

**LOCKE'S PERFECTIONIST LIBERALISM: AN ARTICULATION AND
DEFENSE**

by

Evan Patrick Riley

BA, Philosophy, University of Louisville, 1995

BA, Philosophy, Politics and Economics, Oxford University, 1997

Submitted to the Graduate Faculty of
The College of Arts and Sciences in partial fulfillment
of the requirements for the degree of Doctor of Philosophy

University of Pittsburgh

2008

UNIVERSITY OF PITTSBURGH
COLLEGE OF ARTS AND SCIENCES

This dissertation was presented

by

Evan Patrick Riley

It was defended on

December 5th, 2008

and approved by

Karin Boxer, Assistant Professor, Philosophy

Stephen Engstrom, Professor, Philosophy

Michael Goodhart, Associate Professor, Political Science

Kieran Setiya, Associate Professor, Philosophy

Director: Michael Thompson, Professor, Philosophy

Copyright © by Evan Riley

2008

LOCKE'S PERFECTIONIST LIBERALISM: AN ARTICULATION AND DEFENSE

Evan Riley, PhD

University of Pittsburgh, 2008

Locke's view in the *Two Treatises* not only allows for but embraces interference with individuals on recognizably perfectionist grounds. It is plainly a form of perfectionism. Yet it is also an early paradigm of deontological liberalism for Locke sharply emphasizes the importance of moral duties to respect the basic rights of the sovereign individual. It is tempting to conclude that he is confusedly appealing to two opposed forms of moral and political theory, indeed to what we have come to see as two opposed forms of moral reasoning, viz. consequentialism on the one hand and deontology on the other. This temptation should be resisted. Perfectionism and deontology are not necessarily at odds with one another; some perfectionisms may coherently and productively also be deontological liberalisms. Locke's is one such view.

Respecting the constraints associated with justice through the exercise of practical wisdom may be held to be a constitutive element in the good life. Such a view is coherent and appealing insofar as it makes intelligible the relation of justice to flourishing without inviting the worries about tyrannizing that plague consequentialist forms of moral theorizing. This is theoretically unambitious as it rules out robustly explaining the

nature of moral rectitude by appeal to the idea of maximizing the good. Yet it is not trivializing.

Locke's liberalism fundamentally calls for every human being to be brought into full practical reason and to be accorded a minimally decent scope for exercising that capacity in various productive ways in society with others.

The dissertation culminates in a demonstration that Locke was correct to hold the kind of perfectionist liberal view that he did, rather than the standard libertarian view often still attributed to him. Standard libertarianism is especially vulnerable to a kind of collective self-defeat, for while perfectly respecting the relevant constraints of libertarian justice, the members of libertarian society may undermine the realization of one of their characteristic basic values. Such degeneration would be no accident; it is brought about through intentional actions fully morally legitimate on that conception. Locke was hence correct to defend his actual view rather than this alternative.

TABLE OF CONTENTS

PREFACE.....	viii
1.0 INTRODUCTION.....	1
1.1 PERFECTIONISM SKETCHED.....	2
1.2 THE PROPER END.....	11
1.3 A WORRY DEFUSED.....	16
1.4 LIBERALISM SKETCHED.....	20
2.0 AGAINST HURKIAN PERFECTIONISM.....	24
2.1 THE MISBEGOTTEN ESCHEWAL OF MORALLY EVALUATIVE CONTENT.....	25
2.2 AGAINST HURKA’S POSITIVE PERFECTIONISM.....	34
3.0 AGAINST RAWLSIAN ANTIPERFECTIONISM.....,	39
3.1 RAWLS’S OBJECTIVISM AND THE DIFFICULTY.....	40
3.2 THE INCONCLUSIVE ARGUMENT FROM THE BURDENS.....	45
3.3 AN OBJECTION TO TREATING REASONABLE REJECTABIL- ITY AS DECISIVE.....	50
4.0 THE GENERAL PICTURE OF THE <i>TWO TREATISES</i> ON JUSTICE IN HOLDINGS.....	57
4.1 PRELIMINARIES.....	63

4.2	LOCKE'S GENERAL ANTLIBERTARIAN PRESUMPTION.....	73
4.3	THE SANCTIONING OF REDISTRIBUTION.....	84
5.0	LOCKE'S LIBERAL PERFECTIONISM POSITIVELY CONSTRUED..	102
6.0	LIBERTARIAN SELF-DEFEAT.....	125
6.1	TWO VARIETIES OF LIBERAL JUSTICE REVISITED.....	127
6.2	STABILITY, REASONABLENESS, AND THE REASONABLE STABILITY CRITERION.....	137
6.3	MORAL LITERACY, MORAL EDUCATION AND FULLY BEARING A CONCEPTION.....	144
6.4	THE SELF-DEFEAT.....	152
6.5	CONCLUSION.....	159
	BIBLIOGRAPHY.....	166

PREFACE

I hereby thank my family and the members of my committee for their considerable patience and help throughout the writing of this dissertation. Any remaining obscurities and errors are of course my own responsibility. I also thank the editors of the *Journal of Moral Philosophy* for permission to use material from my forthcoming “Libertarian Self-defeat.” I refer to particular passages in Locke’s *Two Treatises* by using a Roman numeral to indicate which treatise is under consideration followed by an Arabic numeral indicating the section.

1.0 INTRODUCTION

It is often presupposed that properly conceived perfectionist moral and political theorizing is consequentialist in character. John Rawls treats it this way as does Thomas Hurka.¹ In this part of the dissertation I begin by showing that this is mistaken. It is conceptually coherent to combine recognizable perfectionism with a commitment to deontological liberalism. I go on to demonstrate, in a preliminary way, the attractions of this form of perfectionism, perfectionist deontological liberalism.

I begin by discussing the general features of the perfectionist family. I endorse the thought that a view of human moral and political life is a form of perfectionism in the relevant sense when it expresses a recognizably teleological view of human nature that finds its proper end in human flourishing. The perfectionist's account of abstract right, and justice, coheres with and is on her view made intelligible only in the light of her detailed account of such flourishing. On a robust perfectionist view achieving such flourishing requires the development of some characteristically human capacities. Typically, the flourishing is thought to consist at least in part in the exercise of those

¹ Rawls thinks *all* properly perfectionist theories are consequentialist, though he also allows some mixed-bag theories to include perfectionist principles. See John Rawls, *A Theory of Justice*, 1st edn (Cambridge, MA: Harvard University Press, 1971). Hurka thinks all the *sensible* perfectionist theories are consequentialist. See Thomas Hurka, *Perfectionism*, (Oxford: Oxford University Press, 1993).

capacities. Yet I argue against thinking that the only coherent forms of perfectionism are consequentialisms.

I further that case through critical consideration of Thomas Hurka's *Perfectionism*.² I argue, *pace* Hurka, that perfectionist deontological liberalism is not merely coherent but otherwise prima face sensible. I also show that it is not vulnerable to some obvious objections that may be cogently pressed against Hurka's preferred form of consequentialist perfectionist moral theory. I also argue that Rawls's antiperfectionist scruples as displayed in *Political Liberalism* are not well grounded.³ My argumentative strategy there is to point up the absence of obvious general grounds for distinguishing the credentials of avowedly perfectionist deontological liberalism (hereafter PDL) from those of its neutralist brethren.

1.1 PERFECTIONISM SKETCHED

Clearly, a commitment to perfectionism in moral and political philosophy can take a range of different forms and the use of the term is contested.⁴ Nonetheless, there is rough

² See Hurka, *Perfectionism*, pp. 9-60.

³ See John Rawls, *Political Liberalism*, 2nd edn (New York: Columbia University Press, 1993, 1996.)

⁴ The general approach dates to Plato and extends through the history of moral philosophy. See Plato, *Republic*, trans. G.M.A. Grube, rev C.D.C. Reeve, (Indianapolis: Hackett, [380 B.C.], 1992). Useful recent short discussions include: Richard Arneson, 'Perfectionism and Politics', *Ethics*, Vol. 111, No. 1. (2000), pp. 37-63, Joseph Chan, 'Legitimacy, Unanimity, and Perfectionism', *Philosophy & Public Affairs* 29 (2000), pp. 5-42, and David McCabe 'Knowing About the Good: A problem With Anti-perfectionism', *Ethics* 110 (2000), pp. 311-338. Monographs defending explicitly perfectionist liberalisms include: Vinit Haksar, *Equality, Liberty and Perfectionism*, (Oxford: Clarendon, 1980), Joseph Raz, *The Morality of Freedom*, (Oxford: Clarendon,

agreement on the most general features that a substantive normative view of human political and moral life will possess if it is a kind of perfectionism. In particular, it must be recognizably a teleological view and focused on some account of human flourishing. That is, such a view embraces an account of human flourishing, and thus of human nature, which is taken to have objective purport and to constitute the proper end of human life. On such a view, the proper account of human abstract right gets significance and content from the prototypical support that respecting the substantive constraints of that account would provide for the conditions and constituent elements of human flourishing.⁵ Securing and fostering human flourishing, on this sort of view, may also be held to properly serve as a central goal of political or state action even in the face of actually existing controversy on the nature of the human good and concerning the proper constraints on its pursuit among roughly reasonable people. This is what I will call ‘the paternalist thesis’.⁶ The debate between liberal neutralists and perfectionists in political theory is centered on this last issue, the neutralist denying and the perfectionist accepting the possible legitimacy of such action.⁷

It is useful to distinguish the paternalist thesis from the robust perfectionist account. Any robust perfectionist account begins with a conception of the *telos* as

1986), George Sher, *Beyond Neutrality*, (Cambridge: Cambridge University Press, 1997) and Stephan Wall, *Liberalism, Perfectionism and Restraint*, (Cambridge: Cambridge University Press, 1998).

⁵ As I stress below this prototypical support can be either productive, constitutive, or both.

⁶ This has a more general sense than philosophers sometimes entertain. Paternalism here indicates interference with an individual where the justification for that relies on a substantive conception of human flourishing even where the individual is deemed roughly reasonable and rational. It is not restricted to cases of interference for the individual’s own good.

⁷ See Steven Wall & George Klosko (eds.), *Perfectionism and Neutrality*, (Lanham, MA: Rowman and Littlefield, 2003).

successful, human flourishing. This flourishing is thought to partially consist in the complete development and exercise of some characteristic human capacities. Further, the general way in which the characteristic excellences or virtues in human life contribute to such flourishing is presupposed. This is not to say that there is, within the family of views, precise agreement on the nature of the human virtues in either their individual or institutional shapes. Nor are they always understood in a particularly moralistic way. It is merely presumed that there are excellences, characteristic of properly developed human beings and of their social institutions, and that these will contribute to the *telos* productively and possibly also constitutively. In other words, the human virtues, are such—are excellences—relative to attaining the necessities of living well, that is, flourishing, in the human way. And on the perfectionist view that is how we are to understand justice, as one of those virtues.⁸

This presupposition gives the necessary conceptual room for any candidate specification of some excellence—say justice—to be functionally vindicated in the light of the overall account. A functional vindication illustrates how a virtue, for example justice, would serve well in a general functional role by supporting the achievement of

⁸ One philosopher who can be counted on to reject this is G.A. Cohen. Cohen thinks of the substance of justice as somehow autonomous, or “transcendent,” a point that is developed in his criticism of Rawls’s constructivism. He thinks justice is not to be identified even (apparently) with a subset of those excellences that when instantiated constitute and produce, all things considered, flourishing in human social life. See G. A. Cohen, *Rescuing Equality and Justice*, (Cambridge: Harvard University Press, 2008) page 21 and page 337. I have yet to formulate a full answer to Cohen on this score. But see the immediately following paragraph in which I describe the notion of a functional vindication. Giving such a vindication is only possible where we repudiate Cohen’s picture of principles of justice as independent of the conditions of human life.

flourishing human life.⁹ For instance, if one could show that some particular specified conception of the requirements of justice, where concretely instantiated by being properly understood and reliably acted upon, favored the production and reproduction of what we deemed to be the overall *telos*, in a normal human community, that would be a reason in its favor. Conversely, if it turned out that some candidate conception of those requirements, that is, of the substance of the virtue, were instantiated in a human community and this undermined that *telos*, this would be reason to reject that account. In other words, where we accept some detailed account of the *telos* of human flourishing we provide ourselves with a standard for judging competing specifications of the virtues; they are expected to make a contribution to the overall flourishing of individuals of the kind of living thing we have in view. There is a question as to whether the flourishing constituting this final end of ours is to be understood as essentially a unitary mode of success for the group and only incidentally of individuals, or the other way around, or variegated for subclasses of the group, or what. But this can be set aside. We can legitimately treat this sort of view of the relation between the virtue of justice and human flourishing as teleological in what I will call the original sense. It accords nicely with Aristotle's work.¹⁰

It should be noted that there is an opposing and canonical conception of the teleological in moral philosophy, inspired by some remarks of Rawls's sharply

⁹ The general functional role is a dual constitutive and efficient causal role as played in some system.

¹⁰ The idea of a functional vindication of purported characteristic excellences in the light of the *telos* relative to kind of living thing is Aristotelian if anything is. Consider the *ergon* argument. See Aristotle, *Nicomachean Ethics*, trans. T. Irwin (Indianapolis, Hackett. 1985) page 1098a and following. This is an attempt to vindicate the thought that the *telos* of human beings is partially constituted by properly reasoned actions—that is virtuous actions—performed in the living of an otherwise complete life.

distinguishing it from the deontological. For Rawls, an approach to moral philosophy is teleological only where it has two features.¹¹ I quote a seminal passage here. The emphasis is added.

The two main concepts of ethics are those of the right and the good; the concept of the morally worthy person is, I believe, derived from them. Now it seems that the simplest way of relating them is taken by *teleological* theories: the good is defined independently from the right, and then the right is defined as that which maximizes the good ... Teleological theories have a deep intuitive appeal since they seem to embody the idea of rationality. It is natural to think that rationality is maximizing something and that in morals it must be maximizing the good...It is essential to keep in mind that in a teleological theory the good is defined independently from the right: This means two things. First the theory accounts for our considered judgments as to which things are good (our judgments of value) as a separate class of judgments intuitively distinguishable by common sense, and then proposes the hypothesis that the right is maximizing the good as already specified. Second, the theory enables one to judge the goodness of things without referring to what is right... Teleological doctrines differ, pretty clearly, according to how the conception of the good is specified. If it is taken as the realization of human excellence in the various forms of culture, we have what may be called *perfectionism*. This notion is found in Aristotle and Nietzsche among others.¹²

Notice that for Rawls here the human good must be understood, in perfectionist thinking, independently from the right and thus independently from what is just. Notice also that moral rectitude and justice more particularly is to be understood as whatever will maximize the good so defined. This way of understanding the basic structure of teleological views continues to have broad currency, and it licenses the inference that perfectionist views are all consequentialist in general structure. It does so trivially since

¹¹ See Rawls, *A Theory of Justice*, pp 24-5.

¹² *Ibid.*

‘teleological’ in the relevant sense turns out to be a synonym of the broad sense of ‘consequentialist’.¹³ But a view that is teleological in the original sense is not required to have the theoretical features that Rawls makes definitive. The original sense of the term leaves it open as to whether any particular perfectionism is consequentialist in its general structure. Let me explain.

First, the teleological theorist, in the original sense, is not required to define the good independently from the right, though she might. As I said, it is possible that justice for example will in some way be a partial constituent of the *telos*, for instance where justice in action, the virtuous activities of the just person as such, is held to be part of human flourishing. If the theorist holds a view of that shape, then the account of human flourishing would be incomplete where no description of justice was provided. Simply put, the good, in this case human flourishing, will not be definable independently from justice. Of course this leaves it open that there is more to the good, i.e., human flourishing, than right action. For example, suppose that the *telos* embraced by the account was, as Aristotle in places suggests, human activity in accordance with overall practical wisdom, in the context of an otherwise complete life. Given that knowledge of the requirements of justice is part of what the practically wise person knows, and given that the actions called for under justice will be part of the relevant human activity, there will be, in that case, no defining of the good independently of justice.

Second, there is also no conceptual requirement that a view teleological in the relevant sense have Rawls’s second feature, though again it might. That is, a view can be

¹³ As far as I know it is Elizabeth Anscombe who coins ‘consequentialism’. See Elizabeth Anscombe, ‘Modern Moral Philosophy’, *Philosophy* 33, No. 124 (1958), page 12.

teleological in the original sense without insisting that the requirements of justice, or abstract right, consist in the call for those actions in any circumstance that will maximize the achievement of the good. It could well be that what justice requires sadly bars the path to some wonderful outcome. For example, by unjustly wronging these people now we might make it the case that conditions are subsequently made more conducive to human flourishing. Yet the defender of some perfectionism may nonetheless coherently resist sanctioning the injustice. He doesn't, I think, cease to be a 'teleologist' in recognizing stringent moral limits on possible paths to the achievement of human flourishing, even human flourishing as he conceives it.

It might appear that the perfectionist has no conceptual room to resist sanctioning the wrong in such a case; indeed it might seem that she is not even in a position to treat the wrong as genuinely such. To illustrate this point, consider one way of, as it might be put, finding primary value in a conception of human flourishing. Imagine human flourishing to consist in some measureable, aggregative, variable quality attributable to individual human beings. Notice that if we further simply take actions not to be among the kind of things properly called qualities, then right action and flourishing are guaranteed already to be distinct. Further, suppose we treat the right as having its content determined entirely as whatever would bring about the most such flourishing in any given context. This last move of course reflects the general form of consequentialism in moral philosophy; the core doctrine of consequentialism is precisely to refuse to grant that the right has content apart from what makes for the most good, or is expected to do so. Making these moves is one way of giving content to a perfectionism, and were we to provide the content in just this way it would be confused to also think that there was

room to resist the wrong in question. Yet none of this is necessary for this is not the only way to give content to perfectionism.

Another way is to take one's original theoretical bearings concerning the constraints of morality—the commands of duty for example—from a comprehensive picture of what human life looks like when that life form is flourishing. Such a picture could be worked up as Rawls suggests through sustained reflection on and Socratic interrogation of our considered judgments at all levels of generality.¹⁴ Perhaps Michael Thompson is correct to think that the basic conceptual structure for making life-form judgments, and further some substantive knowledge of the human life-form and proper human flourishing, is *a priori* for us.¹⁵ Yet, however we arrive at such a comprehensive picture, even in outline, once we are considering thriving human beings anything like realistically, it is natural to take their flourishing to consist in idealized modes of human action over an otherwise ideally complete life—and so not as a precisely aggregative, variable possible quality of human beings, or of rational agents. The constraints of practical reason, those for instance associated pre-theoretically with the virtue of justice—the call for promise making and keeping, the call for giving to each her proper share—are to be made coherent with, and understood only against the background of, this picture of thriving human life. And the actions called for under justice may then be understood as functionally supportive of flourishing without being correctly glossed as whatever actions are required to lead to the most flourishing, as rapidly as possible, in any circumstances.

¹⁴ See Rawls, *A Theory of Justice*, pp. 46-53.

¹⁵ See Michael Thompson, *Life and Action*, (Cambridge: Harvard University Press, 2008).

This is still obscure I suppose, so consider the following as offering an instructive analogy. Imagine a physically healthy organism of some kind. Take a continuous activity performed by some essential organ in healthy organisms of that type, where the results of that activity produce a substance the organism needs, in a certain quantity, to stay alive. Holding merely this fixed, and whatever else we say, it will be correct to hold that the organ's activity constitutes the health of the organism in two ways. On the one hand, the activity is simply part of healthy existence for the organism, and so is continuously going in the healthy ones. On the other hand, that activity has a specific efficient causal role in the bodily life of the organism, viz. to produce the needed substance within certain limits. Neither of these claims are reducible to the thought that the purpose or basic nature of the activity is to maximize healthiness in the individual, nor do they imply it.

Clearly, the perfectionist may think of the relation between actions exhibiting justice—more generally human virtue—and flourishing as like the relation here between the activity of the organ and the health of the organism; many have. The typical results of just action, and so just action itself, will tend to contribute productively to human flourishing insofar as, for example, respecting the bodily integrity of, fostering the autonomous lives of, and laying-off the fairly generated holdings of individual human beings, do. Thus doing these actions will be worthwhile insofar as they are means to the means of flourishing. Yet just action will also, perhaps, be considered part of what it is to flourish as a human being, and will be choice-worthy on those grounds as well. Of course this leaves an enormous amount unsaid. But I think it is already clear that one can coherently be a perfectionist and yet not be a consequentialist.

A threat to this way of proceeding will doubtless come from a different direction. For one might worry that the kind of view here in question will be theoretically uninteresting. The worry more specifically is this. Once one sets aside the consequentialist picture, there is no longer room for offering any robust explanation of the right in terms of our prior grip on a separate object, the human good. And in the absence of that room, we might further think, all we have is the dogmatic statement of one picture of flourishing and justice, to be opposed dogmatically to other such pictures. The first claim here is true. We do eliminate the very possibility of offering a robust explanation of this kind, though our desire to offer explanations of this kind is no reason to accept the general idea that what is right is what maximizes the good independently conceived. The second claim is false. For there remains room for dispute and progress of a sort even where we accept the general force of the analogy just above, and begin to work within this form of the perfectionist paradigm.

1.2 THE PROPER END

Let that suffice, for now, to indicate how I am thinking of teleological structure. I claimed above that the *telos* of human flourishing is held, on perfectionism, to be the proper end of human beings as such. How are we to understand this? This claim expresses at least the thought that the norms associated with human flourishing will guide us if we are reasonable, given only that we are human beings. This isn't yet to say

anything about the content of the principle of reason or rationality that we might take to express this, however vaguely. Yet even the bare notion of guidance as conditioned upon the actualization of human reason suggests that when it comes to our proper end, as opposed to that of the other simpler living things, the issue is complicated by practical reason. We are animals whose proper end arguably includes recognition of our proper end. The end in question—human flourishing—can move human beings through the deliberative spontaneity of its being grasped, by its bearers, as an end. And so our flourishing occurs through and possibly in intentional action.

A crucial idea immediately in the offing here is the thought that, for human beings, flourishing will require the fully realized capacity for practical reason. Human beings can and do act on the basis of reasons, sometimes good reasons, sometimes over a sustained period of time. This bare sort of capacity may or may not be unique among Earth dwelling creatures, but there is no denying that there is a characteristically human form of it and that it is a capacity admitting of degrees of perfection. With this acknowledged, the possibility opens up in the human case that flourishing can be explicitly sought by the bearers of the life-form under its own guise, through intentional actions, and indeed realized through exercises of the individual's own power of practical reason, where that power is sufficiently developed and perfected. The perfectionist typically seizes on these possibilities. She typically holds that part of what is required to flourish in the human way is that this flourishing be grasped and realized through the practically wise person's exercising her power of practical reason. That cognitive and conative capacity, or set of capacities, will typically be subject to stringent moral protection when the account is positively articulated. This is so since attaining it, keeping

it, and exercising it, will be necessary regardless of what else human flourishing consists in.

If this is correct, the typical perfectionist is not skeptical about the very possibility of knowledge of the flourishing human life being grasped by members of that life form. Indeed, it would be unusual in the extreme to defend a perfectionist account of human flourishing that did not take the self-direction of human agents through substantive human practical wisdom as central to the picture. How then is the knowledge held by the practically wise to be generally characterized?

For help with this question, I look to Thompson and Philippa Foot on natural goodness.¹⁶ A robust perfectionist account of human flourishing requires the complete development of some potentials, capacities and features of human nature, the ones that are deemed significant, worthy, proper in the light of the overall view of human life. A canonical description of these special capacities and features would be well expressed, regardless of the substantive details, in the shape of what Thompson has called Aristotelian categoricals.¹⁷ These are descriptive claims concerning the functioning of the proper parts and abilities of the prototype of a natural kind of living being, alive in its normal environment, and that exhibit a familiar kind of non-statistical generality. Typically, these claims are expressed in sentences beginning with the definite article, sentences such as “The Bobcat’s excellent night vision makes it well suited for stalking

¹⁶ See Thompson, *Life and Action*, and Philippa Foot, *Natural Goodness*, (Oxford: Oxford University Press, 2001).

¹⁷ See Michael Thompson ‘The Representation of Life’, in R. Hursthouse, G. Lawrence, and W. Quinn, (eds.) *Virtues and Reasons*, (Oxford: Clarendon, 1995), pp. 247-296.

during [dawn and dusk].”¹⁸ Such natural historical descriptions quite plainly have to do with proper functioning of the exemplary case, on the whole or in part. And they do not cease to be true, where they are true, even in circumstances when most, for example most Bobcats, fail to have the features in question. They are simply not of the right logical form to be made false by the numbers and, while clearly descriptive, they will ground ought-thoughts of a kind. This is how we use them. Specifically, where we have a concrete instantiation of the life-form and it is missing, or lacking to some nontrivial degree, some feature, organ, activity that the prototype exhibits in flourishing, or needs in order to flourish, relative to the kind, we can straight away register that as a defect or lack. The claims constitutive of a perfectionist moral view of human flourishing are intended of course to work in the same way. For they too are not thought to be falsified by the numbers. And they too are to ground judgments of virtue and vice, of proper development and defect, looking to flourishing life as the standard.

In a natural historical account of plants or nonhuman animals we are quite content with the idea that some features reflect excellence in the relevant animal or plant on the grounds that, when properly developed and brought to bear, they serve for the prototype, the attainment of flourishing for that kind in its appropriate environment. It needs them. Anscombe reminds us of this. “But in the case of a plant let us say, the inference from ‘is’ to ‘needs’ is certainly not in the least dubious. It is interesting, and worth examining, but not at all fishy.”¹⁹ There is something important and instructive here for the moral and political philosopher according to some perfectionists. For instance, on the later Foot’s

¹⁸ See Kevin Hansen, *Bobcat: Master of Survival*, (Oxford: Oxford University Press, 2007), page 41.

¹⁹ See Anscombe, ‘Modern Moral Philosophy’, page 7.

perfectionism, it is in general true that what makes some living X fully good, or exemplary of its kind, is its fully or perfectly instantiating those qualities that prototypically allow for one of its kind to flourish in what we take to be its normal environment, where circumstances cooperate. These are the ones it needs. Judgments about human excellence are to be understood as a particular kind of natural historical judgment, and not pertaining to some rarified topic—capital ‘m’ Morality—isolated from more mundane matters of human life.

However satisfied or dissatisfied we might be with that way of understanding what the moral philosopher should be up to, there are at least two ways in which some conception of human flourishing might serve as to give direction to our lives by being the end proper to us as a kind. The simplest way in which it might do so is in being the final external goal to be properly sought in every action of any human person. On extreme versions of this view if one of us is not directly seeking more—or indeed the most achievable—human flourishing in any particular action one cares to think about, that one is not acting as she ought. This has looked problematic to many for familiar reasons: it seems way too simple to be true to the phenomena, it risks being grotesquely over-demanding, and it risks calling for heinous wrongs were those required in the circumstances to achieve this end. Worse, it seems unable to reflect an adequate picture of human agency.²⁰

Consider, as an alternative, a general standing principle of action that tells us to indeed seek to produce or foster human flourishing as an instrumental goal unless seeking

²⁰ See Bernard Williams, ‘A Critique of Utilitarianism’, in *Utilitarianism For and Against* (with J.J.C. Smart), (Cambridge: Cambridge University Press, 1973), pp. 77-150.

to produce it is inconsistent with the actions expected of the genuinely flourishing fully virtuous person. Here we have room to build in an appeal to what is recognizable as justice at the basic level, so this is as deontological as one could like.²¹ Yet it is nonetheless also plainly sensible to, on such an account, describe human flourishing as giving overall direction to our lives by being the end proper to us. This variety of view appeals to the notion of fully virtuous action and the practically wise human being in connection with its picture of flourishing; it isn't explaining either from outside the other. The connection between humanly virtuous action and human flourishing is radically noncontingent in virtue of their mutual presupposition. Is it intellectually responsible to take this stance? Some philosophers doubt that it is, and this question has not been resolved to everyone's satisfaction. I address it below in the remarks on Thomas Hurka's work.

1.3 A WORRY DEFUSED

Many liberals, including Popper, Berlin and more recently Rawls, have worried that the perfectionist family of views is prone to sanction evil in virtue of its form and content.²²

²¹ The term "deontological" is used throughout as a label for conceptions or theories of morality or sound practical reason under which the cognition of duty is a primitive element, and not something derived. That is precise enough to be useful and largely accords with the way the phrase is commonly put to work among philosophers.

²² See for example §50 of *TJ*, and pages 194-5 of *Political Liberalism*. See Karl Popper, *The Open Society and Its Enemies* (Princeton: Princeton University Press, [1945]) and Isaiah Berlin 'Two Concepts of Liberty' in *The Proper Study of Mankind*, (New York: Farrar Strauss and Giroux, 1997).

The worry is particularly acutely felt in connection with perfectionist moral reasoning as deployed in the political realm. It is claimed that on any perfectionist moral theory the way is clear for the theory to sanction or even call for the tyrannizing of human beings in the interest of achieving or protecting human excellence. This is so, it is held, since perfectionism appeals to some detailed notion of full human excellence or flourishing, and achieving this is treated as the proper end of human life. It is further claimed that there is no bar internal to the picture to using people entirely instrumentally, as a means of achieving full flourishing—no bar that is to the actions that we recognize pretheoretically as wrongful tyrannizing. On such a picture, justice may well call for killing or enslaving people in various circumstances that are sadly not hard to imagine. On a specific and cartoonish version of it, we ought, on the grounds of justice, to chop-up and feed the benighted majority to the exceptional as the additional protein will aid in the production of the states of mind likely to generate great works of art.

I of course accept the thought that this would be to get things wrong but I also deny that every perfectionism has the problematic features in question. I stress, against this objection, that some perfectionism might have a quite other conception of full human flourishing in view, one strictly inconsistent with what counts as tyrannizing from the liberal point of view. We might think that human flourishing is not found in possession and exercise of isolable states or capacities of any kind, even where those are capacities of supreme artistic genius, or very high intellectual or athletic skill or beauty. For instance, one might embrace the notion that human flourishing consists in the virtuous living of a full human life where the conditions for that are found only in the properly realized liberal democratic society. Whatever more exactly characterizes that society, it

is a society of political and moral equals, each of whom pursues his or her reasonable purposes within the bounds set by the duties owed to others and to himself, where each person has been educated into something recognizable as human autonomy. Thus we may reject the suggestion that for any perfectionism only the extraordinarily gifted individual, the freak of nature, may truly flourish qua human being, and begin on making the case that robustly liberal institutions are necessary for human flourishing.

This reply is important for it indicates that some ways of treating the conception of human flourishing at the center of the perfectionist account make it very difficult to see how anti-liberal tyrannizing could be sanctioned. Yet an interlocutor might try to argue here that this reply has missed the deeper problem, one that no amount of softening or liberalizing the content of the *telos* will fix. This is so, the interlocutor may claim, simply insofar as perfectionism is a form of teleological morality and will thus call for the straightforward maximizing of human perfection or flourishing. Its abstract structure, according to this thought, entails that the perfectionist will not be able to coherently rule out immoral and illiberal paths to flourishing no matter how liberal we take that flourishing to be. But I take it we can now see that our interlocutor is here simply making a mistake. Given that what I have suggested above concerning the teleological structure of perfectionism is correct, this objection is simply not the general one it purports to be.

We have seen, that is, that a view can be recognizably teleological and yet not a maximizing consequentialism. It is coherent for the perfectionist *telos* to partially consist in virtuous action. And there is no general conceptual bar to that conception of virtuous action reflecting a recognizable form of deontological liberalism.

