

## Book Proposal

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**Title: Responding to Political Libertarianism --  
Why Justice Depends on Endowments of Public Goods**

**Length:** Approximately 300-320 pages in print.

**Market:** scholars in political philosophy; given widespread interest in the topic, also graduate and undergraduate courses in political philosophy, and educated general readers interested in social justice issues and American politics.

### **Overall Goals and Central Thesis: The *Endowment Model***

This book will introduce a new account of social justice through an exploration and critique of political libertarianism. "Libertarianism" (or specifically right-libertarianism, also called "neo-liberalism") is a set of views about social justice favoring maximal free markets, natural property rights, and thus also large corporate power. Although it is enormously influential in American popular culture, political libertarianism is rarely the subject of serious philosophical evaluation. However, scholars dismiss it at our collective peril in a nation where Ron Paul's following grows and Vice-Presidential candidates and syndicated columnists regularly cite Ayn Rand as if she were a serious philosophical authority. Libertarianism needs more systematic scholarly attention; and the main problems with its premises and conclusions can be explained in a way that reveals an important alternative for theoretical consideration while also being intelligible to a wider readership beyond academia.

This book will lay out four versions of political libertarian theory and explain their basic errors and conceptual pitfalls. These identified problems in turn point to an account of political justice that unifies in one framework the importance of public goods that markets cannot provide, meritocratic standards that markets do not instill or fulfill on their own, and the historically founded imperative to sustain and grow several kinds of *capital* that constitute 'culture' and 'nature' in their broadest senses. These include not only technological means of production, financing and physical infrastructure but also social networks, political institutions, environmental resources and services, knowledge bases, artworks, traditions and other cultural relations that promote trust, reduce transaction costs, and dramatically affect people's opportunities and life-expectations. Access to these forms of natural and cultural capital are essential to people's productivity and security, and they are accumulated through long periods of history. Libertarian theories go astray by missing our collective moral obligation treat the 'principal' of these capital bases like *endowments* that should be sustained over time. These endowments provide a basic level of protection from direct impacts of natural selection and (later) from market forces -- and this baseline 'insurance' is the essence of human culture. By benefitting profoundly from them and taking on the status of members in a legal order that derives from the cultural imperative, citizens are (at least implicitly) committed to acting as *trustees* for these endowments of public goods: they are obligated to cooperate through a workable government to preserve access to these endowments in perpetuity.

I will argue that this model can answer objections from Lockean "consent theories" (e.g. John Simmons) without appealing to a strongly communitarian conception of people's practical identities like that defended by Michael Sandel (which rejects the basis of liberal rights on controversial psychological grounds). Instead, the endowment model meets libertarians on their own terms, partly via long-recognized problems about initial acquisition, and also provides an empirically plausible foundation for intuitions about "fairness" and chance of birth that have appealed to many readers since John Rawls first articulated them (though he offered no deeper basis for them). Hence the endowment model works from within recognized themes and considered judgments in liberal traditions rather than critiquing them from a radically external position.

At the same time, my critique of libertarianism and proposed alternative aims to synthesize insights from different strands of political theory as divergent as libertarian, Kantian, republican or associate, utilitarian, and environmental approaches into a single account. My goal is not to develop in full detail an alternative theory of justice in this work, but simply to show that understanding dilemmas encountered by libertarian theories is *fruitful*, because it indicates how to improve on past alternatives such as Rawls's Kantian contract theory. I will show that the numerous but apparently separate difficulties with varying forms of libertarianism actually point to the same underlying omission, which the endowment model rectifies. It provides the key piece we have been missing, which can unify liberal insights (e.g. concerning liberties, incentives, and the importance of respect for merits) and with the need for fairness to people starting life in widely varying situations.

### **Topics and Structure of the Analysis**

In philosophical terms, the book's main achievement will be to offer the first truly comprehensive overview of the different kinds of libertarian arguments that currently influence popular politics; to pin down the problems with each of these basic libertarian strategies; and to show that these problems can be solved in a way that preserves a robust set of basic individual rights as part of a broader system of public goods to be sustained by collective action. The analysis will begin by explaining and clarifying the differences (and potential connections between) four main lines of argument for libertarian conclusions in philosophy and political theory:

- A. Consequentialist arguments from economic theory holding that minimally regulated markets with low and/or flat taxes yield the best total results (e.g. Friedman, Hospers, Forbes, Gingrich);
- B. Arguments that focus on effort and merit as best respected by free markets, and the natural value of virtues resulting from strong property rights (e.g. Rand and Machan);
- C. Contractarian models starting from Hobbesian moral egoism (e.g. Narveson) that appeal to some allegedly natural concept of 'interference' to define liberty and invoke the notion of equal maximal liberties as the ideal point of convergence among bargaining parties;
- D. Deontological conceptions of autonomy or personhood favoring strong Lockean property rights and negative liberties over entitlements to material goods (e.g. Hayek, Nozick, Berlin).

Of course such arguments are often blended in popular appeals (e.g. by Grover Norquist or Rand Paul); but explaining the different bases of libertarian arguments helps clarify the fundamental dimensions of social justice that any plausible unified account must address, which are as follows:

1. Justice in transfer (non-coercion/voluntariness in contracts and gifts, access to the relevant information), and rectification of past violations (to the extent feasible without creating new intrinsic wrongs).

