

LIBERTARIANISM AND ITS CRITICS

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ABSTRACT

The paramount question in the field of political theory is the question of how best to organize our political community. In other words, what should be the relationship between the government and the governed. To answer these questions, different political theorists from ancient ones like Socrates, Plato and Aristotle to modern ones like John Rawls, Sandel, and Nozick have postulated different answers.

These answers range from the focus on groups to focus on individuals as the basis of analysis. In this work, however, my focus is on the libertarian alternative as an appropriate solution to the question. The core of libertarianism is that the individual is the most important factor in any political community. For libertarians, each person is the owner of himself/herself and is free to dispose of his/her life as he/she deems fit. The only reason for government intervention in individual affairs, according to libertarians, is to prevent crime and enforce contracts. Any government activity other than these two is a violation of individuals' autonomy and should be resisted, libertarians claim.

After considering the libertarians' positions on specific policy questions like education, equality of opportunity, political morality and democracy, I compared them to other alternative positions by the critics of libertarianism before coming out with my alternative positions to both libertarians and their opponents.

I find the libertarian alternative very attractive on the face value. However, after a deeper reflection, I am convinced that unbridled individualism does not augur well for the common good as it destroys the concept of community as known traditionally and does not take into cognizance the fact that there is no individual without a community and that the community is prior to the individual. Individuals only find meaning to their existence in a shared culture and language. To this end, political theorists should find an equilibrium between individual freedom and the communal good as both are not mutually exclusive as suggested both by libertarians and perfectionists.

In all, the basic question of political theory still remains without a conclusive answer acceptable to all and sundry. To this end, I hope I have been able to contribute my little quota to the

discussion and hopefully one day, we may finally reach our Eldorado in political theory and the rest would be history.

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CHAPTER 1

INTRODUCTION

1.1 Research Questions

As customary in the field of Political Theory, the prominent question is how best do we organize our political society? Attempts to answer this basic question have led to different theories and philosophies, some of which include: perfectionism, natural law theory, utilitarianism, divine command theory, socialism, communism, liberalism and libertarianism, etc.

Recently, however, the libertarian alternative as suggested by Hospers and Hudson has been having an enormous and increasing influence in public policy debates in the United States, especially, over the last few decades (Hospers 2005, 1; Hudson 2008, ix). Libertarianism is gradually gaining in popularity, especially, among the young who crave more freedom. The rise in the popularity of the Tea party and its good showing in the 2010 midterm election is also seen by some, especially in the Republican Party, as encouraging for libertarian ideas.

Although the Republican Party and the Tea Party are not the same as the Libertarian party, they both constantly embrace libertarian economic policies and rhetoric, while differing on social policies and the role of government in legislating in non-economic matters. For instance, while the Tea Party is economically conservative and opposes tax increases, it favors conservative Christian values like the traditional marriage between a man and a woman, opposition to abortion and the legalization of drugs, as does the Republican Party generally.

Libertarians, on the other hand, are opposed to government intrusion into people's lives, including their bedrooms. Libertarians do not support any particular religious view of morality. For them, gay marriage, premarital sexual relationships, and any form of relationship that the Tea party and religious conservative groups may refer to as nontraditional family values, cannot be legislated against as long as they are freely consented to by the individuals involved.

The Republican Party also has within its fold people like Ron and Rand Paul, both of whom espouse the libertarian ideology. The popularity of Rand Paul as a force to be reckoned with in the

Republican Party and as a possible contender for the presidential ticket in 2016 may also be an indication of the increasing popularity of libertarianism, especially, as he is very popular among young people on social policies and their underlying normative commitments. The candidacy of Gary Johnson of the Libertarian party can also be viewed in the same light, although he has not gained much traction with many people.

With the increasing contribution of libertarians to public policy debates, research into libertarianism has become more relevant at this point. To this end, my research focus is on libertarianism and its position on some specific policy questions and the general question of democracy. These policy questions are education, equality of opportunity, and social questions involving moralism and paternalism.

I will examine the libertarians' stance on these questions. What are the strengths and limitations of their position? Should we adopt libertarians' policies as they relate to these questions? If yes, why, and if not, why not?

I will also look at some critics of libertarianism like communitarians and egalitarian liberals and their arguments and disagreements with libertarian policies. After a critical examination of libertarian policies and their critics, I will argue for the feasibility of one or the other, and suggest alternative policies where necessary. For instance, on education, I will argue for a compromise between the libertarian and communitarians views. In the chapter on equality of opportunity, I argue that an exclusively libertarian market economy poses a danger to the idea of democratic citizenship. While I am persuaded by the libertarian anti-perfectionist view on drugs and same-sex relationships; on abortion, I will advocate for more family-friendly work practices and easier laws on adoption that make it easier for women to make a choice to keep their pregnancies instead of abortion. In general, like liberal egalitarians, I will argue in favor of government neutrality on the good life on moral questions. On this, I agree that libertarians are right. However, on the other hand, I argue in favor of government intervention in the market to protect the weak and poor, who may not have the wherewithal to withstand the impersonal forces of the market that work against their interest. On this, I see the

libertarian view as wrong and unhealthy for a democratic society that values democratic equality.

Before going into the details on the above questions, I will first give an over view of libertarianism in chapter two. In chapter three, I will discuss libertarian arguments on education: critics of that view, and what I consider the most plausible position. Chapter four will be a detailed discussion of libertarianism on equality of opportunity, then its critics as well the most plausible position on the issue, while chapter five will focus on libertarianism and the question of Moralism and Paternalism. For chapter six, the focus will be on democracy. What do libertarians think about democracy? Is it the best form of government? Is democracy compatible with negative rights in libertarians' view? These questions will be answered chapter six. Finally, chapter seven will be a summary of the work, conclusion and recommendation for future research.

1.2 Methodology

For this project, my research method will be a philosophical analysis of libertarian arguments- its cogency, coherence and consistency. I will apply the same method to evaluate the critics of libertarians before arguing for alternative policies where necessary. I will also engage the use of statistical analysis to test, empirically, libertarian claims on the policies discussed in this work.

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CHAPTER 2

AN OVERVIEW OF LIBERTARIANISM

2.1 What is Libertarianism?

“Libertarianism is the doctrine that every person is the owner of his own life, and that no one is the owner of anyone else’s life; and that consequently every human being has the right to act in accordance with his own choices, unless those actions infringe on the equal liberty of other human beings to act in accordance with their choices” (Hospers, 2005, 1).

At the core of the libertarian political philosophy is the idea of liberty. But what does it mean to be free? There is no easy answer to the above question. However, when libertarians use the word liberty, they refer to negative liberty or freedom. By negative freedom, libertarians mean freedom from coercion. Every member of society, according to libertarians should be free to carry out their daily activities without hindrances from government and criminals, as long as acting on such liberty does not infringe on the negative rights of others.

Libertarians claim that when people are free, they are able to exercise their choices in various ways that were not possible before. They are free to invent, practice trades and professions they are capable of without government regulations, engage in foreign trade and generally develop their capabilities to the highest possible levels. In summary, libertarians claim that in a society governed by their principles, people are free to attain their full potentials. This in their view is a plus for society as almost everyone has something unique to offer if government regulations are removed, the only exception being the handicapped and a very few others who have little or no marketable talents. This group of people is so small in the libertarians’ view that they could be successfully cared for by charitable individuals and groups.

