

An Epitome of Libertarianism

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Abstract

Libertarianism (Mack 2018) sets out to provide illuminating accounts and assessments of the philosophical arguments that have been made on behalf of libertarian conclusions. One theme of that book is that three philosophical approaches dominate these endeavors to vindicate libertarian conclusions. They are the natural rights approach, the cooperation-to-mutual-advantage approach, and the indirect utilitarian approach. This essay explains the nature of these three approaches and the differences among them by tracing their development in the writings of theorists such as John Locke, David Hume, Herbert Spencer, Robert Nozick, and F. A. Hayek.

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I. Introduction

I use “epitome” in the old-fashioned sense in which it means an illuminating synopsis of a larger body of work. In that sense, this essay is an epitome of libertarianism on two levels. It is, I believe, an illuminating synopsis of core themes from my recent book, *Libertarianism* (Mack 2018). And, I believe, that recent book itself is an illuminating account of key ideas that have been offered in defense of the underlying principles of libertarian doctrine—including that doctrine’s affirmation of a robust private property and market-based economic order. This essay focuses on three philosophical approaches in support of libertarian conclusions: the natural rights approach, the cooperation-to-mutual-advantage approach, and the indirect utilitarian (or indirect consequentialist) approach. *Libertarianism* itself delves more deeply into the arguments that characterize these approaches. One understated theme of this essay (and of *Libertarianism*) is that the indirect utilitarian approach tends to morph into the cooperation-to-mutual-advantage approach, and at

crucial junctures, the mutual advantage approach tends to appeal to natural rights ideas.

After a brief introductory chapter, chapter two of *Libertarianism*, “Philosophical Antecedents,” explores the natural rights views of John Locke ([1689] 1980), the cooperation-to-mutual-advantage doctrine of David Hume ([1740] 2000), and the indirect utilitarian views of John Stuart Mill ([1859] 1987) and Herbert Spencer ([1851] 1970). Chapter three, “Libertarian Foundations,” provides a sympathetic rearticulation of Robert Nozick’s revival and reaffirmation of Lockean natural rights theory (Nozick 1974) and of F. A. Hayek’s restatement of basic classical liberal principles along Millian (Hayek 1960) and Humean (Hayek 1973) lines. Nozick and Hayek both see themselves as defending individual freedom as the primary political norm. Chapter four, “Economic Justice and Property Rights,” offers a fairly elaborate reconstruction of Nozick’s rights-oriented historical entitlement theory of justice in holdings (Nozick 1974) and of both Hayek’s critique of “social” or “distributive” justice and Hayek’s defense of strict compliance with the “rules of just conduct” (Hayek 1960, 1973, 1976) as the key to cooperation to mutual advantage. Both Nozick and Hayek maintain that it is unjust to deprive individuals of discretionary control over themselves and the extrapersonal goods they have acquired through peaceful production and trade.

“Further Philosophical Roads to Libertarianism” surveys developments in libertarian theorizing after Hayek and Nozick.¹ It begins with an examination of Hillel Steiner’s natural rights version of left-libertarianism. Steiner seeks to unite natural rights of self-ownership with a view of economic rights that includes an equal right of all to the earth (Steiner 1994). “Further Roads” then turns to Loren Lomasky’s largely Humean view that our basic personal and property rights reflect the terms that rational individuals concerned with safeguarding and advancing their life-defining projects would all endorse to regulate their interactions (Lomasky 1987). This chapter then explores Douglas Rasmussen and Douglas Den Uyl’s grounding of libertarian “meta-norms”—especially the right to self-direction in one’s choices and actions. These meta-norms are understood as the only principles that are reasonably enforced within a society

¹ Since length considerations precluded its inclusion in the printed volume, this chapter is available as an online bonus chapter.

composed of individuals, each of whom properly seeks his or her own self-perfection (Rasmussen and Den Uyl 2005).

Finally, this chapter explores David Schmidtz's indirect utilitarian articulation of and support for conceptions of justice that are most conducive to human beings living well together (Schmidtz 2006). Utilitarianism maintains that the ultimate standard for ranking alternative overall social outcomes is the extent to which they realize net aggregate happiness or well-being. However, *indirect* utilitarianism maintains that if individuals or state agents directly seek to promote what they take to be the best available overall social outcome, their conduct will be counterproductive; desirable social outcomes are better achieved indirectly through agents' steadfast compliance with certain rules and institutions. *Libertarian* indirect utilitarianism maintains that the best recipe for the attainment of desirable social outcomes is strict regard for individual freedom and property and contractual rights.

Beyond these accounts of libertarian theorizing, the final chapter of *Libertarianism*, "Objections: Internal and External," explores in some detail the internal debate between anarchist and minimal state libertarians (Childs 2017; Cowen 2017; Nozick 1974; Rothbard 1973, 1978, 2017). It then turns to critical discussions of some objections to libertarian doctrine offered by egalitarian and socialist philosophers (Cohen 2009; Murphy and Nagel 2002; Rawls 1993).

