

LIBERTARIANISM, WELFARE RIGHTS, AND A WELFARE STATE

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In a recent article,¹ James P. Sterba argued that the opposition of libertarians to welfare rights and a welfare state is ill-founded and that a libertarian justification for such rights and such a state can be given. I shall be setting forth the essentials of his argument and subjecting them to criticism.

I

Sterba's basic line of reasoning may be expressed as follows:

1. Libertarians base their political philosophy on a commitment to the right to liberty, and they conceive this right in one of the following two ways: (a) as a fundamental, underived right—indeed, as the ultimate political ideal; under this conception, liberty consists of being unconstrained by other persons from doing what one wants—or, at any rate, what one is able—to do (a conception deriving from Herbert Spenser); (b) as a right derived from other more fundamental rights such as the right to life and the right to property; under this conception, liberty consists of being unconstrained by other persons from doing what one has a right to do (a conception deriving from John Locke).
2. Irrespective of which of these two ways libertarians conceive this right, their commitment to it implies a commitment to a system of welfare rights.
3. Once libertarians realize that a system of welfare rights follows from their commitment to the right to liberty, they should come to see that the justification for a welfare state is straightforward and compelling.

Hence, (4) libertarians should acknowledge a commitment to a system of welfare rights and thus to a welfare state.²

Sterba supports this basic argument by giving backing for steps two and three.

In regard to step two, he divides his discussion into two sections, one focusing on supposed implications of a commitment to the Spenserian conception of liberty (1a), and the other on supposed implications of a commitment to the Lockean conception (2a). What he tries to do in the former instance is to parlay what he calls a "typical" conflict (of interest) situation involving the rich and the poor into a conflict between their liberties, thereby forcing a choice between the two. Having established the necessity of a choice, he provides an argument favoring the liberty of the poor over the liberty of the rich, an argument that he deems tantamount to establishing a system of welfare rights. What supposedly makes the argument so compelling to libertarians is that the only not-specifically-libertarian principle it invokes is a foundational principle allegedly worthy of acceptance by any and all political philosophies. The latter is the "ought" implies "can" principle (OIC, for short). In an auxiliary argument, Sterba calls attention to the aspect of this concept of liberty that identifies it with the ultimate political idea. His claim is that a function of such ideals is to resolve conflicts of interest in ways that would be reasonable to all parties involved.

With these points firmly in mind, let us examine the pertinent details of Sterba's reasoning. The conflict of interest between the rich and the poor relates to needs. The rich have more than enough resources to meet their basic nutritional needs; whereas the poor do not have enough such resources, even though they have tried all the means available to them that libertarians regard as legitimate for their acquisition. Thus, we have a situation in which the liberty of the rich to satisfy their luxury needs—some of them, anyway—conflicts with the liberty of the poor to take from the surplus resources of the rich what is necessary to satisfy their basic nutritional needs. Both liberties are not satisfiable. The problem for libertarians is: Which is to be chosen? Which is the morally preferable liberty? Sterba claims that in order to see that the liberty of the poor is morally preferable to the liberty of the rich, we need only appeal to the OIC. According to this principle, people are not morally required to do what they lack the power to do, or, granting the power, what would require on their part an unreasonably great sacrifice. Although the poor have it within their power to willingly relinquish the liberty to take from the rich what they require to meet their basic nutritional needs, it would be unreasonable to ask them to make so great a sacrifice. In an extreme case it would mean asking them to sit back and starve to death. We cannot blame the poor for trying to evade this sacrifice. Yet it would not be unreasonable to ask the rich to sacrifice their liberty to meet some of their luxury or surplus needs so that the poor can have the liberty to meet their basic nutritional needs. Unlike the poor, the rich can be blameworthy for failing to make such a

sacrifice. Accordingly, the liberty of the poor is to be preferred morally to the liberty of the rich and should be chosen over it. Inasmuch as the argument turns solely (for libertarians) on the acceptance of the OIC, and this principle is common to all acceptable moralities, libertarians should accept it. Moreover, since under this conception liberty is intended by libertarians to [fulfill] a moral/political ideal that resolves conflicts of interest in ways that would be reasonable to ask both the rich and the poor to accept, they should judge as reasonable the request that the rich sacrifice the liberty to meet some of their luxury needs so that the poor can have the liberty to meet their basic nutritional needs.