Other than liberty, property is another right given the utmost primacy in libertarian philosophy. Property rights are typically derived from the idea of self-ownership. The self-ownership argument is born out of part of Locke’s philosophy of property rights. According to Locke, “though the earth, and all inferior creatures, be common to all men, yet every man has a property in his own person: this

nobody has any right to but himself” (Locke 1690, Chapter V). Locke argued that each individual has a property right in himself and his labor, and from this right flows the right to the fruits of his labor. The products of one’s labor are his to keep. “Whatsoever then he removes out of the state that nature has provided, and left it in, he hath mixed his labor with, and joined to it something that is his own, and thereby makes it his property” (Ibid).

In Locke’s view, the formation of political society was based on the need to protect property rights. According to Locke:

...but because no political society can be, nor subsist, without having in itself the power to preserve the property, and in order thereunto, punish the offences of all those of that society; there, and there only is political society, where every one of the members hath quitted his natural power, resigned it up into the hands of the community in all cases that exclude him from appealing for protection to the law established by it (Locke 1690, Chapter III).

For many Libertarians, property rights are the foundation of all other rights. Without property rights, no other rights are possible. To deny one her property rights is to deny her the ability to plan her life, which is tantamount to slavery (Hospers, 1995, 8). The right to property means that not only should one have the right to the products of his labor, but that one has the right to take economic actions necessary to acquire property. According to Branden and Branden:

Without property rights, no other rights are possible. If one is not free to use that which one has produced, one does not possess the right of liberty. If one is not free to make the products of one’s work serve one’s chosen goals, one does not possess the right to the pursuit of happiness. And...since man is not a ghost who exists in nonmaterial manner...if one is not free to keep and to consume the products of one’s work, one does not possess the right to life. In a society where men are not free privately to own the materials of production, their position is that of slaves whose lives are at the absolute mercy of their rulers (Branden and Branden 1962, 43).

For libertarians, without property right, there is no freedom. To be free, one must be free from others and government aggression against their person and property. Government in many libertarians’ view is a violator of rights if it goes beyond its necessary roles. Government taxation or regulations of

the market constrain people from exercising their liberty, especially as government uses its coercive state apparatus to enforce its laws (Hospers 2003, 1).

Because government is a great violator of rights, libertarians argue that only a minimal government, often referred to as the night watchman state, is appropriate. The night watchman state exists only to protect people's negative rights and enforce contracts (Nozick 1974, 179). By negative rights, libertarians mean those rights that impose no positive duty on the part of others, i.e. others are not required to do anything in order to protect such rights. Such rights include; the right to life, the right to freedom and the right to property. That A has a right to life simply implies that others have a duty not to kill him/her without any justifiable reason. It does not, however, mean that others have a duty to actively protect or provide means of livelihood for A.

Since libertarians are opposed to positive rights unless contracted, they are against the welfare state. The welfare state in their view amounts to an imposition of a positive duty on others, in this case, an additional tax burden to help the poor, to which many people do not voluntarily agree. This, they claim, is a violation of citizens' rights to keep the products of their labor. For libertarians, taxation for the purpose of redistribution is tantamount to forced labor, and in the worst case scenario, to slavery (Nozick 1974, 169). For Nozick, all that is needed to justify ones' holdings is that they must be acquired justly. If there is justice in the initial acquisition of holdings, and there is justice in voluntary transfer, then people are entitled to keep their holdings. He sums up the topic of distributive justice as follows:

1. A person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding
2. A person who acquires a holding in accordance with the principle of justice in transfer, from someone else entitled to the holding, is entitled to the holding.
3. No one is entitled to a holding except by (repeated) applications of 1 and 2.

In line with this principle, a distribution is just if everyone is entitled to their holdings under the distribution (Ibid, 151).

In a similar vein, Machan rejects all forms of redistribution meant to enhance equality on the ground that such a redistribution is a violation of property right. To redistribute resources to enhance equality and fairness of opportunity for others is beyond the moral limits negative rights impose on the state. It is a violation of people's right to their resources. It is a violation of one's property right. "...it is not unfair to be better off than others--they are not owed our lives and labors by us, contrary to how egalitarians think" (Machan and Duncan 2005, 68).

For libertarians, the best way to secure a fair distribution is through free markets. There are two approaches to markets as the morally proper medium of distribution in libertarian views. One group of libertarians bases their market approach on rights. Nozick, for instance, belongs to this group. To this group, markets afford people the right of choice. For the libertarian, to fully protect the rights of free exchange and transactions, there must be an unfettered access to markets (Sen 1993, 526). Markets, therefore, are voluntary instruments of protection of rights, especially, the rights of transaction. This is a process-based approach, not an end based approach.

By a process-based approach, Libertarians mean that no particular end is morally required as long as the process is voluntary and fair. The market does not guarantee the success or failure of any individual in transactions; what matters is that transactions obey market rules. If market rules are obeyed, then whatever outcomes the market process produces are fair and just.

On the other hand, there are libertarians who argue that the primacy of markets in distribution is based on outcomes. This outcomes approach sees markets as the most efficient means of economic growth and distribution. To this group, a market is *quid pro quo*. Whatever comes out of a free market exchange is just, whatever prices one gets is a function of what he/she has to offer. Market mechanisms can efficiently decide the economic questions of what to produce, how to produce, when to produce and for whom to produce. The failure of socialism in the old Soviet Union and the Eastern block is a testimony of the inefficiency and unsustainability of a command economy.

According to Buchanan (1985, 14-15), the efficiency argument for markets rests on two major claims: "(1) a theoretical statement that exchanges in the ideal market reach an equilibrium state that

is Pareto Optimal, and (2) the assumption that actual (non-ideal) markets, or feasible modification of actual markets, sufficiently approximate the efficiency of the ideal market to make them preferable to non-market arrangements". To meet the Pareto Optimality condition of an ideal market, the following conditions must be met:

- (1) Perfect information about the quality of goods and services, and the cost of the alternative cost of producing them. The cost of getting this information should also be zero
- (2) The cost of enforcing contracts and property rights is zero
- (3) Participants in the market process are rational with their preferences organized in a transitive order
- (4) Transaction costs are zero and there is perfect competition. Each participant is able to enter and exit the market at will, and there are no negative externalities
- (5) Products in the market are undifferentiated, i.e., buyers cannot differentiate between the products offered by various sellers and vice versa (ibid).

If these conditions are satisfied, then a Pareto Optimal outcome is guaranteed. This is a condition in which a state of equilibrium is reached and production and exchange occur in which no one could be made better off without someone being made worse off. Since the conditions of an ideal market can never be truly met in a real world, the case for market efficiency, then, rests on the ability of the actual markets to approximate the conditions of the ideal market as much as possible. To this end, libertarian-leaning economists rely on the concept of diachronic efficiencies of the market.

By diachronic efficiencies of the market, economists mean efficiencies that result from market competition over time. The condition for diachronic efficiency is achieved by reducing the cost of production through competition as producers strive to use cheaper methods of production to allow their goods to be more affordable to consumers, thereby maintaining an edge over their competitors. Producers who fail to make use of less costly methods of production may soon be out of business as a result of losing to producers who do.

In a similar vein, competition among entrepreneurs leads to reduction in transaction costs because entrepreneurs that match buyers with less expenditure of their resources can charge less for the services they provide to consumers. By doing this, they have an advantage over competitors whose services are more expensive. Finally, the need for information by entrepreneurs, producers and consumers creates a market for information. In each of these cases, competition in the actual markets creates incentives for behaviors that tend toward the satisfaction of an ideal market of zero information and transaction costs and full information (Buchanan 1985, 16, Hayek 1960, 54-70, Hayek 1948, 118-208).