- This depends on an adequate account of natural rights including property rights deriving from moral grounds (e.g. autonomy), the structure of legal orders, and available forms of compensation.
- 2. Justice as reward according to merits of multiple kinds (objective standards of excellence for positions of responsibility, holdings proportionate to effort-based contributions, and punishment proportional to the wrongness of a crime) and as balancing competing claims.
  - the aspect of justice most evident in judgments of natural equity and in criminal justice contexts.
- 3. Justice as solidarity against the arbitrary swings of fortune, including the natural lottery.
  - the minimum baseline insurance developed by human *culture as a whole* against bad luck in one's circumstances of birth and early upbringing before responsible choice begins (starting positions).
- 4. Threshold utility in outcomes, especially as concerns providing sufficient well-being, including capabilities to act in meaningful ways, for most or all members of society.
  - This criterion remains important even if it is secondary to individual rights within their *core scopes*; past some point, it will seem unjust to extend a right further to the detriment of other public goods.

My critical review of different libertarian theories (as presented by six main defenders) will bring out the importance of these fundamental dimension of justice and clarify basic desiderata and conceptual requirements pertaining to each of them. For example, I will offer

- an explanation of familiar intuitive notions of fair opportunity, and how they relate to (a) people's starting position in life, and (b) access to resources from the global commons (the issues classically addressed in the "Lockean proviso" and its contemporary variants).
- an explanation of public goods, including capital endowments on which people draw to be productive, such as environmental, epistemic, social, political and general institutional capital in civil society. An analysis of how much of our productivity depends on access to such capital assets that we did not create or pay for undermines meritocratic arguments for libertarianism and explains the intuitive appeal of norms of sustainability – moral obligations to cooperate in preserving endowments on which we all depend and passing them on to future generations.
- an analysis of different proposed versions of the Lockean "proviso" on property originally acquired (in part) from nature, from Nozick to Henry George and Michael Otsuka and Mattias Risse. The endowment model provides an appealing way of unifying their conflicting intuitions.
- an adequate "principle of fair play" (defensible against serious objections by Nozick, Simmons, etc.) requiring contributions from all who benefit proportionally from kinds of collective efforts when these are *partly constitutive* of individual autonomy. *Pace* Lockean consent theories, natural rights have a content that points beyond the state of nature: they give us obligations to defend them not only individually but by cooperation with willing others, to the point of establishing basic rights in a system of positive law (Kant, Arendt, Habermas, Benhabib).
- a clear place within a coherent system of liberties for political rights that are substantively equal despite morally arbitrary differences between people resulting from chance and fortune, and that reflect the nature of moral agents, allowing people opportunity to excel as citizens (as the classical republican tradition has emphasized).

The endowment model that flows from these critiques of right-libertarianism offers a theory of culturally conditioned autonomy on the basis of which we can finally answer Ayn Rand's main objection to John Rawls's famous assertion that fairness requires limits to inequality in life-prospects resulting from chance of birth (see *A Theory of Justice* §3). While Rand insists that such differences deriving from starting-place luck are not unjust (see her "Untitled Letter"), the endowment model counters that the central function of all human culture is to reduce the extent

to which life-prospects depend directly on luck; this is what distinguishes a *state of culture* (even prior to government) from a classical state of nature in which the forces of natural selection operate directly on human beings. Rather than being based solely in an abstract requirement of respect for persons as moral agents, then, Rawls's intuition can be defended historically in terms of the social conditions without which individual capacities for autonomy cannot be developed by education and minimally effective use of one's powers upon nature and in social relationships. Thus basic individual rights arising from the innate capacity for autonomy are linked to capital public goods without which authoritative individual choice and liberties have little meaning.

While this anthropological argument allows us to isolate the forms of participation in social benefits that are essential to autonomy and thus entail a corresponding obligation of fair contribution to their cooperative maintenance, it will not follow on my analysis that any person has an involuntary obligation to join the particular nation-state in which they are born. Rather, what the anthropological analysis shows is that in becoming moral agents with autonomy, individual persons have already acquired an obligation to *the people(s)* constituted by historical networks of culture in which they were raised. The inevitable debt one owes to one's people in this sense is not an absolute requirement to join the government they formed; a just scheme will allow individuals to opt out of citizenship in the nation in which they grew up, and so viable options for emigration must also be included. This is one of several issues in rights-theory that push us beyond the level of nation-states towards a global framework, for which the endowment model is well-suited.

### **Relation to other scholarship and new contributions:**

There are few recent works critiquing libertarianism in political philosophy. The prominent ones tend to focus on one particular strand of libertarian argument, present stand-alone objections (often in technical form) without linking them to a broader conception of justice and its components, or focus on differences between negative and positive liberty from which normative conclusions do not readily follow. For example, while Alan Haworth raises good objections to conceptions of negative liberty, they can come across as philosopher's puzzles with little obvious relevance to pressing questions about welfare, education, or the tax code. I will discuss the negative-positive debate only in showing that no viable theory of basic liberties can do without the concept of personal autonomy (as some followers of Isaiah Berlin imagine) and in explaining problems with the common formula (dating from Spencer) of "maximal equal liberties." For my purposes, it is more important to develop recent work on collective action problems, the nature of public goods, acquisition of property and common ownership of the world's resources.

