

LEARNING FROM LIBERTARIANISM:
THANKS FROM AN UNREPENTANT SOCIAL DEMOCRAT

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Like many, probably most political philosophers, I support laws that would substantially reduce economic inequalities that capitalism otherwise creates and would not dream of describing myself as a libertarian. Yet I will argue that libertarians have had important lessons to teach the likes of us. These lessons are deep. They ought to transform our typical premises and projects, even though they need not transform us into libertarians.

The nature and scope of these lessons is obscured by difficulties in categorizing the typical outlook of those with much to learn. "Egalitarian" is sometimes used to evoke our most pervasive common feature. But like all labels in political philosophy, including "libertarian," "egalitarian" threatens to be either parodic or soporific. Few philosophers who would accept the label are levellers with a goal of economic equality, yet treatment of people as equals is not a distinctive philosophical stance. Most philosophers who would not dream of calling themselves "libertarian" think that protection of the most important liberties is the most important political goal. They do not accord all freedoms this special status, especially in the economic realm, but few self-described libertarians are defenders of freedom from all interference with self-advancement that does not interfere. (For example, few libertarians complain of taxation to fund fire departments and the construction and maintenance of highways.) Yet the importance of libertarianism for non-libertarians is not just as a source of criticisms of this or that individual political philosopher. Political philosophers are a very contentious bunch, directing many non-libertarian criticisms at every non-libertarian.

The best way to make clear the importance of learning from libertarianism is to make the target of instruction political as well as philosophical. Most philosophers who would not dream of calling themselves libertarian seek to provide moral foundations that would sustain a familiar political program whose least misleading label is probably "social democracy." After briefly describing this program in, I hope, boringly familiar terms, I will describe important lessons that philosophical social democrats should learn from libertarians. Libertarians have demolished the foundations in fairness for social democracy that philosophical social democrats have tried to construct. They have rightly emphasized the inherent value of forms of commercial self-advancement that philosophical social democrats have typically regarded as, at most, instrumentally important. Libertarians have correctly insisted that economic justice has no pattern. While all of these lessons can be absorbed by social democrats, the infusion makes a difference to their goals of economic justice; it does not just evoke new arguments for old prescriptions.

Granted, if all these lessons can be absorbed by social democracy, that is a reason for libertarians to consider becoming social democrats, or, in any case, to base opposition to social democracy on empirical criticisms of efficacy, not moral characterizations of what constitutes oppression. For libertarianism has distinctive problems of its own. The outcome of social democrats' learning from libertarianism might, then, be reconciliation, in which each side has reason to be grateful to the other.

Social Democrats and Libertarians

The audience for the libertarian lessons that I will describe are philosophers who share (and share with many millions of non-philosophers) a political perspective with the following elements, which often lead to the complaint, "There is too much economic inequality in my

country." While not opposed to a market-based economy, they support political measures to improve people's lives that would substantially reduce economic inequalities that capitalist enterprise would otherwise create. While the improvement that they seek includes help for those who are poor, they think that many others, who are not poor, should also be helped to meet a variety of needs, through measures that reduce the income of the best-off in their societies. For example, along with anti-poverty programs and assurance to the poor of care for severe illness, they want government to provide extensive access to educational and cultural resources and assurance to all of adequate care for illness in general. They want policies for taxation and growth that give strong preference to the income of those who are not rich over those who are. They believe that these measures would be enacted if their fellow-citizens were well-informed and fulfilled their political duties.

People with this shared political perspective identify themselves through a variety of labels. In the United States, they call themselves "liberals" or "progressives." Elsewhere, they may call themselves "social democrats" or "socialists." Since "liberal" evokes a very different outlook outside of North America, "progressive" claims a presumptuous title to the way forward, and "socialist" evokes obsolete critiques of capitalism, "social democrat" is the least misleading name.

Social democrats seek to use the state to help some people by means that require taking from others. The help that they seek ranges far and wide among sources of well-being. This use of the state is morally wrong unless it is impartial: it is wrong to force people to contribute to an endeavor in which they count for less than others. So, on philosophical reflection, the general goal of social democrats, in matters of domestic economic justice, ought to be, at least to a first approximation, the impartial promotion of the wellbeing of members of their society. Taking the

failure of utilitarianism as a lesson already learned from powerful critics including both Rawls and Nozick, a philosophical social democrat should regard this endeavor of impartial political promotion of wellbeing as appropriately monitored by some version of Rawls' original position. A variant of the original position of representatives that Rawls came to favor after *A Theory of Justice*¹ is well-suited to this task : A system of laws and policies that shapes people's lives throughout a society is relevantly impartial if one would choose it if one sought to advance the wellbeing of someone for whom one is responsible, among those who will be affected, but did not know who this is.

Of course, the general aspiration to laws that impartially promote wellbeing might not be effectively pursued by the social democratic political program. Its uses of the state might be pervasively self-defeating. This dependence on empirical facts is nothing to be ashamed of. To the contrary: only fanatics base political programs on moral principles alone. At the same time, in the division of labor that advances principled political argument, the philosophers whom I have just described have the distinctive task of finding sound moral foundations for social democracy, moral principles that yield social democracy when combined with empirically warranted claims about efficacy. So, they should be on the lookout for productive challenges from partisans of moral principles different from their own.

The challenges whose productivity I will celebrate come from libertarians. Who are they? In answering this question, one can take advantage of the universal view that Robert Nozick was a libertarian when he wrote *Anarchy, State and Utopia*. At the start of his book, he summarized his stance as the view that any state that goes beyond "the narrow functions of protection against force, theft, fraud, enforcement of contracts, and so on ... will violate persons' rights not to be forced to do certain things, and is unjustified."² Unfortunately, "and so on" is vague and the

measurement of functions as "narrow" depends on shifting terms of political and philosophical combat. Many of those who regard themselves as libertarians and look to *Anarchy, State and Utopia* as a central source of insight would locate in that "so on" tax-funded endeavors, overcoming public goods problems and coping with externalities and constraints on information, foresight and coordination, that include fire protection, the construction and maintenance of highways, and elementary education, as well as regulation including patent-protection and limits to liability for unpaid debts. The distinctive feature of the activities that they support, shared with those that Nozick names, is that these general endeavors advance the self-chosen projects of some and have expected net lifetime costs for no one, on account of their expected benefits. (The absence of net costs for anyone, despite the imposition of some costs, is also the feature to which Nozick himself appeals in justifying the state that he countenances in the face of anarchist objections.) The crucial contrast with the general aspiration of social democracy is the "noteworthy implication" that Nozick immediately presents: "the state may not use its coercive apparatus for the purpose of getting some citizens to aid others." Someone who accepts this much breadth to Nozick's "and so on" will have a corresponding understanding of economic entitlement: holdings that result from noncoercive work, nonfraudulent exchange and voluntary transfer ought not to be interfered with in ways that can be expected to impose net costs on some who advance themselves through those processes.

