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Is the Least Government the Best Government?

To make its research easily available to a broad audience, the Center for Philosophy and Public Policy publishes a quarterly newsletter: *QQ—Report from the Center for Philosophy and Public Policy*. Named after the abbreviation for “questions,” *QQ* summarizes and supplements Center books and working papers and features other selected philosophical work on public policy questions. Articles in *QQ* are intended to advance philosophically informed debate on current policy choices; the views presented are not necessarily those of the Center or its sponsors.

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With the rallying cry of “getting government off the backs of the people,” the new administration has launched a comprehensive campaign to reduce the role of government and expand the domain of private enterprise. Thus the president has called for budget cuts of billions of dollars in Medicaid, food stamps, unemployment compensation, subsidized housing, and legal services for the poor. At the same time measures of economic rejuvenation are proposed to stimulate growth in the private sector, with attendant benefits predicted for affluent and indigent alike. Although a federal “safety net” for the very poorest will be retained, private remedies are in large part to replace public remedies for improving the condition of the nation’s needy.

The Reagan program has set off heated controversy on the proper role of government and the appropriate limits to its extent and authority. After nearly half a century of increasing responsibility by government for the welfare of its citizenry, the presuppositions of the New Deal are being radically reexamined. Advocates and opponents of more minimal government are debating: is that government best which governs least? This claim can be understood in two different ways. It might mean that minimal government is most *successful* in promoting the good of its citizens, that minimal government works best to provide its citizens with what they need for a satisfying life. It might also mean that any more extensive government oversteps its legitimate moral authority and trespasses on the rights of those it governs.

Minimal government as an economic remedy will be tested by the success or failure of the Reagan

prescription in curing inflation, unemployment, and lagging productivity. But the second claim, that lesser government is morally preferable on other grounds, can be debated independently of the nation's economic prognosis.

One leading defense of minimal government on moral grounds is libertarianism, and libertarian theories are currently receiving much political and popular attention. According to the libertarian, there are severe limits on the state's authority, and these limits are set by citizens' rights. A libertarian argument of this kind is presented by Geoffrey Brennan

by the state. The most important rights for the libertarian are the rights to non-aggression and the right to property. Brennan and Friedman argue for these rights by attempting to ground them in rights that seem to them to be so basic as to require—or even to permit—no further argument.

They begin with perhaps the simplest and barest of all rights: the right to think and to act when in isolation from others. Surely if we have any rights at all, they claim, we have the right to *think* whatever we please and to act in complete isolation. A minimal extension of this right is the right to act whenever no



Public responsibility for the welfare of the needy has been a feature of American government at some level since colonial times: the statutes of the Plymouth colony stipulated that "Every township shall make competent provision for the maintenance of the poor." Today the Census Bureau reports that a third of the households in this country receive non-cash federal benefits such as Medicare, food stamps, or low-cost housing.

and David Friedman, economists at the Center for Study of Public Choice at Virginia Polytechnic and State University. In "A Libertarian Perspective on Welfare," appearing in *Income Support: Conceptual and Policy Issues* (published by Rowman and Littlefield for the Center for Philosophy and Public Policy), they argue for a very reduced role for government, limited by a strict observance of citizens' basic rights. In this same volume, Allen Buchanan, Associate Professor of Philosophy at the University of Minnesota, replies that the libertarian view of rights is inconsistent. Even on his own account of rights, the libertarian is compelled to recognize as well a broader set of rights, imposing obligations beyond the capacity of minimal government to fulfill.

A Libertarian Account of Rights

At the heart of libertarianism is an account of human rights as defining moral constraints upon all action—most significantly, on all action undertaken

harm is done to anyone else, even though one does not act in total isolation. Here, the libertarian must provide an account of what is to count as harming another, for if the relevant notion of harm is too broad, the right to act will be correspondingly weak. On the libertarian view, your action does not harm another simply by making him worse off than he would have been had you not acted. Your action *harms* another only if it violates one of his rights. The libertarian right to act, then, is a right to act when this does not violate anyone else's rights, where the further content of these other rights is yet to be specified.

The libertarian right to act includes the right to the direct products of one's own actions, to the fruit of one's own labor. Brennan and Friedman argue that "the moral entitlement of a man to himself" must involve this first minimal right to possess and to use: "Whatever one can produce on one's own one has a moral entitlement to." It seems reasonable as well that the right to possess and to use the products of one's

own labor should entail the right to alienate one's possessions, to enter into voluntary trade with others for their labor and the products of their labor. Thus the libertarian claims to have established the right to an earned share in the product of complex cooperative enterprises. A fairly sophisticated right to property has thus been derived from much more basic and less controversial entitlements.

