

## Comment on Narveson/Sterba Exchange

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Roderick T. Long

Let me begin by setting out and assessing the dialectic as I understand it.

Libertarians claim that individual freedom includes the freedom to acquire and keep private property, thus ruling out welfare rights. James Sterba's chief objection is that in conflicts over resources, preventing the needy from appropriating the property of the wealthy is a violation of freedom, and so is something that the consistent libertarian must reject; hence libertarianism entails welfare rights. And Jan Narveson's chief response is that one cannot derive positive rights from negative ones.

I think, with one caveat, that Jan is right in denying the possibility of deriving positive rights from negative ones. The caveat is that there are cases in which one must take positive action in order to avoid violating someone's negative rights. For example, if I am crossing the street while you come racing along in your car, in order to respect my negative right not to be run over it is not sufficient for you to do nothing; you must take the positive action of either stepping on the brakes or turning the wheel. Hence I have a right against you that you take such positive action.<sup>1</sup> I don't see this caveat as relevant to the present dispute, however, since Prof. Sterba is not presenting welfare rights as *instrumental* to respecting liberty; rather he's presenting them as an *instance* of respecting liberty. So I'll leave the caveat aside.

While I agree with Jan, then, that positive rights can't generally be derived from negative ones, I don't think this is sufficient to reply to Prof. Sterba's argument, because what's at issue between him and Jan, as I see it, is whether welfare rights – in the sense of rights to appropriate what others have produced or homesteaded – are positive or negative. A welfare right that requires you to take some positive action to assist me would seem to be positive; but one that simply calls on you to refrain from interfering with my, or my agent's, appropriating some of your stuff on my behalf can easily be cast as negative.

Now the libertarian could reply to this by maintaining that property is an extension of the self – a position maintained in different ways by thinkers from Aristotle,<sup>2</sup> Locke,<sup>3</sup> and Hegel<sup>4</sup> through the 19<sup>th</sup>-century liberal economists Louis Wolowski and Émile Levasseur,<sup>5</sup> and more recently Sam Wheeler<sup>6</sup> and myself.<sup>7</sup> If what we transform through labour becomes an extension of ourselves, then anyone who appropriates the products of our labour against our will is in part appropriating *us*, and a purported right to appropriate another person arguably goes beyond a negative

claim to a positive one.<sup>8</sup> However, Jan does not, so far as I know, appeal to the notion of property being an extension of the self in his defense of property rights, so this reply may not be available to him; and if it isn't, his rejection of positive rights seems insufficient to ward off Prof. Sterba's argument.

But Sterba's position seems to me to face a problem of its own. After all, if the freedom of the poor to appropriate the goods of the wealthy is a negative liberty, then the freedom of the wealthy to appropriate the goods of the poor – surely a more common problem – will be a negative liberty too, yet that is not a liberty that Sterba wishes to defend, nor is it one to which he wants libertarians to be committed.

In previous statements of his argument, Sterba has maintained that where there is a clash of negative liberties, the *more important* one should win – and that the freedom of the poor to meet their basic needs is more important than the freedom of the rich to meet their nonbasic needs.<sup>9</sup> Prof. Sterba does not use that precise wording in his present paper, appealing instead to the principle that “ought” implies “can,” but the idea seems to be the same. Yet even if those claims are right, they do not seem to yield the conclusion Sterba wants, namely that libertarianism *per se* entails welfare rights; rather, on Sterba's own showing, libertarianism does so only with the help of further normative premises as to what is more important than what.

This is likewise true of Prof. Sterba's present argument, which relies on ought-implies-can rather than on a principle of relative importance. Sterba's gloss on ought-implies-can – here again I cite his earlier work – is that “people are not morally required to do what they lack the power to do *or what would involve so great a sacrifice or restriction that it is unreasonable ... to ask them [or] to require them to [do it].*”<sup>10</sup> The second disjunct has no practical import without assistance from further normative premises informing us as to which sacrifices are unreasonably great and which aren't. (And presumably what counts as unreasonably great will be context-relative, so that, for example, demanding that someone starve to death rather than steal a loaf of bread will count as unreasonable, while demanding that someone starve to death rather than kill and eat her neighbor will not.) So in neither case does libertarianism *by itself* entail welfare rights; other normative premises are doing most of the work.

Prof. Sterba may think that his additional normative premises are so trivially obvious that whatever entails welfare rights with their help can fairly be described as entailing welfare rights *tout court*. But any such apparent obviousness looks to be an artefact of the way Sterba has framed the issue: as a conflict between the claims of the rich and the claims of the poor. Within the context of libertarian rights theory, the framing would instead be in terms of a conflict between the claims of *producers* (who may be rich or poor) and the claims of *non-producers* (who may likewise be rich or

poor).<sup>11</sup> When the libertarian does favour a rich claimant over a poor one, she does so only as an instance of favouring the producer of a good over the non-producer of it.