II. The Natural Rights Approach

The central idea within any full-fledged natural rights view is that some morally portentous fact (or set of facts) about each person is the basis for ascribing to each person one or more basic moral rights. Libertarian or libertarian-leaning natural rights doctrines take these basic moral rights to be protective of each individual's pursuit of happiness, well-being, system of rational interests, or life-defining plans and projects. More specifically, those basic moral rights constitute each person's moral claim not to be interfered with by others in the course of the pursuit of happiness, well-being, rational interests, or life-defining plans and projects. Each individual is to be permitted to pursue their own valued ends in their own chosen way—except, of course, through conduct that interferes with others in their pursuits of their valued ends in their chosen ways.

A theory of rights will be a coherent guide to action (or constraint on action) only if each individual can enjoy the rights it ascribes to him or her without violating the rights that the theory

ascribes to others. The coherent articulation of a basic right to freedom from interference requires that no individual's enjoyment of the right against interference demands that anyone else's right against interference be violated. If rights conflict in this way, some actions will be both permissible (as exercises of a right) and impermissible (as infringements of a right).

The way to specify people's rights to freedom from interference so that they will not come into conflict is to construe each person's freedom to consist in his or her discretionary control over some *discrete* set of resources for action.² Individual *A* exercises freedom whenever she does as she sees fit *with the resources for action over which A has rightful discretionary control*. *A* infringes upon *B*'s freedom when she does as she sees fit with resources over which *B* has rightful discretionary control. When *A* infringes upon *B*'s freedom in this way, she is not merely exercising her freedom, because she is not merely doing as she sees fit with the resources over which she rightfully has discretionary control.³ The codification of moral rights in terms of each individual's rightful discretionary control of a distinct set of resources for action ensures the "compossibility" of the rights of all persons (Steiner 1977). Given this compossibility, no "higher" moral principle is needed to tell us whose rights should be sacrificed for the sake of someone else's enjoyment of rights.

Thus, libertarian natural rights theory tends to proceed by spelling out people's basic rights to freedom in terms of each individual's right to dispose of one's own person—one's mental and physical attributes—and one's legitimately acquired extrapersonal holdings as one chooses. The right to freedom from interference is the right to discretionary control over oneself and one's legitimately acquired possessions. Since one can be deprived of this discretionary control by deception and fraud, one's fundamental right to freedom includes a right against being subjected to such deception and fraud—that is, a right that others abide by their contracts. The need to codify the basic right to freedom in terms of a right of

² There can be no moral right to violate rights. If *A* has a right to treat *B* in a way that *normally* would violate rights, e.g., seizing *B*'s possessions, there must be some special explanation of how *B* has lost his right to those possessions.

³ Will *any impingement* by *A* upon resources for action over which *B* has rightful discretionary control count as an *infringement* of *B*'s right against interference? If so, almost anything anyone does with her own rightful possessions will count as an infringement upon someone else's rights. For an explanation of why minor impingements should not count as infringements, see Mack 2015.

discretionary control over a discrete domain of resources for action explains why libertarian or libertarian-leaning theories—even those that disavow the natural rights approach—repeatedly invoke the idea that each individual is sovereign within his or her “domain” or “sphere” of freedom (See Mill [1859] 1987, p. 9).

Of course, to assert that people possess natural *moral* rights over themselves, their legitimately acquired possessions, and the fulfillment of their contracts is not to assert that these rights are in fact respected by other individuals, associations, or political or legal actors. It is not to assert that existing law will recognize (much less protect) these rights. To say that these rights are “natural” is not to say that people naturally abide by them in the way that physical objects naturally “abide by” descriptive physical laws. Natural *moral* rights are indications of what constraints on conduct each individual *may properly demand* from others. They are indications of what actions by others do *wrong* to individuals and may permissibly be resisted. By identifying what sorts of actions violate moral rights and may permissibly be resisted, these natural moral rights specify the scope and the limits of permissible coercive actions on the part of individuals and political and legal institutions.

These rights are “natural” in the sense that the moral claims they express are not created by any agreement among individuals, by any strongman’s proclamation, or by any legal enactment. Nor are these rights a function of social expediency; they are not moral claims that society or the state grants to individuals because it is useful for society or the state to extend certain immunities to those individuals. Individuals do not receive these rights from society or the state. Rather, the rights come first; the acceptability of social and political institutions depends on their compliance with these rights.