Typically liberalism involves a conception of right practical reason. This involves a kind of practical literacy reflecting the equal moral worth of human beings, the importance of the development of recognizable full autonomy, and crucially, respecting fair opportunity across a wide range of circumstances for the exercise of such autonomy. Any liberal regime of rights and duties properly reflects those commitments in some form. So, a liberal perfectionist at this point may simply respond to her worried interlocutor by observing that the view she defends is a form of deontological liberalism despite its perfectionism. She emphasizes that respecting those deontic constraints, the ones that we are inclined to think of as liberal—centrally duties imposed by the Hohfeldian claim-rights of individuals to their minds, bodies, basic liberties, and worldly holdings—limits the ways in which we might properly act, out of respect for individual human beings.²³ The perfectionist thinks we discover those constraints only by reflecting on a comprehensive picture of human flourishing; human flourishing, where we leave it open that this could be partially constituted by right action, is still at the center of the account. Given all this, tyranny will not be particularly easy to sanction on this account of justice. Yet it is perfectionist nonetheless and so the tyrannizing worry is defused.

Thus I grant the force of the worry but deny its generality; it is properly directed against only some illiberal members of the perfectionist family. And this is not merely the countenancing of an abstract possibility. Some actually defended forms of perfectionism build deontological liberal protections, and recognizably liberal aims, into the doctrine of the flourishing life at the center of the account. A well known example is

²³ See W.N. Hohfeld 'Fundamental Legal Conceptions In Applied Judicial Reasoning' *Columbia Law Review*, Vol. 23, No. 5. (1923), pp. 502-506.

afforded us by Joseph Raz's *The Morality of Freedom*. Raz argues therein for the legitimacy and importance of actively protecting, e.g., through the state, what he calls valuable social forms, those features of our collective cultural life that provide a meaningful context for personally autonomous actions in pursuit of objectively worthwhile comprehensive goals.²⁴ Views of this kind are not consequentialist insofar as they reject a general maximizing structure and make action in accordance with the deontological liberal constraints part of the flourishing human life. Since the protections of human interests paradigmatic of liberalism are already part of the view at the basic level, and since the view is not at bottom a call for maximization, the force of the worry is effectively blunted.

1.4 LIBERALISM SKETCHED

Having introduced the notion of deontological liberalism, I explain that a bit further here. There are two further substantive features a view in normative political and moral philosophy must endorse if it is to be not merely perfectionist and deontological but also recognizably a kind of liberalism. First, the developed view must give place of pride to, and manifestly enjoin respect for the development of, what I will call substantive freedom. This will be an important element in the good life on any perfectionist liberal view. This requires the development and protection of genuine human practical reason, but it isn't limited to that, for it familiarly involves the protection of the worldly opportunities constitutive of or instrumentally required for meeting all the various basic

²⁴ See Raz, *The Morality of Freedom*, §5 of Chapter Twelve.

human interests. Second, the view must be ‘equalitarian.’ That is, it must involve the standing presumption that the typical human being is, in point of basic moral standing, the equal of any other. We are all, in other words, for the purposes of liberal moral and political philosophy, assumed to be on a par with one another in virtue of belonging to the same kind. Both of these thoughts enjoin considerable complexity and qualification and I will not attempt to fully articulate their content. In any event one must be committed to both to be a purveyor of recognizable liberalism and so of perfectionist liberalism.

In slightly more detail, consider the nature of substantive human freedom. This is a complex subjective capacity, involving both cognitive and conative powers for self-direction on the side of the person and that person’s being embedded in a concrete worldly situation that provides fair opportunities for the exercise of those powers in chosen actions. Though there is much relevant contemporary work in this area under the heading of ‘autonomy’ there is some danger in using this word to track the broader idea I am interested in here.²⁵ First, the word has a variety of closely related uses strongly associated with Kant’s—and Contemporary Kantian—moral philosophy in the Anglophone community.²⁶ One central such use, canonically formulated in Kant’s *Groundwork*, is that whereby it is taken to name the ability of a (good) will to be a law unto itself, independently of, it is said, any feature of the object of the relevant volition.²⁷ Whatever the truth about that doctrine and Kant’s considered version of it, there is clearly

²⁵ See for instance Raz, *The Morality of Freedom*, Chapter Fourteen. Raz argues therein for adequate worldly options as a constituent of autonomy.

²⁶ See Stephen Darwall, ‘The Value of Autonomy and the Autonomy of the Will’, *Ethics* 116 (2006), pp. 263–284, for a clear account of the different senses of ‘autonomy’.

²⁷ See Immanuel Kant, *Grounding for the Metaphysics of Morals*, trans. J. Ellington, (Indianapolis: Hackett, 1993 [1785]), academy page 440.

a distinction between the subjective powers in question, cognitive and conative, with reference to any reasonable person, and the worldly situation of such a person, such that she can be said to be properly fully free. That is, subjective or personal autonomy in one familiar sense is plainly to be distinguished from full or complete human freedom, even as we may take the former to be necessary for the latter. Saying how the subjective capacities are to be understood as fitting together with the worldly setting and opportunities is one long-standing concern of political philosophy, but the relevant point here is just that substantive freedom may be distinguished from one or another of its constituent elements and that the perfectionist liberal is interested in the protection of the whole.

The paradigmatic contemporary liberal concern with voluntary rational choice (rationality here construed in a very thin sense) as the mark of freedom and the ancient perfectionist concern with the proper cognitive response to moral reasons come together in perfectionist liberalism. The perfectionist liberal indeed agrees that the development and exercise of a capacity for voluntary rational choice is necessary for personal autonomy and ultimately for human freedom and agrees with the non-perfectionist liberal that human freedom is a good thing, and a condition or constituent of the good life. Yet she will insist on the reminder that the mere ability to choose rationally and voluntarily, and its exercises in actual voluntary choices, is not of particular deep significance; the preferences or ends may be debased and what is valued and chosen by the rational agent may not in fact be worth choosing. Further, she will in consistency reject the idea that endowing rational agents with a reflective capacity, and an ability to revise their ends, by itself carries us over into the realm of genuinely full practical reason. That is,

supplementing what Warren Quinn calls the neo-Humean picture of rationality so as to fully express the reflective capacities emphasized by Harry Frankfurt doesn't yet give us the account of practical reason that the perfectionist favors.²⁸ Getting human people to realize the capacity for good practical reasoning, on the perfectionist view, requires more than getting them to be rationally competent voluntary choosers, even in a way perfectly so, with full powers of calculation, reflection and revision. It requires giving them some genuine substantive knowledge of the human good.²⁹ The full practical reasoner is on the perfectionist liberal view a person with that sort of knowledge. And it is just such a person whose capacities for reason would be described in the Aristotelian categoricals of some positive perfectionist account.

Where a view of human political morality has all those features it should be counted as a perfectionist deontological liberalism.

²⁸ See Harry Frankfurt 'Freedom of the Will and the Concept of a Person' in *The Importance of What We Care About* (Cambridge: Cambridge University Press, 1988), pp. 11-25.

²⁹ See Warren Quinn 'Rationality and the Human Good' in *Morality and Action* (Cambridge: Cambridge University Press, 1994), pp. 210-227.

2.0 AGAINST HURKIAN PERFECTIONISM

Thomas Hurka defends the view that any sound perfectionism is a maximizing consequentialism in its basic theoretical structure, and one that properly eschews morally evaluative description at the fundamental level. I offer a reasoned rejection of this analysis. Hurka's discussion is worth addressing given its clarity and given that he is widely read. If he were correct, the style of substantive view that I have begun to defend and will be attributing to Locke would be mistaken.

In particular, as we have already seen, there is reason to reject the thought that every coherent perfectionism is consequentialist. Of course, the bare coherence of a style of view—in this case perfectionist deontological liberalism—is not sufficient grounds for adoption. In this section, I begin by giving reasons to reject Hurka's thought that it is a condition on its theoretical soundness that any perfectionism explain the value of human flourishing from the outside in. I go on to question the thought that any sound perfectionism enjoins us to maximally produce isolable states, or qualities, of some sort. This is a general presupposition of the positive account that Hurka favors.

The larger argumentative strategy here is, first, to recognize that the general perfectionist approach has a manifest appeal, once we've cleared away some preliminary worries as in the above. A way of proceeding then is to inquire as to the best form(s)

such an approach might take. And so, second, I propose here to undermine the appeal of the consequentialist forms, by undermining the arguments of its foremost expositor.

2.1 THE MISBEGOTTEN ESCHEWAL OF MORALLY EVALUATIVE CONTENT

Hurka insists that if a perfectionism is to be sound, the human flourishing which the theory describes must be elucidated in a way which entirely eschews “*morally* evaluative content.”³⁰ For Hurka, this is not a worry that the deployment of ‘moral’ in the work of professional philosophers is disconnected from the uses that would give it a clear sense. Presumably we know perfectly well what it would be to rely on such thoughts and forms of judgment, but it is intellectually irresponsible to rely on them here. The moral theorist’s job on this sort of view is to provide a noncircular vindication of human virtue, showing it to be choice-worthy without presupposing it to be. If this were correct, an interest in Lockean perfectionism would be purely scholarly, for it is no part of Locke’s ambition, in likely contrast to Hobbes, to lay bare the amoral foundations of political morality. Locke’s perfectionist political morality is based on a conception of the reasonable that is recognizably already a morally charged notion. It seems that Hurka’s methodological stance is ultimately not well grounded. I argue for this in what follows.

To be sure, Hurka does not think that most perfectionists in the tradition provide his favored sort of account, but he thinks it a condition of genuine intellectual respectability in the current context. Indeed he thinks that it is viciously circular for a

³⁰ See Hurka, *Perfectionism*, pp. 18-22. I take “soundness” here to indicate coherence, interest, and overall reasonableness and not, say, truth and deductive validity.

perfectionist to build her conception of the human virtues into her picture of what flourishing human nature might be. This “moralistic” move, he writes, “is a fundamental error” notwithstanding the fact that some of our best moral philosophers have been committed to forms of it.³¹ Instead, we ought to begin, Hurka thinks, with a neutral description of human nature in the interests of producing what I will call, following Hurka, a freestanding perfectionist account of morality.

What, in general, is the project of giving a freestanding theory of morality in the relevant sense? On standard forms of the project the moral theory would provide a principled vindication of morality by showing its choice-worthiness on nonmoral grounds. Typically, the method is to appeal to a conception of choosing well, and so of benefit or doing well, that does not prejudge the issue. With such a conception on the table, morality can be vindicated by being shown as, for example, a reliable means to doing well—roughly, that is, flourishing, thriving—in just that sense. Hurka claims that the very possibility of producing a freestanding perfectionist theory requires some relevantly neutral description of human flourishing and that seems correct. Yet a willingness to begin moral philosophizing with a rough picture of human virtue on the table, while in way theoretically unambitious, is not obviously fundamentally mistaken. It seems to many, including to me, that the attempt to vindicate morality in the way intended by the proponent of the freestanding account inevitably distorts things.

What immediately follows are some considerations aimed at dislodging the ambition to develop a freestanding account of human flourishing that could be put to work in an equally freestanding account of morality. First, I register a doubt that this

³¹ See Hurka, *Perfectionism*, page 19. Hurka claims, plausibly, that Aristotle, Aquinas, Green and Kant commit this supposed error.

kind of ambition is ultimately sensible. Then I express my skepticism that it could be convincingly carried out in just the way that Hurka apparently envisions for his favored form of perfectionism.

On my view it would be plainly a mistake to begin the task of elucidating morality and its relation to human nature by denying that a human being qua flourishing is thereby, among other things, a genuinely virtuous person, more generally one who is at least roughly recognizably practically wise. This is to say that if we are interested in a general inquiry into human flourishing we would be wrong to block at the start the possibility that the virtues roughly as traditionally understood, including what we sometimes think of as moral ones, are constitutive elements in human flourishing. I presume that we should leave room for the thought that the person that lives well is, in living well, a recognizably virtuous person. Or, more generally, we should allow room for fleshing out the thought that the flourishing person is nonaccidentally a practically reasonable person in approximately Locke's sense.

Now this is already to question the project of developing a free-standing moral theory as that project has traditionally been pursued. In order to see this clearly, we need to consider in general terms how such a project is purported to work. It begins through presupposing a conception of doing well—thriving, flourishing— and choosing well that doesn't beg the question of the choice-worthiness of morality. Here are some examples.

In Thrasymachus's hands in Book 1 of the *Republic*, choosing well is choosing so as to efficiently amass wealth and other forms of social power; doing well consists at least in essential part in amassing those things.³² In Hobbes's hands in *Leviathan*

³² See Plato, *Republic*, page 343 and following.

choosing well is choosing so as to assure the efficient satisfaction of one's present and future desires whatever those turn out to be; doing fully well is satisfying those as fully and efficiently as possible over the course of one's long life.³³ Classical utilitarians supposed that choosing well is choosing so as to maximize utility or expected utility. On a suitable understanding of utility, for instance as consisting in quanta of pleasure, the classical utilitarian provides a free-standing hedonic moral theory.³⁴ Morality is vindicated as reliable means of maximizing pleasure. Typically nowadays a relevantly thin conception of choosing well is specified by some formal theory of instrumentally rational choice. That sort of theory relies on a notion of subjective preference, which it takes as given. It is the satisfaction of those preferences in which flourishing may be thought to consist, should we want to use the word.

Each of the above cases plainly rely on a conception of flourishing as a human being from which recognizably fully virtuous action is I think precluded; it is in each case not an element in the flourishing to be sought but, if the vindication works out, a means of getting there. One worry presumably motivating this style of thought is that in the absence of an ontological separation of flourishing from virtuous action the theory won't be well-formed. The theory won't show morality to be worth choosing on independent grounds. But this is a place where we should question the theoretical ambition, rather than give up at the outset on the possibility that virtuous action belongs constitutively to human flourishing. We don't want our desire to give a robust vindication of morality from outside to distort how we conceive of what it is to do well as a human being.

³³ See Thomas Hobbes, *Leviathan*, (Indianapolis: Hackett 1994 [1668]), pp. 57-8.

³⁴ See John Stuart Mill and Jeremy Bentham, *The Classical Utilitarians* (Indianapolis: Hackett 2003).

Suppose though that we set this doubt aside, and attempt to embrace this theoretical ambition. If one sharply distinguishes the reasoning relevant to the purported vindication from the motivation of the practically wise, it is possible to give a freestanding account of a kind that doesn't distort things in this way. Gauthier comes to mind as having done really vital work in this vein, by appealing to rational self-interested agents seeing self-interested reason to be bound-up with others in a community of full virtue. Of course, it isn't obvious what the appeal, to us, of such a vindication is exactly, though it does allow for flourishing to include full human virtue. The jarring aspect is that the purported vindication is entirely alien to the substantial practical reasoning of the virtuous person. And this is, in effect, to treat virtue as merely instrumentally valuable.

But however that may be, I think there is some basic confusion with regard to carrying out the project in the precise way that Hurka envisions. Hurka suggests that the way to avoid begging the question here is to begin by producing descriptions of human nature that will figure in the clauses of the moral theory. These descriptions are to be expressed without remainder in the language of the natural sciences. This much is implied by the balance of his text; it is much in evidence that Hurka has ambitious reductive aspirations with his particular form of perfectionism. He is interested in, as Philip Kitcher puts it, an "explanatory objectivism" that will "pick out some property whose ascription can be made in a value-free fashion, seeing this as the criterion of human well-being."³⁵

Hurka begins by defending the thought that the best theories of perfectionism aim at the ideal of the "development of whatever properties are *essential to humans and*

³⁵ See Philip Kitcher, 'Essence and Perfection', *Ethics* 110 (1999), page 60.

conditioned on their being living things.”³⁶ This seems plausible as far it goes. Yet, it seems obvious that this claim needs to be further qualified by some such phrase as ‘and required for living well in a complete life’; otherwise we simply don’t have anything recognizable as flourishing before us. But qualifying the claim in this way would beg the question that Hurka is trying to avoid begging, were we take living well as requiring virtue, so let that qualification pass. Hurka wants an initial conception of human nature that does not presuppose what is significant from the moral point of view and his favored candidate for that conception is what we might loosely call scientific description. This point emerges in his response to an objection to the effect that an evaluatively-laden conception of human nature of the sort he wants to refrain from is unavoidable. Hurka responds with the thought that he can appeal to a conception of the human essence that is not evaluative in the relevant way. In the course of that response he writes

We know that its atomic structure is essential to gold, the view holds, because this structure is central to the best explanations of Gold’s weight, color, and other properties... To say that humans ought morally to develop the properties central to good scientific explanations is to characterize their good using standards that are not moral. It is to borrow standards from science, and for moral [-theoretical?] purposes these standards are descriptive... On the view we are considering, the perfectionist ideal is equivalent to the following: “The good human life develops to a high degree the properties central to the truest, simplest, and most predictively powerful explanations of humans’ other properties.” Whether or not this idea is attractive it can ground a free-standing morality.³⁷

How is Hurka’s envisioned freestanding moral theory supposed to work in connection with the suitably neutral description? We are, I think, to begin with an entirely deracinated conception, deracinated relative to the moral point of view, of fully

³⁶ See Hurka, *Perfectionism*, page 16, emphasis in the original.

³⁷ See Hurka, *Perfectionism*, page 17.

developed human nature. Then, presumably, we test the following master practical hypothesis: we ought to act so as to maximally achieve the instantiation of that conception. Hurka is I think also implicitly committed to the following further thought. If it turned out that one could mirror the core practical judgments and modes of classification that we typically make in the moral mode, but through using this master hypothesis and the deracinated conception we begin with, we would have a genuinely freestanding moral theory.

There are two problems I can see with this proposal. First, there is reason to think that no appropriately deracinated conception of human nature could play anything resembling the mirroring role. Second, if one supposed that one could carry this project off, there yet seems to be no reason to think that the resulting theory would be noncircular in the relevant sense. I spell these points out just below.

Suppose that there is a complete unified and true scientific theory of human behavior. Such an ideal theory would express the complete story about the place of human beings in the natural causal order; it would be comprised of the complete collection of true law-like statements and general facts concerning the physical structure of human beings, their psychology, and their observable behavior. This description would be appropriately deracinated from Hurka's point of view and it could be generated in the way he seems to favor.

However, there is reason to think that such a theory, as ideally thorough as it is, will be inadequate as genuinely comprehensive account of human nature. Specifically, we all take human beings to be creatures governed by norms of various kinds, norms that determine correct and incorrect action. There is simply no reason to judge that what we

think of as competencies under these norms will be strictly identical with and individually reducible to discrete correlative properties as tracked by such an ideal scientific descriptive and explanatory theory.³⁸ And in the absence of this kind of precise correlation, we have reason to think that no very close mirroring of our morally imbued judgments and classifications will be possible in the theory associated with the deracinated conception.

To spell this out: I do not deny that one could accurately describe and show as properly to be expected some observable human behavior in the theoretical language of ideally good natural science. And this where we might reasonably ordinarily interpret what is going on, independently of our scientific commitments, as, e.g., action expressing a virtue, or wrongful action done out of rational self-interest, or the performance of deductively valid reasoning, or action in accordance with a rule. Yet in order for Hurka's project to get off the ground, the ideal scientific description of human nature would need both to be fully coherent independently of our conceptions of norm governed capacities, and yet also recognizably fully capturing those very phenomena as characterized in normative, indeed moral, terms. We have no reason to expect that this is so much as possible. Human responsiveness to the norms constitutive of correct speech, of instrumental rationality, of deductive logic, and so on is simply not of the right general shape to be captured by even a complete true description and explanation of the causal

³⁸ This is not to deny the possibility of supervenience relations. Rather it is to be skeptical of the thought that a system of concepts trading in the normative will supervene precisely upon the classifications of ideal science, such that we could see the same abstract forms of judgment at work. See John McDowell, 'Noncognitivism and Rule-Following' in *Mind Value and Reality*, (Cambridge: Harvard University Press, 1998) pp. 198-218.

regularities concerning our behavior. This is so precisely insofar as these norms are what they are: viz., norms of correctness in judgment and action.

So the consideration in view is that the kind of ideally neutral description that Hurka wants to begin with seems a very poor candidate as a truly comprehensive account of human nature. Despite its ideal completeness in one domain it is unsuitable to serve; too much gets left out simply in light of the kind of claims that such a theory would be comprised of. One might in a certain mood insist that this is evidence against the very existence of the norms that we are here appealing to. One might think that the idea of objective moral norms is especially suspect. But notice that that kind of response is not generally tempting; it doesn't tempt us with respect to norms such as those reflecting deductive inferential validity, or good scientific practice. Familiarly, the appropriate reasoned responsiveness to the norms of deductive inference is not fully captured by even the ideally true theories descriptive of the causal regularities of human empirical psychology.

Finally, suppose that it were possible to develop a fully comprehensive account of human nature in the language of idealized natural science, as we presently think of that. What is the envisioned relation between the deliverances of this theory and our prior picture of morality? It will not do for the envisioned ideal theory to merely offer alternative description and explanation of the goings-on of observable human behavior, where our seeing those goings on as genuine human actions done for reasons depends upon utilizing normatively charged concepts. The naturalistic story wouldn't then be doing the envisioned noncircular explanatory work. Presumably what Hurka envisions is a fully consistent theory with which we would produce theorems that mirror

those moral judgments we are mostly inclined to accept, and that also provides guidance in hard cases. If I have understood how Hurka wants to proceed, at some point the moral theorist must compare the structure and content of the implications generated by her deracinated theory with the judgments and claims of some recognizable pretheoretical account of morality. We will need some reason to think that this theory is tracking and indeed laying bare the right sort of object, for otherwise there simply is no testing of the master hypothesis. Yet this is to bring back in precisely the sorts of thoughts that the defender of the free-standing moral theory treats as illegitimate. We won't know that our moral theory is a good one, for example, that it is a substantive theory of the object that is supposed to be in view, unless some of the judgments it licenses mirror ones we are inclined to make. It appears that there's no avoiding an appeal to morally evaluative content.

2.2 AGAINST HURKA'S POSITIVE PERFECTIONISM

I turn now to consider the outlines of the positive account of perfectionism that Hurka develops. Hurka suggests that “the best perfectionism starts by identifying some human states as intrinsically good.”³⁹ His favored candidates for those states are physical development, and the development of theoretical and practical rationality. Note that Hurka's conception of practical rationality does not include substantive restrictions on the kinds of ends one might seek. Hurka has it that the collection of states so identified constitutes the perfectionist's “vision of the good” and that such a view “always

³⁹ See Hurka, *Perfectionism*, page 60.

commends acts to the degree that they promote the good.”⁴⁰ Familiarly, the good is here conceived as conceptually prior to the right in the sense that what is right is held to be whatever will best produce the good, independently conceived, given our circumstances. That is, Hurka’s proposed version of perfectionism is consequentialist.⁴¹

Second, Hurka also contends that any sound perfectionism enjoins a maximizing rather than a satisficing ideal. “If we are attracted by this ideal, it is as something to be maximized and pursued to the highest degree. This is reflected in our intuitive judgments...As their achievements [those of the talented] increase, the demand to build on them does not diminish.”⁴² It is not clear to me that the distinction between ‘ever more’ and ‘merely enough’ is sensibly applied as way of sorting the ideals of all possible perfectionist accounts. But this strong claim appears to be a mistake, even if we take the distinction to be sensibly applied. The very idea of perfecting human nature simply does not imply a categorical injunction calling for an ever-increasing perfection, whatever the details of one’s perfectionism and whatever the circumstances.

It is obvious that insofar as human flourishing somehow conceived is recognized as the proper end of collective and individual human life, whatever the detailed nature of that flourishing, it is going to be what we should seek in many circumstances of intentional action. So it is difficult to see how there could be a perfectionism that didn’t express a purported standing reason to seek, or to act consistently with, human flourishing, in our circumstances. Clearly also, the idea that we can distinguish in typical epistemic conditions rough degrees of the constituents of flourishing, and indeed of

⁴⁰ Ibid.

⁴¹ See Hurka, *Perfectionism*, page 57.

⁴² See Hurka, *Perfectionism*, page 56.

flourishing over all, seems sensible and indispensable. In addition, one should grant that a committed perfectionist would be rational just insofar as she chose actions that were no worse from that point of view than any other known option.

Yet, where these points are granted, there appears to be no general reason why if genuine human flourishing were achieved, according to some perfectionist standard, it should remain the case that the view be understood as continuing to demand a greater amount of it from the people in question. The overall demand of many perfectionist accounts in those circumstances is perfectly well understood as simply enjoining that one or all continue to live as one is, or all are, living. There's surely no reason to think that that injunction—to strive to live a flourishing life, and to support flourishing in others, and so here to strive to continue living in the same excellent way—is best understood as fundamentally a call for open-ended increase of some quantifiably measurable intrinsically good stuff. In ordinary cases, when we give a person directions to continue on in the same way towards a goal—'Keep going down Forbes Avenue towards the Cathedral'—we aren't tempted to think that what we are at bottom saying to her is that she should continuously add to the number of correct steps that she's already produced, so as to increase that number indefinitely. This is to say that there is no general reason to insist that sound perfectionism always enjoins a thoroughgoing maximizing ideal in Hurka's sense.

Moreover, there is some reason to doubt that the distinction on which Hurka's question depends is well applied here, despite our willingness to grant the sensibleness of making the relevant rough comparative judgments. Consider the manifest oddity in treating human flourishing, once we begin to think seriously about it, as a directly

quantifiable feature of reality, instances of which can be precisely measured on a cardinal scale.⁴³ Unlike money or clean water, it simply isn't prima facie the relevant sort of thing. Human flourishing seems to include in addition to various mundane bodily goods and conditions, the development and exercise in chosen actions of certain fundamental human capacities of reason. But no light is shed on the nature of that complex whole, overall human perfection in a complete life, by treating it as literally composed of quantifiable kinds of stuff. Yet we apparently need to assume exactly this to consider Hurka's question as to whether we should view any perfectionism as either calling always for quite literally more, or rather for merely enough.⁴⁴

However we are to resolve that issue, what is of central importance here is that when the injunction to choose the option leading to the best perfectionist outcome is located within the form of a consequentialism of isolable features, as Hurka proposes, the resulting view treats human beings as mere instruments for instantiating some genuinely valuable qualities that as matter of contingent fact they may or may not bear. Suppose that we find the precisely measureable exercises of certain highly developed capacities to

⁴³ Hurka recognizes that it is at least a considerable distortion to assume that human flourishing can be unproblematically measured in that way. See Hurka, *Perfectionism*, pages 69 and 84. But he thinks that treating it as if it could be measured on a cardinal scale is a useful idealization, since it allows us to model in a detailed way some presumably correct perfectionist judgments, and then I take it extend the apparatus into areas of controversy. I am not sure how he would develop the point, but I doubt that anyone who appreciates the degree to which this is a distortion will be moved in the controversial areas.

⁴⁴ My discomfort with the presuppositions of the question does not reflect the familiar confusion of criterion with decision procedure. I am expressing a simple skepticism about how flourishing must be conceived on any perfectionist account, if it is true that that sound perfectionism enjoins either a thoroughgoing maximizing or alternatively a satisficing ideal. It is not clear that human flourishing is the relevant sort of thing, so it isn't clear that the general question makes sense. This is not the worry that the typical agent would be unable to calculate accurately.

be what is genuinely valuable, in line with Hurka's view, for example high degrees of mental or physical functioning, or beauty. Let us take it as clear that only some human individuals are actually capable of actualizing those capacities to these high degrees. The potential for what is recognizable as perfectionist tyranny then begins to loom very large, for there is no moral bar internal to the account to treating the individuals that cannot realize these capacities entirely instrumentally, and not, that is, as ends in themselves.

More generally, there are no internal restrictions on his view as to how the states in question are to be realized. Thus, if we could best produce the exercises of those capacities in some eccentric, *prima facie* immoral but efficient way, by forcing people to develop certain of their potentials in part by denying them standard fair options, then, by the lights of the theory, that is just what we ought to do. These implications follow from treating perfection as constituted by some such isolable states within a consequentialist framework.

To sum up, it is clear that the alternative view, a perfectionist deontological liberalism is not incoherent in virtue of its basic form. In addition, there are familiar worries associated with the basic form of Hurka's preferred version, to which perfectionist deontological liberalism is invulnerable. While none of this is fully decisive, I will take it that I've said enough to justify the thought that Hurka has deployed the honorific 'sound' with respect to the wrong members of the perfectionist family. I conclude that there is considerable room to doubt that sound perfectionism is to be delimited in the several specific ways that Hurka suggests, and that there's no obvious problem with the very idea of a perfectionist deontological liberalism that eschews Hurka's preferred features.

3.0 AGAINST RAWLSIAN ANTIPERFECTIONISM

If what I have suggested above is correct, it might still turn out that the commitments of any such view are too demanding—politically, morally, or epistemically—for any specification of it to be acceptable. I address this line of objection, albeit in a limited way, in what follows. Though a version of the overall line of argument in the dissertation would go through even if the worries here considered were sustained, much of the underlying interest would I think thereby disappear. That is, if it turned out that all perfectionisms, even perfectionist deontological liberalism, required altogether too much from us, in the way of knowledge of the good, by our present lights, it wouldn't be of much general interest. I think that it is simply not the case that perfectionist deontological liberalism must make unacceptably high demands. Yet I do not aim to decisively demonstrate that here. Indeed I am not sure how that could be decisively demonstrated. Instead I will content myself with making the following point: I argue that if one begins by taking seriously substantive moral and political philosophizing of the kind that Rawls so singularly renewed, and which I find attractive and worth doing, one cannot easily find good general reason to set aside the particular perfectionist forms of liberalism as especially and unduly demanding.

There is a particular difficulty in this vicinity for Rawls, and derivatively for Rawlsians. For Rawls relies on a fairly robust objectivist conception of the human

good—that is, a picture of human flourishing—in setting out his account of justice as fairness. This is so despite the much emphasized doctrine concerning the priority of the right and his subsequent inveighing against the appeal to comprehensive accounts of human life in public reasoning under the banner of constructivism. It would accordingly be self-contradictory for a Rawlsian to subscribe to any thorough-going subjectivism or skepticism concerning our knowledge of the good as grounds for dismissing liberal perfectionism. The Rawlsian needs subtler reason to exclude the details of any particular picture of human flourishing, to treat these as never to be directly relied upon in the political context where there is controversy among the roughly reasonable. I consider those subtler reasons in this section and argue that they should not be treated as decisively weighing against PDL.

3.1 RAWLS’S OBJECTIVISM AND THE DIFFICULTY

Rawls’s final preferred label for his style of approach to articulating the nature of political morality is ‘Kantian constructivism.’ It’s clear that this style of view is a form of what I want to call moral objectivism, and is intended as such, where that is understood simply as opposed to thorough-going subjectivism about the good.⁴⁵ Any Kantian constructivism entails the negation of the following claim: For any human being in any circumstances with any desires, what would be good for that individual is

⁴⁵ See Rawls, *Political Liberalism*, pp. 110-115.

satisfying the substance of those desires. Rawls consistently rejects that idea. Nor will it do, he thinks, merely to appeal to actual community consensus, to what we might call positive social norms, written law, actual practices, concerning the good, for the full story about justice. But he refuses to make appeal to a realism of moral objects independent of human practical reason. Rawls instead intends to work out an objectively valid political morality by appeal to a constructive procedure of practical reason. This is made specific in *A Theory of Justice* by appeal to the notion of group of rational agents, choosing principles of justice to govern the basic structure of society, behind the veil of ignorance.⁴⁶ Subsequently, in *Political Liberalism*, the constructive procedure appeals to reasonable persons where the conception of the reasonable entails a willingness to argue only from considerations that can go to form a genuine consensus on such principles despite basic differences of outlook.⁴⁷ In either form, the procedure is to express what is a reasonable conception of justice for us. That is, the result is intended to be authoritative, fixing and expressing standards of correctness in reason, action, and institutional social life that human individuals are answerable to, regardless of their given preferences and desires. It is in this sense an objectivist view, despite its not being a form of realism.