Someone who endorses these views of just political coercion and morally protected self-advancement, for reasons that do not depend on empirical beliefs about further beneficent consequences, should be regarded as a libertarian. Since nothing is gained by stringent definitions of affiliation (least of all from someone who would not dream of affiliating), I will

also include those who regard these views as much closer to the truth than current rival perspectives and derive insight from them to criticize those perspectives.

Lesson 1: The Limits of Fairness

Few philosophical social democrats think that there is a general duty to choose as one would from a standpoint of impartial concern for everyone. Yet they have a political program based on impartial political concern and ask fellow-citizens to join them as a matter of moral duty. What could be the grounds for this moral appeal? The reasons that they give have been reasons of fairness, presented or prefigured by Rawls in *A Theory of Justice*, where he labeled his theory "justice as fairness." Libertarians' criticisms of those reasons, presented or prefigured by Nozick in *Anarchy, State and Utopia*, have created cracks in these foundations for social democracy that have not been repaired.

It might seem that the requirement of impartiality in what a government does is all that is needed to sustain a requirement that political choice express impartial concern. But that quick inference would show a misunderstanding of the limits to the proper functions of government at the core of libertarianism. Within its proper sphere, government should be impartial. But what is this proper sphere? The issue is whether people have a duty to support the extension of political coercion beyond endeavors that improve the lives of some with no significant risk of imposing net lifetime costs on others, into the endeavor of impartial political provision of help that does impose a significant risk of net lifetime costs on some. A rationale is needed for this further step, a rationale that a cluster of considerations that stand behind the label "justice as fairness" seek to provide.

One rationale, suggested by several passages in *A Theory of Justice*, is that those who benefit from undeserved advantages, such as birth in a favorable situation, must ignore those benefits when they consider whether laws conforming to proposed distributive standards would

treat them justly.³ But it does not seem that people do something wrong in making good use of undeserved advantages so long as those advantages are not wrongly obtained. Why, then, should they ignore these benefits in considering whether laws treat them justly?⁴

Another rationale is suggested by Rawls' claim that reliance on the original position reconciles the imposition of a basic structure with the autonomy of those on whom it is imposed, so that "society ... comes as close as a society can to being a voluntary scheme."⁵ Developing this theme, those who join Rawls in refusing to extrapolate his account of justice beyond national borders have emphasized the special moral challenge posed by political coercion.⁶ The corresponding rationale would be: political coercion is unjust unless it has an adequate justification to those subject to it; the justification must be based on a standard for judging the total system of laws that each would choose as best promoting his or her interests as a whole in the course of his or her life if ignorant of the special features of those interests. But the need for impartiality in laws that are justified despite their coerciveness does not obviously require a general commitment to use government to impartially advance every citizen's interests as a whole. Laws protecting against theft, fraud, murder and rape should be financed and administered impartially. But why should those on whom the laws are imposed take on further projects of redistribution?⁷

Another rationale appeals to everyone's profound dependence on a shared system of social cooperation. Since each would have hardly anything in the absence of a shared cooperative scheme, the right framework (the argument goes) must distribute benefits in a way that each would choose in seeking to advance his or her life-prospects as a whole without knowing his or her actual advantages under the current scheme.⁸ However, the profound extent to which each of us depends on others' initiatives in production and exchange (including the contributions of the long-dead) would seem to be appropriately acknowledged through participation in production and exchange,

helping to continue progress without insisting on impartial distribution.⁹ People invest their own energy, initiative and ingenuity and take their own risks in making use of the facilities they share in order to advance their legitimate goals. If the facilities are fully and fairly paid for, why do the more successful users have an obligation -- indeed, an enforceable obligation -- to give up gains to help those with less?

The difficulties that I have described also challenge luck egalitarianism and Ronald Dworkin's conception of the sovereign virtue of economic equality. A philosophical social democrat might hope that these cracks in the standard foundations in fairness of social democracy will be patched up. But this project of repair has not gotten very far in the course of four decades. Alternatively, she might concede that there is no duty of fairness to support the impartial political promotion of wellbeing. Indeed, she might concede that not everyone has a duty to support this endeavor (a concession that I will recommend). These concessions will transform the standard moral foundations for social democracy, but will not, by themselves, force abandonment of the program as one conscientious political choice. However, if that political program is wrong, unjustly oppressive, the social democrat must abandon it. Libertarians think that social democrats are unwitting oppressors because of their intrusions on property rights. Here too, they have much to teach, even if the intended lesson is too harsh.

Lesson 2: Protecting Self-Reliance

Libertarians insist that it is wrong to take what someone has acquired through non-coercive, non-deceptive activities in order to help others, even if the resulting holdings are morally preferable. Social democrats should accept that such taking can be wrong. The mere fact that Friday's taking yams and dried fish from Crusoe's hut would lead to a better set of holdings (say, because Friday has a young child to take care of) does not make the taking all right.

Granted, that taking benefits of free enterprise to help others is sometimes wrong does not entail that it is always wrong. That extreme claim has always been a burden for libertarianism. If Friday Junior is drowning and Crusoe refuses to let Friday toss a life preserver that he uses to ornament his hut toward the drowning child, since the waves might carry it off, it does not seem that Friday does wrong in taking and tossing. But social democrats cannot exclusively rely on convictions about such extreme cases. The program they support takes from some to help others to avoid deprivations that are not dire, such as merely uncomfortable illness and lack of affordable access to advanced education. If this were not so, they would be ordinary conservatives, not social democrats.

