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**TAXATION, LIBERTY, AND PROPERTY RIGHTS:  
A LIBERTARIAN DEFENSE OF UNIVERSAL HEALTH COVERAGE**

by

**GRAEME CAVE**

**DISSERTATION**

Submitted to the Graduate School

of Wayne State University,

Detroit, Michigan

in partial fulfillment of the requirements

for the degree of

**DOCTOR OF PHILOSOPHY**

2021

MAJOR: PHILOSOPHY

Approved By:

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Advisor

Date

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**2021**

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## **DEDICATION**

*To everyone that got me through this dissertation, and all the other rough times*

## PREFACE

There are four facts that inspired my dissertation. **Fact 1: the United States is said to be the *only* developed country that *lacks universal health coverage*.** In 2014, the Organisation for Economic Co—operation and Development (OECD) reported that most OECD countries had achieved near universal health coverage. In fact, it reported that *only two* OECD countries lacked universal health coverage by this time. The first was Mexico. In 2004, Mexico had introduced its Seguro insurance scheme, which rapidly provided insurance for its poor and uninsured. By 2011, with the help of its Seguro scheme, nearly 90% of its population was covered. But 90% is not 100%, nor is it considered close enough.<sup>1</sup>

But that began to change as the years went on. By 2012, Mexico had managed to insure over 50 million persons that went uninsured a decade ago.<sup>2</sup> Then, in 2020, it replaced its Seguro scheme with its more ambitious and funded Institute of Health for Wellbeing (INSABI) scheme. Given that the INSABI scheme is still in its infancy, it can be hard to tell how effective it is and will continue to be. Nevertheless, between its Seguro scheme, INSABI scheme, and other schemes, it is fair to say that Mexico has nearly or completely achieved universal health coverage.<sup>3</sup> That left only *one* OECD country that still lacks universal health coverage today: the United States.

Importantly, this was not for lack of trying. For over a century now, many Americans have been trying to defend and establish universal health coverage; or at least get closer to it. Multiple presidents have at least claimed to want national health insurance or comprehensive health reform.<sup>4</sup> The developers of Medicare saw Medicare as the first step to universal national health insurance: first insure those 65 and older, then maybe children (Kiddicare), then eventually everyone else.<sup>5</sup> President Clinton attempted to pass major health reform legislation, and President Obama—through much struggle—managed to sign

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<sup>1</sup> OECD (2014).

<sup>2</sup> Knaul et. al. (2012).

<sup>3</sup> Columbia Public Health (2019).

<sup>4</sup> Starr (2013: 1-76; esp. 75-76). See also Friedman (2020: 21-7).

<sup>5</sup> Friedman (2020: 23-5); Starr (2013: 43, 51, 74).

the Affordable Care Act (ACA) into law.<sup>6</sup> Before and after the ACA, democratic lawmakers have proposed numerous health care plans, designed to—at least in part—insure more or even all Americans;<sup>7</sup> and nearly every 2020 Democratic presidential candidate vocally endorsed such change.<sup>8</sup>

These efforts, however, largely proved fruitless. More often than not, presidents who *claimed* to want reform never actually proposed any *plans*; and others who did often proposed plans at the last minute for political reasons.<sup>9</sup> Medicare never managed to extend to everyone, and today is largely stuck for those 65 and older.<sup>10</sup> President Clinton’s plan—despite his best efforts—never passed; nor did any other Democratic plans before or after the ACA.<sup>11</sup> The only plan to get signed into law was the ACA; and that—especially after Republican opposition—was not enough.<sup>12</sup>

Uniqueness itself is not necessarily bad. There are many ways in which the United States is unique compared to other developed countries, and some of these ways might be for the better. But this brings me to **Fact 2: the United States’ lack of universal health coverage is *problematic***. This lack of universal health coverage has created *many* problems in the United States. But we can sum up a large chunk of them with one phrase: high cost, poor performance. To begin, the United States spends more on health care *than any other country*.<sup>13</sup> In 2018, it spent almost 17% of its GDP on health care, over 4% more than

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<sup>6</sup> Starr (2013: 79-238).

<sup>7</sup> See Starr (2013) as well as the Commonwealth Fund (n. d.) for examples.

<sup>8</sup> Uhrmacher et. al. (2020).

<sup>9</sup> Starr (2013: 1-76; esp. 75-76).

<sup>10</sup> Friedman (2020: 24-5). Though importantly, as Friedman notes, Medicare has increased its benefits (ibid. 29) and expanded to include certain persons with disabilities (ibid. 25). Furthermore, there are other public insurance programs as well (see CRS Report RL32237 2015: 12-3).

<sup>11</sup> Starr (2013) and Friedman (2020: 21-6).

<sup>12</sup> See Starr (2013: 161-298) along with Garfield et. al. (2019).

<sup>13</sup> Importantly, part of the reason why is because the United States spends more on pharmaceutical profits and research and development than any other country (OECD 2017; see also Goldman & Lakdawalla 2018; see also Kliff 2018). Because of this, the United States ends up subsidizing the research and development costs of other countries and allows other countries to charge their citizens less for the same drugs (Goldman & Lakdawalla 2018; see also Kliff 2018). I will briefly revisit this issue in footnote 163 (page 54). For now, we simply need to note that—were these costs shared more equitably—the United States would be spending less and/or other countries would be spending more. That said, we must also remember that pharmaceuticals are only *one* kind of health care expense, and there are other reasons why the United States is still stuck spending the most on health care (for some examples, see John Hopkins Bloomberg School of Public Health 2019).

second place (Switzerland) and nearly double the average OECD country. Its per capita spending was over \$10,000, more than double that of Australia, Canada, France, the UK, and New Zealand. Additionally, its spending on private sources swamped every other country: five times more than Canada, the next in line. In Norway and Sweden, private spending was less than \$100. And the average US resident paid \$1122 for health care out of their own pocket. Only the Swiss paid more; and the French and New Zealanders paid less than half.<sup>14</sup>

So what does the United States get for all this spending? The first thing it gets is a sizable *uninsured population*. In 2008, there were 44.2 million persons without insurance. And in 2010, following an economic recession, that number grew to 46.5 million. Importantly, the ACA managed to reduce that number. The ACA was passed in 2010, and from 2010-2013, the number dropped to 44.4 million. In 2014, the ACA's major coverage provisions went into effect; and from 2014 to 2016, that number dropped to 26.7 million. As the Kaiser Family Foundation (KFF) puts it: "Overall, nearly 20 million more people had coverage in 2016 than before the ACA was passed."<sup>15</sup>

That drop in uninsured was significant and historic. But it still left millions of persons without insurance. Then, in 2017, the number of uninsured reversed course. By 2019, the number had jumped back up to 28.9 million; and it is predicted to have jumped again in 2020.<sup>16</sup> Wherever the number lands, we can be confident that, in the year 2021, there are millions and millions of persons without insurance of any kind.

The consequences of lacking insurance in the United States are severe. Study<sup>17</sup> after meta-study<sup>18</sup> conclude that—compared to insured persons—uninsured persons are more likely to forgo preventative care or needed care, delay filling or getting needed prescriptions, and not receive recommended follow

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<sup>14</sup> The Commonwealth Fund (2020). See also Kamal et. al. (2020).

<sup>15</sup> Garfield et. al. (2019). See also Tolbert et. al. (2020).

<sup>16</sup> Ibid.

<sup>17</sup> Tolbert et. al. (2020).

<sup>18</sup> Institute of Medicine (2002).

up care. They are also more likely to be hospitalized for avoidable health problems; and while hospitalized, they are likely to receive worse care. Finally, they often have difficulty paying their medical bills; and are frequently charged a lot more than those with insurance.

Because of this, the uninsured face numerous problems. When it comes to health care, they are more likely to get too little too late; and when they get care, they are more likely to get worse care. As such, they are more likely to get sicker and die earlier.<sup>19</sup> Additionally, they are more likely to face financial hardship due to medical bills, including “using up savings, having difficulty paying for necessities, borrowing money, or having medical bills sent to collections resulting in medical debt.”<sup>20</sup> Furthermore, their poorer health and financial hardship threaten to put them into a perpetual and inescapable cycle of homelessness.<sup>21</sup>

Importantly, these are *not* just problems for the uninsured. To the contrary, these problems create problems for insured persons too. For one thing, sickness makes it difficult to work—and death makes it impossible to work. So the uninsured’s health problems can negatively impact labor markets and the economy.<sup>22</sup> For another thing, when the uninsured cannot pay off their medical bills, those costs turn into hospital debt. And in the US, that debt either leads to taxpayers or hospitals footing the bill.<sup>23</sup>

The second thing the United States gets for all its spending is a noticeable *underinsured population*. In the United States, having insurance does not mean you have *good* insurance. To the contrary, many persons have insurance ill-suited for their needs, making them suffer the same kinds of problems the uninsured face. This is for a variety of reasons, of which I will only mention a few. To begin, *most* Americans get their insurance from *private* sources, like their employers or the individual market. And *most* of these private insurance plans today distinguish between *in-network* and *out-of-network*

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<sup>19</sup> Tolbert et. al. (2020) and Institute of Medicine (2002).

<sup>20</sup> Tolbert et. al. (2020). See also Institute of Medicine (2002).

<sup>21</sup> See pages 188-9.

<sup>22</sup> See pages 144-8.

<sup>23</sup> Coughlin et. al. (2014) and Tolbert et. al. (2020).



health care providers, paying less or nothing at all for health care received out-of-network.<sup>24</sup> Furthermore, cost-sharing has exploded. Today, almost 90% of private plans have deductibles, which are annual dollar amounts that you must pay *before your insurance does anything that year*; and today's average deductible is more than double what it was in 2008. Co-payments are also now commonplace, which are dollar amounts you must pay for a good or service (*after* you have paid off your deductible). The result is that the typical private plan has a deductible in the *thousands* of dollars, with an average co-pay of \$25 for an office visit and \$300 for a hospital admission *per day*.<sup>25</sup>

Finally, private plans like these can be expensive. Importantly, the ACA sought to make these plans more affordable. For example, the ACA established *insurance exchanges*, which are online portals where persons can go to look at, compare, and shop for private plans. And the ACA offers tax credits to anyone shopping on an insurance exchange who makes 100-400% of the federal poverty line (FPL). Additionally, for some of these persons, the ACA also helps them pay for their cost-sharing. To the ACA's credit, these subsidies have reduced the cost of plans and health care for many persons. But the ACA's subsidies are limited. First and foremost, plans sold on ACA insurance exchanges are broken up into categories: bronze, silver, gold, and platinum (ranging from the highest to lowest cost-sharing plans). And the ACA's subsidies are based on the *silver* plans, just above the bottom of the list (i.e. they have the second highest cost-sharing, compared to the rest). Furthermore, the tax credits function on a *sliding scale*—i.e. those that make 100% FPL get a lot of financial assistance; those just shy of 400% FPL get little assistance at all. Finally, those making above 400% FPL get *no* help paying the cost of their plans or cost-sharing.<sup>26</sup>

We can illustrate what underinsurance looks like with a conversation about diabetics and insulin. Diabetics need insulin to treat their diabetes; otherwise, they run a serious risk of going blind, having their kidneys fail, and even dying. Consider now Alec Smith. When Alec got kicked off his parents' insurance

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<sup>24</sup> CRS Report RL32237 (2015: 9, 16-9).

<sup>25</sup> Friedman (2020: 14-5).

<sup>26</sup> Garfield et. al. (2019).

plan, he was working at a restaurant. Unfortunately for Alec, he was not eligible for public sources of insurance: he made too much money for Medicaid, was too young for Medicare, was too old for CHIP, and was not in or from the military. Furthermore, his employer did not offer him insurance.<sup>27</sup>

So Alec was forced to get insurance on the individual market. He went on his state's insurance exchange and looked for available plans. Despite being eligible for a tax credit, he still could not afford a decent plan. The only plan he could find had a deductible of \$7600, meaning that in any given year, he would have to spend *over* \$7000 before receiving any financial help. So he decided to go without insurance, opting to pay his \$1300 a month insulin costs entirely out of his pocket.<sup>28</sup>

Also consider Shane Patrick Boyle. Shane originally lived in Texas, and so had a Texas plan. But when Shane's mother became sick, he moved back to Arkansas to care for her. Unfortunately for Shane, his Texas plan would *not* pay for insulin outside of Texas. Instead of leaving his mother, he attempted to raise enough money to buy the insulin he needed in Arkansas.<sup>29</sup>

Sadly to say, Alec's and Shane's gambles did not pay off. Both fell short of affording the insulin they needed and soon after died.<sup>30</sup> And importantly, Alec and Shane were not the only underinsured diabetics. A report in 2018 found that—while most diabetics in the US had insurance—“40% had rationed test strips and 26% had rationed insulin over the past year.”<sup>31</sup> To put it simply, there are millions in the US that lack *any* insurance, and many who lack *good* insurance.

The third thing the United States gets for all its spending is *overall poor health outcomes*. To repeat, the United States spends more on health care than any other country. So you would think that it would also have better health outcomes than any other country. But you would be mistaken. The Commonwealth Fund compared the United States to ten other high-income countries and found that—

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<sup>27</sup> Friedman (2020: 2-3).

<sup>28</sup> Ibid. 2-3

<sup>29</sup> Ibid. 3-4.

<sup>30</sup> Ibid. 3-4

<sup>31</sup> Ibid. 14.

while the United States spent the most—it had the lowest life expectancy, the highest number of hospitalizations from preventable causes, and the highest rate of avoidable deaths.<sup>32</sup> Bloomberg’s healthy country index ranked the United States 35<sup>th</sup>, falling behind not only high-income countries, but other poorer countries as well. The WHO ranks the United States 37<sup>th</sup>. And as time goes on, the United States continues to sink in the rankings.<sup>33</sup>

For reasons like this, we should not be surprised to learn **Fact 3: in the philosophical literature on health care justice, philosophers are *nearly unanimous* in their support of the United States getting universal health coverage.** Daniels’ support is grounded in his application of Rawls,<sup>34</sup> Segall’s in his luck egalitarianism,<sup>35</sup> Anderson’s in her democratic egalitarianism,<sup>36</sup> Dworkin’s in his equality of resources approach,<sup>37</sup> Liao’s in his fundamental conditions approach,<sup>38</sup> Ram-Tiktin’s in his capabilities approach,<sup>39</sup> Buchanan’s in his pluralistic approach,<sup>40</sup> and so on. More generally, in his SEP entry, Daniels suggests that most philosophical views of health care justice—despite their disagreements—would at least support universal health coverage.<sup>41</sup>

The key phrase here is ‘*nearly unanimous*’. Which brings us to **Fact 4: in this literature, libertarians are the odd ones out.** In his SEP entry, Daniels seems to single out libertarians as the *only* persons who would deny that justice requires universal access to health care.<sup>42</sup> And elsewhere, Daniels seems to single out libertarians as the *only* persons who would deny that we have a right to health care.<sup>43</sup>

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<sup>32</sup> The Commonwealth Fund (2020).

<sup>33</sup> Friedman (2020: 9-10).

<sup>34</sup> Daniels (2008).

<sup>35</sup> Segall (2010).

<sup>36</sup> Anderson (1999) along with Symposium: Elizabeth S. Anderson (1999).

<sup>37</sup> Dworkin (2002: Chapter 8).

<sup>38</sup> Liao (2016).

<sup>39</sup> Ram-Tiktin (2011).

<sup>40</sup> Buchanan (1984).

<sup>41</sup> Daniels (2017).

<sup>42</sup> Ibid.

<sup>43</sup> Daniels (2001).

Taylor seems to reach similar conclusions in his IEP entry;<sup>44</sup> along with Vaughn in the fourth edition of his *Bioethics* textbook.<sup>45</sup> And Snyder Belousek claims that libertarianism is “perhaps the strongest argument against universal access to health care.”<sup>46</sup>

These four facts have led me to ask: Must the libertarian—as a libertarian—oppose the United States getting universal health coverage? Or can she—as a libertarian—join every other philosopher in supporting it? And if she can support it—as a libertarian—then is it something she merely *can* support, or rather something she *should* support? More simply:

**Question:** should the libertarian—qua libertarian—support or oppose the United States getting universal health coverage?

My goal is two-fold:

- (1) Explain why it looks like the libertarian *must oppose* the United States getting universal health coverage
- (2) Argue why—in fact—she *can and should support* the United States getting universal health coverage

To do this, I will break my dissertation up into four chapters. To put it succinctly, I think of the libertarian as someone who adopts three theses:<sup>47</sup>

**Anti-Tax Thesis:** in general, the United States should not tax persons

**Liberty Thesis:** the United States should protect and enforce everyone’s liberty

**Property Rights Thesis:** the United States should protect and enforce everyone’s property rights<sup>48</sup>

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<sup>44</sup> Taylor (n.d.).

<sup>45</sup> Vaughn (2020: 748, 750).

<sup>46</sup> Snyder Belousek (2013: 464).

<sup>47</sup> Or, more precisely: someone who adopts the first thesis and either the second or third thesis (or both). To understand why, see footnote 48.

<sup>48</sup> Importantly, it is not obvious what the relationship between the Liberty Thesis and the Property Rights Thesis is. On one interpretation, they are different ways to describe the same thesis. To violate one’s liberty *just is* to violate her property rights, and to protect and enforce one’s liberty *just is* to protect and enforce her property rights; and vice versa. On another interpretation, they are different theses. One is about liberty, the other property rights; and

Furthermore, I think a state has universal health coverage when (and only when) it has a system that guarantees everyone can afford basic health care. In Chapter 1, I will make clear what my question is *really* asking, provide a literature review of different answers, lay out my strategy for answering it myself, and make clear what my answer is *really* saying. Then, in the remaining chapters, I will explore the relationship between universal health coverage and the Anti-Tax Thesis (Chapter 2), the Liberty Thesis (Chapter 3), and the Property Rights Thesis (Chapter 4). From all this, I will explain why it looks like the libertarian must oppose the United States getting universal health coverage, but argue why she can and should support it instead.

My ultimate hope for my dissertation is to build consensus. On the one hand, I hope to build consensus in the philosophical literature on health care justice. At least at a glance, this literature makes it sound like libertarians are the only ones who oppose the United States getting universal health coverage. I want to argue why—at least for some of these libertarians—this need not be the case, and why they can and should join every other philosopher in supporting it as well. Doing so will help demonstrate why libertarianism can be compatible with and even strengthen the position for acquiring universal health coverage, and why there can and should be even more consensus in this literature than an initial look would suggest.

On the other hand, I hope to build consensus in the public sphere today. Suffice it to say, polling indicates that most Americans and the vast majority of Democrats support the United States getting universal health coverage, or at least making health care more affordable for more persons. Republicans,

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however related they are, violating, protecting and enforcing one is not the same as violating, protecting and enforcing the other.

For my purposes, I do not care which interpretation the libertarian adopts. Even if these theses amount to the same thesis, they each invoke different language. The Liberty Thesis invokes the language of *freedom* and *non-interference*. The Property Rights Thesis invokes the language of *rights* and *duties*. And if they are not the same thesis, then what I say about one does not automatically transfer to the other. In either case, they each warrant their own discussion grounded in their own terms. And so I will discuss both, leaving it to the libertarian to decide which interpretation she adopts and which thesis (or theses) captures what she really believes.

however, appear less convinced.<sup>49</sup> But at least in my experience, the reasons why *Republicans* oppose universal health coverage are essentially the same reasons why *the libertarian* is said to oppose universal health coverage: they both have a preference for the free market, an opposition to government taxation, and a fear that universal health coverage would violate Americans' liberty and/or property rights. So by directly arguing why the libertarian can and should support the United States getting universal health coverage, I am indirectly arguing why these Republicans can and should as well. And thus, not only will I argue for more consensus in the philosophical literature on health care justice, but among Democrat and Republican politicians and citizens as well.

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<sup>49</sup> KFF (2020).

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## CHAPTER 1: DEFINITIONS, A LITERATURE REVIEW, AND MY OVERALL STRATEGY AND ANSWER

The entirety of my project can be summed up as an attempt to answer one question:

**Question:** should the libertarian—qua libertarian—support or oppose the United States getting universal health coverage?

In the remaining chapters, I will do the following:

- Explain why it looks like the libertarian *must oppose* the United States getting universal health coverage
- Argue why—in fact—she *can and should support* the United States getting universal health coverage

Before I do so, however, there are three things I need to do. First, I need to make clear what this question is *really* asking. To do so, I need to define its two key terms: ‘the libertarian’ and ‘universal health coverage’. Second, before giving my own answer, I need to provide a *literature review* of how others have answered this question. Third, I need to explain *my overall strategy and answer* for this question, in order to make sense of what comes after. I will cover all this in Sections 1, 2, and 3, respectively.

### Section 1a: Defining ‘The Libertarian’

Let’s start with an important observation: there are *many* libertarian theories and persons. Within the philosophical literature, Sterba distinguishes between Spencerian libertarians and Lockean libertarians.<sup>50</sup> Holcombe distinguishes between limited-government libertarians and orderly-anarchy libertarians.<sup>51</sup> Kymlicka distinguishes between libertarianism as concerned with property rights, free markets, and self-ownership; libertarianism as mutual advantage; and libertarianism as liberty.<sup>52</sup>

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<sup>50</sup> Sterba (1994: 66-8). See also Sterba (2000: 466).

<sup>51</sup> Holcombe (2004: 325-6).

<sup>52</sup> Kymlicka (1990: 95-159).

Bornschein distinguishes between no-proviso and proviso libertarians.<sup>53</sup> Wendt adds in sufficientarian libertarians, illustrating the *many* kinds of sufficientarianism and distinguishing between dualist libertarians, welfare rights libertarians, and moderate libertarians.<sup>54</sup> In his Stanford Encyclopedia of Philosophy entry, van der Vossen distinguishes between right and left libertarians.<sup>55</sup> And in his Internet Encyclopedia of Philosophy entry, Zwolinski distinguishes between natural rights libertarians, consequentialist libertarians, anarcho-capitalist libertarians, teleological libertarians, and contractarian libertarians. Additionally, Zwolinski claims libertarians cross numerous spectrums: some are theists, others atheists; some are egoists, others not; some are deontologists, others consequentialists, others contractarians, and others virtue-theorists.<sup>56</sup> Outside the philosophical literature, former House Representative Ron Paul and current Senator Rand Paul have both identified as libertarian or libertarian-ish.<sup>57</sup> There are numerous libertarian think tanks,<sup>58</sup> and others with libertarian inspirations.<sup>59</sup> There are also burgeoning libertarian theories, like State Capacity Libertarianism.<sup>60</sup>

Suffice it to say, there is no *one* libertarian; nor is there even *one kind* of libertarian. There are *many* libertarians, who can and do disagree with each other. For my purposes, I am only interested in the libertarian who:

- (1) Places *liberty and/or property rights* at the center of her theory of justice
- (2) Believes taxation is *generally* theft or forced labor

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<sup>53</sup> Bornschein (2018: 340-1). Here, Bornschein contrasts no-proviso libertarians with *SOP*-proviso libertarians. But we can make the more general contrast between no-proviso libertarians and *any*-proviso libertarians, based on what he says. See also Werner (2013: 67-8).

<sup>54</sup> Wendt (2019).

<sup>55</sup> van der Vossen (2019). See also Bornschein (2018: 339-41 and fn. 8).

<sup>56</sup> Zwolinski (n.d.).

<sup>57</sup> Ron Paul ran as a presidential candidate for the Libertarian Party (Britannica n. d.b). Rand Paul helped move the Republican Party in a more libertarian direction (Britannica n. d.a) and is happy to identify as a libertarian conservative (Hannity 2013).

<sup>58</sup> See LPedia (2019) and Chafuen (2020).

<sup>59</sup> Ex. Niskanen Center (n. d.).

<sup>60</sup> See Cowen (2020).

(3) *But* believes *some* states should tax persons for the sake of protecting and enforcing everyone's liberty and/or property rights (hereafter: state-provided security)

(4) *And* believes the *United States* is one such state

Much of this will be explained in the coming chapters. For now, let's go over each part succinctly. To begin, this libertarian has a theory of justice. And to her, justice is primarily (or even only) concerned with persons' liberty and/or property rights. Anything else—like their happiness, well-being, capabilities, social standing, etc.—is only secondary or something else as far as justice is concerned.

Because of this, she is generally averse to taxation. To her, taxation violates persons' liberty and/or property rights. In other words, justice requires the state to refrain from interfering with persons and taking their stuff without their permission. And taxation, generally speaking, does just that. As such, taxation basically amounts to the state stealing from persons or forcing them to work for free.

However, there is at least one exception. To her, the one (potentially only) job of the state is to provide security. And, for better or worse, the state cannot do that without taxation. In order to provide security, the state must (minimally) create and sustain a police force, military, and criminal justice system. And all of that requires the state to employ persons, build and maintain facilities, and provide and store resources. The state cannot do any of that for free. So it must tax persons to do so.

That said, she may not think the state should tax persons for security *no matter what*. Instead, she may think the state should *only* tax persons for security *under specific conditions*. Regardless, she concludes the *United States* should tax persons for security, even if other states should not.

It is important to emphasize that this libertarian accepts *all* (1)-(4), since other libertarians do not. To paint in very broad strokes, most or all libertarians accept something like (1) and probably also (2). But anarchists deny (3) and (4). As far as I understand them, anarchists typically say that *all* taxation—including taxation for state-provided security—is unjust; because to them, *all* taxation is tantamount to theft or forced labor, and taxation for state-provided security is no exception. Furthermore, anarchists are often

so optimistic about the free market and/or pessimistic about the state that they think the free market would provide better security than the state ever could. And so, for moral and/or prudential reasons, they deny (3) and (4).<sup>61</sup>

Minimal state libertarians accept (1) and (2) and potentially even (3), but are at least poised to deny (4). Nozick's *Anarchy, State, and Utopia* is considered the seminal book for minimal state libertarianism.<sup>62</sup> But it is hard to know what Nozick would say about the United States here. Nozick's minimal state has a different history and taxation scheme than the United States with regards to state-provided security. And seemingly, the features which make Nozick's minimal state justifiable in Nozick's eyes are absent in the United States, even when we only consider the United States' security.<sup>63</sup> Ayn Rand says taxation is only justifiable if it is voluntary, and surmises that a state could achieve voluntary taxation for its security.<sup>64</sup> But the United States does not use voluntary taxation for its security; and as I will argue later, I do not think it ever could.<sup>65</sup> So here, we have libertarians who would likely deny (4), even if they accepted (3).

In short, most or all libertarians accept something like (1) and probably also (2). Some libertarians—like anarchists—deny (3) and (4). Others—like minimal state libertarians—could accept (3) but still deny (4). For my purposes, I am *only* interested in libertarians who accept (1), (2), (3), *and* (4). So from here on out, 'the libertarian' will specifically refer to any libertarian which accepts all four claims. Importantly, throughout my dissertation, I will reference several libertarians—and they *themselves* may not accept all four claims. But that will only be for the purpose of making a point which ties back to 'the libertarian' as I define her.

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<sup>61</sup> See Holcombe (2014: 326-8).

<sup>62</sup> Nozick (1974).

<sup>63</sup> Ibid. esp. Part 1.

<sup>64</sup> See Block and Torsell (2020: 104). See also Rand (1964: 1-20, 135-6, 139; 1967: 378-81).

<sup>65</sup> See pages 84-88.

## Section 1b: Defining ‘Universal Health Coverage’

‘Universal health coverage’ is a term many throw around these days. Unfortunately, what it means is far from clear. This is for at least three reasons. First, most persons do not seem to define ‘universal health coverage’ when they talk about it; and those who do often define it differently from others. Consider: In “The political economy of universal health coverage”, Stuckler et. al. ask the question *what is universal health coverage?* To answer that question, they began by conducting a massive literature search, looking for peer-reviewed articles mentioning ‘universal health care’, ‘universal coverage’, and/or ‘universal health’. They found 595 articles on PubMed and an additional 86 articles on Google Scholar. They found another 58 articles using the footnotes from those found with PubMed and Google Scholar. And they found another 148 articles using the World Wide Political Science Abstracts. By the end, they had compiled 887 articles. And then they added more from their personal libraries. Afterwards, they randomly selected 100 of these articles to review.<sup>66</sup>

Their results were telling. Of these 100 randomly-selected articles, *only 21* provided an explicit definition of ‘universal health care’ (or whatever variant they used). Of these 21, the definitions were often unclear about what they were referring to. For example, it was not clear if they were referring to a set of health care services or single interventions; and references to financing and reimbursement arrangements were frequently unsystematic. Furthermore, among these 21, there was little consensus: the definitions they used were all over the place.<sup>67</sup>

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<sup>66</sup> Stuckler et. al. (2010: 10).

<sup>67</sup> Ibid. 10-1. As far as I can tell, these 21 definitions are not provided. However, we can provide our own for illustration:

**WHO:** “[Universal Health Coverage] means that all individuals and communities *receive* the health services they need without suffering financial hardship. It includes the full spectrum of essential, quality health services, from health promotion to prevention, treatment, rehabilitation, and palliative care across the life course.” (WHO 2021; my italics) (Importantly, WHO here seems to emphasize *receipt*; but elsewhere, seems to emphasize *access* and *affordability* [Ottersen et. al. 2014: 2]. Then again, WHO says that *receipt* and *access* are different; and they clearly chose to go with *receipt* [ibid. 1 along with fn. 2].)

Second, to make matters worse, it is often unclear whether terms like ‘universal health *coverage*’ and ‘universal health *care*’ refer to the *same* thing or two *different* things. As we saw above, when Stuckler et. al. tried to figure out what ‘universal health coverage’ meant, they used the search terms ‘universal *coverage*’ and ‘universal health *care*’. And at least in my experience, others have treated these terms as synonymous. But it is not obvious they are. For example, in “Does Universal Health Care Coverage Mean Universal Accessibility? Examining the Canadian Experience of Poor, Prenatal Women”, Morton and Loos argue that universal *coverage* is *not* the same as universal *access to care*.<sup>68</sup> And if we think of universal *health care* as universal *access to care*, then Morton and Loos’s argument implies that universal *coverage* is something different.

Third, and finally, terms we use to describe or illustrate universal health coverage are themselves vague. Take the term ‘coverage’ for example. Universal health coverage has ‘coverage’ right in its name! So presumably, if we could figure out what ‘coverage’ was, we could figure out what happens when we prefix it with ‘universal health’. But unfortunately, ‘coverage’ is also a vague term. At a glance, ‘coverage’ just seems to be another word for *insurance*.<sup>69</sup> Furthermore, ‘coverage’ is often used when talking about

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**OECD:** “Universal Health Coverage is about everyone having *access* to good quality health services without suffering financial hardship.” (OECD n.d.; my italics)

**Investopedia:** “Universal healthcare coverage refers to systems in which all residents of a particular geographical area or country have health *insurance*.” (Investopedia Staff 2021; my italics).

While these definitions may sound the same, they are very different. As I will discuss later, the WHO’s definition sounds like *universal receipt*; OECD’s definition sounds like *universal access*; and Investopedia’s definition sounds like *universal insurance* (see pages 15-22).

<sup>68</sup> Morton & Loos (1995).

<sup>69</sup> In my experience, authors commonly use ‘coverage’ and ‘insurance’ interchangeably, or at least do not make clear their distinction between the two (ex. CRS Report RL32237 2015 and Garfield et. al. 2019). Also, when I searched “what is health coverage?” on Google, most of the immediate results had ‘health insurance’ (*not* ‘health coverage’) in their title.



insurance.<sup>70</sup> Additionally, coverage has been used to refer to access,<sup>71</sup> legal entitlements,<sup>72</sup> and mechanisms.<sup>73</sup>

Also take for example ‘single payer’. ‘Single payer’ is a term often used by opponents of universal health coverage (whatever that means!). And for good reason: polling shows that persons’ reactions to universal health coverage become more negative when ‘single payer’ is invoked.<sup>74</sup> But what does ‘single payer’ mean? Following Dolan,<sup>75</sup> consider three possible definitions:

- (1) When the government owns and employs every health care provider (i.e. all hospitals, doctors, etc.) and finances all health care with taxes
- (2) When the government owns and employs most health care providers and finances most health care with taxes
- (3) When providers are private but are paid by a national insurance fund

In my experience, persons have been prone to call Medicare, Sanders’ Medicare for All, and Canada’s insurance system *single payer*. But that all depends on which of these three definitions you adopt for ‘single payer’. On (1), none of these three are; and to date, no health care system is! On (2), none of them are, though other health care systems are (like Britain’s). Only on (3) do they all count as single payer.<sup>76</sup>

To put it bluntly: there is no single, clear, agreed upon definition for ‘universal health coverage’. But for my purposes, we need *some* definition to work with. How, then, do we proceed? We could attempt

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<sup>70</sup> Ex. What does your insurance cover? What is covered by your insurance? What insurance coverage do you have?

<sup>71</sup> As Stuckler et. al. (2010: 11) found.

<sup>72</sup> E.g. Healthcare.gov (n. d.).

<sup>73</sup> E.g. KFF (2008: 1).

<sup>74</sup> Dolan (2017). See also KFF (2020).

<sup>75</sup> Dolan (2017). Dolan calls (2) the Beveridge model and (3) the National Health Insurance model. I just made up (1) for the sake of illustration.

<sup>76</sup> And even this glosses over the details of Medicare, Sanders’ Medicare for All, and Canada’s insurance system. For example, even though Medicare is a federal program, its administrative and oversight functions are carried out by both public and *private* entities (CRS Report R40425 2020: 26-9). Furthermore, it provides optional *private* insurance (ibid. 1, 23-6). Sander’s Medicare for All allows *private* insurance in some cases (Dolan 2017). Canada’s insurance system is provincial, not national (Dolan 2017; see also Deber 2003); and it allows supplemental *private* insurance (Kliff 2019b). The most accurate thing to say here is that Medicare, Sanders’ Medicare for All, and Canada’s insurance system are *or approach* (3), depending on what one does with these details.

to create a definition that integrates other definitions.<sup>77</sup> We could also attempt to create a definition based on what countries have done.<sup>78</sup> And—following the tradition of analytic philosophy—we could attempt to conceptually analyze the term, looking for its necessary and sufficient conditions through some process like reflective equilibrium.

While each of these approaches has its merits, my approach will be far more pragmatic. As far as I see it, there are many acceptable definitions for ‘universal health coverage’. The best definition for X to use is the one that best fits X’s purposes. So here, I will use the definition that best fits my purposes. And that definition goes as follows:

A state has (has gotten/has achieved) **universal health coverage** when (and only when) it has a **system that guarantees everyone can afford basic health care**

Let’s clarify my definition by spelling out what I mean by:

- Health care
- Basic health care
- Everyone
- A system which guarantees affordability

#### Health Care

‘Health care’, as I define it, is any medical good or service. It includes the medicines you get at a hospital or over the counter. It includes the services you get from a clinic or emergency room. It includes the check-ups you get from your doctors and nurses, the therapy you get from your therapist, the pharmaceuticals you get from your pharmacist, and the surgeries you get from your surgeon. And so on.

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<sup>77</sup> As Stuckler et. al. (2010: 10-4) do.

<sup>78</sup> As O’Connell et. al. (2014) do.

If it is a medical good you can buy—or a medical service you can get from a medical professional—it is health care.

Suffice it to say, there is *a lot* of health care available today in the United States. For my purposes, I will divide all this health care up into four broad categories. As it goes, we are all familiar with illnesses, injuries, and disabilities (hereafter, IIDs). Based on this familiarity:

**Preventions:** health care which *prevents* (*i.e. keeps*) one from acquiring an IID

**Treatments:** health care which *treats* (*i.e. reduces or eliminates*) one's IID

**Aids:** health care which *aids* (*i.e. supports*) one in the face of her IID

**Other:** health care which does *something else*

In other words, preventions are about keeping you from getting an IID in the first place. If you get one, treatments are about—partially or completely—getting rid of it; while aids are about alleviating its symptoms and/or helping you do the kinds of things you could do if you never had it. Importantly, not all health care is about preventing, treating, or aiding you in the face of IIDs. For example, some care is just about alleviating pain, like epidurals for childbirth; and other care is about helping persons end their lives or live out their last days in comfort. That remaining health care simply gets classified as 'other'.

Importantly, my categorization is based on and compatible with other ways of categorizing.<sup>79</sup> Additionally, my categorization is noticeably vague. It is not always clear, for example, whether a specific

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<sup>79</sup> From what I can tell, there are typically two kinds of categorizations here. One kind is typically used by non-philosophers, and includes categories like: hospital care, prescription drugs, mental health, dental, vision, physician services, home nursing, and rehabilitation. The other kind is typically used by philosophers. It starts with a definition of 'health' (see Liao 2016: 263-7 for his and competing definitions). Whatever definition one adopts, the idea is that a person can be at *full* (*i.e. 100%*) *health*. From this comes the distinction between *treatments* and *enhancements*. Treatments includes care which *brings one up or restores one to* full health. Enhancements includes care which *pushes one beyond* full health (see Segall 2010: 122-36 for a helpful discussion, as well as his view contrasted with others). I see my categorization as fitting between these two. Like the philosophical kind, it paints in broad strokes and focuses our attention to a few key distinctions. But like the non-philosophical kind, it has more categories. Also, it does not rely on a definition of 'health', but rather our common-sense understanding of IIDs.

good or service counts as a prevention, treatment, aid, or other.<sup>80</sup> For another's project, this may be problematic. But as I will explain later, all I need here is the *idea* of what I am going for. And what I have here should be sufficient for *that*.

## Basic Health Care

Now, I want to draw a distinction between *basic* and *non-basic* health care:

**Basic health care:** the health care that is considered most important, essential, or worthy of having its affordability guaranteed

**Non-basic health care:** the health care that is considered less important, essential, or worthy of having its affordability guaranteed

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<sup>80</sup> This mirrors two common concerns with the philosophical kind of categorization. As it goes, the philosophical kind distinguishes between *treatments* and *enhancements*. But this distinction is doubly-concerning. First, it is not obvious there is a *real* distinction between treatments and enhancements (see Harris 2007). Second, even if there is a distinction, it is not always clear whether something is a treatment or enhancement. Take for example a vaccine for the flu. On the one hand, the purpose of the vaccine is to prevent one from getting the flu; and that sounds like a treatment. On the other hand, while it is not considered 'normal health' to *have* the flu, it is considered 'normal health' to *be susceptible to getting* the flu. And a vaccine prevents one from getting the flu *by making her immune system abnormally resistant*, which sounds like an enhancement.

My categorization seemingly shares these two concerns. First, it is not clear there are hard distinctions between preventions, treatments, aids, and other. Second, even if there is, it is not always clear whether something counts as one or the other. Again, is a vaccine for the flu a *prevention* or *other* (*i.e.* *enhancement*)? It can be hard to say. For my purposes, I will not dwell on these concerns. So long as we have a rough understanding of what IIDs are—and what it looks like to prevent them, treat them, or aid one in the face of them—we can move forward. That said, if necessary, I will make an implicit distinction. Following Segall (2010: 125), what seemingly scares persons about enhancements is the potential for enhancements to undermine human dignity, social solidarity, and/or individual autonomy. So here, I will just draw a distinction between two kinds of enhancements: those which have this potential (the scary ones) and those which do not (the safe ones). And for my purposes, I am happy to include the safe ones. For example, if we already think of a vaccine as a *prevention*—like Daniels (2009) and Glannon (2001)—then my categorization can immediately count it as a prevention. If, however, we think of a vaccine as an *enhancement*—like Segall (2010: 129-30)—we can think of it as a *safe* enhancement. Surely, vaccines do not pose any threat to human dignity, social solidarity, or individual autonomy; if anything, they help us live dignified lives, interact with each other, and express our autonomy. So here, I would just say a vaccine is a *safe* enhancement which we could count as a prevention. Either way, vaccines count as preventions under my categorization. Importantly, my arguments may end up defending *scary* enhancements as well. But I will leave that to the libertarian to determine, as well as whether there are special reasons to support or oppose universal health coverage which includes those scary enhancements.

For my purposes, I will *not* say what health care counts as basic and non-basic. As I will explain later, I will leave that to *the libertarian* to decide. That said, I should stress that I will make an assumption here. Namely, I will assume that basic health care includes what most would call a reasonable range of preventions, treatments, and aids. And I will assume that range is concerned about *both physical and mental* IIDs. For example, I will assume a reasonable range of emergency care, vaccines, insulin, and mental health drugs and therapy all get included. If necessary, the libertarian can modify this assumption. But simply for the sake of making my points, I will assume this much at the outset.

## Everyone

At a glance, ‘everyone’ seems easy to define: it is just *all of them!* But who is the *them* here? Here, I will distinguish between three groups of persons:

**Citizens:** those considered full members of the state

**Legal residents:** those not considered full members of the state, but who are legally allowed to stay and/or work there

**Other residents:** those considered to be neither full members of the state nor legal residents, and who are liable to be detained and/or removed from the state

By ‘everyone’, I just mean *at least all citizens*. It can, but need not, include more. Any less, and it fails to be *universal* health coverage.

## A System That Guarantees Affordability

There is a lot that can be said about this phrase. For my purposes, I will break it down into three parts: (1) what is *guaranteeing*, (2) what is *guaranteed*, and (3) what *does the guaranteeing*. Let’s begin with (1). Suppose we have two states. In both states, everyone can afford basic health care. But the reason why is different for each. In one state, this outcome was *coincidental, accidental, spontaneous, or lucky*.

There was never any guarantee it would turn out this way; nor is there any guarantee it will stay this way. It just happened; and who knows what will happen next? In the other state, however, this outcome was *guaranteed*. This outcome was planned, worked for, and achieved. And there is a commitment to indefinitely plan, work for, and achieve this outcome.<sup>81</sup>

For my purposes, both states have the same *outcome*. But only the latter has *universal health coverage*. When I say ‘universal health coverage’, I do not *merely* mean everyone can afford basic health care. I *also* mean their ability to afford this care is *guaranteed*. It is not by coincidence that they can afford this care; nor is it by accident, spontaneity, or luck. It is by design. Furthermore, their ability to afford this care does not change with the winds. It is designed to stay.

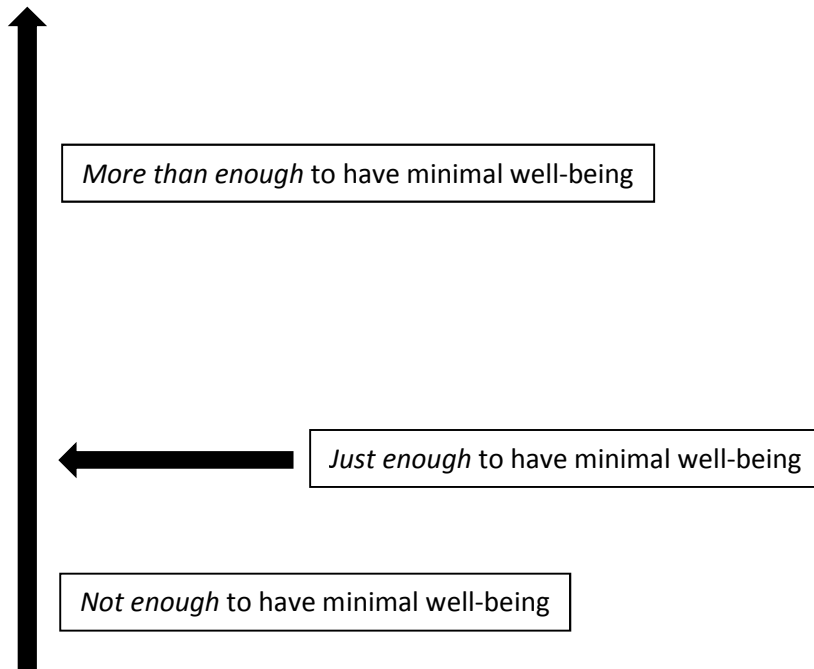
This brings us to (2): what *is guaranteed*. As I said, what is guaranteed is that everyone can afford basic health care. But what does *that* mean? Let’s begin by introducing a new term:

**Basic needs:** the collection of things a person needs to have minimal well-being

What counts as a basic need is debatable. Minimally, it requires what a person needs to biologically survive, like food, water, clothing, and shelter. Additionally, it may require what a person needs to have at least a minimal amount of some other good(s), like wealth, happiness, liberty, autonomy, and/or flourishing. Wherever one lands, we are left with this picture:

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<sup>81</sup> In other words, the commitment is *not* to achieve this outcome for a finite period of time (like a commitment to achieve this outcome for the next five years). Instead, the commitment is to achieve this outcome for the rest of time (or at least until the state dissolves). My thanks to Mark Satta for pointing this out.



When I say ‘everyone can afford basic health care’, I do *not* mean everyone can get this care *for free*. Instead, what I mean is everyone is *financially protected* from the cost of this care. In other words, everyone can buy this care without threatening the basic needs of themselves or dependents. More simply, everyone can buy this care without forcing themselves or dependents to drop below that line. They never have to choose between buying this care and something else which they and their dependents need to have minimal well-being.

To be clear, this could (and in the United States today, likely would) mean that some persons would get this care *for free*, others at a *reduced cost*, and others at *full price*. All that matters is that, for every person, there is some mechanism(s) that kicks in to prevent them and their dependents from falling below that line when buying this care. The mechanism used need not be the same for each person. But every person must have at least one mechanism that does the job when it needs to.

Which brings us to (3): what *does the guaranteeing*. Suffice it to say, health care affordability is complex; so to guarantee everyone can afford basic health care, a state would need a *system*:

**System:** an organized collection of parts that work together to achieve a common goal

Here, the common goal is to guarantee everyone can afford basic health care.

### What Universal Health Coverage Is

To sum up: a state has (has gotten/has achieved) universal health coverage when (and only when) it has an organized collection of parts that work together to guarantee that (at least) all citizens can buy the most essential preventions, treatments, and aids, without threatening the basic needs of themselves or their dependents. Or more simply: a state has universal health coverage when (and only when) it has a system that guarantees everyone can afford basic health care.

So what does that look like? Suffice it to say, there is more than one possible answer. To begin, one could consider the systems that have already been proposed or implemented. She could consider the *many* proposals for United States universal health coverage.<sup>82</sup> Or she could consider the systems found in other developed countries, each incorporating a different system with a different conception of *basic health care*.<sup>83</sup>

Alternatively, one could consider ways to make care health care more affordable on the *consumer-side* and *supplier-side*. On the *consumer-side*, she could consider ways to *give consumers access to money to spend on health care*. For example, she could consider systems that incorporate insurance, health-savings accounts, vouchers, or membership fees. On the *supplier-side*, she could consider ways to *make health care cheaper to buy*. For example, she could consider systems that incorporate community

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<sup>82</sup> See the Commonwealth Fund (n. d.) for a sampling. See also Dolan (2019) for the Niskanen Center's proposal and Friedman (2020) for a defense of Sanders' Medicare for All. See also Starr (2013) for a collection of proposals prior to the ACA.

<sup>83</sup> See the Commonwealth Fund (n. d.) and Tikkanen (2019) for examples. Also, for those worried about the elimination of private insurance, know that *every* system implemented today uses private insurance *in some way or another*. See Kliff (2019b).



health centers; laws which increase the number of health care providers; innovations in technology, medicine, and utilization; reformed patent law; and government price-setting or regulating.<sup>84</sup>

There is a lot that could be said about each of these systems and ways. For my purposes, all we need to remember is that—at least theoretically—there is no *single* system or way for the United States to get universal health coverage. There are *many* systems that have already been proposed or implemented, and *many* ways to make health care more affordable on the consumer and supplier-sides. And that means, at least theoretically, there are *many* systems and ways the United States could use to get universal health coverage itself.

#### What Universal Health Coverage Is Not

That is what universal health coverage *is*:

**Universal *affordability* (my definition):** a system that guarantees everyone *can afford* basic health care

Now, I want to make clear what universal health coverage *is not*. Let's juxtapose my definition with four others:

**Universal *insurance*:** a system that guarantees everyone *has insurance for* basic health care

**Universal *access*:** a system that guarantees everyone *has access to* basic health care

**Universal *receipt*:** a system that guarantees everyone *can receive* basic health care

**Universal *health*:** a system that guarantees everyone *is healthy*

At a glance, my definition may look like these other four. Importantly, however, it is distinct from all of them. First, universal affordability is *not* universal insurance. For one thing, universal insurance is *not necessary* for universal affordability. Universal insurance requires that everyone *has insurance for* basic

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<sup>84</sup> For a discussion of some of these ideas, see the ideas proposed in Section 2, as well as my discussion of my Taxation and Affordability Assumptions in Section 3. See also CBPP (2019), Dolan (2019: 30-2), KFF (2018) and Langwell (1993).

health care. But all universal affordability requires is that everyone *can afford* basic health care. As I discussed above, there are many non-insurance alternatives to making health care affordable. And thus, a system can guarantee everyone can afford basic health care without requiring that everyone has insurance for it.

For another thing, universal insurance is *not always sufficient* for universal affordability. As I discussed in the Preface,<sup>85</sup> having insurance is not the same as having *good* insurance. To the contrary, in the United States today, many persons are *underinsured*. They have insurance, but that insurance offers poor financial protection, forcing them to still ration or go without basic health care, and leaving them susceptible to severe and potentially inescapable medical debt. So a system that guarantees everyone has bad insurance is sufficient for universal insurance, but not for universal affordability.<sup>86</sup>

Second, universal affordability is *not* universal access. Universal access requires that everyone can access basic health care. Now, consider three kinds of barriers which could impede one's access to such care:

**Financial barriers:** prevent one from *affording* basic health care

**Geographic barriers:** prevent one from *having a place to get* basic health care

**Social-cultural barriers:** prevent one from *receiving the same quality of* basic health care<sup>87</sup>

Universal access requires the elimination of *all* these barriers. It must guarantee that one can afford basic health care, has a place to get that care, and can receive a quality of care comparable to others'. Universal affordability, however, only requires the elimination of *financial* barriers. It does *not* guarantee one has a

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<sup>85</sup> Pages vi-viii.

<sup>86</sup> This is especially relevant, because the United States—at least right now—seems to be moving in the direction of relying on the ACA. But if all the United States ends up doing is guaranteeing the uninsured get ACA silver plans, then it would arguably only achieve universal insurance, not universal affordability. In order for the ACA to achieve universal affordability, it would likely have to do a lot more.

<sup>87</sup> Inspired by Daniels (2017).

place to get basic health care or that the care she receives is comparable to others'. It just requires that *if* she can find a place to get basic care, *then* she can afford that care at that quality.<sup>88</sup>

Third, universal affordability is *not* universal *receipt*. Suppose X counts as basic health care. Universal receipt guarantees that—for every person—she can receive X. Universal affordability, however, only guarantees that—for every person—*if* she can receive X, *then* she can afford X. Because of this, when it comes to basic health care, universal affordability is compatible with a scarcity of resources and other rationing schemes. By contrast, universal receipt is not immediately compatible with this kind of scarcity, and seemingly never could be compatible with these other rationing schemes.

Allow me to illustrate. Suppose Drug X counts as basic health care. Now suppose we have two cases:

**Not Enough Drug Xs:** there are *two* persons who want a Drug X, but *only one* available Drug X

**Enough Drug Xs:** there are *two* persons who want a Drug X, and *two (or more)* available Drug Xs

Universal receipt requires that everyone who wants a Drug X receives it. This is a problem in Not Enough Drug Xs, because it would be impossible for both persons to get the drug. My guess is that those who advocate for something like universal receipt have a “barring scarcity of resources” clause attached to it.<sup>89</sup> In that case, universal receipt would at least require that both persons get the drug in Enough Drug Xs.

But universal affordability is different. Universal affordability does *not* require that everyone who wants a Drug X receives it. Instead, it merely requires that everyone *who receives* the drug *can afford it*. Thus, in Not Enough Drug Xs, all universal affordability requires is that *whoever gets the drug* can afford

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<sup>88</sup> That said, we should remember that these barriers are not unrelated; addressing one barrier can affect another. For example, the Institute of Medicine (2003: 45-8) lists studies which suggest that—although health insurance does not eliminate racial and ethnic disparities in cardiovascular services—it is one of the most important factors in narrowing these disparities. DePietro (2020) claims that “Medicaid expansion has narrowed (although not eliminated) the racial and ethnic disparities that have long existed in coverage and access to care among white, black, and Hispanic populations.” Additionally, Wishner et. al. (2016) finds that insurance—how many persons have it and what kind they have—contributes to rural hospital closures, which affects these communities’ access to health care.

<sup>89</sup> Ex. Ottersen et. al. (2014: 1). Furthermore, it seems uncharitable to assume otherwise.

it. It does not say who gets the drug. Furthermore, in *Enough Drug Xs*, universal affordability does *not* require that both persons get the drug. Even if there are enough drugs at this time, universal affordability still permits the drug to be withheld. For example, perhaps one of these persons has already received this drug in the past; or perhaps one of them is to blame for wanting this drug. In this case, there may be reason to refuse giving her the drug and saving it for someone else who might want it in the future. All universal affordability requires here is that *if* one gets the drug, *then* she can afford it. It does not promise she *will* get the drug, *even if* there are enough drugs to go around when she wants it.

Fourth and finally, universal affordability is *not* universal *health*. Universal health guarantees everyone *is healthy*. But universal affordability could never make that guarantee. To begin, as I said earlier, universal affordability does *not* guarantee everyone can receive or has access to basic health care. Furthermore, universal affordability does *not* guarantee everyone *will* buy basic health care; *nor* does it guarantee *which* care persons will buy. Universal affordability makes basic health care affordable. Whether or not persons buy it—and what they buy of it—is their choice. As such, universal affordability does not guarantee everyone even gets basic health care.

But even if it did guarantee everyone got basic health care, that would still not guarantee everyone is healthy. In truth, health care—as a whole—does *comparatively little* for a population's health. For a long time, persons generally believed that what primarily determined a population's health was how good its health care was. But a few decades ago, they realized they were mistaken. It turns out that what improves a population's health the most are policies that address socioeconomic factors—like persons' income and wealth, employment, education, familial upbringing, and relations of inclusion and equality with others (dubbed the 'social determinants of health'). Next are policies that address the environment—like the cleanness of its air and water, the availability of nutritious food, the ability to exercise, and the encouragement to eat better and exercise more. When it comes to what improves a population's health,

health care is a distant third.<sup>90</sup> As such, universal health would have to incorporate all these policies; universal affordability only incorporates the third and least impactful.

In short, universal affordability is *not* universal insurance, access, receipt, or health. When it comes to basic health care, universal affordability does *not* guarantee everyone has insurance for it; nor does it guarantee everyone has access to it; nor does it guarantee everyone can receive it. Furthermore, universal affordability does *not* guarantee everyone is or will be healthy. It *only* guarantees that everyone *can afford* basic health care. Why, then, do I define ‘universal health coverage’ as universal affordability, rather than universal insurance, access, receipt, or health?

My answer is simple: so that I can accommodate as many libertarians as I can. First, by focusing on *affordability*—and not health, receipt, or access—I can appeal to the lowest common denominator. To illustrate, let’s assume that the free market—by itself—could not achieve universal health, receipt, access, or affordability. What would each require the state to do? Universal health would require the state to address the social determinants of health—meaning the state would likely have to drastically redistribute income and wealth, substantially alter employment contracts and the kinds of available employment, provide and bolster public education, have more power to interfere with the raising of children, and actively fight and limit exclusion and discrimination. And it would require the state to make sure our environments not only allowed, but also encouraged persons to eat better and exercise more.

Universal receipt and access would not require the state to do any of that. But it would still require the state to do a lot. On the surface, they would both require the state to guarantee we never suffer a scarcity of basic health care; since we cannot receive or access what is not there. But even if we assume they carry some “barring scarcity of resources” clause, they both would still require a lot of state intervention. Universal receipt and access would require the state to make sure everyone could receive or access care—meaning that the state could easily be expected to establish and employ its own health

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<sup>90</sup> See Gostin (2021: 2) and Segall (2010: 89-92).

care providers, transportation systems, and efforts to eliminate biases or obstacles to communication in medicine.

Universal affordability does not require the state to do any of that either. What it required would depend on the particular universal affordability system. Nevertheless, for most systems at least, all it would likely require is taxation for redistributing wealth, mandating a very narrow range of otherwise free decisions, and/or regulating very specific businesses in an otherwise free market (more on this later). Thus, supposing state intervention was required for universal health, receipt, access, and affordability, universal affordability would require the *least* state intervention.

Second, by focusing on *affordability*—and not insurance—I can give the libertarian more flexibility. When it comes to basic health care, universal insurance requires that everyone has *insurance* for it, while universal affordability merely requires that everyone *can afford* it, with or without insurance. For some, there really is no distinction here: they think the *only* way to achieve universal affordability is through universal insurance. For others, there is a distinction here, but it does not matter. For some *libertarians*, however, there is a distinction here and it matters. As we will see in the next section, some libertarians allow or even support making health care *more affordable* for everyone (or at least for the most vulnerable); but they have problems with *insurance* in particular: like universal insurance, public insurance, insurance mandates, or insurance wholesale. Thus, by focusing on affordability and not on insurance, I give the libertarians more systems to consider; and for some libertarians, these are the systems they are most willing to entertain.

Before concluding, let me address a final concern: have I sacrificed too much for the sake of accommodating as many libertarians as I can? At a glance, it already looks as though I have. Why care about affordability rather than *health*, when affordability is just a means to better health? Why focus on affordability rather than receipt or access, when affordability is just a means to receive or access basic health care? Furthermore, *all* the claims I make in my future chapters revolve around the benefits of

health, receipt, access, or insurance; and since affordability is *none* of those things, why do I still go with affordability instead?

The reason is because I want to start with the easiest case. While universal affordability is *not sufficient* for universal health, receipt, or access, it is *necessary* for all of them. When it comes to universal health, health care may be the least impactful determinant of a population's health; but it is still *a* determinant of a population's health. In fact, in some circumstances, health care is the only viable option left. Take a diabetic for example. The best way to prevent a person from becoming diabetic may be to make sure she has a base-level income, familial upbringing, and social inclusion, as well as an environment that encourages her to eat healthier foods. But *once she has diabetes*, she needs insulin. As such, everyone cannot be healthy unless everyone can receive or access basic health care; and so, universal health requires universal receipt or access. But universal receipt or access requires universal affordability. Universal receipt requires universal access, since persons cannot receive what they cannot access. And universal access requires universal affordability, since persons cannot access what they cannot afford. Thus, universal affordability—while notably insufficient—is necessary for universal health, receipt, and access.

In short, we can imagine a ladder, with universal affordability at the bottom, then universal access, then universal receipt, then universal health. Every time you move up a rung, the more a population's health will improve, but the more state intervention will likely be required (and so, the more reason the libertarian will have to oppose it). I contend that, if my arguments work, then the libertarian can and should *at least* support the United States getting universal *affordability*. Whether or not the libertarian can and should support *more* will depend on empirical facts and what she is willing to give up for the sake of population health. Additionally, insurance is just a means to affordability, so my references to insurance have implications about affordability more generally. And I am interested in those implications, not insurance specifically. As such, from here on out, I will define 'universal health coverage' as *universal*

*affordability* and treat those two terms synonymously. If the libertarian is convinced that my arguments push her towards universal health, receipt, access, or insurance, then she can note that change for herself and substitute when she finds it necessary.

## Section 2: A Literature Review

Let's pause to review where we are at. My project is about answering one question:

**Question:** should the libertarian—qua libertarian—support or oppose the United States getting universal health coverage?

In the prior section, I explained what this question is *really* asking by defining its two key terms: 'the libertarian' and 'universal health coverage'. Now, I need to offer a *literature review* of others' answer to this question before turning to my own. For succinctness, I will only reference a handful of answers; and I will break them up into three groups:

- What the introductory texts on the philosophy of health care justice say
- What actual libertarians say
- A handful of libertarian defenses of universal health coverage

Importantly, there will be two difficulties here. First, as I said earlier, I define 'the libertarian' as anyone who accepts four specific claims. Yet, it is not obvious the "libertarians" I am about to reference would accept all these claims. Nor is it obvious that they would even call themselves libertarians! Second, as I said earlier, I define 'universal health coverage' as universal affordability. Yet, it is not always obvious what these authors say about *that*. Some focus on universal *access*; some focus on *rights to health care*; some focus on affordability, access, and/or rights to health care, but do not distinguish between them. And those who write about affordability do not explicitly distinguish between *a system that guarantees affordability* or simply *mechanisms to improve affordability*.



Here, my goal is merely to suggest the following. First, the introductory texts on the philosophy of health care justice *seem to* say the libertarian *should oppose* the United States getting universal health coverage. Second, *persons like the libertarian* seem to provide a wider range of answers: some seem to say she *should oppose*; others seem to say (or illustrate how) she *can allow but not require*; and others seem to say she *should support* (but often only specific systems, and often based on specific empirical claims). Third, other persons have offered (or laid the groundwork for) additional arguments for why she *should support*. To achieve my goal, I will do my best to only highlight what is most relevant from these authors and fill in whatever details need filling in.

#### Introductory Texts on the Philosophy of Health Care Justice (Answer: Oppose)

Let's start where philosophy students would start: the introductory texts on the philosophy of health care justice. My sampling of these texts includes Daniels' *Stanford Encyclopedia of Philosophy* (SEP) entry on health care justice, Daniels' introductory article on health care rights, Taylor's *Internet Encyclopedia of Philosophy* (IEP) entry on health care ethics, and Vaughn's fourth edition of his *Bioethics* textbook.<sup>91</sup>

Beginning with Daniels SEP entry, Daniels asks "Does Justice Require Universal Access to Health Care?". And almost immediately after, he seems to suggest that only some libertarian theories would answer "no": "We shall not spend time, however, assessing views that deny [that justice requires universal access to health care]—noting only that *some libertarian accounts of justice* would reject redistributive efforts to promote health just as they would redistributive efforts to promote other social objectives."<sup>92</sup>

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<sup>91</sup> Importantly, Daniels' introductory article on health care rights—as well as Engelhardt (1996b)—were taken from Vaughn's fourth edition of his *Bioethics* textbook. This likely explains—at least in part—why these introductory texts converge on the same overall points.

<sup>92</sup> Daniels (2017); my italics.

In “Is There a Right to Health Care and, if So, What Does It Encompass?”, Daniels discusses what different theories of justice have to say about a right to health care. He ends up concluding that most of these theories do—or plausibly could—say we have some kind of right to health care. The apparent exception: libertarianism. As he puts it:

If we are to think of a right to health care as a requirement of justice, then we should look to more general theories of justice as a way to specify the scope and limits of that right. On some theories of justice, however, there is little basis for requiring persons to assist others by meeting their health care or other needs. Libertarians, for example, believe that fundamental rights to property, including rights to personal assets, such as talents and skills, are violated if society coerces individuals into providing “needed” resources or skills [citing Nozick (1974)]. Libertarians generally recognize an “imperfect” duty to act beneficently or charitably, but this duty involves discretion. It can be discharged in different ways that are a matter of choice. Persons denied charity have no right to it and have no complaint against persons who act charitably in other ways.<sup>93</sup>

Next is Taylor’s IEP entry on health care ethics. Taylor considers two policy perspectives: libertarianism and egalitarianism. According to Taylor, libertarian principles of justice may or may not recognize a right to health care. But even if they do, health care—like food, clothing, shelter, and every other available good or service—should be left to the free market. The result is that wealthier persons will be able to buy high quality health care, less wealthy persons will only be able to buy lower quality health care, and poor persons will not be able to buy any health care at all. For these principles place the autonomy of citizens to make their own choices over beneficence. This is in stark contrast to egalitarian principles of justice, which establish a right to health care, obligate the government to provide citizens with access to health care, and place beneficence over autonomy.<sup>94</sup>

Finally is Vaughn’s *Bioethics* textbook. Vaughn’s comments on libertarianism echo those of Daniels and Taylor:

According to libertarian theories of justice, the benefits and burdens of society [including income, property, employment, rights, taxes, and public service] should be distributed through the fair workings of a free market and the exercise of liberty rights of noninterference. The role of government is to protect the rights of individuals to freely pursue their own interests in the economic marketplace without violations of their liberty through coercion, manipulation, or

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<sup>93</sup> Daniels (2001: 764).

<sup>94</sup> Taylor (n.d).

fraud. Government may use coercion, but only to preserve liberty. Beyond these protections, the government has no obligation to adjust the distribution of benefits and burdens among persons; the distribution is the responsibility of free and autonomous individuals. Persons may have equal rights or equal worth, but that does not entitle them to an equal distribution of society's benefits. The government acts unjustly if it coercively redistributes those benefits.

On this view, no one has a right to health care, and a government program using tax dollars to provide universal health care or even health care only for low-income families would be unjust. Such a program would be a coercive violation of people's right to use their resources as they see fit. The libertarian would accept a system of health care only if it is freely endorsed and financed by those who participate in it. So health insurance acquired through free choice by a group of private citizens to meet their own health care needs is acceptable. State-supported health insurance financed by taxes is not. But none of this would rule out voluntary charity by well-off citizens to provide health care for the poor.<sup>95</sup>

There are two important points to make about these introductory texts. First, we should not read them uncharitably. Daniels is careful not to single out all and only libertarians. In his SEP entry, he says "some" libertarian accounts, not "all" of them. And in his introductory article, he says "for example", allowing for other non-libertarian theories to also deny the existence of a right to health care. And in general, when reading SEP entries, IEP entries, and introductory textbooks, we should assume the authors are painting with broad strokes. Additionally, Daniels mentions two authors—Buchanan and Sterba—who give a libertarian defense of a right to health care and/or government support for health care (more on that later). Second, we should remember that—for my purposes—I am only interested in what these texts say about the libertarian and *universal affordability*. And much of what they say is not explicitly about *that*.

That said, the introductory texts above leave us with a clear enough picture. Even on a charitable reading, these texts single out libertarians as the nay-sayers. Daniels may only say "some libertarian accounts" and "libertarians, for example". But in neither text does he mention *any* other like-minded accounts or theories of justice to consider. Taylor and Vaughn probably recognize the diversity of libertarian theories and persons, but they do not mention it; and they both use libertarianism as the

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<sup>95</sup> Vaughn (2020: 748, 750).

*paradigm* theory of justice which leaves persons without health care or insurance. Additionally, after Daniels mentions Buchanan and Sterba, he follows up by saying “*most libertarians resist any weakening of the property rights at the core of their view.*”<sup>96</sup> So they—intentionally or not—leave us with the impression that most or all libertarian theories and persons have a unique answer to my question.

And that answer seems to be this: the libertarian *should oppose* the United States getting universal health coverage! As it seems to go, we do not have a right to afford basic health care; and so, the government has no obligation to guarantee we can afford it. And the government cannot tax, regulate, or mandate our money, businesses, or free decisions to guarantee we can afford it; because that would violate the rights of others to use themselves and their resources as they see fit. Instead, who can afford it—and what and how much they can afford—should be left to the free market. And the result: the wealthiest can afford more and higher quality care, those less wealthy can only afford less and lower quality care, and the poorest cannot afford any care at all. And while wealthier persons are free to charitably help those who cannot afford care on their own, there is no system that guarantees everyone would end up affording it.

#### Actual Libertarians (Answer: Mixed)

As we saw above, the introductory texts leave us with the impression that the libertarian *should oppose* the United States getting universal health coverage, for more-or-less the same kinds of reasons. However, when we turn our attention to what libertarians *themselves* have said, we see a wider range of answers. For starters, we see a range of opposition and support: some say she *should oppose*, for the kinds of reasons above; others, however, seem to say (or illustrate how) *she can allow but not require*; and others even seem to say she *should support*. Furthermore, there is a range of *support*: typically, those who say she *should support* do *not* say she should support *any* universal health coverage system, but

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<sup>96</sup> Daniels (2001: 764); my italics.

rather only *specific systems* based (at least in part) on their *specific empirical* claims. Here, I will only offer a sampling of these persons. For simplicity, I will divide them into three groups: (1) philosophers, (2) libertarian think tank authors/contributors, and (3) politicians.

Beginning with (1), I will note four philosophers: Peikoff, Engelhardt, Hayek, and Flanigan. At one end of the opposition-support spectrum is Peikoff, who answers she *should oppose*, for reasons like we saw above. According to Peikoff, the only legitimate rights are rights to act without interference and work for what you want; there are *no* rights to be given others' resources without their permission. A right to health care would just be a right to be given others' resources without their permission, because it would require them to give you health care (or the means to get health care) whether or not they wanted to. And so, we do not have a right to health care. Instead, those who cannot afford health care can only rely on the charity of others. As such—especially if we modify a right to “health care” with a right “to afford basic health care”—we get the same picture we got with the introductory texts.<sup>97</sup>

If there is any difference between Peikoff and the introductory texts, it is Peikoff's optimism. Unlike Taylor, Peikoff assures us that—in a free or even semi-free country—those who cannot afford health care will necessarily be a small minority.<sup>98</sup> So perhaps Peikoff thinks charity will be more than sufficient to account for those who cannot afford such care on their own. Importantly, however, that only brings Peikoff so far. Again, I define ‘universal health coverage’ as *a system that guarantees* everyone can afford basic care. Peikoff clearly does not require a *system* of charity to guarantee affordability; he does not even require charity at all! He merely *allows* charity and seems to imply that charity *could*—in principle—account for the stragglers. There is no guarantee charity *would* account for these stragglers. And even if charity did, it would not be the result of a system, but rather coincidence. At best, Peikoff's

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<sup>97</sup> Peikoff (1993).

<sup>98</sup> *Ibid.*

optimism gives him the same *outcome* as universal health coverage, but *not* universal health coverage *itself*. And so, even including Peikoff's optimism, he seemingly still answers *oppose*.

Engelhardt seems to move us up the spectrum. According to Engelhardt, justice does *not require* universal health coverage; but under certain conditions, justice *allows* it. Let's start with why he thinks justice does *not require* it. According to Engelhardt, we have the basic right not to be interfered with without our permission; and when X violates our right, X owes us restitution. But we do *not* have the basic right to others' assistance. This includes the right to health care, including the right to a decent-minimum of health care.<sup>99</sup>

To illustrate, imagine you have some IID. Does this mean the state owes you health care? It depends on *who is to blame* for your having your IID. If the *state* is to blame, then yes, the state owes you health care or something comparable to make up for the harm it caused you. If *some individual* is at fault, then no, the state does not owe you anything. *But* that *individual* does; and a just and beneficent state will use police, forced restitution, and charitable programs to make that individual pay up and prevent that from happening again. If, however, *no one* is at fault (i.e. it was caused by natural forces, like genetics or a natural disaster), then no, the state does not owe you anything. Nor does any individual. And were the state to take someone's resources without their permission to assist you, it would violate their right to non-interference. In short, we do not have the general right to have health care. But we have the right to purchase health care without interference on the free market; and, in some cases, you specifically might be owed health care for the sake of another's restitution. And so, unless the state perpetually finds itself owing everyone health care, justice does not require the state to guarantee everyone has health care.

