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Sterba on Liberty and Welfarism

Abstract: James Sterba advances several arguments designed to show that libertarianism, contrary to what this author and other libertarians think, actually implies support for welfarism and even egalitarianism. This discussion shows why his arguments do not work. There is preliminary discussion of our parameters: how much is Sterba claiming we have a minimum right to in the way of welfare? It is argued that if this is set very low, a libertarian society would easily eliminate the poverty he is concerned about, and if it is set very high, then the standard could be unmeetable and certainly could not have been met until very recently at the least. More abstractly, it is argued that Sterba is in error about the normative assumptions required for libertarianism's strong distinction between nonharm and outright help. Once these are cleared up, it is seen that his case depends on equivocation. The duty not to harm simply does not imply a duty to help. In the closing pages, a contractarian framework is advanced to explain the libertarian's disaffection for the kind of 'strong' rights Sterba wants to uphold.

1. Introduction

As Professor Sterba says, he and I have been discussing these matters for, as he accurately puts it, longer than either of us can remember. In the process, some elements change but many remain. I want to thank him for his newest formulation, which seem to me notably clear. As such, I think it also makes it still clearer where and why I think he goes awry. Libertarianism is not on the brink. An old professor of mine long ago was given to remarking that 'you can't get blood out of a turnip'. Parmenides couldn't get a frozen ball out of our changing universe, and Sterba can't get socialism out of a commitment to individual liberty. If you're going to try to reconcile welfarism or, more extreme yet, egalitarianism with liberty, you need more, I think, than he (or anyone?) has provided.

In this new discussion, I marshal my remarks under several important headings. The order of topics is partly a matter of taking them up in the order in which they come up in his new paper, and partly a matter of intrinsic succession from one topic to another. In any case, I hope to have responded to all of his claims. I have not attempted to distinguish what is new and what is not in his current paper, but simply discuss them on their own. The first, Supererogation, is new, or at least I do not recall his previously touching on it. The second, Future Generations, is a topic I simply didn't address previously, but that I think

in retrospect it will be useful to do here. But the main emphasis is on about liberty and welfarism.

2. Supererogation

One puzzling passage early in his paper says,

“It bears noting that when I speak of an ideal of liberty or equality, I intend those ideals to include both supererogatory and obligatory requirements, the latter of which correlate with rights that are taken to be fundamental. So this debate is centrally about what fundamental rights people should have and what those rights require.” (Sterba 2015, 189)

I am puzzled by this. Sterba connects the two sentences by the word ‘so’, suggesting that he thinks the second follows from the first. But if a moral directive is *supererogatory*—which means, *beyond* the call of duty, and therefore, obviously, not enforceable, then *that* aspect of the debate is *not* about rights. It clearly matters enormously which category we put welfare in, since I have always insisted that seeing to the needs of the needy is something we morally should do, despite being unenforceably so. I am assuming that we disagree about what is fundamentally appropriate for enforcement, not about what morally commendable people should do.

3. Future Generations—A Red Herring

Sterba characterizes my position thus:

“Nor do we violate the rights of distant peoples or future generations, he claims, by using up resources that they need, or will need, to survive, since distant peoples and future generations have no right to welfare.” (Sterba 2015, 190)

But all talk of rights in the far future is problematic in a way that makes it important to separate out that issue from issues about who has what rights in the present. For I would argue that there is no problem about us now using up resources that people in the distant future will *need in order to survive*, or for that matter, will need for much of anything. The reasons for that are technological and epistemic, rather than moral—but they are extremely powerful. In the first place, the fact simply is that ‘we’—all the producers in the world—can and do, even now, produce far more than the entire populace ‘needs’ to stay alive, and indeed to stay alive at well above a level of near-starvation; and we do not use up irreplaceable resources in doing so. Mankind has problems, but *that* one has been solved. And it has been solved just about entirely by free market methods. Socialist agricultural methods have by and large been a huge failure, as Sterba well knows. But free markets are *free*; they inherently deny a ‘right’ to what

anyone produces. They entail, instead, the right to produce as one can and to engage in trade with others; also to engage in all sorts of other associations with them, including the right to beg—but *not* the right to *exact* resources on the ground that one ‘needs’ them.

And in the second place, as is the failing of so many who bring in future generations, Sterba doesn’t take into account the fact that the *size* of those generations is determined by the actions of the preceding generation. So that if it looked as though things will be tough for a population of size X, at some future generation, then the problem is simply solved by the preceding generations just making sure that the size of the new population is Y, where Y is enough less than X to guarantee adequate supply. To repeat, that is a strictly academic point, since the first point simply obliterates the issue as any sort of possibly real-world problem. China, notoriously, adopted a draconian way of solving what it supposed was a population problem. It wasn’t, and its policies have turned out to be entirely misguided. All other countries in the world, including the supposed high-problem areas, have greatly reduced their rates of population growth—or in the case of the ‘advanced’ countries, have reduced it to negative growth—and that without any government intervention. So, please, let’s completely disregard this bogus issue in the present discussion.

4. Idealization

Perhaps Sterba would consider the Future Generations ‘problem’ as part of the idealization which, he says, we both engage in. In his initial introduction of the idea, he says,

“Narveson and I are assuming that there are two groups of people, one group, which I like to call ‘the rich’, have more than enough resources to meet their basic needs for a decent life and another group which I like to call ‘the poor’ lack the resources to meet their basic needs.”
(Sterba 2015, 191)

Regarding this scenario, I claim that the poor in question do not have the right to take what they need from the rich, and Sterba holds that they do. However, he also says that

“needy people are entitled to welfare only if they have done all that they reasonably can to meet their basic needs themselves, that is, they have to have fully utilized their ability to be productive, and in the circumstances, that must have proved insufficient.” (199)

I am not sure whether he includes that in the ‘idealization’, but since his description of the idealization includes the idea that the poor ‘lack the resources to meet their basic needs’, it would seem that he owes us some sort of characterization of what those needs are supposed to be, and also of what the current technological situation is regarding how they would be met. I don’t think that

Sterba appreciates the impact of this point, so let's expand on that a bit right now.