In general, because of the breadth of the needs it serves, political reliance on impartial concern evokes the specter of an intrusive Nanny State, using the threat of forcible confinement to take from some to help others without proper regard for property rights. A partisan of social democracy has to absorb the libertarian lesson that property rights matter apart from beneficial effects on holdings without introducing constraints that rule out social democracy. This need is the second major challenge from which philosophical social democrats must learn. Nozick says as much in a footnote to his most celebrated example, the fable of Wilt Chamberlain, where he notes that "here and elsewhere ..., a theory which incorporates elements of pure procedural justice might find what I say acceptable, *if* kept in its proper place," but challenges theorists who would regulate the social consequences of free enterprise to justify their mixture of protections for free enterprise and constraints on its social outcome.¹⁰

In fact, respect for property rights is essential to, not in tension with, impartial concern for persons. A Nanny State that takes greater material need to be enough to dictate transfers to

those in greater need is negligent, not aggressively tender-hearted, blithely ignoring the need for self-reliance.

If I am concerned for someone, if I want her life to go well, I must be concerned that she form worthwhile goals, including long-term goals, expressing what she cares about in life, and that she pursue them through her own efforts, with sufficient success that these personal goals give point and value to her choices. This object of concern is what I mean by the need for self-reliance. Indifference as to whether people are helped to get ahead by hand-outs or by their own efforts shows contempt for them, not concern.

Of course, acquiring what one has in the right way is not the whole story of well-being. Concern for people is also a desire that they have access to a variety of successes in living, for example, the enjoyment, development and expression of personal affection and friendship; inquiry whose complexity, content and demands suits their curiosity, interests, temperament and capacity for learning; meaningful work and reciprocation for others' contributions in cooperation; the fulfillment of responsibilities that grow with growing capacities; the enjoyment of beauty; having fun. These and other aspects of living well have independent value, sometimes overriding self-reliance. If someone resolves never to go to a publicly subsidized museum because of the loss of self-reliance, he has turned an important aspect of well-being into an obsession. A similar qualification about balance applies to any dimension of well-being. Just as the obsessive independent impoverishes his life by rejecting all help, the good-for-nothing who only cares about having fun without seeking to achieve anything, the lazy aesthete who relishes high culture without caring about doing anything in return for what she relishes and the workaholic who can only engage with his work lead lives that are worse because they are ill-balanced.

For most of us, these judgments of what lives are better or worse are among our most secure convictions. Of course, diverse sets of emphases are good, and no one's combination is perfect, because of tensions among the dimensions of wellbeing (accomplishment and having fun, for example). Appreciation of the diversity of both dimensions of wellbeing and of emphases among them in well-balanced lives will inform the choices of representatives in the original position of impartial concern.

Because self-reliance is an important need, the political expression of impartial concern favors a system of property rights. People only have access to lives shaped by their self-reliant pursuit of goals through which they express their temperaments and interests if they have a secure expectation that resources they could acquire through a broad range of activities that do not intrude on others' self-advancement will be available to them to pursue those goals, including goals involving long-term plans. Without this protection, they must be overly dependent on others to advance their interests, devote themselves to defensive maneuvers or confine themselves to a limited range of activities which may not reflect their temperaments, interests and talents.

The property rights expressing due concern for self-reliance will not protect retention of all results of non-coercive production and voluntary non-fraudulent exchange from all taxation to help others. Anyone can pursue a suitably wide range of suitably self-expressive worthwhile goals despite knowledge that some portion of the gains from work and contract will be taken for use in public causes. Still, outside of isolated and extreme emergencies, taking the results of free enterprise must be done through laws, not freelance taking, with its tendency to destroy long-term plans, dictate self-defense and replace aspiration with rational anxiety. When laws are the basis of taking from some to help others, this must be justifiable as an impartial way of

advancing needs other than self-reliance that are sufficiently serious that well-being is promoted despite the reduction of self-reliance. Moreover, there must be strong reluctance to suddenly, sharply increase the legally required transfers, since uncertainty concerning such incursion makes it hard to pursue long-term plans.

Impartial political concern is, similarly, supportive of, not in tension with, other rights and liberties, including those that both libertarians and social democrats seek to protect. For example, if one cannot openly express what one thinks or feels or must do so in the face of publicly endorsed contempt, this stifling and exclusion profoundly worsen one's life. No one who properly values her life would put protection of these aspects of her life in jeopardy for mere material gains; so a representative in the relevant original position would not make this gamble, either. The protection would be especially stringent and absolute in spheres that are central to a self-directed life such as religion and intimate relations among consenting adults.

Despite its similarity to Rawls' reliance on morally justified "fundamental interests" in his later years, this moral foundation for social democracy is not "political-liberal," since it relies on assessments of ways of living as worthwhile and appropriately balanced. These assessments are part of impartial concern for persons. Perhaps they are not needed for justice as fairness, but that foundation for social democracy seems best abandoned in the face of libertarian attacks. This does not mean that people should steer others toward better ways of life through criminal penalties or should support the public branding of ways of life as inferior just because the rating is correct. These activities typically worsen lives by thwarting important needs for self-development and inclusion. But due concern for these needs does not paralyze other concerns. For example, support for education that depends on valuing insightful enjoyment of cultural achievements or a preference for improving opportunities over increasing transfer payments can

justifiably, to some extent, marginalize people who do not care about culture or contribution, weakening inclusion in order to avoid sufficiently serious non-fulfillment of other important needs. -- While this perfectionism will not be welcomed by libertarians, philosophical social democrats should be grateful to them for revealing its presence in the moral foundation with the greatest promise of surviving libertarian criticisms.

In exorcising the specter of the Nanny State, I have sketched an argument that the politics of impartial concern wrongs no one, but rather supports appropriate restrictions of what a government may do to its citizens. But the fact that impartial political concern for people's wellbeing is morally legitimate, in this sense, does not entail that a morally conscientious citizen has a duty to support it. Other choices (perhaps including the minimal state or protection of civil and political liberties supplemented by a low safety net) could be morally permissible on her part, even if the different dictates of impartial concern are a morally permissible choice as well. "Justice as fairness" might have filled this gap, through appeal to a duty to treat others fairly. But the first lesson from libertarianism, the critique of "justice as fairness," stands in the way of this appeal. Haunted by the apparent failure of the foundations in fairness, social democrats have to ask whether they can continue, in good faith, to invite people to join their movement as a matter of moral duty. Perhaps self-interest is their only positive appeal.