What morally portentous fact (or set of facts) about each person do libertarian theorists offer as the basis for ascribing to each person a natural right not to be interfered with in the pursuit of happiness, well-being, rational interests, or life-defining projects? Advocates of natural rights often point to features of persons such as self-consciousness, the capacity to formulate and pursue complex plans, the capacity to understand and comply with moral norms, and the capacity for autonomous action as facts that explain why persons have moral rights not to be subjected to certain interferences (or even have moral rights to certain forms of assistance). The thought is that the possession of such nifty, relatively high-brow features explains why each individual has an importance or dignity that must be

respected by all other beings possessing these same elevating features. These features, it is thought, provide others with reason to be circumspect in their conduct toward those who possess these nifty qualities.

However, these features as such do not seem to support the ascription to persons of the sort of individual rights that libertarian (or libertarian-leaning) theorists want to assert. One might ascribe all these features to persons while also thinking that the only significance of persons having these features is that people can and should utilize them to glorify God, to overcome the merely animalistic aspects of our nature, or to promote the maximization of pleasure across all sentient beings. And no such thought would leave room for individuals to possess basic moral rights to live their own lives in their own chosen ways.

The key thing that is missing from the list of portentous facts about persons that are often presented by *nonlibertarian* natural rights theorists and that, in contrast, is characteristic within *libertarian* natural rights theorizing is this claim about persons: each person reasonably seeks personal happiness, well-being, the attainment of one's system of ends, or the fulfillment of one's own life-defining projects. Each person has an ultimate end of one's own: the attainment of genuine well-being. We can find one version or another of this affirmation of moral individualism throughout the libertarian natural rights tradition. This finding should not be surprising. Since the fundamental function of individual rights is to provide individuals with moral protection in the pursuit of their personal well-being, it would be odd for such rights not to reflect or be responsive to the propriety of individuals achieving their respective well-being. The core libertarian natural rights thought is that the appropriate response on the part of *B* to *A* being a morally independent being—that is, a being who has in the flourishing of her own life an end of her own—is *B*'s noninterference with *A*'s chosen pursuit of that end.

So, for example, Locke holds that, although happiness in general is the ultimate good, each individual rationally pursues that part of the general happiness which is one's own. Each person's moral purpose is the attainment of one's genuine happiness. In the crucial sections 4–7 of his *Second Treatise*, Locke investigates what import the fact that *A* rationally pursues her own happiness has for *B*'s conduct toward *A*. Locke argues that the significance for *B* of this fact about *A* is that *B* may “not, unless it be to do justice on an offender, to take away, or impair the life, or what tends to the preservation of the life,

the liberty, health, limb, or goods of another” ([1689] 1980, sec. 6). The significance for *B* of *A*’s happiness being *A*’s proper end cannot be that *B* must be as devoted to *A*’s happiness as he is to his own. Such a conclusion would amount to the belief that *B* exists for *A*’s purposes.

However, Locke insists that no person is made for the purposes of others. The import for *B* of *A*’s having her own happiness as her rational end is that *B* must not treat *A* as a resource that exists for his own ends. Since no one is grist for anyone else’s mill, each individual has a right against all others interfering with one’s pursuit of happiness as long as one’s pursuit of happiness does not take the form of treating others as grist for one’s mill. According to Locke, *B* himself will rationally call upon others not to interfere with his search for happiness. However, since *A* is *B*’s moral equal as a being who also rationally pursues happiness, *B* cannot soundly advance his own claim against interference unless he acknowledges *A*’s equal claim to a right against interference (Mack 2018, pp. 10–15).

Despite differences in terminology, Nozick’s argument for individuals possessing moral rights against other persons imposing sacrifices upon them follows a similar course (Mack 2018, pp. 41–55). Nozick starts (as does John Rawls in *A Theory of Justice*) with the premise that rational choice is a matter of an individual choosing the course of action that most fully advances one’s utility or well-being. Therefore, it is rational for an individual to incur some cost to oneself if doing so is the least costly way to avoid a greater cost to oneself. It is rational for *A* to go to the dentist today to get a cavity filled if this is the least costly way to avoid the greater cost of having the decaying tooth pulled next month. Nozick then asks (still following Rawls) whether one should *also* hold that it is rational for *A* to incur a cavity-filling amount of pain if doing so is the least costly way to save *B* from undergoing a tooth-pulling amount of pain. (We are assuming here that *A* and *B* are “strangers,” i.e., individuals whose interests are not significantly intertwined.) Also, if *C*’s forcing *A* to undergo that lesser pain is the least painful way to save *B* from undergoing the greater pain, does rational choice call upon *C* to impose that sacrifice on *A*? Does it call upon *A* to submit to the imposed sacrifice?