David Gauthier's arguments from game theory demonstrate the limits of free markets, and I will rely on several of his key points in responding to consequentialist arguments for *laissez faire* markets. But his insights need to be developed into an ethically richer conception of public goods of the kinds suggested by Mark Sagoff and Elizabeth Anderson, according to which there are ethical judgments that cannot be modeled as (non-tuitive<sup>1</sup>) brute preferences. Gauthier also emphasizes the silence of optimal market theory on starting distributions, but his proposed solution ignores the implications of the history of capital development, which my endowment model explains. Michael Otsuka's important arguments directly address this issue via discussion of the Lockean "proviso" (the principle meant to define fair access to originally unowned resources); but he does not address all the main forms of sociocultural capital, and his arguments

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<sup>1</sup> Tuitive preferences refer to or depend on the preferences of others -- such as altruistic preferences that are satisfied by a friend's desires being fulfilled, or envious preferences that focus on interpersonal differences in satisfaction.

need to be linked with other aspects of justice (e.g. merit). On the flip side, Serena Olsaretti's insightful critiques of meritocratic arguments for markets need to be nested within a broader framework linking merit to principles of fairness in starting positions in life. Gerald Cohen's related arguments in *Self-Ownership* undermine libertarian theories of rights, but they only work against deontological versions of libertarianism (such as Nozick's). I will extend this approach by arguing that a better understanding of autonomy implies deontological theories of morality that entail more enforceable duties to collective action than libertarian theories allow. But I will also argue that the legal provision of individual rights based on autonomy also needs to be understood as part of a larger system of public goods, which critiques of deontological libertarianism tend to ignore. Finally, Hobbesian contract arguments do not depend on deontological obligations or claims of merit; while a theory of autonomy can aid in refuting them, other arguments are needed (see several of the bullet points below). My bibliography offers more details about other relevant recent works on which I will draw.

Thus my more embracing approach will synthesize available partial critiques of different versions of libertarianism in a framework that explains the legal enforcement of basic rights (including property rights) as an especially important kind of institutional capital that depends on other public goods -- both conceptually in discerning the proper scope of rights and legally for rights to be secure and meaningfully useable in developing one's autonomy. Both the standards of merit and starting-position fairness needed for market processes to be procedurally just entail limits on inequality of access to training and material resources needed for a fair opportunity to develop merits (which are partly comparative) and chances to use one's liberties via free contract to advance one's personal ends. And property rights must be further limited to compensate for past injustice and to prevent collective action problems that must be avoided to secure other key public goods beyond those demanded by fairness in meritocratic processes. All these limits to liberty turn out to be explainable in terms of the (higher-order) public good of sustaining endowments of natural, social, epistemic, institutional and other forms of cultural capital.

### **Other Key Points in the Critique of Libertarianism**

Even among readers who are not fully persuaded by my endowment model of justice, the negative side of my case against libertarianism may awake some from "dogmatic slumber." In addition to the arguments indicated above concerning public goods, starting position fairness, and conflicts between luck and merit, I will develop a number of other points in detail, including the following:

- ◆ The notion of self-determination implicit in the liberal theory of rights developed by Locke as part of Enlightenment arguments against slavery and perpetual monarchy implies limits on the authority involved in individual autonomy -- limits concerning what a person can do with herself. *Inalienable* liberties arise from these limits, which actually form the core of Kant's deontological project.
- ◆ Any notion of autonomy robust enough to ground inalienable liberties (and perhaps even a few *non-forfeitable* rights, such as freedom from torture) justifies banning not only coercion and fraud, but also blackmail, some forms of bribery, free markets in vital organs, and probably prostitution (in its likely forms); it will also limit acceptable monopolies and require citizens to have at least basic education.
- ◆ Hobbesian and Lockean theories face intractable problems concerning organization of a stable social contract in a state of nature. Autonomous transitions out of a state of nature, like legitimate acts of secession and morally authoritative revolutionary dissolutions of government require a notion of *original sovereignty* in a "people" that exists *qua* group and can act collectively prior to any constitution or order of positive law -- and so prior to individual contracts too (see Habermas on originary sovereignty and also Rawls's response to Nozick in *Political Liberalism* lecture VII, "The Basic Structure as Subject").