In the discussion of the Lockean concept of liberty (1b), the issue shifts from a concern with liberty *per se* to its consideration as specified by certain rights some libertarians consider more fundamental. Sterba identifies these as the rights to life and to property, the former being understood as a right not to be killed unjustly and the latter as a right to acquire goods and resources either by initial acquisition or voluntary agreement. Despite the shift of focus, this discussion resembles the earlier one in that it turns on an alleged problem in the relations between the rich and the poor. Furthermore, the OIC is invoked here, too, as the means of solving the problem. What Sterba tries to show is that, if they are willing to admit (as they should) the validity of the OIC, libertarians cannot legitimately appeal (as they usually do) to a view of the exercise of property rights as unrestricted or unconditional. Were they to make such an appeal, they would have to admit that there could be situations in which the rich would be killing the innocent poor. For there could be circumstances in which the rich, in freely exercising their unrestricted property rights, would be preventing the poor from taking what they require to satisfy their basic nutritional needs. True, the rich in engaging in such preventive acts

would not in fact be killing the poor, but only causing them to be physically or mentally debilitated. Yet since such preventive acts involve resisting the life preserving activities of the poor, when the poor do die as a consequence of such acts, it seems clear that the rich would be killing the poor, whether intentionally or unintentionally.³

However, if libertarians are willing to accept the OIC, they cannot hold a view of property rights that accepts the killing of the poor as simply a consequence of the legitimate exercise of property rights, or that leaves them dependent upon charity for the satisfaction of their most basic needs. They must hold an account that makes an exception in the case of "those surplus goods and resources of the rich that are required to satisfy the basic needs of those poor who through no fault of their own lack opportunities and resources to satisfy their own basic needs."⁴ Failure to make such an exception would impose an unreasonable sacrifice upon the poor, a sacrifice

they could not be blamed for trying to evade. Such an imposition would constitute an occasion for the invocation of the OIC. On the other hand, it would not be unreasonable to ask the rich to accept an account of property rights that makes the aforementioned exception. Acceptance of what amounts to a conditional theory of property rights is, of course, tantamount to the acceptance of some sort of system of welfare rights.

Sterba's support for step three of the basic argument, i.e., for the linkage of welfare rights to a welfare state, is very brief and may be expressed as follows:

(1a) Only a welfare state would be able to effectively solve the large-scale coordination problem necessitated by the provision of welfare; hence, (2a) it is inconceivable that welfare rights could be adequately secured in a society without the enforcement agencies of a state; hence, (3a) once welfare rights are acknowledged, the justification for a welfare state is straightforward and compelling.

Having offered what he thinks are satisfactory reasons in support of crucial steps two and three of his argument, Sterba believes he has completed his demonstration that libertarians should acknowledge welfare rights and the welfare state.⁵

II

It seems to me that from the standpoint of validity, Sterba's basic argument is a strong one: the steps, if true, appear to provide good grounds for accepting the conclusion. At any rate, the problems I wish to raise have to do with the steps themselves (including supporting reasons, where provided), not their logical relation to the conclusion.

Let us start at the beginning, with step one. I have no quarrel with the first conjunct of this step. Without a doubt, liberty in some sense is the basis—at least a *sine qua non*—of libertarianism. My first complaint has to do with the second conjunct and, when developed, with certain aspects of step two. Although, as we have seen, Sterba gives explicit definitions of what he takes to be the Spenserian and Lockean conceptions of liberty, he never shows that Spenser and his followers or Locke and his followers actually put forth or held these conceptions as he (Sterba) defines them. There are references to the views of certain libertarian thinkers (e.g., Hayek) in his discussion of the supposed implications of these conceptions, but no quotations from nor footnote references to their works are offered specifically to verify the accuracy of these definitions. As I read the literature of libertarianism, the concept of liberty that virtually all libertarians use as the basis of their philosophy does indeed involve reference to an absence of constraints (i.e., of force, fraud, violence, aggression, or coercion) against the agent by other persons, but it also includes reference to an absence of constraints by the agent