So why does Engelhardt think justice *allows* universal health coverage? According to Engelhardt, we all have property rights over ourselves and legitimately-held resources. And these rights cannot be

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<sup>99</sup> Engelhardt (1996b). See also Weiner (1997: 113, 123-4).

interfered with to assist others. *But* a community can legitimately hold resources in common, if that is what the community's members choose. And the community can—but need not—use those commonly-held resources for universal health coverage.<sup>100</sup>

Assuming a community has these resources and chooses to use them for universal health coverage, the system it chooses must be limited. Namely, that system cannot violate anyone's right to non-interference. For example, it cannot prevent anyone from freely choosing to purchase better health care; and it cannot force anyone to fund a system which she morally opposes. That system must respect everyone's freedom of choice and moral diversity.<sup>101</sup>

Engelhardt offers two ideas of what this system could look like. His first idea is that the community could establish a multi-tier system of health care. The bottom tier would provide “a decent minimal or basic amount of health care for all”, while the top tier would allow wealthier persons to purchase better health care for themselves or loved ones.<sup>102</sup> Importantly, however, Engelhardt questions how diverse persons could agree on what counts as a decent minimal or basic amount of health care.<sup>103</sup>

This leads us to Engelhardt's second idea. Instead of trying to determine what counts as a *decent minimal or basic amount* of health care, the community could simply give the poor vouchers or money for health savings accounts. To use his own illustration, suppose we have two groups of health care providers: the Roman Catholics and New Age agnostics. The Roman Catholics—because of their religious beliefs—do not offer artificial insemination, abortion, or euthanasia; but they do offer hospice care. The New Age agnostics, by contrast, offer artificial insemination, abortion, and euthanasia; but they do not offer

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<sup>100</sup> Ibid. Importantly, it can be hard to know what exactly this looks like, since Engelhardt (at least here) does not describe how communities are created, how they can legitimately hold resources in common, and how they can choose to use those resources for universal health coverage. But I will not dwell on this concern.

<sup>101</sup> Engelhardt (1996b: esp. 782-3).

<sup>102</sup> Ibid. 783. See also Weiner (1997: 113, 123-4).

<sup>103</sup> Engelhardt (1996b: 783).

hospice care, because they favor euthanasia instead. As such, each group offers a different menu of care.<sup>104</sup>

Following Engelhardt's second idea, everyone would be free to choose which menu of care they want, and what care they want from that menu. Some (most?) would be able to pay for their own care, using their private insurance and/or out-of-pocket spending. But some persons would be too poor to afford any insurance or health care on their own. For these poor persons, the community could give them vouchers, which could then be used for basic care on *the menu of their choice*. Or, the community could give them money to put in health savings accounts, which they could then take out later to spend on health care. This way, everyone could afford basic health care, while still respecting everyone's freedom of choice and moral diversity.<sup>105</sup>

What, then, does Engelhardt's answer appear to be for my question? At least on the surface, he appears to say she *can allow, but not require*. In other words, the libertarian *can* let the United States get universal health care coverage, *but* she does not *require* the United States to do so. Furthermore, *if* the United States is going to get universal health coverage, it *must* choose a system constrained by the respect owed to everyone's freedom of choice and moral diversity. It could—perhaps—be a multi-tier system; or—seemingly preferably—a system which gave vouchers or money for health savings accounts to those who could not afford basic health care on their own.

That said, I am inclined to think Engelhardt's *real* answer is she *should oppose*. And that is because my question is not about *any* state getting universal health coverage, but specifically the *United States*. Here, Engelhardt makes clear that the United States *should not* finance universal health coverage *by taking persons' money without their permission*—however constrained that system would be. Instead, the United States *can only* finance a (constrained) system with money it holds in common for this purpose.

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<sup>104</sup> Engelhardt (1997: 194-6).

<sup>105</sup> *Ibid.* 194-6.



Suffice it to say, it is hard to imagine how the *United States today* could finance *any* system without at least taking *some* persons' money without their permission.<sup>106</sup> And Engelhardt seems to agree.<sup>107</sup> Nevertheless, Engelhardt at least illustrates what it could look like to answer she *can allow, but not require*.

Hayek and Flanigan push us to the other end of the spectrum. According to Hayek, there is no reason why the state should *not* provide protection from sickness and accident; and state provision of this protection is compatible with the preservation of freedom:

Nor is there any reason why the state should not assist individuals in providing for those common hazards of life against which, because of their uncertainty, few individuals can make adequate provision. *Where, as in the case of sickness and accident, neither the desire to avoid such calamities nor the efforts to overcome their consequences are as a rule weakened by the provision of assistance, where, in short, we deal with genuinely insurable risks, the case for the state helping to organise a comprehensive system of social insurance is very strong.* There are many points of detail where those wishing to preserve the competitive system and those wishing to supersede it by something different will disagree on the details of such schemes; and it is possible under the name of social insurance to introduce measures which tend to make competition more or less ineffective. *But there is no incompatibility in principle between the state providing greater security in this way and the preservation of individual freedom.*<sup>108</sup>

Flanigan takes it as a starting point “that states should provide affordable access to health care and that this access can be permissibly funded with tax revenue”.<sup>109</sup> As she says, “there are many reasons to give persons health coverage”, and most of us can agree—for some reason or another—that “institutions ought to provide citizens with at least some health care”.<sup>110</sup> Here, Flanigan merely argues that the state should *not* do so *by using the ACA’s employer mandate*,<sup>111</sup> and seemingly prefers replacing the ACA with a voucher system.<sup>112</sup> As such, both Hayek and Flanigan are already on board with the United

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<sup>106</sup> See pages 206-8.

<sup>107</sup> Ex. Engelhardt (1996b: 776).

<sup>108</sup> Hayek (1994: 125); my italics. To give credit where credit is due: I found this Hayek quote from Yglesias (2010), and I found Yglesias (2010) from Gomez (2017). I also found Dolan (2017) and Peralo (2017) from Gomez (2017).

<sup>109</sup> Flanigan (2013: 215).

<sup>110</sup> Ibid. 217.

<sup>111</sup> Ibid. 218-34.

<sup>112</sup> Ibid. 234 en. 8.

States getting universal health coverage. For them, the question is not *if* the United States should have universal health coverage, but rather *which system?* As such, the answer for them is likely she *should support*.

This brings us to (2): libertarian think tank or LLC authors and contributors. My sampling includes Cannon from the CATO Institute, Neuhofel who has written for the CATO Institute, Peralo from Being Libertarian, and Dolan from the Niskanen Center. Unlike my sample of philosophers, my sample here all seem to (more-or-less) answer she *should support*. However, they differ from one another in at least two crucial ways: first, the *empirical* claims they each make; and second, the *specific system* they say she should support.

Let's begin with Cannon. Cannon is CATO's director of health policy studies and has written prolifically about his stance of libertarian health care, the ACA, and free-market alternatives.<sup>113</sup> For my purposes, I will focus our attention to two of his articles, both found on CATO's Libertarianism.org. In Libertarianism.org's encyclopedic entry on health care, Cannon says that "In limited circumstances, a substantial number of libertarians support state-sponsored coercion to prevent the spread of infectious diseases. In the absence of violence, theft, tortious injury, fraud, or breach of contract, however, libertarians reject the use of coercion in health and medicine as immoral and counterproductive."<sup>114</sup>

Cannon explains what this looks like, but here, I will summarize what I take to be his most relevant points:

**Infectious disease:** Persons can harm each other by spreading infectious diseases, which can justify government efforts to identify and contain those diseases. But those efforts should be limited: there must be no alternative to government coercion, and the government must use the least coercive measures possible.

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<sup>113</sup> For a list of his works, see <https://www.cato.org/persons/michael-f-cannon>.

<sup>114</sup> Cannon (2008).

**Licensing laws:** “Licensing laws restrict entry into the medical professions, dictate what tasks each profession may perform, and deny patients the right to be treated by the practitioner of their choice.” Furthermore, licensing laws reduce access to the poor. Finally, “unregulated markets are extremely likely to develop private quality certification.”

**Selling human organs:** The government should not ban the sale of organs to transplant patients or organ brokers. That ban “allows the government to assert a property right in the body of every citizen”; and furthermore, creates an artificial shortage of organs that causes thousands of unnecessary deaths each year.

**Limited Liability:** The government should honor contracts to limit a provider’s liability in exchange for cheaper or free health care. Refusing to honor those contracts limits “the right of consenting adults to engage in mutually beneficial exchanges that harm no one else” and “reduce access to care among those least able to pay.”

**Insurance:** The government should not penalize persons for choosing to have worse insurance or no insurance at all. Doing so coerces persons to buy insurance they may not want or need or even find immoral. It infringes on their ability to choose what they want for themselves. And it increases the cost of insurance and the number of insured. Furthermore, public insurance programs (like Medicare and Medicaid) “devour private health insurance markets and deny adults the ability to choose whether and how to fund their health needs in retirement and how to assist the needy.”<sup>115</sup>

In “A Libertarian Vision For Health Care”, Cannon argues why “A more libertarian health care system would mean higher quality, lower prices, more innovation, and better access for all”. Here is a summary of what I take to be his most relevant points:

**Health care is easier:** Many patients have a concierge, which “helps you communicate with your medical team, helps you understand your treatment options, and even acts as a cost-sharing

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<sup>115</sup> Ibid.

consultant". Patients also have an easier time communicating directly with their doctors. Additionally, telemedicine is common, allowing patients to meet with doctors over the phone and schedule house calls. Everyone is still free to use indemnity insurance and research their own specialists and treatment options. It is just that most persons do not.

**Health insurance is better:** Healthy persons are purchasing insurance, because it is finally a good deal for them to do so. For starters, they can now purchase "pre-ex" insurance. Pre-ex insurance is *not* insurance, but rather a *place-holder* for insurance. It allows persons to pay a *small fraction* of the cost of insurance, so that they can wait to get sick and buy insurance when they need it. Additionally, they can purchase insurance without ACA restrictions. Additionally, "health insurance comes with a total-satisfaction guarantee". If you do not like it, you can give it up, and others will compete to insure you instead.

**Health care is more universal:** The poor can afford and get better health care. This is for two reasons. First, this libertarian health care system allows low-skilled clinicians, which increases the range of services and lowers health care prices. Second, because this system is less expensive to finance than our current system, poor persons get to keep more money to spend on health care.<sup>116</sup>

How does the United States get this libertarian health care system? According to Cannon, at least a handful of things. First, it requires the United States to abandon the ACA. Doing so gets rid of the restrictions which—he contends—are "preventing innovators from protecting people against preexisting conditions" and makes insurance "more affordable by restoring people's freedom to purchase or not purchase coverage". Second, it requires the United States to allow lower and mid-level clinicians, as well as out-of-state doctors that treat the poor for free. Third, it requires the United States to give all the

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<sup>116</sup> Cannon (2020).

money it spends on persons' behalf back to the persons themselves. This, in turn, lets persons demand more and higher quality health care, and makes them more cost-conscious and demanding consumers.<sup>117</sup>

With that said, let's return to my question. To be technical, I am not convinced Cannon's libertarian health care system counts as 'universal health coverage' as I define it. First, while Cannon may *call* what he is talking about a libertarian health care *system*, I am not convinced it is a *system* at all. As I said earlier, a system for me is an organized collection of parts that work together to achieve a common goal. I am not convinced that any of Cannon's parts are organized and working together towards the same goal. Rather, to me at least, they all sound like disparate parts doing their own thing, which coincidentally has the collective outcome that health care is more affordable. Furthermore, I am not convinced that his "system" *guarantees everyone* can afford basic health care. Seemingly, it would make health care cheaper and give poor persons more money. But Cannon makes clear that persons could—and some presumably would—go without insurance;<sup>118</sup> and elsewhere, he makes clear that the insurance persons get may not be *good* insurance.<sup>119</sup> And I see no mechanism that guarantees they could still afford care if they end up suffering financial hardship and lack good insurance on which to fall back. In truth, Cannon here sounds more like Peikoff to me: both are overly optimistic about the free market's ability to make health care affordable; and both, at their best, only offer something like the *outcome* of universal health coverage, but *not* universal health coverage *itself*.

That said, what Cannon says is at least on the path towards universal health coverage. And elsewhere, he suggests that no system could ever *really* achieve the goal of universal health coverage, and his system comes the closest to it.<sup>120</sup> So if we give him that, his answer seems to be she *should support*.

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<sup>117</sup> Ibid.

<sup>118</sup> Ibid.

<sup>119</sup> For example, Cannon defends short term insurance plans as an alternative to ACA-compliant plans (Cannon 2018a and 2018b). And these plans, while comparatively cheaper, are also comparatively much worse: they have fewer covered benefits and consumer protections and more cost sharing. See Pollitz et. al. (2018) and KFF (2019).

<sup>120</sup> Free Thoughts (2014: 41:11-42:22).

But importantly, his answer is nuanced in two crucial ways. First, Cannon seemingly embraces what I will call the Best of Both Worlds thesis: that the most *moral* system is *also* the most *effective* system. As we can see above, Cannon thinks government restrictions are in some sense *immoral*: they wrongly interfere with persons' freedom to choose how to use their own bodies and money. But he *also* thinks government restrictions are *counter-productive*: they make health care more expensive and leave the poor with less money to spend on it. Second, Cannon seemingly *only* supports *one kind* of system: the one run (exclusively or primarily) by the *free market*; there is little or no place for government restrictions aimed at making health care more affordable. And so, Cannon seems to (more-or-less) answer she *should support*, but *only* a free-market "system".<sup>121</sup>

Next up is Neuhofel, who has written for the CATO Institute. Neuhofel argues that our health insurance system has many problems: it requires physicians to give their patients a lot of forms, reduces the time physicians can see their patients, hides costs from patients and is more expensive than patients realize, and creates administrative costs.<sup>122</sup> He also argues that we can understand how absurd our *health* insurance system is if we see how absurd an analogous *food* insurance system would be.<sup>123</sup> In response to problems like these, he founded Direct Primary Care (DPC), which is a model that primary care physicians (like himself) use. It works like this: DPC physicians do *not* accept health insurance. Instead, patients pay a membership fee, which covers basic services. Additionally, physicians can offer other services and be clear how much everything costs; patients can then choose to pay for whatever additional services they want. That way, patients know exactly what they are paying for and how much they are paying for it, and

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<sup>121</sup> My interpretation of Cannon here seems bolstered in *Free Thoughts* (2014). In 1:15-1:46, Cannon says he would prefer all health care allocations to be determined by individuals acting voluntarily, market exchanges, and charity. And in 56:30-1:01:42, Cannon does not merely praise the free market for health care affordability and quality. He also says that we—unfortunately—cannot look to other nations to see how a free health care market would look, “because every advanced nation has some government guarantee of access to health care, and that basically gives away the whole ball game”. And then, he goes on to say that “if the United States health care sector is worth anything,” it is the part where it gave “market forces room to breathe”. This suggests to me that, for Cannon, his ideal “system” is one without government involvement *at all*.

<sup>122</sup> *Building Tomorrow* (2018).

<sup>123</sup> Neuhofel (2018).

both physicians and patients spend more time seeing each other and less time filling out insurance paperwork.<sup>124</sup>

Now, back to my question. Here, it is obvious that Neuhofel is *not* defending a universal health coverage system. But he does illustrate what a universal health coverage system *could look like*. Neuhofel makes the *empirical* claims that today's insurance has many problems and there are more effective alternatives, like membership fees and transparent pricing. As such, Neuhofel illustrates what it would look like to answer she *should support*, but *only* for systems which rely less on insurance and more on alternatives.

This brings us to Peralo, who writes for the Being Libertarian LLC. Peralo says what *he wants* is laissez-faire capitalism, to cut government spending by 70%, and something more like Randcare (which I will discuss later). *But* he also makes the *empirical* claim that he cannot get what he wants: politically-speaking, it would never happen. So instead, he argues on behalf of a *compromise*. He outlines his proposal in detail, but the highlights are this: in exchange for deregulating medicine, medical schools, and immigration—and shifting money to encourage health savings accounts and private insurance—he will support more government spending and even single-payer health care. This, he believes, could actually pass in Congress, be better than the ACA, and be the best he could realistically get.<sup>125</sup>

Now, back to my question. Here, it is not clear whether Peralo's compromise would count as 'universal health coverage' as I define it. But I am happy—for simplicity's sake—to grant that it is or on the path towards it. What I want to emphasize here is what Peralo *does*. Peralo, like others we have already seen, wants to leave health care to the free market. *But* unlike those others, Peralo *also* makes the *empirical* claim that—politically-speaking—that would never happen. So rather than spend his time arguing about what is *ideal*, he instead spends his time arguing for *the best he can get*. As such, Peralo

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<sup>124</sup> Building Tomorrow (2018).

<sup>125</sup> Peralo (2017).

seems to answer the libertarian *should support*, but *only* for those systems worth compromising for in our political reality.

Finally is Dolan, from the Niskanen Center. Dolan, like Peralo, makes an *empirical* claim about our political reality. Namely, he thinks that universal access for the United States is *inevitable*. So his attitude, as he puts it, is to “Stop fighting it and start figuring out how to make it work here, as it does elsewhere.”<sup>126</sup> And elsewhere, Dolan outlines such a plan. His plan is detailed, but the general idea is this: the system would guarantee everyone had insurance which paid for all health care costs after a certain point. Those below the low-income threshold would get their health care for free. Those above would only pay a set amount for their health care, relative to how much they exceed the low-income threshold. The result: those who cannot afford to pay for health care at all get it for free; those who can pay a set amount of what they can; and no one drops into (or further into) poverty because of their health care expenses. Beyond that, the system allows other ways to make health care affordable: its insurance is not the only mechanism, but rather a guaranteed fall-back.<sup>127</sup>

Now, back to my question. As I see it, Dolan and Peralo are a lot alike. Both make *empirical* claims about our political reality: the former claims it would be *impossible* to leave the government out of health care affordability; the latter claims universal health coverage is likely *inevitable*. So both defend plans which they think *could actually pass*. That said, there are a few noticeable differences between the two. First, unlike Peralo, Dolan actually seems to think his plan is *ideal*, but is willing to compromise on the details. Second, unlike Peralo, Dolan defends what is clearly ‘universal health coverage’ as I define it. It is a system which guarantees everyone has insurance, which they can fall-back on to guarantee basic health care is affordable. Dolan, then, clearly answers she *should support*, at least for systems which guarantee everyone has fall-back insurance.

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<sup>126</sup> Dolan (2017).

<sup>127</sup> Dolan (2019).



This brings us to (3): politicians. Here, I will only note one politician, which I take to be the most prominent self-identifying libertarian (or libertarian-ish) politician today: Senator Rand Paul. Paul has made clear that he wants to abolish the ACA. But helpfully, he has also laid out his replacement plan, which some (like Peralo) call Randcare. For my purposes, I will just hit some of Randcare’s highlights:

- Let persons purchase inexpensive insurance plans or go without insurance entirely
- Let persons contribute more to health savings accounts and use that money on more health-related expenses
- Make it easier to deduct health insurance costs from taxes
- Give states more flexibility to find alternatives to Medicaid
- Let insurers sell insurance across state lines<sup>128</sup>

Now, back to my question. It is not clear if Randcare would count as ‘universal health coverage’ as I define it. But Paul’s staff claims it “would expand access to higher-quality, lower-cost health care for more Americans, regardless of medical history.”<sup>129</sup> Seemingly then, Paul thinks Randcare would at least get the United States closer to universal health coverage. Here, I see Paul like Cannon. Namely, he appears to make the *empirical* claim that the less government restrictions, the more persons can afford health care. Or as Paul puts it: “Getting government out of the American people’s way and putting them back in charge of their own health care decisions will deliver a strong, efficient system that doesn’t force them to empty out their pockets to cover their medical bills.”<sup>130</sup> As such, Paul seems to answer she *should support*, but *only* for systems with less government restrictions than the ACA (like Randcare).

So what can we take away from our look at these libertarians? Here, I want to highlight two differences between them and the introductory texts we saw earlier. First, in contrast to the introductory texts, the picture we are left with here is far more *mixed*. Some say she *should oppose*, others say (or

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<sup>128</sup> Rand Paul Staff (n. d.). See also KFF (2017).

<sup>129</sup> Rand Paul Staff (n. d.).

<sup>130</sup> *Ibid.*

illustrate how) she *can allow but not require*, and others actually say (or assume) she *should support*. Furthermore, those who say she *should support* typically have more nuanced answers. While they typically agree she should *not* support the ACA, they disagree about what she should support *in its stead*. Engelhardt—at least under certain conditions—advocates for giving the poor vouchers or money for health savings accounts; Flanigan advocates for abandoning the ACA’s employer mandate and seemingly replacing the ACA with a voucher-system; Cannon and Paul advocate for abandoning most or all of the ACA and numerous government restrictions and leaving more to the free market; and Neuhofel—at least on the small scale—advocates shifting away from insurance and towards membership fees and price transparency. Peralo and Dolan both advocate for plans they believe can realistically pass. For Peralo, that means accepting more government spending or even single payer in exchange for deregulation elsewhere. For Dolan, that means a system which guarantees everyone has insurance which prevents them from having to pay more than they can.

Second, in contrast to the introductory texts, libertarians here often appealed to *both moral and empirical* reasons for the conclusions they drew. For some, their reasons were *largely moral*. For example, both Peikoff and Engelhardt are driven to protect what they take to be persons’ rights to non-interference. Additionally, when it comes to the systems Engelhardt allows, his defense of them is primarily moral: they are the systems which best respect persons’ freedom of choice and moral diversity. Hayek says state protection from sickness and accident is compatible with freedom. Flanigan takes it as a starting point that—for moral reasons—the state should guarantee everyone has access to health care; and her attacks against the ACA’s employer mandate are centered around freedom of contract and fairness.

That said, many of these libertarians’ reasons were *empirical*. Cannon and Paul argue that ACA restrictions in particular—and government restrictions in general—make health care more expensive for more persons. Neuhofel argues today’s insurance is problematic and alternatives are more effective. Peralo argues he cannot realistically get the health care system he wants; so instead, he defends the best

system he can get. Dolan argues that universal access for the United States is inevitable and defends a flexible system that still offers everyone a fall-back of financial protection.

In short, the introductory texts made it sound like libertarians think universal health coverage is *at odds with* liberty and property rights; and they simply are *willing to sacrifice* the former for the sake of the latter. But as we saw above, some libertarians see these two things as *compatible*, with the former even *requiring* the protection and enforcement of the latter. And others are more open to government restrictions and compromises. In short, the picture the introductory texts left us with was not inaccurate *per se* (see Peikoff and Engelhardt, for example), but it was incomplete. The real picture is far more mixed and nuanced.

#### A Handful of Libertarian Defenses (Answer: Support)

This brings us to a handful of libertarian defenses of universal health coverage. As I said earlier, my goal is to argue that the libertarian *can and should support* the United States getting universal health coverage. Importantly, however, I am not the first to do so. We have already seen some libertarians defend, illustrate, or simply assume as much. But here, I want to note five additional ways others have defended—or laid the groundwork for defending—this answer. They are those that appeal to:

- (1) Basic needs
- (2) Duties of beneficence
- (3) Protecting and enforcing everyone's liberty and property rights
- (4) Specific libertarians
- (5) Free-riding

Let's begin with (1). Consider the following argument:

- (A) The United States should help persons meet their basic needs
- (B) The United States cannot do so without universal health coverage

Therefore, the United States should get universal health coverage

Libertarians are notorious for denying (A). But importantly, *numerous* philosophers have argued that the libertarian in particular should accept (A).<sup>131</sup> So here, in order to defend this conclusion to the libertarian, all these philosophers need to add is a defense of (B). But (B) seems rather easy to defend. For starters, if anything is a basic need, it is some level of *health*. And that is precisely what basic health care is concerned about. Furthermore, as I will argue later, any meaningful attempt at homelessness prevention will require universal health coverage. Finally, as I will also argue later, universal health coverage does not *merely* help everyone meet their basic needs; it *also* helps them do so through their own work and independence, instead of having to rely on the government or charity. And that at least sounds like what the libertarian wants here. As such, if we merely add a little more to what these philosophers have already argued, we can easily create a libertarian defense of universal health coverage.

Now consider (2): duties of beneficence. Libertarians are notorious for saying the state should *not enforce* our duties of beneficence: it should be our decision when we are beneficent, how we are beneficent, and to whom we are beneficent. But as Buchanan notes, they at least typically agree we *have* duties of beneficence. And as he argues, one of the most effective and efficient ways to satisfy these duties is to have universal health coverage.<sup>132</sup>

But as Buchanan continues, there is a problem here: we cannot achieve universal health coverage (or satisfy these duties more generally) unless *a lot of persons* contribute to it (and other large-scale projects). And there are at least two reasons why—without enforcement—they would not. First, there is the *rationality problem*. As it goes, when it comes to projects as large as universal health coverage, my *single* contribution is essentially a drop in the bucket: if enough persons contribute, my contribution does not matter; if too few persons contribute, my contribution is not enough; rarely would my contribution

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<sup>131</sup> Sterba (2000: 64 fn. 1) offers a list. I expect authors like Blincoe (2018) and Wendt (2017) can be added to the list.

<sup>132</sup> Buchanan (1984: 69).

*itself* be required. So here, it is *rational* for me to withhold my contribution, for fear that it will be wasted. Second is the *assurance problem*. As it goes, when it comes to projects as large as universal health coverage, I may not want to contribute *unless* I have the *assurance* that enough persons will contribute too. Universal health coverage *only* works if enough persons contribute; and I do not want to just throw my money away! So I will *only* contribute if I am assured that everyone else will do so as well. Otherwise, I will withhold my contribution, for—again—the fear that it will be wasted.<sup>133</sup>

As such, Buchanan concludes we cannot achieve something as large as universal health coverage without enforcement. In other words, the state needs to guarantee that everyone who must contribute does. It must make contributing rational and provide everyone with the assurance they need to confidently contribute. But that just means, in order to effectively and efficiently satisfy our duties—which libertarians typically agree we have—we need the state to get universal health coverage and enforce our contributions to it.<sup>134</sup>

Importantly, there are libertarian responses here. But Buchanan addresses them,<sup>135</sup> so I will press on to (3): protecting and enforcing everyone’s liberty and property rights. As I said earlier, the libertarian—if nothing else—believes the state should protect and enforce everyone’s liberty and/or property rights. And that means—if nothing else—the state should protect *everyone* from *violent and property offenses* and punish all and only offenders. ‘Everyone’ here means *everyone*, not just the wealthy. And violent and property offenses are the clearest violations of a person’s liberty and property rights which a state is supposed to prevent and rectify.

This concession is important for two reasons. First, there is evidence which strongly suggests that universal health coverage would help the state *more effectively and efficiently* protect *everyone* from these offenses. For one thing, there is a body of evidence connecting homelessness to crime to universal

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<sup>133</sup> Ibid. 68-72.

<sup>134</sup> Ibid. 72.

<sup>135</sup> Ibid. 72-8.

health coverage. As I will argue later,<sup>136</sup> there is *substantial* evidence that being homeless is *dangerous*, making one *far* more likely to commit property offenses and be a victim of violent offenses. Additionally, there is *substantial* evidence that homelessness prevention not only reduces crime, but in fact reduces it *more effectively and efficiently* than the police and criminal justice system alone. Finally, there is *substantial* evidence that meaningful homelessness prevention *requires* (among other things) universal health coverage. Additionally, there is burgeoning evidence that Medicaid expansion reduced violent crime and saved money doing it. For example, Vogler (2020) found that states that expanded Medicaid experienced statistically significant reductions in violent crime compared to those which did not; and the reduction in crime resulted in an annual cost savings of approximately \$4 billion!<sup>137</sup>

Second, there is reason to believe universal health coverage protects everyone from these offenses *in a more libertarian way*. The police, military, and criminal justice system protect persons *by scaring them* into not committing offenses and *punishing them* if they do. Universal health coverage, by contrast, protects persons *by making it possible to avoid victimhood and live their lives as they choose*. As a result, the former protects *some* by *threatening and removing others'* liberty and property rights; the latter protects *everyone* by *enabling them to retain* their liberty and property rights. Given how much the libertarian cares about persons' liberty and property rights, she seemingly would prefer the latter over the former whenever possible.

As such, this evidence seems to implicitly make a strong libertarian case for universal health coverage. As it goes, the libertarian needs to *reframe* her understanding of universal health coverage. She needs to *stop* seeing it as assistance to some at the expense of others' liberty and property rights, and *instead* see it as a tool for the state to more *effectively and efficiently* protect and enforce *everyone's*

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<sup>136</sup> See pages 181-94.

<sup>137</sup> Vogler (2020: esp. 1166, 1190).

liberty and property rights *in a more libertarian way*. Should she do that, she has strong reason to support universal health coverage: because she already wants and is willing to tax persons for *that*!

This brings us to (4): specific libertarians. Some have argued that *specific libertarians* would (or at least should) support universal health coverage. Hausman<sup>138</sup> and Snyder Belousek<sup>139</sup> argue that *Locke* would (or should) have supported universal access. Bradley responds to Peikoff, modifying what Peikoff says into a defense of universal access,<sup>140</sup> and Weiner does the same with Engelhardt.<sup>141</sup> And given that universal affordability is *necessary* for universal access and satisfying a right to a decent minimum of care, these defenses easily translate over into defenses for universal health coverage.

Finally, there is (5): free-riding. To be clear, (1)-(4) were libertarian defenses of *universal health coverage*. (5), however, is merely a libertarian defense of *the mandate that everyone has insurance in the United States*. That said, insurance is a means to affordability and will likely be a staple of any serious attempt to get universal health coverage in the United States today. So I will discuss what some have said here as well. To begin, we must discuss what *free-riding* is. Free-riding is when a person does not pay the costs, but gets the benefits of the persons who do. As some have noted, there are ways the uninsured free-ride on others in the United States today.<sup>142</sup> I will mention two. The first deals with how insurance works. As it goes, some persons prefer to only get insurance when they are sick; that way, they only pay for it when they need it. But here is the problem: insurance cannot work if *everyone* does that. And if *a lot* of persons do that, insurance becomes more expensive for everyone else. To put it simply, insurance is fundamentally redistributive: it uses money which the healthy are not using to pay for the costs of the sick. If *no one* is healthy, then there is *no* money to use for the sick; and if *a lot* of persons are sick, then

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<sup>138</sup> Hausman (2011).

<sup>139</sup> Snyder Belousek (2013).

<sup>140</sup> Bradley (2010).

<sup>141</sup> Weiner (1997).

<sup>142</sup> Ex. Daniels (2017), Menzel (2003: 290-302), and Rulli et. al. (2012).

those who are healthy must pay *even more* to cover the sick's expenses.<sup>143</sup> As such, persons who choose to wait until they are sick to purchase insurance are free-riding on persons who did not. Quite simply: they are hoping every other healthy person is paying into it, so they can reap the benefits without having to do so themselves.

The second way deals with current United States law and uncompensated care. In 1986, the United States Congress passed EMTALA, which requires specific hospitals to give anyone acute emergency care, regardless of their ability to pay.<sup>144</sup> Because of this, those without insurance are prone to have an emergency, get care for it, and be unable to pay their medical bills. When this happens, their bills become debt for the hospital which cared for them. And in the United States today, that debt leads to either taxpayers or hospitals footing the bill.<sup>145</sup>

Thus, there seem to be libertarian reasons to mandate that everyone has insurance, at least in the United States today. For starters, libertarians are among the first to oppose externalizing our costs onto others without their permission. And clearly, those who wait to purchase insurance until they are sick or get emergency care without paying for it are imposing their costs on hospitals, the insured, and taxpayers. Additionally, libertarians at least claim to care about personal responsibility. And requiring everyone to have insurance seems to require them to take responsibility for their own health care costs.<sup>146</sup>

Importantly, some libertarians have continued to oppose this mandate. Cannon and Paul, for example, argue this mandate would restrict persons' freedom of choice, forcing them to buy insurance which they may not want or need, or even find immoral.<sup>147</sup> Additionally, part of the reason why we have

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<sup>143</sup> See CRS Report 32237 (2015: 2-3).

<sup>144</sup> CRS Report RS22738 (2010).

<sup>145</sup> See Coughlin et. al. (2014) and Tolbert et. al. (2020).

<sup>146</sup> As Preiss (2017) demonstrates, different libertarians have different conceptions of personal responsibility. Yet, whatever conception they adopt, the point still seems to stand. Additionally, this was originally the *conservative* defense of the individual mandate, espoused by Romney, the Heritage Foundation, and other Republicans. That is, until Romney lost the election to Obama and Obama began supporting the mandate. Then Romney and other Republicans began to oppose it. For that history, see Starr (2013: esp. 19-21, 169-170, 194, 202-3, 249-52, 287, 292).

<sup>147</sup> Cannon (2008); Rand Paul Staff (n. d.).



uncompensated care in the United States is because we have laws like EMTALA. So when it comes to addressing uncompensated care, the libertarian may prefer revoking EMTALA over enforcing a mandate which restricts persons' freedom of choice.<sup>148</sup>

That said, there are still libertarian reasons to favor the mandate here. First, libertarians already agree freedom of choice is not absolute. For example, they agree you should not have the freedom to choose to punch innocent persons in the face. Here, it sounds quite libertarian to say that you should *also* not have the freedom to choose to impose your health care costs onto others without their permission. But if that is the case, then the appeal to freedom of choice falls flat and the libertarian's support for the mandate remains.

Second, there are at least two concerns with the idea of revoking EMTALA. To illustrate why, let's consider three options:

- (A) Revoke EMTALA
- (B) Keep EMTALA, but let persons go without insurance
- (C) Keep EMTALA, and mandate that everyone has insurance

For starters, there are many reasons why a libertarian could avoid (A). For example, when it comes to emergency care, hospitals often cannot wait to see if the patient can afford the care before providing it; they must provide that care *now* or the patient could die! Given this problem, there is practical reason to prefer a law which provides care to those who cannot afford it over one which does not to those who can. Additionally, revoking EMTALA could easily result in more deaths and the spreading of more diseases. And while that itself would be unfortunate, it could also require more government spending and intervention for body disposal and disease prevention—which the libertarian would likely want to avoid.<sup>149</sup> And this,

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<sup>148</sup> This appeared to be Scalia's suggestion when discussing the constitutionality of the individual mandate. See Starr (2013: 282-3).

<sup>149</sup> As the COVID-19 pandemic made clear, disease prevention may not just include more government spending, but also lock-down mandates!

of course, is to ignore the personal and social toll that revoking EMTALA could have. Again, without EMTALA, more persons would likely die. At its best, this would be devastating for the friends and families of the deceased. But quite plausibly, it could also further cultivate a society desensitized to the suffering of others. While the libertarian may think she is willing to bite that bullet, she should remember that—as Buchanan pointed out—she likely thinks we have duties of beneficence. And these duties seem harder to satisfy in such a society.

Furthermore, even if the libertarian prefers (A), she must still contend with our political reality. However much the libertarian likes (A), the fact of the matter is (A) is probably impossible. Polling data strongly suggests that universal health coverage is more popular than not, and that most persons at least support making health care more affordable for more persons.<sup>150</sup> Additionally, despite Republicans' best efforts, they were unable to repeal the ACA—let alone replace it with anything—even when they had complete control over the executive, legislative, and judicial branches.<sup>151</sup> Suffice it to say, at least right now, it seems unimaginable that EMTALA could ever be revoked. But if that is the case, then (A) is not *really* an option to begin with, however much the libertarian may prefer it. Instead, the libertarian's only *real* options appear to be (B) and (C). But when it comes to (B) and (C), (C) sounds like the more libertarian option, since it—again—better aligns with persons internalizing and being personally responsible for their own health care costs, rather than externalizing their costs onto others and having others foot the bill. But then, the libertarian is back to supporting the mandate.<sup>152</sup>

To sum up: many have already answered (or provided the groundwork for answering) my question. The introductory texts suggest that the libertarian should oppose the United States getting universal health coverage. As it goes, persons likely do not have a right to afford basic health care; and guaranteeing the affordability of that care for everyone would violate at least some persons' liberty

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<sup>150</sup> KFF (2020).

<sup>151</sup> See Ballotpedia (n. d.). Importantly, however, they were able to *weaken* the ACA. See Garfield et. al. (2019).

<sup>152</sup> See Moffitt (from the *Heritage Foundation*) for a similar kind of response (Starr 2013: 250).

and/or property rights. As such, what and how much care persons can afford should be determined by the free market. And that means the wealthiest can afford more and better care, those less wealthy can only afford less or worse care, and the poorest cannot afford any care at all.

Libertarians who write about universal health coverage, however, leave us with a more mixed and nuanced picture. Some say the libertarian should oppose it, for more-or-less the reasons above. Others say (or illustrate how) the libertarian can allow but not require it. And others say she should actually support it. But importantly, they disagree about *which systems* she should support *and why*.

Finally, some have provided additional libertarian defenses (or the groundwork for libertarian defenses) of the United States getting universal health coverage. Some appeal to basic needs; others to duties of beneficence; others to protecting and enforcing everyone's liberty and property rights; others to what specific libertarians said; and others to free-riding.

For my dissertation, I do *not* see myself as departing from this literature. Instead, I see myself as building upon and filling it in. But how do I intend to do that? This leads us to my final section.

### Section 3: My Overall Strategy and Answer

Let's pause—one more time—to review where we are at. My project is about answering one question:

**Question:** should the libertarian—qua libertarian—support or oppose the United States getting universal health coverage?

In the first section, I explained what this question is *really* asking. And in the second section, I provided a *literature review* of others' answers to this question. Now, I want to conclude by explaining *my overall strategy and answer* for this question. As it goes, there are three parts. First, I will focus on three theses. Second, I will make two assumptions. Third, I will explain what my overall answer is and build up to the remaining chapters.

## Part 1: My Three Theses

Let's review how I define 'the libertarian'. 'The libertarian'—as I define her—is someone who:

- (1) Places *liberty and/or property rights* at the center of her theory of justice
- (2) Believes taxation is *generally* theft or forced labor
- (3) *But* believes *some* states should tax persons for the sake of protecting and enforcing everyone's liberty and/or property rights (hereafter: security)
- (4) *And* believes the *United States* is one such state

More simply, the libertarian is someone who adopts three theses:

**Anti-Tax Thesis:** in general, the United States should not tax persons

**Liberty Thesis:** the United States should protect and enforce everyone's liberty (and/or)

**Property Rights Thesis:** the United States should protect and enforce everyone's property rights

As such, when it comes to the libertarian, the most obvious reasons for her to oppose, allow, or support universal health coverage for the United States are going to revolve around these three theses. So here, my strategy is to explore the relationship between universal health coverage and these theses and see what pops out.

## Part 2: My Two Assumptions

Before I begin my exploration, however, I will start by making two assumptions:

**Taxation Assumption:** universal health coverage for the United States *requires taxation*

**Affordability Assumption:** universal health coverage for the United States *is affordable*

Regarding my Taxation Assumption, there are many ways the United States can help get universal health coverage. I discussed this earlier,<sup>153</sup> but for simplicity, we can lump these ways into four kinds. As it goes, the United States can use:

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<sup>153</sup> Pages 14-5.

**Public insurance:** provide its own insurance or administer its own insurance program

**Regulations:** make sure insurance or health care providers play by certain rules or sell goods or services at specific prices

**Mandates:** require individuals or organizations to make specific decisions

**Subsidies:** help pay for the cost of insurance or health care

The United States can use one of these kinds, some of these kinds, or even all these kinds of ways to guarantee everyone can afford basic health care.

Importantly, however, *all* these kinds of ways *require taxation*. Public insurance requires taxation to finance the insurance and/or program. Regulations and mandates require taxation for enforcing the regulations and mandates. And subsidies require taxation to actually pay for the cost of insurance or health care. Whichever way—or ways—the libertarian chooses here, it requires taxation to follow through.

Here, I want to assume that the *only* way the United States can get universal health coverage is by using public insurance, regulations, mandates, and/or subsidies; and that whichever combination it goes with, that combination requires taxation. Quite simply, I am ruling out the possibility of an *unfettered free market system*: a system which requires *no taxation at all* and leaves *everything* in the free market's invisible hands.

Regarding my Affordability Assumption, universal health coverage has a price tag; the United States cannot just get it for free. Here, I want to assume that—whatever its price—the United States can afford it. In other words, the United States can sustainably finance it without threatening its economy or ability to do what the libertarian wants it to do.

I will make these assumptions for two reasons. The first reason is because I genuinely believe they are *true*. It would take too much time to defend each in detail. So here, I will just give a taste. Regarding my Taxation Assumption, it is hard to *even imagine* what an unfettered free market system would look

like. The free market—by itself—does not guarantee anyone anything; whatever falls out of it is simply the product of persons’ and businesses’ exchanges. And although Paul and Cannon advocate limiting government restrictions, neither seem to offer genuine unfettered free market systems. Paul’s Randcare does *not eliminate* taxation; it only *limits* it.<sup>154</sup> And while I cannot tell if he personally wants to keep that taxation or is just willing to compromise, it is hard to see what would replace that taxation if it were jettisoned. And as I said earlier, Cannon’s libertarian health care “system” does not sound like a system at all. And even if it is, it seemingly lacks any mechanism to account for those who suffer financial hardship and lack good insurance on which to fall back. In short, an unfettered free market system almost sounds impossible *by definition*. As such, assuming we eliminated all taxation here, the most we could seemingly hope for is the *outcome* of universal health coverage, but *not* universal health coverage *itself*.<sup>155</sup>

Moreover, whatever we want to call an unfettered free market system, it probably *would not work*. Importantly, there is reason to think that limiting or eliminating some government restrictions could make health care more affordable for more persons.<sup>156</sup> But seemingly *some taxation* is required to *guarantee everyone* can afford basic health care. As far as I can tell, private insurance—by design—does not want to insure those who need it most, requiring regulations, mandates, subsidies, or public insurance to guarantee that everyone who needs it gets it.<sup>157</sup> Vouchers and subsidies—by design—require taxation

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<sup>154</sup> For example, while Randcare repeals *most* private market rules, it does not eliminate *all* of them. Furthermore, it keeps HIPPA, ACA subsidies, Medicaid expansion (though increases state flexibility to obtain waivers), and Medicare (KFF 2017). All of which require taxation to administer and enforce.

<sup>155</sup> I suppose the free market system would allow private organizations to voluntarily band together and collectively work to perpetually make basic health care affordable to all. This, however, sounds unrealistic—and regardless, is not at all guaranteed.

<sup>156</sup> For example, as Cannon (2020) and Dolan (2019: 32) both note, increasing the number of health care providers could lower health care costs; and that would likely require loosening government restrictions.

<sup>157</sup> See Friedman (2020: 36-45), Starr (2013: 153, 187, 239-46), and KFF (2008: 5-8). For a discussion of the problems with private insurance and pre-existing conditions, see Claxton et. al. (2016), Claxton et. al. (2019), KFF (2001), and Pollitz (2020). Or just search “private health insurance” along with “adverse selection”, “death spiral”, or “pre-existing conditions” in a search engine. Importantly, in response to these concerns, some Republicans have responded by endorsing the use of high-risk pools. But high-risk pools, almost *by definition*, would require substantial taxation to work as intended (Pollitz 2017).

for financing.<sup>158</sup> 4 in 10 persons say they would have difficulty paying for a \$400 emergency expense,<sup>159</sup> suggesting that health savings accounts would be worthless to many without subsidies—which, again, require taxation. Direct Primary Care sounds promising in many respects, and even manages to be lenient for those going through financial hard times. But even Neuhofel agrees that persons need insurance for catastrophic care,<sup>160</sup> and again, many persons have little money to spare. Seemingly, then, even at its best, Direct Primary Care would require insurance and subsidies to work on a mass scale—but that, again, requires taxation.<sup>161</sup> Government price setting or controlling obviously requires taxation. And so on.<sup>162</sup> In

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<sup>158</sup> Furthermore, some voucher systems sound like non-starters. For example, a voucher system could not merely give everyone (or the most vulnerable) the same amount of money, since (1) the need for health care is unpredictable and uneven and (2) health care costs are highly concentrated (see Mechanic 1976: 35 along with Pollitz 2017; see also CRS Report RL32237 2015: 2). As such, voucher amounts would need to be proportional to needs and spending to sustainably work for everyone included.

<sup>159</sup> Board of Governors of the Federal Reserve System (2019). For criticisms of health savings accounts—both in theory and how they work in the United States—see Starr (2013: 152-7). This calls to question how effective Randcare’s expansion of health savings accounts would be, at least without subsidies and potential restructuring.

<sup>160</sup> Building Tomorrow (2018: 14:45-16:00). See also AAFP (n.d.): “Because some services are not covered by a retainer, DPC practices often suggest that patients acquire a high-deductible wraparound policy to cover emergencies.”

Additionally, it should be noted that most—if not all—of Neuhofel’s problems with insurance are not problems with insurance *itself*, but rather with insurance *in the United States*. The United States insurance system is uniquely complex (Starr 2013: 10-1), and most private insurance takes the form of managed care (The CRS Report RL32237 2015: 9, 16-9), which is very restrictive and complicated. If that was replaced with a simpler system and simpler insurance, physicians would be able to spend much more time with patients using insurance and would likely have to obsess less about forms and administrative costs. For example, see what Friedman (2020: 44, 62-3) argues Sanders’ Medicare for All would do for administrative costs and time with patients.

<sup>161</sup> And this is ignoring the fact that transitioning to a Direct Primary Care model on a mass scale would require a lot of government intervention—and in turn taxation—since the free market today would likely not make that transition on its own, at least any time soon.

<sup>162</sup> Seemingly, Rand thinks that insurance will become more accessible and affordable if it can be sold across state lines (Rand Paul Staff n. d.). But in 2017, six states *already allowed* insurance to be sold across state lines, yet *none* of them had even one cross-state sale. And that was seemingly because the primary barrier to selling insurance across state lines was *not* the law, but rather the *money and complexity* it would take to create provider networks at discounted prices. Furthermore, there is reason to believe that permitting the sale of insurance across state lines *without government regulations or mandates* could actually make good insurance more expensive (Corlette & Lucia 2017). Thus, permitting the sale of insurance across state lines would seemingly—at its worse—make good insurance *less affordable* and—at its best—do little without government investment. And that, again, requires taxation. Additionally, libertarians seem drawn to the idea of taking the money and decision-making away from the government and putting it back into the hands of the persons (like Cannon 2020 and Rand Paul Staff n. d.). And Republicans seem to favor something similar, called *consumer-driven health care* (see Starr 2013: 151-2 and CRS Report RL32237 2015: 17-8). But this idea seems problematic and even unworkable, both in theory and in practice (Starr 2013: 152-4; see also Friedman 2020: 30-50). Again, more can be said here. But I hope all this provides a taste for why I am convinced this assumption is true.

short, an unfettered free market system would seemingly not only fail to *guarantee* everyone can afford basic health care; it would seemingly also fail to even *coincidentally have the outcome that* everyone can afford basic health care. To truly guarantee everyone can afford basic health care, the United States seemingly needs *some taxation* of one kind or another.

Regarding my Affordability Assumption, every other developed country seems to have (or approximate) universal health coverage; and *all* of them spend *less* on health care than the United States!<sup>163</sup> Furthermore, there are many proposals which explain in detail how much they will cost.<sup>164</sup> Some are predicted to cost about as much as the United States spends now; some are predicted to cost even less.<sup>165</sup> To put it bluntly: it sounds unimaginable that the United States—despite all its proposals and resources—is the only developed country which cannot afford (or better approximate) universal health

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<sup>163</sup> The Commonwealth Fund (2019); Kamal et. al. (2020). Importantly, as I said in footnote 13 (page iv), part of the reason why is because the United States ends up subsidizing the pharmaceutical costs of these other countries. Were that not the case, these countries would surely be paying more (or going without some pharmaceutical innovation). That said, there are three points worth stressing here. First, as I also said in that footnote, pharmaceutical costs are just one kind of health care cost and the United States spends more on health care for other reasons. Second, when it comes to pharmaceuticals, there are many ideas for how the United States can spend less without seriously threatening research and development. For example, following countries like Germany, the United States could develop a model that rewards innovation and cuts spending on new drugs with little benefit (Lauterbach et. al. 2016; see also Nemzoff & Chalkidou 2018 for a discussion of HTA). It could also pursue policies that require other countries to pay more for research and development, or use regulation to lower drug development costs (Goldman & Lakdawalla 2018). It could also finance research and development more from *public* sources and less from *private* sources, potentially leading to just as much (if not more) pharmaceutical innovation at a fraction of the cost (Friedman 2020: 58-61; see also Nemzoff & Chalkidou 2018). And importantly, none of these ideas are mutually-exclusive. Third, as I will point out moments later, there are also many *United States proposals* for universal health coverage, with some predicted to cost the same or even less than what the United States currently spends on its health care system. In short, it is true that the United States helps subsidize the health care costs of other countries, which helps explain why they spend comparatively less. But it is also true that we still have strong reason to believe that if they can afford universal health coverage, then so can the United States—and that it can do so without seriously sacrificing (and perhaps even improving) innovation.

<sup>164</sup> See The Commonwealth Fund (2019) and Tikkanen (2019) for a sampling. See also Dolan (2019) for the Niskanen Center’s proposal and Friedman (2020: 51-71) for more discussion on the cost of Sanders’ Medicare for All.

<sup>165</sup> For example, Dolan (2019) explains in detail why his proposal would cost as much as the United States spends now; and also offers strategies to make it cheaper. Friedman (2020: 51-71) argues Sanders’ Medicare for All would be cheaper than what the United States currently spends. That said, others offer different estimates for Sanders’ Medicare for All (see Katz et. al. 2019).



coverage. As far as I can tell, the better question to ask at this point is *not* whether the United States can afford *universal health coverage*, but rather can it continue to afford *going without it*?<sup>166</sup>

The second—and more important—reason I will make these assumptions is because, if nothing else, they make my project *philosophically interesting*. As I said earlier, the libertarian believes the United States should (1) generally not tax persons, (2) protect and enforce everyone’s liberty and/or (3) protect and enforce everyone’s property rights. Because of this, if *either* my Taxation or Affordability Assumption is *false*, then the answer to my question is *as trivial as it is dull*. To begin, let’s suppose that my Taxation Assumption is false. In other words, universal health coverage for the United States does *not* require taxation; an unfettered free market system is possible. If that is so, then *of course* the libertarian should support *an unfettered free market system*! At their best, other systems would unnecessarily tax persons. And at their worst, other systems would also make health care more expensive for more persons. If the free market alone can handle it, then the only reason to support anything else is to compromise or make the best of a bad situation. And while there may be reasons for the libertarian to do so, that is not really what *my question* is asking.

Now suppose my Affordability Assumption is false. In other words, universal health coverage for the United States is *not* affordable; it would destroy the United States economy and/or make it impossible for the United States to—minimally—protect and enforce everyone’s liberty and/or property rights. If that is so, then *of course* the libertarian should *not support* universal health coverage for the United States! At its best, universal health coverage would keep the United States from minimally doing what she wants it to do. And at its worst, it would spiral the United States into financial ruin. Either way, supporting universal health coverage would require the libertarian to abandon the theses that *make her a libertarian*.

If, however, we suppose both of my assumptions are true, then the answer to my question becomes *interesting and unclear*. To begin, because the libertarian cannot have universal health coverage

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<sup>166</sup> See pages iv-ix. See also Friedman (2020: esp. 68).

*without* taxation, she must now make a choice. But what choice should she make? Should she treat taxation for universal health coverage like she generally treats other taxation, and oppose it on the grounds that it is tantamount to theft and/or forced labor? Or should she, instead, consider it an exception, like she does with taxation for state-provided security? And if she considers it an exception, does that mean she *can* oppose or support it? Or are there additional reasons why she *should* oppose or support it? The answer is not immediately obvious. Furthermore, she cannot take the easy way out and oppose universal health coverage for being unaffordable. Because it is. And so, the answer remains open.

### Part 3: My Overall Strategy and Answer

Each of my remaining chapters will explore the relationship between universal health coverage and one of these theses: the Anti-Taxation Thesis for Chapter 2, the Liberty Thesis for Chapter 3, and the Property Rights Thesis for Chapter 4. In each chapter, I will:

- Explain why it looks like the libertarian *must oppose* universal health coverage for the United States
- But argue why—in fact—she *can and should support* it instead

That said, I want to conclude here by making clear *what* I am arguing she can and should support. Here, I will *not* argue she can and should support *any* universal health coverage system! Every system has its own ways of making health care affordable and requires different taxation and mechanisms to work. Presumably, *some* of these systems ask too much of the libertarian—so much so that she has reason to oppose them *in particular*. Furthermore, there may be a variety of viable systems—and in these cases, the libertarian may have reason to prefer some over others on libertarian grounds. So here, I will *not* argue she can and should support *any and all* possible systems. Nor will I argue she can and should support a *specific* system I have in mind.

Instead, I will argue for a more modest conclusion. As it goes, we all have an *idea* of what it would look like to live in a United States with universal health coverage. Diabetics would not have to ration or go without insulin because they could not afford the doses they needed.<sup>167</sup> Mothers would not have to wait in hospital parking lots, unwilling to bring their children to the emergency room unless *absolutely necessary*, because that care is so expensive.<sup>168</sup> Persons would not need to go to crowdfunding websites like GoFundMe.com to raise (or more likely, fail to raise) enough money to pay for their health care.<sup>169</sup> And bankruptcies due to medical debt would go from being the most common kind of bankruptcy<sup>170</sup> to virtually non-existent. Of course, since no system would ever realistically be perfect, there could still be problems affording the most important or essential care. But those cases would be the exception, not the rule.

In the following chapters, I will *merely* argue that the libertarian can and should support *this idea*: i.e. she can and should support a United States that *looks like this*. Should my arguments be successful, it will then be on her to fill in the details, like what counts as *basic health care* and *which systems* she can and should support to guarantee that everyone can afford it.<sup>171</sup>

That said, the libertarian should not get carried away here. Should my arguments be successful, she must accept two conclusions. First, while she is not required to support *every* system, she can and should support *some* system(s). Second, she has a *prima facie* reason to support *any* system, since all systems would make the United States look how she can and should want it to look. More simply, the guarantee that everyone can afford basic health care now carries moral weight and enters the calculus

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<sup>167</sup> Like Alec, Shane, or the many who have had to ration test strips or insulin (see pages vii-viii). And like Rachel, who I will discuss later (see pages 229-30).

<sup>168</sup> Kliff (2019a).

<sup>169</sup> Friedman (2020: 4-5).

<sup>170</sup> Himmelstein et. al. (2019).

<sup>171</sup> That said, I suspect I will give the libertarian something to work with by the end of my dissertation. For example, if she finds my arguments in Chapter 4 persuasive, she may think basic health care is the care which is necessary for being a project pursuer or independent. See also Hausman (2011).

for what she can and should support. Furthermore, as someone living in the *real* world—and not her *ideal* one—she must also accept two facts. First, as an *empirical* fact, her ideal system may not work. Second, as a *political* fact, her ideal system may not pass.

As such, should my arguments be successful, the libertarian should conclude the following. First, she can and should support the universal health coverage *movement*. In other words, contrary to how the introductory texts speak about her, she can and should join most other philosophers in supporting the United States getting universal health coverage. Second, when it comes to genuine universal health coverage proposals, she should *not* dismiss any of them outright by merely making blanket appeals to the Anti-Taxation, Liberty, or Property Rights Theses. Instead, she should look at any proposal on its own terms and only oppose it if she opposes *its unique way* of achieving universal health coverage. Third and finally, she should be willing to compromise or make the best of a bad situation, knowing that it is better to have the next best system than a worse one or none at all.

That is my overall answer to my question. Now comes the hard part: defending it. Let's begin.

## CHAPTER 2: THE ANTI-TAX THESIS

In this chapter, I will look at the relationship between universal health coverage and the *Anti-Tax Thesis*. To review:

**Anti-Tax Thesis:** in general, the United States should not tax persons

In Chapter 1, I discussed what I meant by the Anti-Tax Thesis.<sup>172</sup> But here, I want to highlight two of its important features. First, the phrase ‘in general’ does a lot of work here. As I explained in Chapter 1, the libertarian does not say the United States should *never* tax persons. For if nothing else, she says the United States should tax persons for the sake of protecting and enforcing everyone’s liberty and/or property rights. Instead, what this thesis says is the libertarian has a *general aversion* towards taxation. She believes the United States should—in *general*—not tax persons. More simply: taxation is the exception, not the rule.

Second, when I say ‘tax’ or ‘taxation’, I am simply referring to persons financing some state-provided good. Importantly, however, I will distinguish between two types of taxation: *voluntary* and *coercive* taxation. *Voluntary* taxation is when persons *voluntarily* finance this good. In other words, these persons—in some sense—agree to pay their state for this good. *Coercive* taxation is when persons are *legally required to finance this good, even if they do not agree to do so*. In other words, they must finance this good—whether or not they want to—and those who do not can be punished by the state. When I say ‘tax’ or ‘taxation’, I mean *either* voluntary *or* coercive tax or taxation. I will make clear when I am talking about the voluntary or coercive kind in particular.<sup>173</sup>

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<sup>172</sup> Page 50.

<sup>173</sup> Importantly, many think taxation is inherently coercive, making the term ‘voluntary taxation’ oxymoronic. My thanks to Katherine Kim for pointing this out. I will keep this term because I find it useful for my discussion ahead. For those who find this term oxymoronic, feel free to replace it with another term. What matters here is the distinction between the state *voluntarily* receiving or *coercively* demanding persons’ money to finance its provided goods. The terms used to make this distinction can be replaced if desired.

Importantly, there are many reasons the libertarian could adopt this thesis.<sup>174</sup> For my purposes however, I will only note two: the *theft* reason and the *forced labor* reason. According to the *theft* reason, taxation is morally on par with theft.<sup>175</sup> To illustrate, take the following case:

**Case Individual-Charity:** You work hard and earn an income. I take \$100 of that income (5-hours-worth of your wages) and give it to a charity.

Here, the libertarian thinks what I did was wrong. Why? It has nothing to do with *why* I took your money. After all, I did not keep your money or spend it on myself; I gave every last penny to a charity. Rather, it has everything to do with *that* I took *your* money. I *stole* your money. And the libertarian thinks *stealing* is wrong, *regardless* of what that stolen money was used for.

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<sup>174</sup> For example, Nozick (1974: 170) says some persons prefer more leisure time, while other persons prefer extra goods and services which require more work time. He claims that taxation treats the latter unfairly, because the latter lose their goods and services they worked for, while the former get to keep their leisure time. Narveson (2003: 427) claims that charitable mechanisms—like charity concerts—are preferable to taxation, because they are “(a) more fun than paying taxes, ... (b) being genuinely charitable, [are] far more recommendable... [and] (c) [these mechanisms] work so well that there would arguably be no need for state support even if there weren’t a moral case against it.

I will ignore both Nozick and Narveson here for two reasons. First, I find that they are—at *best*—only *partially* persuasive. For example, Nozick is right that some persons prefer to work more to get more, while others prefer to work less and get less. But this is far from a fair representation of everyone out there. In the United States today, many wealthy persons do not work more to get more. They simply *inherit* most or all their wealth. Furthermore, many persons who make less and get less do not do so because they prefer leisure. They do so because they are working *low-paying jobs* or are busy *taking care of their families*. I fail to see how taxation treats the wealthy who inherit their wealth worse than those scraping to get by.

Additionally, Narveson’s claims are questionable in numerous cases. Regarding (a), it is not clear that charitable mechanisms are always more fun than taxation. Indeed, some may prefer knowing that they do not have to do much of anything to help others rather than go to charity concerts. Regarding (b), many cases of charity are not *genuinely* charitable. Instead, they are performed out of guilt, for promoting a positive image, and/or for evading taxes. And regarding (c), it is dubious to say that charitable mechanisms could handle everything so well as to make taxation unnecessary. See also Gilibert (2006: 204-5).

Second, and more importantly, I am—if nothing else—assuming that universal health coverage is affordable and requires taxation (i.e. my Affordability and Taxation Assumptions. See pages 50-6). As such, in this particular case, Nozick’s and Narveson’s claims do not stick. Since the baseline is the United States today, my Affordability Assumption rules out the worry that those who work will be treated more unfairly than they already are, at least to some morally significant extent. And my Taxation Assumption rules out the possibility that the United States can get universal health coverage with charitable mechanisms alone.

There are presumably other reasons a libertarian could have here. But in my experience, the *theft* and *forced labor* reasons are the most representative, interesting, and initially compelling reasons among them. And, perhaps more importantly, the *theft* and *forced labor* reasons cannot be immediately jettisoned simply by appealing to my Affordability and Taxation Assumptions. And so, I will only focus on them.

<sup>175</sup> See Huemer (2017).

Now, consider a similar case:

**Case United States-Charity:** You work hard and earn an income. The United States taxes \$100 of that income (5-hours-worth of your wages) and gives it to (the same) charity.

Notice here that Cases *United States-Charity* and *Individual-Charity* are *almost* the same. In both cases, you work hard and earn an income; and in both cases, \$100 of your income is taken and given to a charity. The only difference between these cases is *who* took your \$100. In one case, it was an individual (i.e. me). In the other case, it was the United States. Importantly, when it comes to *theft*, the libertarian does not care *who* did the stealing; she just cares *that you were stolen from*. As such, to the libertarian, these cases are morally analogous. And since she thinks *I* did something wrong in my case, she thinks *the United States* did something wrong in its case too.

But what the United States did was *tax* you! Right now, it sounds like *taxation* is just shorthand for *the state taking your money and giving it to others*. As such, for the libertarian, taxation *in this case* seems wrong. And for that matter, taxation *more generally* seems wrong as well. Again, the libertarian generally does not care *who* stole your money or *what* that stolen money was used for. Instead, she generally cares *that your money was stolen*. As such, she is inclined to think that taxation—in general—is tantamount to theft; and therefore, the United States should generally not tax persons.

The second reason is the *forced labor* reason.<sup>176</sup> According to the forced labor reason, taxation is morally on par with forced labor. To illustrate, consider the following: the libertarian has no problem with you *voluntarily giving* to a charity. She likely thinks that is a good thing and may even be morally required.<sup>177</sup> But she thinks it would be wrong to *force you to work* for a charity. She thinks it would be wrong to force you to volunteer for a charity or become one of its employees. She thinks it would be

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<sup>176</sup> See Nozick (1974: 169-74).

<sup>177</sup> Many of us tend to think charitable giving is supererogatory, but some of us think it is morally required. See Singer's (1972) seminal article for an argument for the latter position. See also Simmons' (1992: 327-41) interpretation of Locke's position on charity, to see a helpful discussion of the distinction between perfect and imperfect duties, and how this applies to understanding charitable giving (both for Locke and in general).

wrong to force you to fundraise for a charity. And she thinks it would be wrong to force you to earn money for a charity.

Now go back to Case United States–Charity. In that case, the United States taxed you *5-hours-worth of your wages*. But to the libertarian, that just sounds like the United States—for five hours—forced you to work for that charity, either as a volunteer or unpaid employee. And since the libertarian thinks forced labor is wrong, she thinks what the United States did was wrong. But again, what the United States did is tax you; and again, the same can be said for other cases of taxation as well. In short, then, the libertarian thinks taxation in general is tantamount to forced labor; and so, the United States should generally not tax persons.

Importantly, more could be said about the theft and forced labor reasons. But for my purposes, I will assume the libertarian adopts the Anti-Tax Thesis *for these two reasons*. The question now is what does that mean for the United States getting universal health coverage? In Section 1, I will explain why it looks like the libertarian *must oppose* the United States getting universal health coverage. Simply stated: universal health coverage requires taxation, which her Anti-Tax Thesis primes her to oppose. In Section 2, however, I will pose a problem: the libertarian’s state-provided security *also* requires taxation, which her Anti-Tax Thesis *also* primes her to oppose. And I will argue that the best ways out of this problem are either to (1) abandon the thesis, (2) say universal health coverage does not require theft or forced labor, or (3) say universal health coverage does require theft or forced labor, but that is okay. Whatever way the libertarian goes, the result is she cannot use the Anti-Tax Thesis to oppose the United States getting universal health coverage.

### Section 1: Why the Anti-Tax Thesis Appears to Say the Libertarian *Must Oppose*

On its surface, the Anti-Tax Thesis clearly opposes universal health coverage. To see why, let’s start by asking two questions:



(1a) Does universal health coverage require taxation?

(2a) If so, should the Anti-Tax Thesis oppose it?

On its surface, the answer to (1a) looks like it is clearly *yes, it does*. As I already discussed,<sup>178</sup> there are at least four ways the United States can use to get universal health coverage:

**Public insurance:** provide its own insurance or administer its own insurance program

**Regulations:** make sure insurance or health care providers play by certain rules or sell goods or services at specific prices

**Mandates:** require individuals or organizations to make specific decisions

**Subsidies:** help pay for the cost of insurance or health care

And as I continued, *each* of these ways requires taxation. Public insurance requires taxation to finance the insurance and/or program. Regulations and mandates require taxation for enforcing the regulations and mandates. And subsidies require taxation to actually pay for the cost of insurance or health care. Whichever way—or ways—the libertarian chooses here, it requires taxation to follow through.

Of course, the libertarian may insist that the United States can get universal health coverage without using *any* of these ways. She might, instead, insist that the United States can get universal health coverage solely through the workings of the free market. But as I discussed,<sup>179</sup> it seems unlikely that the free market—by itself—could create a genuine *system*; and even if it could, that system would likely fail to *guarantee everyone* can afford basic health care.

Finally, as I discussed<sup>180</sup>—simply for the sake of making my question philosophically interesting—I will make my Taxation Assumption: that universal health coverage for the United States requires taxation of some kind or other. To assume otherwise makes the answer to my question trivial and dull. As such,

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<sup>178</sup> See pages 50-1.

<sup>179</sup> See pages 51-5.

<sup>180</sup> See pages 55-6.

we already have strong reason to believe universal health coverage for the United States really does require taxation; and even if we did not, I will assume as such.

This brings us to (2a): should the Anti-Tax Thesis therefore oppose universal health coverage? On the surface, the most obvious answer is *yes, it should*. When it comes to the Anti-Tax Thesis, taxation is the exception, not the rule. As such, unless there is some special reason to tax for universal health coverage, the Anti-Tax Thesis opposes it.

We can strengthen this answer, however, with parallel cases. Consider, again, the following cases:

**Case Individual-Charity:** You work hard and earn an income. I take \$100 of that income (5-hours-worth of your wages) and give it to a charity.

**Case United States-Charity:** You work hard and earn an income. The United States taxes \$100 of that income (5-hours-worth of your wages) and gives it to (the same) charity.

Let's start with Case Individual-Charity. Here, we can all agree (or at least suppose for the sake of argument) that the \$100 I took was put towards a good or noble cause. I did not keep one penny of it for myself or put it towards some evil end. Instead, I gave all of it to a charity to help others in need. Even still, the libertarian concludes what I did was wrong. Again, for her, it did not matter *what the money was used for*. All that mattered is the fact that *I stole your money*. Stealing is wrong, even if the stolen money is put towards a good or noble cause. As such, to her, I still did something wrong.

This brings us to Case United States-Charity. As we saw, the libertarian thinks *who* does the stealing is morally irrelevant. What she cares about is *that you were stolen from, not who did it*. Since the only difference between these two cases is *who* did the stealing, and that difference is morally irrelevant, she concluded the United States did something wrong as well. Additionally, the libertarian thinks the United States here is *forcing your labor*. It is forcing you to donate to, volunteer, or work for free for a charity. And since she thinks forced labor is wrong, she again concludes the United States did something wrong.

Based on all this, let's now create two parallel cases:

**Case Individual-Universal Health Coverage:** You work hard and earn an income. I take \$100 of that income (5-hours-worth of your wages) to help finance universal health coverage for the United States.

**Case United States-Universal Health Coverage:** You work hard and earn an income. The United States taxes \$100 of that income (5-hours-worth of your wages) to finance (the same) universal health coverage.

Cases *Individual-Charity* and *Individual-Universal Health Coverage* are analogous. In both cases, you work hard and earn an income. In both cases, I take your \$100. And in both cases, I put that money towards some good or noble cause.<sup>181</sup> The only difference is *what* good or noble cause that money was put towards. In the former case, it was put towards a charity; in the latter case, universal health coverage. However, as I already discussed, what the libertarian cares about here is *not what the money was put towards*, but rather the fact *that I stole your money*. It does not matter *which* good cause I put your money towards; it does not even matter *that* I put it towards a good cause. What matters is that the \$100 *is yours*, and *I stole it*. *That* is why I did something wrong in the former case. And so, by the same reasoning, I did something wrong in the latter case.

This brings us to Case *United States-Universal Health Coverage*. The only difference between Cases *Individual-Universal Health Coverage* and *United States-Universal Health Coverage* is *who* steals your money. But as I discussed earlier, the libertarian thinks *who* does the stealing is morally irrelevant.

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<sup>181</sup> When it comes to Case *Individual-Universal Coverage*, we can all agree (or at least suppose for the sake of argument) that the \$100 I took was put towards a good or noble cause. This will be obvious in later chapters, but we can note some general benefits here. Making health care affordable makes it easier for persons to *access* and *receive better* care. The result is that making health care affordable translates to increases in population health (see Institute of Medicine 2002 and Tolbert et. al. 2020). Furthermore, studies of Medicaid expansion show that making health care affordable can and does lead to numerous economic benefits, including “state budget savings, revenue gains, and overall economic growth”, “reductions in uncompensated care costs for hospitals and clinics”, “gains in employment”, “growth in the labor market” and “reductions in rates of food insecurity, poverty, and home evictions” (Guth et. al. 2020). Putting one’s money towards universal health coverage, then, can be seen as a good or noble cause.