In undertaking this task, though it is often in the background, Rawls appeals to a picture of properly flourishing human life. Consider his central notion of the primary goods—those things that a rational and reasonable human being, living in the circumstances of justice, would want, whatever else she wants. This idea can be given content only where we begin with some picture of living well for a human being, in the

⁴⁶ See Rawls, *A Theory of Justice*, pp. 118-192.

⁴⁷ See Rawls, *Political Liberalism*, pp. 131-207.

suitable environment, with its typical challenges and pressures. Rawls's specific picture is that of a flourishing liberal democratic republic, the citizens of which are robustly cooperating through generational time despite their deep differences and their quite various aims and interests. Even if the primary goods are held to be intrinsically valuable, they are intelligibly so only where we proceed with such a picture as to how they would be put to use, how they would function, their place in the overall context of human social life. This is a familiar thought ever since Plato's Socrates changed the subject—to expound on the nature of the *Kallipolis*—in response to the challenge posed by Glaucon and Adeimantus.⁴⁸ Were we not the sort of beings that we are, in the sort of social environment supposed typical for us, the favored account of the primary goods would shift accordingly. So, just as the perfectionist does, Rawls develops his conception of justice as fairness in the light of its functional contribution to a picture of human flourishing—though he stresses the thinness of that picture. Consider also how central the development of the two moral powers is to the overall picture that Rawls articulates. These are, first, a capacity for understanding and being properly moved by a sense of justice and second the ability to form, follow and revise a conception of the human good. It is difficult to see how these capacities could be developed in isolation from a general practical competence for acting well intentionally, in the way that befits the human being. And so, again like the typical perfectionist, the Rawlsian account of human flourishing essentially involves the development and relative perfection of our characteristic powers of practical reason.

⁴⁸ See Plato, *Republic*, page 368a and following.

Nonetheless, despite his embrace of these perfectionist themes Rawls is consistently at pains to argumentatively engage—and ultimately reject—perfectionist principles and perfectionism in general as a style of reasoning in connection with political morality. The structure of that engagement and rejection will be simple where we understand perfectionism, in line with Rawls’s account in *A Theory of Justice*, as but a particular form of consequentialism. Yet if what I’ve argued above is correct, even if Rawls convinces us to repudiate consequentialism, this will have no obvious relevance for the consideration of perfectionist deontological liberalism. That sort of view is structurally and substantively quite close to Rawls’s own.⁴⁹ Reasonably rejecting it on Rawlsian grounds will take further thought.

Rawls would have us set the bounds of legitimate interference in a way that respects a form of neutrality principle, which rules out directly proceeding from some robust conception of human flourishing to political action or towards determinative institutional structure. At least where there is controversy among the roughly reasonable concerning the details of human flourishing over a complete life (and how to realize that within the bounds of justice) the state, the citizenry, or their representatives are not justified in acting controversially out of some particular conception where this is taken to rationally ground the decision or action. There ought to be, Rawls thinks, a genuine consensus of the roughly reasonable on matters of basic political morality.

Rawls could have argued directly from a particular conception of human autonomy as dictating the kind of respect he has in mind. He could have held that autonomy so conceived is of paramount importance, and would be violated in any such

⁴⁹ Rawls’s view doesn’t count as a form of PDL since he attempts a principled rejection of the characteristic paternalist thesis allowing for robustly controversial political action.

case. This notion of autonomy might be developed to imply that one ought to be accorded strict authorship of one's own life, where that is understood as entailing acting out of one's own conception of the good.⁵⁰ Against a background picture of human flourishing, he could make the argument that the only way to treat human beings as properly self-authenticating sources of the bounds of their own freedom under modernity is to refuse to allow the basic terms of political morality to be established in the absence of a consensus of the roughly reasonable. Yet Rawls is hesitant to argue directly in this way. Though he surely accepts some such view, he is apparently not confident that he could provide acceptable reasons for it; perhaps he is worried that the reasons he would be tempted to cite are among the reasons that his argument is aiming to exclude. Rawls's motivations here are doubtless complex, having to do both with what should count as a properly compelling philosophical argument, and with our particular historical and epistemic location. Yet it is clear that he thinks we have reason to reject the paternalist thesis. Again that thesis as I construe it consists in the thought that we may interfere with a roughly rational and reasonable person on grounds appealing to a conception of the human good that she could be expected to repudiate, given her views.

Given his reluctance on this score, there appear to be two remaining kinds of reasoning that might be turned into argumentative support for Rawlsian resistance to PDL. On the one hand, one could appeal to substantive problems with perfectionism in general. For instance one might appeal to a purported epistemic shakiness of any very detailed objectivist conception of human flourishing. Here we would weigh the epistemic grounds in favor of believing in any detailed conception of human flourishing

⁵⁰ See for example Ronald Dworkin 'Foundations of Liberal Equality' in S. Darwall (ed.) *Equal Freedom*, (Ann Arbor: University of Michigan Press, 1995), pp. 190-306.

and find them always wanting. I don't think this is a particularly fruitful way of proceeding, and I will not explore it further here.⁵¹

On the other hand, one could advance an argument appealing to a suitably thin conception of political agreement. This is to set aside the grounds for believing in any particular such view, to treat these as irrelevant given the nature of the genuinely pressing problem—principally, for Rawls, this is the problem constituted by the fact of pluralism and its implications for reasonable stability. This latter style of reasoning is exhibited in one line of argument in *Political Liberalism*. If successful, it will block perfectionist justification and action in contemporary political contexts by rendering its grounds off-limits. I think it too fails to provide decisively compelling grounds favoring antiperfectionism.

3.2 THE INCONCLUSIVE ARGUMENT FROM THE BURDENS

Rawls's view in *Political Liberalism* is expressed in terms of the distinction between comprehensive and political conceptions of the human person, human nature and human social life, as deployed in public reason. Comprehensive views are distinguished from the political conceptions not so much by their subject matter, but by their relatively wider

⁵¹ This style of argument has the following problem: it needs good reason to cast general epistemic doubt on the target conceptions of human flourishing favored by the perfectionist, while not undermining its own presuppositions. This looks like wishful thinking to me. See Brian Barry, *Justice as Impartiality*, (Oxford: Oxford University Press, 1995,) pp. 168-173.

scope and higher degree of potentially or actually controversial detail. Indeed comprehensive views can contain or may be made consistent with political conceptions. As he sometimes puts it, a political conception can function as a potentially freestanding “module” of a number of comprehensive views.⁵² And those comprehensive views may and will be expected to conflict with one another.

Rawls thinks that the claims constitutive of a political conception are justified, from the point of view of public reason, precisely and only insofar as they may serve as the basis of reasonable agreement on the norms of justice. Such a political conception is also viewed as naturally arising from a shared political culture characteristic of the sort of community that his theory speaks to most directly. These are the modern mass democracies, in particular those that are struggling with an internal pluralism of comprehensive views. The justification in question is not primarily epistemic in character. Instead it is to be understood as relative to the task of articulating a genuine consensus on the nature of justice, producible in a community of the minimally reasonable. In fact, Rawls thinks one is only justified in advancing a consideration as a decisive reason, bearing on fundamental political matters, where one’s roughly reasonable fellows are in a cognitive position to accept it—that is, where they have no good reason to reject it given their points of view.

The fact of pluralism is clearly at the center of Rawls’s thinking in *Political Liberalism*. Rawls is concerned that the modern mass democracies are prone to continuously produce sources of possible internal conflict, stemming from the wide range of comprehensive views that they continuously foster. This fact is in likely tension with

⁵² See Rawls, *Political Liberalism*, page 12.

the basic desideratum of reasonable stability. The argument of *Political Liberalism* is to address this by showing that when properly understood and situated, justice as fairness has what it takes to meet this challenge—that is, to ensure stability on reasonable grounds. Yet it isn't a sheer or bare pluralism of comprehensive views that goes to motivate Rawls's principled neutralism. Consistently, and like many other liberals, Rawls finds a norm of reciprocity in social life to have a particularly basic grip on us. While it may be that contemporary societies are beset by thoroughgoing conflict, reflecting a wide range of comprehensive views, many of which are illiberal, Rawls does not proceed merely from that to a strict neutralism. He does not argue in favor of respecting points of view that repudiate reciprocal respect for competing views, or those that flatly dismiss the notion of living together in accordance with what can be justified under public reason. Rawls agrees, I think, with the robustly perfectionist liberal that we would be justified in acting publicly against strongly illiberal views. It is only a reasonable pluralism—not a bare pluralism—that constitutes the basic problem that justice as fairness, as a political conception, can provide a solution for.⁵³ And it is only in connection with such reasonable pluralism that the Rawlsian has room to distinguish his view from that of the perfectionist liberal.

Yet there are several things one could mean with that label. Consider the following proposals for spelling out reasonable pluralism.

⁵³ In Rawls's words "the problem of political liberalism is: How is it possible that there may exist over time a stable and just society of free and equal citizens profoundly divided by *reasonable* religious, philosophical, and moral doctrines?". See page xxv of the original introduction. The emphasis is added.

A) Reasonable Pluralism = A substantive pluralism of comprehensive views, held among roughly reasonable members of some society (characteristic of democratic modernity).

B) Reasonable Pluralism = A substantive pluralism of reasonable comprehensive views, held among roughly reasonable members of some society (characteristic of democratic modernity).

This is not the same conception expressed in two different ways; the second occurrence of ‘reasonable’ in B does not render the first occurrence of it otiose. When we call a comprehensive *view* reasonable we are saying, presumably, that it is a) internally consistent, b) at least roughly coherent with our favored set of grounded beliefs about the observable world and c) suitable for framing the project of living any human life. In calling a view reasonable we are suggesting that it is fit for the belief and guidance of the reasonable and rational person. Yet we are not entitled to infer from a person’s counting as roughly reasonable that, if he holds a comprehensive view, it is a reasonable one that he holds. A roughly reasonable person can hold an unreasonable comprehensive view.

This is so since a roughly reasonable person does not reason perfectly, and so may be inconsistently committed to a view that she should reject, given what else she believes or holds dear. Such a person is not ideally well-informed, and so may have some quite poorly grounded beliefs—perhaps those comprising her comprehensive view are among these. Thus: a person can be roughly reasonable and yet be committed to an unreasonable comprehensive view. The society characterized as in A includes some people like this among its citizens.

Yet the conception of reasonable pluralism expressed in A does not give the Rawlsian room to offer a principled objection to PDL. Both the Rawlsian and the defender of PDL would be willing, in some circumstances, to legitimize action opposed

to an unreasonable comprehensive view presumably even were it held by a roughly reasonable person. Rawls apparently needs the conception expressed in B, and not that expressed in A, to be an accurate reflection of our general situation, if his view is to be distinguished from PDL. That is, for Rawls's view to clearly oppose the perfectionist it must be the case that a pluralism of reasonable comprehensive *views* is genuinely possible. Only then can Rawls find space to defend neutralism on the grounds of pluralism.

So, we ought to ask is a pluralism of reasonable views and not merely one of reasonable people robustly possible? The Rawlsian requires a negative answer in order to have the makings of a strong objection to PDL.

The obvious place to look for an argument to the robust possibility of a reasonable pluralism in the sense indicated in B is in the discussion of the burdens of judgment. The burdens of judgment are those conditions limiting the powers of human reason, both theoretical and practical, to arrive at substantive reasonable agreement, in democratic human communities under modernity. Rawls's suggestion is that a reasonable person will embrace a basic form of neutralism given the consequences of those burdens.

Rawls lists, as among the burdens: a) the complexity of the relevant empirical evidence on any complicated question, b) pervasive basic disagreements as to the relative weight of various agreed to be relevant considerations, c) general conceptual vagueness and indeterminacy, d) arbitrary and highly various biographical facts constitutive of the various individual points of view, e) competing goods that are difficult to definitively weigh or reconcile, and f) arbitrary historical and institutional limits on realizing the

whole possible range of human goods. The list is intended to be partial, including only the most obvious of the burdens.

What are we entitled to conclude on this basis? I submit that the conclusion we should draw is simply that a considerable degree of practically ineliminable disagreement, on any complicated question, is to be expected in human communities of the size, complexity and historical location at issue. But that doesn't entail that there is—in practico-theoretical abstract space—a set of mutually partly incompatible comprehensive views, where each is equally well-justified, all things considered, epistemically and pragmatically, and where each can provide a basis for accepting a particular political conception in common with each of the others. We can allow, from what Rawls has argued, for the sociological fact of pluralism of reasonable people in democratic modernity. But we are simply not entitled to conclude that we should acknowledge the fact of the genuine possibility of the complex reasonable pluralism of views. Nor has he shown that the actual pluralism of modernity is characterized as of the more robust variety as in B. He owes us more argument for that. In the absence of this, it isn't clear that he has room to distinguish his view from PDL.

3.3 AN OBJECTION TO TREATING REASONABLE REJECTABILITY AS DECISIVE

In any event, Rawls encourages us to think that the purported fact of pluralism provides some reason to favor principled neutrality, closing the explicit discussion of the burdens

by insisting that they are of the great significance for a democratic idea of toleration. Yet it remains unclear what exact significance this purported fact has for the question of a principled perfectionism or neutrality. Even a complex reasonable pluralism of views, as in B, doesn't dictate how a reasonable person should respond to it. At the very least the consequences of the burdens need spelling out. So how does Rawls argue from his conception of pluralism to his principled antiperfectionism?

Rawls does so by adducing further content from his notion of the reasonable person. His understanding of what makes for a minimally reasonable person is here informed by T.M. Scanlon's thinking, in particular the notion of collective contractualism under a norm of reasonable rejectability. Roughly, this is the thought that whatever else makes for a reasonable person, such a person can be counted on not to advance considerations, as a basis for consensus, that some other consensus-seeking parties to the conversation, rationally and reasonably given their points of view, may or ought to reject.⁵⁴ This is prima facie plausible. It does seem clear that at least in some conditions where consensus is a mutual goal, it is reasonable to accommodate the basic points of view of others and address one's public arguments at a level that does not require radical repudiation on their part of those very points of view. Outside of philosophy, we often think it unreasonable for some party to a high-stakes negotiation to make demands that the other side has good reason not to accept. If this were done intentionally we would take that to be defeasible evidence either of negotiation in bad faith or of hoping one's opponent will slip up.

⁵⁴ See T. M. Scanlon, *What We Owe to Each Other*, (Cambridge, Harvard University Press, 1998), page 192.

I propose to accept this much, but it does not seem sufficient to generally impugn perfectionist reasoning and action about fundamental matters. Admittedly, any view deserving the label of perfectionism, any PDL for example, will have a comprehensive expression. And quite clearly, the defender of a PDL thinks it may be reasonable in some circumstances to cite potentially controversial claims internal to that expression as justification for action or for determinate institutional structure. Is this already in tension with Rawls's and Scanlon's thinking on reasonable rejectability? It is if we take the principle of reasonable rejectability to have an unlimited authority in contexts of consensus seeking. And, where we further take a special sort of consensus seeking—hypothetical ideal contracting on justice—as theoretically privileged for establishing and expressing the nature of political morality, we have general objection to PDL. And this will be pressing where reasonable pluralism is a permanent feature of human social life. Rawls and Scanlon do I think accept this line of reasoning.

I have two points to make to support my view that none of this should weigh decisively against PDL.

The first is this. At least since the *Nicomachean Ethics*, and more frequently in recent years, some philosophers have rejected the idea that practical wisdom is, even in principle, a strictly codifiable matter. There are various ways of specifying this thought, but the general idea is straightforward enough: Any principle purporting to express the, or some, detailed substantial requirements of practical wisdom as a strict rule in circumstances C, no matter how precise and long-winded, is revisable and open textured. If we're feeling pedantic, each such principle should when expressed explicitly include an unless-something-unforeseen-occurs clause, which adverts to the sound judgment of

the practically wise. On this view there is no saying definitively and noncircularly what it is to judge and so to act substantively well, all things considered. If these philosophers are correct and practical wisdom is indeed uncodifiable, then no substantive non-circular principle constitutive of it has an absolute authority. This is so even where we hold that principle to be relevant—in this case where we viewed the context as genuinely a case of consensus-seeking. The thesis of uncodifiability then is in tension with the fully general scope of reasonable rejectability as Rawls and Scanlon apparently construe it.

By contrast, the characteristic thesis of PDL, as understood above, is consistent with uncodifiability. The perfectionist deontological liberal can accommodate this, since the characteristic thesis of PDL holds merely that there is no general bar, posed by a person's rationality or rough reasonableness, to reasoning from a detailed conception of flourishing to political action or decision. Since the debate on uncodifiability remains a live one, the Rawlsian and Scanlonian appeal to reasonable rejectability is not decisive.

The second point is this. Rawls also draws on the idea that one factor rendering the relevant norm—reasonable rejectability—suitably authoritative for us is that it is latent in our political culture. As he puts a version of the point “we look to the public political culture of a democratic society, and to the traditions of interpretation of its constitution and basic laws, for certain familiar ideas that can be worked up into a conception of political justice.”⁵⁵ Chief among these is the idea of the just society as a form of fairly cooperative social existence, where the notion of fair cooperation is to be expounded via appeal to reciprocity, governing citizens viewed as equals. This notion of reciprocity may in turn be given content through appeal to the more specific idea of

⁵⁵ See John Rawls, *Justice as Fairness: A Restatement*, (Cambridge: Harvard University Press, 2001), page 5. See also Rawls, *Political Liberalism*, page 15.

reasonable rejectability, where we are seeking consensus. I think Rawls is correct in holding that some norm or principle of reasonable rejectability is latent in the relevant culture in something like this way. Anyway, let us suppose that he is. The problem for this as a plank for anti-perfectionist argument is that it appears that a norm or principle of permissible perfectionist interference is equally latent in the relevant culture.

Consider: it seems very clear that the typical minimally reasonable person, not in the grip of philosophy, living in democratic modernity, can be counted upon to think that in some difficult circumstances, political action and decision, drawing on a detailed conception of human flourishing, may be legitimately undertaken in the face of relevantly deep disagreement. Such a person will allow as much even where those disagreeing are viewed as roughly reasonable, as directly subject to the effects of that action, and as holding a not entirely unreasonable comprehensive view.

It might help to have concrete areas of dispute before us as reminders. Limiting ourselves to the US case: consider a) the controversy dealt with by the Supreme Court's reasoning on *Brown v Board of Education*, b) the controversy over the political morality of abortion, c) controversial policies of aggressive policing targeting religious or ethnic minorities, as such, in the interests of so-called national security, and d) the controversy over the political morality of same sex marriage. Wherever one is located on the current spectrum of points of view, more or less grounded by some outlook on and comprehensive conception of human life, there will be some such area of dispute with respect to which it will appear, on balance, sometimes reasonable to engage in what should be described as perfectionist interference.

For illustration, consider one case in particular. From one widely held point of view, the basic human interest in what Rawls called the social bases of self-respect is sufficiently important to fully justify the decision in *Brown v Board* and its obvious consequences. And, from this same point of view, this is so even in the face of deep disagreement, on the part of some of those who stand, or stood, to be most affected. It is clear that this point of view need not involve the judgment that those opposed are not roughly reasonable, though it is supposed that they are going wrong here. Nor need this involve the thought that the comprehensive view out of which those opposed are opposed is itself fundamentally unreasonable, though here it is taken to be misapplied or extended in unacceptable ways. It seems equally clear that the basic interest in question—the interest in having a decent childhood educational opportunity under conditions that do not destructively and harmfully stigmatize—will only appear as such against a background picture of what human flourishing consists in. Given that, this is a case of perfectionist interference. Crucially, still from this point of view, this fact is not itself held to be decisively objectionable; the fact that it is or would be a case of perfectionist interference is not determinative even for those who acknowledge it, and it doesn't throw such people into a practical paradox. And I further submit that this general tendency of thought is quite common; there's no reason to think that this is special to the US case.

If that is correct, any argument that begins by taking the basic elements of the shared political culture of democratic modernity as fixed points will be not be able to generate a consistent case for strict neutrality. This is so since the set of fixed points of this shared political culture will undoubtedly include the thought that perfectionist interference will be called for in some circumstances.

Admittedly, Rawls heavily qualifies the character of this appeal, e.g. when explaining it in *Justice as Fairness: A Restatement*:

The exposition of justice as fairness starts with these familiar ideas. In this way we connect it with the common sense of everyday life. But because the exposition begins with these ideas does not mean that the argument for justice as fairness simply assumes them as a basis. Everything depends upon how the exposition works out as a whole and whether the ideas and principles of this conception of justice, as well as its conclusions, prove acceptable on due reflection.⁵⁶

Yet, if this is how to read it, the appeal cannot be used as interesting argumentative ammunition against PDL. The defender of PDL can make precisely the same appeal, holding that PDL and not justice as fairness viewed as a political conception, is to be adopted upon due reflection, all relevant things considered. Thus the issue is left up in the air.

If the foregoing is correct, there is a fact of very widespread agreement, despite the fact of pluralism. This is the general idea that it is legitimate, in some circumstances, to engage in perfectionist interference. I conclude that the case has not been closed on the possibility of PDL. And the way is clear to consider Locke's view.

⁵⁶ See Rawls, *Justice as Fairness*, (Cambridge: Harvard University Press, 2001), footnote 5, page 5.

4.0 THE GENERAL PICTURE OF THE *TWO TREATISES* ON JUSTICE IN HOLDINGS

Locke's political and moral philosophy in the *Two Treatises* is often interpreted as, at its core, a seminal deontological liberalism. This view is correct I think. Given that, some would deny that Locke could coherently also be simultaneously defending a moral and political perfectionism in this book. The relevant thought is, again, that since perfectionism is best viewed as a variety of consequentialist moral theory, and since consequentialist and deontological approaches have opposing logical forms, Locke simply cannot coherently defend a view of that shape. As we have already seen, this is mistaken. Locke could have coherently defended a view of the relevant shape, perfectionist deontological liberalism, since not all perfectionisms are consequentialist. I argue in this part of the dissertation that this is the kind of view he indeed articulates and defends in this work.⁵⁷

I expend considerable effort here showing that the particular kind of view of political morality found in the *Two Treatises* is not a form of standard libertarianism. Despite the recent work of such revisionist Locke scholars as Richard Ashcraft, James Tulley, Gopal Sreenivasan, and despite the integrity, scope, and clarity of John Simmons's philosophically minded commentaries on the *Two Treatises*, many

⁵⁷ Locke does not of course label it that way himself.

philosophers and political theorists persist in thinking of Locke's master work as defending a form of standard libertarianism.⁵⁸ Doubtless this misconception is partly due to the continuing influence of Nozick's *Anarchy, State and Utopia*, and, at further remove, the work of C.B. Macpherson and Leo Strauss.⁵⁹ Whatever the provenance though, this interpretation is mistaken and the thrust of this part of the dissertation is to set the record straight.

This is worth doing for two reasons. First, if it were true that Locke was in essence a standard libertarian, this would put considerable strain on interpreting his view as fundamentally a form of perfectionism. This is so since standard libertarians very strongly tend to defend the notion that interfering with roughly reasonable and rational individuals on grounds that appeal to controversial conceptions of the good is never legitimate. If Locke had that sort of commitment, the best I could hope for is to show that his political morality was fundamentally incoherent in that it combines commitments to inconsistent theses, at once allowing and disallowing such perfectionist interference. But I do not think this is correct and if I can dispel the temptation to read him in this libertarian way that will remove a major obstacle to viewing the *Two Treatises* correctly—as expressing a form of perfectionist deontological liberalism.

⁵⁸ See Richard Ashcraft, *Revolutionary Politics and Locke's Two Treatises On Government*, (Cambridge: Cambridge University Press, 1986), James Tully, *A Discourse on Property*, (Cambridge: Cambridge University Press, 1983), Gopal Sreenivasan, *The Limits of Lockean Rights in Property* (Oxford: Oxford University Press, 1995), John Simmons, *The Lockean Theory of Rights*, (Princeton: Princeton University Press, 1992), and John Simmons, *On The Edge of Anarchy*, (Princeton: Princeton University Press, 1993).

⁵⁹ See Leo Strauss, *Natural Right and History*, (Chicago: University of Chicago Press, 1953) and C. B. Macpherson, *The Political Theory of Possessive Individualism* (Oxford: Oxford University Press, 1964).

The second reason is that if Locke were committed to standard libertarianism, setting aside any other possible commitments, he would be committed to what is in itself a self-defeating view. As I show below, standard forms of libertarianism neglect the real conditions under which human beings become competent with practical reason—in particular in what we think of as its moral department. This leads to the failure of libertarianism to meet a basic criterion of adequacy for theories of justice. Hence, were Locke a libertarian, his view would share this weakness and would be less fruitful than it is. For there are also good general reasons given a standard conception of the nature of political philosophy to be interested in a genuinely Lockean view.

Political philosophy, familiarly, is pulled in two directions at once; it aims at giving us the general materials for understanding ourselves and making judgments relevant both to the therapeutic task of reconciliation, and to the activist's tasks of criticism and justified social change.⁶⁰ Locke's book is very rich in those materials. Consider that his overall picture expresses versions of the following theses: Each reasonable human being is a proprietor with respect to some of her own parts, abilities, rights, and powers. Each reasonable human being is the moral equal of any other. The Earth's natural resources are, in a way, held in common by the members of our species as such. There is a universal extra-legal human right to intentionally act on the world so as to better one's lot. The legitimate government is but a trustee of the genuine interests of the political society who creates it.⁶¹

⁶⁰ For a recent expression of this thought see Rawls, *Justice as Fairness*, pp. 1-3.

⁶¹ See John Locke, *Two Treatises of Government*, P. Laslett (ed.) (Cambridge: Cambridge University Press, 1960 [1690]). For the thoughts in this paragraph see the *First Treatise* Chapter 9 and the *Second Treatise* Chapters 2, 5, 8 and 9. Locke is arguably also cognizant of and committed to the revolutionary thought that moderate scarcity, as a

These thoughts are manifestly attractive in the context of political philosophy, even where we refuse to treat them all as considered judgments having a prima facie justification. For instance, there is the implication that living human beings are properly viewed as stewards of the world's resources. There is the implication that the members of a political society may justifiably rebel against a sitting government. There is the implication that each person is owed, on the grounds of justice, a decent opportunity to mix his or her labor with the world. Any view that can deliver such meaty implications within a synoptic and coherent vision of human life, as Locke's does, is worth taking seriously.

Consider also Locke's method. The present intellectual climate in Anglophone political philosophy is yet strongly marked by the hypothetical contractualist paradigm. The most general form of this idea is that the proper philosophical account of political morality is fixed by the results of an imagined rational agreement, rational bargain, ideally reasonable conversation, or appropriately modeled and played game.⁶² The central task of the political philosopher is, on this kind of view, to correctly frame the relevant hypothetical setting and then provide a rigorous rational reconstruction. The upshot of that reconstruction is supposed to be determinative for the nature of political morality.

problem characterizing the objective circumstances of justice, may be overcome, at least to a degree, through the collective application of human labor. See again *Second Treatise* Chapter 5. Hereafter I will refer to particular passages in the *Two Treatises* by using a Roman numeral to indicate which treatise is under consideration followed by an Arabic numeral indicating the section.

⁶² See Hobbes, *Leviathan*, pp. 74-127, and Plato, *Republic*, 358e and following. From the twentieth century—in addition to Rawls—see John Harsanyi, *Essays on Ethics, Social Behavior, and Scientific Explanation*, (Dordrecht, Holland: Reidel Publishing Company, 1976), and David Gauthier, *Morals by Agreement* (Oxford: Oxford University Press, 1986).

Locke demurs from this in the *Two Treatises*; the hypothetical moment of rational or reasonable agreement, or ideal conversation, is not theoretically privileged for answering basic questions of political morality. This point requires some care. It is not that Locke demurs insofar as he is a stubborn actualist about the fundamental social contract where that is treated as determinative of the whole of basic political morality. He is an actualist insofar as the formation of political society is concerned, but the point here is that he rejects the idea that political morality stands in need of the theoretical justification a hypothetical contract purports to provide. Instead, Locke begins with human social interaction in the state of nature, with an already moralized conception of human social life, and with a robust conception of human practical reason. In this Locke proceeds in something like the style of the contemporary principle-and-case based nonconsequentialist moral theorist.⁶³ For Locke is not averse to relying on our considered reflective reactions to imagined cases for probative force. Yet given that his canvas is broad—human social life in the state of nature—and given that it is political morality in connection to human flourishing that is his apparent concern, he is rather more like the ancients, and in particular Aristotle, than is commonly appreciated. Locke's view is hence valuable as an original instance of what counts now as an alternative paradigm for working as a liberal within political philosophy—call it natural law liberalism, or neo-Aristotelian liberalism, or what have you.

⁶³ See the work of Frances Kamm—e.g. *Intricate Ethics* (Oxford: Oxford University Press, 2006). See also Michael Otsuka, *Libertarianism Without Inequality* (Oxford: Oxford University Press, 2003). Both of these philosophers are heavily influenced methodologically by Robert Nozick, *Anarchy, State, and Utopia*, (New York: Basic Books, 1974). This last of course owes a lot to Locke.

Finally, Locke's view in the *Two Treatises* expresses a pair of important substantive insights. First, Locke is attuned to the realities of human life and in particular to a central fact of our existence—viz. that humans are social animals who engage in a robust and particular form of practical reasoning. Human practical reason is not bare instrumental rationality for Locke, nor is it for him merely instrumental rationality supplemented by statistically typical individual human desire or self-interest. Human practical reason essentially involves for him cognitive sensitivity to the basic interests of others—that is, it involves a responsiveness to the grounds of other regarding duty. Second, Locke is also cognizant of the fact that the capacity for reasoning practically well, in this sense, is only contingently produced in human beings, yet is the *sine qua non* of human flourishing. This point is particularly clearly expressed in his Chapter VI of the *Second Treatise* where it motivates Locke to ascribe strict duties of education and upbringing to parents. This second point is important, for it reveals that a Lockean view has basic resources that, as, I suggested above, standard libertarian views characteristically lack.

In this chapter I explain Locke's conception, in that work, of the nature and place of what, following Nozick, I call justice in holdings. I show that this conception endorses general doctrines inconsistent with standard libertarianism. Further below I argue that Locke's view has some positive features characteristic of the perfectionist deontological liberalism characterized above.

4.1 THE PRELIMINARIES

Locke's account of justice in holdings, as expressed in the *Two Treatises*, is, I will show, one that morally sanctions, in a range of circumstances, coercively enforceable redistribution of de facto holdings from their present possessors—even, sometimes, their heretofore legitimate owners—to others. Indeed Locke defends a relatively expansive conception of these circumstances in the *Two Treatises*, and this is good evidence against the idea that Locke's view is well thought of as a version of standard libertarianism. For standard libertarianism characteristically proceeds by denying the sensibleness of any expansive conception of the circumstances that would justify such coercive redistribution or the justified interference that it entails.

Following some clarification, I describe three abstract modalities of possible redistribution with respect to which accounts of justice in holdings can vary. I go on to argue that two features of Locke's account of justice in holdings indicate a general presumption on his part that redistribution, even along controversial modalities, can be, and sometimes is, morally legitimate. And I then show that in the *Two Treatises* Locke explicitly sanctions redistribution, and so interference against some rational individuals' wills, along each of the three modalities.