against other persons—unless, of course, there has been prior unprovoked aggression against the agent. In short, libertarian liberty consists of an absence of constraints and constraining. At the very least, the liberty that forms the basis of libertarian political philosophy consists of both of these elements, not just the former. This holds whether the libertarians are Spenserians or Lockceans or whatever. Thus, even if Sterba is right in his reading of libertarians' definitions of the conception of liberty *as such*, he is wrong in assuming that these definitions form the basis of the political philosophy to which libertarians are committed. The major impact of this point is to be found in step two, specifically in the conflict claim that lies at the heart of Sterba's discussion of the Spenserian conception. Sterba is able to make the conflict between the rich and the poor into a conflict between their *liberties* only because he has assumed that the conception of liberty that Spenserians maintain and take to be the basis of their position consists merely of an absence of constraints by other persons. If the so-called liberty of the poor to take from the surplus resources of the rich—with or without their permission—what is necessary to satisfy their basic nutritional needs is a genuine liberty according to the Spenserians, then it is not a liberty that they would find legitimate. Thus, either there is no conflict of liberties at all (since there is but one true liberty involved), or *contra* Sterba the conflict is immediately and straightforwardly resolved by them in favor of the liberty of the rich over the liberty of the poor. If the poor take without permission resources owned by the rich, they are guilty of theft—a highly objectionable act according to libertarians of virtually all persuasions. To put it in the language under consideration, the poor are without warrant *constraining* the rich.

To this objection Sterba may retort that I have missed the central point of his entire discussion, which is to show that it is the "hardness" of libertarians on the theft and similar issues that needs to be exposed and mitigated. He might concede that he was a bit presumptive in speaking of the "liberty" of the poor to take surplus resources of the rich; however, he might go on to add that the crux of his whole argument is to be found in his claim(s) concerning the OIC. He might say that the essential conflict he wants to press home to libertarians, whether they are Spenserians for Lockceans, is expressible in terms of the following dilemma: libertarians must either refuse to budge on the theft issue and be forced to reject the OIC, or accept the OIC and give ground on the theft question. What Sterba wants to persuade libertarians to do is to abandon the first disjunct and embrace the second. His assumption is that the disjunction is not only exclusive but also exhausts the genuine alternatives available. He wants to confront libertarians with the idea that they cannot defensibly uphold the OIC, which they should be willing to uphold, and also maintain a hardline on the theft issue.

I believe that libertarians may defend themselves against this charge in several ways on the basis of differing stands on the OIC. Recall

that Sterba claims that the OIC stipulates that people are not morally required to do what they lack the power to do, or, granting the power, what would impose an unreasonably great sacrifice on them. For purpose of analysis, the OIC may be divided into two: the primary (or stronger) "lack of power" component (LOP, for short) and the secondary (or weaker) "unreasonably great sacrifice" component (UGS, for short). Hardnosed, radical libertarians would reject the OIC in toto—at least as a universal, unexceptionable principle. They would claim that in some cases—theft of the rich by the poor being one such—people are morally required to try to accomplish certain things they know in advance they most likely cannot achieve. Even in the face of starvation and impending death, the poor ought to try to refrain from stealing from the rich (or whomever) even though they realize that their efforts ultimately will fail. Ince libertarians who reject the LOP as an unexceptionable principle are not likely to accept the UGS at all and since Sterba grants that it is within the power of the poor to restrain themselves in extreme circumstances such as these, there is scarcely any need to pursue the matter further.

Among more moderate lines of defense, the least moderate would consist of an acceptance of the LOP but an outright rejection of the UGS. The claim would be that there is no need to interpret the OIC in such a way as to include the UGS: "can" means just what it says or implies, viz., having the power, whereas "cannot" means lacking the power. If, for example, it is in principle possible for people to withstand the temptation to steal in extreme circumstances, then the OIC is satisfied. No appeal beyond this is required or even relevant. Great sacrifices, even unreasonably great sacrifices, do not violate the OIC, properly understood. A narrow and strict interpretation is not faulty simply because it is narrow and strict.