One will answer these questions affirmatively if and only if one holds that the rationality of *A* incurring a cavity-filling pain to avoid a tooth-pulling pain consists *simply* in the cavity-filling pain being less than the tooth-pulling pain. If one has this view, it does not matter *who* undergoes the lesser pain and *who* avoids the greater pain. On this

view, *A*'s incurring a lesser pain in her life with the result that *B* avoids a greater pain in his life is precisely as rational as *A*'s incurring that lesser pain in her life with the result that *A* avoids that greater pain in her own life. Indeed, if *who* undergoes pain and *who* is spared pain does not matter, then if the lesser pain in *A*'s life needs to be *imposed* by *C* in order for *B* to be spared that greater pain, *C*'s imposing that pain on *A* is precisely as rational as *A*'s imposing that pain on herself.

However, according to Nozick, the view that all that matters is the extent of the loss incurred and the extent of the loss avoided is mistaken because it fails to recognize *the separateness of persons*. Nozick's claim is that what makes *A*'s cavity-filling trip to the dentist rational is that *A* thereby avoids the greater pain of a tooth-pulling trip to the dentist. The trip is worthwhile because it is worthwhile *to A*. Rational choice endorses this trip because, through the choice of the trip, the person who incurs the cost is a net beneficiary. Of course, *B* would be a net beneficiary were *A* to prevent some loss to *B* by means of her submitting to some loss, and that would explain why *B* might hope that *A* will submit to this loss. However, that *B* favors *A* incurring some loss hardly shows that it is rational for *A* to choose to incur it.

A's later stage of life in which she enjoys not being subject to tooth-pulling pain is *part of A's life*, and that is why the avoidance of that pain makes it worthwhile for *A* to incur the cavity-filling pain. In contrast, *B*'s not being subject to tooth-pulling pain would not be a part of *A*'s life; it would be part of a separate person's life. That *B* would be a net beneficiary of *A*'s loss hardly shows that *A*'s submission to the loss is worthwhile for *A*. Nor, of course, does the fact that *B* would benefit from *C*'s imposing some less extensive loss on *A* show that it is rational for *A* to favor or submit to that imposition. Nozick writes, "There are only individual people, different individual people, with their own individual lives. Using one of these people for the benefit of others uses him and benefits the others. Nothing more. What happens is that something is done to him for the sake of others. Talk of an overall social good covers this up" (1974, pp. 32–33).

For Nozick, there are two crucial implications of the separateness of persons. The first and more obvious implication is that "no moral balancing act can take place among us; there is no moral outweighing of one of our lives by others so as to lead to a greater overall *social* good. There is no justified sacrifice of some of us

for others” (Nozick 1974, p. 33). This first implication is a negative one: all attempts to justify the imposition of sacrifices on individuals by invoking the advancement of an alleged overall social good are to be rejected. Providing greater gains to *B* and *C* does not justify the imposition of a lesser loss on *A*. Nor does the creation of the social state in which the worst-off individual is better off than he would be in any other available social state provide *A* with reason to accede to the sacrifice that *A* must undergo for that state to be attained. Similarly, the creation of the social state in which there is more equality or utility or well-being among individuals than there would be in any other available social state does not justify to *A* the sacrifice that *A* must undergo for that state to be attained.

However, the natural rights stance goes beyond debunking justifications for imposing sacrifices on individuals in order to advance some putative overall social good. That stance maintains not merely that such impositions lack positive justification, but also that anyone who inflicts such impositions *wrongs* the individuals subjected to them. According to the natural rights approach, a full appreciation of the fact that the rational goal of each individual is her genuine well-being has two implications. The first is the rejection of overall social outcome justifications for imposing sacrifices. The second is the affirmation of “moral side constraints” against such sacrifices.

Reminiscent of Locke, Nozick holds that to take seriously the separateness of persons is to recognize “the existence of distinct individuals who are not resources for others” (Nozick 1974, p. 33). Since full appreciation of the separateness of persons reveals that individuals are not resources for others, this full appreciation reveals that one has reason not to treat others as resources for one’s own purposes. “To use a person in this way does not sufficiently respect and take account of the fact that he is a separate person, that his is the only life he has,” Nozick writes (1974, p. 33).

Nozick clearly does not say enough on this crucial issue. Here, let us simply note that he joins most other libertarian or libertarian-leaning moral theorists in appropriating Kant’s slogan that persons are to be treated as moral ends in themselves, as not a mere means for the ends of others (Nozick 1974, p. 32).⁴ The root idea here, which cannot be elaborated within this epitome, is this: the fact that each individual is an end in himself—in the sense of having in his

⁴ See Hayek 1960, p. 21; Lomasky 1987, p. 54; Mack 2009, pp. 121–23; Mack 2017, p. 77; and Rand 1964, p. 93.

own genuine well-being a unique rational goal for his life—has moral significance for each other individual. And that moral significance is that this individual is to be treated as an end in himself—that is, as a being who is not a mere resource available as a means to the ends of others.