What she cares about is *that your money was stolen, not who did it*. Since the only difference between these two cases is *who* did the stealing, and that difference is morally irrelevant, the libertarian should think the United States did something wrong as well. Additionally, the libertarian has every reason to see the United States here as *forcing your labor*. It looks like the United States is forcing you to donate to, volunteer, or work for free for universal health coverage. And since forced labor is wrong, she should still think the United States did something wrong in this case.

In short, we are seemingly left with the following:

(1a) Does universal coverage require taxation? *Yes, it does*. We have strong reason to believe it does; and if nothing else, we are assuming it does.

(2a) If so, should the Anti-Tax Thesis oppose it? *Yes, it should*. The Anti-Tax Thesis treats taxation as the exception, not the rule. Furthermore, the theft and forced labor reasons appear to oppose taxation for universal health coverage.

As such, on the surface, the Anti-Tax Thesis clearly opposes universal health coverage for the United States. And since the libertarian adopts this thesis, she clearly should do so as well. However, I now want to pose a problem: on the surface, the Anti-Tax Thesis clearly *also* opposes *the libertarian's state-provided security*. In the remaining sections, I will explain this problem in greater detail, explore how the libertarian can get out of it, and what ramifications that has for universal health coverage for the United States.

## Section 2: A Problem the Libertarian Cannot Accept

The problem I am about to pose is not novel,<sup>182</sup> but it is a problem nevertheless. To review, the libertarian *also* adopts the Liberty Thesis and/or Property Rights Thesis. In other words, she thinks the United States *should* protect and enforce everyone's liberty and/or property rights. How does the United

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<sup>182</sup> It was at least made by Shue (1996: 37-39), and presumably others as well. Additionally, Bradley (2010) uses Shue to pose this problem against Peikoff (1993).

States do that? It is hard to say for sure, but based on what other libertarians have said, I will suppose the libertarian thinks it—minimally—requires a United States police force, military, and criminal justice system. Let's call that bundle her *state-provided security*.

With that in mind, let's now ask two questions, just like the ones we asked in the previous section:

(1b) Does the libertarian's state-provided security require taxation?

(2b) If so, should the Anti-Tax Thesis oppose it?

As with (1a), the answer to (1b) is also *yes, it does*. The reason why is straightforward: the United States cannot provide the libertarian's state-provided security *for free*! In order to create and sustain a police force, military, and criminal justice system, the United States needs to do at least three things. First, it must *employ persons*, like police, soldiers, attorneys, judges, and prison guards. Second, it must *build and maintain facilities*, like police stations, military bases, courts and prisons. Third, it must *provide and store resources*, like office supplies, weapons, and modern technology. And *none of that* comes for free. As such, in order to provide security, the United States *must tax* persons.

This brings us to (2b): should the Anti-Tax Thesis therefore oppose the libertarian's state-provided security? As with (2a), the answer to (2b) is seemingly also *yes, it should*. Again, the Anti-Tax Thesis says taxation should be the exception, not the rule. And again, we can strengthen this answer with parallel cases. Consider:

**Case Individual-Police Force:** You work hard and earn an income. I take \$100 of that income (5-hours-worth of your wages) and give it to some United States police force.

**Case United States-Police Force:** You work hard and earn an income. The United States taxes \$100 of that income (5-hours-worth of your wages) and gives it to (the same) police force.

These cases are analogous to the *Charity* and *Universal Health Coverage* cases. The only difference is what the money is going towards: in one set of cases, it goes towards a charity; in another set, universal health coverage; and in this set, a police force. But as I discussed in those other cases, the libertarian does not

care *what* the money goes towards. Nor does she care *who* takes the money. What she cares about is that someone or something *stole* your money. Stealing is wrong, regardless of who does it or what the stolen money is used for. And so, like the other cases, I or the United States did something wrong here. Additionally, the libertarian has every reason to see the United States here as *forcing your labor*. It looks like the United States is forcing you to donate to, volunteer, or work for free for one of its police forces. And since the libertarian thinks forced labor is wrong, she should still think the United States did something wrong in this case. In short, we are seemingly left with the following:

(1b) Does the libertarian's security require taxation? *Yes, it does*. Her security requires a police force, military, and criminal justice system; and each require employed persons, facilities, and resources. None of that comes for free, and so all of it requires taxation.

(2b) If so, should the Anti-Tax Thesis oppose it? *Yes, it should*. The Anti-Tax Thesis treats taxation as the exception, not the rule. Furthermore, the theft and forced labor reasons appear to oppose taxation for the libertarian's security.

To sum up, the Anti-Tax Thesis so far appears to oppose *both* universal health coverage *and* the libertarian's state-provided security. To put it simply: as far as the libertarian sees it, taxation sounds tantamount to theft and/or forced labor. And theft and forced labor sound wrong, *whoever does it and whatever they do it for*. That does not seem to change whether we are talking about charity, universal health coverage, or state-provided security. As such, as of right now, the Anti-Tax Thesis seemingly says the libertarian *must oppose* universal health coverage for the United States. But it *also* seemingly says she *must oppose her state-provided security too*.

And this is something the libertarian *cannot* accept! 'The libertarian', as I define her, just *is* someone who accepts the Anti-Tax Thesis *along with* the Liberty and/or Property Theses. And to accept this conclusion is to reject the Liberty and Property Theses. More simply, it is to switch from being *the*

*libertarian to an anarchist*. As such, provided she wants to *stay* the libertarian, she cannot accept where we have found ourselves. What, then, should she do? Here, I see three options:

- (A) Abandon the Anti-Tax Thesis
- (B) Explain why her state-provided security does *not* steal from anyone or force anyone's labor
- (C) Explain why her state-provided security does steal from persons or force persons' labor, *but that is okay*<sup>183</sup>

Here, my goal is *not* to attack any of these options. Rather, my goal is to argue that—*whichever option she chooses*—the result is she can no longer use the Anti-Tax Thesis—by itself—to oppose universal health coverage for the United States. We can take care of option (A) right now. As it goes, the libertarian can abandon the Anti-Tax Thesis, arguing now that—contrary to what she originally thought—taxation is not *really* theft or forced labor. Should she do so, she no longer has to worry about what this thesis says about her state-provided security. But then, by the same token, she also cannot appeal to it to oppose universal health coverage. If she abandons it, she abandons it wholesale, not just in the cases she finds convenient. Additionally, if she goes with (A), then she ceases to be the libertarian. And that changes everything.

There is much more to say about options (B) and (C). Let's turn to them now:

### Section 3: Option (B)—State-Provided Security Does *Not* Require Stealing from Anyone or Forcing Anyone's Labor

On the surface, the libertarian's state-provided security *looks like* it requires theft or forced labor. But one could argue that, when we look beneath the surface, we see it does not. To my knowledge, the most common explanation to suggest so is the *Consent* Explanation. At its most basic, the Consent

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<sup>183</sup> Here is another way to phrase these options:

- (A) Abandon her aversion to taxation
- (B) Explain why taxation for her state-provided security is *voluntary*
- (C) Explain why taxation for her state-provided security is *coercive, but that is okay*

Importantly, many think coercive taxation is *not* tantamount to theft or forced labor. But here, my focus is the *libertarian*. And for her, it seemingly is.

Explanation says taxation is *not* theft or forced labor when it is consented to, and we consent to being taxed for her state-provided security.<sup>184</sup>

The first part seems agreeable enough. If I *take* \$100 from you and use it to fund a charity, then I have seemingly stolen from you and/or forced your labor. But if you *consent* to my taking \$100 from you to fund a charity, then all I am seemingly doing is carrying out your wishes or taking part in some kind of promise or contract. Similarly, if the United States taxes you \$100 for its police *without your consent*, then that taxation looks like theft or forced labor. But if the United States taxes you \$100 for the police *with your consent*, then that taxation just looks like a part of some acceptable agreement. When it comes to taxation, the problem is *not* that the United States takes persons' money *at all*. The problem is that it takes persons' money *without their consent*. If persons consent to the United States taking their money, then there is seemingly no theft, no forced labor, and no problem.

The second part, however, seems trickier to assess. Do we *consent* to being taxed for the libertarian's state-provided security? Unsurprisingly, this is a difficult question to answer, and there is a vast literature on consent, taxation, and political obligation. Suffice it to say, we cannot do justice to that literature here. So instead, I will limit our discussion to three libertarian views:

- Locke's tacit consent
- Rand's voluntary taxation
- Narveson's mutual contractarianism

For each view, I will lay out what it says and discuss what I take to be its implications for taxation. Afterwards, I will use these views to illustrate general concerns about consent and taxation. From all this, I will argue that the libertarian will find herself drawing (at least) one of four conclusions:

- We do *not* consent to taxation for her state-provided security
- We *do* consent to taxation for universal health coverage

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<sup>184</sup> See Mack (2006: 110).



- We consent to *a lot more* than she bargained for
- Consent cannot be the whole story

Which particular conclusion(s) she draws will be up to her. But whichever one(s) she draws, the result is the same: she must conclude that consent alone cannot drive a wedge between taxation for state her security and universal health coverage, at least without opening Pandora's box. As such, insofar as she still finds herself opposing taxation for universal health coverage—and does not want to throw the baby out with the bathwater—she will have to look beyond the Consent Explanation for why.

Before we look at these three libertarian views, however, we need to set the stage.<sup>185</sup> First, we need to have some working definition for 'consent'. Unfortunately, 'consent' is a difficult term to define, at least in a way that will satisfy everyone (more on that later). But if we are going to talk about consent, we need some definition to work with. Second, we need to draw a handful of distinctions. Otherwise, it will be difficult to follow what these libertarian views are saying.

Let's begin with my working definition for 'consent'. For my purposes, I want to keep my definition as simple, broad, and easy-to-understand as possible. We already have a general idea of what consent is and what does and does not count as consent. Here, I do not want to get lost in technical distinctions or

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<sup>185</sup> The bulk of what I say about consent is inspired by or taken from Simmons (1976: 275-81). That said, I depart from Simmons in two important ways. First, Simmons' account of consent is rather narrow. He distinguishes between promises, written contracts, and authorizations for others' actions; and then, he only counts the third as genuine acts of consent. I, by contrast, count all three as genuine acts of consent (one could say I adopt his reason for others' grouping them together). Second, Simmons' account of consent is ultimately about the generation of special rights and obligations (and argues what distinguishes promises from acts of consent are whether they emphasize the rights or obligations generated). I, by contrast, skirt talk of rights and obligations and use more layperson terms: acceptance, agreement, and permission. Importantly, my reasons for departure here are entirely practical. I do not think my account of consent is somehow better or more accurate than Simmons'. Far from it, I think Simmons' account is more sophisticated, precise, and enlightening. Rather, I think my account merely helps us stay focused on my purposes. Here, I am not interested in any technical distinctions between promises, written contracts, and authorizations for others' actions. And at least right now, I do not want to get lost in the language of rights and obligations. Instead, for my purposes, I want to keep my account of consent as broad and simple as possible. By making these departures from Simmons, I believe I do that.

philosophical jargon. I merely want to capture this general idea. Here is my attempt, which will be my working definition:

**Consent:** some action or omission which is deliberately and voluntarily performed to signal one's agreement (or acceptance, or permission, etc.) to X.

A lot can be said about this definition; but for my purposes, I will be brief. First, when I say 'one consents to X' or 'one gives her consent for X', I simply mean that *one has signaled that she agrees (or accepts, or permits, etc.) X*. One signals this agreement by action (i.e. by doing something) or omission (i.e. by refraining to do something). Importantly, it is not always clear *which* actions and omissions count as signaling an agreement, nor is it always clear what an action or omission is signaling an agreement *to*. That said, we are already aware of numerous ways to signal agreements: signing a contract, shaking hands, and making a promise are just some examples. Furthermore, we know that context is important here. In some contexts, shaking another's hand signals an agreement to build a house together. In other contexts, it signals an agreement to trade one's money for another's food. And in other contexts, it signals no agreement at all: it just amounts to a friendly greeting, fun game, or awkward moment.

Second, in order to count as consent, one's action or omission must be given *deliberately* and *voluntarily*. Regarding the former, one must be acting or omitting *for the purpose of* signaling her agreement. She must know she is consenting, and she must be intentionally trying to consent. Persons can consent *insincerely*, but no one can consent *accidentally*. Regarding the latter, one's action or omission must be *free*. That is to say, it cannot be forced or coerced. It can be hard to know when one's action or omission is forced or coerced, but there are at least some clear cases. When one gives money out of the goodness of her heart, her action is free. When she gives money because another demands it at gunpoint, her action is not. In order to count as consent, one's action or omission must be given knowingly, intentionally, and freely. Otherwise, it is not consent.

That is how I will talk about consent *in general*. But to fully understand the following libertarian views, I must also draw two common distinctions. First is the distinction between *express* and *tacit* consent. *Express* consent is when one gives consent by *acting* (i.e. by doing something; by being expressive and active). *Tacit* consent, by contrast, is when one gives consent by *omitting* (i.e. by refraining from doing something; by being silent and inactive). To borrow Simmons' examples, suppose you are at a board meeting. Your chairman announces "I would like to move our board meeting on Tuesday to Thursday. All in favor, say 'Aye'." You respond by saying "Aye!" In this case, you *expressively* consent to moving the board meeting, because you consented *by acting*: you said "Aye!". Now suppose, instead, your chairman announces "I would like to move our board meeting on Tuesday to Thursday. Any objections?" You respond by remaining silent. In this case, you *tacitly* consent to moving the board meeting, because you consented *by omitting*: you remained silent and refrained from making an objection.<sup>186</sup>

Second is the distinction between *actual* and *hypothetical* consent. *Actual* consent is when one *actually* consents. It is when a real person consents in a real situation. *Hypothetical* consent, by contrast, is when one *would have* consented under hypothetical conditions. For example, she would have consented *if she was rational, or if she did not know her privileged circumstances, or if she was bargaining with others in a position of equal footing*. Whatever the hypothetical conditions are, the point is that the consent is not actual: no real person consented in a real situation.<sup>187</sup>

To sum up, consent is some action or omission which is deliberately and voluntarily performed to signal one's agreement (or acceptance, or permission, etc.) to X. There is some vagueness here, but that need not bother us. We already have a general idea of what consent is and what does and does not count as consent. And we are already aware of numerous ways to consent, know context matters, and have at least a rough idea of what is and is not coercive. Additionally, there are two common distinctions to keep

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<sup>186</sup> See also Wennberg (2003: 19).

<sup>187</sup> See Wennberg (2003). See also Simmons (1993: 76-7).

in mind. Express consent is when one consents by acting, while tacit consent is when one consents by omitting. And actual consent is when one actually consents in a real situation, while hypothetical consent is when one would have consented in a hypothetical situation.

With that in mind, I can now discuss our three libertarian views: (1) Locke's tacit consent, (2) Rand's voluntary taxation, and (3) Narveson's mutual contractarianism. As I said before, I will start by looking at each view individually, laying out what it says and noting what I take to be its implications for taxation. Afterwards, I will use these views to illustrate general concerns about consent and taxation. From all this, I will argue the libertarian cannot use consent alone to drive a wedge between taxation for her state-provided security and universal health coverage, at least in a way she would accept. And so, if she still wants to drive this wedge, she will have to look beyond the Consent Explanation to explain why.

#### Locke's Tacit Consent

We begin with what Locke says about tacit consent.<sup>188</sup> In Sect. 119-122, Locke asserts that man can *only* be subjected to the laws of government by his own consent. However, he says there are *two* ways a man can consent here: by *expressly* consenting or *tacitly* consenting:

Every man being, as has been shewed, naturally free, and nothing being able to put him into subjection to any earthly power, but only his own consent; it is to be considered, what shall be understood to be a sufficient declaration of a man's consent, to make him subject to the laws of any government. There is a common distinction of an express and a tacit consent, which will concern our present case. No body doubts but an express consent, of any man entering into any society, makes him a perfect member of that society, a subject of that government. The difficulty is, what ought to be looked upon as a tacit consent, and how far it binds, i.e. how far any one shall be looked on to have consented, and thereby submitted to any government, where he has made no expressions of it at all. And to this I say, that every man, that hath any possessions, or enjoyment, of any part of the dominions of any government, doth thereby give his tacit consent, and is as far forth obliged to obedience to the laws of that government, during such enjoyment, as any one under it; whether this his possession be of land, to him and his heirs for ever, or a lodging only for a week; or whether it be barely travelling freely on the highway; and in effect, it reaches as far as the very being of any one within the territories of that government.

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<sup>188</sup> Locke (2010).

To understand this the better, it is fit to consider, that every man, when he at first incorporates himself into any commonwealth, he, by his uniting himself thereunto, annexed also, and submits to the community, those possessions, which he has, or shall acquire, that do not already belong to any other government: for it would be a direct contradiction, for any one to enter into society with others for the securing and regulating of property; and yet to suppose his land, whose property is to be regulated by the laws of the society, should be exempt from the jurisdiction of that government, to which he himself, the proprietor of the land, is a subject. By the same act therefore, whereby any one unites his person, which was before free, to any commonwealth, by the same he unites his possessions, which were before free, to it also; and they become, both of them, person and possession, subject to the government and dominion of that commonwealth, as long as it hath a being. Whoever therefore, from thenceforth, by inheritance, purchase, permission, or otherways, enjoys any part of the land, so annexed to, and under the government of that commonwealth, must take it with the condition it is under; that is, of submitting to the government of the commonwealth, under whose jurisdiction it is, as far forth as any subject of it.

But since the government has a direct jurisdiction only over the land, and reaches the possessor of it, (before he has actually incorporated himself in the society) only as he dwells upon, and enjoys that; the obligation any one is under, by virtue of such enjoyment, to submit to the government, begins and ends with the enjoyment; so that whenever the owner, who has given nothing but such a tacit consent to the government, will, by donation, sale, or otherwise, quit the said possession, he is at liberty to go and incorporate himself into any other commonwealth; or to agree with others to begin a new one, in vacuis locis, in any part of the world, they can find free and unpossessed: whereas he, that has once, by actual agreement, and any express declaration, given his consent to be of any commonwealth, is perpetually and indispensably obliged to be, and remain unalterably a subject to it, and can never be again in the liberty of the state of nature; unless, by any calamity, the government he was under comes to be dissolved; or else by some public act cuts him off from being any longer a member of it.

But submitting to the laws of any country, living quietly, and enjoying privileges and protection under them, makes not a man a member of that society: this is only a local protection and homage due to and from all those, who, not being in a state of war, come within the territories belonging to any government, to all parts whereof the force of its laws extends. But this no more makes a man a member of that society, a perpetual subject of that commonwealth, than it would make a man a subject to another, in whose family he found it convenient to abide for some time; though, whilst he continued in it, he were obliged to comply with the laws, and submit to the government he found there. And thus we see, that foreigners, by living all their lives under another government, and enjoying the privileges and protection of it, though they are bound, even in conscience, to submit to its administration, as far forth as any denison; yet do not thereby come to be subjects or members of that commonwealth. Nothing can make any man so, but his actually entering into it by positive engagement, and express promise and compact. This is that, which I think, concerning the beginning of political societies, and that consent which makes any one a member of any commonwealth.

Let's start with an important observation: Sect. 119-122 are notoriously confusing passages, and Lockean scholars disagree about what they are *really* saying.<sup>189</sup> So here, I will not pretend to offer any definitive interpretation. Instead, I will argue that (1) on the straightforward interpretation of Locke here, Locke must say the vast majority of United States citizens do *not* consent to being taxed for the libertarian's state-provided security; (2) on a more charitable interpretation of Locke here, Locke must say citizens consent to far more than the libertarian bargained for; (3) Lockean responses only make things worse for the libertarian or require her to look beyond consent to get what she wants.

Let's begin with (1). As far as I can tell, the most straightforward interpretation of what Locke says here is that there are *two* kinds of persons:

Express Consenters	Tacit Consenters
<ul style="list-style-type: none"> <li>• <i>Expressly</i> consent</li> <li>• Consent to being <i>members</i></li> <li>• Consent is <i>permanent</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>Tacitly</i> consent</li> <li>• Only consent to <i>obeying the law</i></li> <li>• Consent is <i>only temporary</i></li> </ul>

Let's talk about each in more detail. As Locke seems to say, Express Consenters are those who *expressly* consent, like through a promise or compact. And what they consent to is being full *members* of the commonwealth. In other words, they consent to partaking in the commonwealth's scheme of benefits and burdens. For example, they agree to take on the burden of paying necessary taxes for the commonwealth's security; but they receive the benefits of that security as a right. And their consent to

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<sup>189</sup> For that matter, scholars disagree if these passages are even worth interpreting. As some scholars see it, these passages are not only nonsense, but *obviously* nonsense. According to these scholars, Locke is only concerned about reaffirming and reinforcing the law of nature; these passages are merely an ad hoc attempt to explain away problems of succession and franchise. My thanks to Brad Roth for pointing that out. While that may be correct, my aim here is not to interpret Locke, but rather use Locke as a vehicle to discuss tacit consent. And so, I will ignore what these scholars say.

membership is *permanent*. Unless they are removed or the commonwealth dissolves, they remain members.

This is in contrast to Tacit Consenters. Tacit Consenters do *not* expressly consent to anything. Instead, they *tacitly* consent simply by *having possessions in or enjoying any part of the government's dominion*. However, this consent is *not* consent to membership of the commonwealth. Instead, it is merely consent to obey the government's laws while their possessions or enjoyments still fall under the government's dominion. As such, their consent is *temporary*: they are free to remove their possessions and enjoyments from the government's dominion; and once they do, they are no longer obliged to obey its laws. Importantly, while they remain under the government's dominion, they will *also* receive the commonwealth's security. But unlike members, they will *not* receive it as a *right*. Instead, they will receive it as a *homage* due to those living peacefully among the commonwealth's members.

When it comes to the libertarian, the problem here is as straightforward as the interpretation. According to this interpretation, the *only* persons who consent to taxation for her state-provided security are *Express* Consenters. Express Consenters consent to *membership and membership dues* (i.e. taxes). But Tacit Consenters do *not* consent to *membership or their dues*; they *only* consent to *obeying the law* while they are here. And it is painfully obvious that, on this interpretation, the vast majority of United States citizens count as Tacit Consenters. While some citizens today have arguably expressly consented to citizenship (ex. immigrants who went through the process to become citizens), the vast majority of citizens are simply *born here*. Thus, on this interpretation, the vast majority of citizens do *not* consent to taxation for her state-provided security. They merely consent to obeying United States' laws until they leave.<sup>190</sup>

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<sup>190</sup> Simmons (1993: 81-2). Importantly, one could push back here. As it goes, some of the United States' laws are *tax* laws. As such, consenting to obey its laws could imply consenting to obey its *tax* laws too. And since those tax laws include taxation for its police, military, and criminal justice system, that sounds like consenting to taxation for the libertarian's state-provided security. So by this reasoning, tacitly consenting to obey laws *includes* consenting to taxation for her state-provided security. For my purposes, I will ignore this line of reasoning. For those who find it persuasive, I am about to discuss my concerns with consenting to membership. And all of my concerns there equally apply to this response here. My thanks to Brad Roth and Mark Satta for pointing this out.

Importantly, this may in fact be Locke's conclusion. It is quite possible that Locke genuinely believed membership in a commonwealth required express consent;<sup>191</sup> that, because of this, he held the radical idea that governments should require express oaths of allegiance; and that, because of this, the vast majority of citizens in the United States are not *really* citizens and *really* only tacitly consent to obey the laws while they are there. And should Locke have genuinely believed all that, that is all there really is to say about Sect. 119-122.

That said, there are at least three reasons to doubt the straightforward interpretation of these passages. First, in Sect. 122, Locke mentions *three* kinds of persons: foreigners, denizens, and subjects or members. But it is hard to see how Locke could distinguish between these *three* kinds of persons with this interpretation's *two-fold* distinction. Second, and relatedly, this interpretation lumps *a lot* of persons together, like those born here, legal residents, and tourists. It would be odd if Locke genuinely counted them all as having the same political rights and obligations. Third, this interpretation ties together *how* one consents with *what* one consents to: those who *expressly* consent *automatically* consent to *membership*, while those who *tacitly* consent *automatically* consent to *mere obedience to the law while there*. But it seems rather obvious that *how* one consents and *what* one consents to are separate issues. For example, it is easy to imagine one visitor *expressly* consenting to obey the laws by signing paperwork upon her arrival, with another visitor *tacitly* consenting to obey the laws by understanding the custom that—once she crosses the border—she is bound to respect the laws of that land. Additionally, it is easy to imagine one person expressly consenting to *membership* and another person expressly consenting to *merely obey the laws while present*. It would be odd if Locke could not see this for himself.<sup>192</sup>

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<sup>191</sup> Ex. Farr & Roberts (1985: 390-3, 398). See also Simmons (1993: 84).

<sup>192</sup> Simmons (1993: 81-8).



This brings us to (2): a more charitable interpretation. Given the concerns above, we can choose to interpret II 119-122 as Locke being a little unclear or sloppy. As it goes, Locke only discusses two kinds of persons. But in truth, he really thinks there are *four*:

Express Member Consenters <ul style="list-style-type: none"> <li>• Expressly consent</li> <li>• Consent to being members</li> </ul>	Tacit Member Consenters <ul style="list-style-type: none"> <li>• Tacitly consent</li> <li>• Consent to being members</li> </ul>
Express Nonmember Consenters <ul style="list-style-type: none"> <li>• Expressly consent</li> <li>• Consent to obeying the law</li> </ul>	Tacit Nonmember Consenters <ul style="list-style-type: none"> <li>• Tacitly consent</li> <li>• Consent to obeying the law</li> </ul>

In other words, some persons *expressly* consent to *membership*, while others *expressly* consent to *merely obey the laws while there*. They do this through actions like promises, compacts, or signing paperwork at a border before entering. On the flip side, some persons *tacitly* consent to *membership*—i.e. those born here—while other persons *tacitly* consent to *merely obey the laws while there*.<sup>193</sup> Why some tacit consenters consent to membership and others only to obey the law is debatable,<sup>194</sup> but we can at least say that they each consent by having possessions in and receiving enjoyments from the government's dominion.

<sup>193</sup> This is Simmons' view (1993: 85-8), or at least a rough approximation of it.

<sup>194</sup> Simmons' (1993: 85) answer: "those who have a serious stake in the commonwealth's preservation and well-being" are *members*; those who do not are *nonmembers*. For my purposes, I will ignore this notion of *having a stake* for three reasons. First, it is not obvious to me who does and does not have this stake. Second, even if we agree every citizen has this stake, it is not obvious to me what they have a stake in. For example, they all might have a stake in the United States' preservation and well-being, but they may (and probably do) disagree about what exactly that looks like. And it can be difficult to assess how this stake translates to taxation for the libertarian's state-provided security without knowing what citizens have a stake in. Third, as far as I can tell, the most plausible thing for the libertarian to say here is that those who have a stake in the United States' preservation and well-being *minimally* have a stake in its diverse citizens peacefully living among and interacting with each other. But I cover that idea later (see pages 106-23). So to avoid confusion and potential repetition, I will leave this notion of *having a stake* aside, merely noting it as *one* potential explanation here.

This charitable interpretation helps the libertarian in at least two ways. First, it explains why citizens *do* consent to taxation for her state-provided security. And second, it explains why citizens do *not* consent to taxation for universal health coverage. As it goes, those who expressly or tacitly consent to citizenship consent to pay United States taxes. Today, those taxes include taxes for the United States police, military, and criminal justice system. But they do not include any taxes for universal health coverage. Thus, by consenting to citizenship, citizens *only* consent to pay the former taxes, not the latter.

That said, there is an obvious concern here. Right now, the idea seems to be that consenting to United States citizenship—either expressly or tacitly—counts as consenting to pay *any* of its taxes. But the United States today has *many* taxes; and nothing stops it from instituting new ones. For example, while the United States does not have universal health coverage, it does have the ACA, Medicare, and Medicaid. Additionally, it has numerous welfare programs.<sup>195</sup> Furthermore, while the United States does not have universal health coverage *now*, it could have universal health coverage *later*. Additionally, it could always institute new welfare programs and/or strengthen existing ones. And all of that requires taxation. So if consenting to membership implies consenting to whatever taxation the United States happens to have, then per this charitable interpretation, the libertarian must conclude that citizens *also* consent to paying (or potentially one day paying) the very taxes she likely opposes!

Importantly, Locke seems to offer two responses to this worry. First, Locke seems to distinguish between a government's *regulation* and *taxation*. In Sect. 139, he says that the government “may have power to make laws, for the regulating of property between the subjects one amongst another, yet can never have a power to take to themselves the whole, or any part of the subjects property, without their own consent. In Sect. 138, he says “The supreme power cannot take from any man any part of his property without his own consent.” And in Sect. 140, he says “It is true, governments cannot be supported without

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<sup>195</sup> When I say ‘welfare’, ‘welfare programs’, ‘welfare policies’ or ‘social welfare policies’, I am referring to *government assistance* programs and policies.

great charge, and it is fit every one who enjoys his share of the protection, should pay out of his estate his proportion for the maintenance of it. But still it must be with his own consent...". Thus, for Locke, there is seemingly a difference between regulation and taxation. Regulation merely requires consenting to membership. But even after consenting to membership, taxation requires separate consent.<sup>196</sup> Call this Locke's Separate Consent response.

Second, Locke makes clear that government has a particular *end*. Unfortunately, Locke is rather fast and loose with how he phrases that end, but he seems to think that end is about the preservation of property and the public's good and safety.<sup>197</sup> Furthermore, Locke makes clear that—while a man can *consent* to a government's arbitrary authority—he cannot *be bound* by that authority.<sup>198</sup> As such, Locke seems to think that the government has a purpose, the government should not overstep its purpose, and there are limits to consent.<sup>199</sup> Call this Locke's Limits response.

To sum up, the obvious concern for Locke was that he seemed to say that merely consenting to membership implied consenting to *any* tax a government imposed. But Locke seems to deny this in at least two ways. The first is his Separate Consent response, which seemingly says that—while consenting

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<sup>196</sup> See also Simmons (1993: 96).

<sup>197</sup> Here are some different ways Locke has phrased the end of government or something similar:

Sect. 90: the end of civil society is to "avoid, and remedy those inconveniences of the state of nature".

Sect. 110: the end of government is "the public good and safety".

Sect. 134: the great end of entering into society is "the enjoyment of their properties in peace and safety".

Sect. 138: the end of government is "the preservation of property".

Sect. 163: the end of government is "the good of the community" (and again references the public good).

Sect. 165: the end of all laws is "the public good".

Sect. 229: the end of government is "the good of mankind".

Sect. 239: the end of government is "the public good and preservation of property".

<sup>198</sup> See Sect. 23, 135, 137, 149, 164, 171, 172.

<sup>199</sup> Given what Locke says about tacit consent and arbitrary government authority, both Pitkin and Simmons agree that—for Locke—consent is *not sufficient* for political obligation. In other words, you are not obligated to obey a government's arbitrary authority, *even if* you consent to it. Pitkin takes it a step further and says—for Locke—consent is *not necessary either*. You are obligated to obey good governments (as Locke understands them) but not bad ones, whether or not you consent to do so (Pitkin 994-7; see also Simmons 1976: 282-4). Simmons, by contrast, says—for Locke—consent is *necessary but not sufficient*. You are not obligated to obey any governments until you consent to do so. But your consent can only obligate you to obey good governments, never bad ones (Simmons 1976: 282-6). Personally, I side with Simmons here and will speak as such. However, the problem I will raise is the same for both interpretations: that—for Locke—consent cannot be the whole story.

to membership implies consenting to government *regulation*—it does *not* imply consenting to government *taxation*. To the contrary, any government tax must receive its own separate consent. The second is his Limits response, which seemingly says that a government has a purpose, should not overstep its purpose, and that consent has limits. As such, Locke could say citizens are not obligated to pay taxes that transgress a government’s purpose, even if they are consented to. Tying this to the libertarian, she need not say consenting to United States citizenship implies consenting to *any* of its taxes. Rather, she can say each tax requires separate consent. And she can also say citizens may not be obligated to pay that tax even if they consent to it, so long as that tax transgresses the purpose of the United States government and/or the limits of consent.

Unfortunately for the libertarian, however, all Locke does here is reintroduce the same concerns or show that consent cannot be the whole story. Let’s begin with Locke’s Separate Consent response. According to this response, consenting to citizenship only implies consenting to regulations; taxes need separate consent. But the problem for the libertarian is quite obvious: *taxation* for her state-provided security is a *tax*. Indeed, as Locke himself notes in Sect. 140, it is a tax of “great charge”. And so, per this response, her taxation requires separate consent. But that just means—even if we grant that citizens consent to *citizenship*—she now needs to explain why they *also* separately consent to taxation for her state-provided security. And it is not clear that they do, especially in a way that does not *also* imply they separately consent to the taxation she likely opposes.

In fact, when we look closer at Locke’s Separate Consent response, we can see that Locke actually makes it even *harder* for the libertarian to get what she wants. To review, in Sect. 140, Locke says “It is true, governments cannot be supported without great charge, and it is fit every one who enjoys his share of the protection, should pay out of his estate his proportion for the maintenance of it. But still it must be with his own consent...”. But immediately following this he says “i.e. the consent of the *majority*, giving it either by themselves, or their representatives chosen by them.” So when it comes to taxation in the

United States today, Locke seemingly only demands that the *majority of representatives* consent to the taxation. But that just reintroduces the taxation the libertarian likely opposes. For the fact of the matter is the majority of representatives gave their separate consent for the taxation of the ACA, Medicare, Medicaid, and numerous welfare programs: they drafted, discussed, passed, and signed each of these programs into law! Furthermore, there is nothing stopping the majority of these representatives from one day passing legislation for universal health coverage or additional and/or strengthened welfare programs. And that is the case with the United States' *current* ways of electing representatives. Suffice it to say, there is substantial reason to think that the *current* way of electing representatives is remarkably *unrepresentative*, and that making it more representative would likely result in more *Democratic* representatives.<sup>200</sup> And if there are any representatives likely to pass universal health coverage or additional and/or strengthened welfare programs, they are the Democrats.<sup>201</sup>

This brings us to Locke's Limits response. According to this response, the government should not overstep its purpose; and furthermore, that while persons can *consent* to both good and bad governments, their consent can only *bind* them to good governments. Thus, this response suggests citizens may not be bound to pay taxes which overstep the government's purpose and limits of consent.<sup>202</sup> Yet, all this response does is admit that consent is not the whole story. Prior to this response, the idea was consent was enough: if you consented to pay a tax, then you were bound to pay that tax. Now, consent is not enough: even if you consent to pay a tax, you still may not be bound to pay it. So to complete the story, we now need to know what the purpose of government is, when the government oversteps its purpose, and when one's consent is binding. And that just means that the Consent Explanation alone—at most—can only part of the libertarian's complete story.

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<sup>200</sup> Consider Associated Press (2017), Black (2021), Millhiser (2020), and Wegman (2020).

<sup>201</sup> Consider Ekins (2019), Federal Safety Net (n. d.), Gramlich (2017), and KFF (2020).

<sup>202</sup> Importantly, this line of reasoning calls to question the libertarian's commitment to freedom of contract and our supposed freedom to sign away our liberties and/or rights. See Simmons (2005). For my purposes, I will ignore this concern.

To sum up, Locke's tacit consent cannot give the libertarian what she wants. On the straightforward interpretation, most United States citizens do *not* consent to taxation for her state-provided security. And on the charitable interpretation, while these citizens do consent to her taxation, they also consent to taxation she likely opposes, like taxation for the ACA, Medicare, Medicaid, and numerous welfare programs; and they would consent to taxation for universal health coverage and more if later passed. Furthermore, Locke's responses do not help her here. Locke's Separate Consent response breaks the connection between consenting to citizenship and her taxation, and even reintroduces the taxes she likely opposes. And Locke's Limits response only demonstrates that consent cannot be the whole story. For it concludes consent cannot be enough to bind us to taxation, requiring us to know a government's purpose, when it oversteps its purpose, and the limits of consent to know when our consent to taxation is actually binding. In short, there is seemingly no way to spin Locke's tacit consent to give the libertarian what she wants. She will either find herself concluding (i) citizens do not consent to her taxation, (ii) citizens also consent to taxation she likely opposes (and potentially one day to taxation for universal health coverage), and/or (iii) consent cannot be the whole story.

#### Rand's Voluntary Taxation

This brings us to Rand's voluntary taxation. According to Rand, there should be a state, but *only* one which protects our natural rights. And in order to protect these natural rights, the state must tax citizens for its security. However, persons' rights over their property are absolute, and so they cannot be taxed without their permission. As such, the state can only tax those who agree to be taxed. And so, taxation for state-provided security must be voluntary.<sup>203</sup>

The problem with voluntary taxation is—to put it bluntly—it *does not work*. To demonstrate why, let's begin by expanding on what the libertarian wants here. When she says she wants state-provided

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<sup>203</sup> Rand (1964: 1-20, 135-6, 139; 1967: 378-81). See also Block and Torsell (2019: 103-4).

security, she does not mean she wants state-provided security *as one of many options to choose from*. She does not want some persons paying for the state police force while others pay for a private police force instead; she does not want some persons paying for the state military while others pay for their own private mercenaries; she does not want the state criminal justice system to apply to one group of persons, and a private criminal justice system to apply to another. In the libertarian's state, it is not *merely* that there is state-provided security; it is *also* that private security is limited or banned. More simply, the state has a *monopoly* on coercive force: everyone is protected by the same police and military, and everyone is bound by the same criminal justice system. Private security is limited so that it does not conflict with the state's monopoly on coercive force; and private alternatives and vigilantism are strictly prohibited.

With that in mind, I can now discuss the *problem of free-riders*.<sup>204</sup> As it goes, state-provided security is a special kind of good: it is the kind of good that persons can benefit from without paying any of its costs. When the police and criminal justice system detain and imprison criminals, you benefit, because now you live in a safer community. When the military wards off foreign invaders, you benefit, because now you live in a safer community. When state-provided security does what it is designed to do, you benefit, because now you live in a safer community. And this is true, whether or not you pay for this security. In short, state-provided security benefits everyone, including those who don't pay for it. Those who don't pay for it are *free-riders*: they get the benefits without paying any of the costs.

Here, it is worth mentioning that Rand acknowledges her voluntary taxation would have free-riders. But to Rand, this is a good thing. As it goes, some of us may think free-riding is unfair. After all, no one wants to pay for something when they can get it for free. So why should we let persons benefit from state-provided security if they don't help pay for it themselves? Isn't that unfair to those who actually pay

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<sup>204</sup> I take this problem—and its responses to Rand—from Block and Torsell (2019: 103-6), which themselves borrow from Sechrest (1999: 91-3, 193). See also Duff (2005: 29-31) and Mack (2006: 111), especially their relevant footnotes. What Buchanan (1984: 68-72) says about enforced beneficence and the *rationality* and *assurance* problems also apply (see also Chapter 1: pages 42-3).

for it and make these benefits possible? But according to Rand, this is the wrong way to think about free-riding on state-provided security. To her, the benefits free-riders receive is not unfair. Rather, their benefits are a positive externality. In other words, there are many benefits we receive that we don't help pay for. When your neighbors plant a beautiful garden on their lawn, you benefit from the wonderful view they gave you from your window. Yet, you did not help pay for their garden. Similarly, when an Italian restaurant opens up next to your ice cream parlor, you benefit from all the extra foot-traffic and desert-seeking customers that restaurant brings. Yet, you did not help pay for this restaurant. In both of these cases, we do not think your benefiting-without-paying is unfair. Instead, we think of your benefits as positive externalities: they are benefits you fortunately got from the free actions and exchanges of others. To Rand, the benefits free-riders get from state-provided security is a positive externality. Some persons, through their economic ability and rational self-interest, help pay for state-provided security. Those less economically able benefit as a result of what the more economically able would have done anyway. And so, free-riders are merely recipients of a positive externality.<sup>205</sup>

Let's assume, for the sake of argument, that Rand is right here. The problem is Rand misses a more fundamental problem with free-riding. The problem here is *not* that voluntary taxation is *unfair*. The problem is that it is *unsustainable*. If persons can get the benefits of state-provided security for free, then the rational self-interested thing to do is *not* pay for state-provided security. Because of this, voluntary taxation actually encourages persons to free-ride on the payments of others. But the more persons free-ride, the less funding state-provided security gets. And the less funding state-provided security gets, the worse it becomes, eventually becoming unsustainable.<sup>206</sup> Furthermore, voluntary taxation lacks the tools to fix this problem. Even if persons realize their state-provided security is degenerating, they know that their individual payments will not fix it; and they know that, if others do not also help pay, their own

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<sup>205</sup> Rand (1964: 139).

<sup>206</sup> Sechrest (1999: 92). See also Duff (2005: 29-31) and Mack (2006: 111), especially their relevant footnotes.



payments will be wasted. And so, they will still be encouraged to not fund state-provided security themselves, even if they agree their state-provided security needs more funding.<sup>207</sup>

In short, then, voluntary taxation for state-provided security is unsustainable. It encourages free-riding, which gradually worsens state-provided security and potentially leads to its undoing. This, in turn, leads to increased demand for private alternatives. The worse *state-provided security* gets, the more persons will seek out *private* security. If the state police force is bad, more persons will want a private police force; if the state military is ill-equipped, more persons will want private mercenaries; and if the criminal justice system lacks the resources to provide everyone with acceptable trials and punishments, more persons will seek out private adjudication. Simply put: if state-provided security is bad, more persons will seek out better private security elsewhere.

Here, Rand seems to respond that this problem can be solved by legally limiting and/or banning private security.<sup>208</sup> But her response here is inadequate for two reasons. First, making private security illegal does not necessary eliminate it. More likely, it just creates a black market for it. This is especially true if persons demand security that the state is too underfunded to adequately supply.<sup>209</sup> Second, even if we assume persons would follow these laws, they would still be encouraged to free-ride, even if they agree their state-provided security needed more funding. And this, in turn, would gradually worsen their state's security and potentially even undo it. As such, if persons did not obey Rand's laws here, they would retreat to the black market for private alternatives. And if they did obey her laws here, they would be stuck with dismal state-provided security or no security at all. Either way, Rand's state-provided security would be far less effective than what she—and the libertarian—wants it to be.

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<sup>207</sup> What Buchanan says about the *rationality* and *assurance* problems applies just as much here as it does to universal health coverage. See Buchanan (1984: 68-72) (see also Chapter 1: pages 42-3).

<sup>208</sup> As Block and Torsell (2019: 106) point out.

<sup>209</sup> See Sechrest (1999: 193).

To sum up, Rand's voluntary taxation for state-provided security is unsustainable. It encourages free-riding, which—at best—gradually makes state-provided security worse and—at worst—leads to its undoing. And this, in turn, creates more demand for private alternatives. Thinking of free-riding as a positive externality does not change this. Nor does making private security illegal. The only way to avoid the problem of free-riders is to coercively tax those who would otherwise choose to free-ride. But that is just to say that taxation for state-provided security cannot be voluntary.

#### Narveson's Mutual Advantage Contractarianism

This brings us to Narveson's mutual advantage contractarianism.<sup>210</sup> To begin, consider these two rules:

**Rule-No Coercion:** “do not [use coercion], unless it is necessary in order to ward off or defend oneself or others from persons violating this very rule”<sup>211</sup>

**Rule-Assistance:** assist those who cannot meet their basic needs

According to Narveson, if everyone was *rational self-interested*, then *everyone* would agree to comply with Rule-No Coercion. As he argues, any normal person can coerce another, and every normal person would be adversely affected if so coerced. Thus, everyone would obviously agree to rule out coercion. However, if everyone was *rational self-interested*, then *only some* would agree to comply with Rule-Assistance. Rule-Assistance would require those who do not need assistance to assist those who do. Importantly, the need for assistance is not equal. Some persons are poor and weak, and so will most likely receive assistance and not give it. Conversely, some persons are wealthy and strong, and so will most likely give assistance and not receive it. Thus, if everyone was rationally self-interested, poor and weak

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<sup>210</sup> This analysis and discussion of Narveson's mutual advantage contractarianism was inspired by and heavily borrows from Gilabert (2006). I merely take what I found useful for my purposes, modify what was said, and apply it to universal health coverage.

<sup>211</sup> Narveson (2004: 316). See also Gilabert (2006: 201).

persons would agree to comply with Rule-Assistance, because they would likely be better off under such a rule. But wealthy and strong persons would not agree to such a rule, because they would likely be worse off under such a rule.<sup>212</sup>

Importantly, more needs to be said here for my purposes. To see why, consider an additional rule:

**Rule-Protection from Coercion:** everyone who is able will contribute a fair tax to finance state-provided security, which is designed to impartially protect everyone from coercion

The point to make here is Rule-No Coercion and Rule-Protection from Coercion are *not* the same rule. Complying with Rule-No Coercion requires one to *refrain from* coercing others. Complying with Rule-Protection from Coercion requires one to *contribute* to impartial state-provided security. And here, we are concerned about the latter rule, not the former.

That said, there is a straightforward argument linking what Narveson says about Rule-No Coercion to Rule-Protection from Coercion. As it goes, it is in everyone's best interests to not be coerced, and to only use coercion in order to protect themselves or others from coercion. Thus, it is in everyone's best interest to agree to comply with Rule-No Coercion. Unfortunately, we know some persons would not comply with Rule-No Coercion. Thus, it is *also* in everyone's best interests to be a part of a state which impartially protects everyone from being coerced by others. However, the state cannot do that unless it taxes persons for its impartial security. As such, it is *also* in everyone's best interests to be fairly taxed for that impartial state-provided security. Which is to say, it is in everyone's best interest to agree to comply with Rule-Protection from Coercion. As such, if everyone was rationally self-interested, then everyone would agree to be taxed for impartial state-provided security.

Now consider a final rule:

**Rule-Universal Health Coverage:** everyone who is able will contribute a fair tax to finance a universal health coverage

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<sup>212</sup> Narveson (2003: 426; 2004: 316). See also Gilibert (2006: 201, 206-7).

What Narveson says about Rule-Assistance could be said here as well. As it goes, some persons are poor and weak, and so need basic health care and/or are unable to afford that care on their own. Conversely, some persons are wealthy and strong, and so do not need that care and/or are able to afford that care on their own. As such, under Rule-Universal Health Coverage, poor and weak persons will most likely receive assistance without giving it; wealthy and strong persons, by contrast, will most likely give assistance without receiving it. As such, if everyone was rationally self-interested, then *only some* would agree to comply with Rule-Universal Health Coverage.

Now, *if Narveson was right*, then the libertarian could make the following argument. As it goes, if *everyone was rationally self-interested*, then *everyone* would agree to obey Rule-Protection from Coercion. However, *only some* would agree to obey Rule-Universal Health Coverage; the poor and weak would, but the wealthy and strong would not. But all of this is just to say that *everyone hypothetically consents* to taxation for her state-provided security, but *only some hypothetically consent* to taxation for universal health coverage. And so, on the grounds of hypothetical consent, she could conclude that taxation for her state-provided security does *not* require theft or forced labor, but taxation for universal health coverage does.

The problem, however, is that Narveson is wrong. In fact, Narveson here faces a dilemma, where he must conclude that both kinds of taxation sink or swim together. To see why, go back to Rule-Assistance and Rule-Universal Health Coverage. On the surface, it seems rather obvious that it is in *everyone's best interest* to comply with these two rules. Everyone has an interest in meeting their basic needs; and everyone has an interest in the ability to afford basic health care. Everyone must meet their basic needs to do anything, and everyone is susceptible and eventually will succumb to some kind of illness, injury, or disability in their lives. As such, on the surface, it sounds like if everyone was *really* rationally self-interested, then everyone would agree to comply with rules that guaranteed assistance. To do otherwise

seems irrationally imprudent.<sup>213</sup> So why does Narveson say some would—out of rational self-interest—refuse to comply with these rules?

The answer is because, when it comes to Narveson's mutual advantage contractarianism, everyone *knows their wealth and power*. Here, the idea is that wealthy and powerful persons *know* they are wealthy and powerful; and poor and weak persons *know* they are poor and weak. Thus, they *know* the likelihood of being overall beneficiaries versus contributors when complying with these rules. The wealthy and powerful know they will likely give more than they get under these rules, while the poor and weak know they will likely get more than they give. That is why the wealthy and powerful—if they were rationally self-interested—would refuse to comply with these rules.

But here is the problem. If wealthy and powerful persons *know* they are wealthy and powerful, then they would—out of rational self-interest—*also* refuse to comply with the rules about *coercion*. For starters, some persons are so wealthy and powerful that they would likely give more than they got under Rule-No Coercion. Narveson makes it sound like it is in *everyone's* rational self-interest to agree not to coerce each other, except if doing so is necessary to defend oneself or others from coercion. But this is far from obvious. Agreeing to comply with a no-enslavement rule obviously benefits you *if you are otherwise likely to be made a slave*. But it does not obviously benefit you *if you are otherwise likely to be a successful slave-owner*. Similarly, agreeing to comply with a no-assault rule obviously benefits you *if you are in a position to be assaulted*; but it does not obviously benefit you *if you are in a position to assault others without them assaulting you back*. The same can be said about rules regarding theft and exploitation.

To put it simply: complying with Rule-No Coercion obviously benefits those *who would otherwise likely be coerced without being able to coerce others*; but it does not obviously benefit those *who would otherwise likely coerce others without being coerced themselves*. And that is the problem here. When it

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<sup>213</sup> Narveson (2003: 426) seems to agree. See also Gilabert (2006: 206-7).

comes to the wealthy and powerful and poor and weak, the relationship they share is *not* equal. Wealthy and powerful persons are more able to enslave, assault, steal from, exploit, and otherwise coerce the poor and weak. Poor and weak persons, by contrast, are less able to give or reciprocate that coercion in kind. Thus, when it comes to Rule-No Coercion, all that is obvious here is that the *poor and weak* would agree to comply with it out of rational self-interest. It is less obvious that the *wealthy and powerful* would do the same under the same conditions. More likely, at least some wealthy and powerful persons would *not* agree to comply with such a rule, instead opting for a rule which allowed them to use their superior wealth and power to enslave, assault, steal from, exploit, and otherwise coerce those who cannot do so themselves or retaliate in kind. And so, at least some of them—out of rational self-interest—would *not* agree to comply with Rule-No Coercion.<sup>214</sup> And if they did not agree to comply with Rule-No Coercion, then they certainly would not agree to comply with Rule-Protection from Coercion either. Instead, they would only agree to fund security which made it even easier to coerce the poor and weak and further protect and grow their own wealth and power.

Furthermore, even if we could explain how the wealthy and powerful would—out of rational self-interest—agree to comply with Rule-No Coercion, at least some would still refuse to comply with Rule-Protection from Coercion. It is one thing for the wealthy and powerful to agree to *not coerce* the poor and weak. It is quite another thing for them to agree to *also be taxed to protect* the poor and weak. And here, it seems obvious that *at least some* wealthy and powerful persons would—out of rational self-interest—choose not to do so. Some persons are so wealthy and powerful that they would benefit more from privatized and/or more tailored state-provided security. They would benefit more from funding a police force which only protects their property than one which also protects the property of others. They would benefit more from funding a military or mercenaries which further their global economic interests than one which merely protects their state's borders. And if others violated Rule-Coercion against them, they

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<sup>214</sup> As Gilabert (2006: 206-9) makes clear.

would benefit more from funding arbitration conducted on their own terms than impartial state proceedings and punishments. To fund more impartial state-provided security which protects everyone would advantage others at their own expense. In short, even if the wealthy and powerful—out of rational self-interest—agreed to comply with Rule-No Coercion, at least some of them would *not also* agree to comply with Rule-Protection from Coercion.

As such, the argument about hypothetical consent faces a dilemma. On the one hand, if wealthy and powerful persons *know* they are wealthy and powerful, then at least some of them would *not hypothetically consent* to taxation for *either* the libertarian's state-provided security *or* universal health coverage. And so, both kinds of taxes would require theft or forced labor. On the other hand, if wealthy and powerful persons *do not know* they are wealthy and powerful, then everyone *would hypothetically consent* to taxation for *both*. And so, neither taxation would require theft or forced labor. As such, when it comes to hypothetical consent here, taxation for both sink or swim together.

To sum up, the libertarian cannot rely on Locke's tacit consent, Rand's voluntary taxation, or Narveson's mutual advantage contractarianism to drive a wedge between taxation for her state-provided security and universal health coverage, and least in a way she could accept. Locke's tacit consent leaves her concluding either (1) the vast majority of United States citizens do *not* consent to taxation for her state-provided security, (2) they *also* consent to far more than she bargained for, or (3) consent cannot be the whole story. Narveson's mutual advantage contractarianism leaves her concluding that everyone hypothetically consents to taxation for both or some do not hypothetically consent to either. And Rand's voluntary taxation, quite simply, does not work.

Importantly, however, these are *only three* libertarian views about consent and taxation. And nothing stops the libertarian from seeking out an alternative view or coming up with her own. But here, I want to conclude this section by arguing the following. My assessment of these views does not *merely*

illustrate what *these particular views* say. Far from it, they *also* illustrate *two general problems* with the Consent Explanation more generally:

#### General Problem 1: Not Real Consent

The first general problem deals with *real* consent. To put it bluntly: the Consent Explanation would be an easy sell if everyone *expressly and actually* consented to taxation for the libertarian's state-provided security. But the idea that everyone has done so is patently absurd. In the United States today, the vast majority of citizens have not expressly consented to such taxation in any real situation. They were never given a contract to sign or asked to make some promise or oath. Furthermore, we know that if they were, *some would not consent*. Some morally oppose funding the police and criminal justice system, others morally oppose funding the military, and others morally oppose taxation altogether! The idea that everyone has expressly and actually consented to such taxation is a non-starter. And so too is the idea that everyone would if merely given the chance.

Of course, the Consent Explanation would also be an easy sell if everyone at least *expressly and actually* consented to be bound by the decisions of the majority of their representatives. After all, in the United States today, the majority of representatives have passed legislation to tax for state-provided security.<sup>215</sup> But the idea that everyone has done so also sounds implausible. Again, the vast majority of citizens have not signed a contract or made some promise or oath to that effect. And again, we know at

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<sup>215</sup> Though if the libertarian went this route anyway, she would commit herself to saying we consent to the taxation she wants to avoid, as well as potentially consenting to taxation for universal health coverage in the future. As I brought up earlier, in the United States today, the majority of representatives drafted, discussed, passed and signed into law numerous taxes, including those for the ACA, Medicare, Medicaid, and numerous welfare programs. And the majority could conceivably do the same with universal health coverage in the future. Furthermore, as I also brought up, there is every reason to believe these taxes would be created and/or strengthened if these representatives were *more representative* (see pages 80-3). As such, so long as the libertarian wants to avoid saying we consent to all this (and potential future) taxation as well, she cannot go this route anyway.



least some would not if given the chance. As such, the idea that everyone consented to majority rule is—again—a non-starter.<sup>216</sup>

Because of this, in order to make the Consent Explanation work, the libertarian must appeal to tacit and/or hypothetical consent. But on their surface, many interpretations of tacit and hypothetical consent do not sound like *real* consent. Consider first Locke's tacit consent. According to Locke, a man tacitly consents *merely* when he *has possessions in or receives enjoyments from the government's dominion*. But this does not sound like consent *at all*. Consent, as I said earlier, must be *deliberate* and *voluntary*—i.e. it must be intentional and non-coercive. And here, it is hard to see how Locke's tacit consent counts as either. For starters, under Locke's tacit consent, a man can easily *accidentally* consent.

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<sup>216</sup> Importantly, more can be said here. Locke, for example, argues that forming a commonwealth requires *everyone's* consent. But after the commonwealth is formed, the *majority* determine the form of the commonwealth's government. And should that government be a representative democracy, the majority of representatives form the commonwealth's legislation. His reasons are seemingly two-fold. First, Locke believes that forming a commonwealth forms a political body, and that body should move with the majority force. Second, Locke believes there needs to be some decision-making procedure for a commonwealth, and majority rule must be that procedure (see Simmons 1993: 90-3). Plamenatz, for example, argues that taking part in the voting process signifies consenting to the authority of those elected, and that taking part in a political system's processes counts as consenting to that system (Plamenatz 1968: 168-71; see also Simmons 1976: 289).

Both Locke and Plamenatz, however, seem mistaken. Regarding Locke, the most obvious point to make here is that—in the United States today—most citizens have not expressly and actually consented to *even forming* a commonwealth. So even if everything Locke says here is correct, it still has no application to the United States today. But unfortunately for Locke here, what he says also sounds wrong. For one thing, there is no reason to believe that a commonwealth should follow “the majority force”. It is not some wild animal, driven by powerful impulses. It is a collection of diverse persons, each with their own beliefs, goals, and values. And if it should be driven by majority force, that force need not be majority rule. Loud and active minorities can cause more political momentum than silent and apathetic majorities. Furthermore, there are numerous decision-making procedures outside of simple majority rule. So consenting to form a commonwealth does not automatically count as consenting to majority rule as well (see Simmons 1993: 93-4).

Regarding Plamenatz, it simply seems false that *participating* in a process counts as *consenting* to that process. For example, Plamenatz makes it sound like a person would have to be irrational to vote for someone without signifying her consent to be bound by majority rule. But there are many rational reasons why she could vote without signifying such consent. For example, she could detest majority rule, but—realizing she alone cannot change her political system—try to make the best of it by voting for the candidate she can most tolerate. She could find majority rule impractical or immoral in her political climate, yet feeling powerless, decide it best to play along and attempt to vote in like-minded people. In these cases, she would be acting quite rationally without signifying her consent to be bound by majority rule. More generally, as individuals, we alone cannot change our political systems. So sometimes participating in our systems is better seen as making the best of a bad situation, not as consenting to those systems themselves.

Of course, Locke and Plamenatz are not the only ones to use consent to justify majority rule. But if nothing else, the above highlights the difficulties of trying to explain how United States citizens today consent to their system of majority rule.

So long as he has possessions in or receives enjoyments from the government's dominion, he consents to (at least) obeying that government's laws, *even if* he has *no* idea he is doing so! Furthermore, he does not have the free choice to refuse taxation (if he is a natural citizen) or obedience to laws (if he is a visitor). He is forced to pay and/or obey; and he will be punished if he is caught doing otherwise. Put simply: nothing about Locke's tacit consent sounds deliberate or voluntary. And it must be both to count as *real* consent.

Why, then, would Locke think his tacit consent is *real* consent?<sup>217</sup> Arguably, there are at least two reasons. First, Locke seems to have thought it would be *inappropriate* or *immoral* to benefit from the government's dominion without (at least) obeying its laws. Second, Locke makes clear that a man's tacit consent can be withdrawn. Once a man leaves the government's dominion—removing all possessions and enjoyments from it—his obligations vanish. So, perhaps, he believed that benefiting or the ability to leave implied some kind of consent.

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<sup>217</sup> Importantly, Locke may not. To illustrate, first consider 'apple tree' and 'maple tree'. Here, 'apple' and 'maple' are *modifiers* of 'tree'. In other words, we are talking about different kinds of *real* trees: one kind is apple, another kind is maple. Now consider 'real tree' and 'artificial tree'. Here, we are not talking about different kinds of *real* trees. Rather, 'real tree' is a *phrase* that refers to a real tree; 'artificial tree' is a *phrase* that refers to something *tree-like*. In short, consider 'X tree'. Sometimes 'X' is a *modifier* of tree: it is a word that identifies a kind of *real* tree. Sometimes, however, 'X tree' is a *phrase*: it is a phrase that refers to either a *real* tree or something *tree-like*. The same can be said about 'tacit consent'. Here, we can think of 'tacit' as a modifier of 'consent'. In other words, there are different kinds of *real* consent, and one kind is *tacit*. Just like how there are different kinds of *real* trees, and one kind is *apple*. Alternatively, we can think of 'tacit consent' as a phrase. It does not refer to *real* consent, but rather something *consent-like*. Just like how 'artificial tree' is not a kind of real tree, but rather something *tree-like*.

Up until now, I have spoken as if Locke is using 'tacit' as a modifier to 'consent'. That is, I have assumed he thinks there are different kinds of *real* consent: one is *express*, another is *tacit*. But perhaps he really means 'tacit consent' as a phrase. That is, he does *not* think tacit consent is *real* consent, but rather something *consent-like*. If that is so, then Locke actually does not think tacit consent is real consent. Consider Simmons (1976: 286-8). Simmons draws a distinction between acts which are "signs of consent" and acts which "imply consent". Simmons maintains that only the former count as *real* consent, while the latter are just *consent-like*. And then, he claims Locke mistakenly took the latter as the former, suggesting Locke meant to talk about *real* consent but failed. But perhaps Simmons is wrong here. Perhaps Locke was intentionally talking about the latter, knowing that it is only *consent-like*. In either case, Locke would not be talking about *real* consent. The difference is whether that was mistaken or intentional. My thanks to Mark Satta for pointing this out.

For my purposes, it does not matter what Locke really thought about tacit consent. Here, I am not worried about how to interpret Locke, but rather what the libertarian wants. When it comes to the Consent Explanation, the libertarian wants *real* consent, not just something *consent-like*. And I am arguing Locke's tacit consent is not *real* consent. Whether or not Locke was mistaken or actually agreed is another matter.

But neither of these reasons work. First, just because one benefits from X, that does *not* imply she therefore consents to X. I *benefit* from X when it advantages me in some way. I *consent* to X when I deliberately and voluntarily agree to it. Clearly, these are not the same thing, and I can do the former without the latter. I can benefit from the view of my neighbor's garden without consenting to pay for it. I can benefit from everyone else stopping at red lights without consenting to do so myself. More relatedly, I can benefit from a government's laws without consenting to obey them. And I can benefit from state-provided security without consenting to be taxed for it. In fairness to Locke, it may be *inappropriate* or *immoral* not to obey the laws or pay for the security which benefits me. But here, that has nothing to do with my *consent*. It has everything to do with principles of fairness or gratitude.<sup>218</sup>

Second, the idea that one can always leave does *not* imply she consents to obey or pay while she stays. The fact of the matter is, at least in the United States today, leaving is *very expensive and difficult*. To leave this country and take up residence elsewhere, you must have enough wealth and resources to get yourself across the border into some other country. You must also have access (and the time) to follow immigration processes. And should you also want to become a citizen of the new country, you must meet their criteria for citizenship, which could easily require more wealth and/or guaranteed employment. And all of this is ignoring the less-obvious but still very real costs of leaving: the costs of potentially having to leave your family or friends behind, learn a new language, and/or adapt to a different culture or way of life.

And this is doubly important. For one thing, not everyone has the wealth, resources, access and time to successfully immigrate to another country; and those who do may lack what they need to become citizens there. As such, their staying here does *not* imply they consent to the laws or taxation of the land, since they actually cannot leave. For another thing, even if they can leave, their obeying laws or paying

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<sup>218</sup> See also Simmons (1976: 287-91).

taxes is still coerced. To illustrate, imagine you live in a neighborhood with a mafia. And one day, a mafia member comes by your home and says the following:

**Case 1:** “You have two choices: you can either obey our rules and/or pay our protection fee or be punished”

**Case 2:** “You have three choices: you can either obey our rules and/or pay our protection fee, be punished, or leave town at great expense and difficulty.”

Case 1 is blatantly coercive. Giving you the choice between (1) obeying and/or paying and (2) being punished is the quintessential case of coercion; it is basically the held-up-at-gunpoint scenario. But if Case 1 is coercive, then surely Case 2 is too. What makes Case 1 coercive is that the mafia member is giving you a choice between giving them what they want and suffering a serious cost. Surely, giving you the choice between giving them what they want, suffering one serious cost, or suffering *another* serious cost does not remove its coercive nature—and it certainly does not imply you now consent to obey and/or pay their rules and fees. But if that is the case, then we must conclude that the ability to leave does not imply consent. Again, in the United States today, persons are not politely asked to obey laws and/or pay taxes, being excused if they would rather not. Instead, they are told to obey laws and/or pay taxes, suffering a punishment if they are caught doing otherwise. That is coercive. Giving them the additional choice to leave at great expense and difficulty does not change that.

In short, Locke’s tacit consent does not sound like *real* consent. Real consent must be given deliberately and voluntarily, but Locke’s tacit consent can be given accidentally and—regardless—is coerced. Furthermore, benefitting from a government’s laws or security does *not* imply one *consents* to obey or pay, however inappropriate or immoral that may be. Finally, the idea that one can always leave does *not* imply one consents to obey or pay, since (1) she may not actually be able to leave and (2) even if she can, her obedience and/or payment is still coerced.

Of course, this is just *Locke's* conception of tacit consent. But what his conception illustrates is that, for tacit consent to count as *real* consent, it must be given *deliberately* and *voluntarily*. In other words, it must be some omission *intentionally* and *freely* performed to *signal* that one agrees to obey laws and/or pay taxes. But if that is so, then the only *real* tacit consent finds itself facing the same problems as *express* consent. For just as the vast majority of United States citizens have not agreed to obey or pay *through some compact, promise, or oath*, the vast majority of United States citizens have *also* not agreed to obey or pay *through some situation where their silence or inaction was deliberately and voluntarily performed to signal that agreement*. As such, when it comes to taxation for the libertarian's state-provided security, *Locke's* tacit consent illustrates a more general problem: either tacit consent is not *real* consent, or the vast majority of United States citizens do *not* tacitly consent to it either. And this suggests that appealing to *real* actual consent is a non-starter, whether it is express or tacit.

Now consider hypothetical consent. Given the problems of actual consent, the libertarian may choose to retreat to hypothetical consent. But if any consent fails to sound like *real* consent, it is *hypothetical* consent. Hypothetical consent, by definition, does not involve a *real* person consenting in a *real* situation. It only involves what a person (which herself could be hypothetical) *would have* consented to in a hypothetical situation. As such, when it comes to hypothetical consent, no one *actually* consented to anything at all! Furthermore, we often only treat *actual* consent as *real* consent. When one signs a contract with a business, we take her as consenting to the terms of that contract and say she is (legally and/or morally) bound to those terms. And when she does not sign this contract, we take her as not consenting to or being bound by those terms. Seemingly, saying she *would have signed in a hypothetical situation* does not change our mind. If she did not sign it, then she did not consent and is not bound by those terms, *even if she would have signed it under other circumstances*.

Importantly, this is not to say that hypothetical consent is *useless*. To the contrary, hypothetical consent can be a useful tool for assessing the quality of a government's laws or taxes. For example, there

is reason to worry about a law or tax which every rational person would reject; so too is there reason to worry about a law or tax which everyone would reject if they could bargain with each other on equal footing. But the fact remains that hypothetical consent here is *not* being used as a proxy for actual consent; it is merely being used as a tool to assess a law's or tax's fairness, goodness, or reasonableness. And while that may be useful, that is not *consent*.<sup>219</sup>

To sum up, a lot of the consent I discussed does not sound like *real* consent, at least as the libertarian would see it in the United States today. And without that consent, it is hard to see how the Consent Explanation could work. For if she abandons all that consent, then all she is seemingly left with is something akin to everyone's express and actual consent. And it is clear that, in the United States today, taxation for her state-provided security (or the majority rule that spawned it) does not have *that*; nor would it even if everyone was given the chance make some compact, promise, or oath. But if that is right, then the Consent Explanation is a non-starter.

#### General Problem 2: Dilemma

Suppose, however, that tacit consent and/or hypothetical consent *do* count as *real* consent. If that is so, then the above discussion illustrates a dilemma for the libertarian. As it goes, the more *strictly* she construes consent, the easier it is to show why we do *not* consent to taxation for her state-provided security. But the more *loosely* she construes consent, the easier it is to show why we *also* consent to taxation for universal health coverage and/or more than she bargained for.

Consider first tacit consent. If the libertarian, like Locke, says tacit consent is merely having possessions in or receiving enjoyments from the government's dominion, then she can easily explain why we consent to taxation for her state-provided security. But then, she must also conclude that we *also* consent to taxation for the ACA, Medicare, Medicaid, and numerous welfare programs. And she must also

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<sup>219</sup> See also Simmons (1993: 76-9).

conclude that, should the United States get universal health coverage—or add to and/or strengthen its welfare programs—we consent to taxation for that as well. But if she, contra Locke, says tacit consent must be an omission which deliberately and intentionally is performed to signal one's agreement, then she can easily explain why we do *not* consent to taxation for the ACA, Medicare, Medicaid, numerous welfare programs, and the potential universal health coverage or additional and/or strengthened welfare programs. But then she must conclude that we *also* do not consent to taxation for her state-provided security either.

Now consider hypothetical consent. If the libertarian, like Narveson, says hypothetical consent involves persons who *know their wealth and power*, then she can easily explain why we do *not* consent to taxation for universal health coverage or assistance. But then, she must conclude we *also* do not consent to taxation for her state-provided security. But if she, contra Narveson, says hypothetical consent involves persons who *do not know their wealth and power*, then she can easily explain why we consent to taxation for her state-provided security. But then she must conclude that we *also* consent to taxation for universal health coverage and assistance.

Of course, when discussing this dilemma, I have left out numerous middle-ground conceptions of tacit consent and hypothetical consent. But this dilemma illustrates two serious problems. First, it is not at all clear *which* conception of consent (if any) will actually get the libertarian what she wants. What she wants is a conception of consent that says we consent to taxation for her state-provided security without implying we also consent to more than she bargained for. But it is hard to imagine what conception could give her the taxation she wants without at least some of the taxation she does not. Second, even if there is such a conception, it is not at all clear that this conception is *meaningful*. For the libertarian, the point of finding this conception is to explain *both* why taxation for her state-provided security is not theft and/or forced labor *and* why taxation for the stuff she did not bargain for is. If the only conceptions that give her

what she wants are ad hoc, then her conceptions will be meaningless. In either case, the Consent Explanation will be unable to do what the libertarian wants it to do.

To me, then, there are only two plausible attempts to salvage the Consent Explanation on the libertarian's behalf. First, she can simply require that taxation for her state-provided security be voluntary. Second, she can say that consent is not the whole story. But neither will get her very far. Voluntary taxation for her state-provided security is a non-starter, because it does not work, at least in the United States today. And saying consent is not the whole story just admits that the Consent Explanation—at its best—is only *part* of the story, forcing her to look beyond the Consent Explanation to tell the rest of it.