- ◆ The argument for coordination via a stronger central government in the *Federalist Papers* are directly opposed to “states rights” radicalism and devolution of powers to local control; these coordination arguments turn on recognition of certain collective action problems in supermajority requirements. The need for coordinative power for states to be justifiable limits the kinds of opt-outs they can accept.
- ◆ Most American founders were committed to a “republican” conception of democracy as deliberation about the common good, which supports the notion public goods arising from judgments that are not preferences independent of others' preferences. This view is incompatible with Hobbesian egoism, which leads to pure majoritarian theories with their problematic implications (slave constitutions, secession at will, voting in a dictator, etc). These are the same problems at the collective level that inalienable liberty rules out at the individual level. Hobbesian libertarians thus find themselves with Senator Douglas.
- ◆ There are limits to inequality in access to material resources as outcomes of past transactions by contract (even when these are procedurally just, and incorporate starting conditions that assure fair opportunity to earn merits) that are necessary for rights to participate in deliberative democracy to be secured (compare Rawls' argument in *Political Liberalism* for the "fair value of political liberties").
- ◆ To be implemented, a conception of fair opportunity requires some way of defining an equal opportunity education system, which must at minimum develop motivation as well as talents -- consistent with the recognition that individual free choice may prevent both. Here again we see how much influence culture and forms of social capital have.
- ◆ Pace Spencer, there is no way to specify "the" maximal set of (negative) liberties that are compatible with equal liberties of the same scope for all, any further extension of which would either (a) limit the extent of some other liberty in the set, or (b) *interfere* with the liberty of someone else (or both). Condition (a) makes sense only if we focus on the positive use of some liberty as a power to bring about some result (as Narveson tries to); and even then, there may be several different sets of liberties that would count as maximal according to condition (a). Condition (b) requires that we have a natural (pre-moral) sense of "interference" in terms of which we could then define the set of liberties that it is morally wrong to violate. But there is no such non-normative notion of "interference" that can do this job.
- ◆ Theories of property rights tracing to legitimate initial acquisition (such as Nozick's) become useless given an almost endless history of past injustices indirectly affecting present (and future) persons, most of which cannot be ascertained accurately or corrected without other costs to the stability of expectations that is necessary for autonomy and economic growth (e.g. according to Hayek). Thought experiments imply that the only morally acceptable way to correct such effects of past injustices sufficiently is to set a new minimum standard of access to the goods necessary to be productive for each new generation, or minimum levels of diversity in holdings to prevent extreme concentrations of wealth, and accept the redistributions this requires in the name of setting a new baseline that all can accept as wiping the slate.
- ◆ This point about past misappropriations of property is part of a larger set of ways that people's sense of responsibilities is affected by past unchosen burdens and benefits coming from the history of the culture in which they live and its many assets and liabilities -- which will help give concrete shape to any actual political effort to establish starting-position fairness according to some more abstract ideal.
- ◆ Well-being cannot be measured solely in terms of satisfaction of preferences because of the problem of *adaptive preferences*, which none of the libertarian theories canvassed can solve (in contrast to objective ethical judgment accounts). Nor can well-being be measured solely in terms of holding commonly needed goods, because these are not equivalent to the basic *capabilities* involved in the fulfillment of the human telos. Even on a fairly minimal conception (e.g. Sen's), this telos involves not only personal autonomy and "individuality" in Mill's sense, but also social relationships such as friendships, deep memberships, and chances for creative work aimed at inherently worthwhile products or long-term ends. These points explain some minimal forms of paternalism that are widely accepted, though rejected by libertarians.
- ◆ It generates confusion to speak of a government being morally neutral on a matter when decision about it is left up to individual choice (and thus to market dynamics). The decision to leave some matter up to individual choice expresses a judgment that (a) the chooseable options are not moral wrongs of a kind that cannot be legally tolerated -- perhaps because they violate rights of others, and (b) that aggregate effects of such choices will shape the incentives of everyone who has to choose on the same matter in ways that

do not produce harmful collective action problems. These are substantive moral and prudential judgments, respectively. Libertarians tend to draw this boundary only with judgments type (a) in mind.

Many of the deepest problems with one or another style of libertarian argument are brought out most forcefully by developing these particular issues in some detail -- though they will all point towards their endowment model, according to which human persons who are imaginatively or really without or between nation-states remain in a *state of culture* rather than pure state of nature.

These critical points and concepts, which are largely missing from most public political discourse and journalism in English-speaking nations today, can also be illustrated by some concrete applications. Space-permitting, I hope to make the concepts listed above accessible to students and general readers by applying them to familiar issues in contemporary society -- from health insurance and poverty to public schooling and differential salaries for more and less demanding jobs. The historical development of the US federal debt is also revealing because it looks like a pyramid scheme, which is the paradigm opposite of sustainable management of an endowment. The endowment model has some fairly direct and easy-to-grasp implications for management of national budgets (for example, wise trustees build principal in times of plenty and spend somewhat above the annual return or yield in down economies -- much like Jonah and the Pharaoh). The health of a nation's population can also be regarded as a biological endowment to be carefully guarded. In this light it becomes much easier to address many of the simplistic fallacies that go unanswered in American political discourse and get people to see that individual rights -- which are not to be maximized -- must be understood in relation to a whole host of other public goods.

**Author's Background and Preparation:** Much of my past scholarship has focused on ethics, existential philosophy, and issues in moral psychology -- resulting in monographs such as *Will as Commitment and Resolve* (2007) and *Narrative Identity, Autonomy, and Mortality* (2012). These works furnish a conception of personal autonomy that I will use to explain individual rights (including inalienable liberties), deliberative conceptions of democratic decision, and the kind of education that enables capacities involved in autonomous action. I have also published several essays in political philosophy. Four of these are articles on global governance and a federation of democracies (all appearing in peer-reviewed journals); an additional essay in an edited collection addresses the fraught issue of religious arguments in the public sphere. These essays outline the conception of public goods and democratic legitimacy that I will develop in critiquing right-libertarians. Years ago I also published a paper responding to Jim Sterba's "From Liberty to Welfare" argument and addressing problems with the concept of equal maximal liberty. In the past three academic years, I have twice taught an elective on "Political Libertarianism & its Critics," which has been very popular and successful; this experience helped me develop the distinctions between styles of libertarian argument that to be explained in the new book. In addition, I am now teaching a course on Human Rights for the second time and working on issues in rights theory. My courses on Global Environmental Justice have also informed the "endowment model" that will be developed and defended in my proposed book. Please see my CV for more details.