Of course, natural rights theorists go on to provide accounts of property rights and economic justice and to address such crucial issues as the extent (if any) of morally permissible state action. Unfortunately, any attempt to deal with these matters would take us beyond this epitome's purpose of describing the basic character of the three main philosophical approaches within libertarian theorizing. I shall only mention here three alternative strategies proposed by natural rights thinkers for the justification of private property rights.

Locke famously held that property rights to extrapersonal objects—to this acorn, to that cultivated field, and so on—derive from each individual's right to one's own labor, which itself is an aspect of that individual's natural right of self-ownership (Locke [1689] 1980, secs. 25–51). If *B* mixes his labor with some previously unowned raw material, the now transformed object cannot be seized or destroyed by anyone else without that party seizing or destroying *B*'s invested labor. Since *B* retains a right to that labor, it follows that any such seizure or destruction of the transformed object violates *B*'s rights. And that means that *B* has rights to whatever objects are the product of his investing his labor in previously unowned material.

Murray Rothbard's view that private property rights derive from acts of "homesteading" (Rothbard 1973, pp. 31–37) seems to embody this Lockean strategy. In contrast, Nozick is eager to avoid the labor-mixing metaphor (Nozick 1974, pp. 174–75). Nevertheless, he holds that any system of taxation will treat individuals as though they are at least partially owned by those who operate that system or those they claim to represent. Thus, taxation of legitimately acquired possessions contravenes self-ownership and, for that reason, is impermissible (Nozick 1974, pp. 169–73).

A third natural rights strategy emphasizes a basic natural right to acquire and exercise discretionary control over extrapersonal objects—a right that is part of the proper articulation of each individual's moral claim to pursue his own ends in his own chosen ways. Such a right of property is instituted through the development of conventions that define the processes through which, within a given society, individuals acquire and transfer property. According to this strategy, particular property rights are manifestations of this basic

right of property rather than of the basic right of self-ownership—although each of these basic rights is an aspect of each individual’s fundamental claim to freedom (Lomasky 1987, pp. 111–51; Mack 2010; van der Vossen 2009).

III. The Cooperation-to-Mutual-Advantage Approach

Suppose one shares with natural rights thinkers such as Nozick the view that overall social outcomes that involve losses for some individuals cannot be justified by pointing to larger gains awarded to others. Nor can they be justified by the promotion of some alleged “societal good” such as making the worst-off members of society as well off as possible or equalizing happiness (or income) among all members of society. That is, suppose one agrees that a change from one overall social state to another has to be justified to each individual on the basis of its enhancing that individual’s utility, well-being, or prospects for advancing his or her life-defining projects. If so, one will be attracted to the idea that in order for an action, policy, or institution to be justified within a given society, it must enhance the life prospects of each member of society or at least enhance the life prospects of everyone affected by it.

One might seek to apply such an idea by figuring out what detailed plan for society will enhance everyone’s well-being in specific, anticipated ways and by working for the institution of that plan and of the political power necessary to enforce it. In other words, one might pursue the *direct*, deliberate orchestration of predictable gains for everyone. Much more wisely, one might favor an *indirect* or (as Hume says) *oblique* approach. One might seek to identify the conditions under which individuals will tend to avoid negative-sum and zero-sum interactions and will tend instead to engage in positive-sum interactions—especially positive-sum interactions that will in turn engender further opportunities and incentives for mutually beneficial collaborations. These will be the conditions that foster voluntary cooperation among individuals—cooperative interactions that *each* enters in anticipation of advancing his or her own ends and projects.

In such interactions, party *A* acts in a way that is anticipated to be advantageous to party *B* in exchange for *B* acting in a way that is anticipated to be advantageous to *A*. Crucially, the voluntary interaction will be apt to be advantageous to each *from his or her own evaluative perspective*. No philosopher king will be needed to engage in the hopeless task of identifying the particular content of the well-

being of each member of society and checking to see that, for each member, the system of voluntary cooperation will deliver that particular content.

A central discovery (or rediscovery) of seventeenth-century political philosophers was that the general condition for the flourishing of positive-sum interaction among a group of individuals is the anticipation of strict compliance among them with certain constraining rules of conduct. Some of these thinkers, such as Hugo Grotius and John Locke, thought of these norms as naturally sound moral principles. Others, such as Hobbes, thought of these norms as rules that had to be promulgated and validated by state authority. Grotius emphasized how anticipation of compliance with these rules fosters trade. Hobbes emphasized how anticipation of compliance fosters peace and investment. Locke emphasized how such anticipation fosters greater development and employment of human capital. These sorts of insights were systematized in the first half of the eighteenth century by David Hume within his account of the principles of justice (Mack 2018, pp. 22–26).