Are we idealizing throughout *all historical time*? If so, I would note that in ages past, Sterba's condition may have been realistically modeled now and again. When it was, would the 'haves' have been willing to impose taxes on themselves in order to feed the have-nots? If history is our guide, the answer is—overwhelmingly, not. Of course, Sterba might claim that their moral senses were deficient. But I insist that they were implicitly acknowledging the morality of the ages, which I claim to be embodied in my version: that feeding the needy just because they are needy is a matter of sentiment, not justice, that we may and perhaps should help them out, but certainly they do not have an enforceable *right* to our aid. (Sterba's main argument is that what they have the right to is only that we, the well-off, have the (enforceable) duty to stand aside when they undertake to raid our gardens, etc., and much of my discussion, below, is devoted to that maneuver. I will be insisting that it's illegitimate, as I am sure would have been the view of ordinary 'rich' people since pretty much the beginning of any era when the acquisition of above-necessity goods has been possible.)

And now, let's move to the present time. Sterba is extremely vague about his criteria of the minimally decent life that he wants to maintain as the right of the have-nots. Is it, perhaps, *just enough to stay alive*? (And, for how long? Presumably as long as one would last before other diseases or other life-threatening problems set in? Or does he, as I would guess, also hold that the poor have the right to any and all life-prolonging medical procedures, no matter how expensive they are, once they are invented?) If it's just a matter of food and shelter, then the domain of his thesis is *zero*. For in today's world, there are *no* persons who will starve, other than in areas under autocratic or military rule or civil war, even without any government administration. In the rich nations like Canada and the U.S., persons voluntarily choosing to live on handouts ('panhandlers') do so well that they aren't tempted to try to get paid work. Does Sterba take such things into account? There is no evidence that he does. His idealizing on these matters seems to be rooted in roughly 18th century economic conditions. But the facts certainly demonstrate that his thesis, in today's real world, is completely empty.

On the other hand, if he wants to raise the bar and insist on the aforementioned Basic Human Right to two TV's, two cars, air-conditioning, one bedroom per child, and the rest of it, then the idea that we somewhat wealthier people have no right to fend off would-be availers of our *third* TV's, etc. so as to meet their 'needs' for the usual two, will strike just about anyone as preposterous.

Or perhaps Sterba wants to move to a still more 'egalitarian' position far more quickly than could be supported by any supposed concession I am supposed to have made (though, below, I will examine the basis for the several misunderstandings that I think still infect his arguments). Perhaps Sterba's envisaged 'decent minimum' is up around the American 'official poverty level'. At that level, 'poor' people, as so often has been pointed out, enjoy a host of amenities of life that were impossible in centuries prior to the late 20th. Practically all of those 'impoverished' persons have running water, electric ranges, TV, cars (typ-

ically more than one!), air-conditioning, telephones, and nowadays computers of one sort or another, and much more. In my argument, as will be seen, that is a level of amenities that rational persons in the ‘luxury’ group would certainly not allow to be what they are due from the have-nots, and I find it hard to believe that Sterba would think it plausible that they would—although, to be sure, I suspect that the fellow signatories in *his* preferred ‘social contract’ are all leftist academics like himself.

Finally, if he wants to press on and take the extreme view about medical rights as I specified it above, then it is simply impossible to fulfill what he would be maintaining are people’s rights, and his ‘ought implies can’ idea works against his own position.

One might add here that it is puzzling to think that there is some sort of basic human right to things that simply didn’t exist or weren’t possible in previous ages. Were the classical Romans unjustly deprived of electric refrigerators? A couple of billion people in today’s world, we read, are still without electricity. Are their *rights* thus violated, despite the fact that *nobody* at any level of income or power could turn on the lights even a mere hundred and fifty years ago? Or medical care? We know now that hardly anything any doctor could or would do to any patient could be expected to improve that patient’s condition until about a century back. Were people being ‘denied their rights’ when they got the flu and, due to wholly understandable medical ignorance, died from it? It surely takes some fancy conceptual footwork to speak thus.

Of course, if there is a ‘basic right to equality’ of amenities, the idea no doubt would be that when anybody creates some useful new thing, then somehow everybody in the world, whether living in a society whose circumstances have been the same for ten thousand years or in a contemporary free-enterprise society, is entitled to it. I am not sure whether Sterba would draw quite that inference from his casual mention of egalitarianism, but I continue to think both that it is incredible and that there is no way he can extract it from the bare idea of a general right to liberty, which is my position.

But let’s return to idealization.

5. Real and Ideal: How Are They Related in This Discussion?

These questions about the framing of the issue between us on the score of whether people have a right to have their ‘needs’ taken care of, non-consensually, by the ‘haves’, given a reasonably minimalist specification of what is involved, becomes extremely *thin*—so thin that one hardly knows how to respond to many of Sterba’s arguments. In any case, we cannot go *from* the premise that we have no positive rights against each other (and assuming, what I propose to show, that Sterba’s gimmick of claiming to derive his welfarism strictly from negative rights won’t work) *to* the conclusion that libertarians are ‘in favor of starvation’. That is political campaign rhetoric, not philosophy. Libertarians, to a man (and woman) so far as I know, are among those quick to contribute to Oxfam and

the like when severe needs suddenly arise, as with tsunami victims in Southeast Asia and the like. Libertarians' principle is that the involuntary methods of the State are the wrong ones to use for alleviating whatever starvation is genuinely able to be alleviated (all of it, nowadays, as I say)—but certainly not that we *shouldn't* do anything to alleviate them. It is only that we are to do so at our own, voluntarily incurred, expense.