### Tentative Chapter Outline

#### **1. Introduction: the Spread and Dramatic Influence of Libertarian Ideology in the US**

Ayn Rand, the anti-Leninist, and the reaction to FDR's Economic Rights

The Austrian Neo-Liberal Economists -- the influence of von Hayek, Friedman, Greenspan

The Heritage Foundation, the Hoover Institute, and the Rise of 'Neo-Con' Editorialists

The Lethal Combination: Great Society Entitlements plus the Reagan and Bush Tax Cuts =

Massive Federal Debt, which burdens the future and limits current government leverage.  
Four Philosophical Paths to a Libertarian Conception of Political Justice: Maximizing  
Negative Liberty, Neo-classical Basic Rights, Hobbesian Marketism, and Earned Desert.

## **2. The Dream of “Maximal Liberty” – its Conceptual and Practical Antinomies**

Hohfeld and Berlin: the Illusions of the Negative-Positive Liberty Distinction.  
Herbert Spencer, Hobbes, and the magic formula of 'Maximal Equal Liberty' in social contracts.  
The Impossibility of 'Balancing Liberties' in the way implied by the Formula.  
Multiple Similarly Extensive sets of 'Equal Liberties' -- no privileged solution for a contract.  
How Enforcement of Liberties and Opportunities to Use Liberties disrupts maximal liberty.  
Without a useable concept of maximal equal liberties, pure contract-libertarianism is a non-starter.  
Contract-libertarianism (Narveson) vs Indirect Economic Libertarianism based on  
consequentialist grounds in economic theory (Rand, Hospers, Friedman, Forbes, Gingrich).

## **3. Hobbesian Approaches: Moral Egoism as a basis for Market Fundamentalism?**

Jan Narveson's Hobbesian Argument for Maximal Liberty, and its implicit reliance on markets.  
Begging all the Questions: the Impossibility of a Non-Normative definition of 'Interference'  
with another's liberty. Dependence on *de facto* property distributions in Narveson's cases.  
Monopolies, Patents, Rights of Way issues, Cooperation based on tuitive preferences,  
Adaptive preference problems (& the inadequacy of higher-order preference solutions).  
Absurd implications: Selling one's Life, Selling oneself into Slavery, Selling control over  
one's mind, Prostitution, Bribery, Blackmail, Pyramid Schemes, and Secession at will.  
Plutocracy: the political outcome of libertarianism and the commodification of free speech.  
No public education or welfare for children: Dickens on "Want" and "Ignorance."  
Sterba and Otsuka vs Narveson and Machan: Ad-Hoc attempts to dismiss the emergence of  
'welfare-libertarian' rights to take excess property; relationship to left-libertarian views.  
The Incoherence of the Left-Right Libertarian Debate without a conception of public goods.

## **4. Neo-Lockean Deontological Libertarianism – the bridge that thins to a knife-edge.**

Nozick's Modifications of Rand – an existential ground for basic rights as side-constraints.  
Lockean Grounds: Inalienable Liberties arise from moral preconditions involved in autonomy as  
the inherent authority to govern one's own life and activities; implies limits to contracts.  
Kantian Grounds: the Inviolable Dignity of Personal Agency implies not only individual  
rights but also duties to aid others and classical republican obligations to the common good.  
Nozick's Headache over Rights to *Enforcement* of Natural Rights: Kant & Arendt's linkage thesis  
John Simmons on Lockean Consent vs Responsibility to Govern, and the Principle of Fairness.  
Nozick's Problem with Defectors: the problem of deciding when people must pay for a common  
or joint good leads to the need for a 'public goods' criterion and some principle of fair play.  
Nozick's Property Conundrum: by abandoning Desert standards, Entitlement Theory depends  
entirely on the justice of exchanges and initial starting distributions – and thus rectification of  
past injustices, which cannot feasibly be done only on a case-by-case basis.  
– A Rawlsian baseline as the most likely solution to the rectification problem.  
Four Increasingly Hopeless Cases for Nozick's version of the Proviso – those too late to claim  
useful land; calculating effects of compounding past injustices; involuntary beneficiaries of  
market activity that raises living standards; mining of natural resources in different places.  
Non-Libertarian Solutions: fair baselines for each new generation; some types of contract banned.  
– Henry George's proviso; Otsuka's proviso; other versions, and a combined final proviso.

## 5. Collective Action Problems, Public Goods, and Fair Starting Points in Transactions.

The Central Error of Deontological and Market-Libertarianism: trying to ignore public goods.

Collective Action Problems: Gauthier's *Proof* of the incompleteness of free markets.

Sagoff: beyond narrow welfare-economic conceptions of public goods to thick ethical values.

An exposition of the more obvious public goods needed for a decent society:

- the *non-market* preconditions of stable free markets, from contract law and currencies to trust.
- further limits to market outcomes: non-monopoly, no duress in contract, no insider trading, etc.
- basic liberties, their legal enforceability and substantive value to citizens: Sunstein's cases.
- public safety, political stability, trustable consumables: David Hazlett's cases.
- democratic legitimacy, broad civic knowledge among citizens, and truth-seeking media
- environmental externalities priced into products and services
- sustainable capital bases for future generations: fiscal, social, cultural, environmental
- fair starting points: Rawls's thesis and Ayn Rand's critique of it. Rawls's inadequate reply.

A Gauthier-style response: the need for initial fairness for transactional fairness to begin.

An Endowment theory response: the growth of culture consists fundamentally in the reduction of the extent to which life-prospects depend on chance of birth; Blustein on our debts to the past.