The libertarian faces a considerable problem, however, with deriving rights to land and other natural assets, since these are not produced by the efforts of any individual (nor, Brennan and Friedman add, by the joint efforts of any collectivity, such as "the people"). But, following Robert Nozick, Brennan and Friedman argue that the institution of private ownership of land greatly increases the total productivity of society, thus making almost everyone better off than if all land remained unowned. Thus, since the alternative to private appropriation makes everyone worse off than the system of private appropriation does, no one can complain that he has been injured by any given act of private appropriation. Certainly, Brennan and Friedman conclude, "if the derivation of moral entitlements to one's own person is to be of much practical relevance, some 'private' possession of land is necessary."

Libertarianism's fundamental moral injunction is against violating these recognized rights. Property rights—and rights to "property" in one's own person—serve as constraints on all actions. Aggression against property or persons is as illegitimate on the part of the state as on the part of any private individual. According to Brennan and Friedman, "violation of rights . . . takes on a primacy among sins: If an act violates another's rights, it is morally reprehensible, whatever the desirability of the outcome."

The crucial implication of this stance for our purposes is that it grants the state no legitimate claim against the property of its citizens for the advancement of public welfare goals. However noble the objectives of any governmental program might be, they cannot be promoted by violating individual rights. On this view, most of the current activity of government—and all taxation to fund social programs—is impermissible. "The legitimate role of government within libertarianism is at most the minimal one of protecting individuals' moral entitlements from both internal and external aggression and enforcing contracts entered into voluntarily."

Here the objection may be raised: Doesn't the libertarian minimal government, by seeking to avoid the violation of property rights, end up violating another equally important set of rights? By eliminating all governmental social programs, the libertarian eliminates *all* federal assistance to the nation's needy: all food stamps, income support payments, Medicaid, subsidized housing. Doesn't this violate the right to at least some minimal level of subsistence? Where do welfare rights fit in to the libertarian derivation of entitlements?

The libertarian's answer is: they don't. Brennan

and Friedman state emphatically: "The first-line response to the question 'What welfare rights are legitimate within a libertarian theory?' is the single, simple answer: none!" On the libertarian view, a right to welfare could only be understood as claim by some to the property of another. Brennan and Friedman explain: "The libertarian does not consider the world as a place in which bread falls from heaven, where the proper moral problem is one of dividing it, but as a place where individuals produce things of value—bake bread—and where each thing thus appears not as

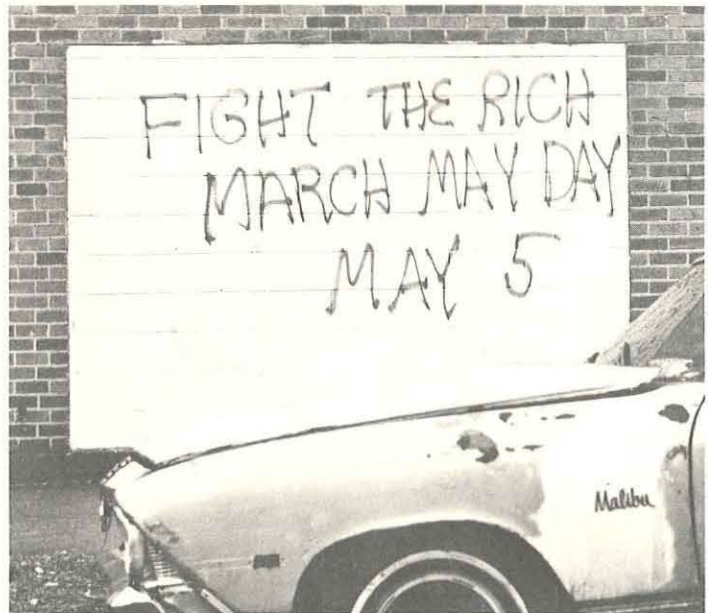
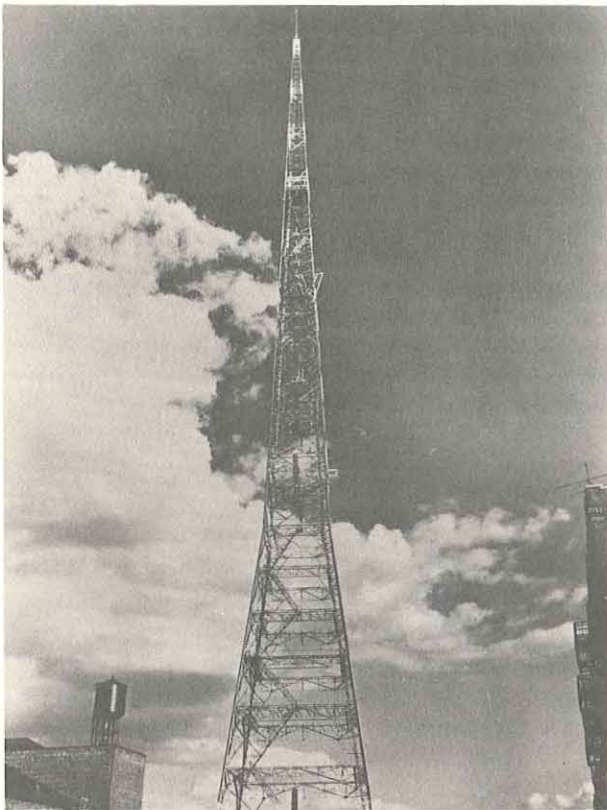
"The first-line response to the question 'What welfare rights are legitimate within a libertarian theory?' is the single, simple answer: none! . . . No redistributive activity through the [coercive] agency of government can be justified."