According to Buchanan, “In the market enormous amounts of complex information are utilized in the adjustments of prices over time, and yet it is not necessary that all of this information, or a minuscule of it, be possessed by any individual or group for the system to tend toward efficient outcomes.” In sum, according to many libertarians, the market is a device that efficiently coordinates the actions of many individuals through specialization in the acquisition and utilization of information (Buchanan 1985, 16-17).

While some libertarians favor the market as the source of distribution because of its efficiency, others like Nozick and Machan argue that markets, even if they are inefficient, are the right means of distribution because of individual rights. For the rights-oriented libertarians, the only proper means to divest a person of his holdings is through justice in transfer. For them, individuals have a right to the proceeds of their labor unless they freely exchange it with others through market transactions or they bestow it to others as gifts (Nozick 1974, 160; Machan and Duncan 2005). Thus, while some libertarians argue that the reason to trust markets as means of exchange is because of their efficiencies, and others argue that markets are the only way to protect individual rights in transactions because markets transactions are voluntary, they both arrive at the same conclusion that markets should be the main means of exchange and distribution in society.

Finally, because libertarianism is a doctrine of self-ownership, libertarians reject all forms of moralism or paternalism. Paternalism can be defined as enactment of moral laws by government to

protect individuals from themselves. Such laws include laws against prostitution and other sexual behaviors, laws against drug abuse, seat belts regulations, etc. (Hospers 2005, 6). They also reject the use of government authority to enforce a particular ethical way of life. Since no one's rights are violated by acts such as prostitution or drug use, it is against liberty and self-ownership to make laws banning such behaviors.

Libertarians object to the view that laws such as drug prohibition make for a better society. They argue that, for instance, drug addiction is a psychological problem that hurts no one other than the drug addict. The argument that addicts are responsible for crimes such as burglary in order to support their addiction holds no water for libertarians. In libertarians' view, the crime is not the addiction, but the theft, which is a violation of the negative right of another person. Hence, the appropriate punishment for the addict in the case will be a punishment for theft and not for addiction. Similarly, Hospers (2005, 6) argues that it is the criminalization of drugs like marijuana and heroin that increases the price of such drugs astronomically in the black market, which makes it unaffordable for users, making them likely to steal in order to sustain their drug use.

For instance, Hospers argues that the actual cost of heroin will be much lower if it were legalized. The legalization of heroin in his view will lead to a stop in the enormous traffic in illegal sale and purchase of it. He further argues that it is the high cost of drugs caused by criminalization that leads to the drugs being highly expensive as a result of the activities of drug barons in the black market. It is because these drugs become highly expensive that some drug users are prone to crimes like stealing in order to satisfy their craving for the drugs. (Hospers 2005, 6). If the use of drugs is decriminalized, there will be less crime as seventy-five percent of the crimes committed in New York today are committed by addicts, who steal in order to meet their demands for drugs whose costs are highly prohibitive (Hospers 2005, 6).

Hospers is not arguing that decriminalization of drug use will lead to fewer addicts in the society, but it will reduce the crimes associated with addiction. Addiction itself, for libertarians, is not a crime. It only becomes a crime when the addicts constitute a threat to others, i.e., when it interferes

with their negative freedom. To criminalize the use of drugs, which do not in any way affect the well-being of others, is paternalistic. For libertarians, a war on drugs is the height of paternalism, which they oppose because everybody belongs to himself or herself, not to government or society. Therefore, individuals should have the right to do whatever they want with their bodies or consume whatever they like as long as they do not aggress against others. I will reserve further discussion on this topic for chapter five.

Although the most popular version of libertarianism is the right wing libertarianism which I have been describing above, left-libertarianism has been growing in popularity over the last couple of years (Vallentyne, Steiner, and Otsuka 2005, 201). According to Vallentyne (2000,1), “left-libertarian theories of justice hold that agents are full self-owners and that natural resources are owned in some egalitarian manner.” Left-libertarians, like their right wing counterpart, support self-ownership and its attendant property rights. They, however, differ on ownership of natural resources.

Right wing libertarians support the appropriation of natural resources on the ground of initial holdings and subsequently through justice in transfer (Norzick 1974, 150). To right wing libertarians, a piece of land, for instance, may be appropriated by the first person to find it, once he or she has mixed his/her labor with it, maybe by clearing the bush and planting crops or erecting buildings. This they argue is right as long as it was not forcefully taken from a previous owner.

Unlike right libertarians, left-libertarians oppose the appropriation of natural resources without due compensation to others. They argue that by claiming property rights in unproduced resources, one is denying others their rights to such resources, which are necessary for their survival. Some left libertarians argue that no one has a right to appropriate natural resources without appropriate authorization given by some specified decision-making process of the majority of members in the society. Others argue that it is not feasible to have a unanimous authorization from others before one can use natural resource since that implies that “no one would then have the right to do anything (e.g. stand in a given spot, eat an apple, or even breath) without proper authorization from other members of society. For every action requires the use of some natural resources” (Vallentyne 2000, 8). Those

opposed to prior authorization before using natural resources hold that natural resources may be used by agents, if they conform to some specified terms of use, but no one has exclusive right of use (no private ownership). Many left-libertarians find it implausible to say all natural resources are jointly owned and that no one may appropriate these gifts of nature. The solution proposed by this group is that agents may appropriate natural resources as long as they are willing to pay the competitive market price of the resources to society (Vallentyne 2000, 9).

Some scholars like Fried (2005, 219) argue that left-libertarianism is nothing but liberal egalitarianism in another cloak. Although left-libertarians and liberal egalitarians do not endorse exactly the same policies, the two different theoretical routes will often lead to the same policy outcomes. This is a result of left-libertarians stretching the term “natural resources” so that it is sometimes even extended to individual talents that the individual did not work for. They claim that such talents are to be used for the benefit of the society. If this is the case, then, what is the difference between left-libertarianism and liberal egalitarian theories like Rawls? The debate still rages forth and back. The ongoing debate is, however, beyond the scope of this work as my focus is on the conservative right wing libertarians and their critics.

On education, libertarians, unlike supporters of universal education, reject the idea of compulsory education on the ground that it is not compatible with liberty and that it is tantamount to paternalism, which libertarians naturally reject. They argue that by making education compulsory, government is interfering with the decision of parents on whether to educate their children or not. Children, according to libertarians, belong to their parents, not the state, and it is parents, who have a moral duty to see to their well-being. By making education compulsory, government is usurping the authority of parents on how best to take care of their children. By engaging the language of rights, libertarians claim that have parents a niche carved out for them over their children that government cannot trespass. Although it is morally expedient that parents educate their children, for libertarians, it is not a legal duty. Therefore, it is not enforceable. Government or other interested parties should only

be able to remonstrate with parents who refuse to educate their children, but should not be able to punish them for not doing so.

Libertarians disagree with the proponents of compulsory education, who argue that some parents may not educate their children if education is not made compulsory by government. According to libertarians, government cannot because of the action of a few parents who may not educate their children limit the freedom of every parent. To do so is to use the presumption of guilt of some to limit the freedom of all. They also argue that “with compulsion comes all manner of corollary requirements by the state, including the number of days in school, the subjects taught, and who is allowed to teach, all of which add up to a considerable restriction on freedom” (Cheshire in Machan and Ramussen 1995, 177).