This conclusion would not merely be disheartening in itself. It would cast in doubt the claim that the goals and demands of social democracy would be the outcome of impartial political concern. If social democracy achieves majority support, as its democratic aspiration requires, the minority who do not share the dominant interests would be excluded from significant political argument, a harm of exclusion that worsens their lives. For those in the dominant coalition of interests, political life would have less value because it strives for the

imposition of laws on people with no reason to actively support them. While there is nothing incoherent in an appeal to shared interests among some which is qualified by a commitment to political impartiality toward all, this is, in practice, an unstable combination, encouraging pork-barrel politics in which competing interest groups strive for favoritism. From the perspective of impartial concern, such costs in the coarsening of political life could be justified by dramatic gains in liberation from poverty. But the broader aspirations of social democracy, extending well beyond relief from poverty, are seriously threatened if they would entail these costs.

Taking the defeat of justice as fairness to heart, social democrats can still base their movement on a moral appeal. Even though impartial beneficence is not a general dictate of morality, one ought to be concerned for others. A general principle of concern along the following lines would express appreciation of the equal moral worth of all: Everyone's underlying concern for others ought to be sufficiently great that greater concern would impose a significant risk of worsening his or her life, if he or she fulfilled all further responsibilities; but apart from special relationships or interactions it does not have to be more demanding than this. By "a significant risk of worsening one's life," I mean a nontrivial chance that one's life as a whole will be worse than it would otherwise be. What is jeopardized is one's ability to pursue enjoyably and well worthwhile goals with which one intelligently identifies and from which one cannot readily detach. Neither the goal of concern nor the proviso about non-worsening requires prevention or avoidance of every loss that might otherwise be encountered, regardless of scale. Ordinary rain on an ordinary picnic does not produce a worse life than a sunny stretch. (Those who disagree on the grounds that the rain makes a picnicker's life worse but not significantly should understand all relevant sentences in this essay as implicitly including their adverb.)¹¹

Suppose that social democrats are right in their indispensable empirical claim that their program will, impartially, advance wellbeing. (Since self-reliance is an aspect of wellbeing and inadequately justified coercion reduces wellbeing, their program must, then, substantially improve on self-help and private charity.) Suppose, too, as I have argued, that such a political endeavor of social democracy does not wrong anyone by intruding on her rights to be left alone. Then, a moderate principle of concern such as I have sketched creates a duty to support social democracy among those who satisfy the non-worsening clause.

These will include people who can expect sufficient benefits from social democracy (as opposed to other impartial political programs) that they can expect no net lifetime costs from this program. In addition, there are many well-off people, with considerable resources for self-help, who can expect net lifetime costs, but not costs that make their lives worse. Going to less wonderful restaurants, drinking less wonderful wines, and buying fewer antiques makes a way of living less expensive, but it does not follow that it makes a life worse. Granted, well-being requires commitment to specific goals, expressing and shaping one's identity and guiding one's choices, in attachments whose disruption can worsen one's life. Social democrats can and should reduce this disruption among those attached to worthwhile expensive goals through gradualism, which the proper valuing of self-reliance in any case requires. Further reducing the extent of such disruption, they can and should support policies that channel gains from increased productivity to those with more significant unmet needs, avoiding the production of new attachments to expensive goals through use of these gains by the best off.

At least in developed countries, this circle of shared concern and duty would include the vast majority, if social democracy impartially promotes wellbeing. Since those in the minority with too much to lose are not wronged (or so I have argued), they should yield without resentful

to a vast social democratic majority, who are pursuing a legitimate political goal in response to relevant reasons and compelling moral demands. Indeed, it would be rational for someone in such a minority to embrace social democracy as a personal commitment, sufficiently important to him that the sacrifices its success entails do not worsen his life. In this way, he would overcome pointless political loneliness, converting reluctant sacrifices into sources of pride.

There may be countries in which the majority have no duty of concern to support social democracy, because of a significant risk that their lives will be worsened. (These might be people living on the coast of a country with an impoverished inland province.) Still, if social democracy has the moral legitimacy for which I have argued, someone in this majority has a duty of concern to support measures that promote wellbeing, beyond what self-help and private charity accomplish, to some extent – an extent that does not impose a significant risk of worsening her life. So, if social democracy accurately expresses impartial political concern for wellbeing, an appeal to moral duty can still sustain democratic movement in the direction of social democracy, partly implementing impartial political concern for wellbeing. Combined with economic progress, which reduces the impact of taxation on the lives of those forced to help and reduces the extent and urgency of needs for help, this movement will eventually widen the circle of duty-bound support for social democracy to include the vast majority.

Like the establishment of fundamental respect for property rights, this response to libertarian criticisms is not simply a means of fending off the criticisms. Philosophical social democrats have tended to dismiss significant economic losses to the more advantaged as of no moral significance when they are necessary for improving the life-prospects of the least advantaged. For example, Rawls writes "... [I]f we give any weight to the more advantaged, we are valuing for their own sake the gains to those already more favored by natural and social

contingencies. ... [S]o to maximize a weighted mean [in which the expectations of the more advantaged have some weight though less than those of the less advantaged] is, so to speak, to favor the more fortunate twice over," favoritism that he rejects as unfair.¹² Libertarians have insisted, to the contrary, that economic losses imposed on the advantaged are morally important, regardless of gains to the worst-off. Due credit for what libertarians have to teach about property rights and fairness leads to acceptance of this claim, even if its consequences are less prohibitive than libertarians suppose.

Lesson Three: Value (Non-Exploitive) Capitalism

Social democrats are not Marxists. They believe that some form of capitalism is preferable to any feasible form of non-capitalism. In particular, they think that some form of capitalism is preferable to state socialism, which does a worse job of delivering goods to those who need them and is a bad basis for democracy. In all of this, philosophical social democrats agree with libertarians. But the terms in which capitalism is endorsed tend to be very different, and not just because different forms of capitalism are approved. Philosophical social democrats rarely celebrate commerce, including the buying and selling of labor, as an inherently valuable human relationship. While appreciating that Marx's proposal for replacing capitalism failed, they are often receptive to his writings as a source of moral insight. In particular, they are often receptive to the assessment of the buying and selling of labor under capitalism as exploitive in typical cases, not just in the cases of extreme misery and drudgery that are atypical in advanced capitalist economies. For their part, libertarians regard capitalist commerce as a relationship that merits protection apart from its special capacity to deliver the goods and sustain democracy. They celebrate capitalism as an economic way of life.