A somewhat more moderate approach would involve an acceptance of both components of the OIC but would include a denial of the applicability of the UGS to cases like the one at hand. In other words, it would deny that the poor's refraining from thievery in this context is an unreasonably great sacrifice for them to endure. A couple of types of arguments (possibly reducible to one) could be used to support this contention. First, it is not as if the poor, guilty of no crime or wrongdoing, were to be hauled off by the rich (or whomever) to torture chambers where they were "persuaded" to reveal well-kept secrets about their friends or to spread lies about them, either or both of which acts would place their friends' lives or well-being in jeopardy. Under such circumstances, the betrayal of confidences and the telling of lies clearly would be excusable to some extent. The sacrifice they were "asked" to make would be unreasonably great. On the other hand, no one is directly and intentionally causing the miserable poor to suspend their moral scruples and engage in theft. Their situation is not all that different from what many of us, poor or rich, eventually reconcile ourselves to. Of course, our "death date" might well be pushed a little farther into the future if we were willing

to engage in thievery or some other serious crime. But we would hardly want to claim that in upholding our usual morals we were having to endure an unreasonably great sacrifice. Death is a part of life, as the saying goes. A second line argument could attempt to show that a dangerous precedent would be established if we accept the idea of excusing the poor for their theft of surplus resources of the rich on the grounds that they (the poor) are being asked to make unreasonably great sacrifices. There would be no non-arbitrary reason for limiting the notion of surplus resources to the "external" possessions of the rich, nor for viewing the rich solely in terms of their ownership of "external" goods and resources. What about surplus internal organs and tissues, such as kidneys and blood? Quite a few of us are "rich" in these! If one excuses the kind of thievery that Sterba favors—under the auspices of the state, to be sure—then there seems to be no non-arbitrary way to limit it to the usual "external" trappings of wealth. If a healthy, vigorous person has an "extra" kidney or an "extra" supply of blood, shouldn't we likewise excuse the innocent "starving" poor if they or their agents forcibly remove these organs or tissues and appropriate them for their own use?⁶

How strong these three ways of defense are depends in part on how skillfully they are worked out. To make them truly effective it would be essential to develop a fairly broad range of relevant examples, followed by careful and extensive comparisons and contrasts. Only in this manner could definitive conclusions be reached. Mainly what I have tried to do is to suggest potentially promising ways in which libertarians could rebut Sterba's conception and application of the OIC and, at a minimum, to show that his point of view is not self-evident or obviously in the right. If any one of these approaches were to prove as plausible as Sterba's, then it would constitute a successful rejoinder. The onus of proof, after all, is on Sterba.

A related and perhaps more important issue is the following. In invoking the OIC, Sterba clearly wants to appeal to a meta-ethical principle not only worthy of acceptance by all moral theorists but also distinct from any special or partisan moral or political theory. His hope of changing libertarians' minds about welfare rights and a welfare state rests on this assumption. If one reflects on what is going on in Sterba's analysis and the libertarian alternatives I sketched, one must be struck by the differing views concerning the nature of human nature that underlie them. To the extent that theories of human nature are part and parcel of moral/political theories, they contain implications concerning what may and may not be reasonably expected of people in various circumstances, especially extreme ones. What this means is that there probably is no non-question-begging way to support claims about what would and what would not count as unreasonably great sacrifices for people to make or endure. Thus, although the OIC may appear to be distinct from or logically independent of all normative ethical/political theories, this probably is an illusion.⁷

One might reach the same conclusion in a somewhat different way. The term "unreasonably" as it functions in the UGS may be itself a moral term. Rather than being a sacrifice so great that it is immoral *because* it is an unreasonably great sacrifice, making an unreasonably great sacrifice may be *equivalent* to making a sacrifice so great that it is immoral. If so, it is by reference to a partisan moral theory that the application of the UGS is to be determined. Sterba's mode of applying the principle calls upon a set of special moral principles different from and to some extent in conflict with the special moral principles libertarians are committed to. Accordingly, his hope of persuading libertarians by appealing to "higher," neutral moral ground would be dashed, frustrated from the very start.