According to Hume, what are the principles of justice steadfast compliance with which is mutually advantageous? One would expect that the first principle that Hume would cite as crucial to the existence of cooperative society would be the norm against initiating harmful force on another. As Hobbes emphasized, absent a general expectation of compliance with this norm, each person will be prone to strike before he is struck, and each person's anticipation of this disposition in other people will heighten his own inclination to strike first. General compliance with the norm against the initiation of harmful force is mutually advantageous because each is better off in a peaceful society than in the condition of a war of all against all. However, Hume seems to think that a simple cost-benefit calculation is enough to motivate rational people not to initiate force against others; no inculcation of a norm against such initiation is needed.

So, the first norm that Hume cites as a condition of cooperation to mutual advantage is the rule against depriving a first possessor of his holding. Both out of natural selfishness and natural benevolence for our family and friends, we are each inclined to seize the first possessions of others. However, a situation in which such seizures are common is worse for everyone than one in which we each anticipate everyone's first possessions being secure. Thus, for Hume, the first principle of justice requires that the holdings of peaceful first possessors not be disturbed.

Still, a world in which each retains one's first possessions would be a world in which people and their possessions are often not well-adjusted. Individuals often value more highly the first possessions of others than they value their own. Individuals will have the incentive to adjust their holdings through mutually beneficial trade (and through increased production for the sake of trade) only if they can anticipate being secure in their possession of goods that they have attained through trade. Since people will have this confidence only if there is strict compliance with the rule that forbids seizing what others have acquired through voluntary transfer, Hume takes this rule to be the second principle of justice.

Still, a third principle is needed to further facilitate cooperation to mutual advantage. A great deal of mutually advantageous exchange cannot be completed at a given point in time. *A* agrees to help *B* harvest *B*'s Christmas tree crop in December in exchange for *B*'s help in harvesting *A*'s corn crop in July. For such temporally extended cooperative interactions to flourish among individuals who are not already connected by friendship, family, or clan, those individuals must anticipate general compliance with a third rule, namely, that contacts are to be fulfilled. This rule is Hume's third principle of justice. As with the first two principles of justice, the rationale for this principle is that general compliance with it serves each person's own ends (compared to a situation in which compliance is not general). General adherence to the principle provides each person with further opportunities to engage in mutually advantageous interactions with others (Mack 2018, pp. 23–24).

Hume's principles of justice, which condemn the seizure or destruction of legitimately acquired holdings and the nonfulfillment of contracts, are the core principles of a private property market order. The system of cooperation based on mutual regard for property, trade, and contract is the means by which our crucial need for cooperation is satisfied by channeling each individual's natural desire to advance his own interests and those of his family and friends toward the production of goods and services needed by others (whose efforts are likewise channeled) (Mack 2018, pp. 24–25). And these principles correspond to the rights of property and contract fulfillment that are asserted by libertarian natural rights theorists. The difference is that for the natural rights theorist, the mutual benefits of compliance with property and contractual rights are the welcome and nonaccidental side effects of respect for those rights while, for the cooperation-to-mutual-advantage theorist, those

mutually beneficial effects are themselves the reason for endorsing those principles.

Hume and his contemporary and friend, Adam Smith, understood how desirable local and global outcomes could predictably arise without agents intending or planning those desirable results. They understood how spontaneous order could arise and better serve people's interests than planned order could. And they understood how spontaneous order in human affairs rests on the crucial, but often unrecognized, disposition of people to abide by certain rules and their expectation of such abidance from others.

F. A. Hayek was the great reviver, expositor, and extender of these ideas in the twentieth century. However, Hayek was always wary of the project of explicitly justifying basic normative principles. His view was that certain principles—which he calls the “rules of just conduct” and which are precisely Hume's principles of justice—are the natural concomitants of a correct understanding of the nature and bases of desirable social and economic order. General commitment to those rules of just conduct is the crucial foundation from which desirable social and economic order arises.

According to Hayek, social scientific mistakes about the nature and bases of desirable social and economic order have dethroned these rules of just conduct. These mistakes have obscured the function of these principles and have even led to the belief that these rules should be rejected because they are barriers to the achievement of a truly rational and desirable social and economic order. As Hayek sees it, the correction of these social scientific errors will undo the dethronement of the rules of just conduct. The re-enthronement of these rules of just conduct will not require their explicit philosophical validation (Mack 2018, pp. 56–57). Hayek (like Hume) counts as an advocate of the cooperation-to-mutual-advantage approach because, for Hayek, the key feature that makes cooperative social and economic order desirable is that it is beneficial for all who participate in it. The core virtue of the rules of just conduct is that they make possible and sustain mutually advantageous social and economic order.