My position, certainly, is that there is a general but *not* enforceable duty to help others in need. Humane people will see to it that others do not starve, if it is possible to help them; and most people are humane. Why quite a few don't seem to be is a fascinating question, to be sure. (It often is not possible to get to the needy, because people with guns are acting to prevent parties who have the means to help from actually using those means to render the needed aid. This especially has happened in the Communist countries in the past century, and in countries under threat from Islamic and other fanatics. But it does not happen in the reasonably liberal countries of today's world.)

Yet Sterba says this—as if it were a substantial claim:

“A basic needs minimum that secures a decent life can be provided to all the deserving poor today at the same time that a surplus could be produced from existing resources to meet at least some people's luxury needs.” (Sterba 2015, 201)

But in today's world, as I have pointed out, real starvation is extremely rare, though perhaps a less than fully adequate diet is more common. (Of course, enthusiasts about nutrition would argue that inadequate diet is all but ubiquitous, especially in the wealthy countries such as America where people are typically overweight.) Taking that seriously changes the subject so much as to move us way beyond any limits of the present discussion. We are here *not* discussing the question whether everybody, rich or poor alike, may be required to refrain from eating X or doing Y on the ground that their health will be promoted by this. Maximal enforcement of healthiness is certainly incompatible with a right to liberty!

That the minimum for a (nutritionally) 'decent' life for all 'can be' provided with enough left over to provide 'at least some people's luxury needs' is an incredible understatement—a description that belongs in never-neverland. The fact is that by far and away the majority of people in the whole world already have enough to meet that minimum, plus indeed quite a few 'luxury needs' if those are assessed at the appropriately low level that would provide any sense of realism to our discussion. The 'poor' in America virtually all enjoy refrigerators, indoor plumbing, television, telephones, cars, and air conditioning, with the 'poor' in Europe not far behind; the vast majority of them have several televisions, computers, and on and on. Even the Chinese, after centuries of desperate poverty, are now predominantly 'decently off', by reasonable standards. It would seem that Sterba's grasp of the contemporary economic situation leaves a lot to be desired. Thus we would need to turn to the very poor parts of the world to try to find examples, and even there the world has changed markedly since our discussions began. The point is that, without the powerful positive-

rights claims that Sterba is arguing for, the world is already well beyond his ‘idealization’ point, unless it is stretched beyond recognition.

This excursion into the contemporary real world is intended to try to provide some sort of parameters for the ‘idealizations’ Sterba refers to. Since who is considered ‘rich’ and who ‘poor’, which of our desires are to be regarded as ‘needs’ and which as ‘luxuries’ has changed so much over the past century, even, let alone over millennia, the reader is entitled to serious doubts about our understanding of our subject-matter, and thus over implications for current policy. If we take as our idea of minimum needs those prevailing five centuries ago, then there simply are hardly any ‘poor’ to worry about now, or in the foreseeable future. And if we set the standard much higher, then our idealization may have been infected with a normative conception quite alien, as most people would see it, to the subject.¹

6. Future Generations—A Further Note

For the same reasons, it is unreal to suggest, as he does, that our ‘luxury’ consumption *now* is undermining future generations’ capacity even to feed themselves, if that is what Sterba means under the heading of ‘basic needs’. (Sterba says, “However, elsewhere I have argued such a use of resources for meeting luxury needs would likely interfere with the use by future generations of those same resources to meet their basic needs.” (2015, 201)) Our level of agricultural technology today is such that there is simply no reason to think anything of the sort, for any reasonably foreseeable future.² And for that reason, I propose simply to ignore this ‘issue’ in the present discussion. Our question, simply, is whether everyone in the world is subject to a duty to provide for others that may be enforced by the powers of the law. I argue, first, that our basic enforceable duties must be negative, not positive; and second, that Sterba’s attempts to show that even if we confine ourselves to purely negative rights, we *still* can infer a duty to allow others to avail themselves of the agricultural produce (at least) of the productive, contrary to the free wills of those producers, are falla-

¹ My point is beautifully illustrated by an article in *The Atlantic* (June 1914), ‘How Many People in the World Are actually poor?’ (<http://www.theatlantic.com/business/archive/2014/06/weve-been-measuring-the-number-of-poor-people-in-the-world-wrong/373073/>). The Oxford team came up with a list of “ten needs beyond ‘the basics’ in three broader categories: nutrition and child mortality under Health; years of schooling and school attendance under Education; and cooking fuel, sanitation, water, electricity, floor, and assets under Living Conditions. If a person is deprived of a third or more of the indicators, he or she would be considered poor under the MPI. And degrees of poverty were measures, too: Did your home lack a roof or did you have no home at all?” Not surprisingly, they came up with a far larger set of ‘poor’ than had previously been accounted (“Sadly, the world is more impoverished than we previously thought.”)—not because the situations of all those people had worsened (they have, on the contrary, enormously improved) but because this team now accounts more variables and more stringent criteria for meeting them than previously. (The Oxford report itself may be found at <http://hdr.undp.org/en/content/multidimensional-poverty-index-mpi>.)

² I take my claims about these matters to be commonplace and obvious by now. If evidence is required, readers might start with a report, now out of date—things have improved substantially since it came out—about the then-current situation: Bailey (ed.) 1999.

cious. In addition, I argue that the confinement to negative duties and rights is philosophically well based.

7. Harm

Perhaps Sterba's main argument consists in attributing to me a value-laden notion of harm, and then claiming that our disagreement really comes down to disagreement about which norm to use—one that favors the wealthy or one that favors the needy. According to him, I have

“two ways of using a normative standard to determine which liberties from the world of morally unspecified liberties turn out to be negative liberties that he morally approves of.” (Sterba 2015, 192)

One way is supposed to be that I just arbitrarily (my word, but I take it to be implied) assume or ‘intuit’ ‘in the absence of property rights, that certain human actions are acts of violence or harmings while others are not’. Thus I am said to merely ‘intuit’ that when you, the poor person, come, spade in hand, to take these potatoes which I have tended and nurtured to their present advance state of edibility, then you would be using violence against me. Sterba thinks that I am just assuming bourgeois property rights.