## 6. The Dilemmas of Desert-Libertarianism

The intrinsic importance of merit criteria and earned reward alongside other criteria for a just society: a partial basis for second-order rights to equal protection and non-discrimination.

The tension between popular libertarian appeals to earned rewards and to the transactional fairness of whatever markets produce (which Rawls and Nozick both recognize).

The impossibility of a libertarian account of fair equality of opportunity to earn merit in pure markets: Serena Olsaretti's critiques and the ubiquity of luck problems at multiple stages.

The influence of social networks and other forms of non-physical capital on opportunities.

The fundamental lesson: *limits to market accumulation of economic inequality and to effects of luck in markets as a key public goods* in a society that gives due weight to forms of desert.

Education and welfare for children redux – Haslett's arguments reconstructed on this basis.

## 7. The Embracing Alternative to Libertarian Ideology: an Endowment Model of Justice

Neither Neo-Liberal nor Socialist: private ownership of capital in free markets constrained by law and practices of civil society in the name of vital public goods.

Citizens as Trustees of an Endowment: the model of a college board of trustees.

The Nearly Infinite value of the collective endowments that are the unchosen legacy of the growth of cultural traditions, political institutions, artistic creativity, scientific knowledge, trust, communication and social networks, physical capital, and environmental resources (citing evidence from two decades of work on social capital, and extending these findings).

The impossibility of allocating costs of maintaining and growing these endowments in any way that closely matches how much individuals draw on them for productivity and earning.

The maintenance and growth of these endowments as the *ultimate or embracing public good*: the central civic duty to be met primarily in collective action *through government*.

Conclusion: the Sustainability Principle of Justice vs a Property Pyramid

## 8. Technical Appendices

Appendix I: Isaiah Berlin and Conceptual Errors in the Negative-Positive Liberty Distinction (developing critiques by Phil Pettit and others).

Appendix II: the Emptiness of the Maximal Liberty Formula without Purposes-for-Liberties that can be used to specify their core scopes – Rawls's Revision of his First Principle.

Appendix III: the Kingdom of Ends as a Rights-Constrained Deliberative Democracy in common

goods weigh more heavily than private interests in property and wealth.

Appendix IV: the Principles of Social Justice extended from national to global contexts – sustainability norms and global public goods, including basic civil and political rights, food and water security, sound environments, fair immigration systems, etc.

**Projected Length:** With chapters averaging 35 pages (with notes), this would be a 315 page book with the index and bibliography. If space permits, the analysis in Appendix II could also be turned into a full chapter on how to determine the *core scope* of basic rights and their less central extensions in accordance with their constitutive purposes and the other requirements of social justice – the problem left from the critique of the ‘maximal equal liberty’ formula in ch.1. This work is already complete in a detailed draft that I have had on my webpages for years (and it has been cited in at least two published articles by others). However, if the manuscript were to exceed a publisher’s limit, one or more of the Appendices could be cut and saved for separate essays. Another possibility is that the publisher would wish the technical appendices to appear as an online extension of the text.

Brief Bibliography (samples of relevant works in thematic order, with brief comments).

**Pro:**

- (1) Ayn Rand, *The Virtue of Selfishness* (Signet 1964, reprint 2006);
  - the essays in this collection are key texts for the history of libertarianism, together with her novels *Atlas Shrugged* and the *Fountainhead*. “Objectivist” clubs still study this works at college campuses and in cities around the nation.
- (2) Robert Nozick, *Anarchy, State, Utopia* (Basic Books, 1977);
  - the best-known libertarian work commanding wide respect in academic philosophy, it was written partly in response to Rawls liberal welfarist view in *A Theory of Justice* (Harvard University Press, 1971).
- (3) Milton Friedman, *Capitalism and Freedom* (University of Chicago Press, 1962)
  - the classic American statement of Austrian economic arguments for *laissez faire*, minimal government, and the ways that free markets help protect political freedoms.
- (4) Friedrich Hayek, *Law, Legislation, and Liberty*, in three vols. (University of Chicago Press, 1973, 1976, and 1979 respectively).
  - the canonical full statement of Hayek’s arguments for spontaneous order, it offers a blend of economic arguments and political theory focused on the function of constitutional law, statute, courts, and skeptical critiques of socialist theories of political justice. Hayek’s approach is not a merely economic argument as is often assumed; it has deep conceptual grounds. Hayek is the most systematic of the early libertarians.
- (5) Friedrich Hayek, *The Constitution of Liberty* (University of Chicago Press, 1960).
  - a theory of liberty based on Hayek’s work across the social sciences (not only economics). This text includes a defense of negative liberty comparable to Berlin’s.
- (6) Friedrich Hayek, *The Road to Serfdom* (University of Chicago Press, 1944; 15<sup>th</sup> ed. 1994)
  - Hayek’s most influential popular work, this is a critique of socialism in Europe.
- (7) John Hospers, *Libertarianism* (Author’s Choice Press, 1971, 2007). – main text by another famous libertarian whose approach is inspired by Rand, but also work in legal theory.
- (8) Isaiah Berlin, “Two Concepts of Liberty,” repr in *Four Essays on Liberty* (Oxford University Press, 1969);
  - this famous and highly influential lecture is often viewed as a cornerstone of libertarian

theory for its defense of negative liberty and association of positive liberty views with totalitarianism. It has led to a large literature on the negative/positive distinction: see most of the essays collected in David Miller, *The Liberty Reader* (Paradigm, 2006).