On the issue of educational standards, libertarians reject the idea of a uniform standard for all schools. Those who argue for uniformity claim that given the diversity that private education promotes, there cannot be a uniform product. For instance, Aristotle argued that education should be public because public education promotes uniformity of purpose among the citizenry. The purpose of education for Aristotle is to perfect the ethical character of the citizenry, and only through public education can this purpose be fulfilled. For Aristotle, because individuals do not belong to themselves, but to the state, education must be left in the hands of the state to achieve a uniform standard of virtue and the common good. “But since there is but one aim for the entire state, it follows that education must be one and the same for all, and that the responsibility of it must be a public one” (Aristotle 1962, 452).

Claims like Aristotle’s are obviously rejected by libertarians. First, they claim the same standards can be attained by private schools. Second, they claim that standards do not require homogeneity as claimed by many proponents of public education. They argue that evaluative standards of activities are inherent in such activities. “For example, the standards of good medical practice are inherent in the goal of medicine, which is health; the standards of good farming are inherent in the

goal of agriculture, which is abundant crops; of a good mechanic, which is an efficiently running machine and so on for every human activity” (Chesher in Machan and Ramussen 1995, 179).

Thus, standards do not need to be imposed by an outside agent, group or institution. They emerge from the nature of an activity and the purpose it serves. Therefore, the standards by which we assess educational programs and institutions are implied in the goal of education, which is to produce individuals who are “independent, productive, and self-sustaining” (Ibid). Other goals of education include producing citizens who are well informed and perform their civic duties as citizens and for promoting the general well-being of the citizenry.

Against this backdrop, any form of education or educational institutions that can achieve the above goals could be said to be good and standard. However, the debate continues as to what exactly are the aims of education (see chapter 3).

On the issue of equality of opportunity, libertarians support formal equality of opportunity and not fair equality of opportunity supported by liberal egalitarians. By formal equality of opportunity, libertarians mean that the only thing government should do is to ensure that it makes no law that denies anyone the right to pursue their goal in an open market. To this end, laws like Jim Crow and official discrimination against people of color and women are unjust and should not be allowed because they inhibit people’s negative rights. Other than ensuring formal equality of opportunity, libertarians oppose any idea of government’s intervention in markets in order to provide fair equality of opportunity for anyone. To this end, they argue that government regulation of business and taxation for the purpose of redistribution of resources to help the poor violate peoples’ right to keep the proceeds of their labor. I will discuss in detail the topic of equality of opportunity in chapter four.

Similarly, libertarians argue that laws such as the Civil Rights Act of 1964, which prohibits private individuals and institutions from discriminating against people on the basis of their race, sex or national origin, went too far by not restricting such prohibition to public institutions and officials. For them, extending the Civil Rights Act to private institutions limits people’s liberty with regards to what they can do with their private property and also violates their right to freely associate with

whomever they like. From a Libertarian perspective, that I choose not to allow a black man to rent my property should not be a concern to government because the property is mine, and I should have the right to do anything I want with it.

For libertarians, the right to property is a right to choose to exclude whomever I want from its use. If a white man chooses not to associate with a black man, or allow him into his restaurant, so be it, as long as he does not go out of his way to cause any physical harm to the man, thereby tampering with his person and violating his negative right to freedom and non-interference.

While some may see libertarians as heartless on these matters, libertarians argue that such views about them are wrong. They argue that they support formal equal rights for all, and that government should not by its laws and regulations promote one group over another. As usual, libertarians posit that the market is a solution to the issue of discrimination. They argue, for instance, that restaurant owners who refuse to sell to people of color limit their customer base, and an employer who forecloses employment opportunity to women and minorities excludes a lot of talents from his recruitment base. These limitations entrepreneurs put on their businesses will eventually result in losses, which will make them rethink their decisions. Thus, for libertarians, the problem of discrimination can be solved by markets.

Although egalitarian liberals agree with libertarians on social issues, they differ greatly on economic issues and the role of government in redistribution. Egalitarian liberals like Rawls and Dworkin reject the argument that the outcomes of absolutely free markets are just. They reject the view that justice mirrors nature, but argue that justice should correct nature (Rawls 1971, 2001).

According to Rawls, the idea of desert in distribution is morally arbitrary. There are factors that affect distribution, such as intelligence, parents, and race that are not chosen by individuals. To this end, justice requires that government engage in redistribution to promote fair equality. Rawls argues that too much inequality detracts from people's dignity.

Rawls proposes his own version of the social contract theory as a solution to the problem of inequality. He argues his point by using an analogy of the original position. Rawls asks us to step back

from our various positions in the real world and imagine a situation of a contract chosen behind a “veil of ignorance” in which we do not know who or what we will become in the real world. From this point, we are to make choices about the principles of justice we would like to see in the real world. In such a position, people will choose a form of distribution that favors everyone, because no one knows what his true position will be in the real world. “Those who have been favored by nature, whoever they are, may gain from their good fortune only on terms that improve the situation of those who have lost out ... In justice as fairness, men agree to share one another's fate” (Rawls, 1971, 101-102).

In a similar vein, Rawls argues for fair equality of opportunity. In arguing for fair equality of opportunity, Rawls wants the state to control for differences in people’s circumstances of birth such that children who are similarly talented and ambitious have roughly the same outcome irrespective of their family backgrounds. As much as Rawls and other egalitarian liberals argue for economic equality, they do not mean strict equality. Rawls, for instance, allows for inequality in his conception of social justice, but for him, inequality should only be allowed to the extent that it works for the least advantaged members of society. This he calls the difference principle. According to Rawls, “social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and second, they are to be the greatest benefit of the least advantaged members of society” (Rawls 2005, 6, Rawls 1974, 142). The above quote sums up Rawls’ position on fair equality of opportunity.

Dworkin agrees with Rawls that too much economic inequality is a violation of people’s dignity. In his view, there is an objective value attached to people’s lives going well. This objective value means that there is a minimum standard of living that the state must ensure for individuals to live a life of dignity if we are to have equal concern and respect for all (Dworkin 2006, 1-10). For instance, he argues for a universal healthcare in the United States as well as a form of unemployment insurance that caters to the unemployed.

Duncan, like Rawls and Dworkin, argues against the view that the outcomes of an unfettered market are just. According to him, human dignity requires that no one lives a miserable life due to no

fault of his. Duncan rejects the view of free market as fully just because the outcomes are unequal and unfair inequality works to the disadvantage of the weak. For instance, the power asymmetry between an employer and a worker puts workers at the mercy of employers. If government does not put rules and regulations in place to ensure safe or dignity-protecting work environments, workers may lose their jobs for failure to grant sexual favors to employers or be forced to work unnecessarily long hours. The market in Duncan's view cannot correct such anomalies (Duncan and Machan 2005). I will further discuss the role of the market as a mechanism for growth and distribution in the chapter on equality of opportunity.

With regards to questions of state power to legislate morality, libertarians reject all forms of paternalism and moralism. They argue that paternalism and moralism are violations of individuals' rights to choose their own ends. Libertarians, arguing from their theory of self-ownership and the morality of negative rights posit that people are free to do whatever they want with their lives and property. To impose legal sanctions on individuals for making free choices that do not conflict with the negative rights of others is a violation of people's autonomy. Human beings in the libertarian conception are free, autonomous individuals. They are unencumbered selves that are not responsible to other people, culture or government. "One characteristic of rational living is the conscientious consideration of available alternatives. A person should choose the right course of conduct, and this means that he or she must know what alternatives are open to choice" (Machan, 1989, 143).

Given that, libertarians, like egalitarian liberals hold that the government should be neutral on the good life, they argue that individuals have a right to hold conceptions of the good life different from popular views and should not have options arbitrarily closed to them. Against this backdrop, libertarians oppose any attempt by government to promote a particular way of life, especially on the ground of the common good.