“Now the problem with Narveson's argument here is that it rests on a question-begging specification of harming, using violence or making worse off. If we are not going to presuppose property rights to a surplus then we have no way of claiming that the poor uses violence against, or harm, or make the rich worse off when they take from the surplus possessions of the rich [...]” (192)

We'll discuss that first. He then turns to my contractarian thesis. We'll discuss that second.

(1) ‘Harm’ not normative

Regarding the first charge, Sterba's discussion shows serious misunderstanding. To see what it is, we need to recall some elementary distinctions about values, norms, and morality.

Morality, in the sense we're discussing it, is social: it's about people's interactions in society. People are individuals, each with their own evaluational systems and proclivities; those values overlap to some extent, and they diverge a great deal. But whatever they are, those are what prompt their actions. Economists tend to pooh-pooh the idea of interpersonal comparisons of utilities, and they have a point, though it's easy to misstate the point. The point is not that such comparisons are literally impossible or nonsensical—everybody makes them, routinely, at various points. But nevertheless, interpersonal utility has no footing *in moral theory*. That is because all values are *somebody's* values, and we deal with each other each in the light of each person's values, whatever

they are and however much or little they may be comparable to those of others. That is why morality has to amount to a social contract, as I shall further argue below. Morality is about the rules for us each to adopt in order to resolve the innumerable conflicts with which society would otherwise be ridden. The philosopher's task here is try to find which of innumerable possible sets of rules it would be *rational* to adopt.

For this reason, we cannot employ anyone's personal values in morals. That would be for one person to purport to choose for someone else—obviously objectionable from the point of view of the someone else. But in turn, making reference to someone's values simply as a description of what he or she is doing, is perfectly acceptable. 'Jones values x' is a *descriptive*, not an evaluative statement-form. And 'harm' works the same way. To *harm* is to act in such a way as to effect a decrement in that person's situation—a reduction of *his* utilities. Harming is worsening. But to describe a given case as harming is not to make a value judgment. It is to describe in a way that depends on the person involved *having* some values, such that by his reckoning, his condition or situation has been worsened. To say that he has values is to describe—it is neither to accept nor reject them. You *can* be evaluating when you say that someone is 'worse off': if I am a religious person, I might claim that you have worsened your condition by abandoning you religious beliefs. But then I am no longer describing. Descriptively, that person has not been harmed because in his view he is better off. Virtually everybody regards his own health and income as desirable things, and regards sickness and decline of that income as harms or worsenings, and that was the mode in which I was talking when discussing 'harm'.

So the no-harm principle operates in the following way. Where each person is reckoned as the authority on his or her *own* values, we libertarians propose that the fundamental solution to social interaction problems is the forbidding of *harming* where what that means is one person bringing about that another is worse off, in his or her *own terms*, than he or she was at the *status quo* or baseline point. That point is normally the point of interaction or encounter. This does *not* involve morally evaluating, or assessing, the other person's values.

On the other hand, our proposed moral rule—the no-harm principle—is asserted as universal. One person's—any person's—efforts to improve his or her situation are not to be made at the expense of another's. If someone's actions are harmful to *others*, then morality does *not* forbid intervention to correct that situation. So when we, without qualification, say that someone is harmed by an action, we are not necessarily saying that they are wrong. Whether they are so depends on whether the recipient has himself been inflicting harm, loss, on someone else.

We can perhaps put the libertarian idea more effectively by saying that one person is not to cause another person *net* harm, meaning, making him or her worse off in self-regarding non-interactive respects, reckoned in light of the recipient's previous behavior. If his past record is clean and the utilities in question are purely self-regarding, then any harming, relative to that baseline, is forbidden. But if it is not? Then the baseline itself is infected. The police capturing

the burglar render the burglar worse off than he was just prior to the arrest—obviously, he has gained from his act of theft. But since that theft was itself at the expense of its victim, the burglar cannot appeal to the liberty principle against the arrest. On the contrary, the arrest is made in the interest of general liberty.

The baseline issue is fundamental. Anything I do that benefits somebody can be claimed to ‘harm’ him in Sterba’s terms, if, as is usually the case, I *could* have benefited him still more. Sterba’s claim that the rich *harm* the poor by not feeding them, or not allowing them to feed themselves at his expense, is a clear misuse of the term. Of course the poor are worse off than if the rich *had* fed them. But they are not worse off than they were in the status quo, prior to availing themselves of the rich person’s food supply. And that is the relevant baseline for talk of ‘harming’.

Next, consider the relevance of ‘*first* harming’. A ‘first’ harm is a *net* harm: the person whose utility is lowered is to have met all the above criteria. E.g., Jones is standing peaceably in a place which he was also the first to occupy. If now Smith comes along and clubs him, that is a ‘first’ harm—an aggression. Smith’s action is harmful, and our principle calls upon all to refrain from acting as Smith has.

Smith’s wrongful action also licenses some corrective action, as may be. Just what, is not obvious nor settled: a jail term? Exacted compensation? Those corrective actions of course lower Smith’s utility relative to the point where he is, e.g., arrested. But the police lower his utility relative to a baseline which itself has been wrongfully arrived at by Smith due to his previous act against Jones. The individuals who impose the correction (which may or may not be the police, or Jones, but whoever it is should be acting with Jones’s approval) do not act wrongly. The harm he would impose on Smith is not a *net* harm. It is not a ‘first’ harm.