I believe that merely instrumental endorsement of capitalist commerce (which can seem tinged with old-fashioned aristocrats' disdain for those in trade) is inadequate. Social democrats should endorse capitalist commerce as a valuable relationship of mutual help, to the extent to which what each party gains reflects the desirability of what each party offers. In addition to properly valuing a form of success that people are rightly proud of, learning this lesson from libertarianism helps to extract a grain of truth from the critique of capitalist exploitation. In contrast to gains from commerce as mutual help, gains from unequal bargaining power are nothing to be proud of. Yet they are a typical (though not universal) feature of the buying and selling of labor. The contrast between the value of the one form of activity and the lack of value of the other should play a role in political choice. In this way, learning a lesson from libertarianism helps in learning a lesson from Marxism, a lesson that yields criticisms of actual capitalism that are stalwartly bourgeois.

As usual in the moral scrutiny of economic relationships, *The Wealth of Nations* is a good place to begin. In his celebration of the virtues of "the propensity to truck, barter, and exchange one thing for another," Adam Smith notes that it answers to everyone's need at all times "in civilized society ... of the cooperation and assistance of great multitudes."¹³ Commerce is a way to gain help from a great many people by offering help, transcending the necessarily narrow circle of genuine friendship, without seeking strangers' benevolent attention to one's needs. "Give me that which I want, and you shall have this that you want," which Smith describes as "the meaning of every such offer"¹⁴ is not a token of love or friendship. But it expresses a valuable relationship of economic interdependence, in which people sustain reciprocity while minding their own business, rather than cluttering their lives with constant inquiries into others' needs and constant efforts to gain others' benevolent attention.

The realization that commerce, including the purchase of labor, can be a valuable form of mutual aid is quite compatible with another thought, implicit in Smith's discussion of actual wage bargains, that gaining from commerce can lack inherent value and increase the burdens of others' deficiencies to the extent to which it derives from others' inferior bargaining power. By "inferior bargaining power," I mean lesser ability than another with whom one engages in selling or buying to use this process to advance one's interests, lesser ability that is not due to the other's degree of interest in what one offers. To the extent that someone gains from superior bargaining power, his benefit from exchange with another does not depend on how much he helps her achieve her goals but on her lesser capability as an exchanger to convert help to him to help by him.

In his discussion of labor markets, Smith argues that "masters" are typically superior to "workmen" in this way, on account of greater time pressure on workmen to reach an agreement, and lesser competitive pressure on masters.¹⁵ Indeed, his praise of economic regimes is largely based on their tendency to reduce these advantages, without eliminating them, by creating strong incentives to expand employment. While he sometimes notes the impact of measures that do not burden workers now, such as legal prohibitions of strikes, his basic argument is plausible today.

A modern version of Smith's argument might begin with such facts as these. Apart from managers, professionals and highly skilled workers, most of those who work or seek work in every capitalist economy have few reserves of liquid financial assets, not enough to live on for a substantial period of time. Labor market studies consistently report that in normal circumstances "vacancy rates are low, that there are typically many applicants for vacancies, and that average vacancy durations are very short (particularly in comparison with the duration of spells of unemployment.)"¹⁶ The market entry that could create countervailing competitive pressure on the

employers' side is pervasively limited by insiders' advantages such as innovations based on proprietary information (often protected by patents), established reputations (often based on brand names), a secure network of suppliers and distributors, economies of scale, and risks of entering a market when investments in production facilities can only be liquidated at a substantial loss in case of failure.

Suppose that a case can be made for the modern prevalence of the sort of inequality of bargaining power that Smith discerned in typical labor markets in Britain in his time.¹⁷ What would be the moral consequence? While deriving benefit from another's inferior bargaining power is nothing to be proud of, neither does it seem wrong, as such, even when the role of superior bargaining power is clear. A snow plow operator who cruises highways in a newly settled tract in Alaska, extracting higher fees on account of the absence of competition, will do wrong if he charges very burdensome fees for uncostly rescues or leaves people in misery if they cannot afford his normal charge. But these are wrongs of callousness. If he avoids them, his mere profit from superior bargaining power does not seem wrong.¹⁸

Still, the contrast between gaining from superior bargaining power and the mutual self-advancement that Smith celebrates makes a moral difference. It makes a moral difference in the assessment of laws. Suppose that a law has been passed through appropriate procedures and that it takes due care to avoid unpredictable disruption. Someone's protest, "But this will make it harder for me to get ahead by providing others with what they want," deserves consideration as a relevant complaint. In contrast, someone's protest, "But this will make it harder for me to benefit from others' inferior bargaining power" seems absurdly inappropriate, like the complaint against a law requiring labels that identify ingredients, "This will make it harder for me to benefit from people's ignorance"

If the Smithian claim about labor markets is right, then Smith's implicit distinction between two forms of commerce can help to justify laws protecting labor union organizing and strengthening labor unions' power. While these laws impede non-coercive, non-fraudulent self-advancement by employers, what would be impeded is benefitting from bargaining superiority, an activity with no inherent value which increases the burdens of deficiencies rather than helping to relieve them. Similarly, arguments for a tax-and-transfer policy will be stronger if it transfers gains from superior bargaining power. For example, if the disproportionate economic gains of the top one percent in the United States in recent decades and the vastly disproportionate gains of the top tenth of one percent are due to bargaining advantages (such as collusion with like-minded boards of directors at the very top), the case for redistribution is strengthened, just as critics of the New Gilded Age suppose. This devaluing of gains from bargaining superiority moves far beyond criticisms of "corporate welfare" that libertarians press. But like the libertarian criticisms, it depends on a contrast with thoroughly capitalist commercial activities deserving respect, respect that is not as deep as it should be among many philosophical social democrats.

Lesson Four: Justice Has No Pattern

Most philosophical social democrats agree with libertarians that utilitarianism is wrong and that justice is not a maximizing project. Most of this majority seem to think that economic justice is, instead, shaped in its major features by a distributive principle, i.e., a determinate general principle regulating differences in benefits from economic activity throughout any society as a whole. They use "distributive justice" as an equivalent of "economic justice." Their major internal controversies concern the right pattern for the crucial distribution and the nature of what the pattern regulates. In contrast, libertarians deny that economic justice has any distributive pattern.