For them, government promotion of a common good violates individuals' rights to choose and lords one group's conception of the good over another's. To this end, libertarians reject morals legislations, such as the war against drugs, anti-gay legislation, anti-abortion legislation, or laws

banning stem cell research, euthanasia and physician assisted suicide. Since people own themselves, they have the right to do whatever they like with their lives and bodies, as long as they recognize the right of others to do the same and no one's negative rights are violated in the process. This in no way means that libertarians are immoral, but that they reject moralism, which the Webster dictionary defines as "an often exaggerated emphasis on morality as in politics" (<http://www.merriam-webster.com/dictionary/moralism>).

On immigration, libertarians favor open borders that favor the free movement of people and goods. To them, the free movement of capital and persons are in line with the requirements of a free market economy. The Libertarian Party in the United States, for instance, argues for the "elimination of all restrictions on immigration, the abolition of the Immigration and Naturalization Service, and the Border Patrol, and a declaration of full amnesty for all people who have entered the country illegally" (http://www.lpedia.org-/2004_Libertarian_Party_Platform#Immigration). However, with the recent threats from terrorists, most libertarians now allow some immigration controls.

Although immigration is a hot topic right now especially with the refugee crisis threatening Europe, the high influx of immigrants especially children, reaching the border of the US in larger numbers than before in the Summer of 2014 as a result of the instability in Central America, and the problem of about eleven million undocumented immigrants in the US, it is beyond the scope of this project. Maybe, I could take it up in the near future. However, it is noteworthy that the net migration from Mexico to the US in the last few years has been negative.

On foreign policy, libertarians generally oppose military intervention in other states. They embrace mutual friendship and respect with all peoples. The Libertarian Party in the US for instance bases its foreign policy suggestions on two pillars; (1) building positive relationships, with an emphasis on trade, and (2) avoiding negative relationships, with an emphasis on military non-intervention (<http://www.lp.org/issues/foreign-policy>). In libertarians' view, trade promotes peace, and when states trade with each other, they avoid war, as both states will be focused on their mutual benefits from trade rather than fighting.

On the question of democracy and what it entails, although libertarians support negative freedoms, their first concern is economic freedom, particularly, property rights. For instance, Mirron (2010, 53) argues that it is generally assumed that democracy promotes beneficial outcomes such as freedom and economic growth, and that the most important freedoms are political such as the right to vote, rather than economic rights like the right to property. This assumption, in Mirron's view, is backwards. The most important rights for libertarians are economic rights. For them, there can be no political rights without economic rights. Other libertarians or quasi-libertarians like Hayek argue that democracy is an instrumental good and not an end in itself. For him, democracy as majority rule can contain within it an element of authoritarianism. While authoritarian governments may contain some level of liberalism, as there can be a benevolent dictator, in his view, whenever majority rule violates the freedom of the individual under the guise of democracy, then, democracy becomes unjust.

What matters most to libertarians is individuals' negative freedom. As long as that is guaranteed, libertarians do not bother about what form of government a society has. However, because democracy tends to be the most compatible with liberty, libertarians support it as a means to an end, not an end in itself. The end to which democracy is directed is the limitation of government power over individuals. According to Hayek, "if it is to survive, democracy must recognize that it is not the fountain of justice and that it needs to acknowledge a conception of justice which does not necessarily manifest itself in the popular view on every particular issue" (Hayek 1960, 103-117). Against this backdrop, Hayek argues that democracy is a means of securing justice and should not be seen as justice itself.

Like other areas of political theory, libertarianism encompasses a lot of political ideas which cannot be exhausted in a single volume. There are various opinions within libertarianism on any topic. However, my focus is on the common trends in right libertarianism.

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CHAPTER 3

LIBERTARIANS ON EDUCATION

The importance of education to individuals in particular and society in general cannot be over emphasized. Through education and educational institutions, a society maintains its values and passes them down from one generation to another. Education also serves the purpose of producing informed citizens, preparing young ones for a future and training people for the job market. One major positive externality of education in a democracy is that it enhances political stability by promoting values like tolerance and diversity. For instance, Friedman argues that “a stable and democratic society is impossible without a minimum degree of literacy and knowledge on the part of most citizens and without widespread acceptance of some common set of values. Education can contribute to both. In consequence, the gain from the education of a child accrues not only to the child but also to other members of the society” (Friedman 1962, 86).

Those positive externalities mean that education is important to any society that it will be difficult to list all the purposes of education. To this end, government, parents, religious groups, teachers, and civil society groups are always very much concerned about the state of education in any given political society. Some of the concerns are about the content of the curriculum, who sets the curriculum, who should bear the cost, and what should the standards be, etc.

Over the centuries, most philosophers from Plato and Aristotle to Augustine and Aquinas, to Mill, Adam Smith and contemporaries like Rawls, Sandel, and Dworkin have provided different answers to questions about the purpose, the delivery and best content of education. However, my concern in this chapter is the libertarian answers to these questions and the critique of those answers.

Supporters of universal education claim that without compulsory universal education, many children, especially the poor, will be uneducated. The consequences of this large number of uneducated children will not augur well for the society, as lack of quality education leads many youngsters to become entrapped in a vicious cycle of poverty, crime and imprisonment. Consequently,

according to this view, government has a duty to provide education and make it compulsory to a certain level for all school age children.

There are several problems with this view, according to libertarians. For them, the first problem with the above view is that it considers the present state of universal public education as working and educating more children than a private system of education will do. This assumption may not be true, given the problem of overcrowding, poor standards, low test scores, low grades, high drop-out rates and other such problems that plague American public education, especially in the inner cities.

They also mention the problem of dilapidated and unsafe structures as well as what they see as poorly motivated teachers more interested in protecting their jobs than helping students. They further argue that politicized school administrators are content with churning out policy reforms that end up not being implemented but serve the administrators' political and career purposes. Although most of these policies are not effective because they are not pursued diligently, they help advance the careers of these school superintendents, as they add value to their resume when looking for jobs in other school districts, often in larger ones (Wheelan 1999, 719). In all, libertarians picture an inefficient and ineffective bureaucracy which keeps on churning out a number of reforms without commensurate improvement in these schools (Hess 1999, quoted in Noguera, 2003, 3).

According to Noguera, "If these characterizations were limited to a handful of urban schools or districts, the 'problem' might not be so daunting, but this is not the case. Urban school failure is pervasive" (Noguera, 2003, 3). With the supposed pervasiveness of these problems, despite the huge budgetary allocation of government at various levels to education, libertarians argue that public education is a failure and will be better managed by the private sector. Libertarians posit that provision of education by the private sector will enhance competition and choice which will lead to better results. This argument is in line with their general view of the market as the solution to all social and economic problems

They also reject the idea that compulsory universal education makes education more available to children. For instance, Chesher argues that it is presumptuous for government to assume that parents

are so irresponsible that they would not want to send their children to school without government legislation making it a crime to not do so (Chesher 1995, 177 in *Liberty for the 21st Century*). For him, such an assumption is tantamount to paternalism and a violation of the liberty of parents. Chesher further argues that even if some parents will not send their wards to school if education is not compulsory, making education compulsory is still violating the liberty of the many because of a few. This is because government taxes all to provide public education, even those who would have sent their children to school without government legislation. By making all pay taxes, the choice of educational institutions becomes reduced because publicly funded schools become cheaper than private schools, thus edging many private schools out of competition except for a few elite and parochial schools that are not affordable to every parent.