common property, but as the property of a particular individual." The welfare recipient's claim would constitute a claim to what the production of others has morally entitled them to possess. Private philanthropy may be desirable, and the government may have a legitimate role in organizing and coordinating voluntary philanthropic projects. Private individuals may even have duties of benevolence to those less fortunate. But the needy individual has no *right* against any other individual, or against the state. Therefore, "no redistributive activity through the [coercive] agency of government can be justified."

Deriving Welfare Rights from Libertarian Rights

The libertarian bases his defense of the minimal state on a central account of rights. If the account of rights is mistaken, the political theory may be mistaken as well. In his contribution to the *Income Support* volume, philosopher Allen Buchanan argues that in deriving classic libertarian rights from more fundamental entitlements, the libertarian does not carry his own derivation far enough. The libertarian refuses to acknowledge the existence of welfare rights. But, on Buchanan's argument, the libertarian recognizes certain other essential rights that imply the very welfare rights he would deny. If this argument succeeds in showing that welfare rights can be derived from rights widely accepted by libertarians, Buchanan will have shown that at least this portion of libertarianism is, as it stands, incoherent.

The libertarian rights in question are the right to freedom of expression, the right to the benefits of the legal system (due process rights and rights to legal counsel and representation), and certain limited rights of political participation. The right to freedom of expression is a natural outgrowth of the basic rights of thought and action. The right to the benefits of the legal system arises out of the right against aggression,



Differential access to mass media results in gaping inequalities in the exercise of important citizen rights. Both the vice president of a television station and an unemployed janitor who can't afford a television set have equal rights to freedom of expression. But there is an enormous inequality in the effectiveness with which this equal right can be exercised. Photos courtesy National Archives (L) and Ann Karslen Freud.

especially aggression perpetrated by the state. The libertarian understands these rights, of course, purely negatively, as rights not to be interfered with in certain ways, not as rights to be granted whatever one needs to perform various activities. The libertarian view on rights of political participation is more complex. Libertarians reject unlimited majority rule, since majorities might vote to violate basic libertarian rights, such as the right to property. But many libertarians recognize at least a right to participate in elections to determine the officers of the minimal state. If the libertarian recognizes these three rights, Buchanan claims, he is compelled to recognize welfare rights as well.

Buchanan calls his argument "the argument from fairness." It begins with the assumption that libertarian rights are to be understood as *equal* rights, possessed equally by all competent, adult citizens. There is a distinction to be drawn, however, between equal rights and equal effectiveness in the exercise of these rights. Due to inequalities in wealth, in access to health care, and in educational opportunities, some persons are able to exercise their libertarian rights much more effectively in pursuing their goals, whatever these goals happen to be.

Suppose, for example, that Mr. Jones is vice president of a major television station. His corporate responsibilities include preparation of televised editorials, broadcast at the end of each evening's news program. These editorials have considerable political impact, and Jones can point in several instances to legislation directly influenced by his views. Mr. Smith,

on the other hand, is an unemployed janitor who can't even afford a television set. Both Smith and Jones have equal rights of political participation and freedom of expression. But there is an enormous inequality in the effectiveness with which their equal rights can be exercised.

Differential access to mass media is only one of the more dramatic instances of gaping inequalities in the effectiveness of equal libertarian rights. Poor nutrition and lack of health care, compounded by cultural deprivation and inferior education, produce millions of citizens who are unable to communicate their own interests. These same factors contribute to similar inequalities in the effectiveness of the equal right to the benefits of the legal system. Buchanan points to the evidence that poor persons who commit crimes are more likely to be prosecuted, if prosecuted are more likely to be convicted, and if convicted are more likely to get stiff sentences—all of this at least in part a result of severely restricted access to sound legal advice and able legal representation.