A philosophical account of justice in holdings is a general expression and description of the relations determining when something may be morally or legally legitimately held as property.⁶⁴ A thorough account would state what the various

⁶⁴ The phrase is Nozick's, deployed as a way of guarding against what he sees as the pernicious error of assuming that the social product is up for grabs, which he thinks is

incidents constituting the kinds of property relations are, how such holdings originate, what sorts of objects can be held, what the character of the holdings could be, and how this notion coheres with the rest of political morality. The very idea of property, it seems, involves the notion of a sphere of moral or legal exclusion demarcating some scope for the owner's intentional use, free from at least some kinds of interference on the part of others. And this involves, at a minimum, a familiar Hohfeldian conception of a claim-right concerning something, where that right is held by the owner as against others who are thereby under duties.⁶⁵ This is what constitutes it as her private property.

The standard libertarian conception of justice in holdings treats legitimate holdings of private property as relatively immune from legitimate takings and various other forms of possible interference. Among the best-known defenses of this sort of view is the dominant thread of argument in *Anarchy, State and Utopia* and more recent work by Jan Narveson, Randy Barnett, Charles Fried, and Tibor Machan.⁶⁶ This immunity is relative by reference to libertarianism's traditional opposite number—hereafter labeled “liberal egalitarianism.” The immunity is taken by the libertarian to follow from a more basic thesis; e.g., that genuine human liberty is of paramount importance, where genuine liberty includes being at liberty to ignore, if one chooses, even the basic needs and desires

built into the very label “distributive justice.” See Nozick, *Anarchy, State and Utopia*, pp. 149-50.

⁶⁵ See Wesley Newcombe Hohfeld, W.W. Cook (ed.) *Fundamental Legal Conceptions as Applied in Judicial Reasoning and other Legal Essays* (New Haven: Yale University Press, 1923).

⁶⁶ In addition to Nozick, *Anarchy State and Utopia*, see Jan Narveson, *The Libertarian Idea*, (Peterborough: Broadview Press, [1988] 2001) and Jan Narveson, *Respecting Persons in Theory and Practice*, (Lanham, MD: Rowman & Littlefield, 2002), Randy Barnett, *The Structure of Liberty*, (Oxford: Clarendon, 1998), Tibor Machan, *Libertarianism Defended*, (Burlington: Ashgate, 2006), and Charles Fried, *Modern Liberty and the Limits of Government*, (New York: W.W. Norton, 2007).

of others, particularly where one had no positive hand in creating such.⁶⁷ This is elucidated or putatively explained through the claim that there simply are no strict basic duties of justice requiring positive action in aid of one's fellows. And this in turn is supposed to reflect the more primitive thought that there are simply no strict basic duties of positive action at all, but instead only basic duties requiring that we refrain from certain harmful actions.⁶⁸

This could be how things stand; the libertarian could be correct that there simply are no strict basic duties to positively act, and so none to act in aid of those in need, at least where we have had no hand in creating the need. But is there an argument supporting the cogency of this characteristic line of thought in a non-question begging way?⁶⁹

Perhaps the line of thought that the libertarian is inviting her interlocutor to entertain is this.⁷⁰ First, begin with a presumption that the scope of liberty—where by this we mean the scope for voluntary intentional action—is to be restricted as little as is coherently possible, in any decent systematic reflection of justice.⁷¹ Second,

⁶⁷ This characterizes the view, though it isn't usually put that bluntly.

⁶⁸ This last claim is occasionally accompanied by labeling the first supposedly merely putative kind 'positive duties' and the second supposedly genuine kind 'negative duties'. See Narveson, *The Libertarian Idea*, pp. 58-9.

⁶⁹ The thesis is at least atypical and counterintuitive it seems to me. Consider that it entails the claim that there are no strict duties of easy rescue in some easy to imagine cases.

⁷⁰ See again Narveson, *The Libertarian Idea*, page 57 and following. I am indebted to his remarks there for the argument I sketch out in this paragraph.

⁷¹ As Horacio Spector puts it "If negative liberalism wishes to be a genuine theoretical alternative, it must... conceive freedom as the absence of restriction on possible... action, independently of whether or not these are the objects of actual desires, accepting the intrinsic value of freedom so conceived. Furthermore, this seems to be the road negative liberals have chosen..." See Horacio Spector, *Autonomy and Rights*, (Oxford: Oxford University Press, 2008), page 25.

acknowledge that this scope must be restricted by bans on obvious wrongs such as murder, assault, theft, devious promise breaking, and so on. Whatever else counts as sensible possibility—for instance satisfying some specific criterion of compossibility—this much is to be held fixed. Third, acknowledge that starting from any set of circumstances C , the scope of liberty is less constrained by normative restrictions banning forms of action than it would be where some particular form of action is explicitly called for. The thought, I suppose, is that the remaining scope for liberty afforded us by bans on particular actions, even where a number of kinds of action are banned, is always vastly greater than it would be where some particular kind of action is counted as obligatory. For if Φ -ing in C is obligatory, one may not in C do anything else—every other form of action in C is something one may not do. And it then might seem that a far wider range of actions is ruled out by positively requiring in C some particular form of action than is required by any finite series of bans in C . Treating these claims as premises, we could generate a deductively valid argument favoring a standard libertarian conception of justice in holdings. And the third claim, in this context, might be thought to illustrate the rational appeal of the characteristic thesis that there are no positive strict duties of aid at all, but only negative ones not to harm.

This is not very compelling argument. Set aside the second claim, for this is not in dispute among fellow deontological liberals. The first presumption—that the scope for liberty is to be as restricted as little as possible—is obviously basic to the view but equally obviously questionable, and it seems that the typical perfectionist liberal can be counted upon to reject it. On the perfectionist liberal view it is precisely not presumed that, in the abstract, the less liberty is restricted the more adequate our account of justice.

On that view, one needs to consider the other features of human flourishing and determine how such a restriction will function in support of such flourishing.

The third claim is the more interesting one. It purports to lead to a substantive conclusion—that there are no positive duties of action at all and so none requiring aid—from a general point about the logical form of the imperatives expressed in any coherent normative system, and given the first presumption. But I don't think it works as intended. For one could express the content of the demand to Φ in circumstances C negatively—i.e. that content could be expressed as a very longwinded ban on every other form of action. Yet the duty such an expression reflects ought to be considered a negative duty for it says only what one may not do. Plainly, this negative duty would restrict liberty to exactly the same degree as the positive duty it reflects. And, conversely, the libertarian's preferred regime of rights and duties could conceivably be expressed positively—as a very long multiply disjunctive imperative. Thus, that a regime of rights and duties is expressed only in terms of negative duties or only in terms of positive duties tells us precisely nothing about how restrictive or unrestrictive it is with respect to liberty in the relevant sense.

This of course does not decide matters substantively. But as near as I can tell the libertarian has no particular argument that should decisively sway those that doubt the cogency of his starting points. The overweening emphasis on not restricting the scope for voluntary intentional action does not get independent support from attention to the distinction between negative and positive duties. Nor, I think, will the libertarian be able to convince her interlocutors here by reemphasizing the thought that we ought never be required to act positively where we are not particularly causally responsible for

something untoward. One thing in question is the proper place of this kind of appeal. So it seems that standard libertarianism is simply one roughly coherent form of deontological liberalism among others, reflecting one view of the liberties worth protecting, and with those ordered in a particular way.

The various forms of deontological liberalism vary with respect to their implications concerning the circumstances in which coercive redistribution of de facto wealth and holdings of property are allowed or required by duty. More generally, they vary on which sorts of interference against a person's will are legitimate or called for. Many libertarians hold that what distinguishes the political morality of their view is its consistent and steadfast opposition to the supposed wrong of any coercively enforceable redistribution— more generally, interference—against the will of a legitimate owner, and this is the site of robust controversy within the liberal camp.⁷² Since we are interested in how Locke's view is to be understood as a particular kind of deontological liberalism, a consideration of where he stands on three familiar modalities of possibly legitimate coercive redistribution is worth consideration.

A first possible modality concerns those circumstances following and resulting from prima facie wrongful actions, such as those actions we would be inclined to call thefts. Suppose that we are in some such circumstance—I have wronged another by stealing something of hers. How may others, and perhaps the state, legitimately respond assuming that the theft is known about? A standard response is this. The guilty party should make amends, or restitution, and where he fails to do so, others, and perhaps the

⁷² See Machan, *Libertarianism Defended*, page 43.

state, ought to make things right. And making things right here requires redistribution, most obviously the return of the stolen item to its rightful owner if that is possible.

At a general level, this is not the site of robust controversy between deontological liberals of, respectively, the libertarian and egalitarian camps. No libertarian defends the thought that interference against any and every individual's *de facto* will is intrinsically so awful that it ought not to be done even, for example, in cases where we would be rectifying a theft. Of course, on some libertarianisms, much will be made of the distinction between the state's possible action and that of others not the state—for example private security agencies—to legitimately enforce such redistribution.⁷³ And there will be controversy over what sorts of actions one proposes to count as thefts or what possessions as wrongfully held. If one begins as Locke does with the idea that the world and its resources are held in common, some appropriations—and the resulting holdings—appearing *prima facie* legitimate might on reflection turn out to count as thefts, or come to count as wrongfully held.

The second modality is that permitted or required following particular harmful or risky actions of the fully legitimate owner of some holding. The owner of some worldly holding may be understood to have done a criminal or tortuous wrong in some circumstances that rises to the level of a full violation of basic other-regarding moral duty, or can engage in activity that is wrong but less seriously so. Accounts of justice in holdings, across the spectrum of deontological liberal views, typically allow for and call for 'takings', in some such circumstances, from the *de facto* holdings of the heretofore

⁷³ *Anarchy, State and Utopia* is one such case. Part I is a rational reconstruction of a possible process by which entirely voluntarily formed private agencies can come to effectively fulfill the traditional role of the state without violating anyone's rights. See Nozick, *Anarchy, State and Utopia*, pp. 3-148.

legitimate owner. Thus, for example, if one pollutes the public air and water supply above a reasonable standard through industrial hog farming, one might justly lose one's entitlement to the farm, or be fined. Similarly, if one harms or seriously risks harming some relevant others, through one's practice of habitual randomly-timed knife-throwing, or through an act of intentional assault, one may legitimately lose the title to one's knives, or be legitimately fined and incarcerated.

On any typical account, the rights constitutive of private ownership in worldly holdings are simply not well conceived as conferring an altogether strict immunity against legitimate future takings or more generally interference by others. Instead, such rights are constrained by what constitutes 'due use' in Locke's phrase with respect to that holding in particular, as well as by morally allowable behavior more broadly. The controversy we are interested in here—between libertarian liberals and egalitarian liberals—will center on what is to reasonably count as a threshold of allowable harm or allowable risk. The standard libertarian will typically defend a broader—relative to the egalitarian liberal—conception of the sorts of actions allowed and a correspondingly narrower conception of the circumstantial scope for justifiable interference. I argue below that Locke's view is not the very broad and very stringent conception of the owner's right to control endorsed by the standard libertarian views. Instead, Locke subscribes to a notion of due use that is considerably less broad and less stringent than that, in line with his perfectionist commitments.

The third possible modality of legitimate coercive redistribution is that which may be thought due following circumstances in which there was no particular prior wrongful action of the heretofore legitimate owner or owners. This no-prior-fault modality is the

site of robust dispute between proponents of the competing views we are considering. The former conception consists in part in the categorical rejection of the idea that any such redistribution could be legitimate in the circumstances of justice.⁷⁴ No such coercive redistribution is legitimate where the holding was itself legitimate, for it would violate the relevant entitlement. That is, one is entitled to do what one likes with one's property as long as this does not involve acting intentionally, or intentionally failing to act, such that serious risk or serious harm befalls innocent others as a clear result—not merely as a concomitant—of one's doing. The egalitarian conception consists in part in embracing the contrary idea that there are some appropriate instances of such interference—the entitlement should be conceived as always already open to such redistribution.

Consider, by way of illustration, one of the imaginary islands beloved by political philosophers. The island has a number of inhabitants who have completely divided its natural resources in a fashion consonant with the requirements of justice. Other human beings arrive on the scene as the result of a shipwreck, with no material possessions, but bearing the typical range of natural needs. On the egalitarian conception, there will be some further specification of the situation such that the needs of the shipwrecked others will ground claim rights, under justice, with respect to at least some part of the present de facto holdings of the original inhabitants. The character of the claim rights of the original owners with respect to those holdings will either be held on this liberal account to have shifted, or to have been always open to this possibility. Where the original inhabitants

⁷⁴ Champions of standard libertarianism occasionally wobble on this point. Consider Nozick's discussion of the Lockean proviso and the threat of moral catastrophe. See Nozick, *Anarchy, State and Utopia*, page 180. If this wobble is too pronounced, what is distinctive about the view disappears.

might, before the arrival of the refugees, have been truly said to have a claim-right to certain uses, or legitimate control over certain uses, of an entire resource, they now are equally truly—according to such a view—said to have an obligation to bestow at least access to some part of it to the newcomers.⁷⁵ And in some such contexts coercive takings from the de facto holdings of some original owners will be fully legitimate or indeed required under justice where that part or access is denied; here we have the third modality. The egalitarian sees an analogy between this case and other cases where, for her, the occurrent fact of sheer neediness grounds the legitimacy of coercive takings. This line of thought is typically rejected by the standard libertarian.⁷⁶ I argue that Locke by contrast thinks that such a modality can and does have instances in what are recognizably the circumstances of human justice. This is decisive evidence that his picture is closer to the contemporary egalitarian liberal than to the typical standard libertarian.

⁷⁵ This is typically conceived on these accounts as independent of anyone present actually recognizing it or acting out of that recognition. That is, it is thought of as a standard of objectively validity.

⁷⁶ That rejection can take a couple of different forms. One way is to allow for such a duty as would legitimize redistribution in the island case, but deny that this is an enforceable duty of justice, rejecting the purported analogy. This is perhaps Nozick's way: see Nozick, *Anarchy State and Utopia*, page 180. Another way is to deny the existence of any such duties in the absence of causal responsibility or contractual agreement.

4.2 LOCKE'S GENERAL ANTI-LIBERTARIAN PRESUMPTION

Below, I turn to Locke's explicit sanction along each of the three modalities just discussed. Here I consider two abstract features of Locke's thinking in the *Two Treatises* that indicate the presence of a general presumption that some coercive redistribution of holdings, including those holdings meeting a standard of prior full legitimacy as private property, may be rightful in a wide range of circumstances. Since these circumstances include controversial ones where the redistribution is against the owner's will, the general presumption of Locke's picture is anti-libertarian.

The first feature to attend to is Locke's thesis of original common human ownership of the world. This is supposed to be extralegal—i.e., not dependent upon the existence of any political society or system of positive morality or law. It should be accepted that Locke took it that the Earth and its resources are, in a recognizable sense, the original common property of mankind and that the character of that holding is not such that any one of us has morally unrestricted access to the resources in question. This thesis sets Locke a central philosophical problem confronted in the seminal Chapter V of the *Second Treatise*. Specifically, Locke aims there to elucidate how one is to understand the conjunction of mankind's common ownership of the world with the possible rightfulness of the division into discrete parts, held by individual human beings, or small groups, as private property.

There are of a number of abstract possibilities as to Locke's conception of the character of that original community with respect to the world. A central distinction

relevant here is that marked in the literature by the language of ‘negative community’ and ‘positive community’.⁷⁷ To say that mankind enjoys an original negative community with respect to the world is to say that each member of our species is merely at liberty to impose his or her will on the world in particular uses, where that liberty is a bare or unprotected one. On this conception any member may, without violating right, interfere with any other’s attempt to act along the lines of that liberty. The label of ‘positive community’ suggests, by contrast, that a conception of claim-right and so of duty is in use, rendering the label ‘co-ownership’ more apt than it would be in the former case. ‘Negative community’ roughly fits Hobbes’s view of the situation of mankind with respect to the world in the absence of a sovereign power. In contrast, Locke’s considered view of the common holding is not that it is a negative community, even where we restrict the object to the natural world exclusive of human beings and their bodies.

John Simmons, normally reliable as a guide to Locke, has an oddly diffident discussion of this issue. He claims that the textual evidence is “inconclusive” on the general question as to which kind of conception Locke is working with, and he cites in that connection what he takes to be Locke’s hesitance to use the word ‘property’ with respect to the communal holding, or right in common, in question.⁷⁸ I think that there is good reason not to be diffident on this point.

As Simmons appreciates, Locke is at pains in many of the relevant sections of the *Two Treatises* to consistently distinguish the original community from the possibility of

⁷⁷ The concepts corresponding to these expressions go back at least to Grotius and Pufendorf.

⁷⁸ See Simmons, *The Lockean Theory of Rights*, page 239.

legitimately private holdings that may be created out of it.⁷⁹ Thus, Locke has some reason to reserve ‘property’ as a label for the rights with respect to the latter holdings, or to name the stuff so held, in order to maintain the clarity of this distinction. This does not imply though that the original common holding is not well conceived as a form of collectively held property on some suitable conception. That is indeed just what it appears to be. It is worth emphasizing here that Locke has a capacious view of the sorts of things that can count as examples of owned property; it would be no surprise if he were similarly flexible about what degree of entitlement to control is necessary for counting as an original human co-owner of the Earth and its bounty.

Also, Locke uses ‘property’ with reference to his own conception of the original communal right in §87 of the *First Treatise*. Thus, he doesn’t always refrain from using that very word in one of the ways one would expect if he thought of our original moral relation to natural worldly goods as a form of collective ownership.⁸⁰

It might be countered that the relation in question cannot be genuine ownership for nobody is excluded. Let us grant that the possibility of some kind of creature being excluded, relative to the owners, is a necessary condition for a claim-right to be a kind of ownership. Yet I deny that Locke’s world ownership in common fails to exclude in this way. Plausible candidates for the excluded would be the incorrigibly criminally insane, the incorrigibly lazy, invaders from other worlds, and the other animals.

⁷⁹ Relevant discussion is found in I: 86, 87 and 92 and II: 6, 25-27, and 32.

⁸⁰ “...There was no Priviledge of his Heir above his other Children, which could exclude them from an equal Right to the use of the inferior Creatures, for the comfortable preservation of their Beings, which is all the *Property* Man hath in them...” See section 87 of the *First Treatise*. The suggestion here is that this is indeed a property right, albeit one that doesn’t give a co-holder the exclusive claim-right to control she might have vis-à-vis other law governed beings with respect to some *private* dominion.

Where there is room for dispute, then, is in determining the character of the positive community with respect to the nonhuman world of natural goods that Locke does defend, rather than on the question as to whether he defends one at all. Hereafter, I take it as established that Locke is committed to some form of the thesis that mankind collectively originally owns the world. Locke supplies an explicit theological argument in support of that claim; I agree with many current philosophers in rejecting the idea that this kind of argument provides compelling grounds for believing the claim. On my view the claim gets its plausibility from its overall coherence with and elucidation of all our remaining considered judgments.⁸¹ Locke's conception of such common ownership is evidence of a general presumption of the possibility of morally legitimate coercive redistribution, from relatively wealthy co-owners to relatively needy co-owners upon a familiar if vaguely demarcated and historically variable dimension.

This argument is simple. Locke explicitly indicates that the group constituting the co-holders of the Earth and all its bounty, following God's grant, are the individual members of the species, that is, mankind, each on a par with all the rest.⁸² This is to say, at least, that each individual member, upon arrival on the scene, and prior to any act of appropriation on his or her part, begins with a claim-right, somehow to be specified, on the Earth and its fruits, equivalent to every other such human being.⁸³ We are initially

⁸¹ Thus, I follow Rawls—and at further remove Plato and Aristotle—in accepting that some considered moral judgments constitute a legitimate starting point for thinking in a philosophical vein about morality. See Rawls, *A Theory of Justice*, 46-53.

⁸² See I: 87. As against Filmer, Locke characterizes the relevant right as a right in common, where the contrast is a right particular to Adam and his explicitly named heirs.

⁸³ I take one's arrival on the scene to be roughly contemporaneous on Locke's view with a successful birth, perhaps earlier. Locke clearly takes children to be claim-rights bearers with respect to justice; one can be wronged in point of justice prior to being a fully reasonable member of the moral community.

holders in common, in virtue of species membership. This basic right to one's share, on Locke's view, takes the form of an opportunity right—a right to the opportunity to acquire a fair share of the world's bounty as private through one's labor. It is not conceived as a right to some particular part of the natural world. This is not yet to say very much about the nature of that right; it is not to insist that it be realized, made concrete, as a right to appropriate directly from nature. But however that may be, it is possible for the right to be violated through the history of doings, uses, and pattern of de facto holdings of those on the scene prior to, and simultaneously with, any particular person.⁸⁴ It is not a bare liberty, but rather imposes some moral duties upon each human being with respect to, roughly, every other contemporaneous human being and on behalf of future human beings.

It should follow then that for Locke the arrival of new and needy species members can shift the structure of existing entitlements, opening those up to forms of newly legitimate redistribution. For, if the structure of doings and holdings in some circumstance is such that the basic right of access to some newly arrived person's share is violated, for example, through that share being altogether unavailable given present de facto holdings, along with high walls and intransigent possessors, coercive redistribution would be warranted. The questions as to whether and in what conditions exactly Locke thinks such redistribution would be the thing to realize, and what form precisely it ought to take, are not yet on the table. The point is rather that Locke's general conception of mankind's original moral relation to non-human natural goods, at an admittedly high

⁸⁴ Locke famously contrasts his view of the moral constraints in place independently of political society with a view in which everything is permitted. See II: 6: "Though this be a *State of Liberty*, yet it is not a *State of License*."

level of abstraction, allows for and in some circumstances requires legitimate redistribution of this general kind. Why do I think so? Only if we accept this can we make sense of a familiar argument of Locke's.

One can of course claim that this original common right with respect to the world by God's grant is conceived by Locke as merely a right of appropriation and, further, that the legitimate exercise of it is strictly contingent upon there being, as a matter of empirical fact, some resources not yet claimed. The general picture on such an interpretation is that those arriving on the scene historically late have the same right to claim unappropriated resources as those at the dawn of history—a right to appropriate a useful share consistent with allowing whoever is contemporaneous to do likewise. Yet it is simply their tough luck if there is nothing left to take. That is clearly unacceptable as a reading of Locke.⁸⁵

This is why. The very considerations that gave Locke reason to insist that the right of world ownership is common to all the members of the species, and not a right specific to Adam and his particular heirs, serve him here. Locke writes

The most specious thing to be said, is, that he that is the Proprietor of the whole World, may deny all the rest of mankind Food and so at his pleasure starve them if they will not acknowledge his Sovereignty, and Obey his Will. If this were true, it would be a good argument to prove, that there was never any such *Property*, that God never gave any such *Private Dominion*, since it is more reasonable to think, that God who bid Mankind increase and multiply, should

⁸⁵ This interpretation continues to be advanced in the current literature. "Initial common "ownership" in the Lockean sense *entails only* that the various resources constituting the world are *initially* "up for grabs"; for these resources truly to become anyone's property in any meaningful sense, specific individuals actually have to go out and do something with them." See Edward Feser, "There Is No Such Thing as an Unjust Initial Acquisition," in E. F. Paul, F. Miller, and J. Paul (eds.) *Natural Rights Liberalism from Locke to Nozick*, (Cambridge: Cambridge University Press, 2005), page 61. The emphasis is added.

rather himself give them all a Right, to make use of the Food and Rayment, and other Conveniencies of Life, the Materials whereof he had so plentifully provided for them...

These considerations plainly give him reason also to disallow that a few lucky heirs of original appropriators are fully entitled to do whatever they like with, say, the entire world, in the face of others, lately arrived, who begin with no de facto worldly holdings. Here Locke has flatly rejected the very idea that new arrived members of our species could legitimately be starved, or legitimately politically disenfranchised through the threat of starvation.⁸⁶ But if we were committed to the standard libertarian picture, this rejection is simply not well grounded. That is, Locke's picture has elements that would be baseless on a thoroughgoing libertarian picture.

Locke never states that common ownership of the world once belonged to each member of mankind in prehistory but no longer does so; nor is there any clear avowal that the basic duties with respect to other humans in virtue of this common right are particularly shaky or insubstantial.⁸⁷ Private dominions then, are always already open to redistribution to meet the pressing needs of the dispossessed no matter how legitimately such dominions have been carved out. And, even more plainly, every owner is also a trustee on behalf of untold future generations. More generally, not only are property owners not at liberty to starve or blackmail the needy even where they had no particular causal role in bringing about the existence of the needy or the need, they are simply not at

⁸⁶ This is precisely opposed to the picture defended in *Leviathan* of sovereignty by acquisition.

⁸⁷ I do not think we should put too much emphasis on the idea that one's natural other-regarding duties are conditional on one's own preservation 'not coming into competition'. See §6 of the *Second Treatise*. The general theme of that section is that the state of nature is fully moralized. I discuss this below.

liberty to do whatever they like with their property. Some uses of renewable resources, where those are held as private property, would be blocked: those uses for instance that prevent the resource from being used productively subsequently. Locke simply does not operate with a rigid conception of private ownership, nor of the view of freedom naturally linked with that conception.

The second general feature, constitutive of Locke's anti-libertarian presumption, is his conception of conditions on the moral legitimacy of government-levied taxation. If Locke's political morality were indeed a form of standard libertarianism, one would expect to find a general presumption against the moral legitimacy of such taxation where that occurs without the explicit consent of the person to be taxed to any particular instance or for any particular purpose. On a simple such conception, no takings or taxation will be legitimate except where the party to be taxed has explicitly consented to be subject to a particular tax or schedule of takings having approved its purposes in advance. The government may solicit fully voluntary contributions, but is not morally permitted to coerce anyone to give any more than she would prefer to give, or for purposes that she does not support.

Locke's view is not of that type. Consider first the explicit discussion of government-levied taxation, at §140 of the *Second Treatise*. One might hastily take the point of the section to be to stress the general presumption in favor of restricting the allowable scope of such taxation, and as an expression of skepticism regarding the authority of the legislature to levy it, where this is taken to be evidence for Locke's anticipating standard libertarianism. The appeal to consent as grounding the permissibility of taxation is indeed plain, and denying consent a crucial role in morally

legitimizing taxation is here taken by Locke to be tantamount to nonsensically ignoring the general purpose of forming political societies in the first place. However, Locke is very clear that what is to count as legitimating consent in the context of political society may be limited to the consent of the majority as determined by plebiscite, or even merely the consent of the majority of legislators. As he puts the relevant point, having explicitly evinced the general appropriateness of taxation, such a tax on any citizen “must be with his own Consent, *i.e.* the Consent of the Majority, giving it either by themselves, or their Representatives chosen by them.”⁸⁸ The clear implication is that the fundamental law of property, in Locke’s phrase, is simply not violated by taxation against one’s preferences, where it has been appropriately sanctioned. Such taxation is fully morally legitimate.

Consider next in this connection the two sections just prior to 140. One who is predisposed to seeing in Locke a standard libertarian view will typically cite passages from these sections in order to emphasize two ideas. These are: the thought that the goal of property protection is the sole point of forming political society and the thought that the bounds of one’s property are marked by one’s sphere of rightful control. Locke does strongly emphasize in sections 138 and 139 that the legislature, or supreme power, has no right of arbitrary takings. Its authority is understood to be limited to the bounds set by consent, somehow construed. Reading these sections in the light of the predisposition, one might easily move to the thought that Locke is generally suspicious of governmental political authority and holds a general presumption against the likelihood that taxation, in any instance when it is opposed by any more or less reasonable property owner, may be morally legitimate.

⁸⁸ See II: 140.

This line of interpretation is unconvincing. First, it should be noted that one can take full ownership to confer the right to protection against all coercive takings in some respects concerning an owner's holding, and yet nonetheless also allow, in full consistency, for some legitimate takings against the owner's will with respect to those same holdings by others, or the state. In order for this to be sensible, one must simply acknowledge that the rights constitutive of property with respect to some owned good leave off exactly where the rights of others to some product, or share, or aspect of it begin. That is, one can quite comfortably acknowledge that the private property owner simply has no exclusive right of control with respect to that share or aspect or product of some held good that constitutes the proper object of a legitimate tax or taking.⁸⁹ That simply doesn't imply that it—the holding—is not sensibly thought of as her property. How do we know this? It is a feature of the common conception of legitimate interference and taxation. And this is how Locke appears to be thinking in these sections.

Second, Locke suggests explicitly that the right to the sphere of goods properly within the owner's control are partially constituted by the "Law of the Community" once some group has created or entered political society.⁹⁰ In context, this phrase appears to name the explicit positive law governing the political society and not the omnipresent law of nature, the gaps and vagaries with regard to which good positive law finds its use. Thus, presumably, the boundaries of appropriate takings in such a context are fixed to

⁸⁹ For example, ownership of the apple orchard simply doesn't necessarily confer a right to dispose of the entire apple crop or its obtained or obtainable market price without being subject to a tax. It's coherent to limit the owner's sphere of moral say in the relevant way, while also maintaining that the orchard is the owner's property.

⁹⁰ See II: 138. "*Men therefore in Society having Property, they have such a right to the Goods, which by the Law of the Community are theirs, that nobody hath a right to take their substance or any part of it from them, without their own consent;...*" The bold is my emphasis and the italics are in the original.

some degree by original constitutional positive law and subsequent well-made statutory law. Where said law establishes some possible tax liability, or conditions for taking, the property owner is subject to full obligation, whatever she prefers.

Thirdly, to underscore that on Locke's view in political society the detailed structure of the social web of property rights is at least partly determined and fixed by the original constitutional and subsequent decent laws of that society, compare the earlier §120 of the *Second Treatise*. Locke is explicit there that when one becomes a full member of some political society, by consent, one's holdings come fully under the jurisdiction, government and dominion of that society. He describes the holdings as suitably regulated by positive law, and denies that one's property in political society is exempt from government jurisdiction: "By the same Act therefore, whereby anyone unites his Person, which was before free, to any Commonwealth; by the same he unites his Possessions, which were before free to it also; and they become, both of them, Person and Possession, subject to the Government and Dominion of that Commonwealth, as long as it has a being."⁹¹ Where that is the case, the community is fully within its rights to tax private holdings for recognizably redistributive purposes. Where, one supposes, the community decides that such takings are required to serve the public good, not enforcing or actively resisting such measures would be seriously morally remiss.⁹²

Hence, it seems that Locke operates with a general presumption that redistributive takings and hence interference, of a possibly controversial sort, both independent of, and in the context of, political society, may be fully morally legitimate. This has obvious anti-libertarian import. We can also see that Locke has here explicitly stated a principle

⁹¹ See II: 120.

⁹² See II: 134 and 135 for references to the public good.

sanctioning what we might think of as perfectionist paternalism on the part of the state generally. Here the state is said to hold dominion over each of its members and that dominion is not revocable by the choice or preference of the particular member. The state, that is, has the authority to interfere with some, even against their wills, where the rest have sanctioned it. This interference can be undertaken and justified on grounds that appeal to a conception of human flourishing as the other rational and reasonable citizens see it. This is clearly perfectionist.

4.3 THE SANCTIONING OF REDISTRIBUTION

It is clear that Locke's view—see Chapter II of the *Second Treatise*—may be taken as sanctioning coercive redistribution along the lines of the first modality. That is, Locke's doctrine favors, for example, redistributive takings in the service of reparation and restraint, following some familiar injustices, such as theft, independently of co-membership in political society.