The question of what the distributive pattern ought to be has been a source of endless controversy among philosophical social democrats. Large gaps in their focal text, *A Theory of Justice*, were signs of troubles to come. There, distributive justice is regulated by two principles, to be realized so far as a prior principle of civil and political liberty allows. The first principle of economic justice, which has absolute priority over the second, requires fair equality of opportunity, which, Rawls writes, demands that "In all sectors of society there should be roughly equal prospects of culture and achievement for everyone similarly motivated and endowed."¹⁹ The permissible range of this roughness is not further specified, and the priority is asserted without significant justification. The second principle, regulating "in the first approximation ... the distribution of income and wealth",²⁰ is introduced as requiring an equal distribution unless inequality is to everyone's advantage. But this principle, the difference principle (the center of attention despite its secondary standing), turns out to be an injunction to "maximize the welfare of the worst off representative" individual, going up the ladder in maximization so far as maximization in the lower rungs allows.²¹ While much depends on how the worst off representative individual is specified, Rawls only offers two tentative alternative specifications, confessing, "Any procedure [for setting a reasonable social minimum] is bound to be somewhat ad hoc."²²

This reticent open-mindedness was a great virtue of Rawls, entirely appropriate in the pioneering endeavors of a great book. But in the decades since, his sketch has not become an adequate pattern. Improving opportunities afforded by education and early environment has special importance in the impartial promotion of wellbeing, because of the importance of self-reliance. But no lexically prior principle of equal opportunity seems appropriate. The commitment of labor-time, skills and facilities to education can divert too much from other

forms of provision and sources of self-advancement, and can create skills too far in excess of employment opportunities. At the same time, the proper valuing of relations among family, neighbors and friends limits the governmental shaping of childhood environments. Concerning the question of "how to specify and weight the opportunity principle," Rawls himself eventually acknowledged, "I do not know what is best here and simply register my uncertainty."²³

If they turn to the difference principle as a source of guidance, social democrats have to make a principled choice among different worst-off groups whose typical members are to count as the worst-off representative individual, and there is no principled choice. If this is a small group burdened by a combination of stringent disadvantages, these disadvantages (say, of upbringing, neighborhood and social networks) may be sufficiently resistant to improvement of lifetime income and wealth that enacting laws and policies that maximize income and wealth among the worst off is a project that would be rejected from an impartial point of view. People in the rest of society may have too much to lose. Maximizing the income and wealth typical of a larger group, say, those with no more than unskilled workers, would not be as difficult. But perhaps not enough would be done, from the standpoint of impartial concern, for those in a smaller worst-off group.

Rawls' principles are not the only proposed distributive pattern. But the newer patterns have problems of their own. One tendency, to the left of Rawls, proposes that an extreme version of equality of opportunity is the central principle of economic justice, a principle requiring maximization of access to advantage of those with inferior brute luck. The apparent injunction to transfer cheering resources from cheerful people to somewhat grumpy people and the apparent approval of neglect of those who suffer from bad choices for which they are responsible strike many philosophical social democrats as defects in this pattern. Many worry that the elimination

by political means of inferiority in brute luck (including the brute luck of early upbringing) could be excessively intrusive. To cope with such liabilities, first-person prerogatives are typically allowed, deprivation resulting from freely chosen options is accepted as a reason to help, and a possible need to restrict luck equalization in the name of liberty is admitted.²⁴ But nothing is done to show that the favored pattern of equality is of central importance once these and other considerations are given their proper scope.

In search of a more plausible pattern, some propose that equality of status is the hallmark of economic justice.²⁵ But this seems to entail that working people and their children need not be helped by government programs to have access to culture, interesting leisure, lessened physical discomfort and work-lives suiting their temperaments and aptitudes if deficiencies do not lead to condescension by the better off or expectations of servile deference. This thought is ill-suited to social democracy. Of course, the grit of those who work hard and do not earn much merits admiration, not condescension, but the currency of such appreciation would not make worries about how little they earn, how hard they work and the difficulties of change for themselves and for their children irrelevant to political choice.

The continuing search for the pattern that shapes economic justice is due, in part, to the attempt to base social democracy on fairness. In Nozick's quip, those rationales often treat benefits due to traits that no one deserves or to legal frameworks and technological legacies on which all are utterly dependent as if they were manna from heaven, of which everyone should get an equal share unless she has good reasons to accept an unequal arrangement because it gives her more absolutely. But if social democrats should abandon justice as fairness in the face of libertarian criticisms, as I have proposed, they lack this reason to continue their troubled search for the pattern of distributive justice.

Instead, they can absorb the libertarian lesson that justice has no pattern. In the practice of ordinary principled political argument, such patterns play no role. In this practice, social democrats argue that the projects of government help that they support, including but going well beyond help to the poor, promote the general welfare. Philosophical social democrats can explain this goal as one of impartial concern, to be monitored by asking what one would choose if one sought to promote the wellbeing of a member of society one represented but did not know who he or she was. To this extent, they benefit from Rawls' legacy. But the choice of political measures as informed and rational ways of implementing impartial concern in current circumstances does not require application of a determinate comprehensive distributive principle dictating the right choice in all circumstances when combined with empirical facts. In this respect, as in others, the lesson that philosophical social democrats should gratefully learn from the insights of libertarians is to be more like ordinary social democrats.

Instruction and Illusion from Public Choice Theory

Even if social democrats are right to argue that private enterprise and private charity are seriously deficient in meeting needs, there are systematic liabilities of the resort to government. Although such reasons for caution have often been described in work by social scientists who are social democrats, they are welcomed with special warmth by libertarians. In particular, they urge attention to liabilities exposed by the theory of public choice, the study of general mechanisms by which people's interests and resources tend to shape political outcomes in which Mancur Olson and James Buchanan are seminal figures. These are valuable warnings against one-sided attention to the deficiencies of private choice, warnings which ought to inform political judgment.