What normative reasons might we have for favouring the producer in this way? I've mentioned one already: if the products of our labour are extensions of ourselves, then allowing others to appropriate them against our will counts as allowing them, in part, to appropriate *us*, to treat us as mere means, and an objection to this is not a morally trivial consideration. (And if acquiring external property were morally forbidden, then our own existence would likewise be morally forbidden, since our very bodies are made out of materials that we did not create.)

But if we abjure appeal to the idea of property as extension of the self, we can still find other moral considerations, including consequentialist ones, to favour the right of producers to their products.<sup>12</sup> Prof. Sterba implicitly invites us to imagine, as the typical case of a conflict between producers and non-producers, a conflict between rich producers and poor non-producers. But if left-libertarian social analysis is correct, most such conflicts are actually – and non-accidentally – between poor producers and rich non-producers, and so the poor would benefit more often than not from a rule favouring producers.

Briefly, the left-libertarian position – in the sense of “left-libertarian” prevalent in the libertarian movement, not the common-resource position often called by that name in academic philosophy<sup>13</sup> – is that free competition is a levelling force. In a free market, any activity that is highly remunerative will find imitators to undersell the original provider; hence no provider of goods or services can reap very large profits for long. Thus whenever there is great, systematic economic inequality, we have good reason to think that competition is being interfered with – some activity is being protected from imitation, whether by licensing requirements, intellectual property laws, or other forms of state interference. Hence genuinely free markets, by their nature, favour the poor over the rich.

The redistributive state, by contrast, given the perverse incentive structures its monopolistic form embodies, inevitably becomes a net distributor from the less to the more affluent – from more dispersed interests to more concentrated ones – and so by its nature favours the rich over the poor. “Capitalism” – in the sense of a systematic division between a class with a monopoly on land, capital equipment, and other means of production, and another class lacking these means, and so able to survive only by performing wage labour for the first class – is on the left-libertarian view a product not of the free market but of coercive interference with the market.<sup>14</sup> (In his reply to Prof. Sterba, Jan gestures in the direction of left-libertarian ideas through his

citations of Mary Ruwart and Sean Gabb,<sup>15</sup> but I am not certain how far he is prepared to go in the left-libertarian direction, and so am not sure how much of what I say here he is in a position to take on.)

In Prof. Sterba's thought-experiment, Jan's ancestors engross most of the land on Kansas by *fencing* it. I know of no major libertarian theory of property acquisition that takes merely fencing land to be sufficient to homestead natural title to it; some more thorough transformation is required. Murray Rothbard, for example, writes:

If there is more land than can be used by a limited labor supply, then the unused land must simply remain unowned until a first user arrives on the scene. Any attempt to claim a new resource that someone does not use would have to be considered invasive of the property right of whoever the first user will turn out to be to claim a new resource that someone does not use would have to be considered invasive of the property right of whoever the first user will turn out to be.<sup>16</sup>

In the real world, the kind of land engrossment that Sterba envisions always takes place through organised violence, usually state violence.<sup>17</sup>

Likewise, the poor resource management that Sterba sees as an obstacle to global and intergenerational equity is, on the left-libertarian analysis, a product of state privilege that enables resource users to socialise the costs of their poor decisions while privatising the profits – is the chief explanation. Given that there seems to be no way of constructing a state free of this problem (which is inherent in the incentival and informational perversities of its monopoly status), it follows that if there *were* a universal right to welfare, a freed market would implement it better than would any state program. To put the matter another way: the claim of the producer to keep her product is *more important*, from the standpoint of the *poor in particular*, than the claim of the non-producer to appropriate it.

Of course I have not shown that left-libertarian social theory is correct (though obviously I think it is). But Prof. Sterba is not out to show that welfare rights are correct either. All he seeks to show is that libertarianism (or libertarianism plus some moral truisms) entails welfare rights. Yet any libertarian who accepts left-libertarian social theory can, without inconsistency, accept Sterba's moral truisms but deny welfare rights.

But even supposing that left-libertarian social analysis is correct, so that the poor would systematically benefit from an approach to justice that favoured producers' rights to the products of their labour,<sup>18</sup> Prof. Sterba could object that *in the exceptional*

*cases* in which applying the libertarian theory of rights does favour a particular rich person's claim over a particular needy person's claim, the greater importance of the latter's claim generates a welfare right. Against this, however, the libertarian can point to a) the utility to everyone, rich and poor, of a system whose regularity and predictability facilitates the coordination of plans;<sup>19</sup> and b) the low probability that any institution empowered to intervene in those exceptional cases would be incentivally and informationally robust enough to remain confined to those cases.