So far, apart from a brief comment directed specifically toward Sterba's analysis of the Spenserian conception of liberty, the focus of my attention in discussing step two has been on his interpretation and use of the OIC, the principle that undergirds his analysis of both the Spenserian and Lockean conceptions. Now I want to bring out a difficulty with his analysis of the Lockean conception (2a) in particular. Recall that Sterba claims that if libertarians accept an unconditional or unrestricted view of property rights, then they will have to admit that there are circumstances in which the rich would be killing the innocent poor simply as a consequence of exercising such rights. The circumstances would be ones in which the rich would be preventing the poor from taking what they require to satisfy their basic nutritional needs. For this reason, libertarians should abandon their commitment to a view of property rights as unrestricted. In my judgment, Sterba is guilty of an unwarranted stretching of the term "killing" to cover cases it really doesn't cover. Suppose that you and I are strangers in the sense that we have no prior special contractual obligations to each other; that I own a food item which is not essential to my survival or to the survival of any others to whom I have some special responsibility; that the item is essential to your survival, but you are too poor to purchase it from me; that I refuse to donate the item to you; and that, not being able to obtain the item elsewhere, you subsequently die. Then I may be properly accused of grave moral insensibility or lack of compassion; but I may not be properly accused of killing you either directly or indirectly, intentionally or unintentionally. People, like Sterba, who insist on using the term "killing" in such a context and claim that it must be taken literally, seem to be assuming what is contrary to fact, viz., that the needy person has some sort of entitlement to or lien on the property of the non-needy person. It is true that an unrestricted property rights doctrine, if implemented, does permit people to go untried and unpunished (legally) even if they commit certain deeply immoral acts or acts that are commonly regarded as very wrong. But the act of negligent homicide is not one such. The circumstances hypothesized do not warrant the latter charge. Of course, there is nothing wrong with using terms metaphorically, as long as the user is willing to

acknowledge the use for what it is. In the instance of "killing," it must be realized that metaphorical killing carries with it no punitive punch (in a legal sense).⁸

I believe that I have offered sufficient grounds for doubting the part of Sterba's basic argument that concludes that libertarians should accept welfare rights. If so, then I have likewise undercut the immediate basis of his claim in step three that libertarians should be committed to the welfare state. Nevertheless, for the sake of argument I shall pretend that, despite my criticisms, he has successfully argued for the welfare rights point. I shall now argue that the specific case he makes for step three is a weak one—certainly not compelling and perhaps not even straightforward.

It won't do to simply *state* that only a welfare state would be able to effectively solve the large-scale coordination problem necessitated by the provision of welfare (1a). First of all, this assertion if true is not *a priori* or self-evident. Empirical evidence is required to support it and Sterba offers none. Several libertarian thinkers have tried to show that it is in fact false.⁹ Unfortunately, it is all too common for statist, like Sterba, to negatively prejudge the ability of a private, free market, free enterprise system to deal effectively with complex, large-scale projects. Statists also tend to ignore or set aside the historical record in their over-estimation of the effectiveness of government-run operations. Of course, they can always avoid this problem by waxing eloquently about some ideal state. The trouble is that two can play this game. The libertarian can argue that in a truly and fully private, free enterprise market economy the need for a large-scale program to deal with the welfare problem would be non-existent, since the problem of poverty would have been essentially solved. Secondly, even if premise (1a) were true, whether empirical or *a priori*, the conclusion Sterba draws from it (2a) does not follow. From the *fact that* only a welfare state is able to effectively deal with the welfare problem it doesn't follow necessarily that it is *inconceivable that* welfare could be adequately secured without the enforcement agencies of the state. Factual claims alone are not "strong" enough to generate inconceivability claims.¹⁰ Thirdly, even if (2a) were true, it doesn't follow that a welfare state has been justified (3a). From the fact that it is inconceivable that welfare could be adequately secured *without* the enforcement agencies of the state, it doesn't follow that it could be adequately secured *with* these agencies. The possibility that nothing could adequately secure welfare rights must be dealt with and ruled out.