Olson emphasizes the interaction of the costs and benefits to individuals of political initiative on their part with the effective political activity of groups in which their interests are shared. If a collective that would benefit from political influence is large and the impact of a policy choice on each member is not large, then, all else being equal, a typical member will not let political engagement distract her from private endeavors, since she will make hardly any difference in a process lacking major impact on her life. So, there is a tendency, all else being equal, for small groups with especially strong interests to be more effective, even when their success limits the impartial promotion of wellbeing in society as a whole. To some extent, this tendency can be countered by the leadership of large, politically active formal organizations, such as large labor unions or federations of unions, that favor members in the provision of special benefits, creating a special incentive to contribute to a strong collective.²⁶ Moreover, organizations and movements can be sustained by individuals' sense of "personal moral worth" derived from participation rather than their estimate of the difference they make,²⁷ while leadership in political parties is strongly motivated by the desire to be elected to public office, on the basis of a platform with suitably broad support.²⁸

Buchanan emphasizes the impact of the self-interest of members of the electorate on votes determining legislation. If the rule is "majority wins," then trading of support for legislation among groups with distinct interests or their representatives may, over time, produce total expenditure that is excessive from the standpoint of most or even all. On the other hand, this "log rolling" can produce a better fit with impartial concern than its absence, since the trades reflect intensity of interest.²⁹

Attention to such mechanisms should and does inform social democrats' preferences among laws and strategies. For example, realism about public choice gives social democrats

special reasons to integrate mandates to tax and spend in an over-all budget whose fiscal burdens are transparent and readily debated; to favor broadly-based labor organizations in which the breadth of membership gives the leadership cause for concern for the impact of political measures on the economy as a whole;³⁰ and to prefer relatively simple regulations aimed at problems with extensive serious impact to micro-regulations that engage the intense attention and energy of small interest groups.

The mechanisms producing *ceteris paribus* tendencies that public choice theorists describe must be distinguished from their guesses about the actual long-term course of politics, which often seem quaint in retrospect. In 1965, Olson proposes that political parties will have weak organizational resources and limited financial resources, except for municipal political machines.³¹ In 1975, Buchanan asserts a continual powerful general tendency of politicians to support expansion of the fiscal budget's role in the economy and the government's role in society.³² In 1982, Olson proposes that organizations and collusions that are strong – paradigmatically, labor unions -- will remain strong indefinitely in the absence of new legal constraints or destructive disorder.³³ Such guesses about the net impact of incentives and resources could support rejection of social democratic advocacy from the standpoint of impartial concern. Without them, public choice theorists simply free social democrats from chains of naïve optimism.

A realistic appraisal of the role of people's interests and resources in the democratic political process does not just improve the efficacy of social democracy, it strengthens the case for a social democratic political movement. There is always a significant political party or coalition of parties with great strength depending on appeals to citizens' desire to cut taxes and reduce government spending to help meet needs. This strength is ensured by many people's

tendency to pay more attention to the immediate gain to their net income from tax-cuts than to long-term consequences, their generalization from particular failures or excesses of government to typical incompetence (which the leaders of those parties have a vital interest in encouraging), and their reluctance to consider their own dependence on government benefits. Those with great wealth and income have disproportionate capacities to make large political contributions, contribute to lobbying or sponsor advertisements influencing public opinion without significant personal loss, and their potential losses from social democracy will tend to encourage opposition to taxing-and-spending and regulation intended to help those worse-off. Those at the commanding heights of the private economy, with special interests in reducing their tax and regulatory burdens, have reasons and resources for detailed attention to public policy making, while policy-makers, whatever their political affiliations, must rely on them for advice and have reasons to fear the economic consequences of their distrust. If capitalism, along with its many benefits, leaves many serious needs unmet which could in principle be met without morally significant loss (a claim that public choice theory does not reject), then, on a realistic appraisal of mechanisms of public choice a social democratic political movement is a beneficial countervailing force.

An Invitation

The lessons that social democrats should learn from libertarians can have an impact on libertarians as well. Those lessons strengthen the case for leaving libertarianism and joining social democracy.

Many libertarians carry a burden: consequences of their general commitments that they find hard to accept. If libertarianism is right, then Friday does wrong to gently yet firmly wrest the life preserver from selfish Crusoe's hands and a government does wrong to impose any tax to

finance any medical care for the destitute that does not serve the interests of billionaires. The minimal state's coercive protection of free enterprise extends both to the protection of wealth in the presence of dire need and to enforcement of contracts by which people escape from dire need by selling themselves into slavery for life. The minimal state enforces clauses in deeds conveying property on the condition that it not be sold to Jews. Employers must be free not to hire African-Americans and restaurant owners must be free not to serve them, no matter how stringent the reduction of options by these racist associational preferences. If a selfish scientist using her own funds and brainpower finds a cure for cancer and holds out for twenty trillion dollars in compensation, the threat to the global economy must not be evaded by invading her hard drive to take the formula while presenting her with fifty billion instead.³⁴

Suppose that someone, initially a libertarian, finds these consequences hard to accept. She might, on the one hand, back away from full-fledged libertarianism, by accepting that in these cases the protection of the use of fruits of free enterprise by some is overridden by the seriousness of competing needs of others. But then, she will be hard-pressed to find a principled reason to reject distinctive goals of social democracy as inappropriate objectives for the use of state power. Lack of access to productive exercise of one's talents in ways that suit one's temperament and interests, to insightful appreciation of cultural achievements, to achievable relief from persistent discomfort, to the enjoyable exercise of one's curiosity or one's love of nature; the need to choose between drudgery and impoverished unemployment; the lack of a realistic expectation of finding work in which one is not bossed around; and insecurity that interferes with long-term plans and current enjoyment are also deprivations.

Alternatively, the libertarian could stand fast, on the ground that the relief of serious deprivations by coercive means can be impermissible because it interferes with sufficiently

serious moral rights. But, according to the argument that I previously sketched, impartial political concern is supportive of, not in tension with, the rights that are secure convictions of most who find it hard to accept the consequences of libertarianism noted at the start of this section. Through a commitment to impartial political concern, someone who is repelled by those consequences can preserve what is most plausible in her initial commitment to libertarianism, avoid those consequences and avoid ad hoc distinctions.

She should, nonetheless, resist philosophical social democrats' appeals to fairness and distributive patterns and their inadequate appreciation of the moral significance of capitalist self-advancement. Here, the lessons from libertarianism are crucial. This resistance can and should be met by the reconstruction of the moral foundations of social democracy that learns from her resistance.