Locke also favors and explicitly sanctions redistribution along the second modality. Consider, in this connection, that moral restriction on the use of property even in advance of political society that is sometimes called the spoliatio proviso.⁹³ Locke argues in sections 37 and 38 of the *Second Treatise* that in the event that anyone's claimed or generated natural bounty, produced outside of political society, under initially fair conditions, is so abundant that it goes to waste, he has “offended against the common

⁹³ See Jeremy Waldron, *The Right to Private Property*, (Oxford: Clarendon, 1991), page 207.

Law of Nature”.⁹⁴ Further, such a person is liable to punishment in this eventuality on the grounds of having “invaded his Neighbour’s share, for he had *no Right, farther than his Use* called for any of them, and they might serve to afford him Conveniencies of Life”.⁹⁵ The general picture is that one’s holdings of private property of whatever kind, even when legitimately generated, are always subject to the possibility of legitimate takings or cancellation. Where one violates some member of what I call the due use clauses with respect to that holding, or violates some other particular restriction of the law of nature, legitimate penalties may ensue.⁹⁶

I think we can already begin to see Locke’s substantive perfectionist liberalism at work in this account of due use with respect to land. Jeremy Waldron’s discussion in *The Right to Private Property* is typical and typically mistaken in suggesting that Locke’s conception of what will count as due use is very, very broad and that the subsequent restrictions, violations of which may license redistribution, are accordingly not particularly significant.⁹⁷ In this vein, Waldron emphasizes what he takes to be the enormous scope of protected liberty on Locke’s view for an owner to decide to use his legitimately acquired property for any purpose he deems useful. Waldron writes: “Once land has been improved by labour, it is for the labourer to decide how it shall be used.

⁹⁴ See §37.

⁹⁵ See §37, emphasis in the original.

⁹⁶ Locke uses the phrase ‘due use’ at II: 37. I distinguish between a set of moral restrictions constitutive of due use and a particular member of that set—the spoliation restriction. This is atypical I think. Much of the secondary literature on Locke proceeds as if spoliation and the sufficiency condition are the only restrictions on the generation, legitimate use, and nature of private holdings. That seems unduly narrow to me as a matter of interpretation. Locke’s picture of the prepolitical social world is thoroughly moralized—we needn’t think that because spoliation is singled out for discussion it gives the only content to the due use conception.

⁹⁷ See Waldron, *The Right to Private Property*, pp. 207-9.

*His title to make that decision lapses only if he fails to exercise it, or exercises it in such a way as to prevent the land from ever being useful to anyone in any way at all.*⁹⁸ The implication of Waldron's discussion is that this is precisely what the sole normative restriction on the use of private property amounts to. But this is mistaken as a reading of Locke on due use.

One can see that Waldron has gone wrong here by noticing that Locke's example of the wasted crop would not count as a violation of the restriction on land use under this very interpretation. For in intentionally allowing one's crop to rot, one has manifestly not failed to exercise a supposedly unconstrained right of executive decision. Thus, if there is to be a violation it must be the other sort. But, obviously, intentional allowing of (crop) rot does not prevent land from ever being useful to anyone in any way at all. So there would be no violation of natural law if Waldron is correct about the nature of the relevant due use clause. Locke clearly intends, though, to be discussing a violation of a moral restriction on the due use of land in the case at issue. Hence Waldron's interpretation is not correct.

By contrast, I think that Locke is operating with a substantive—if vaguely demarcated—notion of sorts of objectively legitimate uses. For consider that he is famously explicit that the various worldly goods are to be used appropriately, and that not just any intentional action with respect to some such will count as an appropriate use. “*As much Land as a Man Tills, Plants, Improves, Cultivates and can use the product of, so much is his Property.*”⁹⁹ The general suggestion here is two-fold: only particular kinds of uses are by their nature appropriate for particular natural kinds of good, and

⁹⁸ See Waldron, *The Right to Private Property*, pp. 207-8. The emphasis is mine.

⁹⁹ See II: 32. The emphasis is in the original.

analogously only certain modes of labor will secure private property in those various kinds of good.

This general idea seems sound. Absent an appropriately detailed science fiction, we simply wouldn't describe a person sitting in her fishing boat, on dry land, and repeatedly casting her net into a field of Barley as laying claim to that field or its crop. This is so no matter how much effort she is putting in, no matter how intentional her action, and no matter how she describes it. Only particular modes of labor will allow us a grip on—i.e., allow us to develop a degree of de facto control over—any particular resource of some kind. In other words, specific modes of labor are indexed to the nature of the goods they are directed towards, or on. It is this naturalness of just this thought that Nozick relies on in formulating the tomato juice counterexample, supposedly against Locke, but the point has broader relevance. What grounds Locke's initial thought here is that effective use requires some control, and for him our normative status with respect to the world generally has centrally to do with our using the world effectively.

Further, "it cannot be supposed that [God] meant that [the world] should always remain common and uncultivated. He gave it to the use of the Industrious and Rational, (and *Labour* was to be his *Title* to it)..."¹⁰⁰ Pace Waldron, the suggestion of these passages is clearly not that whatever a legitimate, instrumentally rational owner deems to be an appropriate use thereby counts as such. Rather the suggestion is as follows. On the one hand, there are objectively appropriate uses among which a legitimate owner or would-be owner might choose under reason without forfeiting any protected liberty. On the other hand, there are misuses that might entail forfeiture of right, regardless of how

¹⁰⁰ See the *Second Treatise*, paragraph 34.

properly one had mixed one's labor in advance or how sound one's receipt of inheritance. The particular way that Lock develops this view has substantive and interesting implications—it suggests for example that the use of land in typical ways by nomadic hunters leaves it still in the common and hence ripe for appropriation as private by others. But we could well disagree with Locke about the details in such a case, out of concern for the rights of indigenous peoples, while nonetheless sanctioning the general thought.

How exactly is this general thought suggestive of perfectionism as I am proposing to understand that? Locke is operating with a fairly robust picture of proper human flourishing, doubtless reflecting life in 17th century Europe. He is appealing to this picture to justify his claim that certain voluntary actions—e.g., a heretofore legitimate owner allowing his crop to spoil—may effectively forfeit title. This suggests that the owner has no right to do this—that the law of nature does not protect it, but instead condemns it. This is despite the owner being rational and genuinely entitled to the holding. Yet the legitimacy of the interference is not to be understood as a brute fact, for Locke explicitly links the content of the law of nature to the fostering, protection, and realization of genuine human flourishing. Two things seem clear to me. First, the clauses of the law of nature call on us to do what is necessary to properly preserve mankind—that is its general point. Second, Locke thinks human beings are unable to flourish without fully developing their individual capacities for practical reason, which he at one point identifies with the law of nature. I return to this below. Here I am merely indicating that the interference Locke is recommending to us is to be understood this way: Others not the owner would be justified in acting out of their more adequate conception of the

human good in the face of the owner's instrumentally rational will and competing (mis)conception of that good. And that is a kind of perfectionist interference.

But what, finally, of the third modality? I think that it makes the best sense of Locke's canonical texts if one takes his considered view to include the recognition of the rightful possibility of this kind of redistribution also. First, consider that in the *First Treatise* he explicitly sanctions such redistribution at §42 under the label 'charity.' I think that the argument there aims to secure the conclusion that when conditions are appropriate, the needy come to have a claim-right in the surplus holdings of the better off, which is of course precisely a moral sanctioning of redistribution along the third modality. Consider this relevant passage:

God... has given no one of his Children such a Property, in his particular 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 denyed 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 when he has no means to subsist otherwise...

Here Locke is according to the extremely needy the same general kind of Hohfeldian claim-right that he is commonly taken to grant to (other) legitimate property owners in respect of their standardly acquired property; here it is with respect to the surplus de facto holdings of the better off. What grounds the claim-right in this case though is the obtaining of the relevant circumstances: both the dire situation of the needy, and the existence of the surplus, matter. In support of this, notice that he describes the norm as a 'right' or 'title' and that he suggests a strict analogy between the title to some

alienable good that one gets through legitimate appropriation or inheritance, on the one hand, and that which one comes into by being caught-up in sufficiently dire circumstances, on the other.¹⁰¹

Some may be tempted to seize on the verbal distinction between ‘justice’ and ‘charity’ here and claim that duties of charity in Locke’s view are not enforceable on the grounds of relevantly basic right, and hence that the right to the surplus is too weak to either override or to conflict on a par with the relevant rights of the relatively wealthy legitimate owner. On this interpretation, we would have Locke anticipating a thoroughgoing libertarian right to do wrong—a protected liberty to be uncharitable. I submit that this is simply to import a contemporary conceit back into Locke’s text and distort the intended meaning.

The force of the passage is rather that it would be a serious moral injustice to deny aid to the needy in these particular circumstances, and that one would have misconceived the nature of the wealthy owner’s entitlement to her holding in characterizing it as extending so far as to sanction, as an allowable flouting of the demands of charity, an instance of allowing one’s neighbors to starve. The claim-right to the surplus is such that the de facto wealthy holder may be legitimately forced to give, or allow the appropriation of, the surplus. This is precisely the point of Locke’s insisting that it is a right. So the sliver of surplus in such circumstances belongs, under natural law, to the needy and not to the de facto holder, whatever the appearances and however legitimate the holder’s claim

¹⁰¹ I take it as obvious that the typical owner’s right in the *Second Treatise* is a legitimately enforceable claim right and I draw the reader’s attention to the fact that Locke in this passage uses the same word, ‘title’, to label both of the relevant moral requirements. Locke repeatedly uses that word to refer—if loosely—to the typical owner’s right following a privatizing appropriation in Chapter V. See II: 34, 35 and, 36.

to the original holding. And this is plainly a shift in the detailed structure of the relevant entitlement, or an opening up of that entitlement, in either case brought about by the particular circumstances. Where the need is not so pressing there is no such entitlement. Thus does Locke recognize redistribution along the third modality as sanctioned, and indeed required, by justice in general.¹⁰² That is not to say that there is no difference between what Locke wants to call charity and justice in the narrow sense. But there is no indication that the duties associated with Lockean charity in these circumstances fail to be strict—that is, that the legitimate owner has a right to flout them.

Indeed, Locke thinks in general that particular specified moral limits governing the acquisition and structure of particular private property rights in goods can be defeated by what we can call historical advance, and subject to respecification. That is, Locke's thinking indicates that titles to worldly goods secured under natural law, and independently of the formation of political society, can shift their nature, and change in scope and extent, through no fault and indeed no particular doing of the heretofore legitimate owner. This can of course open them up to legitimate interference and sanctions the possibility of redistribution and interference along the third modality.

It is worth emphasis that, as a general matter, this is coherent. One's intellectual commitment to a primary and abstractly characterized basic right or basic human interest can be coherently held fast while the detailed specification of what is typically required to respect that right is defeated and subject to respecification by changes in circumstance. Is this point genuinely understood and relied upon by Locke? One might doubt it, for it is clear that Locke thinks of human nature, of our being corporal rational and properly

¹⁰² This use of 'justice' is not a slip. There are two distinct but related senses at work in the passage.

reasonable beings of a certain important sort, with a proneness to particular forms of virtue and vice, as a fixed fact.¹⁰³ It seems further that the doctrine of elementary abstract rights and duties that Locke is committed to reflect his picture of that nature; it is that fixed nature which is to be properly preserved according to the law of nature and it is that law which at least partly specifies those rights and duties.¹⁰⁴ Commitment to this picture though simply does not rule out the historical defeasibility of various specifications of actions required to respect those basic rights and duties reflective of our nature in particular settings.

That Locke's picture does indeed imply the possibility of defeasibility and respecification of specific moral limits on human action in some contexts relevant to justice can be seen also by considering directly Chapter V of the *Second Treatise*. It is to a discussion of this that I now turn. I aim to show that Locke is therein also clearly committed to the possibility of redistribution along the third modality.

Locke's main self-appointed task in the earlier parts of the Chapter is to explain how the thesis of common human ownership of the world is consistent with the possibility of its legitimate division into exclusive private holdings, without appeal to universal explicit consent. His basic initial explanation is that labor-mixing with nature not yet privately held, given further the satisfaction of some other explicit moral

¹⁰³ Locke's conception of human nature as displayed in the *Two Treatises* and its relation to the virtue of justice is precisely opposed to subsequent historicist conceptions of human nature and human virtue.

¹⁰⁴ See in this connection the seventh of the *Essays on the Law of Nature*. Therein he says, of that law, that "this is not a private or positive law created according to circumstances and for an immediate convenience; rather it is a fixed and permanent rule of morals, which reason itself pronounces, and which persists, being a fact so firmly rooted in human nature." See John Locke, 'Essays on the Law of Nature', in M. Goldie (ed.) *Political Essays* (Cambridge: Cambridge University Press, 1997 [1663-4]), page 125.

restrictions, will accord a legitimate private title to a holding independently of appeal to such consent. One among the conditions that Locke apparently takes to be jointly sufficient, in some relevant contexts, to generate such titles is the sufficiency condition, sometimes called the Lockean proviso. Locke famously appeals to this condition under the language of ‘enough and as good.’¹⁰⁵ The idea is that in some circumstances, only where there are sufficient worldly resources left unappropriated following some particular privatizing appropriation via labor-mixing, such that any other eligible possible appropriator has access to a reasonably equal share, will the holding have the exclusive moral status of private property. In some circumstances of justice, then, no collective consent is in addition necessary to secure that status.¹⁰⁶ An obvious context in which the moral limit of the sufficiency condition has plain applicability and could be met or violated is any setting in which people are relatively few and unappropriated worldly resources are relatively plentiful and accessible.

There is considerable scholarly controversy over what role precisely the sufficiency condition is accorded on Locke’s considered view, and on the question as whether it is sensible. A standard interpretation of Locke has it that satisfying this is a necessary condition on legitimate appropriation in a plentiful and sparsely populated state of nature, but that the restriction simply lapses with the invention and use of money. Jeremy Waldron has argued against this and claims instead that the only restriction on original appropriation and subsequent use of private property that Locke is actually committed to is the ban on spoilage or waste. Waldron further takes Nozick’s zipping back argument to give a sound *reductio* of the very idea of the sufficiency condition

¹⁰⁵ For that phrase, and relevant discussion, see II: 27 and 33..

¹⁰⁶ Locke is clear on this at the close of II: 28.

when it is interpreted along standard lines. Thus: on Waldron's view, there is no Lockean sufficiency restriction, respect for which is a necessary condition on the scope and legitimacy of holdings of worldly goods as private property.

Neither the aforementioned standard view nor Waldron's view is fully adequate as interpretation on this point. First, there are no good grounds for interpreting Locke as merely holding that the invention of money, by itself and as a matter of brute fact causes the sufficiency restriction to lapse, still less that it causes whatever more general consideration gives the restriction its very point, to lapse. Waldron is on solid ground in that respect. But, also, Locke does not consistently and clearly defend the idea that so long as one is diligently productive, one can take as much as one likes. I.e., Locke does not think that the only way to wrong one's fellows in this regard is to fail to productively use what one takes regardless of the character of the surrounding circumstances. Waldron insists that this is what Locke does think, and is doubtless leaning on the close of paragraph 46 wherein Locke repeatedly stresses the requirements of productive use, and the nature of those actions that count as productive uses.

He that gathered 100 bushels of acorns or apples had thereby a property in them; they were his goods as soon as gathered. He was only to look that he used them before they spoiled; else he took more than his share and robb'd others...If he gave away a part... [or] bartered away ... [the same] he did no injury; he wasted not the common stock; destroyed no part of the Goods that belonged to others, so long as nothing perished uselessly in his hands.¹⁰⁷

Of course Locke does think that there is a moral requirement of robustly productive use standing over every owner—this is an aspect of his picture of perfected human nature. But he also defends the idea that it is possible to do wrong to one's fellows merely in

¹⁰⁷ See II: 46.

appropriating an unduly large or attractive holding originally, presumably even if it is subsequently productively used. Again, the world is given to us in common, for us each to develop and use through the exercise of our individual powers of labor; this plainly suggests that none of us ought to block the access of the others to that very world even inadvertently. Only appreciating this allows robust sense to be made of, e.g., Locke's statement "that he that had as good left for his improvement as was already taken up, needed not complain."¹⁰⁸ For this makes it obvious that one could wrong others simply by taking an inordinately large or especially attractive share of natural bounty; grounds for complaint would be valid where as decent a share for any other is not left.

Thus the sensible interpretation is this. The use of a durable money commodity is a technical innovation allowing for an increase in stored wealth. That is, it makes it easier not to violate the ban on spoilage. But this simply does not say that there is no other moral restriction on, or duties to others in respect of, using the world at large and our parcels of private property in particular. And of course these can ground familiar forms of interference when circumstances are right. I think it should be obvious that Locke is operating with a general, if somewhat amorphous, notion of fairness with respect to one's reasonable neighbors, in particular those who are fully willing to work in the service of attempting to live decently. It is this basic notion of regard for our moral equals that grounds what gets called the sufficiency condition, but the general idea is broader than that. The law of nature does not allow us to (unfairly) disadvantage our neighbors through our own sheer industriousness, just as it does not allow us to starve the needy into political submission, even where the need is no fault of ours.

¹⁰⁸ See II: 34.

Finally, consider Nozick's zipping-back argument. This objection is often taken to show that if Locke is committed to any sufficiency-style restriction at all, then no holding of private property could ever have been legitimate in our finite world. And that in turn is supposed to be a *reductio* of the very idea of restrictions of this kind. If this were correct, there would be something badly wrong with any robustly Lockean conception of justice in holdings, since any robustly Lockean conception relies on that very restriction in some form or other.

Yet Nozick's argument turns out not to be the purported decisive objection; it undermines neither the very idea of a Lockean sufficiency condition, nor the more important general idea of fair respect for one's fellows that this condition plainly, I think, embodies. How does Nozick's argument purport to work?¹⁰⁹

Take, for illustrative purposes, a tiny world containing persons A, B, C, D and E. Suppose each person appropriates a minimally useful share in turn, given by alphabetical order. Suppose further that each person is intending to respect a version of the sufficiency condition and assume that it cannot be so strict as to deny the opportunity to appropriate a minimally useful share, wherever exactly it is set.¹¹⁰ We also assume that this world is extremely barren; it can only support the life of four laborers. E is the first person left without the opportunity to appropriate a minimally useful share. Apparently then, D violated the proviso since her labor-mixing appropriation left E without that very opportunity. But, in the intended case, she could not have acted otherwise than she did and yet still have appropriated a useful share. Thus, it is impossible for her to have

¹⁰⁹ See Nozick, *Anarchy, State and Utopia*, page 174.

¹¹⁰ A minimally useful share is one that could support the life of the appropriator and her household with no help from or exchange with anyone else.

legitimately appropriated a useful share. Accordingly, C must have violated the proviso, since his appropriation left D without the opportunity to appropriate legitimately. And so on back to A. The purported lesson is that legitimate appropriation of genuine private property is very likely impossible under any sufficiency-style restriction in any finite world such as ours. So the thing is impossibly strong, however weak it might appear.

I think what is really of interest here is this. Assume: a) that any holdings ever legitimately generated are permanently fixed in nature, size and scope, b) a fixed and finite common stock from which to take those holdings, and c) an ever-increasing population of would-be holders. Under these further assumptions no sufficiency restriction will work to certify any holding as private property. For no matter what restriction we set on the size and quality of holdings, eventually it will be manifestly violated. And that manifest violation would apparently cast doubt backwards on the legitimacy of all previously acquired holdings. What should we say?

It seems to me that we might simply adjust our assumptions, for if any of the three are relaxed, the objection no longer goes through. Relaxing assumption 'a' is the move that Nozick himself gestures towards, for he indicates that the way out of his worry is to allow for the disenfranchised to *use* property belonging to others, to allow them some guaranteed access, even where they can no longer immediately appropriate, as private property, holdings in land directly from nature. This is I think to indicate that even on Nozick's view, the nature of the holdings is such that they are always already open to change in detailed character, given the relevant change in circumstance.¹¹¹ I

¹¹¹ This is presumably just the sort of interference that the standard libertarian rails against. For what if the owner would prefer not to have these commoners whose existence and neediness is after all no fault of hers using her ancestral lands?

think Locke would also have made this move in the face of this objection. But Locke would also not have accepted the idea that the common stock of the world is fixed and finite. Plainly, limiting ourselves just to consideration of non-human nature on the terrestrial biosphere, sans us and sans the results of our labor—i.e., considering merely what Locke takes to be God’s original grant to us as a species—we can see that it is, *with care*, indefinitely renewable.¹¹² Still though, it surely has an upper limit at any particular time. The capacity of the Earth to carry large populations of human beings is not unbounded, or so it appears. But Locke would have insisted too that the total common stock that is to be considered wherever we are looking to apply the basic norm of fairness grounding the sufficiency condition, is not itself static. This is so merely given Locke’s conception of human labor power. That is, Locke plainly thinks that human labor, and in particular the productive use of private property through, and made possible by, exercises of human labor, will continuously renew, enrich and increase the common stock of mankind. Having introduced the idea of the invention of a money convention, he writes “[t]o which let me add, that he who appropriates land to himself does not lessen but increase *the common stock of mankind*. For the provisions serving to the support of humane life, produced by one acre of inclosed and cultivated land are (to speak much within compass) ten times more, than those which are yielded by an acre of land, or equal richness, lying waste in common...”¹¹³ Locke goes immediately on to claim that appropriating and putting land into intensive production is, in effect, a gift to the rest of the species. The implication is clear: the common stock is not conceived by Locke as

¹¹² More precisely, its productive capacity is continuously renewable for what is for one of us a very long time.

¹¹³ See II: 37.

limited to the original grant but rather as subject to increase through the exercise of human labor power. If that is correct the zipping-back argument is ineffective.

But how could this be? By taking now from the common stock how can we be acting so as to ultimately increase it? The obvious way to make sense of this is to see the common stock not as constituted by the natural resources of the terrestrial biosphere. Instead it is apparently being conceived by Locke as the variable set of opportunities for legitimate and required intentional action those aiming at developing, sustaining, and reflecting human flourishing. A series of enclosures-and-intensive-cultivations doubtless negates some opportunities, such as the opportunity for example to range freely over this very stretch of land hunting and gathering, and the opportunity to appropriate as private property some holding directly from this very stretch of land in its natural state. Yet we are to weigh these losses against the opportunities that are the upshot of the relevant actions. It is clear that the typical person could sensibly be said in some such circumstances to have had her net opportunities relevant to proper flourishing increased. It could also be true that some former opportunities, former members of this same set, have disappeared. One can work and live as a waged laborer in some petite bourgeois utopia only where there are some who have the means to hire workers and pay them a living wage, and so on and so forth. And that circumstance might be brought about only by actions and circumstances that destroy other previous opportunities.

Admittedly, complications abound in connection with this line of thought. Some might worry that it is unclear that the very idea of increased opportunities for flourishing makes sense, unless and until we have laid out a formal account that shows exactly how we are to count them. I do not share that worry. Others might worry that incoherence

looms; this I don't think is necessary. Others might be suspicious that Locke has an ideological ax to grind in connection with the enclosure controversy. That too I do not want to bother with.

The interest of this for my purposes is two-fold. First, we can see that Locke's sufficiency restriction is not vulnerable to the zipping-back objection, since the common stock, relative to which enough and as good is to remain after intentional doings with respect to the world, is not static. Instead it is subject to a kind of open-ended increase. Thus: there is reason to think that it will be possible continuously to meet forms of the restriction. Second, if this general picture is correct, Locke is obviously open to respecification and to interference and redistribution along the third modality. For if we treat the notion of the common stock as constituted by opportunities, and we allow appropriations and improvements to block heretofore traditional modes of enrichment or work, exactly where they are trumped by newly created opportunities, that simply is to recognize respecification of the overall regime of property rights and duties. This implies that there is no principled bar to heretofore legitimate holdings being opened up to interference and redistribution.

Consider this case as illustrating the general point. Suppose, at one time, that holdings are exhaustive of the original grant, and heretofore fairly distributed, under some interpretation of the sufficiency clause. Subsequently a large new generation arrives at maturity, while the previous owners are yet also still on the scene. What then does justice sensibly demand, if indeed one agrees with Locke about the original grant being the property of the species members as such? One might insist that those new arrivals who do not stand to inherit are unfortunate, but are strictly owed nothing barring

some special voluntarily incurred connection between parties. That is the response of the standard libertarian, but it is not Locke's response. On the other hand, one might insist that, at this subsequent time, the whole of God's grant is to be returned to the status of unowned nature and opened up again to fresh appropriation. One might think only this could be fair to the members of the new generation and that only this could preserve the point of the sufficiency restriction. But Locke plainly would reject this move as well. Is there any alternative? The obvious alternative here is to stress that all are under a relevantly basic duty to see to it there be fair opportunity to labor productively for those new arrivals willing to work. This duty can only be met, in some circumstances, where we are sufficiently flexible about the detailed nature of the regime of property rights authoritative over the moral community at any particular time. That is, where it might have been legitimate to deny others the use of one's land when people are relatively few, it will cease to be when circumstances change. I think that this is precisely the position that Locke occupies.

5.0 LOCKE'S LIBERAL PERFECTIONISM POSITIVELY CONSTRUED

Let's take it as established that Locke's view in the *Two Treatises* is not well thought of as a standard libertarianism. Still, why should we take the author of this work to be defending a deontological liberalism of robustly perfectionist form? I think that this attribution makes the best sense of a range of passages and the best overall sense of some central doctrines defended. I am not claiming that it makes coherent sense in the light of all Locke's major works, and I don't deny that there might be difficulties in squaring everything Locke wrote with this picture. Nonetheless I think that this proposed interpretation is instructive in indicating the general character and unity of the view of human life and political morality in the *Two Treatises*. It has been doubted that Locke has the makings of a genuinely coherent view even considering that work in isolation. John Simmons has produced what is the most careful and charitable recent account of Locke's political philosophy in the *Two Treatises*.¹¹⁴ Yet even Simmons suggests that Locke's moral and political thought in the *Two Treatises* is essentially 'pluralistic' in basic structure, in some respects reflecting the deontological approach and in others a rule-consequentialist style of thought. These are clearly in tension with one another. If, though, Locke's *Two Treatises* has the character I want to attribute to it, it would turn out to be more coherent than this reading would indicate.

¹¹⁴ In addition to *The Lockean Theory of Rights* and *On the Edge of Anarchy*, see John Simmons, *Justification and Legitimacy* (Cambridge: Cambridge University Press, 2000).

This case is presented in stages since it seems that each conceptual element of the view that I want to attribute to Locke is logically distinct from the other two. Along the way I briefly address some likely objections.

To begin with: does Locke's view of correct human practical reason assign a basic status to sensitivity to what grounds the call of duty? I think the answer here is unqualifiedly in the affirmative. If this is correct then his view is deontological.

Briefly, allow me to explain how I am proposing to understand the deontological approach in moral and political philosophizing. Recently this approach has been called nonconsequentialism, but that term is I think best treated as labeling a more general category. For surely there are various ways of standing in intellectual and theoretical opposition to consequentialist accounts of the nature of morality and its place in human life. The deontologist as I want to understand her proposes in particular to take sensitivity to the grounds of moral duty, in something like its traditional shape, as a primitive element in practical reasoning. It is out of that orientation that his or her opposition to consequentialism is developed.

With the terms fixed, let us review some passages that support this interpretation. Consider Locke's well-known description of the state of nature from the *Second Treatise*, Chapter Two.

But though this be a *state of liberty* yet it is not a *state of license*: though man have an uncontrollable liberty to dispose of his person or possessions, yet he has not liberty to destroy himself, or so much as any creature in his possession, but where some nobler use than its bare preservation calls for it. The state of nature has a law of nature that governs it, which obliges everyone: And reason which is that Law teaches all mankind who will but

consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions.¹¹⁵

This passage is clear evidence in favor of interpreting Locke as according a fundamental place in his conception of human right reasoning to the recognition of strict dutiful actions, those actions that are required and of course permitted by the law of nature. Indeed he goes so far in this passage as to identify sound practical reason with the law of nature. He subsequently indeed describes the content of that law in terms of obligations to refrain from harming others. But he immediately goes on to express the view that we have obligations to do “as much as [one] can *to preserve the rest of Mankind*” short of suicide.¹¹⁶ He also explicitly denies that we are made for one another’s uses. Locke’s view as exhibited here is apparently this: A human person’s having cognizance of what we now think of as our core moral duties to others and ourselves is simply part of what it is to be a reasonable human being. This is just what we need as evidence of the deontological nature of Locke’s view.

It is perhaps worth noting that this does not indicate that the author of the *Two Treatises* is committed to a doctrine of innate truths of practical reason. Claiming that sensitivity to duty is intrinsic to fully developed human practical reason is not to claim that full human reason, and so sensitivity to duty, is intrinsic to each living human being as such, or even each bodily mature physically healthy human being. This point will be intelligible if Locke is operating within the original teleological mode of thought, and

¹¹⁵ See II: 6

¹¹⁶ Ibid.

making natural normative judgments dependent upon, in effect, Aristotelian categoricals about the human animal.

In any event, this is not an anomalous passage; again and again our author links the notion of sound human practical reasoning directly to the cognizance of fundamental moral duties. Here I point to three.

First: "...it is certain there is such a Law [of nature], and that too, as intelligible and plain to a rational creature, and a Studier of that Law, as the positive laws of commonwealths...possibly plainer..."¹¹⁷

Second: "The *freedom* then of man, and liberty of acting according to his own will, is *grounded* in his having reason, which is able to instruct him in that law he is to govern himself by, and make him know how far he is left to the reason of his own will."¹¹⁸

Third: "The law that was to govern Adam, was the same that was to govern all his posterity, the *Law of Reason*. But his Off-spring having another way of entrance into the world, by natural birth, that produced them ignorant and without the use of *Reason*, they were not presently *under that Law*: for nobody can be under a law which is not promulgated to him; and this law being promulgated or made known by *Reason* only, he that is not come to the use of his Reason cannot be said to be *under this Law*;"¹¹⁹

These might be multiplied. But I think we have enough already in the way of positive evidence. This suggests that the author of the *Two Treatises* embraces deontology as I want to understand that. Before going on to consider supportive evidence for the perfectionist side of my interpretation, I want to briefly consider two possible objections.

First, one might object that Locke's view is not consistently deontological precisely insofar as it is also theistic and indeed a divine command theory of human

¹¹⁷ See II: 12.

¹¹⁸ See II: 63.

¹¹⁹ See II: 57.

morality. The relevant thought here is that these two categories cannot coherently overlap. I think this is confused.

I grant of course that Locke appeals to God's authorship as the *sine qua non* of the law of nature, of human nature, and indeed of the world at large. But this point simply doesn't touch the question of his deontology. A view will be or fail to be deontological in virtue of its particular commitments concerning the nature of human practical reason. Specifically: this is determined by whether or not fully developed human reason is conceived as thereby responsive to the call of recognizable moral duty. The question of the final causal source of the worldly instantiation of this capacity—human practical reason—is irrelevant. So though I acknowledge that Locke is committed to a theistic explanatory account of the world at large, and of the law of nature in particular, I deny that this gives us reason to hesitate to classify his view as a form of deontology. In order for there to be a real tension in his view, Locke would need to be (also) committed to the thought that reasonable human person is not *per se* responsive to duty but instead must undertake a contingent action of consulting scripture, or directly acquainting herself with God's will *as such*, in order to apprehend the Law of Nature, or to be under its authority. Yet he is explicit in the *Two Treatises* that properly developed human reason already involves the cognition of moral duty. Locke's theism is not in tension with his deontology.