To sum up, it would be too difficult to say everything there is to say about consent and taxation. But what we can say is this much. Consider these four options:

- (A) We do *not* consent to taxation for the libertarian's state-provided security
- (B) We *do* consent to taxation for universal health coverage
- (C) We consent to *a lot more* than she bargained for
- (D) Consent cannot be the whole story

Locke's tacit consent forces the libertarian to conclude either (A) or (C) (and in the future, potentially (B)). Narveson's hypothetical consent forces her to conclude either (A) or (B) (and presumably (C)). Furthermore, it is hard to imagine a conception of consent that would give her (A) without *also* giving her (B) and/or (C). Seemingly, she only has two ways out here. She can either—like Rand—demand taxation for her state-provided security by voluntary or—like Locke—go with (D). But voluntary taxation does not work, and (D) forces her to look beyond the Consent Explanation to finish telling her story. And this is, of course, assuming that tacit consent and/or hypothetical consent count as *real* consent; and in many cases, the libertarian has reason not to do so. In short, then, the libertarian seemingly cannot use consent alone to drive a wedge between taxation for her state-provided security and universal health coverage, at least



in a way she would accept. And so, if she still wants to drive this wedge, she should look beyond the Consent Explanation to explain why.<sup>220</sup>

#### Section 4: Option (C)—State-Provided Security Does Require Stealing from or Forcing Persons' Labor, *But That is Okay*

When we began our discussion about the Anti-Tax Thesis, I made it sound like the libertarian thinks theft and forced labor are *always* wrong and the United States should *never* do it. But perhaps this is not her position. Perhaps she thinks theft and forced labor are *generally* wrong and the United States should *generally not* do it. The idea here is that there is something special about being taxed *for her state-provided security* that warrants whatever theft or forced labor it requires. But why might she think so? I believe there are at least three possible explanations here. Let's review each of them and see what they have to say about taxation for universal health coverage.

The first explanation is the Equality of Benefits Explanation.<sup>221</sup> According to this explanation, we should distinguish between two kinds of systems: those which benefit everyone *equally* and those which *do not*. The libertarian's state-provided security benefits everyone equally, because (at least ideally) the state's police and military protect *everyone*, and its criminal justice system holds *everyone* to the same standards.<sup>222</sup> By contrast, things like welfare do not benefit everyone equally. To the contrary, the poor receive the lions-share of the benefits, while the wealthy receive little—if any—benefits themselves.

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<sup>220</sup> Perhaps we should not be surprised, then, when Mack (2006: 100) quickly concludes that all consent challenges fail. See also Waldron (1988: 271-8), who argues that *no* principle of acquisition would ever receive universal consent, either actual or hypothetical; and as such, no law or structure of institutions designed around a principle of acquisition would ever receive universal consent either. This is important, because *any* version of the libertarian's state-provided security would likely be—in some meaningful way—designed around a principle of acquisition. If so, there is even more reason to believe that the libertarian's state-provided security—however she envisions it—would never receive universal consent of any kind.

<sup>221</sup> This explanation and its immediate problem were taken from Bradley (2010: 839-40).

<sup>222</sup> Again, we have strong reason to believe this is not true in the United States today. For example, consider Buckwalter-Poza (2016) and Hinton et. al. (2018). But again, the libertarian could and should concede this much and support changes to make it more ideal.

Taxation for the former is justified, while taxation for the latter is not. And so, the former should count as an exception, but not the latter.

The immediate problem with this explanation is how it categorizes the libertarian's state-provided security. More simply, it is *likely false* that everyone equally benefits from her state-provided security, at least in the United States today. Who benefits more is debatable. On the one hand, the poor might benefit the most. Bradley, for example, points out that the poor cannot afford their own private security, while the wealthy can.<sup>223</sup> But on the other hand, the wealthy might benefit the most, since they—and not the poor—have a lot of property in need of protection.<sup>224</sup> Regardless of who benefits the most, it seems unlikely that everyone benefits *equally*.<sup>225</sup>

That said, we can modify this explanation to account for this problem. Call it the Equality of *Qualifying for Benefits* Explanation. According to this explanation, we should distinguish between two kinds of systems: those in which everyone *equally qualifies for* the benefits and those in which they *do not*. Everyone equally qualifies for the benefits of the libertarian's state-provided security: for example, both wealthy and poor persons can call the police and take someone to court. But everyone does not equally qualify for the benefits of welfare: only those who are poor (or meet some other criteria) qualify. Taxation for the former is justified, while taxation for the latter is not. And so, the former should count as an exception, but not the latter.

Let's leave aside the case of *welfare* here. If this explanation is correct, then taxation for universal health coverage should *also* count as an exception. What makes universal health coverage *universal* is that it guarantees *everyone* can afford basic health care. Thus, everyone (trivially) equally qualifies for the

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<sup>223</sup> Bradley (2010: 839).

<sup>224</sup> And this, of course, is only contrasting the poor and wealthy. Other comparisons can be made based on race, gender, sexual orientation, religion, and the like.

<sup>225</sup> I suppose one could claim that the benefits are not *equal*, but *comparable*. For example, the poor benefit more in some ways, the wealthy in others, and it all balances out. But I have no idea how to assess that claim. And given the complexity of proving such a claim, the libertarian seems better off appealing to another explanation.

benefits of universal health coverage. And so, taxation for universal coverage should also count as an exception.

The second explanation is the Equality of Contributions Explanation.<sup>226</sup> According to this explanation, we should distinguish between two kinds of systems: those in which everyone makes an *equal contribution* and those in which some contribute *more than others*. Everyone equally contributes to the libertarian's state-provided security, but some persons contribute more than others to things like welfare. Taxation for the former is justified, while taxation for the latter is not. And so, the former should count as an exception, but not the latter.

The immediate problem with this explanation is how it categorizes the libertarian's state-provided security. More simply, it is *false* that everyone *equally contributes* to her state-provided security, at least in the United States today. To the contrary, wealthy persons contribute *far more* to her state-provided security than poor persons. Poor persons pay little—if anything—in taxes for her state-provided security, and taxation for her state-provided security would never be sustainable if poor persons were required to match the contributions of their wealthier counterparts. The idea, then, that everyone *equally contributes* to her state-provided security is simply mistaken.

That said, we can modify this explanation to account for this problem. Call it the Equality of *Fair* Contributions Explanation. According to this explanation, we should distinguish between two kinds of systems: those in which everyone contributes their *fair* share and those in which some contribute *more than* their fair share. What counts as one's fair share is debatable, but we can at least agree on this much: everyone who can contribute will, and all who do contribute will not contribute more than whatever their fair share is determined to be. Everyone (at least ideally) contributes a fair share to her state-provided security. But (perhaps?) some are expected to contribute more than their fair share to things like welfare.

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<sup>226</sup> This explanation and its immediate problem were taken from Bradley (2010: 839-40).

Taxation for the former is justified, while taxation for the latter is not. And so, the former should count as an exception, but not the latter.

Let's again leave aside the case of *welfare* here. If this explanation is correct, then again, taxation for universal health coverage should *also* count as an exception. Universal health coverage does not require everyone to contribute, nor does it require all those who do contribute to contribute the same amount. All it requires is that those who can contribute do, and that those who do contribute give whatever their fair share is determined to be.<sup>227</sup> And so, taxation for universal coverage should also count as an exception.

For the sake of clarity, I decided to discuss the first and second explanations separately. But importantly, taking them together shows just how analogous taxation for the libertarian's state-provided security and universal health coverage really are. In both cases, the benefits received are likely unequal: some could not afford security or basic health care on their own and/or have a great need for it; others could afford that security or care (or better) on their own and/or have little need for it. Yet, in both cases, the qualifications for benefits are equal. Furthermore, in both cases, the contributions given are unequal: some contribute more, while others contribute less, and that is the way it must be. Yet, in both cases, the contributions are (at least ideally) fair. In short, some give more than they get, but all give something fair and get the same thing in return. As such, when it comes to talk of benefits and contributions, taxation for her state-provided security and universal health coverage are not distinct. To the contrary, they are quite analogous. And so, if taxation for one should count as an exception, then so too should the other.

The third explanation is the Necessary for a Peaceful Diverse Society Explanation. According to this explanation, persons are diverse: they have their own interests and desires, thoughts and beliefs, and

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<sup>227</sup> Of course, some particular universal health coverage systems may require unfair contributions. Flanigan (2013), for example, argues the ACA unfairly burdens employers and employees and could be more fairly financed. She may be right. But here, the idea is that universal health coverage *itself* does not require unfair contributions. A system could be designed to make sure everyone's contributions are fairly determined.

conceptions of what is moral and good. Because persons are diverse, they need the libertarian's state-provided security to peacefully live among and interact with each other. Without her state-provided security, they cannot create a peaceful diverse society; and if that security is removed, their peaceful diverse society will fall apart. Taxation which is necessary for a peaceful diverse society is justified, while taxation which is not is not. And so, taxation for the former should count as an exception, but not the latter.

To my knowledge, Humboldt adopts something along the lines of this explanation.<sup>228</sup> According to Humboldt, state intervention is always bad and should be avoided whenever possible. Unfortunately, state-provided security is necessary for diverse persons to peacefully live and interact with each other. As it goes, persons tend to transgress their proper limits. They wrong each other, which begets others' revenge, which begets new wrongs. And this cycle of wrong and revenge continues, leading to an environment of perpetual and widespread conflict. As he continues, state-provided security is the only thing which can break this cycle, because state-provided security becomes the *final* revenge of any conflict (i.e. by inflicting the final punishment or making the final judicial decision). Were state-provided security unnecessary here, he would not support it or its taxation, because it is, after all, a kind of state intervention. But because it—and it alone—is necessary to make a peaceful diverse society possible, he says this state intervention—and *only* this state intervention—is justified. And so, he seems to count taxation for state-provided security as a kind of exception, while opposing essentially all other kinds of taxation.

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<sup>228</sup> See Humboldt (1969: 42-44, 127). Also, contrast with *ibid.* 108, where Humboldt claims: "So true it is that all good and beneficent things rest in a wonderful harmony, that it is only necessary to introduce one of them, i.e. freedom, to enjoy the blessings of all the others." As Vogel (1982; 94-95) summarizes: "[Humboldt] assures his readers that, as a matter of *empirical fact*, freedom from state interference will by itself secure the very goals towards which welfare policies are instituted. In other words, the greatest amount of individual liberty guarantees the realization of *all* other values."

It would be misleading to say Rand or Engelhardt simply embrace this explanation themselves; it would leave out too much of what else they say. But they both at least seem to agree that state-provided security is (or can be) necessary for a peaceful diverse society. According to Rand, state-provided security is necessary, because without state-provided security, society “would degenerate into mob rule, lynch law, and an endless series of blood feuds or vendettas.”<sup>229</sup> Engelhardt says his approach to justice is fundamentally concerned about “a peaceful social structure binding moral strangers, members of diverse concrete moral communities.”<sup>230</sup> And he seems to believe that state-provided security does (or at least can) fit into that structure.<sup>231</sup>

In short, this explanation claims that the libertarian’s state-provided security is necessary for a peaceful diverse society; without such security, persons would create a cycle of wrongs and revenges, and society would degenerate into violence and chaos. Call this claim the explanation’s *central claim*. Is its central claim *actually true*? Seemingly, it cannot be true *analytically*, nor can its truth be knowable *a priori*. To illustrate, consider three hypothetical states:

**No State Anything:** Persons are diverse. Yet despite their diversity, everyone manages to peacefully live and interact with each other. Everyone respects everyone else’s rights, liberty, or whatever. And whatever feuds arise, they are resolved peacefully, preventing any cycle of wrongs and revenges as well as their society’s degeneration into violence and chaos.

**Only State-provided security:** Persons are diverse. Some of these persons want and need what others have, and they are willing to violate others’ rights, liberty, or whatever to get it. If they did, others would respond in kind, creating a cycle of wrongs and revenges and eventually degenerating their society into violence and chaos. Fortunately, everyone is protected by their state’s security. And so, everyone (sometimes begrudgingly) respects everyone else’s rights,

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<sup>229</sup> Rand (1967: 379-81).

<sup>230</sup> Engelhardt (1996b: 782).

<sup>231</sup> Engelhardt (1997: 193).

liberty, or whatever (or are put in prison). The result is no cycles are created which would degenerate their society.

**Only State Assistance:** Persons are diverse. Normally, some persons would want and need what others have, and go after it in a way which would create a cycle of wrongs and revenges, eventually degenerating their society into violence and chaos. Fortunately, the state guarantees that everyone's wants and needs will be satisfied in a way that (consented to or not) keeps persons from feuding. And so, everyone (happily or begrudgingly) respects everyone else's rights, liberty, or whatever; and no cycles are created which would degenerate their society.

All three hypothetical states have two things in common. First, none of these states invoke any contradiction of terms. Second, all of them are logically possible and easily conceivable. Yet, only one of these states has state-provided security. As such, if the central claim is supposed to be analytic or knowable a priori, it is demonstrably false.

To take the central claim charitably, then, it must be seen as an *empirical* claim. In other words, this claim is *not* saying the libertarian's state-provided security is necessary *as a matter of meaning or conceivability*. Rather, it is saying her state-provided security is necessary *in the world we actually live in*. Of course, we can *conceive* of a state where everyone peacefully lives among and interacts with others without any state-provided security. But in the *real world*, that would never happen. Because in the real world, these persons would end up creating a cycle of wrongs and revenges that would degenerate any society they had into violence and chaos. In short, her state-provided security may not be necessary for hypothetical persons living peacefully in hypothetical states. But it is necessary for real persons living peacefully in real states.

I suspect some would push back on this claim.<sup>232</sup> But for my purposes, let's suppose this claim is *empirically true*. The problem now is what is *also* empirically true. Friedman puts it well:

We can almost see the last century as a social experiment in the benefits and costs of market inequality. Throughout the Western world, the spread of egalitarian social welfare and tax policies in the mid-twentieth century lowered income disparities and created a more equal distribution of income. Contradicting the expectations [of some economists], these policies were broadly productive and were associated with rising productivity and national well-being. Beginning in the 1970s in the United States and then in Britain and elsewhere, many countries abandoned their commitment to egalitarian welfare programs. The result has been not only rising inequality, but slower productivity and income growth. Beyond lower incomes, greater inequality and an impersonal disregard for the well-being of individuals has led to declining social well-being.

Treated poorly, told that society has no concern for their well-being beyond their capacity to earn, persons react selfishly and in way that undermine social cohesion and economic efficiency. We have seen this in recent decades, and across countries pursuing different social welfare policies. Distrust, drug abuse, theft, violent crime: these all rise with the reliance on unregulated markets and soaring inequality. There is an economic cost here in lost productivity, increased rates of incarceration, and the employment of more guard labor to protect property. Businesses experience these costs every day in lower employee moral and productivity as well as greater theft and security expenditures. People respond to how they are treated and, shown due care and respect, they respond in kind. We are poorer because persons have responded in kind to the disrespect shown them by a society organized around the market.<sup>233</sup>

To put it more simply: in the real world, the libertarian's state-provided security may be necessary for a peaceful diverse society. But in the real world, her state-provided security *alone* ends up threatening a

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<sup>232</sup> Humboldt's defense of this claim is rather quick and—to put it bluntly—comes off as armchair empirical research. Rand seems to just assume as much, as Block and Torsell (2019: 106) point out. As I hope to demonstrate later, Engelhardt seems to make erroneous assumptions about the relationship persons have with their state's policies. Furthermore, at least some abolish-the-policers seem convinced that Only State Assistance is not only possible, but actually preferable, at least with regards to the police as the libertarian envisions it (see Arrieta-Kenna 2020). And surely some anarchists believe No State Anything is possible and preferable. For example, see Holcombe (2004: 325-6) for his discussion of 'orderly anarchy' libertarians.

<sup>233</sup> Friedman (2020: 96-8). See also Friedman (2020: 94-8) and the accompanying endnotes. See also Wilkinson & Pickett (2019). See especially Wilkinson & Pickett (2019: 25) (and the accompanying endnotes), when they say:

A number of studies show that community life is weaker in societies with bigger income differences between rich and poor. Societies with smaller income gaps have repeatedly been shown to be more cohesive. People in more equal societies are more likely to be involved in local groups, voluntary organizations and civic associations. They are more likely to feel they can trust each other, are more willing to help one another, and rates of violence (as measured by homicide rates) are consistently lower. People get along with each other better in more equal societies. Since before the French Revolution, the idea that inequality is divisive and socially corrosive has been widespread. Now that we have sufficient data to compare inequality – as measured by income differences between rich and poor – in each country, it has become clear that this intuition is emphatically correct, perhaps more so than we ever imagined. Rather than a private hunch, it has – as hundreds of studies now show – become an objectively demonstrable truth.



peaceful diverse society. By allowing an unregulated market and substantial inequality, her state-provided security alone ends up creating an environment which fosters selfishness, distrust, drug abuse, theft, and violent crime. This, in turn, undermines well-being, economic efficiency, and social cohesion. Or to put it even more simply: her state-provided security *alone* undermines what it takes for diverse persons to peacefully live among and interact with each other. And so, while her state-provided security may be necessary for a peaceful diverse society, it alone also threatens it.

To address this threat, the libertarian seemingly has two choices. One, she can increase state (and private) security. Two, she can (along with or instead) add in social welfare policies. In contrast to state-provided security on its own, social welfare policies help create an environment which fosters trust, respect, and cooperation. This, in turn, improves well-being, economic efficiency, and social cohesion. And that, quite simply, makes it easier and possible for diverse persons to peacefully live among and interact with each other.<sup>234</sup>

In short, when it comes to *maintaining* a peaceful diverse society, the libertarian must have more than minimal state-provided security. She must either invest even more in state (and private) security, or she must (along with or instead) invest in social welfare policies. To me at least, the former looks suspect here. Seemingly, it just doubles-down on the problem, rather than actually solving it. Thus, at least as far as I can tell, the latter is the better choice here.

Let's assume, however, that both options would maintain a peaceful diverse society. On this assumption, there is so far no reason to prefer one option over the other. This explanation is only concerned about what is necessary to maintain a peaceful diverse society; and our assumption, both options do the trick. As such, if taxation for state-provided security is justified here, then so too is taxation

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<sup>234</sup> To be clear, I am not claiming here that social welfare policies are a panacea for any threat to a peaceful diverse community. To suggest otherwise is to ignore the complexity of our world and its problems. All I am claiming is that social welfare policies help create and maintain peaceful diverse communities, and unregulated markets undermine these communities.

for social welfare policies. As will be made *very* clear in the remaining chapters,<sup>235</sup> universal health coverage is one of these social welfare policies. And so, if this explanation justifies taxation for state-provided security, so too does it justify taxation for universal health coverage. As such, if one kind of taxation counts as an exception here, then so too does the other.

Importantly, Engelhardt seems to challenge this conclusion. For my purposes, I will focus our attention to two of his reasons. The first I will call his Morally-Loaded reason. As he puts it:

The commitment to a particular package of [health care] services brings with it a particular interpretation of the significance of reproduction, birth, health, suffering, death, and equality (e.g., it involves specific positions regarding artificial insemination by donors, prenatal diagnosis with the possibility of selective abortion, physician-assisted suicide, voluntary active euthanasia, and unequal access to better basic health care). A uniform welfare right to health care involves endorsing and establishing one among a number of competing concrete moralities of life, death, and equality. Because of this tie to morally controversial interventions, the establishment of uniform, universal health-care welfare rights directly or indirectly involves citizens, patients, physicians, nurses, and others in receiving or providing health care in a health-care system which they may find morally opprobrious.<sup>236</sup>

For my purposes, we need to modify what Engelhardt says here. As is clear in the quote, Engelhardt is concerned about a *uniform welfare right to health care*. I, however, are only concerned about *universal health coverage*, understood as *universal affordability*.<sup>237</sup> Thus, a lot of what he says here does not directly apply to my discussion. For starters, universal health coverage is about *financing* health care, *not delivering* it.<sup>238</sup> As such, universal health coverage does *not* force anyone to receive or provide any health care they do not want. It merely makes it possible for everyone to afford the basic health care already available. Furthermore, universal health coverage does *not require* everyone to have the *same* insurance and only have access to the *same* health care. Universal health coverage *can* prohibit wealthier persons from purchasing different or better insurance or health care, for the sake of cost-reduction or efficiency. But it does *not need* to do so. All universal health coverage requires is the guarantee that everyone can

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<sup>235</sup> As well as in footnote 181 (page 65).

<sup>236</sup> Engelhardt (1997: 188-9).

<sup>237</sup> See Chapter 1: Section 1b.

<sup>238</sup> As Friedman (2020: 52) points out about Medicare for All.

afford basic health care. The more it restricts wealthy persons' alternatives, the more health care it can include and the cheaper it can make that care for everyone. The less it restricts wealthy persons' alternatives, the more options wealthy persons will have to choose from. For my purposes, the libertarian can choose whatever she prefers here. And this is important, because as I discussed earlier, Engelhardt himself seems to allow—though not require—some minimal kind of universal health coverage under certain conditions.<sup>239</sup>

That said, what Engelhardt says here can be modified to apply more directly to our discussion. For the sake of argument, suppose we are only considering a *particular* universal health coverage system: one that requires that everyone has the *exact same* insurance and access to the *exact same* kind and quality of health care. In order for this system to work, wealthy persons cannot use *any* of their wealth to acquire different or better insurance or health care. What they can get and have access to is *exactly* the same as everyone else. Call this *equalized* universal health coverage.<sup>240</sup>

What Engelhardt says above more directly applies to equalized universal health coverage. As it goes, the package of services included in this system brings with it a particular interpretation about the significance of reproduction, birth, health, suffering, death, and equality. Thus, it endorses and establishes one among many competing concrete moralities of life, death, and equality. Furthermore, everyone (except the very poor) are taxed for this system. And so, persons are forced to fund what they may find morally opprobrious.

Engelhardt's second reason is what I will call his Restricted Choice reason. As he puts it:

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<sup>239</sup> See pages 28-31.

<sup>240</sup> To my knowledge, *no* real world universal health coverage system looks like *this*. Even in countries with single-payer systems, citizens can use their wealth to purchase coverage for health care outside of the basic set, or to receive health care faster, or to be put in special hospital suites, or something of the like. See the Commonwealth Fund (n. d.), Kliff (2019b), and Tikkanen (2019). Importantly, there are some Single Public Plan for All *proposals* for the United States, and some of these proposals seemingly intend to eliminate private insurance (Commonwealth Fund n. d.). But even those may allow for more private options than they initially suggest (consider what Dolan 2017 says about Sanders' Medicare for All); and furthermore, all of them are just *proposals*—none have actually been enacted. So for my purposes, equalized universal health coverage is a pretend system which is only being used to facilitate my discussion.

The notion of a guaranteed basic benefit package can take on a coercive character, so that individuals are not allowed to purchase better care but may only purchase additional care which is not provided through the guaranteed benefit package. For example, after being compelled by the state force to contribute to a Medicare system, so-called beneficiaries may not offer more money for a covered service in order to gain access to a premier physician...Nor may they legally offer to pay more for a longer, more careful provision of the basic services covered under Medicare...In short, their resources are devalued by a system to which they are compelled to contribute and which will then not allow them to benefit from their required contributions if they wish to purchase better basic care. Substantive, coercively imposed health-care policies come into tension with the free and peaceable choices of individuals.<sup>241</sup>

Here, what Engelhardt says is even more directly applicable to equalized universal health coverage. As it goes, the state would compel everyone (except the very poor) to fund equalized universal health coverage. And it would prevent them from using their wealth to gain access to better physicians and basic services. In fact, it would even prevent them from using their wealth to gain access to other services, making equalized universal health coverage even more restrictive than Medicare. This coercively imposed system would come into tension with individuals' free and peaceable choices.

Let's now sum up Engelhardt's two reasons. According to his Morally-Loaded reason, equalized universal health coverage would endorse and establish one particular moral interpretation among many, and would require everyone (except the very poor) to fund what they may find morally opprobrious. According to his Restricted Choice reason, equalized universal health coverage would come into tension with individuals' free and peaceable choices.

The problem for Engelhardt is *these same two reasons* can be made against *the libertarian's state-provided security*. Consider first his Morally-Loaded reason. Engelhardt is right that equalized universal health coverage may carry a particular moral interpretation, and force those who disagree with it to fund it anyway. But the *same* is true of *the libertarian's state-provided security*. To illustrate, take the criminal justice system for example. Engelhardt—and the libertarian—agree that state-provided security includes a criminal justice system which administers punishments for crimes. So now, consider common questions

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<sup>241</sup> Engelhardt (1997: 189-90).

asked about crime and punishment. Should the criminal justice system have the death penalty for serious crimes? Some answer no. Others answer yes, but only for murderers. Others answer yes, and for other criminals too. Should the criminal justice system be retributive or rehabilitative? In other words, should it punish criminals with the aim to give them what they deserve, or should it punish criminals with the aim to improve them and successfully reintegrate them back into society? Some persons favor redistributive punishment, others rehabilitative, and others have more nuanced answers depending on the particular criminal or crime.

Each of these answers has the same potential to endorse and establish a particular interpretation about justice, fairness, and desert. And importantly, persons find some of these answers morally opprobrious. Some persons think the death penalty is morally abhorrent. Others think giving murderers three-hots-and-a-cot for the rest of their lives is morally abhorrent. Some persons think giving criminals respect and support—in the hopes that they will successfully reintegrate back into society—is morally abhorrent. Others think punishing criminals, instead of helping them, is morally abhorrent. Yet, the criminal justice system cannot accommodate *everyone* here. At some point, it needs to decide whether or not to use the death penalty (or torture, or castration, or other severe punishments); and it needs to decide how retributive or rehabilitative it will be. And wherever it comes down, some will be morally disgusted. Yet everyone, including those morally disgusted, will be forced to fund it.

Now consider Engelhardt's Restricted Choice reason. Engelhardt is right that equalized universal health coverage restricts individuals' choices; more exactly, it restricts how the wealthy can use their wealth. But the *same* is true of *the libertarian's state-provided security*. As I already discussed, when it comes to the libertarian's state-provided security, persons cannot choose to fund a private police force, military, or criminal justice system if they so choose. Nor can they opt out from funding the state police force, military, or criminal justice system if they don't like it. In the libertarian's state, the state has a monopoly on these institutions. There is one police force, military, and criminal justice system. Persons

must fund it, whether they like it or not. And they are bound by it, whether they like it or not. Private security is restricted so that it cannot compete with state-provided security, and private alternatives and vigilantism are strictly prohibited.

In short, both of Engelhardt's reasons apply just as much to the libertarian's state-provided security as they do to equalized universal health coverage. Both would (at least ideally) help maintain a peaceful diverse society. Both have the potential to impose particular moral interpretations which others disagree with. Both would require persons to fund what they may find morally opprobrious. Both would constrain how persons can use their wealth. And this is true of *equalized* universal health coverage. Assuming the libertarian opted for a *less egalitarian* universal health coverage system, chances are Engelhardt's reasons would actually prefer universal health coverage to increased state-provided security here.

Why is it that Engelhardt failed to appreciate the similarities between the libertarian's state-provided security and universal health coverage here? I think there are at least three reasons. First, Engelhardt seems to either (erroneously) believe that everyone would actually consent to adequately finance some minimal kind of state-provided security, or (for some reason) believes state-provided security falls out of his conception of justice.<sup>242</sup> Second, Engelhardt seemingly fails to appreciate how contentious his own conception of justice actually is. To illustrate, consider his contrast between *freedom or permission-based justice* and *goals-based justice*:

Freedom-or permission-based justice is concerned with distributions of goods made in accord with the notion of the secular moral community as a peaceable social structure binding moral strangers, members of diverse concrete moral communities. Such justice will therefore require the consent of the individuals involved in a historical nexus of justice-regarding institutions understood in conformity with the principle of permission. The principle of beneficence may be pursued only within constraints set by the principles of permission.

Goals-based justice is concerned with the achievement of the good of individuals in society, where the pursuit of beneficence is not constrained by a strong principle of permission, but driven by

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<sup>242</sup> See *ibid.* 193: "(permission does secure secular moral authority for the appropriate, albeit limited, use of state coercion, which can motivate compliance with the practice of deriving authority from permission)."

some particular understanding of morality, justice, or fairness. Such justice will vary in substance as one attempts, for example, to (a) give each person an equal share; (b) give each person what that person needs; (c) give each person a distribution as a part of a system designed to achieve the greatest balance of benefits over harms for the greatest number of persons; (d) give each person a distribution as a part of a system designed to maximize the advantage of the least-well-off class with conditions of equal liberty for all and of fair opportunity.<sup>243</sup>

Elsewhere, Engelhardt argues that the only justice which respects the diversity of persons is freedom-or permission-based justice.<sup>244</sup> If I follow, his argument goes roughly like this.<sup>245</sup> First, diverse persons will *disagree* about which goals-based approach to adopt. Goals-based approaches require persons to choose between and make sense of goals like (a)-(d); and they require persons to determine what counts as an individual's *fair share*. But persons are diverse: they have different conceptions of morality, justice, and fairness; and these different conceptions will lead them to disagree about which goals to choose, how to make sense of these goals, and what counts as one's *fair share*. Second, these disagreements are *intractable*. There are *numerous* conceptions to choose from, and for better or worse, we cannot choose among them without begging the question or engaging in an infinite regress. Thus, in order for justice to respect everyone's diverse conceptions, and not favor one over others, it must be freedom-or permission-based.

The problem here is that Engelhardt seems to ignore the fact that the *same claims* he makes against *goals-based approaches* can *also* be made against *freedom-or permission-based approaches*. In order to even make sense of freedom-or permission-based justice, we need to tackle at least three issues. First, there is the issue of *consent*. According to freedom-or permission-based justice, persons are constrained by the *consent* of others. That would be fine if there was *one agreed-upon* understanding of binding consent. But there is not. As we have already discussed, there are at least two kinds of consent:

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<sup>243</sup> Engelhardt (1996b: 782). See also the remaining paragraphs in that section.

<sup>244</sup> Engelhardt (1997: 190-4).

<sup>245</sup> See Engelhardt (1996b; 1997).

actual and hypothetical. Here, Engelhardt clearly favors actual consent.<sup>246</sup> But even if we agree consent only counts if it is actual, there are still further questions. For example: what counts as actual consent? How does one express it? Can it also be given tacitly? If so, how does one do so?<sup>247</sup> Can consent be implied, based on, say, her staying quiet, going along with, or benefitting from something?<sup>248</sup> Also: what are the conditions which make consent binding?<sup>249</sup> Does it require one to be fully informed, somewhat informed, or is her knowledge irrelevant? Are there situations where one is not allowed to give it (ex. signing herself into slavery)?<sup>250</sup> Is one allowed to withdraw it? If so, when and why can she do so?<sup>251</sup>

Second, there is the issue of property rights.<sup>252</sup> Suppose we (somehow) manage to determine what counts as consent in a way that respects everyone's diverse conceptions. Here is the next problem. Like other libertarians, Engelhardt agrees that I need your permission to use *X if X is yours*. But I do *not* need your permission to use *X if X is not yours*. And I do *not* need anyone's permission to use *X if X is no one's*. As such, what I need permission for depends on others' property rights. But that means we now need to answer questions about property rights. For example, how do we get them and what, if any, limitations do they have? Otherwise, I cannot know what I do and do not need your permission for. And the same can be said for the state.<sup>253</sup>

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<sup>246</sup> Engelhardt (1996a: 171). Consider also Engelhardt (1996b: 782), where he only says "Because for Nozick one needs the *actual* consent of *actual* persons..." Here, Engelhardt uses Nozick to illustrate his own freedom-or-permission-based justice; and he contrasts Nozick's and his own justice with Rawls—the paradigmatic example of deriving principles of justice from hypothetical consent. As such, Engelhardt here implies that he favors actual consent himself.

<sup>247</sup> Simmons (1976: 279-81) claims there are five conditions where silence can be taken as tacit consent. But even if Simmons is right here, persons can disagree about when those conditions are met. For these conditions rely on vague terms like 'reasonable', 'appropriate', and 'extremely detrimental'.

<sup>248</sup> Recall how vague my working definition is for 'consent', as well as my distinction between *express* and *tacit* consent (see pages 72-4).

<sup>249</sup> Consider what Wennberg (2003: 18-9) says about valid consent. Even if Wennberg is right here, persons can disagree about which actions count as *autonomous*.

<sup>250</sup> Some believe you can (morally) sign yourself into slavery (ex. Nozick 1974: 331), while other believe you cannot (ex. Locke 2010: Sect. 22-4).

<sup>251</sup> The above list of questions is not exhaustive. It merely illustrates how much disagreement this issue can have.

<sup>252</sup> For a similar point, see Weiner (1997: 117-21).

<sup>253</sup> For a deeper discussion, see Chapter 4. Also recall Waldron (1988: 271-8) from footnote 220 (page 103).



Third, there is the issue of freedom.<sup>254</sup> As we saw above, Engelhardt is clearly worried about the state interfering with persons' freedom. But what counts as freedom? Suffice it to say, there are numerous possible answers. To my knowledge, there are at least three distinct answers: (i) negative freedom, (ii) positive freedom, and (iii) freedom as nondomination.<sup>255</sup> And, unsurprisingly, there are different variations and understandings of each.<sup>256</sup> Furthermore, if we adopt MacCallum's conception of freedom, freedom is a triadic relationship. In other words, freedom just amounts to the claim "X is (is not) free from Y to do (not do, become, not become) Z."<sup>257</sup> What version of freedom we adopt, then, is how we fill in X, Y, and Z. And since there are infinite ways we could fill these variables in, MacCallum's conception of freedom would give us limitless versions of freedom.

The problem, then, is this. Engelhardt gives us two approaches to justice and says one of them is riddled with intractable disagreements. But he fails to note that the other approach (his own) is also riddled with disagreements. Not just between libertarians and others, but even between libertarians and other libertarians. And these disagreements appear no less intractable than the disagreements found in the goals-based approaches. Disagreements about consent, rights, and freedom are no less tied to persons' diverse conceptions than their disagreements about goals, fair shares, and equality. So if one set of disagreements is intractable, there is no reason to think the other is any less. In short, Engelhardt makes it sound like diverse persons' intractable disagreements force us to accept his approach to justice. But taken seriously, these disagreements force us to reject his approach as well.

This should not be surprising when we see *who represents* his two approaches to justice. According to Engelhardt, *Rawls* is the perfect example of someone who adopts a goals-based approach,

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<sup>254</sup> For a similar point, see Weiner (1997: 119).

<sup>255</sup> See Berlin (1969: 118-72) for his seminal distinction between negative and positive freedom. See Pettit (2011: esp. 704-14) for freedom as nondomination.

<sup>256</sup> For example, Christman's (1991; 2005) conception of positive freedom is arguably more nuanced than Berlin's.

<sup>257</sup> MacCallum (1967: 314).

while *Nozick* is a perfect example of someone who adopts a freedom-or permission-based approach.<sup>258</sup> To be sure, Engelhardt is right that Rawls and Nozick have very different theories of justice. But what Engelhardt leaves out is that both Rawls and Nozick *have the same goal*: to explicate the theory of justice which best treats persons as separate individuals and structures their state in a way which respects their diverse conceptions. Rawls's theory of justice is constituted by principles which fall out of his original position. Nozick's theory of justice is constituted by (substantially less defined)<sup>259</sup> principles of acquisition, transfer, and rectification. But both theories of justice are just (very Kantian) attempts at achieving *that same goal*. Furthermore, Engelhardt should concede there are different competing freedom-or permission-based approaches. Engelhardt goes out of his way to explain his own conception of property rights and what it implies. And his conception's implications noticeably deviate from what Nozick has and would say.<sup>260</sup>

In short, Engelhardt speaks as if his conception of justice has some privileged status among persons with diverse conceptions. But it does not. Like goals-based approaches, his freedom-or permission-based approach is riddled with disagreement which is no less intractable. Comparing and contrasting Rawls, Nozick, and Engelhardt makes this even more apparent. Had Engelhardt made this more clear, the similarities between the libertarian's state-provided security and universal health coverage would likely be more obvious.

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<sup>258</sup> Engelhardt (1996b: 781-2).

<sup>259</sup> As Waldron (1988: 255) humorously points out.

<sup>260</sup> Consider what Engelhardt (1996a: 154-62) says about property rights. Here, he not only allows taxation for violations of the Lockean proviso, but also taxation for merely taking brute matter out of the commons. He goes on to say that this taxation should occur at the international (and even intergalactic) level and should take the form of something like a negative income tax. Suffice it to say, Nozick (1974: 174-82) does not say *any* of this. What Nozick does say is this. First, when it comes to acquisitions (and transfers), the *only* limit to consider is the Lockean Proviso. Second, the Lockean Proviso *only* requires that an acquisition (or transfer) does not make anyone *worse off*. Third, acquisitions (and transfers) which take place in the free market do not make anyone worse off. And so, the free market does not violate the Lockean Proviso. As such, Nozick leaves no room for the kind of tax Engelhardt endorses. And if there was room, Nozick would favor a tax which compensated specific individuals back up to their pre-acquisition (or transfer) level of welfare, and not an international (and even intergalactic) negative income tax.

Third, and finally, Engelhardt seemingly misrepresents the real relationship between persons' moral conceptions and state policies.<sup>261</sup> Engelhardt seems to speak as if state policy is somehow isolated from persons' moral conceptions. He makes it sound like diverse persons enter their state with their own moral conceptions; that the state should never go against their moral conceptions; and that the state should only limit their behavior enough to make it possible for them to peacefully live among and interact with each other.

But state policy is *not isolated* from persons' moral conceptions. To the contrary, state policy *helps shape* their moral conceptions. Persons are not born with a moral conception, and the conceptions they have are not static. As persons, the values we hold and the principles we follow are affected by others and are always subject to change. Parents, family, friends, work associates, teachers, celebrities, neighbors (and so on) all help us shape the conceptions we create and modify throughout our lives. The same is true of state policy. Living in a state which marketizes everything, permits extreme inequality, and lets persons die in the streets shapes how persons think about their own worth and the worth of others; it shapes what they think about justice and fairness; it shapes what they think is good and moral; and it shapes what they value and find worthy of pursuit. So too does living in a state which establishes a safety net, limits inequality, and guarantees some amount of education, resources, and/or well-being.<sup>262</sup>

To put it simply: our moral conceptions are not somehow isolated from our state's policies. To the contrary, our state's policies help shape our moral conceptions, *whatever its policies are*. As such, when it comes to choosing among state policies here, there is no neutral option. Whatever policies our state adopts, these policies will help shape our moral conceptions, as well as the moral conceptions of future generations. Had Engelhardt made this more clear, he would have considered the possibility (and

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<sup>261</sup> I take this and what follows from Friedman (2020: 89-100, esp. 94-8).

<sup>262</sup> See sources from footnote 233, especially Wilkinson & Pickett (2019).

not been surprised to learn that) the very state policies his conception of justice defends<sup>263</sup> could (and do) end up undermining the peaceful diverse society he seeks. And that, in turn, would likely make the similarities between the libertarian's state-provided security and universal health coverage more obvious.

In short, then, the Necessary for a Peaceful Diverse Society Explanation does not favor the libertarian's state-provided security over universal health coverage. Her state-provided security may be necessary for a peaceful diverse society. But her state-provided security, left alone, actually ends up threatening it. To address this threat, she must either invest even more in state (and private) security or (along with or instead) invest in social welfare policies like universal health coverage. Furthermore, none of Engelhardt's reasons give the libertarian reason to favor one investment over the other. Both investments would (at least ideally) help maintain a peaceful diverse society. Both have the potential to impose particular moral interpretations which others may disagree with. Both would require persons to fund what they may find morally opprobrious. Both would constrain how persons can use their wealth. And this is true when we compare her state-provided security to *equalized* universal health coverage. Assuming she opted for *less egalitarian* universal health coverage, Engelhardt's reasons would actually give her reason to prefer universal health coverage here. This should not be surprising. Engelhardt seemingly either (erroneously) believed that everyone would actually consent to adequately finance some minimal kind of state-provided security, or (for some reason) believed state-provided security falls out of his conception of justice. He also seemingly failed to appreciate how contentious his conception of justice really is. Finally, he seemingly misrepresented the real relationship between persons' moral conceptions and state policies. As such, on the grounds of maintaining a peaceful diverse society, taxation for both the

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<sup>263</sup> Engelhardt (1997: 193): "Secular morality is procedural, and its legitimacy is limited by the consent of those who participate in common endeavors. Consequently, the paradigm moral activities of secular morality are the free market, contract formation, and the establishment of limited democracies. In particular, democracies will have only that secular moral authority which can be derived either from the actual consent of all their members or from the practice of never using persons without their permission. The result will be that one will at most be able to justify the material equivalent of Robert Nozick's ultraminimal state."

libertarian's state-provided security and universal health coverage is justified. So if taxation for the former gets to count as an exception, then so too does taxation for the latter.

To sum up, none of the explanations we considered here could drive a wedge between taxation for the libertarian's state-provided security or universal health coverage. When it comes to her state-provided security and universal health coverage, neither provide equal benefits but everyone equally qualifies for their benefits; neither would receive equal contributions but both would (ideally) receive fair contributions; and both would help diverse persons peacefully live among and interact with each other. As such, none of these explanations can explain why one taxation should count as an exception but the other should not. As far as these explanations are concerned, both kinds of taxation sink or swim together.

#### Section 5: Conclusion

In conclusion, the Anti-Tax Thesis appears to oppose taxation for *both* universal health coverage *and* the libertarian's state-provided security, because *both* kinds of taxation look like theft or forced labor. Assuming the libertarian wants to stay the libertarian—and not jump ship into anarchism—she *must* at least justify taxation for her state-provided security. And so, she appears to have three options here:

(A) Abandon the Anti-Tax Thesis

(B) Explain why her state-provided security does *not* steal from or force anyone's labor

(C) Explain why her state-provided security does steal from or force persons' labor, *but* that is okay

As we saw, however, whatever options she goes with, it has implications for universal health coverage. If she goes with option (A), then she no longer needs to worry about the Anti-Tax Thesis's apparent opposition to her state-provided security, because that thesis is gone. But then, she *also* cannot use that thesis to oppose universal coverage, because—again—that thesis is gone.

If, however, she goes with option (B), she needs to explain *why* her state-provided security does not require theft or forced labor. Seemingly, the only plausible explanation here is the Consent

Explanation: taxation is not theft or forced labor when consented to, and we consent to being taxed for her state-provided security. Yet, when the libertarian tries to explain why we consent to being taxed for her state-provided security, she seemingly must conclude (i) we do *not* consent to being so taxed, (ii) we *also* consent to being taxed for universal health coverage, (iii) we *also* consent to a lot more than she bargained for, and/or (iv) consent cannot be the whole story. As such, she seemingly cannot use consent alone to explain why one taxation is not theft or forced labor but the other is, at least in a way she could accept.

If, however, she goes with option (C), she needs to explain *why* taxation for her state-provided security is okay, *despite* the fact that it requires theft or forced labor. We considered three such explanations: Equality of Benefits/Qualifying for Benefits, Equality of Contribution/Fair Contribution, and Necessary for a Peaceful Diverse Society. Yet, when we took a closer look at each of these explanations, the libertarian seems forced to conclude that she either (i) really should not count taxation for her state-provided security as an exception, or (ii) should *also* count taxation for universal health coverage as an exception. As such, she seemingly cannot explain why one kind of taxation should count as an exception, but not the other. And so, the Anti-Tax Thesis must call both or neither an exception to its general rule.

In short, it looks like the libertarian is out of options. So long as she wants to justify taxation for her state-provided security, she seems forced to justify taxation for universal health coverage as well, or at least more taxation than she bargained for. But, in truth, there is one more explanation we have yet to discuss. And as far as I can tell, it is one of the most common explanations libertarians offer. Call it the *Doing Its Job* Explanation.<sup>264</sup> To review, the libertarian is *not* an anarchist. While she may believe the United States should be minimal and not do a lot, she still believes the United States should do *something*; and that *something* requires her state-provided security, which in turn requires taxation. And so, on the grounds of the United States doing its job, taxation for her state-provided security is justified.

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<sup>264</sup> See Duff (2005: 29-31) and Mack (2006: 111), along with their relevant footnotes.

As of right now, this explanation seems at odds with the Anti-Tax Thesis. For as I discussed earlier, the Anti-Tax seems to say this:

- (1) The libertarian's state-provided security requires coercive (i.e. non-voluntary) taxation
- (2) Coercive taxation is theft and/or forced labor
- (3) Theft and/or forced labor is unjustifiable

Therefore, taxation for state-provided security is unjustifiable

How, then, does this explanation respond? The answer is four-fold. First, it accepts (1). For starters, it accepts there is no plausible story which says all of us (or enough of us) genuinely consent to being taxed for the libertarian's state-provided security, at least in the United States today. Furthermore, it accepts that voluntary taxation for state-provided security is unsustainable, at least—again—in the United States today. Again, her state-provided security is a special kind of good: it is the kind of good that persons can benefit from without paying any of its costs. Because of this, voluntary taxation for her state-provided security would encourage free-riding, because when you can enjoy the benefits of her state-provided security without paying its costs, the rational thing for you to do is not pay for her state-provided security. And by encouraging free-riding, funding for her state-provided security would gradually decline, continually making that security worse and potentially leading to that security's undoing. As such, the only way to sustainably fund her state-provided security is to make its taxation non-voluntary: i.e. the United States must tax everyone who can pay, including those who would otherwise abstain, opt out, or free-ride on the payments of others.

Second, however, this explanation follows up by modifying *either* (2) *or* (3). Consider first how it could modify (2). As it goes, rights over money are *not absolute*. In other words, persons have the right to use their money as they choose. But that right has limits. There are times when taking one's money without her consent does *not* violate her right. One of these times is when the United States taxes her for state-provided security, because doing so is necessary for the United States to do its job. Taking one's

money without her consent *only* counts as theft or forced labor *when it violates her right*. And so, coercive taxation for state-provided security does *not* count as theft or forced labor.<sup>265</sup>

Now consider how it could modify (3). As it goes, theft and/or forced labor is *prima facie* wrong, but it is *not always* wrong. For example, killing a person is *prima facie* wrong, but it is *not always* wrong—it is permissible, for example, to kill in self-defense. Lying is *prima facie* wrong, but it is *not always* wrong—it is permissible, for example, to lie to a Nazi in order to protect your Jewish friends. Similarly, theft and/or forced labor are *prima facie* wrong, but they are *not always* wrong. Sometimes, theft and/or forced labor is permissible. One of these times is when the United States taxes persons—with or without their consent—for state-provided security, because doing so is necessary for doing its job. And so, coercive taxation for state-provided security does count as theft or forced labor, *but* it counts as an acceptable exception.<sup>266</sup>

Third, this explanation does *not* merely say *that* coercive taxation for state-provided security is justified. It *also* attempts to structure this taxation in the most justifiable way. At its simplest, the idea is taxation for state-provided security should follow the benefit principle of taxation. In other words, the tax each person pays towards state-provided security should be proportional to the benefits she receives from it. Those who benefit more should pay more, and those who benefit less should pay less. And no one should pay more than the benefits they receive. That way, the tax is fair to everyone. Unfortunately, this kind of taxation—as presented—would be unworkable. Not only would it be too difficult to determine how much each person benefits from state-provided security, but also the most obvious ways to implement this tax would inevitably result in inefficiency and waste. As such, this explanation looks for and adopts the best proxy.<sup>267</sup>

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<sup>265</sup> ex. see Mack (2006: 111).

<sup>266</sup> ex. see Huemer (2017).

<sup>267</sup> See Duff (2005: 31-8).



Fourth, this explanation sets the standard for justifiable taxation.<sup>268</sup> Again, everyone has the right to use their money as they choose—however limited that right is—and theft and/or forced labor is at least *prima facie* wrong. Thus, in order for taxation to be justified, it must meet some (very high) standard which overrides persons' rights and/or the wrongness of theft and forced labor. That standard, this explanation contends, is being necessary for the United States to do its job. Anything else falls below that standard, and so is unjustified.

To sum up, the Doing Its Job Explanation amounts to this. First, the United States should do *something*. Second, taxation required for doing that *something* is justified, because it either is not theft or forced labor, or is but counts as an acceptable exception. Third, all other kinds of taxation are not justified; they end up counting as unexceptional kinds of theft or forced labor. Fourth, taxation for state-provided security is required for doing that *something*. And so, taxation for state-provided security is justified.

But what does this explanation say about taxation for *universal health coverage*? Ultimately, that depends on what that *something* is. According to the libertarian, that something is (at least) one of the following:

**Liberty Thesis:** the United States should protect and enforce everyone's liberty

**Property Rights Thesis:** the United States should protect and enforce everyone's property rights

In the next chapter, I will explore the former thesis in greater detail, and see what it has to say about universal health coverage. In the following chapter, I will do the same for the latter.

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<sup>268</sup> To borrow Huemer's (2017) language.

### CHAPTER 3: THE LIBERTY THESIS

In this chapter, I will look at the relationship between universal health coverage and the *Liberty Thesis*. Before I look at the relationship, however, I need to first discuss what the Liberty Thesis is. As I discussed in Chapter 1, the Liberty Thesis is simply the view that *the state should protect and enforce everyone's liberty*. But that won't get us very far if we don't know what *liberty* is.

When libertarians talk about *liberty*, they are typically talking about *freedom*.<sup>269</sup> And when they talk about *freedom*, they are typically talking about *negative freedom*.<sup>270</sup> The concept of *negative freedom* has its origins in Berlin's seminal work, *Two Concepts of Liberty*.<sup>271</sup> In that work, Berlin distinguishes between two kinds of freedom: *negative* and *positive*. According to Berlin, negative freedom is the sphere in which one can act without interference or obstruction by others. The more one is prevented by others from doing what she could otherwise do—the smaller her sphere is—the more unfree she is; and vice versa. Positive freedom, on the other hand, is when one is her own master. She acts based on *her* will, reasons, or desires, and not the will, reasons, or desires of others. The more *she* is the one controlling her life, the more she is free; and vice versa.<sup>272</sup>

Since Berlin, persons have made related but different distinctions between negative and positive freedom. One popular distinction is that negative freedom is freedom *from*, while positive freedom is freedom *to*. Another popular distinction is that negative freedom is a *lack* of constraints, while positive

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<sup>269</sup> According to Carter (2019), some political and social philosophers distinguish between *liberty* and *freedom*. But for most, there is no difference and they use the terms interchangeably. Following Zwolinski (n. d.), libertarians (at least like Nozick) typically think liberty and freedom amount to the same thing.

<sup>270</sup> At least libertarians like Nozick. See Zwolinski (n. d.). Importantly, Brennan (2018) claims that “Contemporary libertarians...more or less embrace rather than reject ideals of social justice, and they accept that positive liberty is important. The difference between them and Left-liberals is not so much a dispute over fundamental values, but empirical disagreements about the extent of market versus government failure.” I take it as obvious that—if Brennan is correct—then the case for universal health coverage is *even easier* than this chapter suggests. That is because (1) health plays a crucial role in what we are able to do, (2) universal health coverage guarantees everyone can afford basic health care (see Chapter 1: Section 1b), and (3) I am—if nothing else—assuming that universal health coverage requires taxation and is affordable (pages 50-6). So here, I will tackle what I take to be the hard case: libertarians who only care about their state securing *negative freedom*.

<sup>271</sup> Berlin (1969: 118-72).

<sup>272</sup> *Ibid.* 121-3, 131.

freedom is a *power* to do something. Yet another popular distinction is that negative freedom is the lack of *external* limits, while positive freedom is the lack of *internal* limits.<sup>273</sup> All of these distinctions embrace the *spirit* of Berlin's own distinction, but we can debate whether or not they are the *same*.

All of this is to say there are many ways to define negative and positive freedom, each emphasizing different features and (potentially) making different implications. Inspired by the spirit of these other definitions, I will define negative and positive freedom as so:

**Negative freedom (to X):** when one is not prevented, obstructed, or otherwise interfered with by others (from doing X)

**Positive freedom (to X):** when one is able (to do X)

We can illustrate this distinction with the following example.<sup>274</sup> Suppose a woman—call her Starving—is starving, alone in a wasteland. Starving wants to eat some food, but she lacks the strength to walk to the nearest food source. Is Starving free to eat? The answer is she is *negatively* free, but not *positively* free. She is negatively free because no one is preventing, obstructing, or otherwise interfering with her from eating; she is alone. She is positively unfree because she is not able to eat food; she lacks the ability to actually get to the nearest food source.

Based on these definitions, we can rephrase the Liberty Thesis:

**Liberty Thesis:** the state should protect everyone from being prevented, obstructed, or otherwise interfered with from others from doing what they otherwise could do

The takeaway is that the Liberty Thesis is *only* concerned with *negative* freedom, not positive freedom. In the above example, the Liberty Thesis says the state should protect Starving from being interfered with by others. It should protect her, say, from others holding her down, tying her up, or blocking her from getting food. But the state should not concern itself with her ability to actually get food. All the state

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<sup>273</sup> For example, see Carter (2019), Powell (2018), and Zwolinski (n.d.)

<sup>274</sup> Which is based on Zwolinski's (n. d.) own example.

should do is protect her from being interfered with. If, after protecting her, she still dies of starvation, so much the worse for her.

Having defined negative and positive freedom, and rephrasing the Liberty Thesis, I can now explore what it would say about universal health coverage. In Section 1, I will explain why this thesis—on its surface—clearly seems to oppose universal health coverage. But then, In Sections 2 and 3, I will argue why—when we look beneath its surface—we see that this thesis can and should support universal health coverage instead.

### Section 1: Why the Liberty Thesis Appears to Oppose Universal Coverage

On its surface, the Liberty Thesis clearly seems to oppose universal health coverage. To see why, let's start with the following case:

**Case Homeless and Billionaire:** Suppose a woman—call her Homeless—is homeless, unable to get a home on her own. Many miles away, a man—call him Billionaire—is hosting his popular yacht party. Suppose that, if the state took \$1 from Billionaire, it could use that \$1 to provide Homeless with her very own home.

Should the state take Billionaire's \$1 to provide a home for Homeless? According to the Liberty Thesis, the answer seems to be no. If the state took Billionaire's \$1, it would interfere with how he could otherwise use his money. And that \$1 would not be used to protect Homeless from others' interferences. Instead, it would be used to get Homeless a home she cannot get on her own. In short, if the state took Billionaire's \$1 to provide Homeless with a home, the state would be *violating* Billionaire's *negative* freedom in order to *promote* Homeless's *positive* freedom. But according to the Liberty Thesis, the state should *protect everyone's* negative freedom and should not violate *anyone's* negative freedom for the sake of another's positive freedom. So here, the Liberty Thesis seems to oppose state action.

With that in mind, let's now remind ourselves of the *Taxation Assumption* I made in Chapter 1. I am assuming universal health coverage requires some kind(s) of taxation—in part because I genuinely believe that is true, and in part to make this dissertation interesting. That taxation is used to provide persons with public insurance, make public insurance available, regulate private insurance, create and enforce mandates, and/or subsidize persons' insurance or health care costs.

But this taxation just looks like Case Homeless and Billionaire. In that case, the state would interfere with how Billionaire could otherwise spend his money, in order to provide Homeless with a home. When it comes to taxation for universal health coverage, that looks like the state interfering with how persons could otherwise spend their money, in order to guarantee everyone can afford basic health care. In both cases, the state appears to be violating some persons' negative freedom, in order to promote other persons' positive freedom. But again, the state is supposed to protect everyone's negative freedom and not violate anyone's negative freedom for the sake of another's positive freedom. So analogous to Case Homeless and Billionaire, the Liberty Thesis seems to oppose taxation for universal health coverage. And per my Taxation Assumption, universal health coverage requires at least some kind(s) of taxation. So the Liberty Thesis seems to oppose universal health coverage.

This, to me, is the most immediate and apparent way to apply the Liberty Thesis to universal health coverage. However, I will argue there are two problems with this simple story; and they both are inspired by Case Homeless and Billionaire. First, *assuming* the Liberty Thesis *does* oppose state action in Case Homeless and Billionaire, it looks like the Liberty Thesis reaches the *wrong* conclusion. Because of this, the libertarian should *justify* the Liberty Thesis to which she commits herself. But her justifications *imply* that she should support universal health coverage. Second, it is not clear the Liberty Thesis *actually does* oppose state action in Case Homeless and Billionaire. That is because *homelessness* makes one negatively unfree in a very meaningful sense; so if the state should protect everyone's negative freedom, then it should protect persons from becoming and staying homeless. And to do that, the state must

guarantee everyone can afford basic health care. As such, the libertarian should support universal health coverage. Let's call the first problem the *Justification-Implication Problem* and discuss it in Section 1. And let's call the second problem the *Homelessness Problem* and discuss it in Section 2.

### Section 1: Why the Liberty Thesis Should Support Universal Health Coverage—the Justification-Implication Problem

The first problem with Case Homeless and Billionaire is that, *if* the Liberty Thesis says the state should *not* take \$1 from Billionaire to provide Homeless with a home, *then* it looks like the Liberty Thesis *got it wrong*. There are many reasons why this is so, but perhaps the most compelling reason simply boils down to a rough cost-benefit analysis. Billionaire, as his name implies, has *billions* of dollars. A single \$1 to Billionaire likely means almost nothing to him, and he probably would not even notice if it went missing. By contrast, Homeless has no home. Homes provide persons with safety, privacy, and autonomy; and when persons talk about *basic needs*, they typically assume those needs include *shelter*. Thus, by lacking a home, Homeless lacks that safety, privacy, and autonomy, and would typically be described as not even meeting all her basic needs. All of that would change if the state provided her with a home. However one crunches the numbers here, this rough cost-benefit analysis speaks strongly in favor of the state taking Billionaire's \$1 to provide Homeless with a home of her own. As such, if the Liberty Thesis says the state should do otherwise, then it looks like the Liberty Thesis got it wrong.

Importantly, my claim here is *not* that the Liberty Thesis *actually did* get it wrong. Rather, my claim here is that there are rather obvious objections to any thesis which says, when it comes to Case Homeless and Billionaire, the state should let Homeless remain homeless, so that Billionaire can keep the \$1 he likely does not care about or would even notice missing. So unless the libertarian wants to commit herself to an obviously objectionable thesis, she needs some justification for holding it. I believe the libertarian has at least four justifications at her disposal:

**The Option-Maximization Justification:** because the state should maximize persons' options

**The Option-Protection Justification:** because the state should protect persons' current options

**The Self-Development Justification:** because the state should promote persons' self-development

**The Coercion and Oppression Justification:** because the state should protect persons from being coerced and oppressed

For this section, I do not aim to challenge any of these justifications. Instead, I want to accept each justification at face value. But then, I want to argue that each justification—taken seriously—actually supports universal health coverage.

Before we get to these justifications, however, I need to make a note. Following my prior chapters,<sup>275</sup> I will use 'IIDs' to stand for *illnesses, injuries, and disabilities*; and I will use 'state-provided security' to stand for *the state's institutions designed to protect and enforce everyone's liberty and/or property rights (i.e. its police force, military, and criminal justice system)*. According to the libertarian, the Liberty Thesis requires state-provided security. So any justification which *fails* to justify state-provided security *also fails* to justify the Liberty Thesis.

#### The Option-Maximization and Option-Protection Justifications

The first two justifications are grounded in the connection between freedom and options.<sup>276</sup> As I discussed earlier, our conception of negative freedom originates from Berlin. And according to Berlin, the extent of one's freedom is tied to the options she has. He illustrates this idea with a metaphor. He says

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<sup>275</sup> See pages 9 and 66-7.

<sup>276</sup> Here, I will focus on what *Berlin* (1969) says about freedom and options. However, Berlin is not the only one to suggest freedom and options share a fundamental connection. For example, Thaler and Sunstein (2008) defend policies which *nudge* persons into making healthier decisions. They argue *nudging* is (paradoxically) paternalistic and libertarian. It is paternalistic because it encourages persons to choose healthier options. But it is also *libertarian* because it *preserves freedom*. And when they say it *preserves freedom*, what they mean is it *does not remove options or make those options more costly*. Thus, according to Thaler and Sunstein, the freedom libertarians care about is fundamentality about options. Importantly, the topic of *nudging* goes well beyond the scope of our discussion. For those interested, see Thaler & Sunstein (2008) and Nys & Engelen (2017) for a *defense of nudging*; and see Gigerenzer (2015) for an *attack on nudging*.

we can think of options like doors we can push on. As he puts it: “The extent of a man’s negative freedom is, at it were, a function of what doors, and how many are open to him; upon what prospects they are open; and how open they are.”<sup>277</sup> In other words, one’s freedom is in part a function of *how many options she has*, including *both* options she does *and* does not care about. And one’s freedom is limited when others (1) prevent options, (2) obstruct options, (3) remove options, (4) replace options with penalized alternatives (like a threat), and (5) deceive or manipulate one’s choice of option.<sup>278</sup>

In short, according to Berlin, one’s freedom relates to how many options she has. Based on this, I can think of two justifications for the Liberty Thesis. The first is the **Option-Maximization Justification**. As it goes, the state should create an environment that (at least on the aggregate) maximizes everyone’s options. And the state does that (at least in part) by providing security. When one is interfered with by others, her options are in some way limited. So by protecting her from others’ interferences, the state guarantees she can choose anything she is capable of doing. And so, the state should provide security.

The Option-Maximization Justification, then, seems to justify state-provided security. The problem, however, is that it *also* justifies universal health coverage. The reason why is because universal health coverage (at least on the aggregate) maximizes everyone’s options. For one thing, *persons* are not the only thing which can interfere with one’s options; *IIDs* can too, and sometimes to a much greater extent. Universal health coverage guarantees one can afford preventions, which protect her current options against *IIDs*; it guarantees she can afford treatments, which restore her options lost from *IIDs*; and it guarantees she can afford aids, which increases her options in the face of *IIDs*. Furthermore, at least in the United States’ current health care system, universal health coverage would make it possible for currently uninsured persons to receive more and better health care.<sup>279</sup>

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<sup>277</sup> Berlin (1969: xlviii). See also Pettit (2011: 695-704) for an excellent discussion of Berlin’s understanding of freedom of choice.

<sup>278</sup> Pettit (2011: 698-9).

<sup>279</sup> Institute of Medicine (2002), Tolbert et. al. (2020).



For another thing, universal health coverage would increase persons' option-couplings. In other words, sometimes when one chooses option A, she must forgo option B. In the case of basic health care, her choosing to receive that care may require her to forgo meeting her basic needs and caring for her dependents. But under universal health coverage, she need not make that trade-off: she can simply choose *both*.

Finally, universal health coverage increases persons' options in more indirect ways. When persons can afford basic health care, they can afford to—and are more likely to—use health care which makes them healthier and keeps them healthy.<sup>280</sup> And being healthy increases one's options. We could illustrate this with numerous examples: everything else equal, physically healthier persons have more options than those who are sick and bed-ridden; mentally healthy persons are not debilitated by the effects of depression; those paralyzed below the waste can do more with aids which improve their mobility; and so on. But here, I will just make two general points. First, generally-speaking, physical and mental health make it easier—and sometimes even possible—to interact with one's world. As such, having, restoring, or aiding her health keeps, restores, and increases her options. Second, physical and mental health make it easier—and sometimes even possible—to get, keep, and advance in her career. Doing so makes it possible to earn an income, which increases her options even further.

In short, universal health coverage increases many persons' options. When all else is equal, there is simply no world in which someone who cannot afford basic health care has more—or even as many—options as someone who can. Of course, universal health coverage does not come for free. In order to guarantee everyone can afford basic health care, the state would have to diminish the options of some by taxing them and/or mandating how they spend some of their money. But even then, there is every reason to believe universal health coverage would (at least on the aggregate) maximizes options. First, there are many persons who would undeniably have their options increased in a state with universal

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<sup>280</sup> Ibid.

health coverage. Many persons are too poor to afford basic health care, and so they would likely receive that care at little or no cost. As such, they would obviously have a net gain in options under universal health coverage. Furthermore, persons with private insurance are already paying for it; and there are many theoretical and actual universal health coverage systems which suggest these persons would receive the same-quality or even better-quality insurance at the same or even lower cost.<sup>281</sup> So their options would also be increased, or at least not significantly decreased. The only persons whose options would seemingly be at risk are those who are exceptionally wealthy and would be expected to contribute more than they would receive from a universal health coverage system. But second, whether they would have to contribute more—and how much more they would have to contribute—depends on the details. Given what we know about financing theoretical and actual universal health coverage systems,<sup>282</sup> how health care affordability directly and indirectly increases one's options, how the state can control health care costs in a number of ways,<sup>283</sup> and how increasing *others'* options can end up increasing their own,<sup>284</sup> we have reason to believe even *their* options could be increased under universal health coverage. At the very least, we have every reason to believe universal health coverage would keep their exceptional wealth intact, meaning it would—at *worst*—only trivially diminish their options. As such, we have every reason to believe universal health coverage would create an environment that (at least in the aggregate) maximizes everyone's options. So if the libertarian wants to justify the Liberty Thesis with the Option-Maximization Justification, then by implication, she should support universal health coverage.

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<sup>281</sup> See my discussion of my Taxation Assumption (pages 50-6) for sources.

<sup>282</sup> *Ibid.*

<sup>283</sup> See my discussion of What Universal Health Coverage Is (pages 14-5) for sources.

<sup>284</sup> For example, as we will see in the next subsection, universal health coverage would likely make persons more able and willing to actually work, work at businesses which better utilize their talents, and start their own businesses. The result is that it would encourage economic productivity and innovation. And importantly, these benefits increase *everyone's* options, regardless of whether they typically contribute or receive more from their health care system.

Admittedly, however, the libertarian will likely *not* want to justify the Liberty Thesis with the Option-Maximization Justification. To see why, refer back to Case Homeless and Billionaire. In that case, Homeless is homeless and cannot get a home on her own, but the state could provide one to her by taking \$1 from Billionaire. Here, Homeless only has a few options, and her options would grow substantially if she got the home with which state could provide her. Billionaire, by contrast, already has numerous options; and while taking his \$1 may interfere with his options in some trivial sense, his options would remain roughly intact. As such, if the libertarian wanted the state to create an environment that *maximized* persons' options, she would clearly support the state taking Billionaire's \$1 in order to provide Homeless with a home. But the libertarian seemingly does *not* support the state doing that. In fact, she seemingly actively opposes it. Her allegiance is to the Liberty Thesis. And that thesis—right now at least—seems to tell her to oppose such state action. So the libertarian's justification for the Liberty Thesis is likely not the Option-Maximization Justification.

What the libertarian could be concerned about, then, is not the state *maximizing* persons' options, but rather just *protecting* their options. This leads us to the **Option-Protection Justification**. As it goes, it does not matter how many options one currently has, nor does it matter how many more options she could have with state support. All that matters is that she has *any* options, and that the state should protect *those* options, however many or few they are. And so, for the sake of merely protecting everyone's options, the state should provide security.

This justification seems preferable to the libertarian, since it seems to oppose the state taking Billionaire's \$1 to provide a home for Homeless. According to this justification, it does not matter how few options Homeless has, or how many options Billionaire has. Nor does it matter how many more options Homeless could have with state support. Nor does it matter how trivial the state's taking \$1 would be with respect to Billionaire's options. All that matters is this: Homeless and Billionaire each have a current set of options. The state does *not* interfere with Homeless' current set of options (however small it is)

when it lets her remain homeless. But the state *does* interfere with Billionaire's set of options when it takes \$1 from him (however trivial that interference would be). The state should only protect everyone's current options, and not interfere with some persons' options for the sake of increasing others'. And so, the state should not take Billionaire's \$1 to provide Homeless with a home.

Let's set aside the issue of whether this justification is any more intuitive than the Liberty Thesis it seeks to justify. The problem now is a problem we brought up moments before. To repeat, persons are not the *only* things which can interfere with one's current options. IIDs can and do interfere with those options too. And again, in many cases, they interfere to a much greater degree. Disabilities without support can render one's world far more inaccessible than a person's obstruction. Physical and mental illnesses can prevent her from performing basic tasks and living independently far more than a loss of one's luxury spending. Accidentally injuries can limit her career options far more profoundly than another's bothersome interferences. And so on. In short, IIDs are just as much of a threat to one's current options as other persons; and in many cases, they are an even greater threat. So the Option-Protection Justification, taken seriously, says the state should protect everyone's current options—however large or small—from *both* other persons *and* IIDs.

But that just means this justification supports universal health coverage. While universal health coverage is by no means *sufficient* to protect everyone from IIDs,<sup>285</sup> it is certainly *necessary*. In order to protect one from IIDs, she needs to have *access* to that protection. And if she cannot afford that protection, then she either (i) cannot access it or (ii) can only access it by threatening her abilities to meet her basic needs and care for her dependents. And if *anything* threatens one's current options, it is an inability to meet her basic needs and care for dependents; because those inabilities threaten *all* the options she and her dependents have left. So when it comes to protecting everyone from IIDs, without

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<sup>285</sup> Recall my discussion from Chapter 1 about universal affordability versus universal access, receipt, and health (pages 15-22).

threatening their abilities to meet their and their dependents' needs, universal health coverage is required.

In short, persons are not the only things which can interfere with one's current options. IIDs and the inability to meet one's basic needs and care for her dependents do that too. So if the state should protect everyone's current options, the state should protect them from these threats as well. And that protection requires universal health coverage. So if the libertarian wants to justify the Liberty Thesis with the Option-Protection Justification, then by implication, she should support universal health coverage.

There is reason, however, to think the libertarian would not prefer the Option-Protection Justification either. As I discussed, there are many kinds of interferences. But *which* of these interferences count as interferences with one's *negative freedom*? According to Berlin, the answer is *only human interferences*.<sup>286</sup> So according to Berlin, IIDs and the inability to meet one's basic needs and care for her dependents do *not* interfere with one's *negative freedom*. Following Berlin, the Liberty Thesis does *not* say the state should protect everyone from *any* interference; rather, it says the state should only protect everyone from *human* interference. Thus, the state should protect everyone from *others'* interferences, but it should *not* itself interfere with anyone for the sake of protecting another from IIDs or certain inability.

