism*, 15, 8.
4. A notable example is Richard Epstein. See Epstein, *Simple Rules*, 30; *Principles*, 9–39, and “Utilitarian Foundations,” 718, where Epstein argues that the original natural rights theorists often used utilitarian arguments and thus in their conclusions converge in many ways with utilitarian conclusions. He suggests that the loss in faith in God has led to a

modern emphasis on those utilitarian reasons but that core concepts developed by the rights tradition make sense and are consistent with a utilitarian perspective.

5. Milton Friedman, Fredrick Hayek, and Moses Mises are the most famous of those applauded by the Right and libertarians.

6. See Nelson, "Study of Choice," 31, quoting Georgescu-Roegen, *Analytical Economics*, 341. See also Debreu "Mathematization of Economic Theory."

7. There are a number of critiques of neoclassical economics for its single-minded narrowing. These come from within and outside economics. Examples of writers in this tradition include Sen, Sunstein, Kuttner, Hawken, England, Mansbridge, Nelson, Sibley, among others.

8. See the psychoanalytic and psychological traditions emanating from Freud and Jung and more recent commentators on the psyche, such as James Hillman, *Suicide and Soul*.

9. On this other side of Smith, see, for example, Sen, *On Ethics and Economics*, 22–28. See also Raphael and A. L. Macfie, "Introduction" to *Moral Sentiments*, 29.

10. Smith, *Moral Sentiments*, 3.

11. The fundamental disagreement arises from the positions of Keynes, *The General Theory of Employment*, and the monetary understanding was put forward by Friedman and Schwartz, *A Monetary History*. There is a vast second literature on the subject and disagreement. For useful summaries, see, for example, Smiley, "Great Depression," and White, "Boom and Crash."

12. On this critique specifically to economics, see Kuttner, *Economic Illusion*, and essays in Ferber and Nelson, *Beyond Economic Man*, and R. Nelson, *Economics as Religion*.

13. See England and Folbre, "Contracting for Care," and Nelson, "Study of Choice" on the way in which families and care pose a fundamental challenge to traditional economist models and the new economic theorizing about care. See also essays in Mansbridge, *Beyond Self-Interest*, and Leibenstein, *Beyond Economic Man*. For a counterpoint that argues that altruism doesn't exist, see Epstein, *Principles*, 133–157, and "Utilitarian Foundations."

14. Nelson, "Study of Choice," 26.

15. Hobbes, *Leviathan*, chaps. 14 and 15 are eloquent on this point. For a recent perspective, see Epstein, *Simple Rules*, 71–90.

16. See, for example, Epstein, *Simple Rules*, 43. In smaller and simpler social situations, pressure through social mechanisms of disapproval can suffice to pressure compliance, though it is doubtful that such mechanisms can work in broader, more anonymous exchanges, thus requiring "law" to enforce compliance.

17. This is basically the position of Hayek, Friedman, and Epstein, among others.

18. See, for example, the summary of analyses in Barrow, *Critical Theories of State*, for an understanding of how capitalist class interests may be developed and maintained through roles, institutions, and structures of late capitalist economies.

19. These views are influenced by many writers, including Kuttner, Sunstein, Hawken, Sen, among others.

20. Those who favor a utilitarian perspective must try to argue for the end of slavery without invoking the notion of rights. See, for example, Epstein, "Utilitarian Foundations," which tries to derive all the core values of the natural rights tradition from a utilitarian perspective. For my tongue-in-cheek critique of natural rights theory on this point, see my essay on endorsing suicide and slavery as part of a free society in Schwartz, "Liberty and the Public Good."

21. I am distilling the insights from Kuttner, Hawken, and Sens. I also see Rawls as attempting to ask a similar question but not going far enough.

22. See Waldon, *Right to Property*, who anticipates this perspective.

23. This is one of the classic challenges to the utilitarian position in general. For a discussion of objections to utilitarian approaches in general, see, for example, a useful summary and references in Velasquez, *Business Ethics*, 73–87. Rawls tries to mitigate this challenge by arguing everyone would agree with a liberal political system if they were in the original position and had a veil of ignorance about what their position would be. Since they don't know whether they will be poor or rich in the original position, they can come to agreement on how the system is most fair, and thus they can live with it, whatever the results. But as critics have noted, this strips the individuals of all the things they might want to know in the original position and thus undermines the ability of those in the original position to make rational decisions. For a critical discussion of Rawls's thinking, see Daniels, ed., *Reading Rawls*.