According to Hayek, the key social scientific error is “constructivist rationalism.” This is the belief that rational and desirable social and economic order must be deliberately planned. The human and material resources available to a given society must be inventoried and organized so as maximally to achieve society's purpose or its hierarchy of priorities. Social or economic orders that

are not deliberately constructed via the marshalling of resources in this way can be neither rational nor desirable. As Ludwig von Mises and Hayek pointed out, the crucial errors of constructivist rationalism are epistemic. For central planners to rationally allocate human talents and efforts, raw materials, and capital goods in the service of society's purposes, they must have good information about the economic value of those talents, efforts, materials, and goods and about the economic value of what might be produced with them. However, only the operation of a competitive market economy will provide good information about the economic value of prospective economic inputs and outputs. Hence, the very attempt to replace the competitive market with a planned economic order will deprive the planners of the information that they need to allocate inputs rationally (Mack 2018, pp. 57–60).

To this critique concerning economic knowledge, Hayek adds a moral knowledge critique. Central planners would not have knowledge of what outcome they should plan for. There is no (known) societal purpose and no (known) hierarchy of societal priorities. To paraphrase Nozick, there are just individuals with lives and ends of their own. Moreover, no central planner can know the particular content of the ends or well-being of the individual members of society. And, even were the particular content of the ends or well-being of individuals known, there is no (known) method for morally balancing a further realization of one individual's ends or well-being against a further realization of another's ends or well-being (Mack 2018, pp. 68–70). All we can say about a cooperative social and economic order that arises from steadfast compliance with the rules of just conduct is that each participant in that order can be expected to gain from his or her own evaluative perspective. Such an order "serves the multiplicity of separate and incommensurable ends of all its separate members" (Hayek 1976, p. 108). This, according to Hayek, is all that we can ever reasonably ask of any extensive social and economic order.

Whether he is making the case for individual freedom on the basis of a Millian appeal to general happiness (as in *The Constitution of Liberty*) or on the basis of a Humean appeal to principles that facilitate cooperation to mutual advantage (as in *Law, Legislation, and Liberty*), Hayek is sensitive to the problem that even individuals who are devoted to the general happiness or to mutual advantage may in particular cases take themselves to have reason to infringe upon the freedom of others by violating their personal, property, or contractual

rights. It may seem that in certain cases, such defection will enhance the general happiness or will advance the agent's interests without disadvantaging anyone else. Moreover, each person's recognition that others will sometimes take themselves to have reason to defect from the rules of just conduct will reinforce that individual's reason to defect. The result may well be to undermine the general expectation that the rules will be respected and, hence, to undermine the cooperative order.

Hayek's response to this danger is to insist that the desirable consequences of respect for freedom will only obtain if individuals come to perceive freedom as itself an ultimate value or principle—a value or principle that does not have to be justified by the desirability of its consequences in particular cases. “Freedom can be preserved only if it is treated as a supreme principle which must not be sacrificed for particular advantages,” writes Hayek (1973, p. 57).

IV. The Indirect Utilitarian Approach

In its classic form, utilitarianism holds that alternative available social states are to be ranked on the basis of the aggregate happiness they contain minus the aggregate unhappiness (or misery) they contain. Social state X is better than social state Y if and only if the net of happiness over unhappiness in X is greater than the net of happiness over unhappiness in Y (or if the net of unhappiness over happiness in X is less than the net of unhappiness over happiness in Y). In its classic form, utilitarianism understands happiness as the fundamental positive psychic state and unhappiness as the fundamental negative psychic state. What matters for classical utilitarianism is the quality of the experiences that obtain, not the truth of people's beliefs or the extent of their accomplishments or the perfection of their character. A world in which all people reside in self-maintaining happiness machines that make their inhabitants feel good by programing them to think they have true beliefs or great accomplishments or perfected characters could well be the best world as measured by the classic Greatest Happiness Principle.

Classic utilitarianism has one other crucial feature: each individual must perform the available action that will yield the available overall social outcome that is ranked highest by the Greatest Happiness Principle. Individual *A* must perform the action that will yield the best overall outcome even if that action will impose a profound loss on herself or on some other individual. *A* is morally obligated to volunteer for evisceration if the organs harvested from her will save

the lives of five happy people and *B* is morally obligated to conscript *A* for evisceration if the organs thereby harvested from *A* will save the lives of those five happy people.

As the two great advocates of classic utilitarianism, Jeremy Bentham and John Stuart Mill, affirm, classic utilitarianism cannot accommodate belief in fundamental moral rights—for example, rights to live one's own life in pursuit of one's own ends or to be free of interferences by others. Nor, it seems, can it accommodate the mutual advantage norm that condemns advancing the ends of some by inflicting losses on others. Classic utilitarianism, then, seems incapable of supplying the moral protection for individuals and individualism that is at the core of the libertarian impulse (Mack 2018, pp. 27–29).