One might resist the idea that Locke's view is deontological on quite different grounds. It used to be popular among political philosophers to read Locke in a way informed by a hermeneutics of suspicion. The most influential figures here are Strauss

and MacPherson.¹²⁰ Strauss reads Locke as essentially, albeit covertly, agreeing with Hobbes on the nature of human life and human rationality. If this reading were correct, I would be inclined to withdraw my thesis. That is, it seems to me Hobbes is not a deontologist. People can be fully right-thinking on Hobbes's view, instrumentally rational and aiming to assure the way of their future desires, and not thereby be cognitively moved by a recognizable grasp on the grounds of moral duty. (I do not mean to downplay the complexity of Hobbes's view here). But I don't think this reading of Locke is correct. Indeed I find it hard to take seriously at all, since we must ignore far too much.

There is one important passage that a philosopher inclined to agree with this sort of interpretation—that is, the thought that Locke is a closeted Hobbesian, or Hobbesian style ideologist—is certain to point to. So this seems to be worth considering. The relevant passage is from Chapter 2 of the *Second Treatise*. Locke is in paragraph 6 explaining the content of the law of nature. He writes:

Every one, as he is *bound to preserve himself*, and not to quit his station willfully, so by the like reason, when his own preservation comes not into competition, ought he as much as he can, *to preserve the rest of mankind* and may not, unless it be to do justice to an offender, take away or impair the life, or what tends to the preservation of life, the liberty, health, limb, or goods of another.¹²¹

The interlocutor we are imagining seizes on the clause 'when his own preservation comes not into competition'. It is then assumed that the validity or force of the other regarding moral duties are being supposed conditional upon the personal judgment that the line of

¹²⁰ Again see Strauss, *Natural Law and History*, and MacPherson, *The Theory of Possessive Individualism*.

¹²¹ See II: 6.

action is not deemed harmful or even risky to the potential actor's own narrowly conceived interest in so acting. And that is a recognizably Hobbesian thought, effectively scuttling the deontological reading. Does this clause so interpreted reveal the fundamental nature of Locke's view? We should not think so. For accepting this reading requires that we ignore as essentially phony the balance of Locke's text and we lack compelling reason for that.

Further, the case for this Hobbesian reading would surely be stronger if there were no competing version of the content of the passage. But there is. I submit that Locke can here be read as saying that we shouldn't strictly require of every reasonable individual a willingness to sacrifice themselves entirely (to give up their lives for instance, or to engage in highly risky action) whenever others are in need (even desperate need). In other words Locke may simply be adducing some room in the law of nature for what is now called the supererogatory.

A final point worth making here is this. Some find it tempting to read Locke as drawn, in the *Two Treatises*, to rule-consequentialist modes of reasoning, in connection with the law of nature.¹²² The general thought is that this is the only obvious way to make sense of some passage, or stretch of apparent thought. For instance, Locke clearly takes the content of the law of nature, in its various specific injunctions, to be determined by the contribution that actions under those injunctions could be expected to make to what he calls the preservation of mankind. Achieving this end is the general point of that law and I suppose the nature of mankind and of the relevant worldly circumstances will

¹²² I take no side on the issue as to whether there are good grounds for preferring consequentialism of this indirect sort, supposing one to be choosing between forms of consequentialism.

be determinative of its specific content. Now, one way to make sense of that is to conceive the sought object as a straightforwardly external consequence of the relevant actions. And then we can indeed ask what rules would tend to produce that consequence if followed, or what actions would do so in just these circumstances. But this is not a point expounded in that way by Locke. And we have already seen that this is not the only way in which a *telos* can be thought to properly govern practical reason. In the absence of decisive evidence to the contrary, Locke's view in the *Two Treatises* is best read as deontological.

What then of the purported perfectionism? The obvious way to tackle this question is to ask ourselves what we should expect of the text if indeed its view were perfectionist in the ways discussed in above. First, there is the thin sense of perfectionism—perfectionism expressed as the paternalist thesis. This thin sense expresses the basic thought that an appeal to the human good can sometimes ground interference with the lives, properties and projects of roughly reasonable and rational people against their wills and despite their competing conception of the good.

Suppose we are interested in using this language with respect to Locke's view. How should his view be classified? I think there's not room for much controversy here. Locke is pretty explicitly not a strict neutralist. He has a quite substantive conception of how human beings ought to be comporting themselves both in the state of nature and in political society if they are indeed to be living as befits them. And he is clear that this conception of what it is to lead a minimally good human life can be legitimately appealed to in order to justify interference with an otherwise roughly reasonable and rational individual in the state of nature.

What is evidence for this? First, recall that Locke is quite clear that each reasonable person is a legitimate judge and enforcer of the law of nature in the state of nature. This is at least to recognize a necessary condition of justified perfectionist interference, for, in such conditions, genuinely understanding the content of the law gives every reasonable person executive powers to enforce it. And, again, that law has its point in the proper preservation of mankind. Such preservation is, I think, what we should take to be the overall human good on Locke's conception; there is no evidence anyway that there is some other constraining factor in practical reason than that law, nor is there evidence that Locke is worried about a pluralism of competing goods. Now, Locke might have held that each person has an inviolate sphere of choice and action within which he or she may either determine the good, for him- or herself, or within which to freely choose wrongly. But this sort of subjectivist move does not apparently tempt him.

I have found no explicit textual evidence that the author of the *Two Treatises* thinks that there is basic conceptual room in the law of nature for allowing each person a far reaching right to do wrong, as some libertarians would have us accept. Nor does he insist, as we might be inclined to, that there is some arena of judgment or area of action in which it will be best, all things considered, to advert to an individual's own subjective choice, just insofar as it is his or hers. Instead, impersonal reason, the rational apprehension of the law of nature, is the standard of sound practical judgment and of legitimate action generally. According to Locke "...in the state of nature...Men are not bound to submit to the *unjust* will of another: And [yet] if he that judges, judges amiss in his own, or any other Case, he is answerable for it to the rest of Mankind."¹²³ This is

¹²³ See II: 13. The emphasis is mine.

clearly to suggest that we may go badly wrong even in our own cases. And when we do, we may be interfered with legitimately. It is only the *unjust* will of another that we are protected against through the law of nature.

Second, reconsider that Locke appeals to robust due use clauses for legitimately acquired holdings of natural goods in the state of nature. For example, he implies that in some cases allowing one's legitimately held fields to go untended even where they have been legitimately enclosed and diligently sown with seeds, allows them to revert to the common. Again, there are strict standards for appropriate use and more generally appropriate intentional action standing over us all both with respect to ourselves and as regards our other private property. These standards are authoritative independently of the will of the proprietor, even where that proprietor is roughly reasonable and rational, and has acted well previously. This is evidence of Locke's willingness to countenance perfectionist forms of justified interference.

How is this case to be made out? Presumably, the proprietor's original appropriative activity is evidence of his or her roughly reasonable and rational nature. But this much is simply no general bar to justified interference. Locke seemingly thinks that it is not simply what we might call a universal human right to engage in that quintessential practically rational activity, human labor, but in fact a universal basic duty.¹²⁴ And that this is universally called for sets constraints upon all the intentional actions of all the individual owners of human bodies, human agential powers, and various other goods held as private property. People can be interfered with so as to allow for everyone to develop the capacities required for flourishing.

¹²⁴ Again: The world is given "to the use of the Industrious and Rational, ... not to the Fancy or Covetousness of the Quarrelsome and Contentious." See II: 34.

Locke's perfectionism is equally clear when we shift focus to the social conditions of political society. Recall three relevant aspects of Locke's discussion: First, he claims that the entry into political society consists in placing one's person and possessions under the direction and authority of the body of reasonable people one is thereby joining. Clearly this creates the precondition necessary for perfectionist interference as sanctioned by the reasonable political society, taken as a corporate body. Second, Locke is explicit that such interference, against the will of an individual member, when grounded by proper regard for the common good is legitimate. And finally, recall that he does not recognize a right of unconditional exit. If he had, that would cut the other way, providing for at least some absolutely valid modes of subjective judgment. But he does not. Finally, notice that if one is willing to grant that Locke is perfectionist in either of these two spheres, that is itself evidence that he intends anyway to advance a perfectionism in the other. This is so since he explicitly grounds the authority of the political society to engage in reasonable interference upon the alienation of the rights of originally individual executive power in the state of nature.

Let that suffice to show that Locke's view is perfectionist in the thin sense. What of the richer sense? The view of morality structured by a commitment to perfectionism in the richer sense will be governed by some *telos* where that consists in some conception of genuine human flourishing. That conception of human flourishing requires and partially consists in the exercise of fully developed characteristic capacities, such as that for virtuous action. The specific accounts of the virtues and moral duties that are expressed in the clauses of the account will need to make sense in the light of the overall conception of the *telos*. More specifically, we should expect that those virtues in action

will contribute productively and possibly also constitutively to the achievement of the overall *telos*. Still further, acting out of genuine knowledge of the law of nature will be a contributing element to achieving the *telos*. I think that this is the best way to read Locke. The overall purpose of the law of nature is as he says the preservation of Mankind. Whether I am correct in this reading of Locke depends upon what precisely that preservation is thought to involve.

On Locke's conception, in order to count as acting so as to preserve mankind or fulfill the overall purpose of the law of nature is it enough that one not intentionally harm others? Or, perhaps, do we need merely to (also) pile-up the multi-purpose means of satisfying various typical desires as they occur in one's own life?

I think that where Locke writes of the preservation of mankind, he has a rich conception of what it is to flourish as a human being in view. The human life-form, governed by the law of nature—it is the active instantiation of this in the practically reasonable actions, among them the virtuous actions, of living human individuals in community with others that Locke's view would have us foster, develop, and preserve. Nothing else would seem to fit. In particular bare survival of the individual, or even of a great collection of such individuals, is surely not what he has in mind. Consider what he writes in section 128.

In the state of nature...a man has two powers. The first is to do whatsoever he thinks fit for the preservation of himself and others within the permission of the law of nature: by which law, common to them all, he and all the rest of mankind are one community, make up one society distinct from all other creatures. And, were it not for the corruption and viciousness of degenerate men, there would be no need of any other; no necessity that men should separate from this great and

natural community, and by positive agreements combine into smaller and divided associations.¹²⁵

As this passage reveals, we are on Locke's view already a genuine moral community under natural law in advance of positive political society. Thus, it is entirely natural to think that the robust duties associated with the other regarding virtues are basic to Locke's picture of proper preservation of the species; we are a human community under natural law and not a mere collection of atomized rational individuals. The goal of preservation that each practically reasonable Lockean individual has is one of fostering and sustaining human flourishing overall and that flourishing is plainly possible only in cooperative human social life. A second thought is, perhaps, that acting out of respect for that law is partially constitutive of the virtue-involving flourishing that is properly to be realized and preserved. It seems clear that, for Locke, we are to exercise our reason in respect of the world, and that doing this, together, is part of what it is to flourish in the manner of the human being. Further it is plain that, for Locke, this *telos* belongs to us in virtue of the kind of beings that we are. As Locke suggests elsewhere, "truth and keeping of faith belongs to men as men, and not as members of society."¹²⁶ Here Locke has perhaps sought to dodge the theoretical problems that plague Hobbes in his reply to the fool. But I want to draw your attention to that fact that Locke is linking our moral duties directly to the kind of beings that we are. This is just what we would expect if he were committed to perfectionism of the kind that I sketched above.

What further evidence can we find of this? If Locke's view is perfectionist and in the particular style that I am suggesting, then the *development* of right practical reason

¹²⁵ See II: 128.

¹²⁶ See II: 14.

and its exercise in intentional actions will be central to his account, for that capacity will be both productively and constitutively contributing to human flourishing. Emphasizing this promises to help make intelligible and defensible both the much-controverted labor-mixing passages and Locke's brief but crucial treatment of moral education in Chapter VI.¹²⁷ I put the discussion of the latter off for the final chapter and discuss the labor-mixing issue here.

How are we to interpret Locke's well-known thoughts on labor-mixing as generating entitlements to worldly holdings? Two alternatives I consider and reject are what I call the equivocation interpretation and the maker's right interpretation. Then I make the case directly for treating labor-mixing in perfectionist terms. The passage most centrally in question is §27 of the *Second Treatise* and it runs as follows.

Though the Earth, and all inferior Creatures be common to all Men, yet every Man has a *Property* in his own *Person*. This no Body has any Right to but himself. The *Labour* of his Body and the *Work* of his Hands, we may say, are properly his. Whatever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his *Labour* with, and joined to it something that is his own, and thereby makes it his *Property*. It being by him removed from the common state nature placed it in, it hath by this *labour* something annexed to it, that excludes the common right of other men. For this *Labour* being the unquestionable Property of the Labourer, no Man but he can have a right to what that is once joyned to, at least where there is enough and as good left in common for others.¹²⁸

One possible interpretation of this passage in particular and the related passages that immediately follow is the equivocation interpretation. A standard version of this interpretation begins with the thought that Locke at least implicitly conceives of labor as

¹²⁷ The labor-mixing passages are the subject of intense scholarly dispute.

¹²⁸ See II: 27.

a particular sort of physical substance, voluntarily generated in connection with our living bodies, and which is subsequently physically mixed with other parts of the world. The basic thought on this line of (mis)interpretation is that mixing labor is a particular kind of voluntarily accomplished physical mixing of two physical substances, and in that respect exactly like a person's mixing an egg into some batter.¹²⁹ The further thought then is either that it is simply a brute fact that *this* kind of physical mixing affords one an entitlement to private property rights, in certain conditions, or that Locke is committed to some suitable general principle. This purported general principle is to the effect that insofar as we already own something, whenever we mix that owned thing with some other part of the world, we may come to own that other part. Nozick famously gestures towards a counter-example to this principle, in posing the rhetorical question about dumping one's tomato juice into the sea.¹³⁰ It would be anyway uncharitable in the extreme to attribute this line of thought—that reflecting the equivocation interpretation and the purported general principle—to Locke as his considered view on labor-mixing and the entitlements it may confer.

Waldron, directly inspired by Nozick, attributes a version of this interpretation to Locke in his "Two Worries About Mixing One's Labour".¹³¹ I will consider this account since it is quite clear. His line of interpretation and objection is roughly as follows. First, he claims that in order for Locke's argument to work as he apparently intended, we must attribute to him the thought that labor is a physical substance, produced out of other such substances, in that respect like and on the same ontological level with bile, or an egg.

¹³⁰ See Nozick, *Anarchy, State and Utopia*, pp. 174-5.

¹³¹ See Jeremy Waldron, 'Two Worries About Mixing One's Labour', *The Philosophical Quarterly* 33 (1983), pp. 37-44.

This is so, according to Waldron, insofar as the only sensible use for the concept tracked by proper deployments of “mixing... with___”—and I guess also with the relevant uses of “joining” and “annexing”—, where we take it that one of the ingredients is truly physically describable, is one in which the domain is restricted to other physical substances.¹³² But, as Waldron observes, labor is in fact a mode of human activity; indeed it is more narrowly a general category of human intentional doing or action, and as such it simply isn’t to be well thought of as a physical substance. Waldron takes Locke to rely *also* on exactly that natural classification in this passage—hence it is to count as equivocation. Waldron takes Locke to be running those two thoughts together in his attempted argument, thus treating the very same labor as at once both a mixable physical ingredient, and hence not a mode of intentional action, and as a mode of intentional action, and hence not a mixable physical ingredient.¹³³ So Locke’s passage is presented as an attempt at making an argument that has two major blunders. First, it is supposed to contain a basic category mistake, namely casting something that is not a physically mixable ingredient as such. Second, it is thought to exhibit Locke’s commitment to the incoherence of treating the very same thing—labor—as, in the same connection, the action of mixing and as one of the ingredients thereby mixed.

I think that this line of interpretation is highly uncharitable, where we take it as the best we can do with Locke’s thoughts on labor mixing as entitling. We should try to make the best sense of the general idea of labor-mixing as entitling given Locke’s other

¹³² See Waldron, ‘Two worries...’, page 40. It isn’t entirely clear whether Waldron thinks that the only kind of genuine mixing is physical mixing, or whether he merely thinks that things must be of the same general kind in order to be mixed together. “Surely the only things that can be *mixed* with objects are other objects. But labour consists of *actions* not objects. How can a series of actions be mixed with a physical object?”

¹³³ See Waldron, ‘Two Worries...’, page 41.

commitments and explicit statements, while holding on to as much content of the contested passages as possible. Pace Waldron's line of interpretation, Locke is not committed to the thought that labor is a physical substance, nor must we attribute the purported deeper incoherence to him. Before turning to the recently dominant interpretation, the maker's right interpretation, I give some preliminary reasons why we shouldn't accept the equivocation interpretation.

Consider, against this line that in the *Two Treatises* Locke nowhere explicitly says that labor is a physical substance, and nowhere says that he is committed to Nozick's general principle of the seepage of private ownership—viz. the principle that “if that which is owned by you is mixed with something still in common, then you acquire ownership rights over that which was in common.”¹³⁴ Waldron perhaps wants to find that commitment since he thinks that it would reflect an entirely independent line of argument—independent that is from Locke's various other commitments—to the justice of a very strict regime of original holdings in private property.¹³⁵ Waldron apparently thinks that the more independent lines of argument to the justice of that regime, the stronger the case and the stricter the preferred regime is likely to be. Yet it seems to me that Locke is simply not making the argument that Waldron attributes to him in the passage, and that it would be odd to think that the argued for property rights regime will be likely rendered stricter in the envisioned way. There's no reason to think that, and no particular reason to attribute that ambition to Locke.

Second, there seems to be no good reason to accept that the use of “mixing” in expressions aimed at capturing the concept that Locke is attempting to articulate and use

¹³⁴ See Nozick, *Anarchy State and Utopia*, page 176.

¹³⁵ See Waldron, “Two worries...”, pp. 38-9.

requires, as a condition of its very intelligibility, that there are at least two physical substances being said to be mixed. For one thing, there are possible and prima facie sensible uses of “mixing” and its cognate expressions that are said of things that are not physical objects. One can be sensibly said to be mixed-up, one can have mixed feelings, and one can mix metaphors—these are all intelligible uses, and none of them require that this sort of physicalist analysis is possible as a guarantor of meaningfulness. For another, it is surely a familiar practice of philosophers to extend the use of established expressions into new contexts in an effort to communicate heretofore esoteric doctrine. This somewhat stipulative move is what Locke seems to be doing with his talk of mixing, joining, annexing, or laying on, our labor with respect to worldly items, just as he does with his suggestion that human beings are fittingly proprietors of their own persons. We may have Wittgensteinian scruples about that practice, but clearly there’s no need to saddle Locke with the basic category mistake.

Third, though, granting that what can be mixed is not restricted to physical mixables leaves untouched Waldron’s deeper criticism to the effect that Locke is confusedly appealing at once both to labor qua activity and to labor qua (an) object with respect to which the activity is performed. This is the equivocation in question. In order to make the best sense of the conception of labor mixing as entitling, that confusion will have to be avoided. I think we can avoid it by making a straightforward distinction between the capacity for labor and that capacity in exercise, being brought to bear on the world. How does the central passage suggest this? Waldron focuses his discussion exclusively on § 27, from which he purports to extract the argument that hinges, he claims, on the implicit and incoherent thought that the labor that is the activity of the

mixing is also what is thereby mixed. But Locke doesn't say there that labor is a mixing of itself as mixing. Instead he seems to be relying on two senses of "labour" in the passage—one that refers to what is mixed and one that names the mixing. He marks this by changing case. I will shortly make this plain, but first I consider the maker's right interpretation.

This interpretation is originally owed to James Tully and developed and argued for in detail by Gopal Sreenivasan in his *The Limits of Lockean Rights to Property*.¹³⁶ One should perhaps see it as motivated by a concerted effort to take seriously Locke's theism as making a central contribution to a general theory of property rights, where we are to interpret the talk of labor-mixing as reflecting this commitment, albeit in other words. The basic idea is that in general, property rights are generated through creation—the creator as such comes to own the created object. Thus: God has property rights in all of nature given his creation of it *ex nihilo*, and individual human beings have such rights exactly and only where they can sensibly be said to approximate this relationship of God to all of creation. Further those cases, on this interpretation, are just the ones Locke indicates with his talk of labor-mixing. But this is plainly far too narrow an account.

For one thing, this would provide no obvious principled basis for thinking that reasonable human beings are proprietors of their own person, as Locke obviously does. According to this account, one would need a natural account of robust self-creation as the universal condition of any one of us coming into full Lockean moral agency, since Locke's picture of moral agency is explicitly expressed in terms of personal proprietorship. There is no such account in the *Two Treatises*. Perhaps it is true that for

¹³⁶ See Tully, *A Discourse on Property* and Sreenivasan, *The Limits of Lockean Rights in Property*.

Locke we are in some sense each properly the authors of our own lives; when things go as they should any one of us will have been exercising genuinely reasonable choices and will have given overall shape to the biographical history and even to the character that is ours at maturity. That looks like a way to express a commitment to the kind of autonomy valuing liberalism that Locke indeed defends. But there is no clear textual evidence that Locke thinks of this process as full-blown self-creation. Our capacities for agency and our status as individual loci of rights and duties is a natural *precondition* of being at maturity the robust authors of the direction our lives took and will take, rather than an *outcome* of that in any straightforward sense. In short, for Locke, we are reasonable persons in advance of getting to work on authoring our own lives, for becoming a reasonable person is the result of a complete education not the result of having already authored one's own life. Finally, there is the mundane fact that many of the explicitly named forms of laboring that Locke plainly recognizes as generating entitlements, are simply not forms of creation. So even setting aside the issue of self-creation there is good reason not to accept that Locke is committed as a general matter to the maker's right conception of legitimate property.

It is plainly sensible to think of labor as a capacity of any typical practically reasonable human being as such. The capacity for labor is surely part of what makes a typical reasonable human being count as such, for it is at I think a mode of intentional action. The capacity for laboring appears simply to be the capacity for intentionally producing the material supports of our existence. And of course we can distinguish merely having the capacity from exercising it.

I think that one can make good sense of the central labor-mixing passage in line with the above distinction, without embracing either of the rejected interpretations. Locke should be taken as suggesting that one has a property in one's own person and thereby, for instance, that one owns one's embodied capacity for labor, as that is a part or aspect of one's human reasonable personhood. This is of course a general feature of Locke's view, for he makes use of the notion of proprietorship with respect to one's powers to explain how it is that the political society comes by the authority that it has. The very idea of labor as an owned embodied capacity seems sensible enough. Locke is I think correctly interpreted as taking it that we are able to sell and otherwise voluntarily alienate the rights to exercises of that capacity and this seems to presume that we are owners of the capacity.

Locke claims in the passage under dispute that when an appropriation generates an entitlement of the relevant kind, it does so via our mixing labor with some part of the heretofore commonly owned world. This mixing simply I think *consists in* laboring on that part and, where relevant other conditions are met, this secures an entitlement. Thus, I claim, we should read capital-L "Labour" as naming, in each of its three occurrences in the passage, the capacity, which is thought to be a stable feature of the person and the sole occurrence of lowercase-L "labour" as naming the laboring activity of that very person—that capacity activated. Where Locke writes "it hath by this *labour* something annexed to it, that excludes the common right of other Men" one should understand him to be using 'labour' either for 'laboring' or for 'mixing,' and as suggesting that the something annexed to or mixed with the world is an exercise of one's capacity. And if I am right that capacity just is the capacity for intentional action directed to a certain kind

of end. It is this that has been unleashed on, directed on, or mixed with the world. In other words, if we are willing to grant to Locke the elementary distinction between a capacity—Labor—and an exercise of that capacity—laboring, tracked in the original text by Locke’s dropping the capitalization, we have the basic pieces to resist on Locke’s behalf Waldron’s charge of equivocation. It may be unusual to gloss our acting intentionally so as to produce something useful as a mixing of our capacity for labor with the world. But surely it is no worse semantically than the expression ‘imposing one’s will on’. Surely we wouldn’t insist in that case that the will is not something that can be literally imposed on anything.

Is this particularly perfectionist? This distinction does not exactly entail robust perfectionism. But this passage does suggest that Locke is thinking of human morality and human virtue as closely reflecting the fundamental capacities that belong to us by nature. And that should bring to mind the original sense of teleological discussed in chapter 1 above. On that picture we flourish by and through the exercises of the developed capacities that belong to us by nature. It seems that this is what is behind Locke’s argument in this passage.

What finally of the liberalism? Pretty clearly Locke’s political morality is a kind of liberalism. I’ll be quick with this. Locke’s view has both of the aforementioned general features we expect to find—the conceptual heart if you will—of liberalism. These features are: a commitment to fundamental human moral equality and to the thought that mature decent individuals ought to have significant protected spheres for autonomous

choice and voluntary action in a broad range of circumstances.¹³⁷ Typically, the sorts of protected action that characterize liberalism include directly political ones, economic ones, and those associated with what Locke calls innocent delights. These ideas are all clearly present in the text.

¹³⁷ There is simply no conceptual requirement that the protected spheres in order to count as genuinely significant must preclude in every conceivable case interference on the grounds of a competing conception of the good. So liberalism is not necessarily strictly neutralist at every possible juncture.

6.0 LIBERTARIAN SELF-DEFEAT

There is a running dispute in contemporary political philosophy between the libertarian's view of justice on the one hand and the liberal egalitarian's view on the other.¹³⁸ This dispute's refusal to die suggests that neither side has a decisive argumentative advantage in virtue of its general features. Against this, in this final chapter, I argue that there is reason to favor any egalitarian liberalism over any standard form of libertarianism. For, I argue, the libertarian has overlooked something basic to the task of developing a conception of justice: the significance of reasonable stability. If this is correct, it will show that Locke was sensible to have defended the form of PDL that I have attributed to him, rather than the standard libertarianism he is often taken to have anticipated.

The claim that libertarians overlook something fundamental to the nature of justice is not new. What is distinctive about my argument is that it avoids a question-begging appeal to a substantive conception of the basic human interests acceptable only to an egalitarian. Instead, I appeal to a fully general criterion for conceptions of liberal justice that is curiously underappreciated: the Reasonable Stability Criterion or RSC.¹³⁹

¹³⁸ This dispute remains lively. See for instance Craig Duncan and Tibor Machan, *Libertarianism For and Against*, (Lanham, MD: Rowman and Littlefield, 2005).

¹³⁹ Appeal to some norm of social stability or other has been closely connected to the topic of justice throughout the history of political philosophy. Consider Socrates's discussion of the instability of internally unjust groups. See Plato, *Republic*, pages 351d and following. Plainly, achieving a form of what is recognizable as instrumentally rational stability is the general point of Hobbesian sovereignty, and Hobbes treats justice

According to this criterion, a conception of justice is minimally adequate only if it strongly protects the reasonable stability of any society initially perfectly well-ordered under it. Despite the familiar Rawlsian flavor of this formulation, no relevantly controversial or detailed presuppositions regarding the content of the requirements of justice or the nature of (practical) reason is presupposed by my RSC. Further, none of the familiar worries over value pluralism, the nature of morality and moral knowledge, or securing widespread agreement in conditions of modernity, are here invoked. The basic thought is quite abstract: the fully just liberal society, as such, is expected to sustain itself in rectitude through human practical reason, barring accident, *whatever* the precise character of that reasonable rectitude is held to be. In other words, genuine justice, whatever its exact nature, is self-sustaining through human practical reason, whatever *its* exact nature. I appeal also to the thought that a decent upbringing is necessary for the development of any form of basic moral competency in a human being. I call this condition the Moral Education Condition or MEC.

One might think that no interesting result could come from two such abstract claims. But that is not so. I contend that given the typical libertarian's principled repudiation of a strict general obligation protecting universal moral education, and given the MEC, libertarianism cannot meet the RSC. Indeed, As the typical libertarian conception of justice makes insufficient provision for the MEC it turns out to be generally vulnerable to a kind of direct collective self-defeat. Specifically, I contend that

(i.e., reliable promise keeping) as a necessary constituent of such stability. See Hobbes, *Leviathan*, pp. 89-92. Rawls puts consideration of relative stability on the agenda in *A Theory of Justice*. See John Rawls, *A Theory of Justice*, pp. 496-504. Subsequently, he famously pursues and defends a vision of reasonable stability in *Political Liberalism*. See John Rawls, *Political Liberalism*.

such a view is pragmatically inefficient under recognizably ideal conditions: It fails, even under the assumption of perfect compliance, to reasonably guarantee the achievement of an aim characteristic of its full bearers, viz. sustaining libertarian justice. Where the view is substantively altered so as to meet the RSC, and so as not to be subject to this self-defeat, it ceases to be the distinct variety of liberalism originally advertised. This shows that standard libertarianism goes wrong at a quite basic level.

In Section One, I review the dispute between standard libertarianism and egalitarian liberalism. I suggest that it might be productively resolved through appeal to a general criterion of adequacy for conceptions of justice. In Section Two I explain and defend just such a criterion: the RSC. In Section Three I explain the MEC and I further clarify the RSC by appeal to the idea of a person's fully bearing a conception of justice. In Section Four I show that libertarianism fails to meet the RSC and I explain the character of its self-defeat. I briefly consider three possible rejoinders to my argument.

6.1 TWO VARIETIES OF LIBERAL JUSTICE

Justice in the sense at issue is constituted by those enforceable moral requirements reflecting the basic interests of human beings concerning the important goods and bads that come with us living together in our typical circumstances. We cannot avoid affecting the character, quality, and duration of the lives of others through the living of our own lives for we are caught-up together in a causally ordered world. Further, given the general facts of human life on this planet, there is not a simply given superabundance of everything any and every one of us needs in order to live decently, on any

recognizable conception of what that is. And there are the familiar general characteristics of human psychology and particularly human moral psychology; we are not purely other-regarding beings, nor do most people think we ought to be. Given this much, human beings often find themselves standing at cross-purposes with each other, even where they are also bound-up together in a relatively unified social formation. A detailed description of these circumstances provides the reflective space within which it makes sense to ask about the basic constraints morality sets upon our actions given the basic interests of other human beings. Chief among these moral constraints are the requirements of justice.¹⁴⁰ The requirements of justice are so significant, the interests in question so basic, that the actions constitutive of justice are not simply called for but are legitimately enforceable. Let those remarks suffice.

First, the deontological liberal approach begins with the presumption that individual human beings have a deep intrinsic moral worth and a set of what it is natural to call basic interests, where these reflect our typical needs and our form of life. That colors the responsiveness to duty that is intrinsic to developed human reason on this kind of view. We are each assumed to be valuable given merely what we are, and are not thought valuable only as means to or as constituent parts of other things. Second, this fixes a basic moral status upon us, affording each a degree of inviolability placing strict moral obligations upon each of the rest of us. Recognizing these is partially constitutive of reasonableness. This constitutes the deontological character of the approach; the intrinsic worth of each is expressed in terms of correlative duties and rights whereby certain

¹⁴⁰ There is a distinction between the duties associated with justice and other important moral duties that also reflect basic interests. The actions associated with both of these may be generally called for by practical wisdom and so would count as perfect. Yet only the duties of justice are legitimately enforceable.

actions are barred or called for given their very nature. And, as I have been stressing throughout, the account begins by taking it that a reasonable human being will recognize the interests that we take to be reflected in an appropriate regime of rights and duties. Again, what makes a view deontological is the assumption that sensitivity to the basic interests—the grounds of duty—is a primitive element in practical reason.