24. See, for example, Rosenthal, "Smuggling Europe's Waste," and NPR staff, "Electronic Waste."

25. Examples have been documented in Donaldson and Gini, *Case Studies*.

26. See Hoffman, "The Ford Pinto," 207–214.

27. Smith, et al., "Dow Corning," 39–42, and Gini and Sullivan, "The Dalkon Shield," 221.

28. See Velasquez, *Business Ethics*, 73–87.

29. http://en.wikipedia.org/wiki/List_of_motor_vehicle_deaths_in_U.S._by_year and NHTSA.dot.gov, June 2012.

30. See Pfeffer, *Human Equation*, and O'Reilly and Pfeffer, *Hidden Value*.

31. See, for example, the record of safety in the garment industry in Bangladesh, Ali Manik and Yardley, "Gross Negligence in Factory Fire," McCarthy, "Bangladesh Collapse," and Clean Clothes Campaign, "Making Bangladesh Garment Industry Safe." Another example is the treatment of workers in the fast food industry, as documented in Schlosser, *Fast Food Nation*.

32. See the International Labour Organization report on child labor "Marking Progress against Child Labour."

33. For documentation in the fast food industry, see Schlosser, *Fast Food Nation*. Recently, labor abuses have been reported in Apple manufacturing plants, Associated Press staff, “China labor watchdog accuses Apple supplier of worker abuse.” <http://www.nbcnews.com/business/china-labor-watchdog-accuses-apple-supplier-worker-abuse-6C10783106>.
34. Bowie and Lenway, “H. B. Fuller in Honduras.”
35. See case studies documented by Pfeffer.
36. Friedman, “The Social Responsibility of Business.”
37. See, for example, the various critiques in Ferber and Nelson, eds., *Beyond Economic Man*, and *Feminist Economics Today*.
38. On stakeholder theory, see Freeman, “Stakeholder Theory,” and Goodpaster, “Stakeholder Analysis.” See, for example, Benioff, *Compassionate Capitalism*.
39. In this sense, I take Friedman’s argument about the purpose of business to be for the shareholders as a description of how things in reality are, but not as a description of what they morally should be, though Friedman believes this is the way it should be as well. For the complexity of trying to see the relationship between corporate executives, board members, shareholders, and class, see the discussions in Barrow, *Critical Theories of State*.
40. It is difficult to see how one can get to all of these values from a utilitarian account.
41. See Friedman, *Freedom and Capitalism*, 108–118.
42. Grotius, *Rights of War and Peace*, book 2, chap. 3:1–16, 32–39, on the air and sea. For a discussion, see Tuck, “Introduction,” *Rights of War and Peace*.
43. On use of term “externalities” by economists, see, for example, Flynn, *Economics for Dummies*, chap 14. For a sustained alternative perspective, see books by Hawken.
44. For discussions of how future generations should figure into ethical calculations, see the discussion in Velasquez, *Business Ethics*, 308–312, and references there.
45. I take this to be one of the original points of Garrett James Hardin in his original essay on “The Tragedy of the Commons,” and one point I agree with. In my reading of Hardin’s original essay, his point is that the commons becomes a tragedy *only if it is not regulated and that regulation is needed to protect it*. One example he gives is the national parks, which are owned in common (public property) but must be regulated to protect them. His point is that without regulation, things cannot be owned in common successfully. It is beyond the present context to discuss the extensive subsequent scholarship and popular discussion of whether the commons always ends in tragedy or not, and I do not agree with some of Hardin’s subsequent moral conclusions, such as his moral conclusions about preventing immigration in his metaphor of “Living on a Lifeboat.”
46. See on this point Hawken, et al., *Natural Capitalism*, and Hawken, *Ecology of Commerce*.

Chapter 10

1. See Wilson, *Rationality*. This was already noted as a problem by Locke and others as they reflected on why non-Europeans did not all come to the same reasoned assumptions about social life. This remains a key problem that is unresolved by liberal societies.
2. In other words, even if we argue there is shared rationality in modes of thinking, the substantive conclusions of rational people are not always the same. On the argument that there is a universal understanding of right and wrong, see discussion in Tierney, *Idea of Natural Rights*, 2–3, and Gewirth, *Reason and Morality*.
3. See my discussion earlier on this point, in chapter 4 and notes to that chapter.
4. Whether it is possible to discern the founders’ intent and whether that should govern or dictate what we believe and do is itself an interesting question that I take up in *Liberty in America’s Founding*, 309–323. See also Levy, *Original Intent*.

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