Perhaps, however, some significant modification of classic utilitarianism can provide a foundation for libertarian conclusions. Classic utilitarianism's characterization of how individuals should decide which action to perform presupposes incredibly detailed knowledge about the future. The rejection of this deep epistemic presupposition may itself radically change the face of utilitarianism. Indeed, at the core of Mill's own attempt in *On Liberty* ([1859] 1987) to defend principled liberty of thought and expression is the view that autarkic truth-seeking is highly fallible. Effective truth-seeking requires the cooperative process of open-minded debate, and that cooperative process requires that each be free to think for oneself and to express one's conclusions and reasons vigorously (Mack 2018, pp. 29–34).

Similarly, Hayek's Millian case for economic freedom in *The Constitution of Liberty* rests substantially on the idea that the trial and error process of economic competition discloses information that central planners falsely presume they already have. Since freedom to dispose of one's property as one sees fit is essential to this discovery process, that freedom must be respected even when we do not see in particular cases how its exercise will promote optimal results. In both Mill's *On Liberty* and Hayek's *The Constitution of Liberty*, desirable results must be pursued indirectly by means of strict compliance with norms of liberty. On balance, we have more reason to trust freedom to produce desirable results than to trust a policy of deciding on a case-by-case basis which particular actions will have the best effects.

Two further modifications yield an indirect utilitarianism that is much closer to—indeed, that seems to revert back to—the cooperation-to-mutual-advantage approach that one finds in Hume

and in Hayek's *Law, Legislation, and Liberty*. Both of these modifications are already present in Herbert Spencer's *Social Statics* (Mack 2018, pp. 35–37). The first is the individualization of happiness (or well-being). Happiness (or well-being) is not one homogenous thing that will obtain to different degrees in the lives of different people. Rather, because individuals differ in their faculties, aspirations, and values, the happiness (or well-being) that one person may achieve will be qualitatively different from the happiness that another person may achieve. There are many competing conceptions of happiness, and there is no standard by which to weigh units of one conception of happiness against units of another conception. To paraphrase Nozick again, no moral balancing act can take place among these diverse conceptions of happiness. Hence, the aggregation of units of happiness (and misery) which struck Bentham and Mill as the essential starting point for moral and political theorizing turns out to be impossible.

From this follows the second modification proposed by Spencer. This is that no social transformation can count as an increase in the general happiness unless that transformation involves an increase in happiness for each individual as judged by that individual's own conception of happiness—or, at least, some must gain in their happiness without any others suffering a loss in their happiness. All this is the basis of Spencer's claim that the only rational way for the general happiness to be pursued is the indirect route of steadfastly respecting each individual's equal freedom. Such respect enables each to pursue one's happiness as one conceives it in one's own chosen way.

The contemporary libertarian-leaning theorist who tends to describe himself as an indirect utilitarian (or indirect consequentialist) and whose views are described in *Libertarianism* is David Schmidtz (Mack 2018, online chapter, pp. 27–36). Despite that self-description, I suggest that Schmidtz's approach, like Spencer's and Hayek's, is a species of the cooperation-to-mutual-advantage strand within libertarian thought. Schmidtz joins Spencer and Hayek in emphasizing the crucial roles of individual liberty, property, and contract in creating a social environment in which individuals have the opportunity and the incentive to live at peace and in productive relationships with others. However, Schmidtz has a more complex and capacious view of justice than Spencer or Hayek (or Nozick) does.

According to Schmidtz, justice includes the elements of desert, reciprocity, equality, and need. Still, each of these distinct elements needs to be interpreted in ways that enable “people to live together in mutually respectful peace” (2006, p. 79). So, for example, it is reasonable to ascribe desert to those who have taken advantage of the opportunities presented to them because such an ascription of desert “empowers people to use their opportunities well, thereby helping to live well together” (2006, p. 55). The function of each of the diverse elements of justice is to enable society “to become and remain a cooperative venture for mutual advantage” (2006, p. 79).

However, ultimately, a regime of mutual advantage depends upon our believing that some things may not be done to individuals no matter what benefits might arise for others through our doing those things.⁵ As Schmidtz puts it, “There is enormous utility in being able to treat certain parameters as settled, as not even permitting case by case utilitarian reasoning” (2006, p. 171). The desirable social outcome of mutual advantage itself requires us to believe that “justice is about respecting the separateness of persons” (Schmidtz 2006, p. 176).

We have seen that Hayek finds it necessary to the attainment of the good consequences that he seeks to insist that respect for freedom trumps consequentialist calculation. Here, we see that Schmidtz finds it necessary for society “to become and remain a cooperative venture to mutual advantage” to insist, as Nozick does at the beginning of *Anarchy, State, and Utopia*, that “individuals have rights, and there are things no person or group may do to them (without violating their rights)” (1974, p. ix).

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⁵ See the last paragraph of section 2.

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