Rejecting the view that compulsory and free public education improves school enrollment, Boaz (1997, 245) argues that “historical evidence from England and the United States shows that the vast majority of children were educated before the government took over schooling.” Against this backdrop, libertarians argue that the introduction of compulsory education has not really improved enrollment in schools. Instead, it has only taken the control of education away from parents and put it in the hands of government, which, of course libertarians argue is inefficient in most things it does. For instance, West argues that in England in 1861, 95 percent of school age children were already attending school before government made education compulsory. According to West (1964, 470), “... there were 2,535,462 children attending school out of a total of 2,655,767 of school age—a shortfall of only about 4.5 percent.” These large numbers of school children were mostly educated by churches and other private schools (*ibid*). In a similar vein, West, citing New York as an example, claims that “in 1821 the whole number of children between the age of five and sixteen, residing in the State was 380,000; and the total number of all ages taught during the year was 342,479” (West 1967, 105). The above examples show that both in England and New York, schooling in the nineteenth century had been nearly universal even when it was not compulsory.

There are, however, critics of this view. Jacoby, for example, agrees with West that education was widespread in the North before compulsory universal education was legislated, she argues that the situation was not the same in the South and the Mid Atlantic, where education was an exclusive preserve of the rich who saw no need for educating poor whites, not to speak of blacks and women. Not only was education restricted to the rich in the Southern States and Mid Atlantic, it was also controlled by the religious elite who ensured that nothing contrary to their religious beliefs was taught in schools. “For generations, the science and history taught in small towns in Alabama, Mississippi, and Louisiana was vetted by adults who believed in the innate inferiority of blacks and who also subscribed to the fundamentalist creeds at odds with the growing body of secular scientific knowledge” (Jacoby 2008, 54).

Libertarians further argue that with compulsory education comes the requirements for standards set by government. These include the number of days to be spent in school, teachers’ certification, subjects taught and content of the curriculum. For them, these standards are violations of liberty because they restrict people’s choices to determine the type of education they want for their children. For instance, the requirement that teachers be certified limits the number of people who can become teachers, thereby reducing the chance of some people getting employment. This happens because in some instances, school districts require that teachers get a master’s degree before being able to teach or before getting a promotion. This is not an easy task to achieve, especially in these days of skyrocketing costs of education. The requirement in Libertarians’ view could also be regarded as arbitrary, since students have been attending schools for centuries in the United States, even when teachers did not necessarily have advanced degrees, yet the results were encouraging. Buttressing this point, Goldstein, writing in a column in New York Times Magazine, quoted in Northwest public radio’s website claims that “in theory licensing rules protect consumers from shoddy services. In practice, they can also screen highly qualified workers out of the job market” (www.npr.org).

Libertarians claim that by regulating the standards of private schools, government further limits parents’ choices of education for their wards. This is because it is costly to meet government

standards such as building safety, student-teacher ratio, etc. These costs limit the number of private entrepreneurs who can provide education as a service, while on the other hand, the few that are able to afford the costs pass them on to parents.

For libertarians, apart from the costs of complying with government regulation of private schools, which limits parental choice of education for their children, government legislation that makes everyone pay for education through taxes also limits parents' choice of education for their children, reduces competition and enhances inefficiency. They claim that many parents cannot afford to pay for their children's education twice. After paying taxes, it is unaffordable for many parents to send their children to private schools where they will also have to pay fees. Because public schools are funded by taxes, they are "free" for all, since no one pays directly to send their children there. Since public schools are free, it becomes difficult for private schools which charge fees to compete for students with public schools. Since many private schools close shop as a result of unfavorable competitive environment, public schools become monopolies in their districts and can afford to be inefficient as most monopolies are as a result of lack of competition and the assurance that they will always stay in business.

For libertarians, government regulations further limit entrepreneurship in the education sector because they restrict the type of education that could be made available by private firms or individuals since any individual initiative would have to pass through the government for approval and the process is cumbersome and full of bureaucratic red tape (Friedman 1980, 155).

Libertarians argue that if government hands off education to the private sector, then taxes will be reduced as there will be no need to tax everyone to fund education. Tax reduction will put more money in parents' pockets, making it easier for them to afford the private school of their choice. Libertarians also claim that without compulsory public education, all manner of private schools will appear to fill in the gap, increasing choice. For libertarians, the ability to choose will lead to improved standards because each competitor will strive to add value to his/her products in order to have a competitive edge in the market.

Although opponents of libertarians argue that leaving the provision of education to markets will screen out the poor, some libertarians like Friedman suggest the issuance of vouchers to parents, including the poor, as a solution. These vouchers will enhance competition and efficiency by allowing parents to choose their children's schools. The only condition is that government should set a minimum standard for these schools. Parents will be free to use their vouchers in any private schools of their choice (Friedman 1962, 85; Friedman 1980, 159). For Friedman and others, giving parents control over their children's education will make teachers be more responsive to the needs of parents and students.

Like Friedman, Boaz also argues that giving parents control over the education of their children will increase the efficiency and effectiveness of education with teachers becoming more responsive to the needs of parents and students. He posits that states spend about \$6, 800 on a student in 1994. He argues that this amount should be converted to vouchers and given to parents. If this is done, parents would be able to make a choice of where their children attend school. However, he does not rule out the idea of public schools as Friedman did. For him, the vouchers could be used to attend either a private or public school. For Boaz, this will make public schools more efficient because they will now compete for students rather than being sure of getting students based on catchment areas (Boaz 1997, 244).

Friedman likens education vouchers to the GI bill of 1944, the benefits of which included cash payment of tuition and living expenses for veterans to attend universities, colleges, or technical institutions of their choice. According to Altschuler and Blumin "the higher education provisions of the bill were indeed the keys to a prosperous middle class for large number of veterans and were a major force in the rapid expansion of higher education that made college a part of the life experience of the vast numbers of young Americans, veterans and nonveterans alike, in subsequent generations" (Altschuler and Blumin 2009, 150). For libertarians, if the GI bill could increase the quest for higher education among both veterans and nonveterans, the introduction of vouchers for education could achieve the same objective both at the elementary and high school levels.

In a similar vein, Libertarians complain about the waste of funds on public education. They claim that the money spent on education, if left in private hands, will be better utilized for more value. For example, Boaz claims that “American schools have become so inefficient that 60 percent of school boards have considered hiring firms to run some part of the school operation” (Boaz, 1997, 267). Likewise, the Cato institute, a libertarian think tank, argues that lack of funds is not the problem with public education. Rather, it is government monopoly. Writing on their website, the group states that the problems with public schools are not a shortage of money. “State and local governments have continually increased spending for K–12 education. Rather than throw even more money at the problem, states should institute school choice on a broad scale, moving toward a competitive education market. The only way to transform the system is to break up the long-standing government monopoly and use the dynamics of the market to create innovations, better methods, and new schools” (<http://www.cato.org/research/public-schools>).

In the view of libertarians, the best way to solve the perennial crises in the educational sector in the United States is for government to give up its monopoly and allow private investors to take over. Private entrepreneurs, according to libertarians, will introduce better technology that will enhance learning and reduce cost. For instance, Boaz argues that:

While communication and information delivery have been revolutionized in the last twenty years, schools still look the same way they were 200 years ago with a teacher lecturing in front of thirty students, with the school day and the school year geared to the rhythms of an agricultural society. We can only imagine the dynamic innovations in learning that profit-seeking companies might have produced had they been delivering education (Boaz 1997, 244).