However Berlin's positions do not clearly support laissez-faire economics or libertarian property rights; in fact, Berlin supports Mill's claims for a natural basis for our liberties.

- (9) Tibor Machan, *Libertarianism Defended* (Ashgate, 2006);
  - defense of Rand's views tempered by advocating ethical virtues not enforceable by state.
- (10) Jan Narveson, *The Libertarian Idea* (Temple University Press, 1988);
  - sets out a contractarian version of libertarianism proceeding from roughly Hobbesian grounds; depends on a natural conception of "interference" and thin autonomy.
- (11) Chris Sciabarra, *Marx, Hayek, and Utopia* (SUNY Press, 1995).
  - background on the complex dialectic between socialists and Austrian school critics.
- (12) Chris Sciabarra, *Ayn Rand: The Russian Radical* (Penn State Univ. Press, 1995).
  - more historical background on the great popularizer of libertarian ideology.
- (13) Douglas J. Den Uyl and Douglas Rasmussen, eds., *The Philosophy of Ayn Rand* (University of Illinois Press, 1985).
- (14) Douglas J. Den Uyl and Douglas Rasmussen, *Norms of Liberty* (Penn State University Press, 2005).
- (15) A. John Simmons, *Justification and Legitimacy* (Cambridge University Press, 2001).
  - a crucial collection by probably the best defender of a Lockean approach to gov. today.

### **Neutral or Divided:**

- (1) David Gauthier, *Morals by Agreement* (Oxford University Press, 1986);
  - the key set of arguments for incompleteness of markets (bolstered by much other work on game theory and public goods of course).
- (2) David Gauthier, "Justice and Natural Endowment," in Gauthier, *Moral Dealing: Contract, Ethics, and Reason* (Cornell University Press, 1990);
  - a response to Rawls's version of starting-place fairness.
- (3) John Tomasi, "Democratic Legitimacy and Economic Liberty," *Social Philosophy and Policy* (2012 preprint): 50-80.
  - defends a mixed position favoring market freedoms within a government framework designed to aid the poor.
- (4) Peter Vallentyne, "Self-Ownership and Equality: Brute Luck, Gifts, Universal Dominance, and Leximin," *Ethics* 107 (Jan. 1997): 321-343.
  - a very helpful review of scholarship in the 1980s and early 1990s.
- (5) Ellen Frankl Paul, Fred Miller, and Jeffrey Paul, eds. *Liberalism and Capitalism*. Cambridge University Press, 2011.
  - a series of representative essays across the spectrum from right- to left-libertarianism.
- (6) Ellen Frankl Paul, Fred Miller, and Jeffrey Paul, eds. *Natural Rights Liberalism from Locke to Nozick*. Cambridge University Press, 2005.
  - excellent historical background with essays from a range of contrasting viewpoints, esp. on consent theory and initial acquisition issues.
- (7) Ellen Frankl Paul, Fred Miller, and Jeffrey Paul, eds. *Problems of Market Liberalism*. Cambridge University Press, 1998.

**Con** [some key works]:

Major conceptual critiques

- (1) Elizabeth Anderson, *Value in Ethics and Economics* (Harvard University Press, 1993).
  - more support for values that are not just consumed or pursued as the object of subjective preferences, which markets therefore cannot optimally produce (compare with Sagoff).
- (2) Daniel Atlas, *Liberty, Property, and Markets* (Ashage Publishing, 2005).
- (3) Wilfried Beckerman and Joanna Pasek, *Justice, Posterity, and the Environment* (Oxford University Press, 2001).
- (4) Jeffrey Blustein, *The Moral Demands of Memory* (Cambridge University Press, 2008).
  - shows complex moral demands coming from history, including rectification issues.
- (5) G.A. Cohen, *Self-Ownership, Freedom, and Equality* (Cambridge University Press, 1995);
  - key critique of the notion of self-ownership underlying Lockean property rights and the traditional Lockean proviso. Like Otsuka, his arguments most directly address Nozick.
- (6) Alan Haworth, *Anti-Libertarianism* (Routledge, 1993);
  - useful critique, but more focused on the negative/positive rights distinction and some of Nozick's comments. Not as systematic in laying out the main forms of libertarianism.
- (7) William Hudson, *The Libertarian Illusion* (CQ Press, 2009);
  - also useful on real-world implications but starts from a communitarian perspective that is hostile to libertarianism (whereas my approach works mostly from internal critique).
- (8) David Johnston, *The Idea of a Liberal Theory* (Princeton University Press, 1994).
  - makes clear the dilemmas facing any libertarian conception of personal autonomy.
- (9) Serene Khader, *Adaptive Preferences and Women's Empowerment* (Oxford University Press, 2011). - further clarification of the problem of adaptive preferences.
- (10) Matthew Kramer, *The Quality of Freedom* (Oxford University Press, 2003).
  - probably the most detailed and systematic of the negative / positive distinction.
- (11) Eric MacGilvray, *The Invention of Market Freedom* (Cambridge University Press, 2011).
  - A historical critique that is especially clear on classical 'republican' alternatives.
- (12) Martha Nussbaum, *Creating Capabilities: the Human Development Approach* (Harvard University Press, 2011).
  - argues, in agreement with Sen, for a capabilities measure of the human good, with a natural basis. This implies that autonomy cannot be what libertarian theories imagine.
- (13) Michael Otsuka, *Libertarianism without Inequality* (Oxford University Press, 2003);
  - key critique of Nozick's minimal version of the Lockean proviso.
- (14) Serena Olsaretti, *Liberty, Desert, and the Market* (Cambridge University Press, 2004);
  - the best critique I have found of libertarian meritocratic arguments for market outcomes.
- (15) Amartya Sen, *The Idea of Justice* (Harvard University Press, 2009).
  - addresses adaptive preferences and other problems with standard measures of well-being; this approach clearly argues that a form of 'positive liberty' is crucial for justice.
- (16) Mark Sagoff, *The Economy of the Earth* (Cambridge University Press, 1988).
- (17) Peter Vallentyne, *Equality and Justice*, in six volumes [esp. vol.6, *Desert and Entitlement*] (Routledge Press, 2000 - 2003).
- (18) James P. Sterba, "From Liberty to Welfare," *Ethics* 105 no.1 (Oct. 1994): 64-98.
- (19) James P. Sterba, *Morality: The Why and the What of It* (Westview Press)
  - includes mature restatement of Sterba's approach, along with critical responses from libertarians such as Machan and Narveson, and Sterba's rejoinder.
- (20) Henry George, *Progress and Poverty* (Library of Economics and Liberty, 1912).
  - a famous argument for land as common original asset; implies that the Lockean proviso can only be met by pooling proceeds of land rents for common benefits; this is a key predecessor to endowment model.