When Sterba thinks that my use of ‘harm’ involves an evaluation, then, that is a mistake. What is not a mistake is that the affirmation of a right to liberty involves an evaluation, a norm, or, less misleadingly, it asserts a *rule*—a rule against actions that deprive others of their liberty, insofar as those liberties are themselves not harmful to yet others.

Not feeding the hungry does not, then, harm them. It leaves them in whatever condition they were before the question of feeding them arose. If that condition was starvation, that’s of course a bad thing, and we onlookers should be concerned about such things however caused. But the point is, A does not *starve* B when he doesn’t feed him. A doesn’t *create* or *induce* B’s starving condition—he just doesn’t alleviate it. So he’s certainly not being very nice. And niceness is a virtue. But B does not have an enforceable right against A, given the liberty principle.

Sterba’s case, however, rests on concerns about objects in the world that have been brought into their condition by human action, e.g., people growing and harvesting edible plants, or raising edible animals. What he wants to claim is that in preventing the erstwhile poor from depriving their makers of the fruits of their labors, we do make an evaluation. But that is ambiguous. Sterba

thinks that the very description of Jones's act of preventing Smith's acquisition as 'defensive' involves an evaluation. Not so. The wicked can try to defend themselves just as the virtuous can. But of course, the liberty principle *does* declare that Jones has a right to defend himself: his self-defense is legitimate, whereas Smith's unconsented acquisition of what Jones has made is not.

8. Property

To say that is to bring up the subject of property and possessions. It is important to get clear on the relation between them. *Possession* is descriptive; *property* is normative: property is rightful, legitimate possession. The thief takes my car into his *possession*, but it certainly does not thereby become his *property*. We need a moral theory, of course, to decide which possessions are to be accounted the *property* of the possessor. But you do not need a moral theory to describe someone as having been 'harmed' in respect of his relation to his possessions.

So, let us turn to Sterba's case. We are assuming that the damaged individual, Jones, created a state of affairs whose persistence into the future, for purposes determined by the creator, Jones, is an essential part of his creative action. He grows potatoes, say, with a view to eating them. If at some later time someone, Smith, intervenes to make off with those potatoes, contrary to the grower's will, then that intervenor has harmed him. Why say this? The fact that he did so has nothing to do with Smith's state of desires or needs at the time. We cannot say: 'Well, he needed the potatoes more than Jones' and *therefore* did not *harm* him; nor can we say that Jones had a duty to allow Smith to help himself to them. What makes it true that Smith *harms* Jones by acquiring goods that Jones created—which would not have existed but for Jones's actions—is that Smith undoes the effects of Jones's work. He harms Jones because he brings it about that Jones is worse off, having invested his work in something that he expected to be able to enjoy, and now he cannot. He therefore has violated Jones's *liberty*: prevented Jones from doing what he wanted, which was to bring it about that he had a crop of potatoes.

Or can we say this? Sterba now takes a different tack. He thinks we can accuse the rich of 'harming' those to whom they refuse to allow use of their possessions. Here are three excerpts from his paper:

- 1) "If the rich attempt to use it and the poor stop them, the poor would be acting pre-emptively and so the rich would be the first harmers." (Sterba 2015, 193–4.)
- 2) "Suppose the poor prevent the rich from using their surplus for luxury purposes. In the absence of property rights, are the poor thereby harming the rich? Well, we might say that, but we might also say that what the poor were doing is acting pre-emptively to prevent the rich from harming the poor themselves." (193)

But this reasoning is precisely of the kind that is not allowable in the social contract: namely, a value of Smith's that simply overrides the value that Jones

was acting on in creating the valued state of affairs in question—‘simply’ in that Sterba doesn’t require any further interactions to support this restriction. Suppose that Jones has been told in advance that someone else would take the potatoes and Jones responds by not growing them at all (as Hobbes noted so trenchantly in his characterization of the ‘war of all against all’—what’s the point?). In Sterba’s view, the ‘poor’ have *carte blanche*: they get to make war on the producers who in turn have no right to fight back. Obviously the producers may not see it that way. And if they don’t, then there is no contract—no *agreement*.

If instead Smith points out to Jones that he is exceedingly hungry and would Jones please give him some of those potatoes?—then Jones might well respond favorably, being after all a fellow human with a grain of sympathy for his fellows. Or he might not; or he might decide that his own interests are too pressing to allow of helping Smith. The point is that it is for Jones, the actor, to decide—not Smith, and not a philosopher making *his* assessment of their comparative values.

In light of this, consider Sterba’s response to an earlier statement of mine. I said:

“Now, if you take something I valued enough to take it into my possession, you of course do harm me. If that is a thing which I didn’t originally acquire by taking it from your previous possession, I can hardly be harming you in that same sense—my activity is defensive, but yours isn’t.” (Sterba 2015, 198)

Sterba has an important kind of response to this argument of mine:

- 3) “Defensive actions are legitimate only when what one is defending is something to which one has a right. Thus, in the absence of property rights defending that to which one has no right does not legitimate one’s defense.” (198)

This argument begs the question, unlike mine. We are starting, let’s remember, with the Liberty principle, which affirms that actions are wrong only if they harm. Sterba is supposed to be *showing* that the poor have the right to their stuff when they need it—not *assuming it*. To do it right, Sterba would need to show that the liberty principle *just as such* gives the poor the right to help themselves to what I have produced, without my permission. Only then would he be able to appeal to a supposed violation of rights when I defend myself from them. But my analysis of possession and subsequent invasion shows that the liberty principle *does* give people rights to their harmlessly acquired possessions, and does *not* give people, in whatever condition they may be, any right to seize them. The analysis, plus the liberty principle which is our presumed starting point, does give us the right to defend those possessions.