All the same, as I have written elsewhere, the libertarian prohibition on aggression against person or property is

fairly abstract, and there are different ways of rendering it more concrete. A variety of moral considerations, some consequentialist, constrain the ways in which its generality can reasonably be specified. The contours of what counts as aggression are not infinitely malleable; but absent the contribution of further values ... they are not infinitely specific either. ... In some cases the principle will require not using someone else's property without her consent; at other times (i.e., in emergency situations where the threat is great and the use temporary and minimal) it may merely requires compensating the owner after the fact for unconsented use. That the application of the principle is consequence-sensitive does not mean that consequences override the principle ....<sup>20</sup>

Two final points: first, while I have been broadly defending Jan's side of the debate, I do not find his contractarian approach a promising basis for libertarianism. My concern is that, if we take human preferences as they are, there's nothing that *everyone* will agree to; if someone prefers a short life of glory (in the Hobbesian sense of "glory," namely, getting a kick out of pushing people around) over a longer life without it, they have no reason to agree to a libertarian contract.

Second: on the question of whether we should support existing welfare laws under current conditions (referring to those helping the needy, as opposed to the majority of welfare which goes directly or indirectly to the corporate elite), I think a) there is no problem with the average person accepting funds from the government; every government is at war against the majority of its population, and any materiel that can be liberated from the enemy's possession is a plus; b) state welfare for the needy is, in part, a means by which the state offsets, albeit to an inadequate degree, the harm it does to its poorest citizens, and so its abolition should be among the lowest, not the highest, priorities for the libertarian; and c) all the same, any state powerful enough to provide a significant degree of downward redistribution will virtually inevitably be captured by those forces favouring a net upward redistribution,

and so the state welfare system as a whole, so long as it exists, will always be a threat to the poor.

## Notes

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<sup>1</sup> For elaboration of this point, see my “Abortion, Abandonment, and Positive Rights: The Limits of Compulsory Altruism,” *Social Philosophy & Policy* 10, no. 1 (Winter 1993), pp. 166-191.

<sup>2</sup> “The product is in a way the producer in actualisation; hence he loves his product because he loves his own existence.” (Aristotle, *Nicomachean Ethics* 1168a3-4; translation mine.)

<sup>3</sup> “The fruit, or venison, which nourishes the wild Indian ... must be his, and so his, i.e. a part of him, that another can no longer have any right to it ....” (Locke, *Second Treatise* V.26.)

<sup>4</sup> “When the living thing becomes my property it gets another soul than it had. I give it my will. ... [P]roperty makes objective my personal individual will ....” (G. W. F. Hegel, *Philosophy of Right*, trans. S. W. Dyde (Kitchener, Ontario: Batoche, 2001), I.1.A.44-46).

<sup>5</sup> “If man acquires rights over things, it is because he is at once active, intelligent and free; by his activity he spreads over external nature [and has] left upon matter some impress of his personality .... It is his because it has come entirely from himself, and is in no way anything but an emanation from his being. ... The producer has left a fragment of his own person in the thing which ... may hence be regarded as a prolongation of the faculties of man acting upon external nature. ... Property, made manifest by labor, participates in the rights of the person whose emanation it is ....” (Louis Woloski and Émile Levasseur, “Property”; in John J. Lalor, ed., *Cyclopædia of Political Science, Political Economy, and of the Political History of the United States; By the Best American and European Writers*, vol. 3 (New York: Charles E. Merrill & Co., 1888).)

<sup>6</sup> Samuel C. Wheeler III, “Natural Property Rights as Body Rights,” *Notes* 14.2 (May 1980), pp. 171-193.

<sup>7</sup> See, e.g., Roderick T. Long, “Self-Ownership and External Property,” *Bleeding Heart Libertarians* (25 April 2012): <http://bleedingheartlibertarians.com/2012/04/self-ownership-and-external-property>

<sup>8</sup> One *could* maintain that it’s still a negative right – a right, namely, that you take no action to interfere with my appropriation of you – but such a reply seems contrary to the spirit of the distinction between positive and negative rights.

<sup>9</sup> See, e.g., Sterba’s 2008 Central APA Presidential Address, “Completing the Kantian Project: From Rationality to Equality”: <http://blogs.nd.edu/iwmc/files/2010/11/Sterba-2008.pdf>

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<sup>10</sup> Sterba, Presidential Address, *op. cit.*, p. 14; emphasis added.

<sup>11</sup> I simplify somewhat, as libertarian property rights may be acquired by voluntary transfer as well as by production. But in such cases the ultimate basis is the right of the original producer.