Closely related to the debate on compulsory universal education is the issue of standards. Opponents of libertarians argue that leaving education in private hands will not allow for a uniform standard of education, thereby making education a victim to a form of relativism. This, they claim, is not good for any individual or society seeking happiness (Chesher, 1995, 179). For instance, Gutmann argues that it is wrong for a state to leave education in the hands of parents and private institutions. For her, if education is provided only by private institutions, there cannot be societal harmony because

some parents who see their way of life as the best will not allow their children to attend schools with other children whose way of life they deem inferior to theirs.

In such situations, vices such as the concept of racial superiority, sexism and segregation will continue unabated from one generation to another. According to her, “states that abdicate all educational authority to parents sacrifice their most effective and justifiable instrument of securing mutual respect among their citizens.” For Gutmann and many other liberals, tolerance and respect for diversity is a core requirement of citizens in any democratic society, and it must be taught to children in schools. Gutmann further claims that “pluralism is an important political value insofar as social diversity enriches our lives by expanding our understanding of differing ways of life. To reap the benefits of social diversity, children must be exposed to ways of life different from their parents and...in the course of their exposure...must embrace certain values, such as mutual respect among persons, that make social diversity both possible and desirable” (Gutmann 1987, 32-33). To this end, liberals often argue that although parents have a major role to play in the choice of education for their children, a democratic society cannot afford to leave education totally in parents’ hands as children belong to both their parents and the society as future citizens.

Libertarians respond to the question about standards by arguing that the appropriate standard of any activity is inherent in the activity itself. “For example, the standards of good medical practice are inherent in the goal of medicine, which is health; the standards of good farming are inherent in the goal of agriculture, which is abundant crops; of a good mechanic, which is an efficiently running machine and so on for every human activity” (Chesher 1995, 179). Although there are serious debates about what exactly the goal of education is, libertarians argue that there is general agreement that education is meant to produce responsible, self-reliant and productive members for society. If we all agree on this standard, then we can measure if private education can attain it.

Libertarians further argue that because of the diversity in human beings, there is no need for a uniform standard. In their view, it is only markets that cater to the diversity in humanity. This will not entail a uniform standard, but each student or parents will choose the type of school that provides for

their specific needs. To impose a general standard of education, for example, uniform content and curriculum for everyone, is to stifle the diversity among people and to impose a form of education most preferred by a group, in this case, a group of bureaucrats, on everyone, irrespective of their differences.

Libertarians claim that private education will produce a better outcome than public education does. To them, the ability of the market to meet the different needs of individuals and provide competition will enhance efficiency. Just as not every good and service in the world of commerce satisfies everybody, so a uniform form of education will not satisfy everybody. They also complain about the high level of bureaucracy in the public education sector. They argue that it is very difficult to fix simple problems in public education because of the political process and vested interests. In the private sector, however, proprietors of private schools are more likely to be amenable to correcting obvious lapses in their service because parents could easily withdraw their children if they are not satisfied with the service of their schools.

Still on bureaucratic bottlenecks in the public education sector, Boaz claims that from 1960 to 1984, enrollment in American public schools rose by only 9 percent, while the number of teachers rose by 57 percent and the number of principals and supervisors by 79 percent (Boaz 1997, 244). In a similar vein, Friedman uses what he calls Gammon's Theory of Bureaucratic Displacement, which states that "in a bureaucratic system, ... increase in expenditure will be matched by fall in production.... such systems will act rather like black holes in the economic universe, simultaneously sucking in resources, and shrinking in terms of 'emitted' production" (quoted in Friedman 1980, 155).

Friedman continues that in the United States from the 1971-72 school year to the 1976-77 school year, total professional staff in all U.S public schools went up by 8 percent and cost per pupil went up by 11 percent after controlling for inflation. The number of students went down 4 percent as did the number of schools. Also in the five years from 1968-69 to 1973-74, the number of students went up by 1 percent, while the total professional staff went up by 15 percent, teachers 14 percent and supervisors 44 percent (Friedman 1980, 156).

Boaz compares the above statistics to the private sector. For instance, the New York City public school system has 6,000 central office bureaucrats, while the Catholic school system of the same city has only 30 central administrative staff and serves as much as one fourth as many students as the New York City public school system (Boaz 1997, 244). Libertarians argue that such scenarios are common phenomena all over the United States, accounting for a lot of waste in the system.

The crux of many libertarian arguments is the concept of self-ownership. They claim that compulsory universal education in state regulated schools violates that norm. Self-ownership implies that one owns his person and actions, and should be able to direct both as he likes without undue interference from anyone. If parents are forced to send their children to school, then such children are not fully owned by their parents, but partly owned by the government. Parents, in the libertarian conception, are supposed to be fully responsible for all aspects of their children's care.

They also claim that universal public education is used by the state to maintain the status quo. Schools, according to libertarians "...are set up to produce citizens who will be blindly obedient to the dictates of that government, citizens who will uphold the authority of government even when it runs counter to personal interest and reason and who will adopt a nationalistic posture of 'my country, right or wrong'" (Spring 1998, 13-14). For instance, there is a debate about what should be taught in history classes. While some argue that topics like slavery, segregation and the genocide perpetrated against Native Americans should not be taught in schools because such topics portray America in a bad light and teaching them is unpatriotic, others have argued that they are part of American history and should be taught. There are also those who want creationism taught in biology classes and evolution expunged from biology textbooks because it is unbiblical (Ravitch 1990, 337-354).

In line with their desire for autonomous individuals, libertarians reject the hierarchy in public education. The school system, according to them, is made up of bureaucrats, school administrators and teachers, all above students who should control their education. They posit that parents should be free to choose the curriculum for their children's education and make it self-paced for children, rather than

depend on some bureaucrats who plan the curriculum by means of which they foist the current elitist ideas on students.

Some anarcho- libertarians even argue for the abolition of schools. For instance, early writers like Stirner, whose work influenced many libertarians in the nineteenth century, argue that it is not political liberty that matters, but self-ownership. He claims that political liberty simply means that the state, not the individual, is free. By this, he means that schools foist the idea of a free and democratic state on students, but do not teach the children to be free individuals as long as they are taught to comply with social norms and values of society without being able to make their own choice, especially if such a choice is contrary to the established norms and values of society. Stirner's work, *The Ego and His Own*, first published in 1844, is one of the most radical books of all times. His iconoclastic ideas put forward in this book involves a "sweeping and penetrating indictment of society, morality, and even civilization itself" (D'Amato 2014). Stirner's goal is a totally autonomous individual who is free to determine his ends without recourse to traditional morality taught by society through its educational institutions. Although Stirner had some influence on libertarians in the early nineteenth century, his influence has since waned, partly because of his extreme views of individualism. In fact, some libertarians like Von Mises reject Stirner as a true libertarian because of his support for the "might is right" philosophy (Rothbard 2012).

To achieve individual autonomy, individuals should eliminate "the wheels in the head," i.e. the moral imperatives that dictate to one what should be done. It is only when this is done that one can attain true self-ownership (Stirner and Byington, 1918, 342). These moral imperatives about what one should do are learned in schools, which exist to perpetuate the status quo. For individuals to be free means that schooling must be abolished. "Ownership of self means freedom from dogma and moral imperatives and a will that did not depend on authoritarian sources. Ownership of self means freedom from schools themselves" (Spring 1998, 51).

According to Spring, Stirner distinguishes between a free man and an educated man. "For the educated man, knowledge was used to shape character; it became a wheel in the head which allowed

him to be possessed by the church, state or humanity. For the freeman, knowledge was used to facilitate choice” (Spring, 1998, 38).