Desperate people may well turn to force, of course—ignoring considerations of right, in their efforts to head off starvation (though often there are other things that motivate them, such as extremist religious beliefs). Whatever, the point

is that my analysis of stable-possession acquisition shows that the attempt to prevent incursions by others, i.e. to defend one's harmlessly acquired possessions, is legitimately defensive, while those proposing to intervene to acquire those goods themselves is aggressive and therefore wrong.

Of course this leave us with the question who is right: the libertarian or the would-be social welfarist. My point so far is only that Sterba cannot defend his view on the basis of liberty, as he claims. But is my view the better one? I turn to that next.

9. Social Contract: Why It Supports Libertarian Rights

Sterba's assertion that the Hobbesian Social Contract also involves using a 'normative standard' is another misunderstanding. In order to correct this, we must again remember that we are here undertaking a *moral* theory—not just any old norm. What is unique about the social contract is that the only 'norms' involved at the outset are the individual's own values, whatever they may be. Then, via game-theoretical reflection, we infer from our social situations plus those values the rational view of the much narrower subject of morality. We thus help to solve the horrendous problem presented by the rapacity of our fellows.

I appeal to social contract analysis as the correct foundation of social morality, and in particular of the part of it that has to do with rights. Of course that leaves the question whether I am right that the Social Contract does have this result—that is to say, the libertarian result of forbidding all net interpersonally imposed 'harm'. I fully agree that this requires reasoning and argument. But then, I, along with Hobbes, Locke, Gauthier, and others, claim we have done that. Sterba takes the fashionable line that "it is not clear what, if anything, would be agreed to in such a contract situation" (2015, 192). And he adds, "Narveson argues, however, that there is a salient point for agreement, which is that we all just agree to not use violence or do no harm" (192).

Those who say this sort of thing, I believe, have not thought the matter through carefully enough. It is hardly a matter of 'just agreeing'. It is a matter of understanding what is rational for parties in this situation. The reasoning that takes us from the social contract to libertarian rights is straightforward. All actors make decisions on the basis of *their own* utilities (or 'values'). Those who have previously harmed no one have no reason to accept others' utilities, simply as such, to override their own. A rational individual has interests of various kinds. They are *not* limited to 'self-interest', for example—strict egoism is a red herring here. However, some degree of self-interest is normally to be expected—we could hardly remain alive long without a modest measure of self-interest. And on the other hand, extreme or substantial general altruism, while conceivable, is very rare. One must not make the analysis depend on any particular profile of utilities. (Sterba, on the other hand, requires it, as we shall see.) And of course we must proceed from the premises least favorable to our result in order to see whether the whole thing works or not. So we assume, at a minimum,

self-interest, though noting that often, indeed overwhelmingly, people have at least Hume's spark of sympathy for others.

Rational agents are trying to maximize their utility, as the phrase goes: they want to improve their situations and certainly don't want them worsened. Now, the social contract is game-theoretic in its structure. We ask, given the possible impact of others on one's own utilities, and more generally of other people on any agent's utilities, what rules would we all agree to adopt, and which rules would we further allow to be *enforced*? From the point of view of any agent, A, other people may present (a) opportunity, in the sense of a potential for beneficial interaction; or (b) neutrality, in the sense of producing neither benefit nor harm; or (c) detriment, that is, expected worsening of the agent's utility. The rational agent, by definition, prefers (a) to (b), and (b) to (c). Now, a Sterba-type contract would require all agents to be willing to act in order to benefit someone else, *just* on the basis of that other person being 'needy'. This means that if agents do not judge it to be in their overall interests, however those are reckoned by the individual, to do that, then he will nevertheless be *forcibly required* to do so. But there is no a priori expectation that Smith's utilities interest Jones's—they might or might not. Therefore, a Sterba-type universal agreement is *prima facie* irrational. We do not want to come out worse off, nor can we expect anyone else to accept that result for him or herself. But at the same time, we realize that others reason the same way. We need to *optimize* here. And we do that by adopting the rule that no one may act to worsen anyone else's situation. On the other hand, we may do, and are encouraged, to do what will better others' situation.

Thus the obvious rule is the libertarian one: social contract precludes intervening to worsen anyone else's situation (so long, as already pointed out, as that individual has not in turn harmed others, which would justify defensive or perhaps punishing response). It allows *only* mutually beneficial interactions, or neutral ones—those that simply don't appreciably affect recipients' utilities one way or the other. Since, as Aristotle puts it, all action is for the sake of some good, we presume that whatever an agent does voluntarily is somehow beneficial to him; thus the case in which A benefits from A's actions, while no one else is affected negatively, is morally approved, as well as the case in which he benefits B. (Thus, Smith's praying in a church of his choice is something I should approve of, even though I am a staunch atheist. Others listen to rock music, which I deplore, but that is nevertheless something they have a right to do, and the situation in which they voluntarily do so at no one else's expense is one we should all morally (though we do not *aesthetically*) approve of.)

What about interactions with the impoverished? The analysis shows that it would be irrational, at least *prima facie*, to sign up for *uncompensated* required beneficence. But it is in no way irrational to *be* beneficent. Indeed, since people benefit from it (by definition, if the intendedly beneficial action is successful), the social contract underwrites *approval* of charity along with the libertarian objection to the welfare state (pending, of course, further investigation that might turn up an unanticipated benefit from, say, universal health schemes or what-

ever. But Sterba and I are arguing on an ‘idealized’ plane, so such possibilities cannot, as yet, be appealed to here).

Agents may, of course, find that they can make an advantageous arrangement with someone else which would, for instance, get Smith food in return for future work done by Smith for their benefit. That is, indeed, the normal and approved way of interaction, and the one that leads to social improvement all around—a ‘win-win’, as we say.