### Articles on key topics

- (1) David Archard, "Selling Yourself: Titmuss's Argument Against a Market in Blood," *The Journal of Ethics* 6 (2002): 87-103.
- (2) Richard Arneson, "Paternalism and the Principle of Fairness," forthcoming in Christian Coons and Michael Weber, eds., *Paternalism: Theory and Practice* (Cambridge University Press, 2012). – will probably be a defense of the principle of fairness.
- (3) Richard Arneson, "Against Rawlsian Equality of Opportunity," *Philosophical Studies* 93, No. 1 (January, 1999). – one of the few really good pieces on this principle.
- (4) Daniel Shapiro, "Liberalism and Communitarianism," *Philosophical Books* 36 no.3 (1995): 145-155. – a summary of this debate in the 1980s and early 1990s.
- (5) Barbara Fried, "Wilt Chamberlain Revisited: Nozick's 'Justice in Transfer' and the Problem of Market-Based Distribution," *Philosophy and Public Affairs* 29 no.3 (1995): 226-245.
- (6) Phil Pettit, "The Instability of Freedom as Noninterference: The Case of Isaiah Berlin," *Ethics* 121 (July 2011): 693-716.
- (7) Evan Riley, "Libertarian Self-Defeat," *Journal of Moral Philosophy* 7 (2010): 1-27.
- (8) Richard Tuck, *Free Riding* (Harvard University Press, 2008)
  - the chapter on Olson's problem is key for a principle of fairness excluding free-riders.
  - The chapter on perfect competition extends the results to a critique of unlimited markets
- (9) Peter Vallentyne, "Brute Luck, Option Luck, and Equality of Initial Opportunities" *Ethics* 112 (April 2002): 529-557.
- (10) Mattias Risse, "Common Ownership of the Earth as Non-Parochial Standpoint: A Contingent Derivation of Human Rights," *European Journal of Philosophy* 17 no.2 (June 2009): 277-304.
- (11) Jeremy Waldron, "Theoretical Foundations of Liberalism," in Waldron, *Liberal Rights* (Cambridge University Press, 1993).

### Political and Sociological Arguments

- (1) John Field, *Social Capital* (Routledge, 2003).
  - distinguishes productive and destructive forms of social capital.
- (2) William Gates Sr. & Chuck Collins, *Wealth and our Commonwealth* (Beacon Press, 2004);
  - defense of the estate tax and graduated income taxes with a detailed historical perspective.
- (3) David Halpern, *Social Capital* (Polity Press, 2005).
  - key text summarizing recent findings on social capital.
- (4) Stephen Holmes and Cass Sunstein, *The Cost of Rights* (Norton, 1999);
  - excellent on the implications of actual implementation of rights in positive law; but unclear on natural rights basis (or too easily dispenses with these).
- (5) Peter Singer, *The President of Good and Evil: The Ethics of George W. Bush* (Dutton / Penguin Group, 2004). – introduces some of the facts about social capital into the debates.
- (6) Joseph Stiglitz, *The Price of Inequality: How Today's Divided Society Endangers our Future* (W.W. Norton, 2012).
- (7) Gary Weiss, *Ayn Rand Nation: The Hidden Struggle for America's Soul* (St. Martin's Press, 2012).
- (8) Herman Daly and Kenneth Townsend, *Valuing the Earth* (MIT Press, 1994).
- (9) Mark Sagoff, *The Economy of the Earth* (Cambridge University Press, 1988).

(10) Herbert Simon, "UBI and the Flat Tax," *Boston Review* (Oct.-Nov. 2000).

Historical Background

- (1) Ian Shapiro, *The Evolution of Rights in Liberal Theory* (Cambridge University Press, 1986)
  - history and critique of Lockean property rights, Rawls, Nozick, and other responses.
- (2) James Robbins, *Answer to Ayn Rand* (Mt. Vernon Publishing, 1974).