As I also suggested above, a liberal is committed to two other presuppositions. First, the liberal makes it explicit that the basic moral status mentioned is of a single kind—we are one another’s moral equals. Second, the liberal paradigmatically takes it that among the important basic interests of each is an interest in being able to freely direct himself or herself within the bounds of practical reason. As Locke puts it, all are “naturally in... a *State of perfect Freedom* to order their Actions and dispose of their Possessions and Person as they think fit, within the bounds of the Law of Nature, without asking leave or depending upon the Will of any other Man.”¹⁴¹ How one fixes the bounds of practical reason, marking out the spheres of human activity and capacities to be protected, and, crucially, how one orders these, fixes the content of any liberalism. There remains plenty of room for disagreement over the nature of abstract right and justice and the proper way of ordering its claims, even among philosophers who accept deontological liberalism as a starting place.

Given this way of fixing ideas, it is plain that the standard libertarian is one kind of deontological liberal.¹⁴² Whatever phraseology he employs—“full self-ownership,”

¹⁴¹ See II: 4.

¹⁴² Not all those who favor a minimal state and roughly laissez fair approach to human exchange are deontologists, since it is possible to defend this approach on consequentialist grounds. And not all deontological libertarians are standard libertarians since some defend form of collective original world-ownership similar to Locke.

“negative (not positive) rights,” “no-harm principle”, “liberty” or “freedom”—it is clearly the case that the libertarian defends a particular conception of the proper protections accorded under justice, where that reflects his picture of the basic human interests. Libertarians do not typically employ the phrase “basic human interests.” Nonetheless they typically presuppose a view about what those interests are. In the absence of this, disagreement about what justice requires between libertarians and egalitarians would be more difficult to make sense of.

One’s basic interests are fixed by those circumstances the obtaining of which are required for the typical individual’s living well to some minimum threshold level: call this the level of minimal decency. For instance, a human person is often held to possess a basic interest in having some considerable scope for choosing what to do with her time and her stuff, and in not being subject to various possible forms of interference. This is precisely the sort of thing libertarians insist on the protection of, under the rubric of freedom. Consider what Narveson has written:

We each need morality, first because we are *vulnerable* to the depredations of others, and second because we can all benefit from cooperation with others. So we need protection, in the form of the ability to rely on our fellows not to engage in activities harmful to us; and we need to be able to rely on those with whom we deal. We each need this regardless of what else we need or want or value.¹⁴³

This clearly implies that there are basic human interests in being protected from the possible depredations of others, in being able to rely on those with whom we deal, and so on. In general each of us may be said, by the libertarian’s own lights, to have basic interests in not being intentionally harmed in precisely the ways that concern the

¹⁴³ See Narveson, *The Libertarian Idea*, p. 148.

libertarian most.¹⁴⁴ Of course there are moral theoretical questions about how to understand the reasonable grounds of whatever specified regime of rights and duties that one takes to be in general adequate to the human situation and to reflect one's picture of the basic interests. One familiar move is to appeal to a hypothetical agreement of mutually disinterested instrumentally rational agents to fix the content of that basic regime. But we can clearly distinguish an argument of this sort—one purporting to provide general rational grounds in favor of some such detailed regime—from the basic human interests that said regime in any event reflects.

As discussed above, libertarians are especially concerned with the moral protection of an expansive sphere of the voluntary. Specifically, the libertarian is also committed to some form of the following principle: A person's needs or lacks, at least where that person is not placed at grave risk of death or serious injury in the near term if the needs go unmet, are never good moral grounds for coercive interference with any person or her property in the absence of a voluntarily incurred connection.¹⁴⁵ This implies that a person is properly at liberty to deny the needy aid in the relevant circumstances, where the person in question has no connection to the needy beyond common humanity or common membership in some more parochial community. On this

¹⁴⁴ See again Narveson, *The Libertarian Idea*, p.127, emphasis in the original: "One apparent aim of the Libertarian is to provide a schedule of rights that is "hard," so that in any given case we will always be able to identify the area of permissible action, precisely bounded by the relevant set of rights. Moreover, these are to be wholly "nonteleological" in one sense of that rather obscure term. That is, they are not to be founded upon consideration of the *general* good or *general* interest. These are certainly rights *having to do with* interests in general. They enable us to find out which interests may be pursued in which ways. And it is certainly to be presumed that the parties concerned are acting in their interests, and acting for the purpose of promoting those interests."

¹⁴⁵ See Nozick, *Anarchy, State and Utopia*, p. ix, the second paragraph. See also Machan *Libertarianism: For and Against*, p. 27 and Machan, *Libertarianism Defended*, p. 44-5.

view, practical reason does not require us to give such aid; at best it asks nicely. Indeed practical reason demands, according to this picture, that we refrain from forcing or compelling such aid. Interfering with an unwilling person in such a circumstance is a serious moral wrong—a violation of basic rights. As we have already seen, the incidents constitutive of the standard libertarian conception of private property are famously and controversially strong. Legitimate holdings are largely impervious to legitimate takings or interference against the will of the owner even to meet pressing and basic needs of others.

One kind of case is particularly important for my purposes in this chapter. Consider those people standing in need of a decent upbringing and education. This is all of us when we are young and those of us who, at adulthood, might enter some society from a radically alien culture. Call this general category the newcomers. Consider also those people not especially connected to the newcomers by anything further than, for example, membership in the same society. The case is fixed by asking the following question, assuming that we are in the circumstances of justice. What, if anything, do the latter owe to the former, under justice, in light of the need and in the absence of a special voluntarily incurred connection?

Given her characteristic principle, the libertarian denies that there is a general and relevantly weighty moral duty to bear a share of the burden of bringing up and morally educating newcomers, in the absence of a special connection. Presumably, the libertarian is leaning on the thought that a person ought not to be forced to rectify unfortunate lacks that she had no hand in causing, or that she did not agree to be responsible for rectifying. Machan puts the general point clearly:

Nussbaum and others seem to be willing to grant to some people... the power to compel other people to provide for those in need... The need, of course, does not arise because others have done anything to the needy, thus their enforceable obligation to alleviate it is dubious. At most others ought to extend help as a matter of their generosity.¹⁴⁶

The libertarian's answer to our question is plain: nothing is owed under justice in these circumstances.

By stark contrast, current egalitarian liberals typically defend the thought that there is a general obligation of justice to contribute to properly raising and educating any and all social newcomers, e.g. children. This obligation is explicitly held to stand in authority over any reasonable person in the circumstances of justice.¹⁴⁷ Harry Brighouse states this particularly clearly:

As moral agents, we each have an obligation to other people's children to ensure that they get a decent education... In other words, education for minors is like the right to a fair trial in that it is a good the provision of which must be guaranteed by the state as a matter of justice: it is something that all adults are obliged to provide for each future adult.¹⁴⁸

The educational duty functions on *this* kind of conception in the same way as do the duties to see to it that everyone has access to minimally decent health care, to an opportunity for meaningful work, and so on. That is, these duties are the right shape and strength to morally justify some sorts of interference with a person, her property and her

¹⁴⁶ See Machan, *Libertarianism For and Against*, p. 27.

¹⁴⁷ Particularly clear recent examples include: Mathew Clayton, *Justice and Legitimacy in Upbringing*, (Oxford: Oxford University Press, 2006), Harry Brighouse, *School Choice and Social Justice* (Oxford: Oxford University Press, 2000), and Eamonn Callan, *Creating Citizens*, (Oxford: Clarendon, 1997).

¹⁴⁸ See Brighouse, *School Choice and Social Justice*, p. 45.

projects against such a person's will in some circumstances. Law abiding property owners may, on such a view, be legitimately forced to contribute on behalf of those with whom they are not especially connected. The egalitarian's answer then is that something substantial is owed under justice in such circumstances.

So here we have a moral theoretical impasse despite the significant common ground. Libertarians typically take it to be so obviously false that people could legitimately force others in the relevant cases as to indicate a deep confusion in egalitarian thinking. On the other hand, egalitarians often take the libertarian's rejection of the possibility of such duties to be evidence that the libertarian is operating in bad faith and is ideologically motivated. Yet the libertarian and the egalitarian should each be presumed to be genuinely interested in the protection of the human freedoms conceived as fundamental from the moral point of view. In both cases, the view of the specific incidents constitutive of justice is in the service of a prior picture of the basic human interests. And those pictures clash despite their mutual opposition to consequentialism. How then are we to advance?

In order to avoid dogmatism here we ought to look beyond a contested view of the human interests and attempt to find a general criterion by which we can comparatively assess these conceptions. We could for example adopt as our criterion of adequacy the hypothetical choice of the conception by mutually disinterested instrumentally rational agents, concerned to advance their own interests and ends under conditions acceptable to all. A conception of justice would be deemed acceptable only were it to be demonstrably choice-worthy under those conditions suitably specified; the

possibility opens up that one of the two liberal conceptions under consideration here could pass muster while the other does not.

Yet this familiar instrumentalist approach is not very helpful. I have two misgivings about it. First, I have a general worry: The approach invites us to think that justice at its basis is a set of convenient rules safe-guarding each individual's ability to get ahead on his or her own terms—rules for maximizing one's take over the course of a complete life, agreed to on condition of reciprocity. This seems to me a fundamental distortion. Admittedly, we are not required by every instance of this approach to think of justice in this roughly Hobbesian or Humean way; Rawls and Gauthier for example are usually careful to distinguish the motives of the just person from the motives of the hypothetical contractors, and this is but one qualified thread of Rawls's thinking. But both of these major philosophers of twentieth century contractual liberalism are tempted by the thought that the content of an adequate conception of justice is best vindicated in the light of the private aims of agents that are instrumentally rational and mutually disinterested.¹⁴⁹ I doubt this is true, for it makes the distortion so tempting.

Second, adopting this approach certainly doesn't guarantee a convincing resolution of our specific dispute on the question as to how, from within the liberal paradigm, to properly conceive the basic interests in relation to upbringing and moral education. For whether the rational agents would choose either form of liberalism over

¹⁴⁹ This instrumentalist approach is obvious in Gauthier's work. See Gauthier, *Morals By Agreement*. It is also a fair characterization of one prominent thread of Rawls's thinking as expressed in *A Theory of Justice*. Recall that the parties behind the veil are to be viewed as instrumentally rational and mutually disinterested, and are to "attempt to win for themselves the highest index of primary social goods, since this enables them to promote their conception of the good whatever it turns out to be." See Rawls, *A Theory of Justice*, pages 13 and 144.

the other is not clear merely from the adoption of the general model. And so there's a risk that the philosophical dispute that we are interested in here will simply be displaced into the realm of rational choice theory or game theory.

In any event, even if the reader has more faith in the instrumentalist approach than do I, the RSC promises an alternative way forward. It has two of the attractive features of the instrumentalist approach, but it does not share in any reductive aspiration. First, surely a general attraction of the appeal to instrumental reason in these contexts is precisely that it provides what purports to be a neutral starting point on the controversial moral questions. And plainly the RSC exhibits an extremely generous form of such neutrality, since no contested moral claims are directly presupposed through accepting it. Rather, each conception of liberal justice is allowed its own form of reasonable stability, and yet the RSC accords us what we need to weigh and to judge those competing conceptions against each other. Second, the criterion expresses a norm that appears already to be guiding our thinking insofar as we are thinking about justice. It is not something a defender of any conception of liberal justice could cogently reject, once it is made explicit. In order to make good on these claims I turn in the next section to a discussion of the RSC.

6.2 STABILITY, REASONABLENESS, AND THE REASONABLE STABILITY CRITERION

Here I explain the RSC and motivate the thought that all should accept it as a general criterion for adequacy for any liberal conception of justice. The canonical expression of the RSC is as follows:

(RSC): A conception of deontological liberal justice will be minimally adequate only if that conception strongly protects the reasonable stability of any society initially perfectly well-ordered under it.

What does this criterion amount to and why should we accept it? I proceed thusly. First, I discuss the general idea of reasonable stability by contrasting it with mere stability, and by appealing to a very thin and familiar conception of the reasonable. Second, I clarify the abstract type of society with respect to which the criterion is to be deployed. This is that kind of society unified under a single conception and where conditions of justice are otherwise ideal. Third, I draw a useful general implication concerning the idea of the strong protection of reasonable stability as invoked by the criterion. Finally, with the meaning and application of the criterion clarified, I give two reasons why it should be accepted by any deontological liberal.

Consider first the distinction between mere stability and reasonable stability. Stability in this context is that set of conditions, actions, dispositions, and institutions jointly constitutive of what is recognizable as a systematic mode of ongoing social life.¹⁵⁰

¹⁵⁰ Though I am clearly following in his wake, this is not how Rawls typically deploys the word ‘stability’; for him it usually modifies ‘conceptions of justice’ rather than ‘social

Such social stability is consistent with some dynamism, for practices and institutions change and particular people fill various roles at different times without a society's ceasing to be more or less the same society exhibiting the same way of social life. Still, it must be sensible to view the society as the same society and as going on continuously in the same general way over time if it is to be properly called stable.¹⁵¹ Social stability might be unjust or bad in any number of ways. Think of oppressive caste systems, or Martian imperialists—systematically exploitative relations of any kind constituting a way of going on socially will do. Whether some kind of social stability is a human good depends on the details of the form that it takes.

Central to any kind of social stability are the motivations of the people or agents living together in the relevant way. Dispositions on the part of the people, or more generally, the agents, to behave reliably can be sustained in many ways that do not involve reason.¹⁵² *Reasonable* stability is of course that variety of stability constituted and sustained through the persons exercising their own powers of practical reason, that is, through the persons all being consistently practically reasonable together. What characterizes (practically) reasonable people? I take it to be uncontroversial that

formations.' See Rawls, *A Theory of Justice*, pp. 453-458 and 496-504. See also Rawls, *Political Liberalism*, pp. 140-44 and Rawls, *Justice as Fairness: A Restatement*, p. 185. Compare Bernard Williams on the 'First Political Question'. See Bernard Williams "Realism and Moralism in Political Theory", ed. G. Hawthorne, *In the Beginning was the Deed*, (Princeton: Princeton University Press, 2005) p. 3.

¹⁵¹ Trivially: A form of social life cannot be interrupted by revolutionary change if it is to count as stable.

¹⁵² Such dispositions can be sustained primarily through the repeated ingestion of a drug, or through those various subrational means studied by sociologists under the rubric of 'social cohesion.' Alternatively they could be secured through an enforcement mechanism by mutual agreement, appealing only to the acquisitive motives of mutually disinterested instrumentally rational agents. None of those forms of social stability secured in those ways would be reasonable stability in the familiar sense that I am after.

reasonable people are rational people and that they are not merely rational.¹⁵³ They are rational people who, further, consistently recognize other's basic interests as giving them properly motivating reason to behave in certain respectful ways, even at some kinds of costs to themselves. That is, reasonable people, as such, have the proper regard for the genuine basic interests of other people, treating those as sufficient reason to Φ even where they might also, or might otherwise, have some reason not to. Thus I use 'reasonable' in a familiar way, to include appropriate minded responsiveness to the basic interests of other people where that might, at least *prima facie*, conflict with something else one desires or aims at. When reason is effective in just this way we have the exercise of basic moral literacy. A degree of basic moral literacy is thus necessary for constituting reasonable stability in any society.¹⁵⁴

This familiar conception of the practically reasonable is not empty despite its abstractness. The detailed content in any particular theoretical setting will be fixed in part by a related conception of the basic interests. Thus, for the purposes of my argument, nothing is assumed at the outset about what the basic interests are that reasonable people *qua* morally literate ought to recognize; I simply assume that the basic interests of others, whatever those exactly are held to be, go to constitute some of the reasons they can be counted on to recognize. The thinness of this approach is attractive, for no substantive question is begged against the libertarian conception, or in favor of the egalitarian. I.e.,

¹⁵³ The distinction, put to famous and fruitful use by Rawls, dates at least to the dispute between Thrasymachus and Socrates. See Plato, *Republic*, Book I. See also W. M. Sibley, 'The Rational versus the Reasonable', *Philosophical Review* 62 (1953), pp. 554-560, and T.M. Scanlon, *What We Owe To Each Other*.

¹⁵⁴ This is a conceptual truth.

the basic human interests can be initially conceived in as libertarian a fashion as one likes.

I turn now to the second distinction that seems useful for understanding the criterion. This is the familiar distinction between the kind of society unified under a single conception of justice and that kind beset by pluralism. The first kind of society is one marked by general reasoned acceptance and respect for the constraints of some one particular conception of justice among the grown members, and where the institutional features associated with that conception are similarly robust. Such a society thereby counts as perfectly well-ordered under that conception in Rawls's sense.¹⁵⁵ Plainly we are moving here in the realm of ideal theory; no actually existing societies are ever perfectly well-ordered. Equally plainly such societies are fully conceivable and we can ask of one such society if we expect its mode of stability to be sustainable, in virtue of the content of that very conception. We can ask, that is, if the well-orderedness of some conceivable society is expected to be sustained through the relevant actions of its members. This is a way of asking if the conception of justice characteristic of that society is prone to strongly protect its form of reasonable stability.

The second kind of society is pluralistic in a relevant respect. Here, there are the familiar conflicting conceptions of how to live human life properly and the related dispute over how society should be constrained by the requirements of justice. We can ask in turn of that kind of society what sort of conception of justice, if any, could underwrite its ongoing reasonable stability. I take this to be the question Rawls pursues in *Political Liberalism*.

¹⁵⁵ See Rawls, *Justice as Fairness: A Restatement*, pp. 8-9.

Rawls came to think that even a society initially perfectly well-ordered under justice as fairness as a comprehensive conception, will, under realistic conditions, become fractured and pluralistic over time. Indeed, he thinks there is a marked general tendency in our typical conditions towards pluralism—he calls this the fact of pluralism—and that this gives us reason to opt for a political and not a metaphysical conception of justice. Yet it is not the case that Rawls rejects the RSC, as expressed above, opting for a different and less demanding criterion of stability. Rather, Rawls takes it that justice as fairness as originally conceived fails to meet the RSC, given the facts of contemporary human life, and must thus be reconceived as a political conception. So reconceived, as the object of a suitable overlapping consensus of the reasonable, it then meets the RSC, if Rawls is correct.

Whether or not Rawls is correct, I am concerned here with the first kind of society and not the second divided and pluralistic kind. Plainly there is a conceptually prior test for conceptions of justice, one that a conception ought to pass before we begin to consider the complexities like those associated with the supposed general tendency to pluralism. After all, the RSC merely requires strong protection given initial perfectly unified well-orderedness under otherwise ideal conditions! In other words, it requires of any prima facie candidate conception of liberal justice merely that, under fully ideal conditions, that society continue to generate its own form of reasonable stability over time. Fully ideal conditions are those in which we assume ideal initial moral literacy and sound institutional structure at the outset and set aside the various destructive anomalous contingencies. Only if a candidate conception of justice passes this prior and admittedly simpler test should it advance to face the more stringent challenges raised by nonideal

theory generally, and by what Rawls calls the fact of reasonable pluralism specifically. If a conception of justice is not expected to sustain itself under fully ideal conditions that is a powerful consideration against it.

I turn now to the idea of the strong protection of reasonable stability. There is no canonically accepted detailed account of what it is for a conception of justice to be functioning so as to strongly protect the stability of a society organized under it. What exactly is required to strongly protect some form of social stability depends, in any particular case, on the detailed nature of that stability and on the general circumstances of the society. Yet we can justifiably hold on to one very general claim here. No conception of justice will count as strongly protecting its form of reasonable stability if, given initially perfect compliance with the constraints of the conception, and under otherwise ideal conditions, that kind of society exhibits a tendency to become less reasonably stable in the relevant way. If the society's rate of moral literacy were to be expected to decline that would be such a tendency.

I take it that I have said enough to make the meaning and the intended application of the criterion plain in outline. I here articulate two general reasons any deontological liberal has for accepting it. The first reason has to do with stability in general and the second has to do with the substance of liberalism specifically.

First, any general conception of justice is a conception of the basic moral norms governing ongoing human social life in our circumstances. One who defends any such conception, liberal or otherwise, is defending the general thought that in the circumstances of justice, we very much ought to live and go on living in a way that accords with that conception. That is, the defender of a conception of justice is not

defending a set of human moral norms and institutions going to constitute a way of life that has a built-in expiration date, or that is relative to some contingent and eccentric purposes, or to special circumstances. The very task presupposes this. And hence no conception of justice will be adequate or complete where the nature of justice as conceived under that conception leaves its social reproduction across time to chance. The RSC makes this thought explicit.

The second reason that the deontological liberal ought to accept the RSC is that it seems to be implied by the substance of liberalism. Whatever specific form some deontological liberalism takes, it involves the thought that each individual human being should be allowed to live through the exercise of his or her own power of practical reason. This is understood to imply that all should act under reason in a way that will allow everyone else to do so as well. Thus, the mode of living favored by any form of liberalism must be not only sanctionable by but sustainable through individual persons exercising their powers of reason minimally properly. This implies that any deontological liberal is as such already committed to a robust norm of reasonable stability. The RSC merely links this norm to the structure of the conception of justice and makes plain its character as a standing requirement. I do not see how it can be avoided by any deontological liberal.

6.3 MORAL LITERACY, MORAL EDUCATION AND FULLY BEARING A CONCEPTION

In this section I explain the connection between reasonable stability and a realistic picture of moral education by focusing on what I call moral literacy. I follow Barbara Herman's use of the phrase "moral literacy" to track practical moral competence in general.¹⁵⁶

This coinage is inspired it seems to me, insofar as it reminds us of the following two points concerning literacy in a natural language and its literature. First, its acquisition by any one of us is contingent upon the sustained actions of *others*. Though any typical one of us can become literate, the achievement of literacy typically requires instruction by cultural elders. So it is not something that we can be expected to achieve for ourselves from the ground up, nor is it something that occurs as a standard part of physical development independently of cultural surroundings. Second, linguistic literacies are culturally specific, for they are relative to a particular natural language and its literature. Being literate is a typical accomplishment expected of the normal adult in many contemporary societies, but it can only be realized in one or more local idioms. Both of these points concerning linguistic literacy have close analogues in the realm of practical moral competence it seems; the first is particularly important for my purposes.

What is the general character of moral literacy? Specifically, I assume that minded sensitivity to the interests of others is one aspect of any recognizable conception of moral literacy. This is again quite abstract, for I am not advancing a determinate conception of what those basic interests are, nor anything very exact about what minded

¹⁵⁶ See Barbara Herman, *Moral Literacy*, (Cambridge: Harvard University Press, 2007) pp. 79-129. This is revised from her 1997 Tanner Lectures.

proper sensitivity is. Such moral literacy is a particular realized capacity of practical reason broadly construed; some functioning amalgam of reason, will and sensibility for the person appropriately educated. What matters for the attribution of moral literacy is that the basic interests of others can be conceived as constituting reasons sufficient to move the relevant people to act. So, for every conception of liberal justice there is a corresponding account of basic moral literacy.

Again, the basic interests are exactly those that must be protected if a human being is to live at a minimal standard of decency according to the relevant conception. E.g., a person literate with the constraints of libertarian justice recognizes the specific interests in the appropriate contexts—those interests of her neighbor, for example, giving her reason to keep off the neighbor, and off the neighbor’s private lawn, when she is out with her pit bull. Moral literacy is not limited to competence in pair-wise interactions within the perceived local environment though. It would also include, in this context, being prone to be moved by the relevant interests of others to oppose, say, institutionalized human trafficking or misguided taxation and so on. Even if our paradigmatic standard libertarian never mentions moral literacy, preferring the theme of freedom, her view presupposes such a thing. Indeed, so does every view that appeals to intelligible norms of moral correctness as regards the basic interests of others, and where a grasp of those interests is held to be sufficient reason to move one to action in some contexts.

Whatever the details of some form of human moral literacy, it should be obvious that it can only be brought about in any individual case by education, enculturation, upbringing, broadly construed. A human being comes to be a practically reasonable and

possibly a moral agent in the normal course of events, if she does, insofar as she becomes a competent user of a natural language and the bearer of a particular culture.¹⁵⁷ That these competencies typically come together is no accident; the particular possession of these is an achievement produced through being brought up and educated sufficiently well, and not with merely biological maturation.¹⁵⁸ Notice I do not claim that full linguistic and cultural literacy are even jointly sufficient for moral literacy. The thought is merely that in the normal course of events, none of us develops the distinguishable form of practical competence and knowledge that we could call a form of moral literacy without these other competencies. This is evidence that we wouldn't find human people coming into anything resembling basic moral literacy where we isolated them, entirely depriving them of normal conditions of care and of the typical familial and social interactions, in some cultural setting, that help to make one of us fully human.

Does Locke acknowledge this? Here I return to some outstanding business left over from Part II of the dissertation, for I think that Locke is sensitive to the relevant facts. As I have mentioned, this comes out particularly clearly in his chapter VI of the *Second Treatise*.

Locke begins here by reemphasizing the thesis of fundamental human moral equality, where this is glossed as an equal right to natural freedom. On Locke's account, it turns out that human children are "born to it" rather than "in" it.¹⁵⁹ He subsequently stresses that this peculiar status, likely restricted to the young of our species, is a function

¹⁵⁷ See John McDowell, *Mind and World*, (Cambridge, MA: Harvard University Press, 1996).

¹⁵⁸ Merely biological maturation of course is not ever instantiated for us.

¹⁵⁹ See II: 55.

of our not being born to the full use of our capacities of reason. Consider this passage from paragraph 55 in chapter VI:

The Law that was to govern Adam, was the same that was to govern all his posterity, the *Law of Reason*. But his Off-spring, having another way of entrance into the world, different from him, by a natural Birth, that produced them ignorant and without the use of *Reason*, they were not presently *under that Law*: for no Body can be under a Law, which is not promulgated to him; and this Law being promulgated or made known by *Reason* only, he that is not come to the Use of his Reason, cannot be said to be *under this Law*; and Adam's Children being not presently as soon as born, *under this Law of Reason* were not presently *free*. For Law, in its true Notion, is not so much the Limitation as *the direction of a free and intelligent Agent* to his proper Interest, and prescribes no farther than is for the general Good of those under that Law.¹⁶⁰

Now one might take this as suggesting that human children are not members of the moral community in any respect, and so owed nothing, precisely insofar as and until their capacities of practical reason are fully developed. This would be an extreme version of a view that arises naturally in connection within typical forms of the contractualist paradigm. For where we make the possibility of robust participation in rational reflection, bargaining and agreement the condition of full membership in the moral community, human children, mentally impaired adult human beings, and nonhuman animals will all fail to be full members. This will make it more tempting to think that nothing is owed to them. Locke does not think this. The two passages bracketing the paragraph quoted just above lay heavy stress on the obligations of parents to “preserve, nourish and educate the children.”¹⁶¹ The duty is to “inform the Mind, and govern the actions of their yet ignorant nonage, till Reason shall take its place, and ease them of that Trouble, is what the Children want, and the Parents are bound to.”¹⁶²

¹⁶⁰ Ibid.

¹⁶¹ See II: 56.

¹⁶² See II: 58.

Notice that the question of relative institutional effectiveness is not my concern. Perhaps libertarian societies would embrace and encourage parental home-schooling, together with private schools, as the preferred institutions of education. I am here only interested in spelling out what all should agree is a minimal empirical requirement on moral education: Again, the point is that a human being must be educated into moral competence, through the sustained actions of others—the cultural elders. This does not happen automatically either as a result of pure biological development, nor where that development is supplemented by the so-called school of hard knocks.¹⁶³ And, in the central case of children, we cannot be counted on to each do it for ourselves. Locke seems to be fully aware of this. Not only that, he relies on this thought to ground the relevant set of duties.

We need not agree with any specific theory of the precise character of normal moral psychological development in order to accept this general claim. I label the general claim the MEC; here is its canonical expression:

(MEC) It is a necessary condition for any individual human being's coming to be basically morally literate that this individual be given, by the surrounding elders, an appropriate upbringing and moral education.

¹⁶³ It has been suggested to me that perhaps the school of hard knocks *can* be counted upon to educate us into moral literacy. This strikes me as obviously false. A juvenile more or less rational agent does not necessarily nor typically become morally literate (that is, reliably reasonably responsive to the basic interests of others) by, for instance, having the dogs sicked upon him whenever he trespasses. He might instead become a more effective trespasser and a clever poisoner of dogs. Or perhaps he will cease to trespass since it does not reliably pay. But none of these dispositions or tendencies *is* moral literacy, nor is sufficient for moral literacy, nor is necessary for moral literacy. Indeed, it is plausible to think that this sort of training might be a barrier to proper moral education.

The MEC is flexible; it will accommodate a wide range of views concerning the specific nature of moral literacy. For example, a philosopher might think that moral literacy consists in correctly applying the one true moral theory so to deduce true moral theoretical theorems concerning the basic interests of others in the properly useful circumstances. On this picture, a moral education might have clearly separate theoretical and practical components. Alternatively, one might think that exercises of moral literacy are instances of intrinsically motivational practical thought that do not necessarily involve the use of any of the explicitly moral concepts that we associate with moral theorizing. On this picture the reasoned sensitivity to the basic interests of others is inculcated with the rest of the concepts, and modes of response, that render one of us a typically competent judge and perceiver, a person who knows her way around some concrete cultural milieu. This version of moral literacy also requires an education, though the process is one of overall enculturation rather than the development of competence with the deductive structure and mode of application of a particular moral theory. The MEC is even consistent with a broad range of meta-ethical views including Gibbard's norm expressivism, Mackie's error theory, and Hume's account of justice as an artificial virtue.¹⁶⁴ Any view that has a place for acquiring a skilled disposition to respond practically to what it is natural to call the basic interests of others, at least in part through the learned use of concepts, will have a place for the MEC. Thus it accommodates many different views of the nature of moral literacy, and is empirically and philosophically well supported. We should accept it.

¹⁶⁴ See Allan Gibbard *Wise Choices, Apt Feelings*, (Cambridge: Harvard University Press, 1990) J. L. Mackie, *Ethics: Inventing Right and Wrong*, (New York: Penguin, 1977) and David Hume, *A Treatise of Human Nature*, (Oxford: Oxford University Press, 1978 [1740]), pp. 477-501.

Finally, we should also accept the very idea of a full bearer of a conception of justice. This is a person who is a basic moral literate under some conception, but who in addition has that conception explicitly in view and values the protection of the relevant interests in society generally. In other words, the full bearer is distinguished from the basic moral literate by her explicit recognition and commitment to the conception of justice as such. Take for example the full bearer of libertarian justice. The full bearer sees libertarian human freedom generally as intrinsically valuable, and importantly so; she views the libertarian conception of justice as expressing at least some important truths of morality. She values that society in which each person, each locus of side constraints, is guaranteed full respect by all the mature members, and that simply is a society in which every mature member is at least a basic moral literate under libertarian justice.

It is plain that every roughly coherent normative view of liberal justice generates an ideal conception of the fully just society.¹⁶⁵ This is a society in which the mature cognitively typical people are all full bearers and thus basic moral literates, under the conception. That is, each conception of deontological liberal justice expresses a set of general constraints grounded in its account of the basic human interests, and reasoned sensitivity to those interests is exactly what justice is said to recommend, both as authoritative for people interacting with one another where constrained by institutions, and as informing the construction and design of those institutions. This fully just society

¹⁶⁵ Even John Gray's conception of *modus vivendi* justice generates such an ideal, despite his insistence that his preferred theory "has no truck with the notion of an ideal regime." See John Gray, *Two Faces of Liberalism*, p. 6. Clearly a society of people who had all understood and embraced Gray's conception of justice—his value pluralistic neo-Hobbesian conception that values liberal compromise—would be that very society.

is, in addition, a society in which the basic moral literacy and institutional virtue that characterize the society are known by its bearers to so characterize it.¹⁶⁶ As noted above, I follow Rawls and call this kind of ideal society, the one characterized by universal basic moral literacy under some conception, and with the relevant further knowledge and institutional structures, the perfectly well-ordered society.