I conclude that as it stands the argument for step three is not cogent: its basic premise has not been shown to be true (and may well be false), and neither of the two inferences that comprise it is valid. Indeed, it is a surprisingly weak offering. One wonders if it is based on an unspoken, unrecognized argument which is

straightforward and compelling. Could it be that Sterba's "real" argument is the following?

- A. Welfare rights are legal rights.
 - B. Legal (as opposed to moral) rights can only be conceived within the framework of enforcement agencies of a state.
 - C. A state some of whose agencies enforce welfare rights is in that respect a welfare state.
- Hence, (D) the existence of welfare rights implies the existence of a welfare state.

The problem with this argument is that it is compelling only if it is trivial, only if its premises are tautologies or analytical truths. It seems so easy for statists to beg the key questions concerning rights, legality, and the state that exercise theoretical libertarians. This argument does just that. Furthermore, being unrecognized, it may have a power over statists (especially welfare statists), leading them to believe somehow that they can get by with flimsy arguments like the one Sterba uses to support step three.

III

In his attempt to get libertarians to commit themselves to welfare rights and a welfare state, Sterba has offered an argument that is quite ingenious. But its very ingeniousness tends to mask its flaws. It has been the task of this article to remove the mask and reveal the flaws. In the process, what also may be revealed are aspects of libertarianism that are unsavory to traditional political and moral philosophers. So be it. In certain key respects, libertarianism *is* radical and deviant. Efforts by centrists like Sterba to bring libertarianism closer to the mainstream are bound to be resisted by people like me who are anxious to preserve its radicalism and deviance.¹¹

1. James P. Sterba, "A Libertarian Justification for a Welfare State," *Social Theory and Practice*, Vol. 11, No. 2 (Fall, 1985), pp. 286-306.

2. This formulation is a reconstruction of Sterba's actual argument (*op. cit.*, pp. 286-298). To a great extent, the latter is developed in a dialectical manner: premises and conclusions are woven into a fabric that includes anticipated objections, replies thereto, adjustments in positions, etc.

3. Sterba, *op. cit.*, p. 296.

4. *Ibid.*

5. In the last section of the paper, he gives reasons why he thinks his demonstration is preferable to attempts certain others have made to persuade libertarians to be welfare rightists and welfare statists. Aside from a remark in footnote 7, I shall be content to argue that Sterba's purported demonstration is significantly flawed, without attempting to evaluate his comparisons/contrasts with and judgments concerning the arguments of others.

6. For an extended discussion of basic issues at stake in this line of argument, see Fred D. Miller, Jr., "The Natural Right to Private Property," in Tibor R. Machan, ed., *The Libertarian Reader* (Rowan and Littlefield, 1981), pp. 274-287.
7. This criticism is peculiarly apropos in that Sterba claims, in considering alternative attempts by others to convince libertarians to endorse welfare rights and a welfare state, that three out of four are inferior to his because they beg the question at issue.
8. According to Sterba, Rothbard distinguishes between "political ethics" and "a moral course of action," arguing that in cases of conflict between the two, following the latter is "always punishable and never excusable." A key critical point for Sterba is that Rothbard "clearly has failed to deal with the strong moral challenge to unconditional property rights contained in the 'ought' implies 'can' principle" (*op. cit.*, p. 299). My discussion of the OIC has been an attempt to address this point.
9. E.g., Murray N. Rothbard, *For A New Liberty* (Macmillan, 1973), Ch. 8; Donald J. Devine, *Does Freedom Work?* (Green Hill Publishers, 1978), Ch. 5; Jarret B. Wollstein, *Public Services Under Laissez-Faire* (Self-Published, n.d.), Ch. 3.
10. Unless these claims are purely linguistic. However, if (1a) is analytic, then this part of the argument is trivial and the argument as a whole, vacuous.
11. During the process of review prior to publication of this paper, a reader called my attention to part of Douglas B. Rasmussen's contribution to a recent debate with Sterba. In this writing, Rasmussen covers with care and sophistication some of the same ground that I have traversed here. See Douglas B. Rasmussen, "Reply to Sterba," in Douglas B. Rasmussen and James P. Sterba, *The Catholic Bishops and the Economy: A Debate* (Transaction Books, 1987), pp. 93-102. I heartily commend this essay to the reader.