There are many responses we could make here. We could argue that Berlin's conception of negative freedom is not *real* freedom.<sup>287</sup> We could argue that, even if it is, it is not the only thing worthy of state protection; and that sometimes the state should violate some persons' negative freedom for the sake of some other good.<sup>288</sup> We could argue that the concept of human interference is vague, and in the

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<sup>286</sup> Berlin (1969: 122-3). See also MacCallum (1967: 120-1) and Pettit (2011: 697) for a similar reading.

<sup>287</sup> For a small list of seminal examples here, see Christman (1991; 2005), MacCallum (1967), and Pettit (2011).

<sup>288</sup> This appears to be Berlin's own stance (1969: 167-72).

real world, there are theoretical and practical reasons for the state to treat all IIDs as a kind of human interference.<sup>289</sup>

But I am not interested in any of these responses, because each would make substantive claims that the libertarian may reject. So instead, I will simply respond that, if the libertarian believes only *humans* can interfere with one's *negative freedom*, then her justification for the Liberty Thesis is fundamentally *not about options*. We can debate whether or not IIDs and certain inabilities interfere with one's *negative freedom*. But there is no doubt they can and do interfere with her *options*, and that universal health coverage is required to better maximize and protect everyone's *options*. As such, if what the libertarian is most concerned about is maximizing or protecting everyone's *options*, then she should support universal health coverage. If, however, she says what she really cares about is our *negative freedom*—and IIDs and certain inabilities are not the kinds of things which can interfere with our *negative freedom*—then all she has done is admit her justification for the Liberty Thesis is neither about maximizing nor protecting everyone's options. And that means she will need another justification for the Liberty Thesis.

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<sup>289</sup> For example, take what Nozick (1974: 150-3) says about his entitlement theory. According to Nozick, justice requires rectifying past and present injustices. As Buchanan (1984: 66-7) points out, one could *at least* argue that *some persons* have suffered and/or currently suffer from injustices and are entitled to rectification; and that rectification could plausibly include guaranteed health care affordability. Furthermore, given how the United States may have directly or indirectly created numerous health concerns for its citizens and others (particularly for those who are vulnerable and impoverished), it may make sense to guarantee everyone can afford basic health care, in an attempt to rectify complicated past and present injustices. Of course, such an argument would need more discussion, but it at least seems worthy of that discussion.

## The Self-Development Justification

The next justification is the **Self-Development Justification**. In its simplest form, it says the state should promote everyone's self-development. And since that requires the state to provide security, the state should do just that.<sup>290</sup>

Unfortunately, however, this justification won't get us very far without knowing what *self-development* means. At its most basic, *self-development* is when one cultivates and exercises her capacities, faculties, and abilities—it is, quite simply, when she develops herself. Importantly, however, we can distinguish between *two kinds* of self-development:<sup>291</sup>

**Content-Neutral:** *any* kind of development; development in *any* direction, for *any* purpose, toward *any* goal or end

**Content-Specific:** *specific* kind of development; development in *a specific* direction, and/or for *a specific* purpose, and/or toward *a specific* goal or end

Importantly, how one *defines* self-development will determine how the state promotes it. As such, there are actually *numerous* Self-Development Justifications. And so, we cannot know what this justification says about universal coverage until we know *which one* we are talking about.

For my purposes, I will not cover every possible Self-Development Justification on its own. There are too many possible justifications to do that. So instead, I will do the following. First, I will look at a *paradigmatic example* of a content-*specific* Self-Development Justification: that of John Stuart Mill. Then, I will look at a *paradigmatic example* of a content-*neutral* Self-Development Justification: that of Wilhelm von Humboldt. In each case, I will discuss what he meant by *self-development*, how he thought the state promotes it, and argue what that says about universal health coverage. And I will conclude that *each*

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<sup>290</sup> This section was inspired by and borrows heavily from Brink (1992), Smith (2013), Valls (1999), and Vogel (1982). *Nearly all* of the references to Mill and Humboldt, and *much* of the interpretation, are taken from them. See them for a fuller understanding of Mill and Humboldt's political philosophies.

<sup>291</sup> I take this distinction from Himmelfarb (1990; 61). I phrase the content-neutral kind *exactly* as she did.

justification—if it truly justifies the Liberty Thesis—supports universal health coverage. Finally, drawing from our discussion of Mill and Humboldt, I will argue that seemingly all Self-Development Justifications find themselves in a bind: the more self-development requires, the more they should support universal health coverage; and the less self-development requires, the less they will truly justify the Liberty Thesis. Thus, if the libertarian wants to justify the Liberty Thesis with *any* Self-Development Justification, she should support universal health coverage.

### **Mill's Self-Development Justification**

There is no question that Mill held a Self-Development Justification, at least to some extent.<sup>292</sup> To better understand and apply it, let's answer four questions:

- (1) What does Mill mean by *self-development*?
- (2) According to Mill, how does the state promote self-development?
- (3) Does Mill's Self-Development Justification justify state-provided security?
- (4) What should his justification say about universal health coverage?

Let's start with the first question. It is difficult to know *exactly* what Mill means by *self-development*, but we at least know this much. For Mill, self-development is not just about developing *any* faculties. Rather, it is about developing the faculties *more unique to humans*. One example is one's *deliberative* faculties, which are tied to her ability to choose her *own* plan of life. As Mill says:

He who lets the world, or his own portion of it, choose his plan of life for him has no need of any other faculty than the ape-like one of imitation. He who chooses his plan for himself employs all his faculties. He must use observation to see, reasoning and judgment to foresee, activity to

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<sup>292</sup> Mill's (2011: xxviii) epigraph in *On Liberty* (which was taken from *Humboldt*), says: "The grand, leading principle, towards which every argument unfolded in these pages directly converges, is the absolute and essential importance of human development in its richest diversity." As Valls (1999: 252) observes: "many of Mill's arguments in *On Liberty* rest squarely on the value of human development and the closely related value of 'individuality'." And as Brink (1992: 79) points out: In *Considerations on Representative Government*, Mill says a principle aim of government is to promote its citizens' development. In *The Subjugation of Women*, Mill opposes the subjugation of women on the grounds that it prevents their development. And in other works, Mill worries about charities which encourage dependence, for fear it will undermine development.



gather materials for decision, discrimination to decide, and when he has decided, firmness and self-control to hold his deliberate decisions. And these qualities he requires and exercises exactly in proportion as the part of his conduct which he determines according to his own judgment and feelings is a large one. It is possible that he might be guided in some good path, and kept out of harm's way, without any of these things. But what will be his comparative worth as a human being?<sup>293</sup>

Another example is one's *higher reasoning* faculties. We see this not only above, but also in perhaps his most popular quote: "It is better to be a human being dissatisfied than a pig satisfied; better to be Socrates dissatisfied than a fool satisfied."<sup>294</sup> Thus, for Mill, self-development is about developing *specific* faculties, including one's *deliberative* and *higher reasoning* faculties.

Which leads us to the second question: how does the state promote this development? Mill's answer is two-fold. First, Mill distinguishes between two kinds of state action: (1) those which *impede* development, by impeding *initiative*; and (2) those which *stimulate* development, by stimulating *initiative*. And he says the state should do *as much of (2) as possible*. As he says in *On Liberty*: "a government cannot have too much of the kind of activity, which does not impede, but aids and stimulates, individual exertion and development."<sup>295</sup> And as he says in *Principles of Political Economy*: "A good government will give all its aid in such a shape, as to encourage and nurture any rudiments it may find of a spirit of individual exertion...Government aid...should be so given as to be as far as possible a course of education for the persons in the art of accomplishing great objects by individual energy and voluntary co-operation."<sup>296</sup>

Second, Mill says the state should guarantee everyone meets their basic needs. As he understands, one cannot fully develop her deliberative or reasoning faculties in just *any* environment. Rather, to fully develop those faculties, she must at least have her basic needs met. Of course, Mill recognizes this state guarantee can actually impede initiative, by making persons dependent on state aid. But he responds that, as far as development is concerned, lacking one's basic needs is more fatal than any

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<sup>293</sup> Mill (2011: 109-10).

<sup>294</sup> Mill (1987: 281).

<sup>295</sup> Mill (2011: 219).

<sup>296</sup> Mill (1985: 345-6).

dependence state aid creates. As he says: “it is even more fatal to exertion to have no hope of succeeding by it, than to be assured of succeeding without it. When the condition of any one is so disastrous that his energies are paralysed by discouragement, assistance is a tonic, not a sedative.”<sup>297</sup> As Valls paraphrases: as Mill sees it, “Only after one’s basic needs are met can one hope for individual initiative aimed at anything beyond that.”<sup>298</sup>

Let’s sum up our answers to our first two questions. According to Mill, self-development refers to the development of *specific* faculties. These faculties are the ones more unique to humans, including their deliberative and higher reasoning faculties. The state promotes this development in two ways. First, it acts to stimulate initiative as much as possible. Second, it guarantees everyone meets their basic needs. Let’s call these the *Stimulate* and *Basic Needs* Goals, respectively. So now, we have our third question: does Mill’s Self-Development Justification justify state-provided security?

Here, the answer is surely *yes*. For Mill, self-development is about one (at least) developing her deliberative and higher reasoning faculties. And surely, one cannot do that without some negative freedom. She cannot meaningfully develop her deliberative faculties if others choose her life plans for her. And she cannot meaningfully develop her reasoning faculties if she has no room to make and learn from her own mistakes. Furthermore, she cannot meaningfully develop these faculties unless she can learn from others, which requires them to have some negative freedom as well. In short, negative freedom is a crucial ingredient for Mill’s self-development. So if the state is going to promote everyone’s self-development, it must protect that freedom. And so, state-provided security is justified.

Which brings us to our final question: what should Mill’s Self-Development Justification say about universal health coverage? The answer is straightforward: his justification should *support* it. This is for two reasons. First, universal health coverage is necessary to protect and support everyone’s development in

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<sup>297</sup> Ibid. 334.

<sup>298</sup> Valls (1999: 260).

accordance with the Basic Needs Goal. As I discussed, any meaningful development of one's deliberative and higher reasoning faculties requires some negative freedom. But surely it requires more than that. It *also* requires the *ability* to have, design, and execute one's own plans. And it *also* requires the *ability* to learn and apply what she learned. This is important, because IIDs are threats to *both* of those abilities. For one thing, IIDs can make it difficult—and even impossible—to have, design, and execute one's own plans. Physical injuries and disabilities can prevent one from performing the tasks that her plan requires. Mental illnesses can obstruct her ability to design her own plans. And some IIDs are so serious that they prevent her from even *having* her own plans in the first place. For another thing, IIDs can make it difficult—and even impossible—to develop one's higher reasoning. They can physically damage her brain, and they can obstruct and prevent her from focusing on and attending to learning opportunities.

Finally, IIDs can *isolate* a person, which compounds all the prior problems. As Mill himself recognizes,<sup>299</sup> self-development requires one to *engage with others*. Unless her plans are small and simple, her plans will require the generosity or mutual assistance of others. And again, developing her reasoning requires her to learn from others: what they teach her, how they live, the mistakes they make, and so on. And IIDs can make it far more difficult to engage with others. They can make her bedridden, unable to leave her home. They can make her too afraid to socialize. They can impede her ability to communicate her thoughts, feelings, and intentions. And remember, her engagement with others is a two-way street. If she has a communicable disease, others will not want to engage with her, for fear of becoming sick themselves.

In short, Mill's self-development requires more than negative freedom. It *also* requires protection from and support in the face of IIDs. As I discussed, universal health coverage is *not sufficient* to provide this protection and support.<sup>300</sup> But it is *necessary*. Again, in order to have that protection and support, one

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<sup>299</sup> Mill (2011: 117-8, 142-3).

<sup>300</sup> Again, universal affordability is not universal access, receipt, or health (pages 15-22). Additionally, there are many reasons IIDs can isolate a person. One reason is because of what they do to her. Another is because they

needs to have *access* to it. And if she cannot afford it, then she either (i) will not have that access or (ii) cannot get that access without threatening her basic needs. Universal health coverage guarantees she can afford it, regardless of her circumstances. And so, in order to protect and support her development in accordance with the Basic Needs Goal, Mill’s Self-Development Justification should support universal health coverage.

Second, universal health coverage is necessary to meet the Stimulate Goal. Consider two kinds of data. First, consider Medicaid, Medicaid expansion, and Arkansas’s Medicaid work requirements. I will discuss Medicaid and Medicaid expansion in more detail later.<sup>301</sup> For now, I will be brief. Medicaid is the United States’ program for insuring low-income Americans.<sup>302</sup> Medicaid expansion resulted in *more* Americans receiving Medicaid, meaning that more low-income Americans could afford the health care they needed.<sup>303</sup> Guth et. al. conducted a meta-study on Medicaid expansion, finding that Medicaid expansion was generally associated with “gains in employment as well as growth in the labor market”, with only “a minority of studies showing neutral effects in this area.”<sup>304</sup>

This finding ran in contrast to Arkansas’s Medicaid work requirements. In 2018, Arkansas required that those receiving Medicaid—aged 30-49—had to demonstrate that they were working 80 hours per month, participating in something like job training or community service, or should be counted as an exception. Those that could not had their Medicaid revoked. Sommers et. al. conducted a study on the results from the first six months of Arkansas’s work requirements, concluding that these requirements were “associated with significant losses in health insurance coverage...but no significant change in

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may be communicable. But another reason deals with stigma. To put it succinctly, there are many negative perceptions about disability and mental illness. And because of these perceptions, those who have a disability or mental illness are more likely to be avoided or given fewer employment opportunities (see Corrigan & Watson 2002, De Wispelaere & Casassas 2014: 407, and Luciano & Meara 2014; see also Wheat et. al. 2010 for similar research done in the UK). As such, to truly tackle the threat IIDs pose to self-development, we would need to do more about this stigma. And universal health coverage would likely not do that (at least on its own).

<sup>301</sup> See pages 190-4.

<sup>302</sup> CRS Report RL32237 (2015: 12-3).

<sup>303</sup> Guth et. al. (2020), Wachino et. al. (2014).

<sup>304</sup> Guth et. al. (2020).

employment.”<sup>305</sup> Additionally, they found that—as the number of uninsured rose in all the studied states—the number of persons employed at least 20 hours per week *actually declined*.<sup>306</sup>

When can sum up the results of Medicaid, Medicaid expansion, and Arkansas’s Medicaid work requirements quite simply. When more persons *received* Medicaid—that is to say, when more low-income persons could afford the health care they needed—employment and labor market growth generally *increased*. By contrast, when more persons *lost* Medicaid—and could no longer afford the health care they needed—employment and labor market growth generally *stagnated or decreased*. More simply, these studies on Medicaid strongly suggest that making health care affordable encourages—and makes it possible for—persons to work.

The second kind of data deals with what is called *job-lock*. *Job-lock* is the phenomenon where persons are reluctant or unable to leave their current job, because they get their health insurance from their job, and they fear they will not be able to replace their insurance if they quit. Baker reviews dozens of studies about job-lock over the prior two decades, and his findings are telling. To put it succinctly, he

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<sup>305</sup> Sommers et. al. (2019).

<sup>306</sup> Ibid. Seemingly, there are at least two explanations for why. First, there was *a lot* of confusion about who was subject to these requirements and how to report them (ibid.). Second, the rationale behind these requirements seemingly got it backwards. The rationale is that persons should work for their health care. But seemingly the reverse is true: persons need health care to work! Without the ability to afford health care, persons are less able to do the work which these requirements demand. Adrian McGonigal’s experience with these requirements illustrates both explanations well:

In mid-2018, McGonigal learned that he would be subject to new work requirements, which he would have to report online, as a condition of receiving health benefits...Despite his lack of access to, and difficulty working with, computers, he was able to report his employment in June 2018, but he did not know he needed to continue to do so each month. As a result, when he went to pick up his prescriptions in October, the pharmacist told him that he was no longer covered, and his medicines would cost him \$800. In the absence of Medicaid, he could not afford the cost of the prescriptions and so did not pick them up. His 2 health conditions then flared up, causing him to miss several days of work, and Southwest Poultry fired him for his absences. He thus lost his Medicaid coverage and his job. (Scott 2019)

To put it simply: these requirements—ironically—make it harder to work. So if these requirements actually want to encourage working, they should be eliminated and replaced with universal health coverage.

found that those who did not rely on their job for coverage were *more* likely to change jobs, *substantially more* likely to start their own businesses, and *more* likely to retire or work part-time when they want.<sup>307</sup>

In short, these kinds of data demonstrate that, when health care affordability is guaranteed, she is more likely to (i) actually work, (ii) find work that suits her unique talents and desires, (iii) create her own business, and (iv) retire or work part-time on her own terms. As such, we can see that universal health coverage is *precisely* the kind of state action which *stimulates initiative*. And since the Stimulate Goal says the state should stimulate initiative as much as possible, Mill's Self-Development Justification should again support universal health coverage.<sup>308</sup>

To sum up, universal health coverage is necessary for both the Basic Needs Goal and the Stimulate Goal. For Mill, self-development requires more than just negative freedom. It also requires protection from and support in the face of IIDs. And if one cannot afford this protection and support, then she either cannot access it at all or can only access it by threatening her basic needs. Universal health coverage guarantees she can afford this protection and support, regardless of her circumstances. Thus, in order to promote everyone's development in accordance with the Basic Needs Goal, the state should have universal health coverage. Furthermore, the data demonstrates universal health coverage promotes (i) actually working, (ii) finding work that matches one's talents and desires, (iii) creating new businesses, and (iv) retiring or working part-time on one's own terms. As such, the state stimulates initiative by guaranteeing everyone can afford basic health care. And since the Stimulate Goal says the state should stimulate initiative as much as possible, the state should do just that. In short, Mill's Self-Development Justification supports universal health coverage. So if the libertarian adopts it, she should support universal health coverage as well.

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<sup>307</sup> See Baker (2015) for access to his In-Brief, Full-Report, and Appendix.

<sup>308</sup> See vlogbrothers (2013) for a similar (but more humorous) argument.

### **Humboldt's Self-Development Justification**

Most likely, the libertarian will be more interested in *Humboldt's* Self-Development Justification than *Mill's*. As is obvious above, Mill is *not* a libertarian: his state requires *much more* than the libertarian's minimal state. Humboldt, by contrast, is a libertarian. According to him, in order to best promote everyone's development, the state should *and should only* provide them with security. The rest it should leave to them. When choosing between Mill and Humboldt then, the libertarian is likely drawn to Humboldt.

But let's not get ahead of ourselves. As with Mill, Humboldt unquestionably adopts a Self-Development Justification.<sup>309</sup> To Humboldt, self-development is the true end of humanity<sup>310</sup> and the foundation for the whole greatness of mankind,<sup>311</sup> and the chief point of the state is to fully promote it.<sup>312</sup> So as with Mill, let's answer four questions:

- (1) What does Humboldt mean by *self-development*?
- (2) According to Humboldt, how does the state promote self-development?
- (3) Does Humboldt's Self-Development Justification justify state-provided security?
- (4) What should his justification say about universal health coverage?

Let's start with the first question. Unlike Mill, self-development for Humboldt is *not* about developing any *specific* faculty. Nor is about any *specific* direction, purpose, or goal. Instead, it is about harmoniously and uniquely bringing all her disparate faculties together. More specifically, Humboldt believes every human being is disposed to act with only one dominant faculty at a time. One develops herself when she avoids this one-sidedness, and instead harmoniously brings together all her distinct and

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<sup>309</sup> Remember: Mill's (2011: xxviii) epigraph in *On Liberty* was taken from Humboldt. See footnote 292 (page 142).

<sup>310</sup> "The true end of Man...is the highest and most harmonious development of his powers to a complete and consistent whole" (Humboldt 1969: 16).

<sup>311</sup> "That on which the whole greatness of mankind ultimately depends [is] individuality of energy and self-development" (ibid. 17).

<sup>312</sup> "The chief point to be kept in view by the State is the development of the powers of its citizens in their full individuality" (ibid. 127).

separate faculties. The result is *individuality*: a *unique* synthesis of one's powers, principles, and sensibilities.<sup>313</sup> Vogel sums it up nicely: "The end-product of self-development is not specified in substantive terms. No particular model-character is envisaged, no specific virtues—justice, generosity, gratitude, heroism—are postulated. The whole emphasis lies on a *unique style* of creating and testing purposes, different in each individual case."<sup>314</sup>

Which brings us to the second question: how does the state promote this development? Humboldt says the two essential conditions for self-development are [*negative*] *freedom* and a *variety of situations*. As he puts it: "Freedom is the first and indispensable condition which the possibility of such a development presupposes; but there is besides another essential...a variety of situations. Even the most free and self-reliant of men is hindered in his development, when set in a monotonous situation."<sup>315</sup> So in order to promote self-development, the state must promote these two conditions.

According to Humboldt, the state does this in two ways. First, *the state provides security*. As Humboldt sees it, the state of nature is rather Hobbesian. Without state-provided security, persons tend to transgress their proper limits. They wrong each other, which begets others' revenge, which begets new wrongs. And this cycle of wrong and revenge continues, leading to an environment of perpetual and widespread conflict. As Humboldt observes, one cannot develop herself in that environment, nor can she enjoy the fruits of doing so. Because in that environment, there is *no freedom*. So in order to protect everyone's freedom, it must break the cycle of wrong and revenge by becoming the *final* revenge of any conflict (i.e. by inflicting the final punishment or making the final judicial decision). As such, for the sake of self-development, the state must provide security.<sup>316</sup>

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<sup>313</sup> Ibid. 16-21. See also Vogel (1982: 82-86).

<sup>314</sup> Vogel (1982: 96).

<sup>315</sup> Humboldt (1969: 16).

<sup>316</sup> Ibid. 42-44. See also Valls (1999: 264).



Second, *the state avoids all positive state action*. ‘Positive state action’ refers to *any action by the state to improve persons’ welfare*. To Humboldt, there are at least three reasons why the state must avoid all positive state action.<sup>317</sup> But for our purposes, we need only reference two. First, Humboldt says positive state action *impedes variety and creates uniformity*. As he says: “The very variety arising from the union of numbers of individuals is the highest good which social life can confer, and this variety is undoubtedly *lost in proportion to the degree of State interference*...Like causes produce like effects; and hence, *in proportion as State interference increases*, the agents to which it is applied come to resemble each other, as do all the results of their activity.”<sup>318</sup> In other words, the more state interference, the more persons begin to resemble each other; and the more they resemble each other, the less variety there is.

Second, Humboldt says positive state action *impedes initiative*.<sup>319</sup> When the state does not provide any aid, one must rely on herself and others to get what she wants and needs. And knowing that others cannot rely on state aid either, she is prone to sympathize with and want to help them. The result is she is driven to use her own efforts to provide for herself and help and work with others. By contrast, when the state provides aid, one is prone to rely on that aid and blame the state for her situation; and she is prone to lose sympathy and leave the state to take care of others. Furthermore, she may find herself having to follow state dictates that go against her own moral beliefs and interests. As such, positive state action impedes her development of her self-reliance, sympathy, mutual assistance, and her own moral character. As Humboldt puts it: “[with positive state action] He now conceives himself not only completely free from any duty which the State has not expressly imposed upon him, but exonerated at the same time from every personal effort to improve his own condition...[and] As each individual abandons himself to the solicitous aid of the State, so, and still more, he abandons to it the fate of his fellow-citizens.”<sup>320</sup>

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<sup>317</sup> Valls (1999: 257).

<sup>318</sup> Humboldt (1969: 23-24); my italics.

<sup>319</sup> Ibid. 24-26.

<sup>320</sup> Ibid. 26.

Importantly, Humboldt does not think it will be *easy* to get what one wants and needs without state aid. But to Humboldt, *that is a good thing*. As he says:

If men were left wholly to themselves in their various undertakings, and were cut off from all external resources, other than those which their own efforts obtained, they would still, whether through their own fault or not, fall frequently into difficulties and misfortune. But the happiness for which man is plainly destined, is no other than that which his own energies procure for him; and the very nature of such a self-reliant position sharpens his intellect and develops his character.<sup>321</sup>

Humboldt adds to this idea elsewhere, when he says: “Obstacles stimulate energy, and sharpen wits.”<sup>322</sup>

As such, positive state action only *further* impedes self-development by removing obstacles which stimulate one’s energy, reasoning, and character. And in so doing, one is left without the happiness she gets from procuring things through her *own* efforts.

Let’s sum up our answers to our first two questions. According to Humboldt, self-development is not about any specific faculty, direction, purpose, or goal. It is, instead, about harmoniously bringing all of one’s disparate faculties together—resulting in a unique synthesis of one’s own powers, principles, and sentiments. There are two essential conditions to this development: freedom and a variety of situations. As such, the state promotes this development by promoting these two conditions. The state does this by (1) providing security and (2) avoiding all positive state action.

This brings us to our final two questions. First, does Humboldt’s Self-Development Justification justify state-provided security? And second, what should his justification say about universal health coverage? On the surface, the answers are straightforward: *yes* to the first question, and *oppose it* to the second. Again, as Humboldt sees it, state-provided security is necessary to protect freedom, which is an essential condition of self-development. Furthermore, universal health coverage—at least right now—looks like a positive state action. After all, isn’t the point of universal health coverage to improve persons’

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<sup>321</sup> Ibid. 26.

<sup>322</sup> Ibid. 92.

welfare?<sup>323</sup> And according to Humboldt, the state is supposed to avoid *all* of those actions. On the surface, then, if the libertarian wants to consistently justify the Liberty Thesis and oppose universal health coverage, she need not look any further than Humboldt's Self-Development Justification.

The problem, however, is that these surface-level answers are unsatisfying. In fact, there are two glaring oddities with Humboldt's answers here. And these oddities together create a dilemma for Humboldt, where he finds himself either supporting or opposing state-provided security and universal health coverage together. Let's start by reviewing his two reasons for why the state should avoid all positive state actions: (1) they *impede variety* and (2) they *impede initiative*.

The first oddity is that these reasons *poorly apply to universal health coverage*. As we saw with our discussion with Mill, universal health coverage does *not* impede variety and initiative. To the contrary, it *stimulates* them. Regarding variety, our discussion of job-lock revealed that, when health care affordability is guaranteed, one is more likely to quit a job she finds boring and monotonous for a job which better utilizes her unique talents and desires; she is far more likely to start her own business, rather than work at a business that already exists; and she is more likely to retire or work part-time on her own terms, creating more opportunities to engage with her community outside of work.<sup>324</sup> Furthermore, Humboldt makes clear that, when he says a *variety of situations*, he often means *interacting with diverse persons*;<sup>325</sup> and he even says "the *isolated* man is no more able to develop than the one who is fettered."<sup>326</sup> And as I discussed, IIDs can and do *isolate* persons, making it difficult—and even impossible—for them to have diverse interactions. Regarding initiative, my discussion of Medicaid demonstrated that, when health care affordability is guaranteed, one is more able and willing to work. That means she is more able and willing to earn her own wage and satisfy her own wants and needs. That, in turn, allows her to experience

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<sup>323</sup> I will challenge this idea in the next section. See also pages 43-5.

<sup>324</sup> This last part is especially worth emphasizing, because as Smith (2013) notes, Humboldt cared about one's life *both in and* outside of work.

<sup>325</sup> See Humboldt (1969: 16-17).

<sup>326</sup> *Ibid.* 98; my italics.

the happiness one gets from procuring things through her *own* efforts. As such, as far as Humboldt's reasons are concerned, he seemingly should *support* universal health coverage, not oppose it. So far, Humboldt's reasons only apply to universal health coverage in two ways:

- Evils of state interference: as Humboldt says, variety diminishes in proportion to state interference. And universal health coverage—per my Taxation Assumption—requires state interference.
- Value of lacking state aid: as Humboldt says, when one cannot rely on state aid—and only has what she procured through her *own* efforts—she is more driven to develop self-reliance, sympathy, mutual assistance, and her own moral character. Furthermore, she is more likely to encounter obstacles, which she can use to sharpen her energy, reasoning, and character. Universal health coverage makes it so one can rely on the state for affording basic health care—rather than having to procure it through her *own* efforts—and is designed to remove the obstacles tied to affording such care and going without it.

But this brings us to the second oddity: that these reasons *equally apply to state-provided security*. Regarding variety, Humboldt's claim is that *state interference* diminishes variety. And the problem is state-provided security *just is* a kind of *state interference*. Thus, by his own reason, Humboldt has to say *state-provided security* diminishes variety as well. And so, if that is reason to avoid positive state action, then it is *also* reason to avoid state-provided security.

Regarding initiative, Humboldt brings up numerous worries about positive state action. But *every single one of them* applies just as well to state-provided security. First, Humboldt worries that positive state action impedes self-reliance, sympathy and mutual assistance, because when one can rely on the state, she is less driven to rely on herself or others; and because when others can rely on the state, she is less driven to help them herself. Yet, that is *exactly* what state-provided security ends up doing when it comes to protecting one's and others' freedom. The whole point of state-provided security is that one

need not rely on herself to protect her freedom; nor need she rely on others to help protect her freedom; nor need she help others protect their freedom. Instead, when it comes to protecting her freedom and the freedom of others, she *is expected to* rely on—and let others rely on—the state.

Second, Humboldt worries that positive state action may require one to act against her own moral principles or interests. But surely this is true of state-provided security as well. One may not agree with how the state provides security; she also may not agree with having to be taxed to finance it; and she will be required to act against any principle or interest she has to avoid paying taxes, commit crimes, and take justice into her own hands.

Third, Humboldt worries that, when one can rely on external resources—and not just those she procured from her *own* efforts—she will miss out on a special kind of happiness, as well as obstacles which she can use to sharpen her energy, reasoning, and character. But again, state-provided security is an external resource—she did *not* procure that security *herself*. Furthermore, state-provided security is designed to remove the obstacles of acquiring one's own security or going without it.

In short, Humboldt worries that positive state action impedes initiative. But *every one of his worries* say state-provided security *also* impedes initiative. So if that is reason to avoid positive state action, then it is *also* reason to avoid state-provided security. As such, if we take Humboldt's reasons to avoid positive state action seriously, then one should not only oppose positive state action, but also *state-provided security*. So far, Humboldt's only justification for state-provided security is this:

- Essential conditions of self-development. As Humboldt says, the chief point of the state is to promote self-development, which requires promoting the essential conditions of self-development. Freedom is one of those essential conditions. And without security, there is no freedom. As such, in order to promote this essential condition, the state should provide security.

Taking these two oddities together, we can now see the dilemma Humboldt finds himself in. On the one hand, Humboldt can say the state should promote the essential conditions of self-development. That would justify state-provided security, because freedom is an essential condition, and there is no freedom without security. But then, he should support universal health coverage. Freedom is *not* the *only* essential condition. By his own acknowledgement, a variety of situations is another. And as is made clear from his discussion of positive state action, initiative is important for development too. As I discussed, universal health coverage *stimulates* this variety and initiative. So here, he should support *both* state-provided security *and* universal health coverage.

On the other hand, Humboldt can emphasize the evils of state interference and the value of lacking state aid. That would oppose universal health coverage, because universal health coverage is a state interference which one can rely on. But then, he can no longer justify state-provided security, because state-provided security is *also* a state interference which one can rely on. So here, he should oppose *both* universal health coverage *and* state-provided security. Of course, he could then try to defend state-provided security here by reminding us that, without security, there is no freedom; and that self-development requires freedom. But that will only matter if we turn our attention back to the essential conditions of self-development. And then we are back where we started.

Importantly, Humboldt has two responses here. First, Humboldt says security is *not merely* necessary for self-development; it is also the *only thing* persons cannot provide themselves. According to Humboldt, when it comes to *anything other than security*, persons can provide it just as well—if not better—than the state. And they can do so without invoking the evils of state interference. But security is different. Human conflict poses a unique threat to self-development, and unfortunately, only the state can protect everyone from this threat.<sup>327</sup> Thus, Humboldt's justification of state-provided security is more

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<sup>327</sup> Ibid. 42-44 and 127. See also *ibid.* 108, where Humboldt claims: "So true it is that all good and beneficent things rest in a wonderful harmony, that it is only necessary to introduce one of them, i.e. freedom, to enjoy the blessings of all the others." As Vogel (1982: 94-95) summarizes: "[Humboldt] assures his readers that, as a matter of

of a concession than an enthusiastic support. If persons could provide security themselves, he would prefer that instead. But unfortunately, they cannot. Fortunately, however, it is the *only* thing they cannot provide themselves. And so, the state should provide it *and it alone*.

Second, Humboldt appeals to *rights* to make his case easier. When discussing the necessity of state-provided security, Humboldt says “To counteract the evil which arises from the tendency man has to transgress his proper limits, and the discord produced by such *unjust encroachment on the rights of others*, is the essential object of the creation of the State.”<sup>328</sup> Furthermore, when discussing the value of obstacles, Humboldt says “*only* those [obstacles] which *arise from human injustice* are *uselessly restrictive*.”<sup>329</sup> Clearly, then, *rights* play an important role for Humboldt. They help explain why, when it comes to self-development, the obstacles which security removes are the *only* obstacles which *don’t count*; and they offer *another* justification for state-provided security, because regardless of self-development, encroaching others’ rights is unjust.

For my purposes, however, neither of these responses stick. First, while Humboldt may claim that security is the *only thing* which requires state interference, I am (if nothing else) assuming universal health coverage requires it too.<sup>330</sup> And that just puts him right back in the dilemma, where he either cannot justify state-provided security or should support universal health coverage. Second, we cannot defend, challenge, or even fully understand Humboldt’s claims about rights until we more deeply discuss what these rights are, what (if any) limitations they have, and how the state protects them. And that discussion is for the next chapter, not this one. So for my purposes, we can ignore his first response and bracket his second.

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*empirical fact*, freedom from state interference will by itself secure the very goals towards which welfare policies are instituted. In other words, the greatest amount of individual liberty guarantees the realization of *all* other values.”

<sup>328</sup> Humboldt (1969: 42); my italics.

<sup>329</sup> Ibid. 92; my italics.

<sup>330</sup> See my Taxation Assumption (pages 50-6).

To sum up, when it comes to my purposes, Humboldt's Self-Development Justification cannot drive a wedge between state-provided security and universal health coverage. His reasons for supporting one support the other; and his reasons for opposing one oppose the other. Importantly, Humboldt responds that security is the *only thing* which requires state interference and invokes *rights* to make his case easier. However, for my purposes, we can ignore the first response and bracket the second. As such, we can say this much: when we assume universal health coverage requires state interference and bracket talk of rights, Humboldt's Self-Development Justification either ends up supporting or opposing *both* state-provided security *and* universal health coverage. The libertarian, to review, is looking for a *justification for the Liberty Thesis*. And so, if the *libertarian* adopts this justification, she should support universal health coverage by extension.

### **A *Third* Self-Development Justification?**

To review, I have so far discussed *Mill's* and *Humboldt's* Self-Development Justifications. And I concluded that *both* of them—if they truly justify the *Liberty Thesis*—should support universal health coverage. But importantly, *Mill's* and *Humboldt's* justifications are not the *only* justifications the libertarian can pick from. Earlier, we said there are *two kinds* of self-development. But really, there is a better way to phrase it:

**Self-Development:** \_\_\_\_\_ kind of development; development in \_\_\_\_\_ direction, for \_\_\_\_\_ purpose, toward \_\_\_\_\_ goal or end

Which conception of self-development one gets depends on how she fills in the blanks. Mill filled in the blanks *one way*, Humboldt filled them in *another*. But there are obviously *many more* ways one can fill them in. And how one fills them in determines how the state best promotes it. As such, there are *far more* Self-Development Justifications than the *mere two* I discussed above. So why can't the libertarian simply appeal to some *third* Self-Development Justification?



The problem is because it most likely will not change the outcome. For my discussion of Mill and Humboldt was not merely to discuss *their own* Self-Development Justifications; it was *also* to illustrate a *pattern*. As we saw above, one's negative freedom, health, and basic needs *all* affect how she cultivates and exercises her capacities, faculties, and abilities; and they *all* affect the potentiality and possibility that she can achieve some goal or end. As such, the *more* self-development requires from someone, the *easier* it is to show why one should support universal health coverage; and the *less* self-development requires from someone, the *harder* it is to justify state-provided security. Thus, however the libertarian chooses to fill in the blanks, she most likely will end up with a Self-Development Justification that either supports or opposes *both* state-provided security *and* universal health coverage. As such, if she still wants to justify the Liberty Thesis while also opposing universal health coverage, she will need another justification.

#### The Coercion and Oppression Justification

The final justification I will consider is the **Coercion and Oppression Justification**. As it goes, the state should not coerce or oppress persons. The state does that better when it emphasizes protecting negative freedom over promoting positive freedom. So the state should protect negative freedom over promoting positive freedom.

Berlin illustrates the Coercion and Oppression Justification well.<sup>331</sup> As I discussed earlier, *positive freedom* is the ability to do something. Up until now, we have not questioned what that looks like. Now, we will. Suppose a habitual smoker—call her Smoker—is running late for work, driving as fast as she can to arrive on time. She comes to a fork in the road. If she turns left, she will make it to work on time; if she turns right, she will not. But if she turns right, she can stop at a gas station and buy a new pack of

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<sup>331</sup> Berlin (1969: xlvii, 132-4). Though there are two important notes to make here. First, while Berlin *illustrates* this justification, he does *not endorse it*, at least as a complete justification for the Liberty Thesis as currently presented (see *ibid.* 167-72). Second, I take the following *Smoker* example from Zwolinski (n. d.).

cigarettes. Smoker really wants to be on time for work, but she is *craving* a cigarette. She feels compelled to stop at the gas station and turns right.

Here, did Smoker have the positive freedom to do what she *really* wanted to do? One plausible answer is *no*. What she *really* wanted to do was turn left, but she was unable. And the reason why is because her addictive impulses, and not her *real* self, turned her right. Had her *real* self been in control, she would have turned left. And so, even if it looked like she had the positive freedom to do what she wanted to, she really did not.

The above example illustrates an important difference between negative and positive freedom. Both negative and positive freedom are fundamentally concerned about what a person's *real* self is: negative freedom is about not interfering with one's real self, and positive freedom is about what one's real self can do. But importantly, negative freedom and positive freedom typically have different conceptions of what one's real self is. Negative freedom typically thinks one's *real* self is her *ordinary* self, which essentially amounts to her whole body and mind. Positive freedom, by contrast, typically (necessarily?) distinguishes between her *ideal* self and her *ordinary* self, claiming her *ideal* self is her *real* self. For example, some have argued that a person has two selves: her *higher* self and *lower* self. Her *higher* self uses reason to rationally make decisions, plans, and goals. Her *lower* self runs contrary to her reason, and contains her irrational impulses, uncontrolled desires, and pursuits of immediate pleasures. And her higher self is her real self. Others have argued that a person's real self stretches beyond her *individual* self. Rather, the real self is a *social whole*: a tribe, a church, a race, or a state, for example. She is merely *a part* of the real self. She is like an arm on a body. The body as a whole decides and moves accordingly. She just moves in concert with the rest of the body's parts, playing her role in the body's aims.<sup>332</sup>

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<sup>332</sup> See Berlin (1969: xlvii, 132-4). See also MacCallum (1967).

As Berlin argues, state officials can appeal (and have appealed) to positive freedom as a way to coerce and oppress citizens.<sup>333</sup> For example, state officials can say one's *real* self is her *higher* self and then argue: were she rational enough to understand and pursue what she really wants on her own, the state would not need to get involved. But unfortunately, she is not so rational. Luckily, the state is more than willing to step in on her real behalf and move her in the direction she really wants to go. Or for example, state officials can say the *real* self is the *social whole* and then argue: the state wants to move in one direction, but she will not follow. So the state will do its part to help her do hers. In either case, these state officials would be appealing to positive freedom to argue why they are making her *more free*. But in reality, they would just be coercing and oppressing her for their own ends. And importantly, the same cannot be said for negative freedom. Since negative freedom does not distinguish between one's ideal and ordinary self, state officials cannot appeal to negative freedom as a way to coerce and oppress citizens in an analogous way. As such, asking the state to promote positive freedom invites its coercion and oppression; asking it to protect negative freedom does not. Insofar as we agree, then, that the state should *not* coerce and oppress persons, we seem to agree that the state should emphasize protecting negative freedom over promoting positive freedom.

The Coercion and Oppression Justification, then, could justify the Liberty Thesis.<sup>334</sup> The problem is this justification *also* supports universal health coverage. This is for two reasons. First, like negative

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<sup>333</sup> Berlin (1969: xlvii, 132-4).

<sup>334</sup> Importantly, I am not convinced Berlin's argument succeeds. First and foremost, it is not obvious that positive freedom *must* distinguish between one's ideal and ordinary self. Insofar as positive freedom sticks with the ordinary self, it is not clear there is any more potential for coercion and oppression. Secondly, even if positive freedom must invoke some ideal self, that does not mean it *must* be used to coerce and oppress citizens. Positive freedom—in and of itself—is not a tool for coercion and oppression. It can be used for either good or bad purposes. Arguably, state officials who use it to coerce and oppress citizens are not *using* it so much as *abusing* it. My thanks to Mark Satta for pointing this out. Thirdly, it is not obvious why negative freedom *cannot* invite potential for coercion and oppression. For example, at least at one time in United States history, persons of color were not considered full people. And it seems plausible that the United States could (perhaps did) use the protection of negative freedom as a means to coerce and oppress these persons of color. Suffice it to say, it is not clear to me why positive freedom is so worrisome here, nor is it clear to me why negative freedom is not. Regardless, I will simply grant Berlin's argument so I can focus on what I take to be most important for my purposes: how it relates back to universal health coverage.

freedom, universal health coverage does *not* distinguish between an ideal and ordinary self. Indeed, universal health coverage uses the same conception of self that negative freedom does! Universal health coverage does not make basic health care affordable for everyone's higher selves, but not their lower selves. Nor does it make such care affordable for parts in a social whole. Universal health coverage sees each person as their whole body and mind, and then makes basic health care affordable to *them*. As such, when it comes to a person's *real* self, negative freedom and universal health coverage are on the same page. So if negative freedom is not worrisome here, then neither is universal health coverage.

Second, universal health coverage actually protects persons from coercion and oppression. It does this in at least two ways. The first way deals with the kind of coercion and oppression *which concerns Berlin*. Berlin here talks about how the *state* can coerce and oppress persons into doing what it wants them to do. One of the best ways to keep the state from doing that is by *politically participating*. By politically participating, persons can change who runs the state; they can change the direction the state heads in and the policies it pushes; and they can directly and indirectly oppose state attempts to coerce or oppress any person or group of persons. Importantly, political participation requires certain abilities. Minimally, it requires that persons can *formally* participate, in the sense that they can vote, have their concerns taken account of by state officials, be a part of politically-active associations, and—if worse comes to worse—form resistance groups which can forcibly change how their state looks and works. Ideally, it also requires that persons can *informally* participate, by interacting and engaging with others in social spaces as equals.<sup>335</sup>

This is important, because universal health coverage helps persons politically participate in both ways. As mentioned earlier, IIDs are the kinds of things which can and do *isolate* persons. They are the kind of things which keep persons bedridden or unable to socially engage with others. The same can be said for lacking enough resources to meet one's basic needs and care for dependents. In short, threats to

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<sup>335</sup> See also Anderson (1999: 317-8).

one's health, basic needs, and roles as a caretaker are threats to her ability to politically participate: they make formal and informal participation more difficult—and in some cases impossible—and make her less able to stand up for herself in the face of state coercion and oppression. So if the coercion and oppression which concerned Berlin also concerns the libertarian, she should support universal health coverage.

The second way deals with a kind of coercion and oppression which Berlin left unmentioned: *employer* coercion and oppression. As we saw above, universal health coverage protects everyone from job-lock: it makes it easier for them to switch jobs, start their own businesses, and retire or work part-time on their own terms, because they no longer have to stay where they are *just to have health insurance*. Earlier, I spoke about how this promotes initiative and variety. But importantly, it also protects persons from being coerced and oppressed by their employers. When one is able and willing to quit her job, she is in a position where she can bargain with her employer. She can demand she be treated with respect and not be taken advantage of; she can safely report being the victim of mistreatment or abuse; and she can confidently seek out and request a higher wage and more opportunities for advancement. By contrast, when she is less able and willing to leave, she is less able to stand up for herself, because she knows doing so may result in being fired from the job she needs to keep her insurance. As such, protecting everyone from job-lock does not merely stimulate initiative and variety; it also helps protect everyone from being coerced and oppressed by their employers. And universal health coverage protects everyone from job-lock in the most straightforward way: it directly reduces or eliminates it.<sup>336</sup>

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<sup>336</sup> Whether universal health coverage *reduces* or *eliminates* job-lock—or *how much* it reduces job-lock—depends on the details of the particular universal health coverage system. For example, a system which provides everyone with the same insurance—and offers no alternatives—will likely eliminate job-lock, since one's employment will have nothing to do with her insurance. By contrast, a system which offers guaranteed fall-back insurance (like that advocated by Dolan 2019), but still permits better employer-sponsored insurance may only reduce job-lock. For even if one has guaranteed *fall-back* insurance, she may still be encouraged or even pressured to stay employed for *better* insurance. Regardless, any truly universal health coverage system would likely at least reduce job-lock and has the potential to eliminate it.

In short, the Coercion and Oppression Justification supports universal health coverage. Berlin's worries about positive freedom's coercive and oppressive potential do not apply to universal health coverage. Furthermore, universal coverage actually helps protect persons from coercion and oppression by their state (which concerned Berlin) and their employers (which Berlin left unmentioned). So if the libertarian opts for the Coercion and Oppression Justification, then she should support universal health coverage by extension.<sup>337</sup>

#### An Incomplete, but Telling List

This concludes my discussion of the four justifications we considered. As I said in the beginning, these are *only four* potential justifications. Surely there are others. However, I want to wrap up my discussion by suggesting that, however incomplete this list is, it is very telling. I started by inviting the libertarian to justify a thesis which—for a number of reasons—appears counter-intuitive on its face. And I ended with this:

- If the state should *maximize persons' options* (at least on the aggregate), then one should support universal health coverage
- If the state should *protect persons' current options*, then one should support universal health coverage
- If the state should *promote anything tied to self-development* (self-reliance; sympathy for others; mutual assistance; character development; a variety of experiences; and a society composed of

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<sup>337</sup> Importantly, the libertarian may still worry that universal health coverage is coercive and oppressive. Berlin's worry was about positive freedom's distinction between the ideal and ordinary self. The libertarian may still suspect universal health coverage is coercive and oppressive for other reasons. My thanks to Brad Roth for pointing this out. Here, I have two responses. First, I cannot assess these reasons until I know what they are. Second, I suspect these reasons would amount to claims about liberty, property rights, and/or libertarian problems with the individual mandate. But I address these reasons in this chapter, Chapter 4, and Chapter 1 (pages 45-8) respectively.

diverse persons, with diverse projects, who use their own efforts to help themselves and others), then one should support universal health coverage (or abandon the Liberty Thesis)

- If the state should *protect persons from coercion and oppression*, then one should support universal health coverage

Taken together, then, there are two points worth emphasizing. One: the libertarian is free to adopt a *pluralist* justification. In this section, I only considered *one* justification at a time. But the libertarian need not limit herself to *merely one* justification; she is free to mix and match however many justifications she likes. But as I discussed, *all* of the justifications *I considered* support universal health coverage, and there is no reason to think their combination would change that support. Which brings us to two: the libertarian is free to look for a justification beyond this list. But however incomplete this list is, it at least covers the most common, immediate, and obvious attempts to justify the Liberty Thesis. As such, if she still wants to consistently justify the Liberty Thesis and oppose universal health coverage, she will have to get creative. And if her attempt appeals to the value of options, self-development, or protection from coercion and oppression, the above indicates her attempt will likely fail.

### Summary

To sum up, I started with Case Homeless and Billionaire. In that case, the state could provide Homeless with a home simply by taking \$1 from Billionaire. In this section, we simply *assumed* that the Liberty Thesis opposed such state action. And based on this assumption, I argued that this opposition seemed wrong, demanding *justification* for the Negative Freedom Thesis. But then, I argued each of the four justifications I considered *also* support universal health coverage. And so, if the libertarian used any of those justifications, she should support universal health coverage as well.

In the next section, I want to *challenge the assumption* that the Liberty Thesis really does oppose state action in Case Homeless and Billionaire. There, I will argue that—*on the grounds of protecting*

*everyone's negative freedom*—the state should protect everyone from homelessness. Afterwards, I will argue why protection from homelessness requires universal health coverage. And so, if the libertarian really commits herself to the Liberty Thesis, she should support universal health coverage.

## Section 2: Why the Liberty Thesis Should Support Universal Health Coverage—the Homelessness Problem

The second problem with Case Homeless and Billionaire is that, up until this point, we have *assumed* the Liberty Thesis opposes the state taking \$1 from Billionaire to provide Homeless with a home. Why did we make this assumption? Because up until this point, we have assumed Homeless has complete *negative freedom*.

Go back to Homeless. Unlike Billionaire, Homeless is not able to get a home on her own; in fact, she is unable to do much of anything. But like Billionaire, Homeless is not being prevented, obstructed or otherwise interfered with by others in getting a home; in fact, she is not being interfered with by others in *any way*. Homeless is *alone*: there is no one around interfering with her *at all*. Positive freedom is the ability to do something, while negative freedom is the lack of interference by others to do it. Thus, Homeless does not have the positive freedom to get a home, and she has substantially less positive freedoms than Billionaire. But she at least is negatively free to get a home; in fact, she is negatively free to do *anything*. She has *complete* negative freedom. The Liberty Thesis says the state should only protect *everyone's negative freedom*, and not concern itself with *anyone's positive freedom*. So when it comes to Homeless, there is nothing for the state to protect.

Or so the story goes. In this section, I want to challenge this story. In particular, I want to argue the following:

**Premise 1:** The libertarian should say the state should protect everyone from homelessness (i.e. from becoming and staying homeless).



**Premise 2:** If the libertarian says the state should protect everyone from homelessness, then she should support universal health coverage.

**Therefore:** The libertarian should support universal health coverage.

The above argument is valid. The question then is are both of its premises true? I will offer both an *abstract* and *practical* defense of Premise 1 in the first two subsections. And I will offer a defense of Premise 2 in the third subsection.

#### Abstract Defense of Premise 1

As we saw, the story above suggests Homeless is *completely* negatively free. But what if this story left something out? What if Homeless's *homelessness* is making her—in some different but meaningful sense—negatively unfree? Then per the Liberty Thesis, the state should do something to protect her from *homelessness*; and one way it could do that is by taking Billionaire's \$1 to provide her with a home. More generally, if *homelessness* made persons—in some different but meaningful sense—negatively unfree, then per the Liberty Thesis, the state should protect everyone from homelessness.<sup>338</sup>

The idea that *homelessness* can make one *negatively* unfree is what I now aim to defend. I will defend it with three claims which I assume the libertarian would agree.<sup>339</sup> First, *to be is to be somewhere; to do something is to do something somewhere*. Humans take up space, so their mere existence requires them to be *somewhere*. Furthermore, humans must perform certain bodily functions. For example, they must relieve themselves of bodily waste, and they must sleep from time to time. Every human must perform these actions at some time or another; and at some point, no human can choose to do otherwise. But again, humans take up space. So to perform these actions, they must perform them *somewhere*.

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<sup>338</sup> This subsection was inspired by and borrows heavily from Waldron (1991). I believe what Waldron already provides is sufficient to defend this premise. But here, I aim to take what he says in a slightly different direction, emphasizing a distinction that—I believe—he only implicitly makes.

<sup>339</sup> I take these claims from Waldron (1991: 296-9).

Second, *persons are not negatively free to be everywhere*. Suppose you are out in a field, watching the grass blow in the wind and enjoying the summer sun. All of a sudden, you realize there is a sign to your right. It reads: PRIVATE PROPERTY! TRESSPASSERS WILL BE REMOVED! What that sign tells you is this: you are *not free* to be here. But in what sense are you not free to be here? It cannot be in some *positive* sense. Clearly, you *are able* to be here. You are here *right now*. Rather, you are not free to be here in a *negative* sense. What that sign tells you is you are *liable to be interfered with by others for being here*. If this field belonged to no one, you could stay here as long as you wanted. But this field belongs to the owner of the sign. And because this field is *hers*, she is liable to remove you from this field if she wants.

In short, persons are not always free to be where they are. To the contrary, there are several places persons are not free to be. But when we say *not free to be*, we do not mean that in some *positive* sense; often, persons are more than *able* to be where they are not free to be. Rather, we mean it in some *negative* sense. They are unfree to be where they are because, when they are there, *they are liable to be interfered with by others*. If they were free to be there, they would not be so liable.

Third, *in the United States today, homeless persons are often not free to be in most places*. To begin, there are many places persons can be. But for simplicity, let's consider four kinds of places: private property, collective property, communal property, and unowned places. *Private property* is owned by an individual or private group of individuals; and persons need that individual(s)'s permission to be there. *Collective property* is property owned by the state. Sometimes, persons need the state's permission to be there, like military bases or government offices. But some collective property is *communal property*: they are places owned by the state, for the purpose of being available for public use—and so, persons do not need anyone's permission to be there. And *unowned places* are simply places not owned by any individual(s) or state. No one needs anyone's or anything's permission to be there.<sup>340</sup>

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<sup>340</sup> I take this taxonomy from *ibid.* 296-9.

Unfortunately for homeless persons in the United States today, they are not free to be in most of these places. Unlike persons with homes, homeless persons do not own any place of their own, and so must always be somewhere that does not belong to them. Additionally, because of the conditions of homelessness, many homeless persons lack the special permissions or privileges that allow them to be in many private and collective places. For these homeless persons, they are usually only free to be on communal property or in unowned places. But in the United States today, that does not get them very far. Many communal places have curfews; many limit where one can go to the bathroom; and municipalities can and have passed ordinances to make it illegal to sleep in parks, streets, and subways.<sup>341</sup> Furthermore, seemingly most (if not all) of the land in the United States today is privately or collectively owned,<sup>342</sup> and abandoned buildings—and the communities they reside in—are often bad for one’s health.<sup>343</sup> As such, homeless persons in the United States today are frequently not free to be where they are; and if they are, their freedoms to perform their most basic bodily functions are frequently restricted or revoked.

To sum up, there is a meaningful sense in which homeless persons have less negative freedom than those with homes. And there is a meaningful sense in which homelessness makes persons less negatively free. Homeless persons in the United States today are not free to be in many places; and when they are free, their freedom to perform their most basic bodily functions is restricted or even revoked. They have no place of their own, they often lack special privileges and permissions, and the places they are free to be in can and do restrict when they are free to be there and what they are free to do there. Furthermore, there is seemingly little (if any) unowned land left and abandoned buildings are often bad for one’s health. All of this is problematic because they—like all humans—must be somewhere to

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<sup>341</sup> See *ibid.* 299-302. See also the National Coalition for the Homeless (2018: 16-8).

<sup>342</sup> Seidel (2019).

<sup>343</sup> Purtle (2012).

minimally perform their necessary bodily functions and even exist. Simply put: in some meaningful sense, homelessness is a very serious attack on one's negative freedom.

On the surface, then, the Liberty Thesis seems compelled to say the state should protect everyone from homelessness. As it goes, the Liberty Thesis says the state should protect everyone's negative freedom. Homelessness attacks one's negative freedom, because it makes her substantially less free to perform her necessary bodily functions and even exist. Therefore, the state should protect everyone from homelessness.

Importantly, however, there is an obvious concern here. Before, we spoke of negative freedom as not *actually* being interfered with by others. Now, we are speaking of negative freedom as not *being liable* to be interfered with by others. And surely, those are not the same thing. To illustrate, suppose a kidnapper removes you from your home. In this case, you are not liable to be removed from your home. That is *your* home, and the kidnapper is *breaking the law* by removing you from it. But the kidnapper is *actually* removing you from your home. So in this case, you are actually being interfered with, but you are not liable to be interfered with. Now suppose you break into someone's home while no one is there. You are liable to be removed from that home. That is *not* your home; it belongs to *someone else*. But no one is *actually* removing you from that home. No one is there to remove you, and no police have been called. So in this case, you are liable to be interfered with, but are not actually being interfered with. In short, being *liable* to be interfered with and *actually* being interfered with are *not* the same thing.

So does the Liberty Thesis say the state should protect everyone from homelessness or not? The problem is we do not yet know. And the reason why is because the Liberty Thesis is currently *ambiguous*. To show why, let's start by distinguishing between two kinds of interferences which limit one's negative freedom:

**Actual interference:** when one is *actually* being interfered with by others

**Liability interference:** when one is *liable* to be interfered with by others<sup>344</sup>

As we saw above, homelessness is best thought of as a *liability* interference. Homelessness does not actually interfere with anyone; it is not the kind of thing which can do that. Rather, homelessness makes one liable to be interfered with by others in most places; it makes one liable in most places to be prevented, obstructed, or removed from performing her necessary bodily functions and simply existing.

Taking all this together, we have three distinct interpretations of the Liberty Thesis:

**The Actual interpretation:** the state should *only* protect everyone from *actual* interferences (*not* liability interferences)

**The Liability -H interpretation:** the state should *also* protect everyone from some *liability* interferences, *but* homelessness is *not* one of them

**The Liability +H interpretation:** the state should *also* protect everyone from some *liability* interferences, *including* homelessness

So does the Liberty Thesis say the state should protect everyone from homelessness? The first two interpretations answer *no*. But the last interpretation answers *yes*. The question, then, is which interpretation should the libertarian go with? Here, I will argue why she should go with the third.

Let's start with the first interpretation: the Actual interpretation. According to the Actual interpretation, the state should *only* protect everyone from *actual* interferences (*not* liability interferences). This may be because, contrary to what we said earlier, liability interferences do not *really* limit negative freedom. They may look like they limit negative freedom, but the only interferences which

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<sup>344</sup> When I say one is 'liable' to be interfered with by others, I mean she is *in a position* to be interfered with by others. Importantly, this phrase is ambiguous. On the *legal* interpretation, it means she is *legally* in a position to be interfered with by others: there is a law which says the state can remove and/or punish her (see Waldron 1991: 304). On the *moral* interpretation, it means she is *morally* in a position to be interfered with by others: she is doing something wrong which makes it morally permissible (or obligatory) to remove and/or punish her. My thanks to Brad Roth for pointing this out. For my purposes, I suspect either interpretation will suffice. For the libertarian here, it is *morally wrong* and ought to be *illegal* to interfere with another's property without her permission. And so, in the libertarian's world, doing so puts one in *both* a moral *and* legal position to be removed and/or penalized by the state. That said, if these interpretations do not converge, I will be more precise in the argument to come.

really do are actual. Or this may be because, even if liability interferences do limit negative freedom, they should not concern the state. The only interferences which the *state* should protect everyone from are actual ones.

The problem with this interpretation is there are at least *some* liability interferences which the libertarian thinks limit one's negative freedom, should be opposed, and the state should protect everyone from. To illustrate, consider the following example:

**The Only Nice Law:** All media outlets can *only* say *nice things* about their president. They cannot say anything that criticizes, disparages, or even politely disagrees with anything their president says or does. The same goes for everyone posting anything on the internet. Anyone caught violating this law will be removed from these outlets or internet service.

According to the Actual interpretation, the state should *not* protect everyone from living under the Only Nice Law. The Actual interpretation says the state should *only* protect everyone from *actual* interferences, *not liability* interferences. And the Only Nice Law is a *liability* interference, *not* an *actual* one. The Only Nice Law does not actually interfere with anyone; laws are not the kinds of things which can do that. Instead, all the Only Nice Law does is make everyone legally liable to be removed from a place or service for criticizing, disparaging, and even politely disagreeing with their president in public places. As such, as far as the Actual interpretation is concerned, the Only Nice Law does not really limit anyone's negative freedom. Or if it does, it should not concern the state.

The problem is simply *no* libertarian would *ever* say this! *Any* libertarian would say the Only Nice Law makes persons *less negatively free*: it makes them less free to speak their minds and share their political views with others. Furthermore, *any* libertarian would say the Only Nice Law should be opposed. There are many reasons to value freedom of speech: it can facilitate the discovery of truth, protect political debate and participation, give voice to marginalized groups, promote autonomy, and respect persons as equals, to name a few. But *whatever* reason(s) the libertarian values freedom of speech, surely

the Only Nice Law runs afoul in the most egregious ways. Finally, *any* libertarian would say the state should protect everyone from living under such a law. Initially, she would say the state should *not pass* such a law. But unless she was naïve, she would also demand the state *prevent itself from even trying* to pass such a law. History has made clear that powerful state officials can and do use laws like these to help establish and maintain their power. And history has also made clear that it is not enough to expect or ask these officials to refrain from doing so. Instead, there need to be laws and institutions which protect everyone from state officials abusing their power. If there is anyone who fears state abuse and demands to reign it in, it is the libertarian. To put it simply: the Only Nice Law is *precisely* the kind of interference which the libertarian says the state should protect everyone from *on the grounds of freedom*. And she cannot say this if she adopts the Actual interpretation. So the Actual interpretation cannot be *her* interpretation.

This means her interpretation must be one of the other two: Liability -H and Liability +H. But which one? I believe there are two reasons why the libertarian might buy into the former. First, she might think the *only* liability interferences the state should protect everyone from are *those created by the state*. Homelessness (at least usually) is not caused by the state, and therefore, the state should not (at least usually) protect everyone from it. Second, she might think the state should protect everyone from more liability interferences than that, but still think homelessness falls short of being in that broader category. Let's call these the Only State Reason the Falls Short Reason, respectively.

However appealing these reasons appear, I believe the libertarian should opt for the Liability +H interpretation. To see why, let's discuss both reasons in greater detail. Starting with the Only State Reason, I have so far been speaking as if liability interferences like the Only Nice Law and homelessness are the same kind of thing. But clearly they are different in many respects. Perhaps the most obvious difference is that homelessness has many causes, while the Only Nice Law only has one: the state. Because of this, one might say the Liberty Thesis is only committed to is this: the state should protect everyone from *its*

*own* liability interferences. That is to say, it should protect everyone from *its* laws like the Only Nice Law, and *it* making or keeping anyone homeless. Of course, *that* seems agreeable to the libertarian. But that does not say the state should *also* protect everyone from becoming or staying homeless *from other causes*.

I believe, even if the libertarian held this reason, she would likely have to support substantially more state protection from homelessness in the United States today.<sup>345</sup> That said, I believe she should not hold this reason. To see why, imagine the following: Suppose there is no state law which prohibits speech of any kind. However, suppose the wealthiest hundred persons—call them the Riches—use part of their massive wealth to purchase all the media outlets and internet service providers—making these outlets and providers *their private property*. Because the Riches *love* their president so much, they pass the following:

**The Only Nice Rule:** All media outlets (that the Riches own) can *only* say *nice things* about their president. They cannot say anything that criticizes, disparages, or even politely disagrees with anything their president says or does. The same goes for everyone posting anything on the internet (provided by the Riches' service providers). Anyone caught violating this rule will be removed from these outlets or internet service.

What should the libertarian say about the Only Nice *Rule*? The most natural answer is the state should protect everyone from living under it. As I discussed earlier, *any* libertarian would say the state should protect everyone from the Only Nice *Law*. And the reason why is because it limits persons' freedom of speech, and their freedom of speech is valuable and worthy of state protection. Yet, the *same* can be

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<sup>345</sup> The United States—as a state—has passed numerous policies which have disenfranchised or limited the financial opportunities of many persons. One of the most illustrative examples is its housing policies, which have barred many minorities from establishing and building wealth (see Taylor 2019 and Rothstein 2017). It would be odd to acknowledge all of this, yet say the United States is not even partly responsible for any of these persons becoming or staying homeless. And to admit the United States is at least partly responsible seems to imply it should at least partly protect these persons from homelessness.



said for the Only Nice *Rule*. The Only Nice *Rule* limits persons' freedom of speech *just as much as* the Only Nice *Law*: it makes the *same persons* (in some sense) liable to be interfered with in the *same way*, in the *same places*, for doing the *same thing*. And whatever reason(s) one has for finding freedom of speech valuable and worthy of state protection, surely the Only Nice *Rule* *also* runs afoul in the most egregious ways. As such, the natural move for the libertarian is to say the same thing about the Only Nice *Rule*: the state should protect everyone from it.

Importantly, the libertarian might resist this natural move. As she could argue, there is an important difference between the Only Nice *Law* and the Only Nice *Rule*. The Only Nice *Law* was passed by the *state*, but the Only Nice *Rule* was passed by the Riches. And the state and the Riches are fundamentally different entities. The state, in the libertarian's eyes, is something that should be as minimal as possible. It should not restrict anyone's freedom of speech unless absolutely necessary. The Riches, however, are individuals who can (barring a few exceptions) do what they want with their private property. They can pass whatever speech rules they want for their own media outlets and internet service providers. In short, both the Only Nice *Law* and the Only Nice *Rule* limit persons' freedom of speech. But when freedom of speech clashes with property rights, property rights win. There is no clash with the Only Nice *Law*, but there is a clash with the Only Nice *Rule*. And so, the libertarian can say the state should only protect everyone from the former, not the latter.

At this point, the libertarian will have to decide which has priority: everyone's freedom of speech or the Riches' property rights. Here, I will let the libertarian make the call for herself. But before she does, two points bear mentioning. First, if the libertarian prioritizes the Riches' property rights here, then she values freedom of speech *much less* than she lets on. As I discussed before, there are many reasons the libertarian could have to oppose the Only Nice *Law*: it could easily cripple our collective pursuit of truth; it could fundamentally disrespect us as equal and autonomous individuals; it could have disastrous effects on political discourse and lead to persons being marginalized; and so on. But the same is true of the Only

Nice Rule. Of course, even the libertarian does not think freedom of speech is absolute: she will permit limitations of it from time to time. But if the libertarian will permit *this great of a limitation* and risk *these serious threats* so that *the wealthiest hundred persons can do what they want with their property*, then she is willing to limit freedom of speech *far more often* than we were led to believe. It calls into question how much she *really* values freedom of speech. And it has the odd result that the more she supports private ownership, the more she would permit substantial limitations on persons' freedom of speech.

Second, if the libertarian prioritizes the Riches' property rights, then what she seemingly cares most about is not *negative freedom per se*, but rather *property rights*. But if that is so, then we cannot know what she should say about the Only Nice Rule—or more relevantly, universal health coverage—until we have a deeper discussion about what property rights are, what (if any) limitations they have, and how the state protects them. And again, that is for the next chapter, not this one.

By contrast, if the libertarian prioritizes everyone's negative freedom, then the reverse is true. First, she can truly say she *seriously* values freedom of speech, because she would not condone such a serious limitation of it for the sake of a few wealthy individuals. Second, she could say her primary concern is *negative freedom*—and not just property rights in disguise—giving us an opportunity to continue this chapter. So from here on out, I will assume the libertarian prioritizes everyone's freedom of speech here (or, if she does not, she will now turn to the chapter she finds more relevant).<sup>346</sup>

Let's put all this together. Assuming the libertarian has not jumped chapters, she prioritizes everyone's freedom of speech over the Riches' property rights. Yet, if that is so, then she should say the state should protect everyone from *both* the Only Nice Law *and* the Only Nice Rule. The Only Nice Law and Only Nice Rule have the *same* effect on everyone's freedom of speech; so whatever she says about

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<sup>346</sup> My experience with libertarians suggests they often think negative freedom and property rights cannot clash, and more-or-less amount to the same thing. I believe cases like this challenge this thought: they illustrate a tension between negative freedom and property rights, which needs to be resolved if negative freedom and property rights are going to live harmoniously together. My thanks to Brad Roth for pointing this out.

the *Law*, she should say the *same* about the *Rule*. She says the state should protect everyone from the *Law*. So she should say the state should protect everyone from the *Rule too*.

Which brings us back to the Only State Reason. The first reason why the libertarian could buy into the Liability -H interpretation is the Only State Reason: i.e. the belief that the state should *only* protect everyone from liability interferences *it causes*. Importantly, the Only Nice *Rule* is *not* a liability interference caused by the state; it is caused by the Riches. And the libertarian should say the state should protect everyone from the Only Nice *Rule*. As such, the libertarian should reject the Only State Reason.

Which brings us to the second reason for the Liability -H interpretation: the Falls Short Reason. So far, all we have shown is the libertarian should say the state should protect everyone from some liability interferences, *including* some which the state does not cause. But that does *not* mean the state should *also* protect everyone from homelessness. Perhaps the libertarian assumes homelessness falls short here. While she may not be able to precisely tell us which liability interferences the state should protect everyone from, she at least knows it includes the Only Nice Law and Rule, but believes it does not include homelessness.

Here, I want to challenge this belief. And to do that, I will return to the Only Nice Law and Rule. As I discussed, the libertarian should say the state should protect everyone from both. But what do both of these interferences have in common which make them worthy of being protected against by the state? I contend the answer is this: they both *profoundly* impact one's negative freedom in some relevant respect. I have no precise definition for what this means, so I hope these illustrations will suffice. Some liability interferences do not meaningfully attack one's negative freedom. For example, being liable to be removed from a restaurant for shouting ten expletives in a row does not—at least typically—meaningfully attack one's freedom of speech.

Some liability interferences do meaningfully attack one's negative freedom, but we allow them for the sake of others' negative freedom (and/or rights). For example, being liable to be removed from a

restaurant for talking about politics *at all* does—at least to me—meaningfully attack one’s freedom of speech. Political speech is an important tool for keeping one’s state in check, and that tool is often only useful if she can use it in places where persons gather. At the same time, the restaurant’s owner *owns* her restaurant, and we want her to be free to run her restaurant as she sees fit. Here, she wants to create a family-friendly environment, and she knows that political *talk* often turns into political *yelling*. And so, she wants to prohibit political talk altogether. As such, we must weigh these freedoms against each other. So long as guests are free to talk politics *in every other restaurant and public place*, there is reason here to keep the state out and let the owner make her guests so liable, even though that meaningfully attacks their freedom of speech.

Some liability interferences, however, have such a *profound* impact on one’s freedom that the state should protect everyone from them. One example is the Only Nice Law. The Only Nice Law *profoundly* impacts one’s freedom of speech by making her legally liable to be *removed for even politely politically dissenting in every public place*. Another example is the Only Nice Rule. It too *profoundly* impacts one’s freedom of speech by making her (in some sense) liable to be *removed for doing the same thing in all the same places*. In both examples, the liability interference—whatever the cause—makes one seriously unfree to politically dissent outside of her own home. As such, whatever value we place on one’s freedom to politically dissent—the pursuit of truth, the respect of individuals, the protection of marginalized groups, and so on—both examples run afoul in the most egregious ways. To put it simply: any libertarian (primarily concerned about negative freedom) will agree both examples are liability interferences which profoundly impact one’s freedom of speech, and the state should protect everyone from both for that reason.