Sterba may think that I have introduced yet a new argument here. But I have not. Rather, I hope to have clarified my original argument, which he has evidently misunderstood. What I have done is to refute his claim that the no-harm principle, including its first-harm understanding about possessions, ‘cuts both ways’, as he puts it. It does not. The poor person who takes from the better-off, productive person makes that productive person worse off; whereas in the alternative situation, where the poor man refrains from unilaterally appropriating the products of others, he is no worse off than before—which, to be sure, was pretty badly off. But the ‘rich’ man does not *worsen* the poor man’s situation, whereas the poor man’s action *does* worsen that of Richman. Undoubtedly, it would (at least, usually) be nice of the rich man to help the poor man, and he often will do so, with general approval; but you cannot derive the *enforceable duty* to do so from a duty not to harm the poor man—for he has not harmed him. And if the poor man insists on predatory action, and the wealthier one defends his product, then the wealthy are only attempting to correct an invasion. Any harm that would come to the invader as a result is the invader’s fault, not the defender’s.

10. The Hobbesian Gambit

Let us remember that a *right* to x, as Sterba and I are using the term, entails the legitimacy of defensive action to enforce that right if need be. Now, much is said down through the course of history about the ‘war between rich and poor’. That ‘war’ can be obviated if the rich and the poor can get together in the marketplace, where everyone sells his or her services or goods to anyone interested in purchasing them. The entrepreneurial type will buy people’s labor, especially, enabling both the ‘poor’ and the ‘rich’ to forge ahead. But if instead, as in Sterba’s format, the poor think they are *entitled* to make war on the rich, then the rich will have to waste resources defending themselves, or unproductively succouring the poor. The observation that this is socially inefficient—not a good way to run a society!—is certainly bolstered by the brilliant track record of free exchange as against the miserable one of socialism. But it is logically prior to those historical facts.

Hobbes, indeed, and many others (including Aquinas) have reasoned that the better-off will support social institutions to take care of the poor as a way of heading off an expected invasion by the poor. In Hobbes’s words:

“For seeing every man, not only by Right, but by necessity of Nature, is supposed to endeavour all he can, to obtain that which is neces-

sary for his conservation; He that shall oppose himself against it, for things superfluous, is guilty of the war that thereupon is to follow; and therefore doth that, which is contrary to the fundamental Law of Nature, which commandeth to *seek Peace*.” (Hobbes, *Leviathan*, XVI—discussion of Fifth Law of Nature)

In appealing to the ‘necessity of Nature’ as driving the poor, Hobbes in effect accepts Sterba’s assertion that his view is supported by the ‘ought implies can’ principle. But he is mistaken. Hobbes seems to have forgotten that on his principles, *everyone* has the right to defend himself—not just the poor. All may defend themselves against any invaders, including against attacks by persons claiming that the agent’s goods are ‘superfluous’—a judgment that Hobbes himself knows perfectly well cannot be accepted in these contexts (he can have no user for interpersonal comparisons of utility for moral purposes). So, while it *might* be a good idea for us non-poor to support the welfare state in order to head off the ‘war’, it might also *not* be. The rich—who after all can afford to defend themselves a lot more effectively than the poor can afford to attack—just might find that investment in defense is the better option—and Hobbes can’t object to that.

11. Other Options

Another possibility is that where the overwhelming majority are the ‘rich’ (in the Sterba sense)—as is the case in the rich countries now—they might adopt a state provision of assistance to the relatively few poor, just because practically all of them are sympathetic enough to want to do that, administrative efficiency is promoted by making the scheme universal, and those who appear to overpay are compensated by those superior efficiencies.³ Nothing I have said precludes that option. But notice that it is *not* the sort of argument that Sterba is trying to make. His is strictly a priori (including an a priori preference for ‘needs’ above what he considers ‘luxuries’—a preference he thinks he can wire into the framework of morality without further ado).

The beauty of social contract reasoning is that it does not depend on supposed intuitions or ‘objective’ values such as interpersonal comparisons of utilities, as in Sterba’s view. Its results are such as every person can accept, in light of his or her *own* values, whatever they may be—short of the possibility that we all just love violence and plunder, even if done to ourselves. Appealing to outside sources such as intuition or interpersonal utility estimates is appealing outside human practical reason. But we are humans, and so it is the latter we must work with.

³ This was my argument in Narveson 1988, 388–97. In the preface to the new edition, published by Broadview Press, 2001, I explain why this idea won’t really work—at least not for the general case.

12. Insecurity of Morals

Of course, morality in consequence is insecure. The strong may think that they can ‘get away with’ murder and other interventions, and sometimes they can. But the fact that the contractarian view explains why morality can’t be expected to be perfect is one of its merits, rather than a fatal objection. Most theories of morals either make morality incomprehensible—it should *never* work—or else make immorality incomprehensible (e.g., appeals to ‘categorical imperatives’). But while some people may indeed set aside morality, what they cannot do is expect the cooperation of mankind in their schemes. On the contrary, they can expect war. And in war, the contractarian reasoner observes, we can all expect to lose relative to what an optimal peaceable agreement might have secured for each party instead. That was Hobbes’ objection to the State of Nature. It seems to me (and us) that he was right.

13. About the ‘State of Nature’ and a Note on Zero-Sum Games

If we are to produce a genuine derivation of morality from what we have in its absence, we must start with a ‘state of nature’ understood not just as devoid of *property* rights, but of rights, period. What that means is that no one can be *blamed* for anything, no one judged to be in the wrong no matter what he does. Hobbes argued—justifiably in my view—that in such a condition nobody can hope to benefit from his labor, since anything he does to better his situation will quickly succumb to predation by others. And he famously argued—also justifiably in my view—that this would be an incredible mess and awful for everybody. Intelligent people in such a ‘state of nature’ would see the need for generally inculcated and generally enforced rules. We need not follow Hobbes into what I regard as the morass of his strictly *political* philosophy to see that a social mindset against interpersonal violence is our rational solution to the state-of-nature problem. (The survival of humanity over many millennia is testimony to the ability of people in society to realize, at least to a fair extent, the benefits of morality. We could not possibly have endured in a totally amoral condition for long.)