The additional, necessary empirical defense of social democracy as an informed expression of impartial concern, a project that would stretch beyond the limits of this essay, combined with the arguments of this essay would offer a basis for accepting an invitation to join social democracy. This should be a grateful invitation, to join a non-libertarian movement whose moral basis is enriched by the challenge of libertarianism.

¹ See Rawls, *Justice as Fairness* (Cambridge: Harvard University Press, 2001 [based on lectures in the 1980s]), p. 15; *Political Liberalism* (New York: Columbia University Press, 1993), p. 24; and *The Law of Peoples* (Cambridge: Harvard University Press, 1999), pp. 30f.

² Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974), p. ix.

³ See, for example, *A Theory of Justice* (Cambridge: Harvard University Press, 1999), pp. 82, 86, 122. All passages to which I will refer occur in the original, 1971 edition, as well.

⁴ See Nozick, *Anarchy, State, and Utopia*, pp. 215-25, for a classic elaboration of this challenge, and, for related doubts, extending to desert itself, Loren Lomasky, *Persons, Rights and the Moral Community* (Oxford: Oxford University Press, 1987) and David Schmidtz, "How To Deserve," *Political Theory* 30 (2002): 774-99.

⁵ *A Theory of Justice*, p. 12.

⁶ See, for example, Richard Miller, "Cosmopolitan Respect and Patriotic Concern," *Philosophy & Public Affairs* 27 (1998): 202-224; Michael Blake, "Distributive Justice, Coercion and Autonomy," *Philosophy & Public Affairs* 30 (2002): 257-96; and Thomas Nagel, "The Problem of Global Justice," *Philosophy & Public Affairs* 33 (2005): 113-47.

⁷ In the justification of state coercion in Part I of *Anarchy, State and Utopia*, Nozick's arguments about protection and compensation do not require more-than-libertarian political goals. Without endorsing Nozick's specific justifications of state coercion or his libertarianism, Richard Arneson notes implausible features of the extrapolation of a special duty to uphold distributive justice from the enforcement of laws in "Do Patriotic Ties Limit Global Justice Duties?", *Journal of Ethics* 9 (2005): 127-50, especially pp. 143-9.

⁸ See, for example, *A Theory of Justice*, pp. 4, 88.

⁹ As Schmidtz forcefully argues in *Elements of Justice* (Cambridge: Cambridge University Press, 2006), pp. 90-93.

¹⁰ See *Anarchy, State and Utopia*, p. 162.

¹¹ In a world as needy as ours, a principle of concern such as I have put forward is much less demanding than Peter Singer's requirement to forgo purchase of a luxury or frill whenever there is the opportunity to use the money instead to prevent something very bad from happening. Nearly all of us identify with worthwhile goals, giving point and value to our choices, that

require the occasional purchase of a luxury or frill. Dressing in a way that expresses one's aesthetic judgment and engages in the fun of mutual aesthetic recognition is an obvious example. I have argued elsewhere that my more moderate requirement expresses an appreciation of the equal moral worth of everyone and can account for the duties to rescue to which Singer appeals. Since stronger demands for beneficence will, if politically relevant, stray even farther from libertarianism than I recommend, I will not pursue this argument here. See "Beneficence, Duty and Distance," *Philosophy & Public Affairs* 32 (2004): 357-83 and *Globalizing Justice* (Oxford: Oxford University Press, 2010), chapter 1.

¹² *A Theory of Justice*, p. 88.

¹³ *The Wealth of Nations* (New York: Modern Library, 2000), Book I, Chapter II, p. 14.

¹⁴ *Ibid.*, p. 14.

¹⁵ See *ibid.*, Book I, Chapter VIII, pp. 76f.

¹⁶ Alan Manning, *Monopsony in Motion* (Princeton: Princeton University Press, 2003), p. 271.

¹⁷ This case would have Alfred Marshall as another distinguished pro-capitalist precursor and could include work of the most incisive critic of the economic failures of state socialism, Janos Kornai. See, for example, Marshall, *Principles of Economics* (London: MacMillan, 1920), pp. 567-72; Kornai, *Dynamism, Rivalry and the Surplus Economy* (Oxford: Oxford University Press, 2014), especially pp. 88-105.

¹⁸ This is a variant of an example of Alan Wertheimer's, in *Exploitation* (Princeton: Princeton University Press, 1996), pp. 208, 218f.

¹⁹ *A Theory of Justice*, p. 63.

²⁰ P. 53.

²¹ P. 72.

²² P. 84.

²³ *Justice as Fairness*, p. 163.

²⁴ Such concessions are a recurrent theme in the most extensive defense of luck egalitarianism as correcting deficient egalitarianism in Rawls, G.A. Cohen, *Rescuing Justice and Equality* (Cambridge: Harvard University Press, 2008).

²⁵ See, for example, Elizabeth Anderson, "What Is the Point of Equality?", *Ethics* 109 (1999): 287-337, especially pp. 313f., 326.

²⁶ See Olson, *The Logic of Collective Action* (Cambridge: Harvard University Press, 1965), pp. 16, 43, 51, 68f., 73, 140.

²⁷ See *ibid.*, p. 160. See also Buchanan, *The Limits of Liberty*, Collected Works of James Buchanan, vol. 7 (Indianapolis: Liberty Fund, 2000 [original publication, 1975]), p. 138.

²⁸ See *The Logic of Collective Action*, p. 165. See also Buchanan, *The Limits of Liberty*, p. 198.

²⁹ See Buchanan and Gordon Tullock, *The Calculus of Consent* (Ann Arbor: University of Michigan Press, 1962), chapter 10. Buchanan would not approve of the assessment of the political process by social democracy's criterion of impartial concern. He thinks that a society's rules must not be subject to rational rejection by anyone advancing his interests through free enterprise and using advantages that do not depend on interference with the free enterprise of others. This assumed criterion shapes his choice of what models and consequences to explore (see *ibid.*, p. 6) . But it is an assumption, for which he presents no significant justification, not a conclusion from his derivations of consequences.

³⁰ See Olson, *The Rise and Decline of Nations* (New Haven: Yale University Press, 1982), pp. 48, 90.

³¹ See *The Logic of Collective Action*, pp. 162-5.

³² See *The Limits of Liberty*, p. 199.

³³ See *The Rise and Decline of Nations*, pp. 40f.

³⁴ See *Anarchy, State and Utopia*, p. 181.