To sum up, let’s start by simplifying our terminology:

**Profound liability interference:** a liability interference which *profoundly* impacts one’s negative freedom in a relevant respect

If I am right, then the libertarian should say the following: the state should protect everyone from profound liability interferences, whether the state caused them or not. Admittedly, which liability interferences count as *profound* is tricky and debatable. But for my purposes, we merely need to ask is *homelessness* one of them? If yes, then the libertarian should say the state should protect everyone from it, whether the state caused it or not. And I believe the answer is yes.

To demonstrate why, we need to show three things: (1) homelessness is a *liability interference*, (2) it impacts one's negative freedom in a *relevant respect*, and (3) it does so *profoundly*. I already argued for (1), so now I need to argue for (2) and (3). Regarding (2): if there is *any* freedom worthy of concern, it is the freedom to *perform one's necessary bodily functions* and *simply exist*. Existence is a prerequisite for doing anything, and no one can choose to always stay awake and never go to the bathroom. If one is not free to say mean things about her president, then her freedom *of speech* is impacted. But if one is not free to exist or perform necessary bodily functions, then her freedom *to be* is impacted. And *being* comes before *speech*. So any libertarian who says liability interferences on *speech* are relevant (like the Only Nice Law and Rule) should say the same thing about liability interferences on *being*.

Regarding (3): homelessness does not merely impact one's negative freedom to be in some trivial or even moderate sense; it does so *profoundly*. As I discussed earlier, in the United States today, homeless persons are often not free to be in most places. Homeless persons have no place of their own and often lack the special permissions or privileges to be on private or collective property. Furthermore, most unowned land today is often out of reach or dangerous to be in. The result is that, for many homeless persons, they are only free to be on communal property like parks, streets, and subways. But their freedom to be is often even limited in those places, since many of those places have curfews, limit where one can go to the bathroom, and have ordinances which make it illegal to sleep there. And all this assumes these communal places *will continue to be* communal places. If the libertarian ever permitted wealthy

individuals to purchase those communal places for themselves,<sup>347</sup> homeless persons could—and likely would—be even less free to be there.<sup>348</sup>

In short, the libertarian should say the state should protect everyone from profound liability interferences, whether the state caused them or not. And homelessness is one of—if not *the*—liability interferences which most profoundly impacts one’s negative freedom in one of—if not *the*—most relevant respects in the United States today. So by implication, the libertarian should say the state (or at least the United States) should protect everyone from *homelessness*, whether or not the state caused it. As such, she should adopt the Liability +H interpretation. And that interpretation says the state should protect everyone from homelessness, *on the grounds of protecting everyone’s negative freedom*.<sup>349</sup>

To sum up, the Liberty Thesis is actually *ambiguous*, yielding three different interpretations: the Actual interpretation, the Liability -H interpretation, and the Liability +H interpretation. While the libertarian can choose whichever interpretation she wants, she should choose the third. As I discussed, she already says the state should protect everyone from the Only Nice Law; and provided her primary concern is *negative freedom* (and not *property rights*), she should say the same about the Only Nice Rule. The Liability +H interpretation—but not the Actual interpretation—can say all this. And the Liability +H interpretation—but not the Liability -H interpretation—can explain why. So the libertarian should choose the Liability +H interpretation. But that just means that—when it comes to the Liberty Thesis—the libertarian should say the state should protect everyone from homelessness.

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<sup>347</sup> As Rothbard (2006: 248-9) advocates.

<sup>348</sup> As Waldron (1991: 300-2) points out.

<sup>349</sup> Here, the libertarian may claim that all I have shown is the state should protect *some persons* from homelessness, not *all of them*. For example, she may think the state here should *only* protect those who *do not deserve* homelessness, not those who *do*. I will ignore this response for two reasons. First, this suggestion would require the *state* to determine what persons do and do not deserve. And if *anyone* should have a problem *that*, it is the *libertarian* (see Zwolinski 2015: 524-6). Second, the Liberty Thesis is only concerned with *negative freedom*. And on the grounds of *negative freedom*, I can see no reason here to distinguish some persons from others. The libertarian is free to add in *other considerations* here, but that would stretch beyond the topic at hand and would require its own discussion.

## Practical Defense of Premise 1

Everything I said in the previous subsection is a rather *abstract* defense for why—on the grounds of protecting everyone’s negative freedom—the libertarian should say the state should protect everyone from homelessness. Now, I want to offer a *more practical* defense for why the libertarian should say so. The Liberty Thesis says the state should, if nothing else, protect *everyone* from *actual interferences*. *Everyone*, including both those *with* and *without* homes; and *actual interferences*, including *violent offenses (like murder, rape, and assault)* and *property offenses (like burglary and theft)*. So now, we have a question: what is the relationship between homelessness and these offenses?

The answer is two-fold. First, contrary to common myths about homelessness, homeless persons seemingly do *not* commit more *violent offenses* than housed persons. In fact, there is reason to think they commit *less*.<sup>350</sup> However, homeless persons *do* commit more *property offenses*. After looking at the criminal behavior of homeless males, Snow et. al. concludes that, when it comes to burglary, theft, and auto theft, “The arrest rates for the homeless are *significantly higher* in all three cases than for the general male population.”<sup>351</sup> After looking at the relationship between homelessness, mental illness, and criminal activity, Fischer et. al. concludes “[Our] Findings supported our hypothesis that both street homelessness

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<sup>350</sup> We can see this in numerous studies. Here is a sampling: In response to the myth that “Persons who are homeless are violent, dangerous, and/or are lawbreakers”, the Department of Commerce (n. d.: 2) responds “A person who is homeless is no more likely to be a criminal than a housed person [except for camping ordinances]” and “A person who is homeless is less likely to perpetrate a violent crime than a housed person.” In response to the myth that “Homeless persons commit more violent crimes than housed persons”, the National Law Center On Homelessness and Poverty (2002: 1) responds “Homeless persons actually commit less violent crimes than housed persons.” Speiglmán & Green (2002: 22) look at the arrest patterns of six subgroups (three under *adults*, three under *minors*), and conclude “In all of the subgroups for both adults and juveniles except one, homeless arrestees were significantly less likely to be charged for a violent offense than housed arrestees. The second cluster for minors, which was characterized by committing more severe or violent crimes, did not reflect any differences between homeless and housed persons.” Snow et. al. (1989: 537-538) looks at the criminal behavior of homeless males and concludes that, with regards to violent offenses, “homeless arrest rates are either statistically no different or lower than those for the general male population.”

Based on this evidence, I will assume homeless persons do *not* commit more violent offenses than housed persons. That said, if I am mistaken, then my practical defense here is *even stronger* than I will make it out to be. My thanks to Brad Roth for pointing this out.

<sup>351</sup> Snow et. al. (1989: 538-539); my italics.

and sheltered homelessness would be associated with higher likelihoods of committing non-violent crimes” and “results indicated that the likelihood of committing a non-violent crime increases as homelessness increases.”<sup>352</sup>

Why are homeless persons more likely to commit these property offenses? The most likely answer is *so they can survive*. As Snow et. al. makes clear, when we look closer at homeless arrests for property offenses, a *substantial* number are for relatively harmless offenses for the sake of survival: “In the case of burglary, the plurality of arrests were for breaking into warehouses and abandoned or unused buildings, primarily for the purpose of securing a place to sleep or escaping the elements. And in the case of theft, nearly 50 percent of all arrests were for shoplifting, mostly for cigarettes, food and drink, and occasionally calculators and other such items that are then sold on the streets or in pawn shops.”<sup>353</sup> And as Fischer et. al. puts it: “Rather than thinking of homeless individuals as criminals, it may be more accurate to think of them as persons struggling to get by whose engagement in non-violent illegal activities is driven by survival needs.”<sup>354</sup>

Second, homeless persons are *substantially* more vulnerable to being victims of violence. According to the National Coalition for the Homeless, from 1999-2017, there were “1,769 acts of violence against homeless individuals by housed perpetrators”, and that “476 of the victims have lost their lives as a result of the attacks.”<sup>355</sup> To put that into perspective: in that nineteen-year period, the number of homeless victims who died is *more than double* the number of victims who died from *all hate crimes combined*.<sup>356</sup> And just to be clear: the *actual* number of attacks and deaths is likely *much* higher. As the National Coalition for the Homeless puts it: “persons experiencing homelessness are often treated so

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<sup>352</sup> Fischer et. al. (2008: 262).

<sup>353</sup> Snow et. al. (1989: 537).

<sup>354</sup> Fischer et. al. (2008: 262).

<sup>355</sup> National Coalition for the Homeless (2018: 4).

<sup>356</sup> *Ibid.* 6.



poorly by society that attacks are *forgotten or unreported*" (emphasis added).<sup>357</sup> Additionally, the National Coalition for the Homeless *only* looks at attacks from *housed perpetrators*, not *other homeless individuals*.<sup>358</sup> And as we will see later, homeless individuals *also* attack other homeless individuals (whose attacks may also sometimes be forgotten or unreported). As such, the *total* number of homeless victims is likely *substantially* higher.<sup>359</sup>

Furthermore, after surveying 516 homeless adults across five cities, Meinbresse et. al. finds that 49% of them reported being a victim of violence.<sup>360</sup> To put that into perspective: Truman finds that *only* 2% of the general population reported the same.<sup>361</sup> So to put it differently: these homeless adults experienced violence *almost twenty-five times* more frequently than the general population.<sup>362</sup> Additionally, among these homeless victims of violence, 49% reported they were robbed, including items like their money, clothing, medication, and personal identification documents. Finally, Meinbresse et. al.'s results aligned with what other studies found: that the *longer* someone is homeless, the *more likely* she will be a victim of violence.<sup>363</sup>

Why are homeless persons more likely to be victims of violence? There are likely many answers, but three seem prominent. The first two are offered by the National Coalition for the Homeless. One, unsurprisingly, is that homeless individuals are much easier targets, simply due to their lack of housing. Two, perhaps more surprisingly, many homeless persons are often attacked out of bias and hatred; so much so that the National Coalition for the Homeless advocates including and protecting homeless

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<sup>357</sup> Ibid. 7.

<sup>358</sup> Ibid. 6.

<sup>359</sup> The National Coalition for the Homeless (2014: 6) concludes that the mere number of homeless attacks *from housed perpetrators* is likely *substantially higher*, given how underreported these attacks are.

<sup>360</sup> Meinbresse et. al. (2014: 126).

<sup>361</sup> Truman (2011).

<sup>362</sup> As the National Coalition for the Homeless (2014: 22) points out.

<sup>363</sup> Meinbresse et. al. (2014: 123, 127, 130).

individuals in hate crimes legislation.<sup>364</sup> The third is offered by Fischer: that homeless persons' environment encourages them to attack each other. As Fischer puts it:

In contrast [to *street* homelessness], we found that *sheltered* homelessness *significantly* predicted *increases* in *violent crime*. One explanation for this finding could be that temporary shelters increase contact among individuals who already experience high levels of stress and increased violent tendencies from being homeless. Another possibility is that the atmospheres of these settings may unintentionally create stressful and confrontational living conditions that lead to violence, independent of the stress that accompanies homelessness. Again, it is worth noting that the likelihood of committing a violent crime increased within participants as they intermittently experienced sheltered homelessness. In other words, these findings suggest that homeless individuals are *not inherently violent*, but that some may become violent *when exposed to temporary living situations such as shelters*.<sup>365</sup>

In short, when it comes to the Liberty Thesis, there is a practical reason to say the state should protect everyone from homelessness. If nothing else, the Liberty Thesis says the state should protect *everyone*—both those *with* and *without homes*—from *actual interferences*—like *violent* and *property offenses*. Unfortunately, there is a problem: there is a *strong* relationship between homelessness and these offenses. While homeless persons likely do *not* commit more violent offenses (except when placed in certain environments, like shelters), they do commit *substantially* more property offenses, most likely out of need for their survival. Furthermore, homeless persons are *far more* likely to be victims of violence. This is for a variety of reasons, including the fact that they are easier targets of violence, are victims of bias and hatred, and are sometimes in environments that encourage violent behavior. As such, one of the most obvious ways for the state to protect everyone from these offenses is simply to *protect everyone from becoming and staying homeless in the first place*.

Importantly, we need not merely *assume* this is obvious. Instead, we can turn to the Justice Policy Institute. After conducting a literature review and comparing data on national and state-level spending with crime and incarceration rates, the Justice Policy Institute reaches a handful of conclusions. For my purposes, I will only look at two. First, it finds that “For populations who are most at risk for criminal

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<sup>364</sup> National Coalition for the Homeless (2018: 5, 19).

<sup>365</sup> Fischer et. al. (2008: 262); my italics.

justice involvement, supportive or affordable housing<sup>366</sup> has been shown to be a cost-effective public investment, lowering corrections and jail expenditures and freeing up funds for other public safety investments. Additionally, providing affordable or supportive housing to persons leaving correctional facilities is an effective means of reducing the chance of future incarceration."<sup>367</sup> Second, it finds that:

*...an increase in spending on housing is associated with a decrease in violent crime at the national level and a decrease in incarceration rates at the state level. An increase in spending on housing and community development paired with a decrease in spending on corrections is associated with both lower violent crime rates and lower incarceration rates. Violent crime rates decreased when funding was shifted to housing from corrections.*<sup>368</sup>

To put it simply: one of the most cost-effective ways the state can protect everyone from actual interferences is to *help persons get homes, keep homes, and have access to services which support and improve their health, skills, employment, and quality of life*. It is an effective way to protect the public and lower recidivism. It is associated with lower crime and incarceration. And it can even save the state money, which it can then use to provide even better protection.<sup>369</sup> In short, one of the most effective and efficient ways to protect everyone's negative freedom is simply to protect everyone from becoming and staying homeless. As such, when it comes to the Liberty Thesis, the libertarian should—as a matter of practicality—say the state should protect everyone from homelessness.

Here, it might be worth mentioning that, *just because* X effectively and efficiently protects everyone from violent and property offenses, it does *not* follow that the libertarian should support X. Suppose, for example, that the *most effective and efficient* way to protect everyone from these offenses

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<sup>366</sup> The Justice Policy Institute (2007: 2) defines 'affordable housing' as "permanent housing that is affordable to persons making 80 percent of the median income in the area." It defines 'supportive housing' as "housing that provides on-site services to individuals in need of support to improve or maintain their health, independent living skills, income, employment, socialization skills, quality of life, and, most important, maintain their housing."

<sup>367</sup> Ibid. 1.

<sup>368</sup> Ibid. 10; my italics.

<sup>369</sup> Indeed, as I brought up on page 44, there is burgeoning evidence that Medicaid expansion reduced violent crime and saved money doing it. See Vogler (2020: esp. 1166, 1190).

is to *make it illegal to leave one's home and interact with others*. However effective and efficient that way is, the libertarian should and surely would still oppose it.<sup>370</sup>

But this acknowledgement changes nothing. If the libertarian takes the Liberty Thesis seriously, then she should support the state *effectively* protecting everyone's negative freedom; and assuming she does not want the state to waste money and resources, she should support the state doing so *efficiently* as well. Thus, when presented with an effective and efficient way the state could protect everyone's negative freedom, she should support it *unless she has independent reason to oppose it*.

And here, I simply see no independent reason for why the *libertarian* should oppose the state doing so *by protecting everyone from homelessness*. Consider: it is not difficult to explain why a libertarian should oppose a law that makes it illegal to leave one's home and interact with others.<sup>371</sup> But on what grounds does the libertarian have to oppose the state protecting everyone from homelessness? She cannot appeal to the distinction between *negative and positive freedom*. Here, the rationale is *not* to make homeless persons able to do more; it is to more effectively and efficiently protect everyone (homeless and housed) from violent and property offenses. She cannot appeal to the effect this would have on others' negative freedom. Unlike laws which restrict speech and movement, protecting everyone from homelessness does *not* restrict the freedoms of others. The only thing this protection requires is the state to tax its citizens, establish institutions, and carry out projects by willing participants. And the libertarian should permit that much, *since that is what the state needs to do to protect everyone from actual interferences in any sense*.<sup>372</sup> If anything, the more she hates state-spending, the more reason she has to *support* state protection from homelessness. Again, protection from homelessness can and has

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<sup>370</sup> At least under normal circumstances. I will ignore if and how that changes for abnormal circumstances, like the COVID-19 pandemic.

<sup>371</sup> Though seemingly that explanation would require the libertarian to admit the state should protect everyone from some *liability interferences*, since again, that is what laws like this are. And that just reintroduces our discussion from the previous subsection.

<sup>372</sup> See pages 66-7.

been *more cost-effective* than spending on corrections alone.<sup>373</sup> Finally, as we saw in the previous section, she cannot appeal to the values of options, self-development, or protection from coercion and oppression.<sup>374</sup> For surely enough of what I said there can *also* be said about *homelessness*. In short, I simply cannot find a reason for the libertarian to oppose *this way* of protecting everyone's negative freedom. And if she has no reason to oppose it, then on the grounds of its efficacy and efficiency, she should support it.

To sum up these two subsections: Premise 1 says the libertarian should say the state should protect everyone from homelessness. There are two reasons why: the abstract reason and practical reason. Abstractly, the libertarian should say homelessness *itself* is a profound liability interference that the state should protect everyone from. Practically, if nothing else, the libertarian must say the state should at least protect everyone from violent and property offenses. And given that the state does this effectively and efficiently by protecting everyone from homelessness—and that the libertarian has no independent reason to oppose the state from doing so—the libertarian should say the state should do just that. In short, whether for abstract or practical reasons, the libertarian should say the state should protect everyone from homelessness *on the grounds of protecting everyone's negative freedom*. And so concludes my defense of Premise 1. Now for my defense of Premise 2: that if the libertarian says this much, then she should support universal health coverage.

#### Defense of Premise 2

To keep everything organized, I will break this subsection up into two parts: how poor health relates to homelessness and how that relates to universal health coverage.

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<sup>373</sup> If she is driven to reduce state-spending as much money as possible, she should *really support* the state *preventing* homelessness. According to the Substance Abuse and Mental Health Services (n. d.): "Research shows interventions to *prevent* homelessness are more cost effective than addressing issues *after* someone is already homeless" (my italics).

<sup>374</sup> Or desert, for that matter. See footnote 349 (page 180).

### Poor Health and Homelessness

In 1988, the Institute of Medicine reported that poor health is a primary cause of homelessness.<sup>375</sup> As it observed, health problems and homelessness interact with each other in three troubling ways. First, some health problems *cause* homelessness. As it notes, “certain illnesses and health problems are *frequent antecedents* of homelessness.”<sup>376</sup> The most common example is major mental illnesses, which make it difficult for one to cope with her surroundings, and others to cope with her behavior. But there are other examples too. AIDS opens one up to more infections, thereby making it harder to work and pay rent. Accidental injuries also make one unable to work; and during that time, Workers’ Compensation often fell short of fully protecting those accidentally injured at work. Degenerative diseases that accompany old age can make one unable to work, navigate the health care system, and perform even simple tasks. The result is all these health problems—without support—can lead to homelessness.<sup>377</sup>

Second, some health problems *result from* homelessness. As the Institute of Medicine observed, homelessness increases the risk of many health problems. This includes “diseases of the extremities and skin disorders”, “trauma, especially as a result of physical assault or rape”, “malnutrition, parasitic infestations, dental and periodontal disease, degenerative joint diseases, venereal diseases, hepatic cirrhosis secondary to alcoholism, and infectious hepatitis related to intravenous (IV) drug abuse.”<sup>378</sup> Furthermore, it notes that homelessness can turn minor health problems into major ones, as it illustrates with the following example:

Doris Foy's varicose veins occasionally result in swollen ankles. When homeless, she sleeps upright, and her legs swell so severely that tissue breakdown develops into open lacerations. She covers these with cloth and stockings—enough to absorb the drainage but also to cause her to be repugnant to others because of the smell and unsightly brown stains. She is eventually brought to a clinic by an outreach worker. When the cloth and the stockings are removed from the legs,

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<sup>375</sup> Institute of Medicine (1988). See also DiPietro (2020).

<sup>376</sup> Institute of Medicine (1988: 39).

<sup>377</sup> *Ibid.* 39-41.

<sup>378</sup> *Ibid.* 41.

there are maggots in the wounds. She is taken to the emergency room of a hospital, where her wounds are cleaned.<sup>379</sup>

Third, homelessness *complicates the treatment* of health problems. As the Institute of Medicine noted, some treatments require bed rest, which is difficult—if not impossible—when the patient does not have a bed. Diabetes is not difficult to treat if one has a home. But it far more difficult to treat if one cannot refrigerate her syringes, if her syringes are mistaken for drugs by others (which warrants her removal from a shelter), or if she does not have access to an adequate diet. And in general, it is difficult to treat oneself when her drugs are stolen, and her arguing about it could be grounds to put her out of her shelter and back on the streets.<sup>380</sup> Given this interaction between health problems and homelessness, it is no surprise that the Institute of Medicine concluded “homeless persons experience a wide range of illnesses and injuries to an extent that is *much greater* than that experienced by the population as a whole.”<sup>381</sup>

That report is decades old. But today, numerous studies confirm what it observed.<sup>382</sup> Hayashi explains why:

The connection between housing and health is coldly logical. The sick and vulnerable become homeless, and the homeless become sicker and more vulnerable. Although the tipping point is often the loss of a job, sickness or injury often precede it. Sickness and injuries make holding a job difficult, which leads to income declining and homelessness for those without a safety net...Once homeless, the healthy become sick, the sick get sicker, and the downward spiral accelerates.<sup>383</sup>

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<sup>379</sup> Ibid. 41.

<sup>380</sup> Ibid. 42.

<sup>381</sup> Ibid. 68; my italics.

<sup>382</sup> DePietro (2020) writes that “More than 30 years ago, the Institute of Medicine found that poor health was a primary cause of homelessness, that the traumatic experience of homelessness created new health care conditions and exacerbated existing ones, and that homelessness prevented vulnerable persons from accessing needed care. Many studies have confirmed those findings. Persons experiencing homelessness have higher rates of chronic, acute, and behavioral health conditions, which are compounded by stress, weather conditions, and social isolation. Poor health is the primary reason this group also has high emergency department and inpatient use. For providers working in the field of homeless health care, these concepts have been shortened into the mantra: “homelessness is hazardous to one’s health.””

<sup>383</sup> Hayashi (2016).

## The Necessity of Universal Health Coverage

How does the state protect everyone from homelessness, knowing that poor health is one of homelessness's primary causes? Unsurprisingly, there is no simple answer. However, one thing seems clear: if the state is going to protect everyone from homelessness, it must *at least* guarantee everyone can afford basic health care.

There are at least two reasons why. First, there is Institute of Medicine's report. As it noted, while homeless persons have numerous barriers to accessing the health care they need, "the *most significant* barriers to access are *financial*."<sup>384</sup> Furthermore, while financing mechanisms (like Medicaid, other benefit programs, or direct subsidies) are not sufficient to address all these barriers, they are "necessary" and are "obviously the first precondition".<sup>385</sup> To put it more simply: the primary reason why homeless persons cannot get the health care they need is simply because they cannot afford it. And while guaranteeing they can afford it will not address all their health care problems, it is a necessary first step.<sup>386</sup>

Second, there is the data on Medicaid and Medicaid expansion. I discussed Medicaid and Medicaid expansion earlier;<sup>387</sup> but here, I will go into more detail. Medicaid is the United States' program for insuring low-income persons. Anyone eligible for Medicaid can receive it by demonstrating their eligibility.<sup>388</sup> Prior to the Affordable Care Act, many homeless persons had difficulties receiving Medicaid for multiple reasons. First, every state has its own Medicaid program, with its own eligibility requirements. For example, in 1988, a person making \$414 a month (before medical expenses) was eligible for Medicaid in Wisconsin; but a person making any more than \$117 a month was ineligible for Medicaid in

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<sup>384</sup> Institute of Medicine (1988: 100).

<sup>385</sup> *Ibid.* 100.

<sup>386</sup> This is evident in Meinbresse et. al. (2014)'s findings. The National Coalition for the Homeless (2014: 22) sums it up nicely: "[in Meinbresse et. al.'s study,] 68% of the homeless victims of violence, who sought and received help, were *unable* to pay the associated medical bills."

<sup>387</sup> Pages 146-7.

<sup>388</sup> CRS Report RL32237 (2015: 12-3).



Tennessee.<sup>389</sup> Second, demonstrating one’s eligibility can be difficult. The Center on Budget and Policy Priorities offers an illustrative example: “Persons experiencing homelessness are more likely to have a disability than the general population but have a harder time proving it, in part because lack of access to health care can mean they have limited medical evidence of their conditions”.<sup>390</sup> Third, it is not always obvious if one is eligible or how to apply for Medicaid. And fourth, states can differ in how modernized and simplified their Medicaid enrollment processes are.<sup>391</sup> The result was most homeless adults were only able to get Medicaid if they could prove they had a qualifying disability, were pregnant, or were over sixty-five.<sup>392</sup>

The Affordable Care Act made it easier for homeless persons to receive Medicaid. First, the Affordable Care Act allowed states to *expand Medicaid*. If a state expanded Medicaid, then everyone who made up to 138% of the federal poverty line was automatically eligible for Medicaid.<sup>393</sup> Second, the Affordable Care Act required states to modernize and simplify their enrollment processes. Third, the Affordable Care Act increased outreach and enrollment efforts to help eligible persons actually apply and receive Medicaid.<sup>394</sup> The result was *far more* persons in general,<sup>395</sup> and homeless persons in particular,<sup>396</sup> received Medicaid.

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<sup>389</sup> Institute of Medicine (1988: 83).

<sup>390</sup> Center on Budget and Policy Priorities (2020).

<sup>391</sup> Wachino et. al. (2014).

<sup>392</sup> Center on Budget and Policy Priorities (2020).

<sup>393</sup> Why would a state choose to expand Medicaid now, instead of earlier? Because of funding. To keep this simple, let’s call everyone who is ineligible for Medicaid but falls below the 138% poverty line the *138%ers*. Each state’s Medicaid program is paid for in part by the state government, and in part by the federal government. Depending on the state, the federal government pays around 50-73%, leaving the remaining 23-50% for the state government to pay. As such, prior to the Affordable Care Act, a state was allowed to include the 138%ers, but it would have to pay around a quarter to a half of the cost of doing so. Given how much states already spent on their Medicaid programs—and how they, but not the federal government, are required to balance their budgets—they typically could not or were unwilling to pay that cost. Under the Affordable Care Act, however, if a state expanded Medicaid, the federal government would *fully* pay for the 138%ers up to 2016, phase down to 90% in 2020, and pay 90% of the costs afterwards. This meant states could include the 138%ers at *almost no additional cost to them*, and so were more able and willing to do so (Snyder & Rudowitz 2015).

<sup>394</sup> Wachino et. al. (2014).

<sup>395</sup> Guth et. al. (2020), Wachino et. al. (2014).

<sup>396</sup> DiPietro (2020), DiPietro et. al. (2014), and Warfield et. al. (2016).

The take-away from this brief history lesson is this. Prior to the Affordable Care Act, many homeless persons were uninsured. After the Affordable Care Act, many became insured through Medicaid. Thus, if we want to see how coverage affects homelessness, we can look at how Medicaid expansion (along with modernization, simplification, and outreach efforts) affected this previously uninsured homeless population.

DiPietro sums up these effects nicely.<sup>397</sup> First, Medicaid expansion has *improved access to services and quality of care*. As she points out, while studies typically do not focus on homeless populations, Medicaid expansion “has been shown to increase access and improve quality of care and health outcomes, frequently on outcome measures that are especially important for persons who are homeless.” For example, it lowered overdose deaths and hospitalizations; it increased preventative care and health care quality; and it increased access to prescription drugs, treatments, screenings, and surgeries for conditions which cause and perpetuate homelessness.

Second, Medicaid expansion *increased resources for health care providers who serve homeless populations*. Since Medicaid expansion substantially increased the number of homeless persons insured, the health care providers which serve them now receive more Medicaid reimbursements. This, in turn, reduces these providers’ need to survive on limited government grants. The result is these providers have more financial stability, can hire more staff, and offer better care.

Third, Medicaid expansion *better addressed social determinants of health*. For example, since Medicaid reduces or eliminates one’s out-of-pocket health care costs, those with Medicaid have more income to spend on their other needs. As DiPietro says: “A number of studies have focused on debt and other economic indicators, finding that Medicaid expansion reduced unpaid medical bills and prevented

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<sup>397</sup> DiPietro (2020). Importantly, I slightly modify how DiPietro relays this information. She claims that Medicaid expansion *increased dignity and inclusion*. While that may be right, all her data seems to show is that expansion improved persons’ peace of mind, decreased racial and ethnic disparities, and saved lives. I leave it open whether that implies expansion increased dignity and inclusion as well. Furthermore, I only reference the effects which I find relevant to my discussion at hand.

new delinquencies,<sup>398</sup> reduced the number of loans taken out each month and decreased the amount of payday loan debt, and reduced the number of unpaid bills and the amount of debt sent to third-party collection agencies.” Furthermore, as she points out: “for every 1,000 new Medicaid enrollees, there were 22 fewer evictions per year—an important homeless prevention outcome.”

Fourth, Medicaid expansion *improved peace of mind*. As DiPietro points out, studies show Medicaid beneficiaries had “decreases in depression”, “reductions in stress associated with paying rent or food”, and had a “greater sense of well-being”. Furthermore, when it came to parents on Medicaid, expansion “reduced psychological distress and improved mental health status”. And this is important, for as she puts it: “worrying less about health care allows persons who are homeless to focus more attention on finding food, housing, and employment.”

Fifth, Medicaid expansion *reduced racial and ethnic disparities*. As DiPietro reminds us, there are long-standing disparities among Caucasian, African American, and Hispanic populations in coverage and access to health care. Furthermore, there are disparities in homelessness. For example, while African Americans only make up 14% of the US population, they account for 41% of those without stable homes. Expansion helped close these gaps by increasing the number of minorities with Medicaid.

In short, universal health coverage plays a necessary role in protecting everyone from homelessness. Poor health is a primary cause of becoming and staying homeless, so any protection from homelessness will have to address this cause. Although we may not know *what exactly* that requires, we know it at least requires universal health coverage. IOM concluded decades ago that addressing financial barriers to accessing health care is a necessary first step, and Medicaid expansion demonstrates how much health care affordability protects persons from becoming and staying homeless. Thus, in order to truly protect everyone from homelessness, the state would need to guarantee everyone can afford basic

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<sup>398</sup> This is especially important, considering that medical bills are the leading cause of personal bankruptcies, which often precede homelessness (Hayashi 2016).

health care. As such, if the libertarian says the state should protect everyone from homelessness, then she should support universal health coverage.

### Summary

To sum up the whole argument in this section: First, the libertarian should say the state should protect everyone from homelessness. The reason why is two-fold: abstractly, she should say homelessness itself is a profound liability interference that the state should protect everyone from; practically, she should say the state should protect everyone from homelessness as an effective and efficient way to protect everyone—both those with and without homes—from actual interferences—like violent and property offenses. Second, if the libertarian says this much, then she should support universal health coverage. The reason why is because poor health is a primary cause of becoming and staying homeless, and universal health coverage is necessary to protect everyone from this cause. Therefore, the libertarian should support universal health coverage *on the grounds of protecting everyone's negative freedom*.

### Section 3: Conclusion

In conclusion, the relationship between the Liberty Thesis and universal health coverage is more complex than it initially appeared. On its surface, the Liberty Thesis seemingly opposes the United States getting universal health coverage. The Liberty Thesis says the United States should *only* protect everyone's *negative* freedom, and not violate anyone's negative freedom for the sake of another's freedom. Universal health coverage seemingly requires the United States to *violate* some persons' negative freedom, in order to *promote* others' positive freedom. And so, getting universal health coverage seemingly requires the United States to do what the Liberty Thesis forbids.

However, as I argued, there are two problems with this surface-level reading. First, the Liberty Thesis appears obviously counter-intuitive, crying out for justification. Yet, *all* the justifications I looked at actually *support* universal health coverage. And while this list of justifications is not complete, it is telling. Second, there is both abstract and practical reason to say that—per the Liberty Thesis—the state should protect everyone from homelessness; and that requires universal health coverage.

What these problems show is there is *more than one way* to read the relationship between the Liberty Thesis and universal health coverage. On one reading, the Liberty Thesis *opposes* the United States getting universal health coverage; on another, the Liberty Thesis *supports* it. Let's call these the *Opposing Reading* and *Supporting Reading*, respectively. Here, the libertarian *can* go with either, and whichever one she goes with will determine whether she opposes or supports universal health coverage.

But although she *can* go with either, she *should* go with the *Supporting Reading*. First, the *Supporting Reading* can be justified by *any or all* the justifications I discussed. The *Opposing Reading*, however, can be justified by *none* of them. That means, if she goes with the *Opposing Reading*, she must either find another justification or simply go without one. The former seems difficult, since that justification cannot appeal to—and must somehow outweigh—the value she places on options, self-development, and protection from coercion and oppression. And the latter just leaves her wondering why she cares so much about this thesis in the first place.

Second, the *Supporting Reading* understands the relationship between negative freedom and homelessness. Abstractly, it can *say* and *explain why* the state should protect everyone from liability interferences like the Only Nice Law and Only Nice Rule. And it acknowledges what these interferences and homelessness have in common. Practically, it recognizes that one of the most effective and efficient ways to protect everyone—both those with and without homes—from actual interferences—like violent and property offenses—is simply to protect everyone from homelessness.

By contrast, the Opposing Reading seemingly ignores the relationship between negative freedom and homelessness. Abstractly, it seemingly either fails to say or explain why the state should protect everyone from both the Only Nice Law and Only Nice Rule. And any explanation it could offer would likely fail to acknowledge the important similarities these interferences and homelessness share. Practically, it seemingly fails to recognize how simply protecting everyone from homelessness effectively and efficiently protects everyone from actual interferences. And if it does recognize this, it seemingly decides to sacrifice that efficacy and efficiency for no good reason.

In short, when it comes to the Supporting Reading, it is easy to justify the Liberty Thesis and acknowledge the relationship between negative freedom and homelessness. When it comes to the Opposing Reading, however, it is difficult—and maybe even impossible—to do so. As such, if the libertarian goes with the Supporting Reading, her libertarianism will come off rational, morally defensible, and understanding of the reality of homelessness. If she goes with the Opposing Reading, however, her libertarianism will come off irrationally dogmatic, needlessly cruel, and seemingly not get or stubbornly refuse to acknowledge how—abstractly and practically—protection from homelessness effectively and efficiently protects one’s negative freedom. And so, while she *can* go with either reading, she *should* go with the *Supporting* Reading. But that just means she should—on the grounds of protecting everyone’s negative freedom—support universal health coverage.

In the previous chapter, I discussed the relationship between universal health coverage and the Anti-Tax Thesis. In this chapter, I discussed the relationship between universal health coverage and the Liberty Thesis. But what if the libertarian’s *ultimate* concern is neither taxation nor freedom, but instead *rights*? Then my work will not be done unless I discuss the relationship between universal health coverage and the Property Rights Thesis. Which brings us to my final chapter.

## CHAPTER 4: THE PROPERTY RIGHTS THESIS

In this chapter, I will look at the relationship between universal health coverage and the *Property Rights Thesis*. Before we look at the relationship, however, I need to first discuss what the Property Rights Thesis is. As I discussed in Chapter 1, the Property Rights Thesis is simply the view that *the United States should protect and enforce everyone's property rights*. But that won't get us very far if we don't know what *property rights* are.

In truth, property rights are very difficult to pin down; so much so that some no longer try. This is for at least two reasons. Firstly, scholars disagree about what a right *fundamentally is*. As such, while they typically agree about what rights *do*, they disagree about what they actually *are*.<sup>399</sup> Secondly, scholars disagree about what private property is; and given the difficulty of trying to define 'private property', some conclude that the term is actually undefinable.<sup>400</sup> Given these scholars' disagreements and obstacles to defining, it would be impossible to deeply explain what *property rights* are in a way all found understandable and acceptable.

Luckily for my purposes, however, I do not need to deeply explain what property rights *are*. Instead, I can keep our understanding of property rights fairly broad and simple. Let's start by talking about *your property*:

**Your property:** something is *yours* and *belongs to you*

What does it mean for something to be *yours* and *belong to you*? According to the libertarian, it means that you have a special kind of *right*. Let's call this right your *property right*:<sup>401</sup>

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<sup>399</sup> See Waldron (1988: 79-105); see also Skoble (2011).

<sup>400</sup> See Waldron (1988: 26-30).

<sup>401</sup> Here, I am focusing on *your*—i.e. an *individual's*—property rights. Importantly, libertarians would likely also say that *organizations* (like companies) can have property rights too. And libertarians can also say that *states* can have property rights as well. For my purposes, I will on focus on an *individual's* property rights, to keep my discussion as simple as possible. While the ideas are ultimately the same for organizations and states, going beyond individuals threatens to unnecessarily complicate the overall points I wish to make.

**Your property right:** the *moral and negative right* to use something as you choose<sup>402</sup>

To understand this definition, I need to explain what I mean by three terms: *right*, *moral*, and *negative*.

But before I can do that, I first need to talk about *duties*. A *duty* is a reason for action which overrides other reasons for action. Let's illustrate with three simple cases:

**Unnecessary Harm:** Someone says something which really hurts your feelings. You *really* want to respond by punching her in her face. But you have a duty not to inflict harm on others, unless for self-defense.

**Parental Responsibility:** Your daughter has a school performance tonight. You *really* want to stay home instead and watch your favorite show. But you have a duty to love and be there for your children.

**Respect for Authority:** You are a soldier being woken up by your drill sergeant early in the morning. You *really* want to go back to sleep. But you have a duty to obey your drill sergeant's commands.

In each case, you have a strong *desire* and a *duty*. Both are just reasons to act in one way or another. The idea is your *duties* override your *desires* (and other competing reasons). As such, you may want to punch someone in her face, watch your favorite show, and go back to sleep. But you ought to restrain yourself, watch your daughter's performance, and get out of bed.

As I discussed earlier, scholars disagree about what rights *are*, but they typically agree about what rights *do*. And what rights *do* is two-fold. First, rights impose duties. For example, if you have the *right* not to be harmed, then everyone else has the *duty* not to harm you. If you have the *right* to have enough to subsist, then at least one other person has the *duty* to make sure you have what you need to survive. If

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<sup>402</sup> This definition is actually too simple, even for my purposes. However, adding any more detail here will detract from the points I now want to make. For my more robust definition, also include what I later say about your property right being a *bundle of rights* (page 205).



you have the *right* to receive X from Y, then Y has the *duty* to give you X. To put it simply, every right imposes at least one duty on at least one person.

Second, rights put right-holders in a (moral) position to demand the performance of the imposed duties. For example, suppose you have the right to someone's \$100. That imposes the duty on her to give you that \$100. But importantly, that also means you are now in the position to *demand* that she give you that \$100. In other words, you do not have to beg for it, grovel for it, humiliate yourself for it, or merely ask for it. You can demand it without embarrassment or shame. If she gives it to you, you do not owe her any gratitude. And if she does not, your appropriate reaction is indignation; and you are in the position to demand that she be punished and/or you be compensated.<sup>403</sup> To put it simply, if you have a right, then others *owe* you something. You do not have to thank them for giving you what they owe you. And if they do not, you are in the position to demand their punishment and/or your compensation.

In short, there are three takeaways from our discussion of rights so far. First, duties are reasons for action which override other reasons for action, like desires or self-interest. Second, rights impose duties. That is to say, every right imposes at least one duty on at least one person. Third, right-holders are in a (moral) position to demand the performance of the duties their rights impose. Right-holders can demand what they are owed; and if they are not given it, they can demand that they be compensated and/or their duty-bearers be punished.

Suffice it to say, there are *many* ways to divide up rights and duties. For my purposes, I will only focus on two key distinctions. The first distinction is between *moral* and *legal* rights. *Moral* rights are rights you can have in or outside of a state; and a state can violate these rights. *Legal* rights are rights you can only have in a state. They are created and defined by the state; and the state is free to change them, thus changing whether or not you have those rights.

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<sup>403</sup> Feinberg (1980: 141-2).

The second distinction is between *positive* and *negative* rights.<sup>404</sup> As this distinction is typically presented,<sup>405</sup> *positive* rights are rights that impose positive duties—that is to say, duties which require one to *do* something at a cost to her. *Negative* rights are rights that impose negative duties—that is to say, duties which require one to *refrain from doing* something. For example, if your right requires me to go out of my way and do something for you—or give or provide you with something—your right is positive. If, however, your right merely requires me to leave you alone, your right is negative.

As will be made clear later, this typical presentation will not do. As I discussed, a right imposes *at least one* duty on *at least one* person. As such, it is at least theoretically possible for a right to impose multiple duties on one person, some positive and others negative. It is also at least theoretically possible for a right to impose positive duties on some persons and negative duties on other persons. It depends on what the right is. As such, to sharpen our language, I will phrase the distinction differently. *Negative* rights are rights which *only* impose negative duties. *Positive* rights are rights which impose *at least one* positive duty on *at least one* agent (individual, group, organization, or state).

There is an easy way to determine whether a right is positive or negative. For any right, pretend you have the right and ask: would this right always be satisfied if everyone just left me alone? If yes, the right is *negative*; if no, the right is *positive*. For example, you have the right *not to be assaulted*. All that right requires is no one assaults you. If everyone just left you alone, no one would ever be assaulting you. And so, if everyone just left you alone, your right would always be satisfied, making it negative. Now pretend you have the right *to a car*. That right requires you to actually have a car. And that means, if you

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<sup>404</sup> It is worth noting that this distinction is not universally shared. Shue (1996), for example, argues that the typical presentation of positive and negative rights is “thoroughly misguided” (ibid. 53), and that all subsistence rights, all basic rights, and most moral rights “involve threefold correlative duties”: (1) “Duties to *avoid* depriving”, (2) “Duties to *protect* from deprivation”, and (3) “Duties to *aid* the deprived” (ibid. 51-55; see also ibid. 35-64). If Shue is correct, then the distinction between positive and negative rights is (at best) unhelpful or (at worst) non-existent.

For my purposes, I will assume there is such a distinction. For better or worse, libertarians seem drawn to it (Wenar 2020; see also Burrus 2017 and Skoble 2011; and some have even applied it to health care (ex. Burrus 2017) (See also Chapter 1: Section 2). So for the sake of keeping the libertarian on board, I will use it as well.

<sup>405</sup> Ex. Burrus (2017) and Skoble (2011).

cannot get a car on your own, some agent must help you get a car. As such, if everyone left you alone, your right could go unsatisfied. And so, your right is positive.

Importantly, positive rights do not always make clear *who exactly* has a positive duty or *what exactly* their positive duty is. In the case of a right to a car, that right imposes a duty on some agent(s) to help you get a car if you cannot get one on your own. But which agent has the duty to you help here: your family or friends; strangers; car dealerships; the government? Also, what does their duty require them to do: gift you a car; give you money to purchase the car; reduce the price of a car for you? It is unclear. All that is clear is *some agent(s)*—individual(s), group(s), organization(s), and/or state(s)—must help you get a car if you cannot get one on your own. Because if *no one* helps you when you need it, then your right to a car remains unsatisfied. More generally, we know positive rights impose *some* positive duties on *some* persons. But we may not always know *which* positive duties for *which* persons.

A final note about positive rights. Sometimes libertarians talk about positive rights differently than the typical philosophical literature on rights.<sup>406</sup> Consider what Skoble says about positive rights here:<sup>407</sup>

Some positive rights are created by a contractual relationship. Since I am a member of AAA, I have a positive right to towing services if my car breaks down. Non-members have a negative right to seek towing services, but I am actually entitled to receive them...[this] relationship is entirely consensual and defined by a contract. If I claimed I had a positive right to a steak, someone would have an obligation to give me one, not as a trade, but as a non-consensual service.

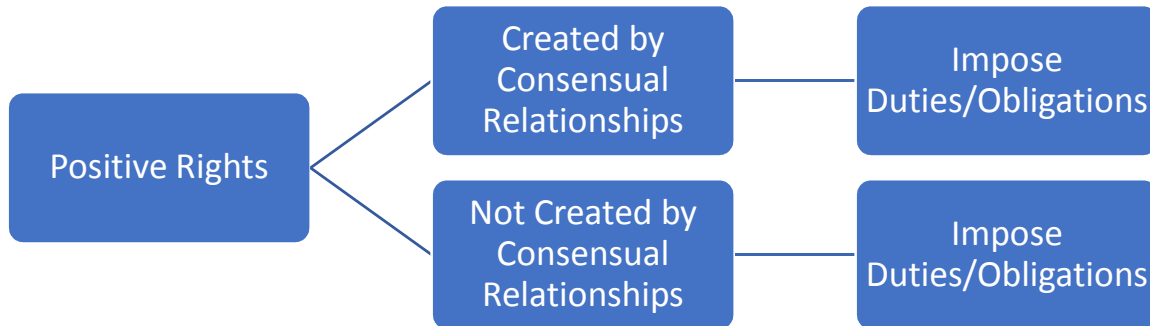
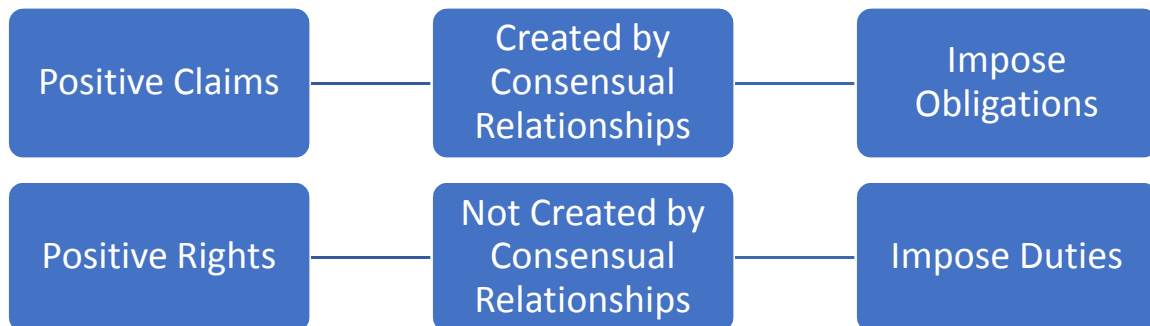
Here, Skoble breaks apart from the typical philosophical literature on rights in at least two ways. First, Skoble says consensual relationships like a contract create positive *rights*. The literature, however, typically says these relationships do not create positive *rights*, but rather positive *claims*. Second, Skoble uses the terms ‘duties’ and ‘obligations’ interchangeably, suggesting they are essentially different words

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<sup>406</sup> Here, I want to make clear that the typical philosophical literature on rights focuses on *moral* rights, *not legal* rights. For this chapter, I will do the same, since the only rights that concern this chapter—i.e. property rights—are moral rights. This is important, because what I say about the literature’s typical view and Skoble’s view does *not* account for legal rights and would be lacking if it tried. My thanks to Katherine Kim and Brad Roth for pointing this out.

<sup>407</sup> Skoble (2011).

for the same thing. The literature, however, typically treats these words differently. As the literature typically sees it, *rights* impose *duties*, while *claims* impose *obligations*. The relationship between rights and duties parallels the relationship between claims and obligations. But the words each mean something different. We can illustrate these differences thusly:

**Skoble's View****The Literature's Typical View**

We can illustrate the difference between these views by using Skoble's own examples. According to Skoble's view, there are two positive rights here: the positive right to receive AAA services and the

positive right to a steak. The former was created by a consensual relationship (in this case, a contract). The latter was not. And both impose duties/obligations. According to the literature's typical view, there is only one positive right here: the positive right to a steak. And that right imposes duties. The contract between AAA and its members did not create a *right* for members to receive AAA services, but rather a *claim*. And this *claim* imposes an obligation on AAA to provide those services when requested.

For my purposes, it ultimately does not matter whether the reader adopts Skoble's or the literature's typical view. As far as this chapter is concerned, these are just different ways to describe the same ideas. That said, for the sake of clarity, I will adopt the *literature's typical view*. More specifically, I will speak of consensual relationships—contracts, trades, promises, and so on—as creating *claims*, not *rights*. Moreover, I will say rights impose duties, while claims impose obligations, keeping in mind that the relationship between rights and duties is the same relationship between claims and obligations. Doing so, I believe, will not only make our language more precise, but also allow us to focus our attention on the positive rights which concern Skoble, the literature, and this chapter: those that do not arise from consensual relations.

Based on these distinctions, we can sum up *property rights* thusly. Your property right is the *moral and negative right* to use something as you choose. In other words, you and you alone have the right to choose how to use it, meaning that everyone else has the duty to refrain from using it without your permission. It is a right you can have in the state of nature, and it is a right which the state can violate. As such, when any agent (individual, group, organization, or state) uses what you own without your permission, they have wronged you and you are in a moral position to demand their punishment and/or your compensation.

Your property right, as defined above, is something we are very familiar with in the United States today. But for the sake of clarity, we can illustrate it with a simple example. Suppose, after working hard and saving enough money, you purchase a car. As far as the libertarian is concerned, you *own* that car.

And that means you and you alone have the right to choose how to use that car: you can drive it, put stuff in it, break it, destroy it, sell it, or trade it in for something else. Everyone else—individuals, groups, organizations, and even the government—has the duty to refrain from using that car without your permission. If they do, they wrong you and put you in the position to demand their punishment and/or your compensation.

This is how I will *define* your ‘property right’. But for my purposes, it would be helpful to think of your property right not as a *single* right, but rather a *bundle* of rights.<sup>408</sup> For example, your property right over X (say, your car) might include the:

- Right to use X
- Right to sell X
- Right to gift or bequeath X
- Right to destroy X
- And so on

Why think of your property right as a *bundle* of rights? Because as we can see, all these rights are *separable*. None of these rights are logically the same, and none of them logically follow from or entail another. Saying you have the right to use your car is not the same as, nor does it imply, the right to sell it; and neither are the same as, nor imply, the right to gift or destroy it.

To avoid long-winded sentences, I will continue to speak of your property right as if it is *one* kind of right. But throughout this chapter, the libertarian should remember it is better thought of as a *bundle* of rights. As the libertarian, she places property rights at the front of her theory of justice. But especially given what I will cover in the later sections, she should remember that it is up to her what rights go in that bundle, and to which resources those bundles can apply.

With this in mind, we can rephrase the Property Rights Thesis as so:

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<sup>408</sup> See also Waldron (1988: 27-28).

**Property Rights Thesis:** the United States should keep others from using what we own without our permission. If others do, it should punish them and/or compensate us.<sup>409</sup> And it should not use what anyone owns without her permission.

The question now is what does the Property Rights Thesis have to say about the United States getting universal health coverage? In Section 1, I will explain why it looks like this thesis *must oppose* it. Simply stated: this thesis says the United States should not use what we own without our permission, but that is what universal health coverage would require. Then, in Sections 2-5, I will argue why this thesis actually *can and should support* it instead. In Section 2, I will argue that we cannot know what this thesis would say until we answer two basic questions: how do we acquire and transfer property rights and what, if any, limitations do these rights have? And I will demonstrate why these two questions are hard to answer. Then, in Section 3, I will offer a strategy for answering these questions and conclude that the libertarian should adopt the Project Pursual/Independence grounding for property rights. In Section 4, I will argue why this grounding—taken seriously—says the libertarian can and should support the United States getting universal health coverage. Finally, in Section 5, I will respond to a handful of objections.

### Section 1: Why the Property Rights Thesis Appears to Say the Libertarian *Must Oppose*

On the surface, it looks like the Property Rights Thesis must oppose the United States getting universal health coverage. According to the Property Rights Thesis, the United States should not use what *anyone* owns without her permission—for that would violate the very property rights the United States is supposed to protect and enforce! And seemingly, universal health coverage would require just that, at least in the United States today.

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<sup>409</sup> Or more precisely: help us receive compensation from those who did. See Engelhardt (1996b: 778-9).



To illustrate, recall my Taxation Assumption from Chapter 1.<sup>410</sup> As I say there, I am (if nothing else) assuming that universal health coverage for the United States requires taxation. And so, universal health coverage requires the United States to take our money. But here's the thing: each of us *owns* our (legitimately acquired) money. And so, per the Property Rights Thesis, the United States can *only* take our money here *if each of us gives the United States permission to do so*. So long as some of us refuse to give the United States permission here, the Property Rights Thesis forbids the United States from getting universal health coverage.

And there is the problem. While the idea of the United States getting universal health coverage is popular, some persons are not on board with it. In a poll conducted by KFF,<sup>411</sup> in 2019, 31% of respondents had a negative reaction to "universal health coverage", 34% to "Medicare-for-all", and 36% to "National health plan". Furthermore, only 74% of respondents even favored the most minimal and vague demand: having the federal government do more to help provide health insurance for more Americans.

Additionally, even though most respondents had a positive reaction to those terms and favored that demand, we should remember that just because someone favors the *idea* of universal health coverage, that does *not* mean she would support *any* universal health coverage system. For example, while 74% of respondents favored the above demand in 2019, only 53% favored Medicare-for-all, with only 31% strongly favoring it. Additionally, others have made clear that they support some kinds of systems but not others.<sup>412</sup> So even those who support the *idea* of universal health coverage may not give the United States permission to take their money for *the system it actually pursues or can realistically pass*.

Suffice it to say, some persons seem unwilling to be taxed for even the *idea* of universal health coverage in the United States today. And presumably some on board with the *idea* would be unwilling to

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<sup>410</sup> Pages 50-6.

<sup>411</sup> KFF (2020).

<sup>412</sup> See Chapter 1: Section 2.

be taxed for the system the United States pursued or could most realistically pass. To put it simply: realistically-speaking, the United States could not craft a universal health coverage system which everyone who could would willingly finance. So based on my Taxation Assumption, that means it would have to take some persons' money without their permission to get universal health coverage.

But that is precisely what the Property Rights Thesis prohibits. Again, this thesis says the United States cannot take *anyone's* money without her permission. As such, at least right now, it looks like this thesis must oppose the United States getting universal health coverage.<sup>413</sup>

## Section 2: Two Basic Questions and Why They Are Hard to Answer

Or so the story goes. In truth, the story is much less clear. According to the Property Rights Thesis, the United States should protect and enforce everyone's property rights, and not violate anyone's property rights. And we cannot know what that looks like without first answering two basic questions:

**Basic Question 1:** How do we acquire and transfer property rights?

**Basic Question 2:** What, if any, limitations do these property rights have?

To put it simply: If we do not know how property rights are acquired and transferred, then we cannot know whose or what rights the United States is supposed to protect and enforce. And if we do not know what (if any) limitations these rights have, then we cannot know whether or not the United States' taxation violates anyone's rights. The story above makes these questions sound easy to answer. In this section, I want to argue why they are not.

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<sup>413</sup> Importantly, this would allow a universal health coverage system financed solely through voluntary contributions, provided it did not violate anyone's property rights in other ways. See Engelhardt for such ideas (discussed in pages 28-31). But I suspect that would not be possible in the United States today. There are already problems with voluntary taxation for any large-scale system (see pages 42-3 and 84-8). But arguably, these problems would be especially pronounced if the system required insurance, given how insurance works (see pages 50-6). Furthermore, were such a system possible, this chapter would become far less interesting. So, if only to make this chapter more interesting, I will ignore these kinds of systems.

### Basic Question 1: How Do We Acquire and Transfer Property Rights?

When it comes to this question, the best place to start is where many libertarians start: with the *Self-Ownership Thesis* (or the *right to self-ownership*). The Self-Ownership Thesis is, quite simply, the thesis that we each *own ourselves*. What *exactly* that means is contentious,<sup>414</sup> but for my purposes, let's just say that means we own our bodies, minds, talents, capacities, abilities, and labor. Importantly, this right is *unacquired*. In other words, we don't have to *do* anything to get it. We start with it immediately and automatically.<sup>415</sup>

For better or worse, the Self-Ownership Thesis by itself has little to say about universal health coverage. The Self-Ownership Thesis only says one owns *herself*; it does not say she *also* owns *resources*. And if universal health coverage threatens any property rights at all, it threatens one's rights of her *resources*, not *herself*. Universal health coverage is about *financing*. It taxes one's *money* and/or mandates how she spends it; it regulates the kinds of *insurance* one can buy and sell. It does *not* require her to use *herself* other than she chooses.<sup>416</sup> As such, if we want to say anything about universal health coverage, we need to ask not how we come to own *ourselves*, but instead how we come to own *resources* too.

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<sup>414</sup> Waldron (1988: 398) says: "To say I own myself is to say that nobody but me has the right to dispose of me or to direct my actions." See also Bornsheim (2018: 340-1) and Werner (2015: 67). That said, there are different ways to think about self-ownership. For example, see Kymlicka (1990: 118-25) and his distinction between *formal* and *substantive* self-property. Furthermore, it is debatable what it means to *own* one's labor and talents. See Waldron (1988: 177-83 and 405-6, respectively).

<sup>415</sup> Mack (2010: 53).

<sup>416</sup> Nozick (1974: 169-74) claims taxation is akin to forced labor. According to him, being taxed \$100 for a charity is morally the same as being forced to labor for that charity. By extension, we can assume he would say the same about being taxed for universal health coverage. Now, if Nozick was right, we could argue universal health coverage violates our *self-ownership*. But Nozick is wrong. To illustrate, suppose we *only* own ourselves; we do not own *any* resource. If that is the case, what would violate our property rights? Arguably, forcing you to work a specific job would violate your right to choose how you use yourself. But *taking or using your rewards* from working a job would not. Those *rewards* are not a part of *you* or *your labor*; they are *resources*. Furthermore, *insurance* you create is not a part of *you* or *your labor*, nor are the *profits* gained by selling it. Mandates which force you to buy insurance affect how you *spend money*, not how you *labor*. Your *labor* is a part of you; your labor's *creations* and *rewards* are not. So if one *only* owned herself, she would have no complaint against being taxed for universal health coverage. That shows if universal health coverage violates property rights at all, it violates one's property rights over her *resources*. Of course, there may some important connection between self-ownership and resource-ownership, whereby violating the latter violates the former; but then we would still need a theory of resource-ownership to complete the picture. Self-ownership by itself would not do the job.

Libertarians believe we come to own resources through *specific actions*. In other words, we do *not* own any resource immediately and automatically. But we can (i) *acquire* an unowned resource by performing some action(s) on that resource, or (ii) gain a resource owned by someone else by engaging in certain actions that *transfer* that resource.

Let's begin with (i). Formally, we can say something like:

For all persons P and unowned resources R, if P does action A with respect to R, P comes to own R<sup>417</sup>

Less formally, we can simply say actions generate property rights over unowned resources. But which actions? There are many possible answers. To keep things simple, let's follow Mack and break all these answers up into two kinds of conceptions:<sup>418</sup>

**Inherent-feature conception:** the action which generates a property right does so in virtue of some *inherent feature of the action itself*

**Practice conception:** the action which generates a property right does so in virtue of some *justifiable practice of property*<sup>419</sup> *saying it generates a property right*

To illustrate this distinction, suppose there is a plot of unowned land for the taking, and you want to own an acre of it. You perform a specific action—you *cultivate the land*—and because you did, you now own that acre of land. Why is it that, simply because you cultivated the land, that land is now yours? According to an inherent-feature conception, the answer is because cultivating land *itself* is the kind of action which generates property rights over land. Under a practice conception, however, it is *not* because there is anything special about cultivating land *itself*. Rather, it is because you are participating in a justifiable<sup>420</sup>

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<sup>417</sup> Waldron (1988: 263). Which persons fall within the class of P, which resources fall within the class of R, and which actions fall within the class of A will depend on the details of a specific libertarian theory.

<sup>418</sup> Mack (2010: 54-55).

<sup>419</sup> Which I will define momentarily. See also pages 244-6.

<sup>420</sup> This *justifiable* part is important, but discussing it now would detract us from the point I want to make. As such, I will return to it later (page 213-4; see also pages 244-6).

practice of property; and that *practice* says cultivating land is a way generate property rights over it. Think of a practice as a body of rules and conventions, specifying which actions generate which property rights. Since there are many possible bodies of rules and conventions, there are many possible practices of property. Which actions generate which property rights is therefore determined by what *your* practice of property says. As such, cultivating land might generate property rights over land *under your practice*, but not another's. In short, the main difference between these two conceptions is how they answer the question: why does that action generate a property right over that resource? The inherent-feature conception answers *because of something about that action itself*; the practice conception answers *because your practice of property says so*.

How we come to own unowned resources, then, is going to come down to whether we adopt an inherent-feature conception or a practice conception. Importantly, however, it is not as easy as picking our favorite. For as of right now, both ask more questions than they answer. To illustrate, let's start with the inherent-feature conception. The most famous and influential version of this conception is Locke's labor-mixing theory.<sup>421</sup> According to his theory, there are certain actions which *mix one's labor* with a resource. For example, when she picks berries, she *mixes her labor* with those berries; when she cultivates land, she *mixes her labor* with that land. This is important, because as we established with the Self-Ownership Thesis, *we own our labor*. So the theory goes that, by mixing one's labor with a resource, she mixes something she owns (i.e. her labor) with something she doesn't (i.e. a resource). The result is that resource now contains something she owns. And because that resource now contains something she owns, she now owns that resource too.

There are *numerous* questions we can ask about Locke's theory.<sup>422</sup> For my purposes, however, three bear mentioning.<sup>423</sup> First, how does this theory even make sense? The idea is that you can *mix your*

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<sup>421</sup> Locke (2010: Sect. 25-51).

<sup>422</sup> For a succinct sample, see Simmons (1992: 267-9).

<sup>423</sup> I take all these questions from criticisms made by Nozick (1974: 174-8) and Waldron (1988: 184-91).

*labor* with a resource. But labor does not seem like the sort of thing you can *mix* with a resource. Typically, we think of your *labor* as a kind of *action*; and saying you own your *labor* is merely a way of saying you get to choose how to *act* in one way or another. But *actions* are *not* something you can *mix with resources*. A cook can mix eggs with batter, but she cannot mix *cooking* with batter, nor can she mix *baking* with her mixture of eggs and batter. We can mix resources with other resources. But we cannot mix our actions with them. So if our labor is merely some kind of action, then saying we *mixed our labor* with a resource is just false; and so is saying that resource now *contains* our labor.

Importantly, we may not think of labor as a kind of *action*. If not, we likely will think of it as a kind of *energy*. To be sure, this would address the worry above. We cannot mix *actions* with resources, but we can mix *energy* with them. The problem, however, is that Locke—or us—cannot seriously think we come to own resources by mixing our *energy* with them. Sometimes, when we labor on a resource, we add energy to it. But other times, our laboring takes energy away from it (ex. killing an animal for food). Furthermore, even if we added energy to a resource, that energy wouldn't *stay* in that resource forever; at some point, it would dissipate. So if *mixing your labor* just amounts to saying you mixed your *energy* with a resource, then (1) you often don't and (2) when you do, that mixed energy eventually goes away. The result is your labor either never was or no longer is contained in (most of?) the resources you thought you owned, meaning that you actually do not own them.

Second, even if we can explain how we *mix our labor* with a resource, why does that mean we now *own that resource*, instead of *losing our labor*? The idea is that, simply because a resource now contains something we own, that means that resource is now ours. But often times, we don't think this way. For example, suppose I own a can of soup and pour it into wet cement. A few hours later, the cement dries. Clearly, I *own* my soup; and clearly, I *mixed my soup in that cement*; so clearly, that cement now contains something I own in it. This idea seems to suggest I now *own that cement*. But none of us would say that. We would, instead, simply say I *lost my soup*. The fact that I mixed my soup with cement doesn't

mean I own that cement. So why is it, when I mix my labor with a resource, I own that resource? Why can I not simply lose my labor, like I lost my soup?

Third, even if we can explain why mixing our labor gives us a property right over a resource, why does it give us a property right over a *whole* resource? The idea is that, because a resource contains our labor, we now own the *whole* resource. But that resource isn't *just* our labor. Nor does it transform into our labor. That resource is still a resource. It simply contains our labor in some part of it. So why do we get to own the *whole* resource, and not just the part containing our labor? For example, suppose I mix my soup with cement and that cement now dries. And suppose (contrary to what we'd normally say), that means I now own the cement. Why does that mean I own *the whole sidewalk's worth of cement*, and not, say, just the small block of cement with my soup in it?

Here, the libertarian might be tempted to simply jettison Locke's labor-mixing theory for another inherent-feature conception. But the questions we asked about Locke's labor-mixing theory illustrate a more general question for *all* inherent-feature conceptions: when it comes to owning unowned resources, why do actions with *this* feature(s) generate property rights over a *whole* resource, but actions with *that* feature(s) don't? If the libertarian cannot answer that question, her inherent-feature conception is just going to sound confused.

Perhaps—especially now—the libertarian is more drawn to a practice conception. Importantly, however, practice conceptions leave us with questions of their own. We can illustrate by discussing Mack's theory.<sup>424</sup> According to Mack, we have at least two natural (i.e. unacquired and moral) rights: the right to self-ownership and the right of property. The right to self-ownership we already know—it is just our property right over ourselves. The right of property is the right not to be precluded from creating or participating in a justifiable practice of property. A justifiable practice of property has at least four features: it is *coherent* (the rules of owning resources are compossible); *transparent* (the rights the rules

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<sup>424</sup> Mack (2010: esp. 58-64).

establish are readily identifiable); *comprehensive* (the rules apply to all resources which can appropriately be owned); and *inclusive* (all persons—and not just some of them—are eligible to participate in the practice). In short, then, we have a right to make or join some justifiable practice of property; and that right is distinct from our right to self-ownership.

As presented, Mack's theory leaves us with two pressing questions. First, why do we have this *second* right of property? For all the confusion Locke's theory created, there is something elegant about it. We already agree we own ourselves. All Locke's theory tries to do is connect our self-ownership to resource-ownership: we own resources which, in some sense, contain our labor. However confusing his theory ends up, all it seems to need is the right to self-ownership. But Mack's theory is different. To Mack, we own ourselves because we have the right to self-ownership. We can own resources, however, because we have the right not to be precluded from creating or participating in a justifiable practice of property. In other words, to Mack, our resource-ownership has *nothing* to do with our self-ownership. And while that helps his theory escape the confusion which Locke's theory created, it now gives him *another right* to explain: why do we have the right to self-ownership *and also* the right of property? Do we have other rights? Is one of them a right to health care affordability? Second, what makes a practice of property *justifiable*? As Mack said, a justifiable practice *at least* includes the four features I discussed above. But does it include *other* features too? And if so, what are those other features? Is one of those features that it guarantees everyone can afford basic health care?

In short, both inherent-feature conceptions and practice conceptions leave us with more questions than answers. None of this is to say that these questions *cannot* be answered. To the contrary, many philosophers have offered answers on behalf of Locke's theory; and Mack explicitly answers the questions we asked of his theory. We will look at Mack's answers and (some) of these philosophers' answers soon enough. For now, I just want to drive the point home that it is far from obvious how we can own unowned resources, *even if* we agree we own ourselves.



Which brings us to (ii): *transferring* resources. To review: *acquiring* resources is about acting to own *unowned* resources; *transferring* resources is about acting to own *already-owned* resources. Seemingly, the actions which transfer resources include the transactions that we are all too familiar with today: buying, selling, or trading; receiving a gift, inheritance, or donation; and so on. And seemingly, these actions help shape what we say about topics like fraud, contracts, and warranties.<sup>425</sup>

Beyond that, however, it is hard to know what to say about transferring resources. For one thing, it is still not clear *which actions* count as transferring resources and which do not—nor do we know why *those* actions do and others don't. For another thing, it is not clear what the actions that *transfer* resources are supposed to have in common with the actions that *acquire* resources. For example: are both kinds of actions captured by the same inherent-feature or practice conception? If yes, what essential features do *cultivating unowned land* and *receiving a gift* have in common? If no, then why does each kind of action require its own conception and what do both conceptions look like? Again, none of this is to say that these questions *cannot* be answered. Here, I just want to make clear that it is far from obvious how we can own already-owned resources, *even if* we agree we own ourselves and can acquire unowned resources.

In short, it is far from obvious how we acquire and transfer property rights. Even if we accept that we own *ourselves*, it does not follow that we can also own *resources*. Furthermore, supposing we can also own resources, it is not obvious how we can *acquire* unowned resources and *transfer* already-owned resources. Without that, we cannot know if anyone has property rights over resources; and if they do, who has what property rights. And without that, we cannot know how the United States is supposed to protect and enforce everyone's property rights—at least over the resources required for getting universal health coverage.

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<sup>425</sup> I take this from Waldron (1988: 258).

## Basic Question 2: What, If Any, Limitations Do Property Rights Have?

This brings us to our next question. Suppose we can own resources—we can acquire unowned resources and transfer already-owned resources. The question now is this: what, if any, limitations do these property rights have?

To begin, let's suppose that a person can own the following: (A) a plot of land, (B) the materials required to create plastic, and (C) the plastic she creates. Here, let's ask two questions:<sup>426</sup>

**Amount-Limits Question:** are there any limits to *how much* one can acquire or receive from transfer?

**Use-Limits Question:** are there any limits to *how we can use* what we own?

Many libertarians give the following answers.<sup>427</sup> To the first question, they answer *no, there are no limits*. So long as one performs the required actions, she can acquire or receive as much of a resource as she wants. To the second question, they answer *almost no*. They say one *cannot* use her resources in a way *which violates the property rights of others*—but, *other than that*, she can use her resources however she wants. For example, she cannot stick her knife in your chest, because that violates your property right over yourself. Nor can she use it to scratch your car, because that violates your property right over your car. But so long as she does not use her knife to mess with what you own without your permission, she can do whatever she wants with it.

Let's combine these answers into the Basically No Answer. The problem is that the Basically No Answer *cannot* be correct. To illustrate why, let's look at three cases, which I will call the *Zelda Cases*.<sup>428</sup>

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<sup>426</sup> These questions are inspired by Bornshein (2018: 341). Presumably, we could ask other questions about the limits of property rights here. But for my purposes, these two questions will suffice.