<sup>12</sup> For that matter, even if we do start from the idea of property as extension of the self, there are different possible ways of specifying the precise contours of property rights on this basis, and choosing among them can legitimately invoke additional moral considerations, including consequentialist ones. See my “Eudaimonism and Non-Aggression,” *Bleeding Heart Libertarians* (30 April 2013): <http://bleedingheartlibertarians.com/2013/04/eudaimonism-and-non-aggression>

<sup>13</sup> I use the term “left-libertarian” not in the sense of a position that combines self-ownership with common resource ownership (the sense associated with Peter Vallentyne, Michael Otsuka, Hillel Steiner, and Eric Roark), but rather in the sense of a position that combines free-market libertarian means with leftist (including anti-capitalist) ends (the sense associated with Kevin Carson, Gary Chartier, Charles Johnson, and the Alliance of the Libertarian Left). The former sense, dating from the 1990s, is more widespread in academic philosophy (unfortunately, in my view) while the latter sense, dating from the 1970s, is more widespread within the libertarian movement.

<sup>14</sup> For defense of these left-libertarian claims, see Gary Chartier & Charles W. Johnson, *Markets Not Capitalism: Individualist Anarchism Against Bosses, Inequality, Corporate Power, and Structural Poverty* (London: Minor Compositions, 2011): <http://radgeek.com/gt/2011/10/Markets-Not-Capitalism-2011-Chartier-and-Johnson.pdf> ; Kevin A. Carson, *Studies in Mutualist Political Economy* (Charleston SC: BookSurge, 2006): <http://www.mutualist.org/sitebuildercontent/sitebuilderfiles/MPE.pdf> ; and Kevin A. Carson, *Organization Theory: A Libertarian Perspective* (Charleston SC: Booksurge, 2008): <http://www.mutualist.org/sitebuildercontent/sitebuilderfiles/otkc11.pdf> ; and ongoing discussions on the Center for a Stateless Society’s website: <http://c4ss.org>

<sup>15</sup> Ruwart’s views are broadly left-libertarian, but in a much more moderate form than those cited above. Gabb is more thoroughly left-libertarian in his economic views (where he is heavily influenced by Carson), but not at all in his social views.

<sup>16</sup> Murray N. Rothbard, *Man, Economy, and State with Power and Market: Scholar’s Edition* (Mises Institute, 2004), p. 217. See also Rothbard, “Law, Property Rights, and Air Pollution,” *Cato Journal* 2.1 (Spring 1982), pp. 55-99; Rothbard, *The Ethics of Liberty* (NYU Press, 2003); and Rothbard, “Confiscation and the Homestead Principle,” *Libertarian Forum* I.6 (15 June 1969). And Sterba’s scenario would be still more difficult under those left-libertarian theories, such as Kevin Carson’s, that require *continual* use and occupancy and so deny the legitimacy of absentee land ownership (and thus of rent) – by contrast with Rothbard’s, which requires only *initial* use. For discussion of the differences, see Carson, *Studies, op. cit.*, II.5, as well as my own “Land-Locked: A Critique of Carson on Property Rights,” *Journal of Libertarian Studies* 20.1 (2006): <http://mises.org/library/land-locked-critique-carson-property-rights>

<sup>17</sup> As libertarian economist Ludwig von Mises writes, in a passage cited favourably by both Rothbard and Carson: “Nowhere and at no time has the large-scale ownership of land come into being through the working of economic forces in the market. ... The great landed fortunes did not

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arise through the economic superiority of large-scale ownership, but by violent annexation outside the area of trade.” (Ludwig von Mises, *Socialism* (Yale, 1951), p. 375.)

<sup>18</sup> cf. Roderick T. Long, “Left-Libertarianism, Market Anarchism, Class Conflict and Historical Theories of Distributive Justice,” *Griffith Law Review* 21.2 (2012), pp. 413-441.

<sup>19</sup> “A single act of justice is frequently contrary to public interest; and were it to stand alone, without being follow’d by other acts, may, in itself, be very prejudicial to society. When a man of merit, of a beneficent disposition, restores a great fortune to a miser, or a seditious bigot, he has acted justly and laudably, but the public is a real sufferer. ... But however single acts of justice may be contrary, either to public or private interest, ’tis certain, that the whole plan or scheme is highly conducive, or indeed absolutely requisite, both to the support of society, and the well-being of every individual. ... Property must be stable, and must be fix’d by general rules. Tho’ in one instance the public be a sufferer, this momentary ill is amply compensated by the steady prosecution of the rule, and by the peace and order, which it establishes in society.” (David Hume, *Treatise* III.2.2; for elaboration of this point, see F. A. Hayek, *Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy* (Routledge 2013).)

<sup>20</sup> “Eudaimonism and Non-Aggression,” *op. cit.*