This is not to make political activists of each full bearer, but it does mean that each sees as importantly valuable any society's living collectively in the relevant way. It is worth noting that the full bearer of libertarian justice, as conceived here, does not embrace a consequentialism concerned to maximize the degree to which the libertarian conception of justice is realized and respected. Moral literacy under libertarian justice can be highly valued by the full bearer without being a problematically overriding value in the envisioned way. Other ends will presumably take precedence, and the constraints of justice may not be overridden on such a conception even as a way of reducing the likely violation of such constraints overall or in the future.

How does the basic moral literacy relative to some deontological liberalism relate to reasonable stability? In short, a variety of basic moral literacy as fixed by some conception of liberal justice at least partially constitutes the reasonable stability of any society where that form of literacy is widespread. Where most individuals are reliably recognizing the basic interests of everyone, under some conception, giving them motivating reason to behave in the relevant ways, it follows that most people will be behaving in the relevant ways. All will be behaving cooperatively in one form of the general liberal mode. They will be keeping their contractual promises, laying off one

¹⁶⁶ See Rawls, *A Theory of Justice*, pp. 3-6, 453-62.

another's property, bodies and spheres of private activity, not interfering with the exercise of the basic political liberties, and so on. As they will be doing these things consistently in the very same way the society will exhibit a unified way of life over time; that is, it will be stable. A society of perfect but merely basic moral literates would exhibit something very close to Rawlsian perfect well-orderedness. There will be no conflicts centered on competing conceptions of the basic interests, for there are no competing conceptions and no one is violating the basic interests. Those standard sources of conflict simply will not exist. But the concept of a socially unified basic moral literacy is slightly more primitive than Rawlsian perfect well-orderedness, for it does not entail the reflective knowledge that Rawls makes characteristic of the latter. A person could be a basic moral literate without understanding herself as oriented under a conception of justice, without indeed having the concept of a conception of justice, and without knowing that one's fellows are responsive to the basic interests conceived in precisely the same way.

6.4 THE SELF-DEFEAT

I hold that libertarian justice is self-defeating. A conception counts as self-defeating for my purposes where the aims characteristic of the full bearers of that conception are not expected to be realized even under ideal conditions, where the agents are all full bearers and are following that conception religiously. Ideal conditions in this connection are constituted by three factors. First, we imagine perfect compliance by each with the strict constraints of the conception, e.g., full respect for the claim-rights of each person.

Second, we imagine as instantiated whatever realistic set of institutions the defender of the conception presupposes as appropriate for the ideal case. Third, we set aside the possibility of various anomalous contingencies that might dramatically affect the ongoing life of the society, e.g., shockingly virulent plagues against the fully grown, invaders, massive waves of immigration from alien societies, and so on. But we presuppose the realistic standard challenges posed by the circumstances of justice. Under these recognizably idealized conditions, I argue, libertarianism fails to meet the RSC and is self-defeating. It is self-defeating insofar as it is subject to pragmatic inefficiency with respect to sustaining rates of libertarian moral literacy. See below.

1. It is a basic value of the full bearers of libertarian justice that every mature person in society fully respect everyone's core interests—that is, that all be basic moral literates with libertarian justice.
2. Even under ideal conditions, societies of full bearers of libertarian justice will tend to produce, over time, adult basic moral illiterates.
3. SO, libertarian justice allows for scenarios such that even if every full bearer perfectly complies, a basic value of those bearers is less well-achieved as a result over time. (By 1 & 2)
4. A conception of justice that allows for scenarios such that even if every full bearer perfectly complies with that conception, a basic value of those bearers is expected to be less well-achieved as a result over time, is thereby self-defeating.
5. SO, libertarian justice is self-defeating. (By 3 & 4)
6. If some societies perfectly well-ordered under a conception of justice, J, at some time, come to contain moral illiterates relative to that conception at a subsequent time, under nonetheless ideal conditions, that conception has failed to meet the RSC.
7. Libertarian justice fails to meet the RSC. (By 2 & 6)

Consider the first premise. Of course, there is no strict contradiction in holding both that people are under some strict moral duty and also denying a commitment to any particular view concerning the value of high rates of the relevant moral literacy. Yet a full bearer of standard libertarian justice values a society in which people are morally literate with the libertarian requirements, all other things being equal, over one in which they are not. And that is to say that the protection and ongoing achievement of such a mode of life is indeed a characteristic value for the full bearer of libertarian justice.

Consider the second premise. It is plain that initial perfect compliance with libertarian justice is fully consistent with the rise of moral illiteracy relative to that conception. This is a straightforward implication. More controversially, I think it is also plain that there is a marked tendency for initially perfectly well-ordered libertarian societies under the general circumstances of justice to produce moral illiterates. This claim is quasi-empirical and so contestable. It is defensible? There are two kinds of cases to consider in this connection, reflecting two different formulations of libertarianism. On the first kind, no one owes anyone a moral education or upbringing, unless such a person has explicitly voluntarily agreed to provide one. There is, for example, no duty owed directly to any newcomer simply in virtue of facts such as voluntarily incurred biological parenthood nor is there a relevantly structured obligation owed to third parties.¹⁶⁷ On the second kind of libertarianism, children and immigrants, or one's fellows in society, or both, do have a relevant claim-right—the duty to educate

¹⁶⁷ For example: there is no duty to one's fellow social members at large that has the same purport as a duty owed directly to newcomers.

stands over birth parents in the normal course of affairs. Yet nobody has recourse against any and all morally literate members of society if the first resort fails them.

In the first kind of case, in indefinitely many conceivable settings that exhibit the circumstances of justice and the relevant perfect compliance, I claim, children will come to maturity not having been given a decent upbringing, adult immigrants will arrive on the scene with a relevant educational need that goes unmet, and these people will have no basic moral literacy of the right sort. Why should we think so? After all, there are two *prima facie* reasons for doubt: First, these agents are all full bearers of libertarian justice and hence value the relevant moral literacy. Second, we can also assume that they understand the extrinsic benefits of living in a society in which moral literacy is high. So they have multiple reasons to act so as to sustain moral literacy.

I grant this. Yet, these facts do not give us any reason to expect that the moral literacy rate will be strongly protected in all relevant cases. The original members, *qua* full bearers, do indeed aim at global libertarian moral literacy. Yet they will refrain, out of respect for the basic interests falling under justice, from coercively trying to bring about the education of the newcomers and they will refrain from coercive public takings to fund some institution to secure the process. This is so since, on this view, no one has a relevantly strict duty to bring-up and educate the newcomers and indeed all are under a strict duty not to interfere with others on these grounds. Undertaking such interference would count as deeply morally wrong—a violation of basic rights—and so all are under a strict duty not to so act.

Further, recall the following general facts concerning the circumstances of justice. First, in general, for most people, there is a significant gap between the various ends they

seek—for themselves, their friends and families—and the resources they have on hand to achieve those ends. That is, we assume that most people’s aims and needs are not so modest, and their given resources are not so great, that those aims might all be achieved without significant cost, requiring no work, sacrifice or trade-offs. Further we assume that the goods that people generally ought to seek as all purpose means to satisfy their needs and achieve their aims are to a significant degree rivalrous and excludable. Finally, recall that the needy cannot in this particular be expected to do it for themselves. This is enough to make things relevantly difficult.

Second, we assume against the background of libertarian justice specifically that there will be some incentive to free ride. That is, any rational and reasonable agent who has no special connection to the newcomers will have an incentive to await the relevant *beneficent* action on the part of other people, rather than personally incurring the relevant cost. This will be the prudent thing to do and irreproachable from the point of view of libertarian justice. That is, there is no violation of justice here. Awaiting such action will not be beneficent, but it is not unjust and does not violate anyone’s rights or flout the basic duties owed under practical reason. An agent’s acting in this way is hence consistent with that agent being a full bearer of libertarian justice.

Thus: Since securing the relevant moral literacy is not an overriding value, the full bearers will act in morally protected ways that have the effect of not sustaining the rate of libertarian moral literacy. And everyone will initially protect everyone’s right to so act—this follows from the perfect compliance that we begin by assuming. In indefinitely many such settings, some grown people will come to be, as a result, on the scene and lacking moral literacy; moral literacy will be less well-achieved socially than at

the outset, despite and indeed *through* initial perfect compliance. Through perfect compliance the degree of moral literacy in the society is expected to decline.

This is clear for the first kind of case and the same result follows for the second kind of case. Here justice does not require that newcomers lacking connections be given the relevant moral education, by those unconnected, or by society at large, though we suppose that it does require parents to morally educate their own children. It is to be expected that, over time, that very society will exhibit a declining rate of libertarian moral literacy, through the arrival of mature moral illiterates, or the arrival at maturity of moral illiterates. There is no fully general duty to see to the education of newcomers—orphans and immigrants may be legitimately neglected.

Is Locke's considered view vulnerable to this objection? I submit that we have good reason to doubt that he is. Though it is true that Locke explicitly considers only the parental duties to educate the young, that is no reason to think that he would insist that there was no duty in common to aid the educationally needy when no one else is going to do so. If we thought that Locke's view showed other evidence of a commitment to standard libertarianism, this would give us reason to pause. But the evidence reviewed in above pointed the other way. Finally, it should be recalled that Locke also takes it to be the case that the victor in a just war has no right to absolutely impoverish the dependents of the vanquished. This would suggest where an innocent is concerned we may have obligations even where we are not responsible for the existence of the needy person. Presumably it is the same in the case of parental absence or neglect, with respect to moral education.

Consider premise four. The conception of self-defeat is adapted from Parfit's discussion of direct collective self-defeat in *Reasons and Persons*.¹⁶⁸ Parfit characterizes that as the quality that a moral theory exhibits when, if there is perfect compliance such that each agent succeeds in following the theory-given aims appropriately, it is certain that the aims of all will be less well-achieved than in the case in which nobody successfully follows those aims. Parfit here has a slightly different object in view than do I. He requires, for the application of his conception of self-defeat, that the undermining of the characteristic aim connected with some general moral theory be the certain result of following the constraints of the moral theory in question properly. My version of self-defeat requires merely that the undermining of the achievement of some characteristic value not be ruled out and that it be likely to occur in some relevantly ideal circumstances. That is, I require, for a conception of justice to be self-defeating in this sense that a characteristic value be such as to have its achievement undermined in some ideal circumstances by proper action in accordance with the conception. This is precisely the openness to pragmatic inefficiency.

It follows in both kinds of cases exhibiting this self-defeat that the RSC has been violated. A conception does not plausibly count as strongly protecting reasonable stability if actions in perfect accordance with it, under ideal conditions, allow for the degeneration of reasonable stability. An obvious way for a society to exhibit a degeneration or decline in reasonable stability is to go, under its own power, from a situation in which every mature agent is fully morally literate with the relevant conception to a situation in which

¹⁶⁸ Derek Parfit, *Reasons and Persons*, p. 55.

that is no longer the case. That is just what has happened in the above two kinds of cases. Standard libertarianism thus plainly violates the RSC.

6.5 CONCLUSION

I close by considering three possible responses on the libertarian's behalf. First, I do not think a highly concessive response, one that consists in acknowledging the validity of the RSC and in accommodating her conception of justice to the reality of moral education, will be attractive to the libertarian. For if she goes that route, she must give up the principle that is characteristic of her view, on pain of incoherence. Recall that the libertarian takes it that a person's needs or lacks, at least where that person is not placed at grave risk of death or serious injury in the near term if the needs go unmet, are never good moral grounds for coercive interference with any person or her property in the absence of a voluntarily incurred connection. Yet sticking to this principle is strictly inconsistent with recognizing a general duty of justice to contribute to education of the form we are considering. That is neither the educationally needy nor the current full bearers are being placed at grave risk of death or serious injury in the near term in virtue of this. Since there is no voluntarily incurred special connection, there should be no such duty under justice. So, if the erstwhile libertarian is sufficiently impressed with this argument to embrace a duty of the relevant form as coercively enforceable, then, in consistency, she must give up what is characteristic of libertarianism. A view so modified simply ceases to be the distinctive form of deontological liberalism in question.

Second, some might yet be tempted to retort that educational practices not being required by justice doesn't imply that these will never characterize the doings of the full bearers of libertarian justice. Since my argument depends upon the full bearers valuing the social achievement of moral literacy why not assume that the full bearers would act voluntarily so as to sustain it? I grant that such action is not strictly inconceivable. Yet the argument stands. Even perfect compliance with justice doesn't guarantee, as it should, that reasonable stability be strongly protected. In addition, for the familiar reasons adduced above, we can take it that where justice does not require some action, and where that action is relevantly costly, we are not to assume that it will generally characterize behavior. We are simply not entitled to the assumption that in every conceivable libertarian society the conditions of moral education for all will be protected voluntarily, even where there is initial perfect compliance. Surprisingly, the fact that the bearers value libertarian reasonable stability does not give us the relevant guarantee nor the relevant expectation.

Consider, finally, what I'll call the Nozickian reply.¹⁶⁹ Let us revisit the kind of scenario that in *Anarchy, State and Utopia* is supposed to generate the legitimate minimal state.¹⁷⁰ Recall that according to Nozick, a dominant protective agency (DPA) can arise in the state of nature without violating anyone's rights. Such a DPA is likely to be in a way less than a genuine state, for it will likely lack a legitimate monopoly of force over a complete territory. Its field of legitimate action will be analogous to a slice of Lorraine cheese, for there are expected to be independent proprietors who refuse to buy the

¹⁶⁹ I am grateful to an anonymous reviewer at the *Journal of Moral Philosophy* for suggesting I should explicitly consider the Nozickian form of response.

¹⁷⁰ For ease of presentation, I ignore the intervening stage of the ultra-minimal state.

security policies that the DPA has been selling and enforcing. Seeing this, Nozick seeks a way to extend the DPA's authority such that its field of action is more state-like while also not violating anyone's rights in the process. Nozick's suggestion is that this can be done even where the independents stick to their guns: the DPA begins actually defending a monopoly of enforcement procedures over what counts as the whole territory, prohibiting the independents from using their own enforcement procedures. And it extends and enforces a standard protection policy to them, *gratis*. We are invited to conclude that a DPA that does exactly this has thereby become a legitimate minimal state. Though the independents have been made worse off through the extension and defense of the de facto monopoly, as they are fairly compensated this is held to be morally permissible and not a violation of libertarian rights.

Perhaps an interlocutor could avail herself of a similar move in order to answer the argument of this chapter. Begin by assuming that some members of libertarian society would strongly prefer not to contribute to the moral education of those newcomers to whom they have no special connection. Suppose though that these were in the minority. Then imagine that this minority group, against their wills, is subject to a tax to pay for some institutional solution to the problem: e.g., tuition, room and board at private orphanages, and tuition for language and cultural assimilation classes for recent immigrants. These coercively enforced educational subsidies are analogous to the moment of harm above. Where then is the moment of compensation? An interlocutor could argue that such independents are compensated insofar as they are rendered invulnerable to what would otherwise be the increased likelihood of harms. That is, we further assume that the educational measures subsidized will be effective and that

libertarian moral literacy will accordingly remain high and the crime rate correspondingly low. And we also assume increases in crime and a decrease in reasonable stability in the absence of those measures.

The lesson that our interlocutor wants us to draw is clear. Just as Nozick's own argument shows that the rise of a minimal state is consistent with respecting the rights of standard libertarian political morality, so too the parallel case shows that the rise of coercively funded forms of moral education is consistent with respecting those rights. If this line of objection were correct, my argument would be effectively scuttled. Yet it is not correct and the argument stands. First, it is not clear that Nozick's original solution actually is consistent with respecting the rights of standard libertarian morality. So it is not clear that the educational subsidies are consistent with libertarian political morality, even if we assume that the cases are fully relevantly similar. Second, it does not appear that the cases are fully relevantly similar. For we can easily find libertarian reasons to reject the educational subsidies taxation case in particular, even if we assumed that Nozick's solution to the problem of legitimate state formation works as he hopes.

Nozick assumes that the directors of the DPA may legitimately intentionally act in such a way as to inflict harms by restricting the liberty of some against their wills, where at least three conditions are met. First, those harmed must be fairly compensated.¹⁷¹ Second, the action cannot *aim* either at getting the unwilling to aid others, nor at paternalistically securing the conditions of the future good of the unwilling; these may be foreseen side-effects.¹⁷² Third, the action must be necessary to forestall serious risks of

¹⁷¹ For the principle of compensation, see Nozick, *Anarchy, State & Utopia*, pp. 82-3.

¹⁷² I derive this from both the discussion of the solution proper and from the description of the "[t]wo noteworthy implications" of libertarian political morality from the preface.

death, serious bodily injury, or grievous psychological harm to innocents, in the near term, and be done for that reason.¹⁷³

Many standard libertarians would surely recoil at these supposed conditions for violating liberty legitimately. Such a critic would begin by insisting that the question of compensation is irrelevant for determining if the relevant action counts as a rights violation. And it isn't clear that every libertarian should accept Nozick's interpretation of these actions as fully morally legitimate even if she grants that it poses a hard case. It is also not obvious that most libertarians should accept Nozick's second condition. For some would surely be inclined to think that any intentional action with a foreseen result of restricting liberty should count as a violation of right, whatever the well meaning aim. Typically the libertarian favors a ban on intentional acts restricting basic liberty regardless of the aim. It would be very odd if, in order to count as libertarian, one had to share Nozick's particular substantive commitment on the interpretation of the doctrine of double effect. Finally, according to many, e.g. Narveson, the only good grounds for restricting the liberty of some is to protect against the violation or infringement of the rightful liberty of others. It is typically explicitly denied by libertarians that an appeal to the "risks of danger" to the well-being of some justifies the restriction of the liberty of others. Yet this is exactly how Nozick's solution is supposed to work. Thus, on the assumption that the two cases are relevant analogues, it does not follow that the proposed

See Nozick, *Anarchy, State and Utopia*, pages 110-115 for the solution, and ix for the implications.

¹⁷³ This is not stated explicitly but Nozick is relying on it nonetheless. "The grounds for this prohibition are that the self-help enforcement imposes [serious] risks of danger on its clients" (through those procedures being "unreliable" or "unfair.") See Nozick, *Anarchy, State and Utopia*, pages 110 (108, and 112).

parallel solution in the educational subsidies case is morally legitimate by libertarian lights.

Suppose though that we allow that Nozick's solution works as intended. Does this give us reason to think that the other case works equally well? I submit that it does not. Even if we grant that the relative reduction in the crime rate and ongoing reasonable stability jointly constitute a kind of fair compensation there are problems with meeting the other two conditions. First, it is mistaken to deny that the envisioned tax policy is done with the aim of using the legitimately acquired wealth of some citizens, against their will, to aid others. More precisely: the relevant aim would appear to be to effect a fair sharing in common of the costs associated with meeting the educational needs, in order to benefit every full bearer, even if it is against the will of some. This is clearly a form of the coercion that Nozick begins his book by setting libertarian political morality *against*: the action aims both at benefiting the willing citizenry against the wills of the unwilling and at benefiting the unwilling against their own wills. Second, it is clear that the original conditions of moral educational neediness as such, on the part of the newcomers, do not pose serious risks of the relevant sort in the near term against anyone. What *is* at risk is the future of libertarian reasonable stability.

By following libertarian justice and beginning with ideal compliance under it, libertarians are expected to produce a society larded with those who are morally illiterate vis-à-vis libertarian justice. This shows that standard libertarianism has gone wrong at a very basic level—it has misconceived the nature of its object. These considerations give us good reason against the adoption of standard libertarianism as a conception of justice. And if I am right that Locke was a perfectionist liberal of the kind indicated above, that

choice has now been vindicated. For the perfectionist deontological liberal is not in principle opposed to interference so as to secure the conditions for developing the crucial human capacities—for instance practical reason. Instead, he embraces that. This allows him plenty of room to avoid the problem of self-defeat posed here for the libertarian.

BIBLIOGRAPHY

- Anscombe, Elizabeth, 'Modern Moral Philosophy', *Philosophy* 33, No. 124 (1958).
- Archard, David and Macleod, Colin, editors, *The Moral and Political Status of Children*, (Oxford: Oxford University Press, 2002).
- Aristotle, *Nicomachean Ethics*, trans. Terence Irwin, (Indianapolis: Hackett, 1985).
- _____, *Politics*, trans. C.D.C. Reeve, (Indianapolis: Hackett, 1998).
- Arneson, Richard, 'Perfectionism and Politics', *Ethics*, Vol. 111, No. 1. (2000), pp. 37-63.
- Ashcraft, Richard, *Revolutionary Politics and Locke's Two Treatises On Government*, (Cambridge: Cambridge University Press, 1986).
- Barnett, Randy, *The Structure of Liberty*, (Oxford: Clarendon, 1998).
- Barry, Brian, *Justice as Impartiality*, (Oxford: Oxford University Press, 1995).
- Berlin, Isaiah, 'Two Concepts of Liberty' in *The Proper Study of Mankind*, (New York: Farrar Strauss and Giroux, 1997).
- Brighouse, Harry, *School Choice and Social Justice*, (Oxford: Oxford University Press, 2000).
- _____, *On Education*, (New York: Routledge, 2006).
- Brennan, Samantha and Noggle, Robert, "Rawls's Neglected Childhood: Reflections on the Original Position, Stability and the Child's Sense of Justice" in *The Idea of A Political Liberalism*, eds. V. Davion and C. Wolf, (Latham, MD: Rowman and Littlefield, 2000).
- Callan, Eamonn, *Creating Citizens*, (Oxford: Oxford University Press, 1997).
- Clayton, Mathew, *Justice and Legitimacy in Upbringing*, (Oxford: Oxford University Press, 2006).

- Chan, Joseph, 'Legitimacy, Unanimity, and Perfectionism', *Philosophy & Public Affairs* 29 (2000), pp. 5-42.
- Clayton, Mathew and Williams, Andrew (eds.), *Social Justice*, (Oxford: Blackwell, 2004).
- Cohen, G. A., *Rescuing Equality and Justice*, (Cambridge: Harvard University Press, 2008).
- Copp, David, editor, *The Oxford Handbook of Ethical Theory*, (Oxford: Oxford University Press, 2006).
- Stephen Darwall, 'The Value of Autonomy and the Autonomy of the Will', *Ethics* 116 (2006), pp. 263–284
- Duncan, Craig and Machan, Tibor, *Libertarianism: For and Against*, (Lanham, MD: Rowman and Littlefield, 2005).
- Dworkin, Ronald, 'Foundations of Liberal Equality' in S. Darwall (ed.) *Equal Freedom*, (Ann Arbor: University of Michigan Press, 1995), pp. 190-306.
- Feser, Edward, 'There Is No Such Thing as an Unjust Initial Acquisition', in E. F. Paul, F. Miller, and J. Paul (eds.) *Natural Rights Liberalism from Locke to Nozick*, (Cambridge: Cambridge University Press, 2005).
- Foot, Philippa, *Natural Goodness*, (Oxford: Oxford University Press, 2001).
- Frankfurt, Harry, 'Freedom of the Will and the Concept of a Person' in *The Importance of What We Care About* (Cambridge: Cambridge University Press, 1988), pp. 11-25.
- Freeman, Samuel, "Illiberal Libertarians: Why Libertarianism is not a Liberal View", *Philosophy and Public Affairs*, 30, Number 2 (2002) pp. 105-51.
- Fried, Barbara, "Left-libertarianism, Once More: A Rejoinder to Vallentyne, Steiner and Otsuka", *Philosophy and Public Affairs*, 33, no. 2, (2005), pp. 216-222.
- Fried, Charles, *Modern Liberty and the Limits of Government*, (New York: W.W. Norton, 2007).
- Gauthier, David, *Morals by Agreement* (Oxford: Oxford University Press, 1986).
- _____, "Why Contractarianism?", *Contractarianism/Contractualism*, ed. S. Darwall, (Oxford: Blackwell, [1991] 2003).

- Gibbard, Allan, *Wise Choices, Apt Feelings* (Cambridge: Harvard University Press, 1990).
- Gray, John, *Two Faces of Liberalism*, (New York: The New Press, 2000).
- Hansen, Kevin, *Bobcat: Master of Survival*, (Oxford: Oxford University Press, 2007).
- Haksar, Vinit, *Equality, Liberty and Perfectionism*, (Oxford: Clarendon, 1980).
- Harsanyi, John, *Essays on Ethics, Social Behavior, and Scientific Explanation*, (Dordrecht, Holland: Reidel Publishing Company, 1976).
- Herman, Barbara, *Moral Literacy*, (Cambridge, MA: Harvard University Press, 2007).
- Hobbes, Thomas, *Leviathan*, ed. by Edwin Curley, (Indianapolis: Hackett, [1668] 1994).
- Hohfeld, W. N., W.W. Cook (ed.) *Fundamental Legal Conceptions as Applied in Judicial Reasoning and other Legal Essays* (New Haven: Yale University Press, 1923).
- _____, ‘Fundamental Legal Conceptions In Applied Judicial Reasoning’
Columbia Law Review, Vol. 23, No. 5. (1923), pp. 502-506.
- Hume, David, *A Treatise of Human Nature* (Oxford: Clarendon, [1740] 1978).
- Hurka, Thomas, *Perfectionism*, (Oxford: Oxford University Press, 1993).
- Kamm, Frances, *Intricate Ethics* (Oxford: Oxford University Press, 2006).
- Kitcher, Philip, ‘Essence and Perfection’, *Ethics* 110 (1999), pp. 59–83.
- Locke, John, *Two Treatises of Government*, P. Laslett (ed.) (Cambridge: Cambridge University Press, [1690] 1988).
- _____, *Political Essays*, M. Goldie (ed.) (Cambridge: Cambridge University Press, 1997).
- _____, *Some Thoughts Concerning Education & Of the Conduct of the Understanding*, R. W. Grant and N. Tarkov (eds.), (Indianapolis: Hackett, [1693, 1706] 1996).
- Machan, Tibor, *Libertarianism Defended*, (Burlington, VT: Ashgate, 2006).
- Mack, Eric, “The Self-Ownership Proviso: A New and Improved Lockean Proviso”, *Social Philosophy*, 12 no. 1, (1995) pp. 186-218.
- Mackie, J.L., *Ethics: Inventing Right and Wrong*, (New York: Penguin, 1977).

- MacPherson, C. B., *The Political Theory of Possessive Individualism*, (Oxford: Oxford University Press, 1962).
- McCabe, David, 'Knowing About the Good: A problem With Antiperfectionism', *Ethics* 110 (2000), pp. 311–338.
- McDowell, John, "Deliberation and Moral Development in Aristotle's Ethics" in *Aristotle, Kant, and the Stoics*, eds. S. Engstrom and J. Whiting, (Cambridge: Cambridge University Press 1996).
- _____, 'Noncognitivism and Rule-Following' in *Mind Value and Reality*, (Cambridge: Harvard University Press, 1998) pp. 198-218
- _____, *Mind and World*, (Cambridge, MA: Harvard University Press, [1994] 1996).
- Mill, John Stuart and Jeremy Bentham, *The Classical Utilitarians* (Indianapolis: Hackett 2003).
- Murdoch, Iris, *The Sovereignty of Good*, (New York: Routledge, [1970] 2002).
- Narveson, Jan, *The Libertarian Idea*, (Peterborough: Broadview Press, [1988] 2001).
- _____, *Respecting Persons in Theory and Practice*, (Lanham, MD: Rowman & Littlefield, 2002).
- Nozick, Robert, *Anarchy, State and Utopia*, (New York: Basic Books, 1974).
- _____, "Parents and Children" in *Left-Libertarianism and Its Critics*, eds. P. Vallentyne and H. Steiner, (New York: Palgrave, [1989] 2000).
- Otsuka, Michael, *Libertarianism without Inequality*, (Oxford: Oxford University Press, 2003).
- Paul, Ellen Frankel, Miller, Fred D., Jr., and Paul, Jeffrey, eds., *Natural Rights Liberalism from Locke to Nozick*, (Cambridge: Cambridge University Press, 2005).
- Parfit, Derek, *Reasons and Persons*, (Oxford: Oxford University Press, [1984] 1987).
- Plato, *Republic*, trans. G.M.A. Grube, rev. C.D.C. Reeve (Indianapolis: Hackett, [380 B.C.] 1992).

- Popper, Karl, *The Open Society and Its Enemies* (Princeton: Princeton University Press,[1945]).
- Quinn, Warren, ‘Rationality and the Human Good’ in *Morality and Action* (Cambridge: Cambridge University Press, 1994), pp. 210-227.
- Rawls, John “The Sense of Justice” in *Collected Papers*, (Harvard: Harvard University Press, [1963] 2001).
- _____, *A Theory of Justice*, (Cambridge, MA: Harvard University Press, 1971).
- _____, *Political Liberalism*, Expanded Edition (New York: Columbia University Press,[1993, 1996], 2005).
- _____, *Justice as Fairness: A Restatement*, ed. Erin Kelly (Cambridge, MA: Harvard University Press, 2001).
- Raz, Joseph, *The Morality of Freedom*, (Oxford: Clarendon, 1986).
- Scanlon, T.M., *What We Owe to Each Other*, (Cambridge, MA: Harvard University Press, 1998).
- Sher, George, *Beyond Neutrality*, (Cambridge: Cambridge University Press, 1997).
- Simmons, John, *The Lockean Theory of Rights*, (Princeton: Princeton University Press, 1992).
- _____, *On The Edge of Anarchy*, (Princeton: Princeton University Press, 1993).
- _____, *Justification and Legitimacy* (Cambridge: Cambridge University Press, 2000).
- Spector, Horacio, *Autonomy and Rights*, (Oxford: Oxford University Press, 2008).
- Sreenivasan, Gopal, *The Limits of Lockean Rights in Property* (Oxford: Oxford University Press, 1995).
- Strauss, Leo, *Natural Right and History*, (Chicago: University of Chicago Press, 1953).
- Thompson, Michael, *Life and Action*, (Cambridge: Harvard University Press, 2008).
- Thompson, Michael, ‘The Representation of Life’, in R. Hursthouse, G. Lawrence, and W. Quinn, (eds.) *Virtues and Reasons*, (Oxford: Clarendon, 1995), pp. 247-296.
- Tully, James, *A Discourse on Property*, (Cambridge: Cambridge University Press, 1983).

- Vallentyne, Peter and Steiner, Hillel, eds. *Left-libertarianism and its critics: the contemporary debate*, (New York: Palgrave, 2000).
- Waldron, Jeremy, *The Right to Private Property*, (Oxford: Clarendon, 1991).
- _____, 'Two Worries About Mixing One's Labour', *The Philosophical Quarterly* 33 (1983), pp. 37-44
- Wall, Steven, *Liberalism, Perfectionism and Restraint*, (Cambridge: Cambridge University Press, 1998).
- Wall, Steven & George Klosko (eds.), *Perfectionism and Neutrality*, (Lanham, MA: Rowman and Littlefield, 2003).
- Williams, Bernard, 'A Critique of Utilitarianism', in *Utilitarianism For and Against* (with J.J.C. Smart), (Cambridge: Cambridge University Press, 1973), pp. 77-150.
- _____, *In the Beginning Was the Deed*, ed. G. Hawthorn, (Princeton: Princeton University Press, 2005).
- Wittgenstein, Ludwig, *Philosophical Investigations*, trans. G.E.M. Anscombe, 2nd edition, (Oxford: Blackwell, [1953], 1958).