<sup>427</sup> Bornshein (2018: 341), Mack (1995: 189 fn. 7) and Werner (2015: 83 en. 26) offer lists of such libertarians (or like-minded liberals), though for my purposes, some (ex. Rothbard) are better thought of as anarchists. Bornshein says many, if not most, of the libertarians on his list have these answers. Furthermore, Mack (1995: 190 fn. 9) says it is hard to find like-minded liberals who defend stronger limits. Other philosophers' descriptions of the Self-Ownership Thesis line up well with these answers (consider footnote 414, page 209). That said, Werner (2015: 69) claims that most libertarians accept more limits than this.

<sup>428</sup> The first case is inspired by Block's (2004: 278) defense of what others have called the Blockian proviso (see also Wendt 2017: 14). The second and third cases are Mack's (1995: 195-6) Cases 8 and 9, which Mack uses to defend

Suppose Zelda finds a cave to rest in. Because she is very sick, she rests in the cave for a few weeks (surviving on the food and water she brought with her), not aware of anything going on outside.

During this time...

**Donut-shaped Land:** Jerk acquires all the land around the cave, a mile in diameter. When Zelda finally leaves the cave, she discovers she is surrounded by Jerk's donut-shaped land. When she asks to pass through, he answers *no*.

**Plastic Dome:** Jerk creates a plastic dome and puts it around the cave. When Zelda finally leaves the cave, she discovers she is surrounded by Jerk's plastic dome. When she asks to be let out, he answers *no*.

**Plastic Bubbles:** Jerks creates plastic bubbles and puts them on all the resources Zelda needs to survive and live a life of her choosing. When Zelda finally leaves the cave, she discovers all the resources she needs are surrounded by Jerk's plastic bubbles. When she asks him to remove even some of his plastic bubbles, he answers *no*.

In each case, Jerk *did not* violate any of Zelda's property rights. At no time did Zelda own anything other than herself and the food and water she brought with her: she did not own the cave, the ground in the cave, the land outside of the cave, or the resources she later needed. Furthermore, at no point did Jerk even come close to touching Zelda's body or the food and water she brought with her. Jerk simply either (1) acquired all the unowned land around Zelda, (2) placed his plastic dome around an unowned cave, or (3) placed his plastic bubbles around unowned resources. As such, if the Basically No Answer is correct, we must accept two conclusions: First, Jerk did *not* violate any of Zelda's property rights when he surrounded her in his land or plastic dome, or surrounded the resources she needs in his plastic bubbles.

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his self-ownership proviso. I call these cases the *Zelda Cases* to acknowledge just how much I borrow from Mack here (Zelda is the victim in all his own cases). Here, I am not using these cases to support either Block's or Mack's *particular* provisos. Instead, I am merely using them to show that there should be *some* proviso(s); i.e. more limits to how much we can acquire and use what we own.

Second, because Jerk owns his land and plastic, Zelda *would* violate Jerk's property rights if she passed through his land, freed herself from his dome, or broke any of his bubbles. To do so would amount to trespassing and damaging his property. In short, Jerk was allowed to trap Zelda; and Zelda is not allowed to break free.

But the libertarian cannot accept these conclusions, for at two reasons. First, the libertarian is supposed to care about Zelda's liberty. But these conclusions make a mockery of whatever value her liberty is supposed to have. Consider: if the libertarian accepts these conclusions, then she cannot claim to care about Zelda's *options*, since Jerk *severely limited* Zelda's options. Nor can the libertarian claim she cares about Zelda's *self-development*, since Jerk *severely limited* Zelda's abilities and opportunities to develop herself. Nor can the libertarian claim she cares about protecting Zelda from coercion and oppression, since Zelda is now *severely susceptible* to Jerk's coercion and oppression. Furthermore, Jerk has essentially imprisoned Zelda. This is most obvious in the first two cases, where he literally *surrounds* her in land and plastic, which as far as the Basically No Answer is concerned, morally function as prison bars. But even in the third case, while Zelda has more freedom of movement, she has no freedom to acquire *anything* she needs to survive and live her chosen life. And if anything is a threat to Zelda's liberty, it is *imprisonment*. Put simply, Jerk has severely limited her options and self-development, severely made her susceptible to his coercion and oppression, and essentially imprisoned her. To accept that is to abandon any care for Zelda's liberty, which the libertarian is supposed to have.<sup>429</sup>

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<sup>429</sup> As I discussed in pages 128-9 (see also footnote 287 on page 139 and page 119 with relevant footnotes), there are many conceptions of liberty, and the libertarian is only interested in *negative freedom*. So here, she may worry that the liberty I am talking about is some other kind. But the liberty I am talking about here *is* negative freedom. As I discussed in Chapter 3, when asking why negative freedom is so important, some of the most common answers appeal to options, self-development, and protection from coercion and oppression. Furthermore, every libertarian will agree that imprisonment limits or eliminates the kind of liberty they care about. To put it simply, there is no bait and switch here. The libertarian is supposed to care about Zelda's *negative freedom*, and the above conclusions make a mockery of *that*.

Second, these conclusions make a mockery of the Property Rights Thesis. Again, this thesis says the United States is supposed to protect and enforce *everyone's* property rights, and not violate *anyone's* property rights. And the libertarian is committed to this thesis. As such, if the libertarian accepts these conclusions along with it, then she is forced to conclude the following: if Jerk and Zelda were in the United States, then (i) the United States should *not* stop Jerk from doing what he did *and* (ii) the United States *should* use its resources to keep Zelda entrapped within Jerk's land or plastic and punish her for even trying to escape. But (i) and (ii) are just absurd. They are absurd even if Zelda's family and friends are not taxed for the United States keeping her imprisoned. If her family and friends are, then (i) and (ii) are somehow even more absurd.

As such, if only to avoid making a mockery of Zelda's liberty and the Property Rights Thesis itself, the libertarian should reject all these conclusions. But to reject these conclusions is to reject the Basically No Answer along with them. Unfortunately, all this tells the libertarian is that the Basically No Answer is wrong. It does not tell her which answer is right. That said, she at least knows whatever the correct answer is, it draws more acceptable conclusions in the Zelda Cases. And so, she at least knows that she should insist there are more limitations on property rights than what the Basically No Answer says. But that just makes it even harder to know whether the United States' taxation violates anyone's property rights—at least for the taxation required for getting universal health coverage.

### Section 3: Grounding Property Rights

Let's review where we are at. We have two basic questions:

**Basic Question 1:** How do we acquire and transfer property rights?

**Basic Question 2:** What, if any, limitations do these property rights have?

Unfortunately, the answers to these questions are far from obvious. Regarding the first question, we know that we get property rights by performing specific actions. We also know that what those actions are

comes down to either some feature of the actions themselves or its relation to some justifiable practice of property. But beyond that, it gets tricky. If it comes down to an action's feature, we don't know which feature, nor do we know why *that* feature—but not others—generates property rights over a whole resource. If it comes down to a relation with a justifiable practice of property, we don't know what (if any) other rights we have beyond the right to self-ownership, why we don't have other rights, and what features make a practice truly justifiable. And we do not know how related and distinct the actions which *acquire* property rights are from the actions which *transfer* property rights, and why that is so.

Regarding the second question, we know there are at least two kinds of limitations property rights can have: how much we can acquire and transfer and how we can use what we own. We saw that many libertarians say there are *no* limitations to how much we can acquire and *almost no* limitations on how we can use what we own. But the Zelda Cases made clear those answers are collectively unsatisfying. And whatever the correct answers are, we know they must say there are *more* limitations than *that*.

In short, we don't yet have satisfying answers to these basic questions. But we need *some* satisfying answers here! If we leave these questions unanswered, we cannot know what the Property Rights Thesis really says about the United States getting universal health coverage. So what should the libertarian do? As we saw above, we can devise *many* possible features and practices of property to choose from. We can also consider the many already-proposed limitations of property rights (i.e. 'provisos').<sup>430</sup> So one thing the libertarian could do is consider all these features, practices, and provisos, assess what she thinks about them, and use them to form what she believes are the most satisfying answers.

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<sup>430</sup> Here is a sampling: the Blockian proviso (Block 2004: 278), Engelhardt's taxation on matter (1996a: 154-62), Locke's waste and sufficiency provisos (Locke 2010: Sects. 27-51; see also Simmons 1992: 278-98 and Waldron 1988: 207-18 for their own and others' competing interpretations); Mack's self-ownership proviso (1995), Nozick's proviso (1974: 178-84), van Dun's free movement proviso (van Dun 2009: 230), and Wendt's sufficiency proviso (2017). See also Arneson (2005) for his discussion of boundary crossings.

I, however, have a different strategy. Instead of looking at and assessing all these different features, practices, and provisos, my strategy is to take a step back and ask a different question: what *grounds* property rights? In other words, what is the principle(s) and/or value(s) which justifies their existence? What do they do that justifies their protection and enforcement? Why is violating them not just *wrong*, but *very wrong*; so wrong that the victim can morally demand punishment or compensation? Let's call this Basic Question 3. And for now, let's refer to Basic Questions 1-3 as (1)-(3), respectively.

There are two immediate advantages to starting with (3), as opposed to either (1) or (2). First, (3) allows the libertarian to get to the heart of the issue. The Property Rights Thesis is one of—and possibly the only—defining theses of her theory of justice and legitimate state intervention. But the Property Rights Thesis is far from the only thesis out there. If she is going to take it over others, she should at least have some idea of why. By answering (3), she makes that idea clear.

Second, answering (3) allows her to more effectively and efficiently answer (1) and (2). There are *many* possible answers for (1) and (2). Answering (3) will not uniquely pick out the correct answers, but it will at least narrow down her options. If her answer to (3) is X, then she can rule out answers to (1) and (2) which contradict, go against, or poorly cohere with X. And by narrowing down her acceptable answers, she can get an idea of what these answers *generally* look like. And for my purposes, that is enough. The libertarian does not need to have her entire theory figured out before she can confidently support or oppose the United States getting universal health coverage. If she has a general idea of what she is going for, she can infer what that would generally say about my Question.

Given these advantages (and that I do not have the time or space to assess *every* possible feature, practice, and proviso out there), let's go ahead then and focus our attention now to (3): *What grounds property rights?* There are many answers the libertarian could offer. But to keep things simple, I will consider six:

- Intuition
- Desert
- Identification
- Creation
- Project Pursual
- Independence<sup>431</sup>

Which one should the libertarian pick? To help her answer, let's start with the most minimal demands. First, the one she picks should be minimally *persuasive*. Obviously, the libertarian has intuitions which others do not, so I am not suggesting the answer should persuade everyone. But if the answer leaves her unable to respond to obvious questions and concerns, she should opt for another. Second, it should be *helpful*. In other words, it should help her determine what her answers to (1) and (2) *generally*

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<sup>431</sup> *Intuition* and my assessment of it are taken directly from Waldron (1988: 266-71). *Desert* is inspired by Jada Strabbing. While some philosophers have also used *Desert* to interpret and defend Locke's labor-mixing theory, they base *Desert* on being virtuous and acting virtuously. Following Strabbing, I chose instead to focus on the layperson's idea that one deserves what she works hard for and earns. For those interested in the version used to interpret and defend Locke (as well as a critique), see Waldron (1988: 201-7). *Identification* and *Creation* are also interpretations and defenses of Locke's labor-mixing theory (see Waldron 1988: 194-201). Additionally, I read Engelhardt's theory (1996a: 154-62) as *Creation*-ish, given his distinction between *brute matter* and the *form* imposed on that matter. Here, I borrow heavily from Waldron and his citations, but add in my own critiques and examples. *Project Pursuit* is taken directly from Wendt (2017), though as he makes clear (ibid. 3 fn. 13), Project Pursuit—in some version or another—is a common grounding for libertarian theories of justice. Also, Mack (1995: 198-9) says that Project Pursuit—in some version or another—is the *standard* grounding of the right to self-ownership. *Independence* is, roughly, taken directly from Simmons' (1992: 222-354) interpretation of Locke's theory (especially what he says about *self-governance* and *a living*). I say *roughly*, because I add to it (though I take it my additions are consistent with what Simmons says). Also, interestingly enough, Machan (2009: 95) lets slip something like *Independence* as his answer. According to Machan: "the right to private property means to specify a range of liberty, of not being subject to the will of others in at least some significant measure." To illustrate why this is interesting, juxtapose what Machan says here with what Locke (2010) says in Sect. 57: [true freedom is not merely being] free from restraint and violence from others...[it is also] a liberty to dispose and order, as he lists, his person, actions, possessions, and his whole property, within the allowance of those laws under which he is; and therein not to be subject to the arbitrary will of another, but freely follow his own." Here, we can see that *both* Machan and Locke value property rights, because they create a space of liberty where one is not subject to the will of others. But while Locke uses this value to *justify* his sufficiency proviso (Simmons 1992: 326-7), Machan uses it to *attack* the sufficiency proviso (and every other proviso). So even though they both value the liberty from others' will which property rights create, they derive very different conclusions about what that means for these rights' limitations. While I will not defend Locke's sufficiency proviso in particular, my arguments will imply that Locke took this value more seriously than Machan.



look like. The whole point of (3), after all, is to help her answer (1) and (2). And if her answer to (3) is completely unhelpful, she will be left wondering why she cares so much about the Property Rights Thesis in the first place. Third, it should explain and justify the most *obvious cases*. All of these answers, taken seriously, may require the libertarian to modify what she originally thought about property rights. But if an answer cannot even make sense of the most obvious cases of resource-ownership, she should opt for another answer.

In the following, I will look at each answer and assess how well it truly lives up to these minimal demands. I will draw three conclusions. First, the libertarian should *not* pick Intuition. At its best, that answer is unhelpful. At its worst, it is unpersuasive. Second, she should *also not* pick Desert, Identification, and Creation. Whether or not they are persuasive and helpful, they each fail to explain and justify obvious cases. Third, the libertarian *should* pick either Project Pursual or Independence (or some combination). Both are persuasive, helpful, and explain and justify the obvious cases. As such, Project Pursual and/or Independence should shape her answers to (1) and (2).

### Intuition

According to *Intuition*, property rights do *not* need any grounding. It is simply obvious that they exist, should be protected and enforced, and should not be violated by the state or anyone else. We should not be surprised if the libertarian (or anyone else) is drawn to this answer. Property rights are something with which many of us are *very* familiar. Most of us are fortunate enough to own some resources, whether they play a meaningful role in our life or are just some means to an end. Furthermore, our economy itself is built around the concept of property rights. You own your (legitimately-received) money, which you can spend however you want.<sup>432</sup> If you spend it on services, you are entitled to receive

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<sup>432</sup> Barring limitations that even libertarians would accept. For example, you cannot purchase the services of an assassin to kill your annoying neighbor.

those services. If you spend it on goods, you now own those goods. And because you own those goods, you can use them however you want: keep them as is, make something new, and/or trade or sell them for some other goods and services. For many of us, our very lives are lived in part through the concept of property rights.

But here, following Waldron,<sup>433</sup> I want to argue that property rights are *not* as intuitive as we may be conditioned to think.<sup>434</sup> To begin, let's distinguish between two kinds of property rights. *Acquired* property rights are those which we get from acquisition—i.e. by coming to own a previously-unowned resource. *Transferred* property rights are those which we get from transfer—i.e. by coming to own a resource once owned by some other agent. And for simplicity, let's call *property duties* the duties which both kinds of property rights create.

With that distinction in mind, let's start with acquired property rights. To review, acquired property rights do not *merely* grant one a freedom or permission. They also *create duties* which did not exist before. The idea is that, when person P performs some action A on an unowned resource R, it is not *just* that P now has the freedom or permission to use R; it is *also* that now *everyone else has the duty* not to use R without P's permission; a duty that *did not exist* prior to P performing A. And, just to be clear, P created these duties *on her own*. These duties were not created by P *and others*. They were created *unilaterally* by P's action. Thus, the idea behind acquired property rights is this: a person *unilaterally creates duties* which previously did not exist *by performing some action*.

Can we think of other actions which also unilaterally create duties? Following Waldron, I can think of three: (i) easy rescue cases, (ii) cries for help, and (iii) promises. Let's start with (i). Sometimes, a person performs some action which puts his life in danger. For example, she jumps in the deep end of a pool,

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<sup>433</sup> Waldron (1988: 266-71). Here, I simply paraphrase and add to what Waldron says, adding in my application to health care.

<sup>434</sup> At least those which are *acquired*. Here, some of my points will *only* apply to acquired property rights, while my other points will apply to *both* acquired *and* transferred property rights.

even though she cannot swim. Assuming that you could *easily rescue* her (you can jump in and save him, with no risk to yourself), the idea is her (irresponsible) action created a duty that did not exist before: you now have the duty to rescue her from drowning.

Here, the problem is there are two key differences between easy rescue cases and acquired property rights. The first is that, when someone puts herself in an easy rescue case, she does not do so with the *intent* to create a duty on others to rescue her. She either accidentally or irresponsibly creates that duty. Acquired property rights are different. When someone performs an action to own an unowned resource, she does so *intentionally*. That is *why* she is performing her action.

This leads to (ii) cries for help. Sometimes, someone cries for help and can be easily rescued. For example, she harms herself (or almost harms herself) in the hope that you will then rush over and be there for her. In this case, she is intentionally acting to create this duty. But this just leads to the second key difference between these cases and acquired property rights. When it comes to these cases, the *action* does not create the duty; what creates the duty is some *principle*. In these easy rescue and cry for help cases, it is *not* because they performed the action of jumping in the deep end or harming themselves that you have the duty to help. Rather, you have the duty to help because of some principle that roughly amounts to *you should help persons who can easily be rescued or are crying for help*. But assuming intuition alone grounds acquired property rights, the *action itself* is what creates the property duty.

And this, of course, is assuming we even have these duties. This is worth pointing out, because often times, libertarians *don't* think we have them—or at least, the state should not enforce them. They may think that saving and helping these persons would be *supererogatory*. They may even think that refusing to save and help them would be *inappropriate* or *immoral*. But typically, they think we do not have the *duty* to save or help them—or if we do, that the state should not enforce these duties. If that is so, the libertarian will think of acquired property rights as being completely different from these other cases.

This brings us to (iii) promises. Promises and acquired property rights have a lot in common.<sup>435</sup> Both create duties or obligations that did not exist before. Both kinds of duties or obligations require the performance of some action: there is no promissory obligation unless one actually makes a promise; there is no property duty to refrain from using what one owns until she actually acts to own it. Both kinds of duties or obligations have the appearance of being created unilaterally: the promisor creates the promissory obligation; the one who acted on the unowned resource creates the property duty. And libertarians recognize both as real duties and obligations which should be enforced by the state.<sup>436</sup>

But there are two crucial differences between promises and acquired property rights here.<sup>437</sup> First, promissory obligations—despite appearances—are *not* created unilaterally. Instead, they require *both* a promisor *and* a promisee to create. Consider: Suppose I make a promise to mow your lawn. That *begins the process* of creating an obligation to mow your lawn. But that obligation is not created until *you accept my promise*. If you turn me down, my obligation to mow your lawn never comes about. The same can be said if I promise to give you money in exchange for something of yours—or even in exchange for nothing at all. Unless you accept my promise, I never get an obligation to exchange money with you. In short, promises are a *joint venture* between a promisor and promisee, and so require both persons to generate any obligations. But acquired property duties *are* created unilaterally. There is no joint venture between the person who acts on an unowned resource and everyone else. One's acting to own a resource does not require anyone else. Her action alone generates the property duty.

Second, when it comes to promises, the promisor creates an obligation *for herself*. But when it comes to acquired property rights, the owner creates duties *for literally everyone else*. When I promise to

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<sup>435</sup> Following the philosophical literature's typical view, I will speak of promises as claims creating obligations and property rights as creating duties. Again, the relationship between promises and obligations is the same as that between property rights and duties. See pages 201-4.

<sup>436</sup> Arguably, the libertarian would not think *all* promises should be enforced by the state. But she would think many should. Most notably: those made in contracts and the free market.

<sup>437</sup> The first was brought to my attention by Katherine Kim. The second I take from Waldron (1988: 266-9).

mow your lawn (and you accept), I now obligate *myself* to do something for you. When I come to own a previously-unowned resource, I don't create any duty for myself. What I create is a duty *for everyone else* to not use what I now own without my permission. And everyone else includes persons I've never met, heard of, or seen before; it includes persons on my continent and others; it includes persons who do not want this duty and would never have consented to it if given the chance. When I promise, I create an obligation for myself. When I come to own a previously-unowned resource, I create a duty for everyone else: a duty which neither requires their consent or even knowledge.<sup>438</sup>

To sum up, acquired property rights work like this: a person unilaterally creates duties which did not exist before. These duties apply to literally everyone other than that person, including persons who would not consent to or even know about these duties. The idea that one could single-handedly impose such wide sweeping duties is far from intuitive. And as far as I can tell, there is no other kind of action that looks anything like it.

So it goes for acquired property rights. Do transfer property rights fare any better?<sup>439</sup> On the surface, it looks like they might. Part of what makes acquired property rights sound so odd is that *consent does not factor in*. When I try to own a resource which *no one* owns, I do not need your (or anyone's) consent to own it. I merely need to perform some action upon that resource—namely, the action which grants me ownership over it. But when I try to own a resource which *you* own, I do need your consent to

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<sup>438</sup> Notice how much this departs from consent being a way to commit *ourselves* to moral obligations or duties (Wennberg 2003: 18).

<sup>439</sup> In one sense, the answer is trivially no. To review, transfer property rights are about transferring *already-owned* resources. And so, transfer property rights require acquisition property rights to get the ball rolling. As such, if acquisition property rights sound unintuitive, then transfer property rights are going to have a rough start. Consider: I cannot transfer what I do not own. So if I am going to transfer X, then I must first own X. But how did I come to own X? Perhaps you transferred X to me. But you cannot transfer what you do not own. So how did you come to own X before transferring it to me? This cycle of questions will go on forever unless, at some point, someone *acquired* X when it was *unowned* (either by getting X when it was up for grabs or bringing X into existence). More simply: no one can transfer anything unless someone first acquires something. Otherwise, transfers amount to nothing more than handing off things that are not ours! As such, if acquiring *unowned* resources sounds unintuitive, then transferring *already-owned* resources is not going to sound much better—since the idea that these resources are *already-owned* is going to sound unintuitive. See also Waldron (1988: 257).

own it. I need you to sell, trade, gift, bequest, or donate it to me. Otherwise, that resource is still yours. Thus, unlike acquired property rights, consent plays an important role for transfer property rights. And at least right now, that makes transfer property rights sound more like promises: neither are created unilaterally, and both require consent from the agents involved before any obligations or duties are created.

The problem is that there is still a crucial difference between promises and transfer rights here: the scope of the obligations and duties. Consider: when I promise to mow your lawn and you accept, we create an obligation: to mow your lawn. But that obligation is not *for everyone but you*. It is *only for me*. Before and after my promise, no one else is obligated to do anything with your lawn. But that is not the case with transfer property rights. When I gift you my lawn mower and you accept, we create a duty: to not use that lawnmower without your permission. But that duty we create is not just for me; it is literally for everyone but you. Before this gifting, others did not have this duty; afterwards, they did. And again, everyone but you includes those who would not consent to or even know about this gifting or created duty. When it comes to promises, the obligations stay between the promisor and promisee. When it comes to transfer property rights, the duties extend to everyone else, with or without their consent or knowledge.<sup>440</sup>

In short, when it comes to property rights—either acquired or transferred—the duties they create apply to literally everyone other than the right-holder. Furthermore, no acquired property rights require the consent or even knowledge from anyone else; and transfer property rights only require the consent and knowledge of those making the transfer. Thus, when it comes to property rights of either kind, persons are stuck with duties which they may not agree to having or even know about. And again, that

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<sup>440</sup> Again, notice how much this departs from consent being a way to commit *ourselves* to moral obligations or duties (Wennberg 2003: 18).

idea that actions can create such wide sweeping duties sounds unintuitive and unlike any other action I have seen.

Here, the libertarian may respond that these wide sweeping duties are not as unintuitive as they sound. As it goes, property duties would *only* be unintuitive if they were burdensome. *But* they are not burdensome. Again, property duties are *negative*. They are not duties to actually do or provide something; they are merely duties to *refrain from* using what another owns without her permission. As such, these duties are not demanding. To the contrary, they are easily and even trivially satisfiable. And so, these duties are not unintuitive.<sup>441</sup>

The problem, however, is two-fold. First, it is not obvious the first premise is true. A duty is a duty, whether or not it is burdensome. And the idea that an action can create a *duty* for everyone else, without their consent or knowledge, is still rather odd. Second, and more importantly, the second premise is false. Contrary to what this premise claims, property duties can be quite burdensome.<sup>442</sup> The above response makes it sound like property duties do not demand much. But the truth is these duties can be just as, and even more, demanding than other positive duties and obligations. Nowhere is this more obvious than in health care. To illustrate with one representative example, consider the story of Rachel Madley.<sup>443</sup> Rachel has Type 1 diabetes, which is a disease that destroys her body's ability to produce insulin. Because of this, Rachel needs to take daily insulin injections; otherwise, she risks going blind, having kidney failure, or even dying. One day, Rachel was at a pharmacy, crying because she was unable to pay for her insulin.

Now think about Rachel's "merely" negative duty to refrain from taking the pharmacy's insulin versus whatever positive duty the pharmacy could have to sell it to her at a price she could afford. The pharmacy's positive duty would require the pharmacy to—in the worst-case scenario—forgo one trivial

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<sup>441</sup> See also Waldron (1988: 267).

<sup>442</sup> See also *ibid.* 267-9.

<sup>443</sup> Madley (2019). Importantly, this is a story about a person who *has private insurance*. This further demonstrates that *insurance* is not always sufficient for *affordability*. See pages vi-viii and 15-6.

sale. Rachel's "mere" negative duty, by contrast, would require her to seriously risk blindness, kidney failure, and death. Here, it is clear that Rachel's negative duty demands far more from her than whatever positive duty the pharmacy could have demands of it, even though the pharmacy's duty would be to do or provide something, and Rachel's duty would "merely" be to refrain from interfering.

In short, then, property rights are not nearly as intuitive as many of us have been led to believe. They are nothing like easy rescue cases or cries for help. And even if they were, the libertarian likely does not believe we have *duties* to save or help in those cases anyway—at least duties which the state should enforce. Furthermore, even though property rights look like they a lot in common with promises, they have crucial differences which make promises sound acceptable and property rights sound ridiculous. To put it succinctly, this is how property rights really work: a person—unilaterally or with others—creates duties for literally everyone else which did not exist before, including persons who would not consent to or even know about these duties; and these duties—however *negative* they are—can be just as, if not more, demanding than other positive duties or obligations. The idea that one could impose such demanding duties on everyone else through her own actions—or actions with another—is far from intuitive. And as far as I can tell, there is no other kind of action that looks anything like it.

To put it simply, then: *no, property rights are not immediately intuitive*. We may think they have no need for a grounding, because they are in some sense obvious. But they are far from obvious, and they cry out for some kind of grounding. Chances are, if the libertarian really finds them so intuitive, it is either because she was simply born and raised in a society which—in many important ways—was structured around the concept of property rights, or because she actually has some kind of grounding lurking in the back of her mind. If the former, then her finding property rights intuitive is nothing more than a historical accident. If the latter, then she agrees there is more to say about property rights. In either case, Intuition is not a persuasive answer.



That said, even if we agreed that property rights are in some sense obvious, Intuitive would still be very unhelpful. Even if we agreed the *existence* of property rights is obvious, it would still not be obvious *how we acquire and transfer them* or *what, if any, limitations they have*. And the libertarian should agree with *that much*. For if *that* was obvious, then libertarians would not disagree *with each other* here,<sup>444</sup> and we would not have needed to consider any grounding principle and/or value in the first place! In short, then, Intuitive is unpersuasive at its worst and unhelpful at its best. In either case, the libertarian should opt for another answer.

#### Desert, Identification, and Creation

For these next three answers, I will merely assume they are persuasive and helpful. For I think their real problem lies not in their persuasiveness or helpfulness. Their real problem is that, taken seriously, they each fail to explain and justify the most obvious cases of resource-ownership. Let's start with *Desert*. According to Desert, what grounds property rights is that one *deserves* to own her resources. As it goes, when one *works hard* for a resource, she *deserves* the right to own it. Resources should be owned by persons who earn them, not by persons who don't. For example, suppose Hard Work and Lazy both want to own the same beautiful painting. Hard Work works long hours to raise up enough money to buy it. Lazy, however, spends all that time lounging around in the sun. Eventually, Hard Work earns enough money and purchases it. Intuitively, we think two things. First, Hard Work *deserves* to use that painting as she wants. Second, Lazy does something wrong if—after doing *nothing*—he decides to use Hard Work's painting without her permission. Desert, then, explains why Hard Work has a property right over this painting, which imposes a duty on Lazy not to use that painting without her permission. Property rights are the fitting reward for those who work hard for and earn something.

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<sup>444</sup> Recall the difficulty of answering Basic Questions 1 and 2 (Section 2), as well as footnotes 430-1 (pages 220 and 222, respectively).

Arguably, Desert does a great job with some cases, like the one above. But unfortunately, Desert does a terrible job with other obvious cases. Most notably, Desert completely fails to explain and justify gifts, inheritances, and charitable donations. Gifts—by definition—are unearned.<sup>445</sup> Instead, they are merely received out of others' love or gratitude. The same can be said for inheritances: we do not earn them, but rather simply receive them because we were born into a family or loved by others. Additionally, charitable donations amount to what libertarians and conservatives often accuse government welfare programs of being: handouts. While some charities may expect their recipients to earn what they receive or produce something in return,<sup>446</sup> many charities simply donate goods and services with no demands or expectations. They, and their donors, simply give out of generosity or guilt for their fortunate circumstances. If property rights are about hard work and earning, then one cannot explain or justify why anyone should get to own gifts, inheritances, or charitable donations. But surely the libertarian thinks we should be able to own those too. And so, Desert cannot be her answer.

Importantly, one could push back here in the following way. She could argue that, when one works hard for and earns a resource, she deserves not only the right to *use* that resource, but also the right to *freely give it away*. As such, those who work hard for and earn a resource have the right to give that resource to another of their choosing, as a gift, inheritance, or charitable donation. And because they have that right, everyone else has the duty not to interfere with them doing so. And so, the story goes, Desert can explain and justify these gifts, inheritances, and charitable donations.

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<sup>445</sup> One could argue that some gifts are earned. For example, suppose I always buy you a birthday gift. Does that mean I have—in some important sense—earned the gift that you bought me for my birthday? The same can be said about inheritances and charitable donations. Here, I tend to think that cases which sound like *earned* gifts, inheritances, or charitable donations are either (i) not actually earned or (ii) better thought of as *rewards*. That said, for those unpersuaded, then what I say at least applies to *many* (if not *most*) gifts, inheritances, and charitable donations. And since the libertarian wants to include those too, my points will still stand. My thanks to Katherine Kim for pointing this out.

<sup>446</sup> Which, to me, is not so much a charitable *donation* as much as a charitable *arrangement* or *exchange*.

The problem with this story is that it leaves something crucial out. When it comes to these gifts, inheritances, and charitable donations, there are three parts of the story in need of explanation and justification. First, why does person A get to own a resource? Second, why does that mean A has the right to freely give it away? And third, why is it that—after she freely gives it to B—B now gets to own that resource in the same way A previously did? Assuming A worked hard for and earned that resource, her hard work explains and justifies her owning it. And (maybe?) it also explains and justifies why she can freely give it away. But it does *not* explain or justify why, after she gives it to B, B now gets all the property rights which A previously had. To review, what explains and justifies A's property rights over that resource is A's hard work. B did not work hard for and earn that resource. So why does she now get all the same rights? In short, Desert may explain and justify why *A gets to give it to B*, but it does *not* explain or justify why *B gets to own it afterwards*. By this account, A deserves these rights; B does not.

I personally think this is obvious. But for those unpersuaded, return to my characters Hard Work and Lazy. Here, Hard Work works hard and earns a painting; Lazy does not. Now, suppose Hard Work simply gifts that painting to Lazy. Why does Lazy now become that painting's new owner? Because *Hard Work* worked hard for and earned it, giving *Hard Work* the right to transfer that right.

Perhaps that answer sounds satisfying. But now suppose that—many years later—Lazy simply gifts that painting to his daughter Lazy Jr. And many years after that, Lazy Jr. does the same with her son; who, many years later, does the same with his daughter. And so on. At some point, hard work stops sounding like the explanation for why so-and-so owns the painting. For in this long line of gift-giving, the only person who actually worked hard and earned it has now been dead for many years! Everyone else just got it for free. So if hard work is supposed to explain why someone owns a resource, then at some point, we should agree that the Lazy family no longer owns that painting. But assuming that painting means a lot to the Lazy family and is worth very little, the libertarian would say the most recent Lazy still owns it. And so, Desert cannot be the libertarian's answer.

This brings us to *Identification*. According to Identification, what grounds property rights is that one *identifies* with her resources. As it goes, one can feel so intimately connected with a resource that she ends up feeling like that resource is—in some meaningful sense—a part of herself. As such, when she is deprived of that resource, she not only suffers an economic loss, but a personal loss as well. As Olivecrona illustrates: “The farmer feels united to the soil on which he works. The town-dweller has a similar feeling for the house that is his own; something of himself sticks in that house where he has been living so long with his family.”<sup>447</sup>

While Identification may explain and justify the farmer owning his soil or the town-dweller owning his house, it fails to explain and justify why anyone can own a resource they *don’t* identify with. For example:

**Grocery Shopping:** Suppose one goes to the grocery store and buys a bag of vegetables, rice, and chicken breast for dinner. She also buys other food to eat later.

Assuming the woman above is like the majority of us, she does *not* identify with the food she bought in any meaningful sense. She does not consider that food a meaningful part of her identity; and if others stole her food, she would not feel like her identity was attacked. To her—like most of us—that food is just food. She may want it and look forward to eating it. But she does not feel like it in any way constitutes a meaningful part of who she is. Yet, any libertarian would say she still owns that food.

Furthermore, Identification reaches very non-libertarian conclusions in other cases. For example:

**Apartment-Lease:** Suppose Leaser purchases an apartment building. She does not particularly care about the building itself or anything in it. She simply wants to profit from leasing its apartments. She leases one apartment to Tenant. Tenant *loves* his apartment. It is his first “home

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<sup>447</sup> Olivecrona (1974: 224). To give credit where credit is due, I take my references to Olivecrona, Tully, and Kirzner from Waldron (1988: 194-207).

away from home". He ends up staying there and eventually raising a family there, thinking of his apartment as the home he always dreamed of having one day.

If Identification is the answer, then seemingly in the case above, Tenant is the *real* owner of the apartment. Leaser does not identify with the apartment *at all*. To her, that apartment is merely a means to make money. But to Tenant, that apartment is where he belongs. It is where his family was born and raised. It is where he returns to when he is done working or adventuring. If the town-dweller Olivecrona talks about *identifies* with his home, then surely the Tenant *identifies* with his apartment as well. So when asked who owns the apartment, Identification answers *Tenant*. But surely the libertarian answers *Leaser*. Leaser *bought* and is *leasing* the apartment, so Leaser is clearly the apartment's owner. Of course, Tenant's lease grants him certain rights over the apartment. But the *owner* of the apartment is Leaser.

Taking these cases together, the libertarian is drawn to the following conclusion. One may identify with what she owns, and violating her property rights may cause her personal harm. But identification is neither necessary nor sufficient for explaining and justifying property rights. We can own resources without identifying with them. And we can fail to own resources even when we identify with them. However important one's identification with a resource is, Identification cannot be the libertarian's answer.

This brings us to *Creation*. According to Creation, what grounds property rights is that one *creates* a resource. As it goes, when one labors on a resource, what she is really doing is *creating* an object out of raw material. To be sure, she does not create the raw material; that material was created by something else (God, nature, etc.). But she does create the object which that raw material composes.<sup>448</sup> For example, suppose one builds a table. She does not create the wood she uses, but she does put that wood together to create a table that was not there before. The same can be said for cars, computers, houses, paintings,

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<sup>448</sup> Tully (1980: 116-7). Furthermore, I at least read Engelhardt (1996a: 154-62) as suggesting an answer along these lines.

and so on. In each case, one takes raw materials and then creates something new out of them. Intuitively, we think creators should own their creations. And so, one should own the resource on which she labors.

While Creation may explain and justify property rights over tables and houses, it does not explain and justify other obvious cases of ownership. Namely, it does not explain and justify owning raw materials which we do *not* shape into new objects. For example:

**Apple-Picking:** Suppose one goes to an orchard and picks some apples. She could use those apples to make a delicious pie or crumble. She could also, perhaps, use them to make an interesting decoration or piece of art. But she opts not to. She chooses to simply take them home, eating a few apples a day until she eats them all.

Here, Creation does not explain or justify why she gets to own the apples she picked. Creation could do so if she used those apples to create something that wasn't there before. But she didn't. At no point did she use the apples to create anything new. She simply took the apples that were already there and ate them. Far from creating anything new, all she did was take raw materials away that could've been used for another's creation. As such, her apple-picking did not create anything in any meaningful sense. And so, Creation cannot explain or justify why her apple-picking gives her property over her apples. But certainly the libertarian wants to say she owns her apples. Those are her apples, whether she chooses to make something out of them or merely eat them. And so, Creation cannot be the libertarian's answer.

One could try to push back here in the following way. As she could argue, there is a sense in which *discovery* is a kind of *creation*. According to Kirzner's view:<sup>449</sup>

until a resource has been discovered, *it has not*, in the sense relevant to the rights of access and common use, *existed at all*. On this view it seems plausible to consider the discoverer...as, in the relevant sense, the *creator* of what he has found. It becomes, then, fairly easy to understand how the finder can be held justly entitled to keep that which he has 'created'...The finder-creator has spontaneously generated hitherto non-existent resources, and is seen, therefore, as their natural owner.

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<sup>449</sup> Kirzner (1978: 17-8).

I find it a stretch to say that discoverers are creators in any meaningful sense. But even if Kirzner is right here, Creation still is unable to answer obvious cases. To illustrate, let's simply modify our case above:

**Already-Discovered Apple-Picking:** Suppose one grows and cultivates an apple orchard. One day, however, he decides he no longer wants anything to do with this orchard (they do take a lot of work!). So on that day, he makes clear to the public that he relinquishes his property of the orchard, meaning everyone is free to take what they want from it whenever they want. The next day, someone else goes apple-picking. And rather than using those apples to make deserts or art, she simply chooses to eat them over a period of days until they are all gone.

Here, the apple-picker did *not* discover her apples. And so, in no sense did she *bring them into existence*. In short, there is no sense in which this apple-picker is a creator. She picked already-discovered apples, and she made nothing with them. She simply picked and ate apples which others already knew were there. So even adopting Kirzner's discovery-as-creation view, Creation still cannot explain and justify why this apple-picker owns her apples. But of course the libertarian thinks she owns her apples. Those are her apples, whether or not those apples were previously-discovered, and whether or not she chooses to make something out of them or simply eat them. So Creation cannot be the libertarian's answer.

In short, the libertarian should not pick any of these three answers. Desert cannot make sense of gifts, inheritances, and charitable donations. Identification cannot make sense of activities like grocery shopping and leasing. And Creation cannot make sense of simply owning raw materials. Again, every answer we look at may require the libertarian to modify what she thought about property rights. But any libertarian should want to say—at least in innocent and harmless circumstances—we are able to own gifts, inheritances, charitable donations, purchased food, housing we lease, and picked-apples. By this point, the libertarian should agree property rights are limited. But she need not, nor would want to say they are *that* limited.

Here, the libertarian may respond that—while she should not pick any of these three answers *on their own*—she can still consider a *hybrid view*. For example, she may believe that Desert *on its own* cannot handle all the obvious cases, but Desert *and Identification and/or Creation can*. The problem is it seems too easy to come up with cases that are problems for all three answers. Consider one such case:

**Gifted Apple:** Suppose someone buys an apple and gifts it to her friend. Her friend does not identify with this apple in anyway, but is grateful and decides to eat it as is.

Here, Desert, Identification, and Creation all seem ill-equipped to handle this case. Her friend did not work hard for or earn this apple, does not identify with this apple, and in no sense created this apple. And still, the libertarian wants to say her friend owns the apple and is free to eat it as is if he likes. Seemingly, then, even a hybrid view is ill-equipped to handle obvious cases.<sup>450</sup>

#### Project Pursuit and Independence

This brings us to the final two answers. The first is *Project Pursuit*. According to Project Pursuit, what grounds property rights is the necessary role they play for being a project pursuer. As it goes, we—as human beings—are project pursuers, in that we each have our own projects (or goals, or ends, or

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<sup>450</sup> Here, the libertarian may also say that Desert, Identification, and/or Creation are only for *acquisition* cases. *Consent* is for *transfer* cases. For example, she may think that *acquiring* unowned resources is about *working hard and earning them*. But *transferring* resources is merely about agents consenting to the rights and duties that accompany buying, selling, trading, gifting, bequeathing, and donating. This response, however, would introduce two problems. First, it is not obvious Desert, Identification, and Creation can handle every obvious *acquisition* case. Take for example my Already-Discovered Apple-Picking case. This is an obvious acquisition case. Yet, Identification and Creation seem unable to handle it. The person in that case does not identify with the apples she picked; nor does she create those apples in any sense. The only plausible candidate here is Desert. But Desert only handles this case if we interpret *hard work and earning* very minimally. And if we made a new case with someone picking already-discovered but still unowned berries off the ground to eat, Identification and Creation would still seem unable to handle it, and Desert would have to exaggerate *hard work and earning* even more. Second, even if we suppose that one (or more) of these answers can handle all obvious acquisition cases, Consent is still a poor explanation for transfer cases. Again, transfer cases are *not* like promises. Promises create obligations for promisors and (perhaps) promisees. Transfer cases create duties for *literally everyone* (except, perhaps, the right-holder, depending on the kind of transfer) (see pages 227-8). If I consent to gift you my lawnmower, that may explain why *I* have the duty not to use that lawnmower without your permission. But that does *not* explain why *literally everyone else*—including those who would not consent to or even know about this gifting—*also* have this duty. So Consent cannot fill in the gaps that Desert, Identification, and Creation leave.



whatever) which we want to complete (or accomplish, or satisfy, or whatever). Some of these projects are easy to complete, others more difficult; some can be completed on one's own, others require interaction with others; some are short-lived, others span one's whole life. These projects are incredibly diverse, differing from person to person. They include things like "learning to play an instrument, studying medicine, opening a restaurant, traveling around the world, or founding a family."<sup>451</sup> As diverse as these projects are, however, most of them have something in common: in order to complete them, one needs to be able to *count on resources*. In other words, for the majority of these projects, one needs resources which (i) she can use without needing the permission of others and (ii) others cannot use without her permission. Otherwise, she cannot confidently make decisions about which projects *she* wants to pursue, *her* plans about how to complete them, and *actually* follow through on those plans.

Let's illustrate with a simple example. Suppose one's project is to learn how to play the violin. In order to learn how to play, she must—trivially—have a violin. But that is not enough. She also needs to be able to *count on* that violin. In other words, she needs to know she can play that violin without others' permission, because otherwise others get to decide if and how she can play it. Furthermore, she needs to know others will not use that violin without her permission, because otherwise others can take it from her or destroy it when she wants or needs it to play. In short, her project requires a violin which she can count on. And the same kind of story can be said for most of her projects: studying anything, opening any business, travelling anywhere, and founding any family.

Project Pursuit, then, comes down to this. Being a project pursuer requires that one can count on resources. Property rights put one in a moral position to count on resources: owning resources allows her to count on those resources, because they put her in the moral position to use those resources without the permission of others, and demand others not use her resources without her permission; and they also put her in the moral position to demand punishment and/or compensation if others do. Property rights

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<sup>451</sup> Wendt (2017: 3).

should be protected and enforced, then, because doing so protects and enforces one's being a project pursuer; and violating them is very wrong because that threatens her being a project pursuer.

The second answer is *Independence*. According to Independence, what grounds property rights is the necessary role they play for living independently. As it goes, we—as human beings—should be allowed to govern *ourselves* and better *ourselves* and make *our own* decisions. Our existences should belong to *us*. We should not be dependent on others and be subject to their wills and dictates. In order to be independent, we need to be able to count on resources. In order to make our existences our own—to truly govern ourselves, better ourselves, and make our own decisions—we need the ability to use resources on *our own*, and the assurance that others will not use those resources without *our permission*. Otherwise, our lives will depend on others and what they are willing to do.

The example above works here as well. Suppose one wants to learn to play the violin. If she has a violin she can count on, she can decide how she will learn. She can decide when she will learn. And she can decide if she will continue learning or give it up for something else. But if she cannot count on that violin, then others can take it from her or even break it without her permission. As such, her learning if/when/how she wants will depend on others' willingness to let her. And they may not be so willing. She may have to beg and plead with them. If they take her violin, she may have to do something for them on their terms to win it back. It short, so long as she cannot count on that violin, her learning to play it will depend on others, and not merely herself. And again, the same can be said for studying anything, opening any business, travelling anywhere, and founding any family.

Independence, then, essentially boils down to the same story as Project Pursuit. Being independent requires that one can count on resources. Property rights put one in a moral position to count on resources. Property rights should be protected and enforced, because doing so protects and enforces one's being independent; and violating them is very wrong because that threatens her being independent. Same story; slightly different words and ideas.

These answers may have their differences. But for my purposes, those differences don't matter. For me, what matters is their similarities. First, what ultimately grounds both answers is the view that *persons should be allowed to live their own lives in their own chosen ways (hereafter: living one's chosen life)*.<sup>452</sup> In other words, persons should not be forced to live how others want them to live; they should get to choose that for themselves. Second, both answers appeal to the *Kantian Principle*, which says we should treat persons as ends-in-themselves, and not as a mere means for our own ends.<sup>453</sup> In other words, we should treat persons as separate individuals with lives of their own, rather than as material to be used for our own lives. As such, when it comes to what we can use for our own lives, persons and their resources are off-limits, at least without their permission. The result is both answers roughly tell the same story: persons should be allowed to pursue their own projects in their own ways, and not be used by or depend on the wills or dictates of others.

Because these answers roughly tell the same story, let's combine them into the Project Pursuit/Independence answer, which refers to either Project Pursuit, Independence, or some combination of the two (whichever the libertarian most prefers). When asked what grounds property rights, it answers *the necessary role they play for being a project pursuer, or independent, or both*. In order to be a project pursuer/independent, one must be able to count on resources. Property rights morally put her in a position to count on resources. And so, property rights are necessary for being a project pursuer/independent. In the following, I will be using the phrase "being a project pursuer, or independent, or both" *a lot*. So from here on out, I will abbreviate that phrase to "being a PPI".

As I discussed earlier, the libertarian should reject any answer which fails to meet three minimal demands: (i) it is persuasive, (ii) it is helpful, and (iii) it explains and justifies obvious cases. The previous

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<sup>452</sup> To borrow Mack's (2010: 59) phrasing regarding his ur-claim.

<sup>453</sup> See Mack (1995: 199) and Nozick (1974: 30-1).

answers were unable to meet all three demands. Can Project Pursuit/Independence? The short answer: yes. The long answer: see below.

First, Project Pursuit/Independence is *persuasive*. As we saw earlier, Project Pursuit/Independence is grounded in the plausible views that persons should be (i) allowed to live their chosen lives and (ii) treated as ends-in-themselves and not as mere means. Of course, Project Pursuit/Independence amounts to a kind of *moral individualism*, placing individuals and their goals over other groups and goals.<sup>454</sup> Those not persuaded by any kind of moral individualism will not be sold on Project Pursuit/Independence. But libertarians, at their core, are moral individualists. We should not expect them to persuade everyone, especially those who reject libertarianism wholesale. For those not immediately opposed to libertarianism *itself*, Project Pursuit/Independence is persuasive enough.

Second, Project Pursuit/Independence is *helpful*. To review, the whole point of assessing these answers was to help the libertarian more effectively and efficiently answer two questions:

**Basic Question 1:** How do we acquire and transfer property rights?

**Basic Question 2:** What, if any, limitations do these property rights have

Let's start with Basic Question 1. Project Pursuit/Independence answers *all* the questions we had for acquiring and transferring resources. To begin, when we looked at inherent-feature conceptions, we considered Locke's labor-mixing theory. And it left us confused: how exactly does one *mix* her labor with a resource; why does mixing her labor result in her owning the resource (and not merely losing her labor); why does mixing her labor result in her owning the whole resource (and not merely the part containing her labor)? But if we take Project Pursuit/Independence, we can explain all these questions away. To illustrate, consider a brief paraphrase of Simmons' interpretation of Locke's labor-mixing theory.<sup>455</sup> As Simmons interprets, Locke is *not* saying we *literally mix* our labor with resources. *That* makes no sense.

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<sup>454</sup> See Mack (2010: 58), where I take the term and idea for *moral individualism*.

<sup>455</sup> Simmons (1992: 271-7).

What Locke is actually saying is this: we each have plans to satisfy our wants and needs. When we labor on resources, what we are doing is bringing those resources into our plans.

With that interpretation in mind, let's go back to the questions we asked of Locke's labor-mixing theory. First, how exactly does one *mix* her labor with a resource? Answer: one does not *literally* mix her labor with a resource. Rather, what she does is make a resource a part of her plans. After laboring, that resource plays a role in satisfying her wants and needs in a way it didn't prior. Second, why does mixing one's labor result in her owning the resource (and not merely losing her labor)? Answer: because making a resource a part of one's plans does not work like that. When she labors on a resource, she cannot *lose* her plans, nor can she *lose* her laboring. All she ends up doing is making that resource a part of her plans. And so, her labor results in her owning the resource. Third, why does mixing her labor result in her owning the whole resource (and not merely the part containing her labor)?<sup>456</sup> Answer: because labor doesn't work like that. Labor does not take up space in a resource. What labor does is bring a resource into one's plans. Typically, we need whole resources for our plans, not just parts of them. Furthermore, sometimes it is impossible to only take part of a resource. So typically, labor gives a property right over the whole resource, not just a random part of it.

What this shows is Project Pursuit/Independence can make sense of Locke's labor-mixing theory. But can it make sense of inherent-feature conceptions more generally? Yes, it can. We concluded our discussion of inherent-feature conceptions by asking a general question: why do actions with *this* feature(s) generate property rights over a *whole* resource, but actions with *that* feature(s) don't? Answer: actions *that make a resource a part of one's plans* generate property rights over a whole resource, but not other actions. The reason why is because what grounds property rights is that they give one the moral ability to count on resources to complete her plans in her own way. So the actions that generate property

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<sup>456</sup> I answer this question on my own. But arguably, this is how Simmons (1992: 271-7) would have answered this question if asked.

rights are those that make resources a part of her plans, so that those resources can then be counted on to complete those plans. She does not need to count on any resource not tied to her plans, so any action that does not tie a resource to her plans should not give her a property right over that resource. Furthermore, sometimes her plans require her to *transfer her resource to another*. So actions that let her do so should transfer her resource, while actions that don't should leave that resource under her ownership or return it to the commons for others to acquire. In short, Project Pursuit/Independence can make sense of inherent-feature conceptions for both acquiring and transferring property rights.

What about practice conceptions? For these conceptions, we found ourselves with two pressing questions. First, why do we have some rights beyond the right to self-ownership (like the right of property), but not other rights (like, perhaps, a right to health care affordability)? Second, what makes a practice of property *justifiable*. Here, Project Pursuit/Independence has the answers. To illustrate, let's look at one version of it: Mack's.<sup>457</sup> According to Mack, we each have the natural right to live our chosen lives. This right implies we have at least three other natural rights: (i) the right to self-ownership, (ii) the right not to be lied to or deceived, and (iii) the right of property (i.e. the right not to be precluded from creating or participating in a justifiable practice of property).

We can immediately see why the first two rights fall out of the right to live our chosen lives. We cannot live our chosen lives if others can choose how we live them. And we cannot live our chosen lives if our decisions for our lives are based on lies and deceit. And so, if we have a right to live our chosen lives, that implies we also have the right to self-ownership and the right not to be lied to or deceived. But why does the right to live our chosen lives *also* imply the right of property? Because to live our chosen lives, we need more than ourselves and others' honesty. We *also* need to be able to count on resources. As Mack puts it: "for human beings...life is lived through the acquisition, transformation, and utilization of

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<sup>457</sup> Mack (2010: 58-64).

extrapersonal objects.”<sup>458</sup> Since (i) one has a right to live her chosen life, (ii) she can only live her chosen life by counting on resources, and (iii) her creating or participating in a justifiable practice property is what allows her to count on resources, that implies she has a right to not be precluded from creating or participating in a justifiable practice of property; i.e. the right of property. Importantly, other rights might be implied by the right to live one’s chosen life. But certainly not all rights will.

What, then, makes a practice of property *justifiable*? As Mack says, the function of a practice of property is to create an environment where individuals can more readily count on resources. A justifiable practice of property is simply one which creates that environment. As I discussed earlier, Mack believes that all justifiable practices of property will have certain features, including coherence, transparency, comprehensiveness, and inclusiveness. But importantly, what *makes* a practice justifiable is that it creates the right environment.<sup>459</sup> Many practices of property can create this environment, and so many would count as justifiable. But certainly not all of them would, and those that did not create the right environment would not be justifiable.

Importantly, we need not adopt Mack’s language to reach the same conclusions. So long as we agree that persons should be allowed to live their chosen lives, that doing so requires them to count on resources, and that justifiable practices of property make it possible for them to count on resources, we will find ourselves drawing the same conclusions Mack did: we should not be barred from creating or participating in a practice of property which creates an environment where persons can more readily count on resources. Which practices create that environment is debatable, but we know there is likely

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<sup>458</sup> Ibid. 62.

<sup>459</sup> Ibid. 63 says that “a practice of private property is *justifiable* if and only if it instantiates [these four] features to a reasonably acceptable extent.” This suggests that what *makes* a practice *justifiable* is the reasonable satisfaction of these features. But I believe that is *not* what Mack is saying. Rather, I believe what Mack is saying is that what *makes* a practice *justifiable* is that it creates the right environment. He merely suggests that the necessary and sufficient conditions for a practice creating that environment are satisfying those four features to some reasonably acceptable extent. If Mack discovered that more features were required, or that different features were required, I believe he would (or at least be forced to) change his “if and only if” clause.

more than one that does the job. And we know that, whatever the practice, it will include ways to both acquire and transfer resources. And so, Project Pursuit/Independence can make sense of practice conceptions for both acquiring and transferring property rights.

Now let's talk about Basic Question 2: what, if any, limits do property rights have? When I discussed this question, we looked at three Zelda Cases and concluded there must be more limits to property rights than what the No/Almost-No Answer said. Here, Project Pursuit/Independence begins to shape the appropriate limits. To review, in each of the Zelda Cases, Jerk did *not* use his land or plastic in a way that violated Zelda's property rights. But we still concluded that Jerk did something wrong, and that the state should not enforce what Jerk did with its police and criminal justice system. Why? Because what Jerk did *prevented Zelda from being a PPI*. By surrounding Zelda in his land or dome, or by surrounding any resource she could want or need in a bubble, he took away any hope she had of pursuing her own projects and made her completely dependent on him for any of her wants and needs. What grounds property rights is the necessary role they play for being a PPI. So there need to be limits on property rights to account for what others' need for being a PPI. And whatever those limits are, they will conclude that what Jerk did was wrong, that Zelda is not duty-bound to stay trapped, and that the state should not keep her trapped with its police force or punish her for escaping with its criminal justice system.

Finally, Project Pursuit/Independence can explain and justify the *obvious cases*. First, Project Pursuit/Independence can handle gifts, inheritances, and charitable donations. To begin, most of us have *relational* projects. We want to have deep and meaningful friendships; we want to be close with our families and/or start new ones; we want more than transactional relationships of mutual advantage. Gifts foster and express our love and appreciation for these relationships while we are alive, and inheritances after we pass. Furthermore, some of us have projects to *change the world*. We want to alleviate suffering or change persons' lives. We want to make the world look different than it already is. When we donate to others, our donations bring them into these projects. Of course, others can always refuse our donations.



But if they accept, their acceptance helps complete these projects (if my project requires you to own my \$100 donation, and you accept my donation but somehow don't get to own it, my project remains incomplete). Additionally, while *some* gifts, inheritances, and charitable donations may threaten independence,<sup>460</sup> others certainly don't, and many actually help. When it comes to the most obvious cases of gifts, inheritances, and charitable donations, Project Pursuit/Independence can explain and justify them.

Second, Project Pursuit/Independence can explain and justify grocery shopping and leasing. As it goes, one does not need to identify with a resource to want or need it for her projects. Importantly, merely sustaining oneself is *not* a project in any meaningful sense. But sustaining oneself is a prerequisite for having projects, and it can help her pursue her actual projects. Furthermore, while eating for sustenance is not a project, cooking, baking, and seeking out new foods and flavors are. So is creating a recreational lifestyle that requires that food. So is cultivating a family that eats home-cooked meals. Additionally, leasing is a kind of project. Finally, relying on oneself for sustenance and taking opportunities to make her own wealth facilitate her independence. As such, grocery shopping and leasing cases are easily handled.

Third, Project Pursuit/Independence can explain and justify apple-picking. As it goes, one does not need to create or discover a resource to want or need it for her projects. Often times, our plans will require us to transform, modify, or change raw material into something new. But sometimes, all our plans require is the raw material as it is. Project Pursuit/Independence does not care whether we change raw material or keep it the same. Nor does it care whether that material was previously discovered. What it cares about is whether that raw material is required for our projects. If it is, that is good enough. Also, raw material—created into something new or left alone—can help one govern herself and live her own life. So especially given what was also said in the second point, apple-picking cases are no problem. And if Project Pursuit/Independence can handle all that, then it can easily handle gifted-apple cases too.

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<sup>460</sup> See page 263-4.

In short, Project Pursuit/Independence is the *only* answer which meets our minimal demands. It is very persuasive, at least to anyone who—like the libertarian—believes we should be allowed to live our chosen lives, the Kantian Principle, and/or some kind of moral individualism. It is very helpful; for it not only elegantly addresses all the questions we had with inherent-feature and practice conceptions—as well as the problem we had with the Zelda Cases—but also shapes the correct answers to the first two basic questions. And it is more than able to explain and justify all the obvious cases I discussed above; and it is easy to imagine how it could do the same for other obvious cases as well. As such, when it comes to the six answers we looked at, the choice is clear: the libertarian should pick Project Pursuit/Independence.

That said, there is one more reason why the libertarian should pick Project Pursuit/Independence. Rather than throwing all the other answers out, Project Pursuit/Independence manages to take what was good from those answers, while leaving behind what was bad. As we saw above, Intuition was wrong that there is something *immediately* intuitive about property rights. Without even an attempt at an explanation or justification, property rights simply sound ridiculous. Furthermore, the claim that property duties are easily and even trivially satisfied is false, as is the claim that these duties are always easier to satisfy than any positive ones. But Project Pursuit/Independence makes clear why property rights, *upon reflection*, are intuitive. When we think of property rights as *the products of actions which impose burdensome, non-consented to, and unknown duties on others*, they sound incredibly odd and harsh. But when we think of them as *playing a necessary role for being a PPI*, they sound understandable and appealing. Furthermore, Project Pursuit/Independence correctly identifies why property rights are acceptable to *everyone*. It is *not* because they are *negative*. It is because they are *limited*. Negative duties can be just as, if not more, demanding than positive ones. What makes property rights acceptable is that the same grounding principle or value which explains and justifies them *also limits* them. These limitations, not the mere acknowledgement that property rights are negative, is what makes these rights intuitively acceptable.

Desert was wrong that property rights are grounded in hard work and earning. There are simply too many cases where the libertarian wants to say we own something that we clearly did not work hard for or earn. But importantly, Project Pursuit/Independence does not make hard work and earning completely irrelevant. Many, if not most of one's most important projects will require her serious effort. She most likely cannot live the life she truly wants to live by being lazy. And in an effort to complete her most important projects, she will likely have to learn new skills and prove to others she is worth working with. That, in turn, makes her even more able to depend on herself and less on others. Of course, she can always opt for an easier, simpler, less materialistic life. But that shouldn't bother the libertarian. If she wants to work less, earn less, and own less, that is her choice. But if she wants to do more and own more, she should expect to put in the work.

Identification was wrong that identifying with a resource is in anyway necessary or sufficient for property. But Project Pursuit/Independence still captures that value of identifying with a resource. When it comes to one's most important projects, she will need resources which she can and should expect to identify with. Anyone with the project to have and raise a family in their dream neighborhood should not be surprised when they start thinking of their home as a part of themselves. Farmers with the project to make a living on one's land should not be surprised when they start to identify with the ground that swells with their blood, sweat, and tears. When it comes to one's most important projects, some resources will find themselves holding a special place in her heart. That is unsurprising and even expected.

Creation was wrong that property is about creating something from or discovering raw materials. But Project Pursuit/Independence captures why we typically think creators and discoverers should own what they create and discover. To repeat, when it comes to most of one's projects, she will need resources which are transformed, modified, or changed in some way. Furthermore, her projects may require resources which are currently undiscovered. Additionally, creating and discovering something new

typically requires initiative and effort, which are important skills for living independently. As such, it makes sense why creators and discoverers typically should own what they created and discovered.

If anything, it would be rather odd to say a creator and discoverer should own what she created and discovered *if it is not tied to her projects or independence!* If one makes a table *to use or transfer (or at least, to hold onto on the chance that she will someday)*, it makes sense why she should own the table she made. But if she makes a table *just for the fun of it, with no interest (either now or later) to use or transfer it*, then no one seems to wrong her when they take that table for one of their own projects or independence. Furthermore, if one makes a discovery *and plans to use what she discovered in some way*, then it makes sense why she should own her discovery. But if one simply makes a discovery and has no plans for how to use it, but demands to own it anyway, all she seems to do is prevent others from using what they may have discovered one day themselves for their own projects and independence. If there is anything intuitive about creators and discoverers owning what they create and discover, it is that they typically use what they create and discover for their projects and independence. If they truly did not, we would not find their property rights over these resources intuitive. We would find them unnecessary, malicious, and disrespectful of others. Which, unsurprisingly, is what Project Pursuit/Independence would say.

To sum up, then, Project Pursuit/Independence is doubly impressive. It not only is the *only* answer to meet all three minimal demands; it also manages to take what was appealing about the other answers, while leaving behind their problems. As such, the libertarian has every reason to pick Project Pursuit/Independence as her answer. And this shouldn't surprise her. After all, Project Pursuit/Independence—in some version or another—is a *common* answer to Basic Question 3, and is often used to justify the right to self-ownership in particular or libertarian theories of justice more generally.<sup>461</sup> As such, I will assume I made my case: the libertarian should pick Project

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<sup>461</sup> See footnote 431 (page 222).

Pursuit/Independence as her answer. That means she should think what grounds property rights—what makes them worthy of protection and enforcement, and what makes violating them a serious wrong—is that they are necessary for being a PPI. This means that property rights must be limited to account for others' being a PPI. And that (finally) leads us back to universal health coverage.

#### Section 4: Why the Libertarian Can and Should Support—Taking Project Pursuit/Independence *Seriously*

After all this talk about basic questions, I can finally make my argument for why—per the Property Rights Thesis—the libertarian *can* and *should* support the United States getting universal health coverage.

Let's call my argument the *Taking PPI Seriously Argument*, because all it amounts to is this:

- (1) The libertarian should pick Project Pursuit/Independence
- (2) Whatever she picks, she should take it *seriously*
- (3) Project Pursuit/Independence, taken *seriously*, says—per the Property Rights Thesis—the libertarian can and should support the United States getting universal health coverage

Therefore, the libertarian can and should support the United States getting universal health coverage

The previous two sections all amounted to a defense of (1). And the defense for (2) is straightforward. Insofar as the libertarian wants to be consistent and honest, she should go where her principles and values take her, and not only appeal to them when she finds it convenient. To do otherwise is to be either incoherent or disingenuous.<sup>462</sup> All that leaves, then, is (3). My argument for (3) rests on three claims:

- (3a) Project Pursuit/Independence, taken *seriously*, says—per the Property Rights Thesis—the United States *can* fairly distribute enough—i.e. tax, regulate, and/or mandate a fair share of excesses to satisfy and/or prevent needs<sup>463</sup>

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<sup>462</sup> I take this much as obvious. That said, for a longer and more-enjoyable-to-read version of this defense, see Waldron (1988: 416-8).

<sup>463</sup> See Section 3a for more detail.

(3b) The libertarian should say the United States not only *can*, but also *should* fairly distribute enough

(3c) If all that is true, the libertarian can and should support the United States getting universal health coverage

### 3a: The United States Can Fairly Distribute Enough

Let's start by ignoring the Property Rights Thesis and focusing instead on property rights *themselves*. As we saw above, Project Pursuit/Independence says what grounds property rights is that they are necessary for being a PPI. But importantly, more is necessary for being a PPI than the mere ability to count on resources. In order to be a PPI, one needs at least two other things. First, she must *actually have* resources. She cannot count on resources which others can freely use without her permission. But she *also* cannot count on resources which *are not there*. Thus, to truly count on resources, she not only needs others' non-interference, but also actual resources for others not to interfere with. Second, she must have the *abilities* required to use those resources to pursue projects and be independent. If she lacks these abilities, she cannot pursue any projects and live independently, no matter how many resources she can count on.

Furthermore, as we saw above, property rights need to be limited to account for what others need to be PPIs. To put it differently: property rights cannot make others duty-bound to sacrifice or go without what they need to be a PPI.<sup>464</sup> Otherwise, these rights would undercut the very grounding which justifies their existence, their worthiness of being protected and enforced, and the wrongness of violating them. If you have to respect what I need for being a PPI, then I have to respect what you need for being a PPI too. The grounding goes both ways.

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<sup>464</sup> Waldron (1988: 271-8) reaches the same conclusion using hypothetical and actual consent.

This means that property rights must be *overridable*. In other words, there are other rights, duties, and/or obligations related to what else being a PPI requires. And these other rights, duties, and/or obligations can (i) prevent a property right from being created, (ii) eliminate a property right, and/or (iii) override a property right when they conflict.<sup>465</sup> If the libertarian cannot concede *that much*, then her appeal to Project Pursuit/Independence is not a justification; it is a smokescreen.

Let's now review what we know. We know that property rights must be compatible with what others need to be PPIs. We know that we can reasonably debate what one needs to be a PPI.<sup>466</sup> Minimally, it must require that one meets her basic needs. As I suggested earlier, struggling to survive is not a project, and one is in no position to pursue projects of her own until she has first met her basic needs. Furthermore, one cannot be expected to live *independently* if she is struggling merely to live *at all*. And, of course, if she fails in her struggle to meet all her basic needs, she will die; and to be a PPI at all, one must first be alive. It also must require *some* resources *beyond* those required to meet her basic needs, and *some* abilities to use those resources to pursue her own projects and be independent. But we can reasonably disagree about what that ends up looking like. Nevertheless, wherever we fall here, we know

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<sup>465</sup> Importantly, (i), (ii), and (iii) are distinct. To illustrate, take one interpretation of Locke's (2010: Sects. 27-51) spoilage and sufficiency provisos for example. As it goes, according to Locke's spoilage proviso, you cannot waste what you own. If you do, you return what you are wasting back to the commons for others to use. And according to Locke's sufficiency proviso, you cannot acquire a resource unless you leave "enough and as good" of that resource for others.

Here, I take this interpretation as illustrating the difference between (i) and (ii). Locke's spoilage proviso is an example of (ii): it *eliminates* your property right. As it goes, you create a property right over a resource. But once you waste that resource, you *lose* that right: it is *eliminated*. By contrast, Locke's sufficiency proviso is an example of (i): it *prevents* you from creating a property right. When you take a resource without leaving enough and as good for others, you fail to create a property right in the first place: it is *prevented*.

At least on this interpretation, Locke's provisos only illustrate (i) and (ii). But there is also (iii). Unlike (i) and (ii), you successfully create and keep your property right. That right is simply *overridden* by others' rights, duties, and/or obligations. In other words, when your property right and their rights, duties, and/or obligations clash, theirs win. You keep your right the whole time, but their rights, duties, and/or obligations take priority.

For my purposes, I do not care whether the libertarian goes with (i), (ii), and/or (iii). Nor do I care if she mixes and matches them, depending on the situation. All that matters to me is this: there are times when one's property rights give way to another's rights, duties, and/or obligations. So for simplicity, I will say property rights are *overridable* when others' rights, duties, and/or obligations can (i), (ii), or (iii), leaving the details to the interested libertarian.

<sup>466</sup> I largely take my ideas here from Wendt (2017: 5-6).

two other things: one can have *more* than what she requires to be a PPI, and one can also have *less*. Let's call any amount *more* her *excess* and any amount *less* her *needs*.<sup>467</sup>

Which brings us to my first claim. For property rights to be compatible *at all* with what others need to be a PPI, these property rights must *at least* say this much: when one's property rights over her *excess* clash with others' *needs*, her property rights are overridden. As such, her property rights are *not* violated when a *fair share* (*i.e. no more than necessary*) of her *excess* is taxed, regulated, and/or mandated to satisfy others' needs and/or prevent them from having needs. To say otherwise is to effectively abandon Project Pursuit/Independence. For simplicity, let's call the action [taxing, regulating, and/or mandating a fair share of excesses to satisfy and/or prevent needs] *fairly distributing enough*. Taken together, what this shows is that Project Pursuit/Independence, taken seriously, will end up saying the United States *can* fairly distribute enough *without violating anyone's property rights*. As such—as far as the Property Rights Thesis is concerned—the United States can fairly distribute enough if it wants. One's property rights only stretch so far.