If of course the state of nature was a hopeless condition in which it would not be possible with any amount of cooperation to improve anybody’s situation without worsening someone else’s—a multi-person zero-sum game, in short—then there would be *no* solution to it, and writers who act as though they think this is the fundamental situation of the human race thereby abandon any hope of a rational morality. But for the rest of us who see things as they are—namely, that we are in a condition such that cooperative effort can make many or all of us far better off, *and* do so without thereby harming—‘invading and despoiling’—anyone else, then the stage is set for continual open-ended progress for all. ‘For all’ because even the unproductive will do far better living among productive persons, many of whom are sympathetic to others’ plights, than by engaging

in predation—let alone reserving, *a la* leftish arguments, a *right* to exploit the productive. We make social progress by eliminating barriers to production and to freedom of association among the peaceable. (In saying this, I obviously would need to address the frequent incidence of slavery in societies that seem to have made some progress on the whole. But this excursion into contractarian reasoning has been lengthy enough already. Enough to remark that slaves did derive some benefit from their situations, though not nearly what we can suppose a fully cooperative society might have managed.)

Now, this emphasis on cooperative production—a phrase that is very nearly a tautology, one might add—does suggest a line of reasoning that *might* underpin something like the modern liberal welfare state. It could be argued that we should view all persons, however apparently unproductive, as potentially productive and therefore as *investments* that it would pay all of us to engage in. That idea is worth exploring, though it is rather an uphill battle. But that is not the line that Sterba takes. His, rather, is the a priori line of simply weighing one person's needs against another and deciding whose take precedence, irrespective of contributions to the production of the very resources from which those adjudged needier would be supplied, and regardless of the preferences or protestations of their victims, the productive. On Sterba's view, if B will die unless A does x, then A *must*, in the sense that he may be *compelled* to, do x. That of course cannot be understood as an *agreement* between A and B. By contrast, 'Help those in need, as a sympathetic fellow being!', with frequent positive response, clearly is mutually agreed interaction.

14. Relevance of Productivity

I challenged Sterba on the subject of productivity, saying "I accused Sterba of apparently thinking that the history of an acquisition was irrelevant to its morality [...]" (unpublished communication). He corrects me here, to an extent, pointing out that

"To be relevant, of course, a person's relation to productivity does not have to be the only fact that is relevant. There could be, and in fact are in my view, other facts that also are relevant." (Sterba 2015, 199)

Formally, of course, the point is correct. But in the first place, Sterba has taken up the challenge of showing that the libertarian principle, of itself, will give us the welfare state egalitarianism he plumps for. Libertarianism *is* a 'single factor' theory.

In any case, on his view, just *how* are any other facts relevant? Well, it seems that up to the point where what A produces is enough for A's needs and no more, A has priority—yes. But after that? First he says that "On my view, needy people are entitled to welfare only if they have done all that they reasonably can to meet their basic needs themselves [...]" (199). I have discussed that provision above, noting how it pretty well deflates his thesis as it applies to contemporary

reality. But here my question is: just why *is* the needy person B ‘entitled’ to the supposedly ‘luxury goods’ of highly productive person A? Sterba’s only answer—if you count that as an answer—is that, well, B *needs* those goods, even though A produced them, whereas greedy ol’ A does not *need* them—they’re ‘luxuries’. (He is there plainly making a normative assessment, of course.) He appears even to agree with Singer at his most egalitarian: confiscatory taxation of anything above poverty-line production, the results to be used to line the larders of the poor. But whether he actually wants to go that far, I don’t know. (How Sterba could afford to go to all those conferences if he personally subscribed to that view, I’m not sure!) At any rate, my point is that once it is understood that the rich do not, in any properly clear sense, *harm* the poor by withholding their own production from them, then you cannot do what he claims to do, which is to support redistribution on the ground that the productive *violate the liberty* of the unproductive in their refusal to share—when they do so refuse.

Of course, I once again remind the reader that free enterprise is so enormously productive that the set of persons in the sort of extreme need that seems to be Sterba’s touchstone is close to nil, and certainly is much more than taken care of by the many who sympathize with them enough to help out. But I do not defend free enterprise only because it has that result. Rather, I defend it as instantiating the general right of liberty. Productivity and property rights are relevant on the libertarian view because the fact that someone has produced *x* gives that person the right to its further use, insofar as that is consistent with the liberty of others. It does so because anyone who seizes products has thereby violated the liberty of the producers of those products. Sterba’s reply is: Hey, we’re just depriving the rich of their Lamborghinis, right? (That we thereby also deprive the people who work in the Lamborghini factory of interesting and well-rewarded jobs tends not to deter the calvinist left, to be sure.) But more fundamentally, we should avoid critiquing the tastes of our fellows when we do social philosophy, and try instead to follow the path of reason. This does not allow morality to be infected with the value judgments of philosophers, insisting instead on sticking with what we have—the values of particular individuals in guiding their own actions, and the facts of social life and interaction. Those elements, I have argued, lead us to the libertarian view: that our sole fundamental right is the right of liberty, i.e., our sole fundamental duty to refrain from acting so as to worsen the situations of our fellows. Welfare is properly a function of sympathetic interaction with our fellow members of society. And as such, it is eminently successful where required.

So there I again rest my case. Sterba, I still insist, is attempting to extract leftist blood from analytical turnips. It still doesn’t work, and it isn’t necessary for yielding the right moral result.

Bibliography

- Bailey, R. (2000) (ed.), *Earth Report 2000*, Competitive Enterprise Institute, New York
- Narveson, J. (2001[1988]), *The Libertarian Idea*, 2nd ed., Baltimore
- Sterba, J. (2015), *Libertarianism on the Brink*, in: *Analyse & Kritik* 37, 189–201