Buchanan can now present his argument: "The system of libertarian rights has a crucial feature which the libertarian tends to overlook. The institutions which provide the libertarian rights constitute procedures by which individuals may pursue their goals and defend their interests. But these procedures are inherently monopolistic. They impose severe limits on the ways and means by which a person may pursue his goals and defend his rights and interests. . . . It is not just that I have the *right*, for example, to protect my rights and interests through litigation. The system of

legal rights prevents me from attempting to protect my rights and interests in certain other important ways."

Buchanan asks us to consider the case of a black activist. He exercises his right to free speech in his struggle for civil rights—but in exercising his right he is also required to recognize the same right of the Klansman, exercised in racist opposition to the civil rights movement. The activist may use his freedom of expression to combat racism, but he is precluded from fighting the Klan's propaganda in other ways. The reasonableness and fairness of this restriction, Buchanan suggests, depend to a large extent on the effectiveness of freedom of expression as a means for the activist of defending his cause: how literate and informed he is, what funds he has for access to mass media. It is not reasonable or fair to expect him to sacrifice effective methods of self-defense in exchange for methods that are, for him, far less effective. "At least where certain extreme inequalities exist," Buchanan concludes, "compliance with the system of libertarian rights requires too much from some persons. They are unfairly expected to accept a

With political rights come obligations to refrain from certain other means of defending one's interests. If there are enormous inequalities in the effectiveness of political rights, many citizens are thus unfairly disadvantaged. The existence of political rights therefore implies the existence of welfare rights. And if there are welfare rights, redistributive activity by government to meet the requirements of those rights is not illegitimate.

system of procedures that significantly limits their resources for defending their rights and interests, without receiving the compensating benefits that others enjoy.

The libertarian might reply that all that fairness requires is that the loss of these options for protecting one's rights and interests actually be outweighed by the gain in security that the state-enforced system of libertarian rights provides. If we would all be much more secure and much better off under the libertarian minimal state than we would be under no state at all, then the black activist has no business complaining.

To this Buchanan replies that the libertarian argument does not take the requirement of fairness seriously enough. The libertarian seems to assume that there are only two choices between which the black activist is asked to decide: a brutal Hobbesian state of nature with unbridled aggression threatening the life and liberty of all, or a political system permitting unrestrained inequalities in the exercise of libertarian rights. But unless these bleak alternatives are the only possibilities, then, in Buchanan's words, "fairness at least demands that we consider ways of

ensuring that the system [we choose] does not place unacceptable burdens on the poor." Fairness at least demands that we not choose a system in which structural and institutional inequalities make such a tremendous difference.

Those disadvantaged in the effectiveness of their equal libertarian rights by extreme social and economic inequalities therefore have a legitimate claim to have those inequalities reduced. This means that they have a right to a more equal redistribution of wealth and opportunity, either through problem-specific measures, such as the provision of public funds for access to media or legal services, or by a more global approach of ensuring some minimum standard of living to all. This clearly counts as the sort of welfare right the libertarian would deny.

So, Buchanan concludes, if there are political rights, there are welfare rights as well. And if there are welfare rights, redistributive activity by the government to meet the requirements of those rights is not illegitimate.

The Role of Government

If there are legitimate welfare rights, what institutional arrangements are necessary or desirable to meet their requirements? For it is, as Buchanan fully realizes, one thing to recommend a more equal distribution and another thing to recommend how this altered distribution should be brought about.

As libertarians, Brennan and Friedman are especially suspicious of redistribution via political institutions. Even if we agree on the desirability of a more egalitarian social and economic system, it does not follow, they argue, that the government should be assigned responsibility for effecting these changes. The existence of a right to welfare need not mandate large-scale governmental assistance programs of the sort the current administration is beginning to dismantle. On their view, governmental redistributive programs create "a rather chaotic lottery, in which some of the poor are made rather poorer and some of the rich much richer." This is to interpret the equation of least government with best government as a trustworthy factual generalization.

Non-libertarians would ask whether we have any reason to believe that the invisible hand of the capitalist free market is any more likely to produce an egalitarian outcome. The choice between the legislative and market approaches, judged by the criterion of effectiveness, is an empirical one, to be settled by an evaluation of what facts can be found. But if Buchanan's argument is correct, the terms of the evaluation are at least clear. If welfare rights are genuine rights, the best government is one that provides for their fulfilment. Whether a less extensive government will have more success here remains to be seen.

Income Support: Conceptual and Policy Issues, edited by Peter G. Brown, Conrad Johnson, and Paul Vernier (Totowa, N.J.: Rowman and Littlefield, 1981) is available from the Center for Philosophy and Public Policy. See order form, p. 15.