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<sup>467</sup> For my purposes, I will *only* be concerned with a person's excess of *resources*. After all, universal health coverage only requires the taxation, regulation, and/or mandating of people's *resources* (*i.e.* their money, insurance, etc.). Some libertarians may worry, however, that my argument commits the libertarian to the view that the state can and should *also* use a person's excess of *abilities*. But this worry should be abandoned for two reasons. First, my argument can distinguish between *self-ownership* and *resource-ownership*, because it does *not* say one must be related to the other. And so, my argument can say one's self (and what that includes) is more off-limits than one's resources. Second, the idea that a state could use a person's excess of abilities is odd. It cannot mean the state could force her to work, because that would use more than her excess of abilities; it would also use her body and mind, and presumably her other abilities and labor too. It cannot mean the state could distribute something physical, because abilities are not the kind of thing a state can physically distribute. Nor can it mean the state could somehow remove a person's abilities. If this idea makes any sense at all, it simply says the state can regulate or prohibit how she uses some of her abilities. But even the libertarian agrees with that much. For example, the libertarian thinks the state should let her practice her marksmanship on a shooting range, but not on actual people! So here, all my argument would say is the state can regulate or prohibit how she uses some of her abilities in order to satisfy and prevent needs. But not only does that sound agreeable; it also is what Project Pursuit/Independence would actually say if we took it seriously. See also Waldron (1988: 398-408). As such, for my purposes, we only need to worry about excesses of resources; and we need not worry that my argument implies something absurd about excesses of abilities.



### 3b: The United States Should Do So Too

Just because the United States *can* fairly distribute enough, that does not mean it also *should*. So now, let's compare two hypothetical states. In both states, everyone has property rights. But in one state, no one has any needs and no one ever will. In the other state, however, some persons have excesses while others have needs. Let's call the former state *No Needs* and the latter state *Has Needs*. What are the key differences between these two states?

For my purposes, there are three. The first deals with property rights as *side-constraints*. To my knowledge, the view that property rights function as side-constraints originated with Nozick,<sup>468</sup> but clearly is used by other libertarians today.<sup>469</sup> As it goes, a side-constraint is *not* consequentialist: it is *not* about *promoting* actions for the sake of achieving some goal, maximizing some value, or attaining some outcome. Instead, a side-constraint is deontological: it is about *constraining* actions in order to respect others as persons. More simply: a side-constraint does *not* tell you which action you (morally) should do; instead, it tells you which actions you (morally) cannot do. Suppose, for example, you have the right not to be killed. This right does not tell others what they should do: for example, it does not tell them to be your friend or give you money. Instead, it tells them what they cannot do: namely, they cannot kill you. They cannot kill you for bad reasons (ex. monetary gain), nor can they kill you for good reasons (ex. to make society better off); they cannot even kill you to prevent others from being killed! This right says others cannot kill you, *period*.<sup>470</sup> It constrains their actions. The idea, then, is that property rights function as side-constraints. They don't say what others should do. Instead, they say that others (morally) cannot use what you own without your permission, *no matter what*. They constrain others' actions.

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<sup>468</sup> Nozick (1974: 28-9).

<sup>469</sup> Engelhardt (1996b: 781-3) and Mack (1995: 199), to name a few. Seemingly also Burrus (2017), but that is less clear.

<sup>470</sup> Except in the case of self-defense. I will ignore any complications this exception introduces.

In both No Needs and Has Needs, property rights constrain others' actions. But importantly, they can only function as full-fledged Nozickian side-constraints in No Needs. As I discussed, if we take Project Pursuit/Independence seriously, then property rights cannot make others duty-bound to sacrifice or go without what they need for being PPIs. So in Has Needs, the needs of some can override the property rights of others' excesses. As such, in Has Needs, property rights only *sometimes* constrain *some* persons' actions. But that is not the case in No Needs. In No Needs, *there are no needs* which can override the property rights of others' excesses. So in No Needs, property rights are more able to *always* constrain *everyone's* actions, which is what Nozick and others were going for.

The second key difference deals with *scary actions*. In both No Needs and Has Needs, persons are physically able to steal from others and break and enter others' homes. And in both states, theft and breaking and entering are *sometimes* wrong. But in Has Needs, those actions are *not always* wrong. Again, one's property rights over her excess can be overridden by another's needs. So long as the theft or breaking and entering targets one's excess for the sake of another's needs, that action—as far as property rights are concerned—is permissible.<sup>471</sup> But that is not the case in No Needs. Again, in No Needs, *there are no needs* which could permit theft and breaking and entering. So in No Needs, it is easier to show why these actions are *always* wrong.

The third key difference deals with *confusing protection and enforcement*. In both No Needs and Has Needs, the state seeks to protect and enforce everyone's property rights. And in both states, that can lead to confusing cases. But there are far more confusing cases in Has Needs. Consider what should be an open-and-shut case for any libertarian: person A legitimately acquired \$100, and B steals that money. In Has Needs, we cannot immediately say what the state should do. If A needs that money and/or B does not, then we can say B should be punished and/or A be compensated. *But* if B needs that money and A

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<sup>471</sup> Now, those actions may still be wrong *all things considered*. But then that would be for some reason other than one's property rights. For her property rights would not be violated in these cases. My thanks to Mark Satta for pointing this out.

holds it in excess, then in this case, A's right to that money is overridden by B's needs. As such, in order to know what to say in this case, the state would need to know more about what A holds in excess and what B needs. But that is not the case in No Needs. Again, in No Needs, *there are no needs* which could override property rights or permit theft. So in No Needs, the state can immediately say what the libertarian wants it to say: A owns that money and B stole it, so B should be punished and/or A be compensated.

All this brings us to my second claim. When the libertarian commits herself to the Property Rights Thesis, she wants and expects that to mean at least three things. First, in her state, property rights will function as full-fledged Nozickean side-constraints, which are not so easily overridable. Second, in her state, theft and breaking and entering are always wrong. Third, in her state, when it comes to a case as simple as A stole from B, A will be punished and/or B will be compensated. *That* is the state she wants and expects when she commits herself to the Property Rights Thesis. But as we saw above, *that* is a state she *cannot* have if, in that state, some persons have excesses and others have needs. So in order to truly get the state she wants and expects, no one in her state can have needs.

As such, the libertarian should support the state fairly distributing enough. She may think all she wants is the Property Rights Thesis. But if she takes Project Pursuit/Independence *seriously*, then what she *really* wants is the Property Rights Thesis *in a state without needs*. Otherwise, her Property Rights Thesis leaves her with a state where property rights are more easily overridden, where theft and breaking and entering are sometimes permitted, and where the state cannot even handle a case as simple as A stole from B without assessing persons' excesses and needs. As such, so long as the United States can satisfy and prevent needs in a way that does not violate anyone's property rights, she should support it. But all that is just to say she should support the United States fairly distributing enough.

### 3c: Why That Means the Libertarian Can and Should Support the United States Getting Universal Health Coverage

As I discussed, the libertarian who commits herself to the Property Rights Thesis should support the United States fairly distributing enough. In other words, she should support the United States taxing, regulating, and/or mandating enough excesses in order to satisfy and prevent needs. What does that *actually* look like? It is hard to say. But we know one thing: whatever it looks like, it requires the United States to *at least* get universal health coverage.

To begin, there will always be needs (either unsatisfied or unprevented) without universal health coverage. There are many threats to one's being a PPI. Others using her resources without her permission is *one* kind of threat. But another kind of threat are threats to her *health*. As we saw in Chapter 3, threats to her health (like illnesses, injuries, and disabilities) can make it difficult—and even impossible—for her to have, design, and execute her own projects and plans. Furthermore, they can isolate her from others, making it difficult—and even impossible—for her to engage in mutually-advantageous projects and work to earn her own income.

Still another kind of threat are threats to one's *basic needs*. This is relevant, because as we also saw in Chapter 3, poor health and homelessness have a scary relationship. Poor health increases the odds that one will become and stay homeless. And homelessness increases the odds that her health will get worse. The result is poor health and homelessness reinforce each other, trapping her in a cycle which progressively limits and even prevents her from being a PPI. And this is, of course, to speak of health itself as something *other* than a basic need. And many of us already see it as one.

Furthermore, as we again saw in Chapter 3, the evidence already demonstrates that guaranteed health care affordability helps one become and stay a PPI. It makes it easier—and even possible—for one to actually work and not depend on others for her survival. It makes it easier—and even possible—for her to find work which matches her own talents and desires, rather than working at a job which she doesn't like, fails to utilize her potential, and gives her employer superior bargaining power. It makes it easier—

and even possible—for her to start her own business, rather than settling for a business that is already there. And it makes it easier—and even possible—for her to retire on her own terms. Needless to say, all of this is important for one pursuing her own projects and living independently.

In short, then, there will always be needs without universal health coverage. There are many threats to one's being a PPI. Institutions like the police, military, and criminal justice system (when they work as intended!) protect persons from *one* kind of threat. Universal health coverage, however, is necessary to protect persons from *other kinds*. Without it, threats to health will go unprevented, untreated, and unsupported; persons will become and stay locked in homelessness; and persons will find it difficult—and even impossible—to work and retire based on their own projects and find themselves more dependent on the generosity or unequal bargaining power of others. Universal health coverage, then, is necessary to satisfy and prevent needs. When it comes to being a PPI, then, we can think of universal health coverage as helping complete the United States package of protection and enforcement.

Based on everything I have discussed so far, then, the libertarian should prefer a United States with universal health coverage to one without it. Of course, all this assumes (i) getting universal health coverage does not take more than is necessary from persons' excesses and (ii) there are no free market alternatives. But both (i) and (ii) have already been addressed. As I said in Chapter 1, I am (if nothing else) assuming universal health coverage is affordable and requires taxation, regulations, and/or mandates. And so, I am (if nothing else) assuming the United States can get universal health coverage *without* demanding too much (and potentially demanding less than it does now); and that it *must* tax, regulate, and/or mandate to do so. More simply, the United States can get universal health coverage without posing any special problems here, and there is no free market alternative to choose instead.

Which brings us to my third and final claim. The libertarian should prefer the United States to fairly distribute enough. And it cannot do so without getting universal health coverage. Furthermore, universal health coverage poses no special problems here, and there are no free market alternatives to

choose instead. As such, any successful model for the United States fairly distributing enough must include universal health coverage as part of the package. And so—per the Property Rights Thesis—the libertarian not only can, but also should support the United States getting universal health coverage.

## Section 5: Objections and Replies

I contend this is what the libertarian should conclude *if she takes Project Pursuit/Independence seriously*. And I contend the libertarian should take it seriously. So I contend this is what the libertarian should conclude. That said, the libertarian may have some reservations here. I can think of four. First, she may worry I am conflating *respecting* PPI with *promoting* PPI. Second, she may worry I am conflating the *opportunity* to own resources with *actually* owning resources. Third, she may worry I am ignoring the *reason* why she distinguishes between *positive* and *negative* rights. And fourth, she may worry my argument is not really *libertarian*. Let's tackle all of these worries now, starting at the top and working our way down.

### Respecting versus Promoting

The first worry deals with a distinction between *respecting* and *promoting* one's PPI.<sup>472</sup> As it goes, project pursuit and independence are values. But there is a difference between *respecting* these values and *promoting* these values. We *promote* these values when we provide persons with what they need to be PPIs, and further their pursuit of their projects and independence. We *respect* these values, however, when we do not interfere with others' being PPIs, and do not interfere with their pursuit of their projects and independence. To put it simply, *promoting* is about helping, *respecting* is about not interfering. This is important, because according to the libertarian, these values are to be *respected*, *not promoted*. For to promote someone's PPI comes at the expense of disrespecting another's PPI.

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<sup>472</sup> I take this distinction from Pettit (1991/2002: 97); see also Wendt (2017: 8).

But if that is so, then it no longer looks like the libertarian should (or even can) support the United States getting universal health coverage. Universal health coverage here is about taxing, regulating, and/or mandating persons' excesses in order to satisfy and prevent needs. That sounds like universal health coverage is about *promoting* these values, not *respecting* them. In fact, that sounds like it *disrespects* some persons' PPI for the sake of *promoting* others' PPI. But for the libertarian, it is all and only about *respect*. And so, the libertarian no longer should (or even can) support the United States getting universal health coverage.

The problem with this worry is that it misrepresents what Project Pursuit/Independence is actually doing. I agree that, for the libertarian, it is about *respecting* PPI, *not promoting* it. But I cannot respect your PPI *until I know what that means*. The whole point of Project Pursuit/Independence is to figure that out! In other words, Project Pursuit/Independence is *not* about promoting anything. It is about making sense of the property rights that we are supposed to respect, that the state is supposed to protect and enforce, and that none of us are supposed to violate.<sup>473</sup>

Here, I contend, is where this worry falls apart. As I argued earlier, the libertarian cannot appeal to Project Pursuit/Independence *only when she finds it convenient*. Nor can she justify property rights by claiming they are necessary for being a PPI, *when these same property rights conflict with what others need to be PPIs*. Nor can she say property rights are about respecting everyone's PPI, *when these same property rights make others duty-bound to sacrifice or go without what they need to be PPIs, so that others can keep more than a fair share of their excesses*. If the libertarian is going to appeal to Project Pursuit/Independence, then she needs to take it *seriously*. But as I discussed, if she takes it seriously, then she must admit these property rights are overridable, and that they are not violated when persons' fair

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<sup>473</sup> As Wendt (2017: 8) puts it: "A reply to this objection is that it misunderstands the theoretical place of the project pursuit rationale. Rights indeed function as 'side-constraints,' as Nozick has famously pointed out, and thus they are something persons have to respect, not promote. But project pursuit is neither something persons should promote nor respect. It is on a higher theoretical level, justifying and giving shape to people's rights (that function as side-constraints)."

shares of their excesses are used to satisfy and prevent others' needs. Otherwise, her supposed *respect* for persons' PPI is disingenuous. Again, if I have to respect what you need for being a PPI, then you have to respect what I need for being a PPI. And both of us need more than the mere ability to count on resources.

Perhaps this is most evident when we see how Nozick interprets the Kantian Principle. According to Nozick, what grounds property rights as side-constraints is the Kantian Principle that we should treat everyone as ends-in-themselves, and not as a means for our own ends. Nozick thought all this entailed where rights of non-interference.<sup>474</sup> But *Kant* thought it entailed more than *that*. To Kant, respecting persons as ends-in-themselves requires us to do more than merely not use with their stuff without their permission. It also requires us to see their projects as *our own*. As such, it requires us to—in some meaningful sense—work to advance our projects *and theirs*.<sup>475</sup> As Kant saw it, then, one blatantly disrespects others as ends-in-themselves when she refuses to use (or let others use) a fair share of her excess to satisfy and prevent others' needs.

Of course, this does not mean everything Kant says here is correct. But based on everything I have discussed so far, we can at least see Kant is on the right track and Nozick missed the mark. Nozick is correct that, in order to respect everyone's PPI, we must respect their property rights. And he is also correct that these rights function as side-constraints. But if we take Project Pursuit/Independence seriously, these rights are overridable; and fairly distributing enough does not violate them. As such, fairly distributing enough does *not disrespect* anyone's PPI. If anything is disrespectful here, it is one's refusal to let the state do so.

As such, universal health coverage is *not* about *disrespecting* some persons' PPI for the sake of *promoting* others' PPI. It does not disrespect anyone's PPI. And arguably, it better respects everyone's

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<sup>474</sup> Nozick (1974: 30-3).

<sup>475</sup> Simmons (1992: 325-6). See also O'Neill (1989: 352-5).



PPI. In any case, my argument did not fail to distinguish between respecting and promoting the values of project pursuit and independence. Instead, this worry failed to see what Project Pursuit/Independence was actually doing. And so, the Taking PPI Seriously Argument stills stands. And that means the libertarian can and should still support the United States getting universal health coverage.

#### Cultivating versus Hindering Independence

The second worry deals with independence in particular. As it goes, when the United States simply *gives* persons support, it hinders the kinds of skills required to be independent. It makes them more dependent on government aid, instead of working for what they want themselves.<sup>476</sup> But if that is so, then it no longer looks like the libertarian should (or even can) support the United States getting universal health coverage. Universal health coverage is about *guaranteeing* everyone can afford basic health care, *whether or not* they can on their own. Thus, universal health coverage seems to encourage persons to be *dependent*, not independent! And so, on the grounds of independence, the United States should let persons work for their ability to afford basic health care, rather than freely gifting them that guarantee.

There are at least three problems with this response. The first two are rather quippy. First, this worry misrepresents what universal health coverage would look like. Presumably in the United States today, *some* persons would get their health care or coverage for free. But most would be expected to finance the system. And so, for most persons, they would not be getting this guarantee *for free*—they would be *paying* for it.

Second, if the libertarian is *this* worried about independence, then she should take that worry *seriously*. As I said earlier, there are *many* resources that we do not work hard for or earn, like gifts,

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<sup>476</sup> Waldron (1988: 418-20) notes this concern. Furthermore, libertarians and conservatives claim to care about personal responsibility, whatever they mean by it (see Preiss 2017). Recall also what Humboldt says about positive state action (see pages 151-2). In any case, this seems to be a concern when focusing on the *independent* part of Project Pursuit/Independence.

inheritances, and charitable donations—and yet the libertarian still insists we own them nevertheless.<sup>477</sup> Furthermore, while some of these gifts, inheritances, and charitable donations are rather small, others are quite large. Some persons are gifted brand-new cars. Some charities make and donate entire houses. And some inheritances are so large that the benefactors would never have to work a day in their lives if they chose not to. If the libertarian is *this* worried about independence, then she needs to start placing limits on our ownership of—at least—these extravagant gifts, inheritances, and charitable donations. Otherwise, this supposed worry is nothing more than a farce.

Third—and most importantly—if the libertarian is *this* worried about independence, then she should support the United States getting universal health coverage *even more* than she already did. As I discussed in Chapter 3, universal health coverage *stimulates* hard work and earning. It makes persons more able and willing to actually work, work at a job that better fits her talents and desires, start her own business, and retire on her own terms. It makes one more able and willing to pay her own rent or mortgage. And it makes her more able and willing to earn and provide for herself, instead of relying on the charity of others.<sup>478</sup> If anything is a threat to hard work and earning, it is not the *guarantee* of health care affordability, but rather the *lack* of it.<sup>479</sup>

In short, this worry about independence should be dismissed. For starters, in the United States today, most persons would *pay* for the guarantee provided by universal health coverage. Furthermore, if the libertarian is going to invoke this worry, then she should take it seriously—and there is reason to doubt she would. Finally—and most importantly—if she does take this worry seriously, then that gives her even more reason to support the United States getting universal health coverage. For universal health coverage would stimulate independence—what hinders independence is the lack of universal health coverage. As

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<sup>477</sup> I take this from Waldron (1998: 420-1).

<sup>478</sup> Pages 144-8.

<sup>479</sup> Consider what we saw when comparing Medicaid expansion with Medicaid work requirements, as well as job-lock (pages 146-8). Consider also the difficulty of finding sustainable and reliable work when homeless, along with what we saw about poor health, homelessness, and universal health coverage (pages 188-94).

such, whatever the libertarian's *real* worries, the result is the same: she can and should still support the United States getting universal health coverage.

#### Positive and Negative Rights, Revisited

As I discussed earlier, there is a distinction between positive and negative rights. To review, negative rights are rights which *only* impose negative duties. Positive rights are rights which impose *at least one* positive duty on *at least one* agent (individual, group, organization, or state). Often times, libertarians have a problem with positive rights,<sup>480</sup> and we can understand why. One's property right is the right for her to use what she owns as *she* chooses. But positive rights create positive duties—and those positive duties can demand that she use what she owns in a way *other than* her choosing. As such, the duties positive rights create can *clash* with the property rights we are supposed to have. Libertarians—particularly those drawn to something like the Property Rights Thesis—do not like the idea of our property rights being undercut. And so, they often reject the existence of positive rights.<sup>481</sup>

Here, it will be helpful to take stock of what the Taking PPI Seriously Argument *does* and *does not* say. I have *not* claimed anyone has a positive right to health care affordability or anything else. What I have argued is, if we take Project Pursuit/Independence seriously, then we must agree that property rights over excesses are overridable by others' needs. Because of this, the United States does *not* violate anyone's property rights when it fairly distributes enough. And so, per the Property Rights Thesis, the United States can fairly distribute enough if it wants. Furthermore, I argued that the libertarian should want the United States to do so. Finally, I argued that the United States could never do so without getting

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<sup>480</sup> Or, following Skoble's view (pages 201-4), positive rights not created by a consensual agreement.

<sup>481</sup> Nozick (1969: 238) is a paradigmatic example of such a libertarian. Engelhardt (1996b; 1997) is seemingly also such a libertarian, which helps explain the conclusions he draws about justice in health care. As I will discuss momentarily, Mack (1995) and Peikoff (1993) also appear to be such libertarians. And as Daniels (2001: 764) claims, libertarians often deny the existence of positive rights—like the right to health care or charity—because “most libertarians resist any weakening of the property rights at the core of their view.”

universal health coverage. *This is why* I concluded that—per the Property Rights Thesis—the libertarian can and should support the United States getting universal health coverage. Nowhere does my argument say—nor does it need or imply—that we have any positive rights. As such, the libertarian need not worry that I slipped in any rights she is prone to reject.

Nevertheless, the libertarian may still feel unsatisfied. The *reason* why she dislikes positives rights so much is that she wants persons to have the right to choose *for themselves* how they and their resources will be used. My argument does *not* say anyone has a positive right. But it *does* say persons' right to choose how to use their excesses is overridable by others' needs. And it *does* conclude that the United States can and should use a fair share of persons' excesses in a way other than they may choose themselves. And so, even if I don't invoke any positive rights, the *reason* for disliking them seemingly still stands. As such, the libertarian may still feel unsatisfied, positive rights or not.

I have three responses to this worry. The first two are rather quippy. First, the libertarian needs to remember that she is *already* letting the United States use persons' resources *for some things*. The libertarian is not an anarchist. Per the Property Rights Thesis, she says the United States not only can, but in fact should use a fair share of persons' excesses in order to finance a police force, military, and criminal justice system. So unless she (mistakenly) thinks everyone consents to the United States doing so, she is already on board with the United States *sometimes* using persons' resources in a way they did not choose themselves. As such, she should not start opposing the United States getting universal health coverage *merely* because it requires a fair share of persons' excesses. Because if *that* is all it took, then she never even held the Property Rights Thesis. She would be an anarchist in libertarian's clothing.<sup>482</sup>

Second, my argument is that the libertarian can and should support the United States getting universal health coverage *if she takes Project Pursuit/Independence seriously*. The libertarian is free to choose whatever grounding she wants for property rights. But as we saw above, she should have *some*

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<sup>482</sup> See Chapter 1: Section 1a and Chapter 2: Section 2.

grounding. And the other options I looked at did not even meet her minimal demands. So long as she sticks with Project Pursuit/Independence, then, she needs to take it seriously, even if that means she must accept a conclusion she doesn't like.

The third response, however, is less quippy. When libertarians appeal to this distinction between positive and negative rights, they make it sound easy to get their ideal libertarian state without invoking *any* positive rights or duties that can undercut property rights. But in truth, it is *not* that easy. In fact, it is rather difficult. To illustrate, let's take for example two libertarians: Mack and Peikoff.

Let's start by reviewing what Mack said, but in greater detail. To review, Mack argues that we each have the natural (i.e. unacquired and moral) right to live our chosen lives. This right implies that we have at least three other natural rights: the right to self-ownership, the right not to be lied to or deceived, and the right not to be precluded from creating or participating in a practice of property (i.e. the right of property). Again, it is easy to see why the first two rights are implied. We cannot live our chosen lives if others choose our lives for us; and we cannot live our chosen lives if our decisions are based on lies and deceit. As such, if we have the right to live our chosen lives, then we have the rights (i) to self-ownership and (ii) not to be lied to or deceived.

But why does the right to live our chosen lives *also* imply the right of property? We went through Mack's answer rather quickly the first time. Here, let's lay it out in greater detail. According to Mack, there are *three premises* which connect our right to live our chosen lives to our right of property:<sup>483</sup>

- (1) "Almost all human life, almost all human goal-pursuit, takes place in and through the purposive acquisition, transformation, and utilization of objects in the extrapersonal world. We are not merely embodied beings; we are beings whose lives are mostly lived in and through the physical world that exists beyond the outer surface of our skin."

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<sup>483</sup> Mack (2010: 62); my italics.

- (2) “Individuals’ living their own lives in their own chosen ways in and through the purposive utilization of objects in the extrapersonal world is *greatly facilitated* by their acquiring and exercising ongoing assured discretionary control over extrapersonal objects—in contrast to individuals’ having merely a liberty temporarily to put objects to use.”
- (3) “The possibilities for individuals’ acquiring and exercising ongoing assured discretionary control over extrapersonal objects is *greatly extended* by the presence of a rule-constituted practice of private property. A practice of private property is an artificial extension of the means available to individuals to acquire, enjoy, and exercise discretionary control over portions of the extrapersonal world.

To put it more succinctly:

- (1) Living our chosen lives requires the purposive acquisition, transformation, and utilization of resources
- (2) Our living our chosen lives is *greatly facilitated* when we can count on these resources, rather than merely having the temporary freedom to use them
- (3) Our ability to count on these resources is *greatly extended* by our creating and/or participating in a justifiable practice of property

This, Mack concludes, implies that we have the right of property. So far, so good. But now consider a parallel argument:

- 1b. Living our chosen lives requires the purposive acquisition, transformation, and utilization of resources
- 2b. Our living our chosen lives is *greatly facilitated* when we *actually* acquire, transform, and utilize these resources
- 3b. Our ability to *actually* acquire, transform, and utilize these resources is *greatly extended* by having the guarantee that we can afford basic health care

1b is the same as 1. Furthermore, 2b is just as true as 2. As I have discussed, living our chosen lives requires more than the mere ability to *count on* resources. It also requires that we *actually* have resources which we can count on, as well as the abilities to use those resources for our projects and independence. Also, Mack implicitly agrees. He says that living our chosen lives requires the purposive acquisition, transformation, and utilization of resources. *Not* the *opportunity* to acquire, transform, and utilize. *Not* the *failed attempt at* acquiring, transforming, and utilizing. The *actual* acquisition, transformation, and utilization. So Mack should agree that 2b is true. Finally, as I have demonstrated time and again, 3b is true. Unprevented, untreated, and unsupported illnesses, injuries, and disabilities make it difficult—and even impossible—to live our chosen lives. And guaranteed health care affordability demonstrably makes it easier and even possible for one to prevent, treat, and support herself in the face of these illnesses, injuries, and disabilities. So 3b is also true.

But this just means, per Mack’s reasoning, that we have the *right* to health care affordability. So why, then, does Mack say we have the right of property, but presumably not the right to health care affordability?<sup>484</sup> Seemingly, his answer is because the former is a *negative* right, while the latter would be a *positive* right. As Mack says: “the natural right of self-property rules out persons’ being born to positive obligations to deliver goods or services or desirable practices to others.”<sup>485</sup> The right to health care affordability would be positive, because it would make others born with the positive obligation to guarantee one could afford health care. And so, we cannot have the right to health care affordability. The right to self-ownership forbids it.

But here is the problem: the right of property is *not* a negative right! Of course, it certainly *looks* like a negative right. For one thing, the natural right of property is the right *not to be precluded from* creating or participating in a justifiable practice of property; and that sounds like it imposes the *negative*

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<sup>484</sup> To be clear, Mack (2010) does not *explicitly* say we lack the right to health care affordability. But I believe he would say that for the coming reason.

<sup>485</sup> Mack (2010: 62).

duty on others to refrain from interfering with one's creating and participating. For another thing, Mack is clear about the limits of the right of property. As he says, the right of property is *not* the right to have a practice of property made for you. That would impose positive duties on others to provide you with something, and that is forbidden by the right to self-ownership. Instead, it is *only* the right not to be precluded from creating or participating in a practice.<sup>486</sup>

But this appearance as a negative right is illusory. To illustrate, suppose there are 100 persons on the planet: you and 99 others. The other 99 make their own justifiable practice of property.<sup>487</sup> Unfortunately for you, they do not interact with you at all. Of course, this means they do not interfere with you. But they also do not work with you or for you; they do not buy, sell, trade, or barter with you; they do not collectively protect or enforce any of your property rights; and so on. They simply leave you alone. Here, it seems pretty obvious you are *not* participating in their practice of property.

Now suppose you demand not to be precluded from their practice. They say fine, you have the right to participate if you want. But you cannot demand that any of them interact with you. In other words, you cannot demand that they work with or for you; that they buy, sell, trade, or barter with you; that they use themselves and their resources to collectively protect or enforce any of the property rights you generate through their practice's rules; and so on. After all, that would violate their rights to self-ownership. They are not born with any positive duties to provide you with their interaction. And it just so

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<sup>486</sup> Ibid. 62.

<sup>487</sup> At least, according to Mack's features: the practice is coherent, transparent, comprehensive, and inclusive to some reasonable extent. Here, I take it these features just refer to the *rules* of the practice. In other words, the *rules* are coherent (they are compossible); the *rules* are transparent (they are easily identifiable); the *rules* are comprehensive (they include all resources which can be owned); and the *rules* are inclusive (they do not exclude anyone). Importantly, I am not completely sure what Mack thinks it means to *create or participate* in such a practice. Does it just mean one creates or agrees to a set of rules? Does it mean others are required to provide some kind of interaction? Does it mean others are required to protect and enforce the property rights one generates through the practice's rules? For my purposes, it does not really matter how Mack answers. As I will soon argue, if he says it only amounts to the creation of or agreement to a set of rules, the right of property will be negative, but he should concede that right itself does little—if anything—for living one's chosen life. If he says it amounts to interaction, protection, and/or enforcement, he should concede the right is more positive than he lets on.



happens that, again, none of them interact with you. Here, it again seems pretty obvious you are still *not* participating in their practice of property.<sup>488</sup>

Now suppose you tell them fine, you will create your own practice of property. They say fine, you have the right to create your own practice if you want. But you cannot demand that any of them interact with you. After all, that would violate their rights to self-ownership. They are not born with any positive duties to provide you with their interaction. And it just so happens that, again, none of them interact with you. In the end, all you have is yourself and your “practice” of property. But here, it doesn’t *really* seem like you have a practice. After all, how can you have such a practice *with only you*?

What all this shows is this: practices of property are *inherently interactive*. Of course, practices of property require *rules* about how to acquire and transfer resources. But they *also* require *real persons* to use these rules to acquire and transfer resources with *other real persons*. And they *also* require *real persons* to use themselves and their resources to protect and enforce the resources of *other real persons* as specified by the practice’s rules. If practices of property were nothing more than collections of unprotected and unenforced rules, with no interactions of any kind, they alone would do little—if anything—for living our chosen lives. What makes them so valuable for living our chosen lives is the *organized interaction* they provide us with others.<sup>489</sup>

Which brings us back to the right of property. Mack tells us that the right of property is a *negative* right. But insofar as the right of property actually matters for living our chosen lives, it must be *positive*. The right of property makes others duty-bound to not preclude you from creating or participating in a practice of property. As we saw above, if this right actually matters, that cannot mean they are merely

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<sup>488</sup> The illustrates the difference between (i) a behavioral pattern of property practices governed by rules and (ii) a cooperative system within which the practice takes place. The above suggests that we may have positive duties to maintain an inclusive cooperative system, and that those duties are (perhaps surprisingly) correlative with our property rights or whatever principle(s) or value(s) ground them. My thanks to Katherine Kim for pointing this out.

<sup>489</sup> See a similar point made by Shue (1996: 37-9). I suspect this will throw a wrench in Wendt’s (2019) attempt to defend his moderate libertarianism over other kinds of sufficientarian libertarianisms, considering that at least part of his defense seems to rest on the claim that his version of the right of property is also negative.

demanded to not interfere with you. It must also mean they are—to some extent—demanded to *interact* with you. They must be willing to work with or for you. They must be willing to buy, sell, trade or barter with you. They must be willing to use themselves or their resources to protect and enforce the property rights you generate through the rules of the practice. If nothing else, they must do more than simply leave you alone. If they don't, they have effectively precluded you from creating or participating in a practice of property that actually matters for living your chosen life. As such, this right must impose at least some positive duties on at least some agents.

And importantly, these duties are not only positive; they also can conflict with others' right to self-ownership. Others may not want to work with or for you. They may not want to buy, sell, trade, or barter with you. They may not want to use themselves or their resources to help protect and enforce your property rights. This could be for a variety of reasons: they may not like you; they may think you are inferior; they may have nothing against you, but simply want to use their time, resources, and selves in other ways with other persons. Whatever the reason, they may not want to interact with you. So these duties to interact with you makes them born with positive duties which can conflict with their right to self-ownership.<sup>490</sup>

In short, Mack wants to acknowledge the important role justifiable practices of property play in living our chosen lives. But he also wants to avoid positing any positive rights or duties that can undercut the right to self-ownership. So here, he attempts to satisfy both desires by introducing the right of property. But his attempt fails. If the right of property is as important as he says it is, it must be positive,

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<sup>490</sup> Here, it is worth noting the *symmetry* between Mack's right of property and a right to health care affordability. Both would be positive rights. According to both rights, no *particular person* would be duty-bound to provide you with a desirable good or service; and if she did not, you could not claim *she in particular* violated your right. Instead, both rights would demand that a *system* provide you with something (a practice of property with sufficient interaction, or universal health coverage), and if the system did not, your right would be violated. Given this symmetry, it is even more puzzling why Mack defends the former, but likely rejects the latter.

imposing positive duties on others that can conflict with their right to self-ownership. If the right of property is truly a negative right, then it alone does little—if anything—for living our chosen lives.<sup>491</sup>

The same can be said for Peikoff. Peikoff says the *only* rights we have are the rights to life, liberty, property, and the pursuit of happiness. When asked why only *these* rights, he answers: “Observe that all legitimate rights have one thing in common: they are rights to action, not to rewards from other persons. The American rights impose no [*positive*] obligations on other persons, merely the *negative* obligation to leave you alone. The system *guarantees* you the chance to *work for what you want*—not to be given it without effort by somebody else.”<sup>492</sup> But this is wrong! Peikoff says these negative rights—if nothing else—collectively *guarantee* a person the chance to work for what she wants. But unless she only wants to live by herself and survive on her own land, she needs more than guaranteed non-interference. She also needs guaranteed *interaction* with others. She cannot work for others if no one hires her. She cannot work for herself if no one buys or sells her anything. She cannot work to get what she wants if everyone else just leaves her alone.

So here, Peikoff finds himself in a similar situation. He wants a system that guarantees everyone a chance to work for what they want. But he also wants to avoid positing any positive rights or duties which can uncut our negative rights. So here, he attempts to satisfy both desires by only introducing

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<sup>491</sup> Here, the libertarian may respond that the right of property is easily satisfied. After all, human beings are social animals; and so, we should expect them to come together, make relationships with one another, and work with each other. It would be odd if someone was *completely* isolated from others. But there are three replies to this response. First, it is not obvious the right of property is easily satisfied for everyone at all times. Take, for example, anyone who was effectively isolated from others due to her race, religion, or sexual orientation (or, especially relevantly, her health). Second, even if this right is easily satisfied, that doesn’t make it negative. It just makes it a positive right which is easily satisfied. If you had a right to buy one thing before you die, that right would almost certainly be satisfied with no real effort on anyone’s part. Chances are, someone would sell you something before you die! But that right would still be positive. That right would impose the duty on at least one person to sell you something at some time. If no one ever sold you anything (if everyone merely left you alone), this right would be violated. Third, as I discussed, per my Affordability Assumption, I am (if nothing else) assuming universal health coverage is affordable (and perhaps even cheaper than the United States’ current system) (see pages 50-6). So per my assumption, the right to health care affordability would *also* be easily satisfiable. In short, saying the right of property is easily satisfied is (1) possibly false in some cases, (2) doesn’t change the fact that the right is still positive, and (3) makes it even harder to distinguish between that right and a right to health care affordability.

<sup>492</sup> Peikoff (1993: 1); my italics.

negative rights. But his attempt fails. In order for a system to *guarantee* a person has a chance to work for what she wants, it must guarantee that others will—to some extent—interact with her. But that would impose positive duties on others that can undercut their negative rights.<sup>493</sup>

In short, neither Mack nor Peikoff can get what they want without invoking some positive rights or duties that can undercut the negative rights they espouse. What Mack ultimately wants is for persons to be able to live their chosen lives. What Peikoff ultimately wants is for persons to have a chance to work for what they want and not merely take the rewards of others. But they cannot get what they ultimately want with merely the *negative* rights they invoke. As we saw above, in order to live our chosen lives and have a chance to work for what we want, we at least need others' interaction. And as we saw earlier, we also need to actually have some resources and abilities to use those resources for our own projects and independence. The only thing, then, keeping these libertarians from getting what they ultimately want is their aversion to such positive rights and/or duties.

But their aversion is unwarranted. As we saw earlier, if Mack and Peikoff take Project Pursuit/Independence seriously, *all* they have to do here is concede (i) one's property rights over her excess is overridable by others' needs; and (ii) the United States does *not* violate anyone's property rights when it fairly distributes enough. If they concede this much, then they can invoke whatever minimal positive rights or duties they need *without* worrying about violating anyone's property rights. And given how they both already seem to endorse some version of Project Pursuit/Independence,<sup>494</sup> that is what they should do.

But that just means both of them should support the United States getting universal health coverage. As we saw above, Mack's defense of his right of property is easily converted into a defense for

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<sup>493</sup> Additionally, consider again footnote 490 (page 272).

<sup>494</sup> Mack (1995: 198-9; 2010: 58-64) surely adopts something along the lines of Project Pursuit/Independence here. Peikoff (1993) seems most interested in the values of project pursuit, independence, and hard work and earning.

a right to health care affordability. So at least right now, Mack should say we have *both* rights.<sup>495</sup> That said, if Mack really wants to avoid positing any *right* to health care affordability, then based on his converted defense, he should at least say this much. *Either* we have a *positive* right not to be precluded from a *justifiable* practice of property; what makes a practice of property *justifiable* is that it creates the right kind of environment for *actually* acquiring, transforming, and utilizing resources; and so one feature of any *justifiable* practice of property is that it uses a fair share of persons' excesses to guarantee everyone can afford basic health care. *Or* we have a *positive* right of property; but we *also* have positive duties to let a fair share of our excesses be used to guarantee everyone can afford basic health care. Otherwise, by parallel reasoning, his defense of his right of property falls apart.

Also, Peikoff's appeal to having the chance to work for what one wants actually favors the United States getting universal health coverage. As I have said countless times now, lacking health care affordability makes it more difficult—and even impossible—to work for what one wants, putting her in a position where she is more prone to seek out and rely on the charity of others. By contrast, health care affordability makes it easier—and even possible—to work for what she wants in her own way. So if Peikoff cares so much about a system that genuinely guarantees everyone a chance to work for what they want and not need or rely on the rewards of others, he should support the United States getting universal health coverage.

There are three take-aways from our discussion of Mack and Peikoff. First, the libertarian should stop being so averse to invoking *any* positive rights or duties. She may think she can get what she *really* wants with *only* negative rights. But if she is anything like these libertarians, chances are she will need more than that. Second, she can make room for these positive rights or duties by simply acknowledging that (i) property rights over excesses are overridable by needs and (ii) the United States does not violate anyone's property rights when it fairly distributes enough. Third, should she choose to make these

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<sup>495</sup> Again, consider the symmetry between these two rights (footnote 490 on page 272).

acknowledgements and permit at least some positive rights or duties, it will be even easier to show why she can and should support the United States getting universal health coverage.

That said, it bears repeating that the Taking PPI Seriously Argument does *not* invoke any positive rights or duties. Nor does it require any more than what the libertarian is already willing to give to institutions like a police force, military, and criminal justice system. All it requires is that the libertarian take Project Pursuit/Independence seriously. And since she still has every reason to do so, my argument still stands. And so, even if she is still averse to invoking any positive rights or duties, she still can and should support the United States getting universal health coverage.

#### *Libertarian versus Non-Libertarian Defense*

At this point, the libertarian may worry that the Taking PPI Seriously Argument is not *libertarian* enough for her. So far, this argument has claimed:

- Property rights over excesses are overridable by needs
- The United States does not violate anyone's property rights when it fairly distributes enough
- The United States should tax, regulate, and/or mandate how persons use some of their resources, in order to guarantee everyone can afford basic health care, including those who otherwise would not or could not afford that care on their own

*This* may not sound very *libertarian*. And for my purposes, that is a problem. Of course *non-libertarians* can and should support the United States getting universal health coverage. As we saw in Chapter 1, *most of them already do!* What makes libertarians stand out here is that they are one of the only groups of persons who apparently don't. The goal of this chapter, then, is to prove that *they too* can and should support it—that *even libertarians* can and should support what most persons already do. As such, my argument needs to be a *libertarian* argument. Otherwise, I failed in this chapter's goal.

So now, we need to see how *libertarian* my argument really is. Let's start by quickly reviewing my argument's central claims that don't pertain to universal health coverage:

- **We have property rights:** These rights are moral and negative. Everyone immediately and automatically owns themselves. Everyone can also own resources by performing specific actions.
- **Property Rights Thesis:** The United States should protect and enforce everyone's property rights, and not violate anyone's property rights.
- **These rights are overridable:** Property rights over excesses are overridable by needs.
- **Permissibility of fairly distributing enough:** The United States can use a fair share of persons' excesses to satisfy and prevent needs without violating anyone's property rights
- **Solving problems:** The United States should fairly distribute enough to avoid problems created by needs

For simplicity, let's say these five claims constitute *the PPI theory of justice*. What can we say about the PPI theory? First, there are already libertarians who essentially hold this theory. Most notably, this theory is heavily inspired by—and obviously borrows heavily from—Wendt's moderate libertarianism.<sup>496</sup> Furthermore, assuming we call Locke's theory libertarian, my theory is also heavily inspired by—and obviously borrows heavily from—Simmons interpretation of Locke's theory.<sup>497</sup> If there are any substantial differences between the PPI theory and theirs, there are two. First, the PPI theory is more of an *outline* of a theory than a *detailed* theory. So we can think of their theories as filling in that same outline in two different ways. Secondly, because of this, their theories make *stronger* claims than what the PPI theory requires. We see this most clearly when it comes to what each theory says about the state fairly distributing enough. All three theories agree the state should fairly distribute enough. Where they disagree is why.

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<sup>496</sup> Wendt (2017; 2018).

<sup>497</sup> Simmons (1992: 222-352). Both what Simmons says about what Locke *actually* said and what Locke *should have* said.

Let's look at Wendt's theory first. Wendt's theory essentially modifies Mack's theory. Both Mack and Wendt say we have a right not to be precluded from creating or participating in a justifiable practice of property. But for Wendt, a justifiable practice of property is one that satisfies the *sufficiency proviso*. In other words, it is a practice which—by design—makes sure everyone has sufficient resources to be a project pursuer.<sup>498</sup> Thus, for Wendt, the state's fairly distributing enough ends up being tied to our *rights*. And thus, the state should fairly distribute enough as a matter of *justice*.

The PPI theory, however, does *not* say the state should fairly distribute enough as a matter of *justice*. Instead, it simply says the state should do so as a matter of *practicality*. As it goes, the Property Rights Thesis says the state *can* fairly distribute enough if it wants, but it does *not have to*. But if the state does not, some persons will end up having needs; and these needs will create many problems: they will keep property rights from functioning as full-fledged Nozickian side-constraints; they will permit some cases of theft and breaking and entering; and they will make it difficult for the state to adjudicate even simple criminal cases. Because the libertarian in particular wants to avoid all those problems, she says the state *should* fairly distribute enough. In other words, *justice* does not require the state to fairly distribute enough. But justice allows it. And doing so would solve all these problems which the libertarian wants to avoid. And so, the state should do so as a *practical* way to avoid these problems.

Now on to Simmons' interpretation of Locke's theory (call it the Simmons-Locke theory). It is unclear to me whether the Simmons-Locke theory says the state should fairly distribute enough as a matter of justice or practicality. But whatever it says here, it says it because it invokes a *right to charity*. The idea is that everyone has the *right* to take a fair share of another's excess to satisfy her needs. And

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<sup>498</sup> Wendt (2017: 5-8). Importantly, he adds in the caveat: provided that doing so is possible and does not undermine the point of having the practice in the first place. For my purposes, we need not concern ourselves with this caveat, because of my Affordability Assumption (see pages 50-6). That said, when it comes to the United States fairly distributing enough—as well as creating and maintaining a real universal health coverage system—the PPI theory of justice would adopt this caveat as well, in order to address common objections to sufficientarianism while retaining its libertarian character.



this is *not* a right we relinquish when we enter the state. As such, the state should (either as a matter of justice or practicality) fairly distribute enough to (i) satisfy everyone's right to charity and (ii) keep that right from ever being invoked.<sup>499</sup>

The PPI theory, however, does *not* say anyone has a *right to charity*. Nor does it say anyone has any other right beyond their property rights. Needs create problems for property rights, whether or not anyone has a right to charity or anything else. So the PPI theory effectively reaches the same conclusion without invoking these additional rights.

Now, as I said earlier, the PPI theory is *compatible* with adding in rights of property, rights of charity, and sufficiency provisos. Again, the PPI theory is more of an outline; these rights and provisos can be added in if so desired. But the PPI theory does not *need* to add them in. As such, the PPI theory not only resembles other libertarian theories, but actually ends up making *weaker* claims than they do. And the weaker its claims are, the broader its appeal for other libertarians. And that, in turn, makes it even more libertarian.

Second, the PPI theory has clear libertarian motivations and draws clearly libertarian conclusions. The most obvious point to make here is that the underlying motivation for the whole theory is Project Pursuit/Independence. And again, that is clearly a libertarian motivation. As we saw earlier, Project Pursuit/Independence—in some version or another—is one of (if not the most) common justifications for the right to self-ownership in particular and libertarian theories of justice more generally.

Furthermore, this theory is obviously a kind of moral individualism, which places respect for individual rights ahead of all other goods. It maintains that individuals—not groups or states—are the moral unit. It maintains that individuals have moral rights that no other individual, group, or state should violate. It posits no other goods outside of the individual, like equality, utility, or virtue. And, again, it

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<sup>499</sup> Simmons (1992: 327-36).

maintains that the state should not violate anyone's moral rights to further any of those (non-positived) goods.

To be sure, the PPI theory does say the state should fairly distribute enough. And that typically turns some libertarians off. But again, the motivation here is entirely practical. Again, that taxing, regulating, and/or mandating is merely to address problems *that especially bother these libertarians* in a way that does not violate anyone's moral rights. The PPI theory does *not* say the state should do so *for the sake of* some good, like equality, utility, or virtue. It also does *not* say the state should do so *for the sake of* promoting anything. Furthermore, this theory *prohibits* the state from doing *more* than fairly distributing enough, even if doing so would advance these other goods. This theory is all about respecting, protecting, and enforcing individual, moral rights, even if doing so does not further or even threatens other goods.

Finally, the PPI theory does not ask the state to do *that much*. All this theory says is—for *practical* reasons—the state should fairly distribute *enough*. This theory, then, permits *a lot* of inequality.<sup>500</sup> So long as everyone's needs are satisfied and prevented, millionaires and billionaires are allowed to exist, and the state cannot use any more than their fair share of what they own. Furthermore, this theory does not prioritize the state over the free market. If the free market can satisfy and prevent needs just as well or better than the state, then this theory prefers the free market to do so. Also, this theory (obviously) does not support the state making things worse. This theory *only* says the state should tax, regulate, and/or mandate a fair share of persons' excesses *if* (i) doing so would actually satisfy and prevent needs and (ii) free market alternatives could not. It is an empirical question when these conditions are satisfied. And if the stereotypical libertarian faith in the free market and mistrust of the state is warranted, she can assume they typically won't be.<sup>501</sup>

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<sup>500</sup> One could push back here by bringing up common objections to sufficientarianism. Here, I would just invoke Wendt's caveat. See footnote 498 (page 278).

<sup>501</sup> e.g. Brennen (2018).

Third, contrary to how it may seem, I contend the PPI theory has a Nozickean spirit. This probably sounds surprising, so allow me to explain. Nozick's theory and the PPI theory are obviously not the same. But they are not the same for a very important reason. Both theories *start* with the same agreements. The only difference, I contend, is that the PPI theory does a better job *taking these agreements seriously*. Let's start where both theories agree:

- Both appeal to something like Project Pursuit/Independence<sup>502</sup>
- Both agree that who has what property rights will be spelled out by properly-detailed principles of acquisition, transfer, and rectification
- Both agree that the state should protect, enforce, and not violate these property rights
- Both agree that these property rights are overridable

If both theories share all these agreements, why are they so different? Because, I contend, Nozick did not take Project Pursuit/Independence seriously enough.<sup>503</sup> First, when Nozick appeals to something like Project Pursuit/Independence, he (rightly) infers it grounds property rights. But he (wrongly) leaves out *what else* it grounds. Again, being a PPI does not merely require the ability to count on resources. It also requires actually having resources to count on. And it requires abilities to use those resources to pursue one's own projects and live independently.

Second, Nozick proceeds to make assumptions that contradict what Project Pursuit/Independence would imply. Nozick admits that he does not fill out his principles of acquisition, transfer, and rectification. He merely presents them as constituting the outline of his theory, needing to be filled in at another time.<sup>504</sup> But then he goes on to just *assume* that these principles will end up saying property rights *over one's excess* are *not overridable by others' needs*.<sup>505</sup> That is why his stance on property

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<sup>502</sup> This much is obvious for the PPI theory. See Nozick (1974: 50) for Nozick's theory.

<sup>503</sup> See also Simmons (1992: 321-7), Waldron (1988: 271-83), and Wendt (2017: 10-2).

<sup>504</sup> Nozick (1974: 150-1, 202-3, 230).

<sup>505</sup> *Ibid.* 178-82, 238.

rights is so harsh, and why he ends up opposing most—if not all—kinds of redistribution. But his assumption is not only unwarranted; it also clearly runs afoul of the very Project Pursuit/Independence he started with. Again, if what grounds property rights is the necessary role they play for being a PPI, then these rights need to be limited to account for what others need to be PPIs. And whatever these limitations amount to, they must end up saying property rights over excesses are overridable by needs; and that using a fair share of excesses to satisfy and prevent needs does not violate anyone’s property rights. So the *proper assumption* to make here is that these principles—when properly filled in—will not be as harsh as Nozick believes, and will allow for more kinds of redistribution than he does.

Third, Nozick correctly recognizes that Project Pursuit/Independence implies some limits on property rights. But he gets these limits wrong. According to Nozick, the only limits on property rights<sup>506</sup> are captured by his proviso.<sup>507</sup> Following Werner,<sup>508</sup> let’s break his proviso down into three parts: (1) when his proviso is violated, (2) how his proviso is satisfied, and (3) his proviso’s historical shadow.

Starting with (1), Nozick says “A process normally giving rise to a permanent bequeathable property right in a previously unowned thing will not do so if the position of others no longer at liberty to use the thing is thereby worsened.”<sup>509</sup> More simply, one person’s appropriation of an unowned resource cannot make another person worse off.<sup>510</sup> Werner illustrates what Nozick has in mind here:<sup>511</sup>

Let’s assume, for simplicity, that the appropriation in question takes place on an island with only two persons, A and B. A wants to acquire worldly object O. The rough idea is that, in order to test the proviso, we must compare two scenarios. The first scenario is B’s level of welfare were A to appropriate O. The second scenario is B’s level of welfare *were O to remain unowned* (either by A and B). Crucially, the second scenario is *not* one in which B appropriates O, but rather one in which O remains unowned by anyone. If B’s level of welfare in the second scenario is higher than in the

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<sup>506</sup> Aside from the obvious “don’t use in a way that violates another’s property rights.”

<sup>507</sup> Nozick (1974: 178-82).

<sup>508</sup> Werner (2015: 68-71).

<sup>509</sup> Nozick (1974: 178).

<sup>510</sup> Here, Nozick is concerned with *acquisition*, not *transfer*. However, Wendt gives us reason to believe Nozick’s proviso applies to *transfer* as well. See Wendt (2017: 10). For my purposes, I will focus on *acquisition*, assuming the same kinds of points can be made about *transfer*.

<sup>511</sup> Werner (2015: 69).

first, then, other things being equal, A counts as worsening B's condition, and thus has violated the proviso in relation to B.

More simply, to test Nozick's proviso, we compare two situations: B's welfare (i) when A appropriates O and (ii) were O to remain unowned. If B's welfare is higher or the same in (i), then A's appropriation did *not* make B worse off. But if B's welfare is higher in (ii), then A's appropriation *did* make B worse off. Nozick's proviso is violated when one's appropriation makes another worse off. So here, if B's welfare was higher in (ii), A's appropriation would violate Nozick's proviso in relation to B.

Now on to (2): how Nozick's proviso is satisfied. As Werner points out, since what matters is one's *level of welfare*, there are two ways to satisfy his proviso. First, one can appropriate in a way that leaves enough and as good for others. Second, she can appropriate more than that, *but* then compensate others enough to bring their welfare back up to where they were pre-appropriation. Again, Werner illustrates this nicely. Returning back to our island with A and B, suppose there are only two equally-sized trees on the island, but it takes both trees to make a boat. Here, A can satisfy Nozick's proviso in two ways. First, A can appropriate *only one* tree, leaving the other tree for B. Second, A can appropriate *both* trees to make a boat, *but* then compensate B to bring B's welfare back up to what it would have been if the other tree remained unowned.<sup>512</sup> For example, A can give B some other worldly object B wants; A can work for or do something for B; A can promise B the right to use A's boat (which B did not help make) whenever A is not using it; and so on. So long as B's welfare is not lower than what it would have been prior to A's appropriation, A can appropriate both trees and make her boat without violating Nozick's proviso.

Which brings us to (3): the historical shadow. According to Nozick, his proviso constrains the *initial appropriation* of some unowned resource. The historical shadow puts an *ongoing limit* on using that resource. To illustrate, consider two of Nozick's examples<sup>513</sup> (under my own titles and phrasing):

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<sup>512</sup> Ibid. 70.

<sup>513</sup> Nozick (1974: 180). See also Werner (2015: 70).

**Only One Watering Hole:** Suppose there is only *one* watering hole in the desert. Jerk appropriates that watering hole and charges whatever he wants. Those who cannot afford Jerk's steep prices have no other water to drink.

**Now Only One Watering Hole:** Suppose there are *many* watering holes in the desert. Jerk appropriates one, leaving enough and as good for everyone else. However, days later, a natural disaster occurs, leaving only Jerk's watering hole remaining. Jerk charges whatever he wants. Those who cannot afford Jerk's steep prices have no other water to drink.

Here, Nozick says Jerk violated his proviso in *both* cases. But the reason why is different for each case. In the first case, Jerk *unjustly* appropriated his watering hole. He did not leave enough and as good for others, and he did not compensate them to make up for this. In the second case, Jerk *justly* appropriated his watering hole. But, after the natural disaster, others' welfare ended up lower than what they would have been had Jerk never appropriated his watering hole in the first place. And Jerk did not compensate others to bring their welfare back up. So even though Jerk's appropriation did not make others worse off *initially*, it did make them worse off *later on*. And, per Nozick's proviso, one's appropriation cannot make others worse off *at all*. When one's appropriation makes others worse off later on and she fails to compensate them appropriately, she violates his proviso's *historical shadow*.<sup>514</sup>

There are many problems with Nozick's proviso.<sup>515</sup> But for my purposes, there is only one problem worth discussing: Nozick's proviso is *not* the one we get when we take Project Pursuit/Independence

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<sup>514</sup> See also Werner (2015: 70).

<sup>515</sup> For example, the test for Nozick's proviso compares what one's welfare would have been if an appropriation had not taken place. But why *that* comparison and not another? See Wendt (2017: 11 fn. 50). Furthermore, this test seems hard to apply. As Mack (1995: 202-10) points out, this test seems to compare one's welfare to what it would have been in *the state of nature* prior to an appropriation. But the state of nature (real or hypothetical) is *very different* from the world we live in today. As Mack (1995: 209) puts it: "How many microchips equal a hectare of rice paddy? How many cargo containers equal a fishing spear?" For my purposes, we will just ignore these issues. But it is worth noting that the PPI theory does *not* have these issues. See also Wendt (2017: 10-2).

seriously. This is for two reasons. First, if we take Project Pursuit/Independence seriously, Nozick's proviso is *too weak*.<sup>516</sup> To illustrate:

**Wealthy's Welfare-Friendly Appropriations:** Suppose Wealthy has a *very large* excess of food, water, and shelter; so large, in fact, that another could subsist their whole life on a tiny fraction of it. Poor, by contrast, does not even have enough food, water, and shelter to survive. Poor could satisfy his needs here by using a tiny fraction of Wealthy's excess. But *all* of Wealthy's excess was appropriated in a way that did not lower Poor's level of welfare prior to her appropriations.

According to Nozick's proviso, Wealthy has (at least with regards to Poor) non-overrideable property rights over *all* of her excess; and if Poor used even the tiniest bit of Wealthy's excess to satisfy his needs without her permission, he would be violating her property rights. But as I have said many times now, Project Pursuit/Independence—taken seriously—cannot say *that*. Again, if we take Project Pursuit/Independence seriously, property rights over excesses are overrideable by needs. So Nozick's proviso is too weak for what Project Pursuit/Independence would actually imply.

Second, Nozick's proviso is (perhaps surprisingly) also *too strong*.<sup>517</sup> To illustrate, let's start by reviewing a prior case:

**Now Only One Watering Hole:** Suppose there are *many* watering holes in the desert. Jerk appropriates one, leaving enough and as good for everyone else. However, days later, a natural disaster occurs, leaving only Jerk's watering hole remaining. Jerk charges whatever he wants.

Those who cannot afford Jerk's steep prices have no other water to drink.

Here, as we saw before, Jerk violates Nozick's proviso's *historical shadow*. Even though Jerk justly appropriated his watering hole, his appropriation—post natural disaster—made others worse off relative

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<sup>516</sup> See also Wendt (2017: 11).

<sup>517</sup> See also *ibid.* 12.

to how they would be prior to Jerk's appropriation. To remedy this, Jerk would have to sufficiently compensate others in some way. Otherwise, he will remain in violation of the historical shadow.

But now consider a parallel case:<sup>518</sup> Suppose, first, that we are back on the island with only A and B. Suppose, further, that there is a disease called *Provistisis*, which if contracted, destroys a person's kidneys. The only way to prevent Provistisis is by consuming a wild edible plant called *Curea* before turning 30. If one does not, she will contract Provistisis, and only a kidney transplant can save her. Suppose, finally, that A and B can safely give and receive kidney transplants. With all that said, now consider:

**No More Curea:** Suppose A and B know everything about Provistisis, Curea, and kidney transplants. They find two equally-sized fields with Curea. A appropriates one field—leaving the other for B—and eats all her field's Curea (it's delicious!). The next day—before B manages to consume any Curea—a natural disaster destroys the remaining Curea field (though manages to miss A's field completely). Now there is no more Curea.

This case is analogous to *Now Only One Watering Hole*. In both cases, one person justly appropriated some resource which is important for a person's survival. And in both cases, a natural disaster wiped out the remaining kinds of that resource. Thus, in both cases, the initial appropriation now makes others worse off, relative to what they would have been had the appropriation never taken place. In the first case, we saw that Jerk violated the historical shadow. So by parallel reasoning, we can see that—in the second case—A violated the historical shadow as well. That means, in order to satisfy the historical shadow, A must compensate B enough, so that B is no longer worse off.

But notice what that would require in this case. Curea is the only way to prevent Provistisis. So in this case, B is worse off because she will now contract a disease which will *destroy her kidneys*. As such,

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<sup>518</sup> This case was cleverly crafted by Werner (2015: 71-74). Werner actually gives three cases, but for my purposes, I will simply paraphrase his *Curea 2* case.



the only way for A to sufficiently compensate B here is to *give B one of A's kidneys!* Anything less, and A will stay in violation of the historical shadow.

What the above cases illustrate is this. According to Nozick's proviso, the state *cannot* fairly distribute enough, because doing so would end up violating some persons' property rights over their excesses. *But* according to this same proviso, one can be *required* to give up *far more* than what we would typically consider her *fair share* to satisfy and prevent needs. And she can be required to do so for reasons *outside of her control*. In No More Curea, Nozick's proviso *requires* A to *give up her kidney*; and it requires her to do so because of *some unforeseen natural disaster*. As such, Nozick's proviso opposes the state fairly distributing enough. But it can require one to compensate another with her most treasured resources, her extreme labor, and even her body parts through no fault of her own.

But this is the *opposite* conclusion Project Pursuit/Independence would imply. Project Pursuit/Independence, taken seriously, would likely not require one to compensate so much for reasons outside of her control. And it would never make her do so if the state could fairly distribute enough instead. As such, Nozick's proviso is also too strong.<sup>519</sup>

In short, I contend Nozick did not take Project Pursuit/Independence seriously enough. He should not have assumed that property rights are not overridable by needs. He should not have assumed that his principles of acquisition, transfer, and rectification—when properly-spelled out—would leave us with property rights capable of demanding persons to sacrifice or go without what they need to be PPIs, for the sake of others' excesses. And his proviso does not capture the limitations that Project Pursuit/Independence would imply. In one sense, his proviso demands too little; and in another sense, it demands too much.

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<sup>519</sup> And importantly, Nozick cannot easily fix this problem. The problem here is the historical shadow. If he keeps it, he must say A is required to give B her kidney through no fault of her own. *But* if he drops it, he must *allow* Jerk to keep his watering hole and charge whatever he wants for it. Whether he keeps or loses the historical shadow, he gets one of these cases wrong.

Had he taken Project Pursuit/Independence more seriously, I contend he would have done the following instead. He would have assumed property rights are overridable by needs. He would have assumed that his principles—when properly-spelled out—would leave us with property rights with more agreeable duties and more flexibility for redistribution. And he would have suggested another proviso. Which proviso is still unclear, but it would at least favor the state fairly distributing enough over requiring someone to compensate far more for reasons outside of her control. That, I contend, is what he would have done if he took both theories' agreements seriously. But that just means, if he took these agreements seriously, he would have ended up with something like the *PPI theory*.

And so, I contend, the PPI theory has a Nozickean spirit. Both Nozick's theory and the PPI theory share the same foundational agreements. They just make different assumptions and draw different conclusions. And the reason why, I contend, is because the PPI theory took these agreements more seriously. And Nozick's theory is, without a doubt, a libertarian theory.<sup>520</sup> So if the PPI theory starts with the same agreements—and is only different because it took these agreements more seriously—then it seems fair to call the PPI theory a libertarian theory as well.

To sum up: the Taking PPI Seriously Argument is a *libertarian* one. Its claims are compatible with those made by other libertarians, and actually makes weaker claims by comparison. Its claims have clear libertarian motivations and imply clearly libertarian conclusions. And its claims have a Nozickean spirit. They start where Nozick's starts. They just make different assumptions and derive different conclusions. And they do so, I contend, simply because they take these starting points more seriously. Furthermore, I think we can agree that—if its claims constituted a libertarian theory of justice—that theory would belong in the more right and inegalitarian camps (as opposed to the left and egalitarian ones).<sup>521</sup> In short, then,

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<sup>520</sup> At least in my experience, when it comes to philosophy *outside of* the libertarian literature, Nozick's theory is seemingly *the* libertarian theory. See also Engelhardt (1996b: esp. 781-3), who is seemingly *the* health care justice libertarian, and seemingly derives his libertarianism—at least in some meaningful way—from Nozick's.

<sup>521</sup> Of course, I think the PPI theory could easily be modified into a more left and egalitarian theory. The PPI theory sets the bar rather low: it merely shapes property rights around what is *necessary for being a PPI*. And while we

my argument is a *libertarian* one. And so, per my argument, the *libertarian* still can and should support the United States getting universal health coverage.

#### Section 6: Conclusion

In conclusion, the relationship between the Property Rights Thesis and universal health coverage is more complicated than it initially appeared. On its surface, the Property Rights Thesis seemingly opposes the United States getting universal health coverage. The Property Rights Thesis says the United States should protect and enforce everyone's property rights, and not violate anyone's property rights. At least in the United States today, getting universal health coverage would require the United States to violate at least some persons' property rights, because the United States would need to use the money they own without their permission. And so, getting universal health coverage seemingly requires the United States to do what the Property Rights Thesis forbids.

However, as I argued, we cannot actually know what the Property Rights Thesis says here until we know the answers to two basic questions: how do we acquire and transfer property rights and what, if any, limitations do these rights have? For without the answers to these questions, we cannot know whose or what rights the United States is supposed to protect and enforce, and when its taxation is and is not a violation of anyone's rights. And, as I argued, it turns out these questions are hard to answer.

Above, I offered *one way* to answer these questions. As it goes, the libertarian should attempt to answer these questions by picking a *grounding* for property rights—i.e. some principle(s) or value(s) that

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can reasonably disagree about what *exactly* being a PPI requires, it likely is a rather low bar to meet. Here, I take it as an *advantage* of the PPI theory that it sets the bar so low—and ends up being a rather right and inegalitarian theory—because the goal of this chapter is to show why the libertarian can and should support the United States getting universal health coverage. Arguably, it would not be *that* difficult to show why a *left and egalitarian* libertarian can and should do so. The hard case was always the *right and inegalitarian* libertarian. Still, I believe the motivations for the PPI theory can easily be stretched to make it more left and egalitarian, if one preferred.

explains why these rights exist, why the United States should protect and enforce them, and why violating them is very wrong. I then argued that the grounding she should pick is *Project Pursuit/Independence*.

But, as I continued, Project Pursuit/Independence—taken seriously—says the libertarian not only can, but in fact should support the United States getting universal health coverage. As it goes, Project Pursuit/Independence says the United States can fairly distribute enough, because doing so does not violate anyone's property rights. Furthermore, the libertarian should want the United States to fairly distribute enough, because doing so solves problems which bother her in particular. Finally, the United States cannot fairly distribute enough without getting universal health coverage—which I am (if nothing else) assuming requires taxation and is affordable. And so, I concluded, the libertarian can and should support the United States getting universal health coverage.

That said, this is only *one way* to answer these basic questions. And nothing stops the libertarian from looking for *another way*. And should she choose another way, she may find herself still opposing the United States getting universal health coverage. So here, I want to review why—while she *can* look for another way—she *should* stick with mine.

First, property rights cry out for some grounding. As I argued above, property rights are *not* intuitive. Without any principle(s) or value(s) to back them up, they come off oddly harsh and cruel, and are unlike anything else we are familiar with (making them also sound mysterious and magical). And even if their existence and importance was intuitive, how we acquire and transfer them and their limitations are not. And so, the libertarian should pick some grounding.

Second, Project Pursuit/Independence seems like the grounding she wants. Unlike Intuition, it is persuasive and helpful. Unlike Desert, Identification, and Creation, it can handle obvious cases of ownership. Furthermore, rather than replacing these groundings, it manages to take what was good about them while leaving behind what was bad. And none of this is surprising, given how often it is used to ground the self-ownership thesis in particular or libertarian theories of justice more generally. In fairness,

I only looked at a handful of groundings—surely there are others to consider. But at least right now, it is hard to imagine what such a grounding would look like—especially one that is as persuasive, helpful, and libertarian-inspired as this one.

Third, it seems obvious that the libertarian should take whatever grounding she picks seriously. To do otherwise is to be incoherent or disingenuous. And so, it seems like she should take Project Pursuit/Independence seriously. But again, taking it seriously leaves her concluding that she can and should support the United States getting universal health coverage. Furthermore, the worries I considered do not stick. My argument does not fail to distinguish between *respecting* and *promoting* the values of project pursuit and independence. Nor does it hinder independence and encourage dependence. Nor does it require any positive rights or duties—which the libertarian should not be so averse to anyway. And my argument is indeed a *libertarian* one: it makes even weaker claims than other libertarians, has clear libertarian motivations and draws clearly libertarian conclusions, and even has a Nozickean spirit.

To put it simply, the libertarian can resist my conclusion. But doing so leaves her running the risk of making property rights sound ridiculous, making herself sound incoherent or disingenuous, and failing to make clear why she is drawn to the Property Rights Thesis in a way that sounds even mildly plausible. She is free to take those risks if she likes, but she can avoid them by going my way instead. And if she goes my way, then she not only can, but in fact should support the United States getting universal health coverage.

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**ABSTRACT****TAXATION, LIBERTY, AND PROPERTY RIGHTS:  
A LIBERTARIAN DEFENSE OF UNIVERSAL HEALTH COVERAGE**

by

**GRAEME CAVE****December 2021****Advisor:** Dr. Eun-Jung Katherine Kim**Major:** Philosophy**Degree:** Doctor of Philosophy

Today, the United States is widely recognized as the *only* developed country without universal health coverage. Unfortunately for the United States, that is problematic. Despite lacking universal health coverage, the United States spends more on health care than any other country. In return, it has a large uninsured population, a large underinsured population, and overall comparatively poor health outcomes. Unsurprisingly, then, everyone in the philosophical literature on health care justice—for one reason or another—says the United States should join every other developed country and get universal health coverage. Everyone, that is, except for *libertarians*.

In my dissertation, I argue that libertarians need not be outcasts here. To the contrary, they can and should say the United States should get universal health coverage as well. To do this, I look at three libertarian theses: the Anti-Tax Thesis, which says in general, the United States should not tax persons; the Liberty Thesis, which says the United States should protect and enforce everyone's liberty; and the Property Rights Thesis, which says the United States should protect and enforce everyone's property rights. Then, for each thesis, I explain why it supports universal health coverage, despite an initial appearance to the contrary. And because these are distinctly libertarian theses, I make my case for why libertarians can and should support universal health coverage too.

**AUTOBIOGRAPHICAL STATEMENT**

Graeme Cave is a PhD candidate at Wayne State University. While there, he presented on the ethics of the Affordable Care Act's essential health benefits mandate, the Tax Cuts and Jobs Act of 2017, and the portrayal of women in video games. He served as a graduate teaching assistant for Professional Ethics and Critical Thinking, and taught Critical Thinking and Contemporary Moral Issues. He received the Thomas Rumble Fellowship Award and was a runner-up for the Humanities Center's Doctoral Dissertation Fellowship. Prior to his stay at Wayne State, he received his Bachelors of Arts at Westminster College in Philosophy and Philanthropic Studies, graduating summa cum laude.

Outside of his graduate experience, Graeme spent a year at AmeriCorps tutoring at-risk high school students. He was also a runner-up for a Jenzabar Foundation Grant, which allowed him and his colleagues to spend a few weeks in Rwanda and Tanzania working on microloan projects. These days, he enjoys spending his free time with his girlfriend and two dogs.