While all libertarians criticize the schools as they currently exist, some propose that the solution to the school problem is the creation of “free schools”. Free schools, in the conception of this group of libertarians, are schools that “would try to be non-hierarchical and non-dogmatic” (Gezerlis 2003, 42). The idea of “free schools” is not to radically change society, but to allow individuals be truly free choosing and not have societal ideas imposed on them by the school as an institution.

Although there are some differences among libertarians about education, there is general agreement among the various schools that education should not be controlled by government. They all agree that the concept of self-ownership, which is central to libertarianism, implies that as choosing beings, each person should be free to determine the type of education he wants without interference from government. Parents, in their view, should be free to determine where their children learn and what they learn. To force every student to learn the same curriculum, have the same school structure and have their education controlled by bureaucrats is a violation of autonomy.

Does the view of libertarians on education hold universally? The answer is definitely, no. This takes us to some of the critics of libertarian education.

3.1 Critiques of Libertarian Education.

Because of the importance of education in any community, there is hardly any political theorist or philosopher who has not had something to say about education. Most political theorists agree on the importance of education. The point of debate, however, is about the role of government in education, the curriculum, the role of teachers, the status of students and most importantly, the purpose of education.

For classical perfectionists, the purpose of politics is the ethical perfection of the character of the citizenry. To achieve the goal of ethical perfection, the state is expected to directly control everything that has to do with education, from curriculum to standards, etc. The purpose of state control of education, in their view, is to produce uniformity in values and goals. For perfectionists, the good

is prior to the right, and it is only when the good is known that one can know what is right. The good therefore must be taught in schools under the supervision of government.

The Greek word *arête*, which means virtue or excellence, features prominently in the writings of both Plato and Aristotle. For them, virtuous living is an essential goal of education. In the view of classical perfectionists, education is not just a means to an economic end but an end in itself with regard to a virtuous life. To this end, they both argue in favor of censorship and state control of education. According to Plato, “... poets must be forced, on pain of expulsion, to make their poetry the express image of noble character; we must also supervise craftsmen of every kind and forbid them to leave the stamp of baseness, license meanness, unseemliness, on painting and sculpture, or building, or any other work of their hands; and anyone who cannot obey shall not practice in our commonwealth” (The Republic of Plato, 90).

Aristotle makes a similar point when he argues that things of inferior quality should not be made available to children. Teachers should not allow students to gaze on debased paintings or listen to unseemly talk. For him, the content of what children are taught must be censored. The purpose of censorship is to allow children develop the virtues that are worthy of citizens (Aristotle, 434, 445, 447). Contrary to libertarians’ claim that education should be left in the hands of parents and the private sector, Aristotle argues that doing that would not promote the common good. To attain virtuous living, education, in Aristotle’s view, should be public. For him, private education allows for different conceptions of virtue and the common good. He argues that:

The system of education in a state must be one and the same for all, and the provision of this system must be a matter of public action. It cannot be left, as it is at present, to private enterprise, with each making provision privately for his own children, and having them privately instructed as he himself thinks fit. Training for an end which is common should also itself be common (Aristotle, 322).

Plato argues in a similar vein that parents should not be allowed to have a choice in the education of their children. Unlike libertarians, he argues that children belong to society and not to their parents. Against this backdrop, when children attain ten years of age, they should be taken away

from their parents to be educated. This is to allow them to live a life of virtue and be free from the vicious disposition of their parents by which they may be influenced. (Plato, 220).

Like other perfectionists before him, Aquinas also rejected the idea of the autonomous self. Since we are all members of communities, it can be inferred from Aquinas' teachings that education should not be just for one's personal gain or to further one's own interests. According to Aquinas, "if a great number of people were to live, each intently upon his own interests, such a community would surely disintegrate" (Passerin d'Entrèves and Dawson 1959, 3). For him, the end of all human activities, including education is to achieve beatitude, i.e., the union of the soul with God. This negates the libertarian position that each individual should be able to choose the form of education that is good for him and the end to which such education is directed without any input from the community or state.

For many perfectionists, to allow each individual decide what he wants to learn, when and how is to destroy the idea of the common good, which is inimical to the well-being of all members of the society. Society exists to promote the common good, and any form of individualism at the expense of the common good leads to corruption which will lead to the demise of such a society. Corruption must be avoided at all costs, hence education should be geared towards the avoidance of corruption and this is best done when society controls the content of what children are taught in schools.

Like perfectionists, many contemporary communitarians reject the idea of the autonomous individual. The central theme in communitarian philosophy is the community. The community, which is prior to the individual, takes precedence over individual rights. To this end, the form of education advocated by the communitarians must take cognizance of the primacy of the community. According to Arthur, "communitarianism's basic tenet is that modern, atomized society has lost a sense of social solidarity. There should be an attempt to forge a new equilibrium between rights and responsibilities. Libertarian individualism has been destructive of community as a result of a shift too far in the direction of rights" (Arthur 1998, 356).

For the purpose of the common good, communitarians emphasize the teaching of civic virtues in schools. They engage the use of terms like "moral education and virtue." For example, Etzioni

(1995, 8) writes that “we hold that schools can provide essential moral education...without indoctrinating young people.” In addition to their support for teaching civic virtues and morality in schools, communitarians reject the anarchic idea of education. They defend hierarchy and authority as means of teaching responsibility to the young. As Cochran says: “Acceptance of authority, loyalty to ideals and commitment to historical community, though they do require sacrifice and closure of options, are the very stuff of character building” (quoted in Arthur 1998, 362).

Egalitarian liberal theorists also criticize the libertarian form of education. Although egalitarian liberals and libertarians agree on most social policies such as government’s neutrality about the good life, they differ on economic policies and in some details on social policies. One such policy debate between libertarians and egalitarian liberals is on education. Egalitarian liberals reject the idea that education should be totally private. They support public education for all, while accepting private education for those who want and can afford it. According to Jonathan, “it seems that the more we attempt to restrict the role of the state in the distribution of education (in the name of individual liberty), the more we risk compromising the range of worthwhile options available to all...a range which in part constitutes the preconditions of freedom” (Jonathan, 1997, 191).

For egalitarian liberals, availability of education for all is a precondition for equality of opportunity and freedom (Walzer 1983, 201, Rawls 1971, 74-80). Since equality and freedom are cardinal principles of egalitarian liberals, it is therefore necessary that the state gets involved in the provision of education in order to enhance freedom for all, irrespective of their economic status. Egalitarian liberals further argue that a major purpose of education is the promotion of democratic deliberations. For them, no democracy can function well without democratic qualities such as tolerance and respect for diversity among the citizenry (Gutman 1987, 50-51).

To promote this democratic character in children, government, according to Gutman, cannot leave education wholly in the hands of parents. To this end, public schools are necessary to facilitate interactions among students of diverse backgrounds in order to promote respect, tolerance and understanding of various ways of life in the society. Gutman argues that if children attend only private

schools of their parents' choice, they will only mix with other children whose parents share a similar worldview. This is bad for society because children are not able to understand other people's viewpoints and may not be able to tolerate other views that are different from their parents' and eventually theirs as they grow. In such a situation democracy is endangered because pluralism as a fact of life in democracy requires that all parties respect the views and ways of life of others, even if they disagree with them, as long as such ways of life do not infringe on the negative rights of others. She further argues that children do not belong to their parents alone, but also to the society. For her, both society and parents are stakeholders in educating children. Therefore, both must contribute to education as partners in progress (ibid, 52).

Although egalitarian liberals support education for all and argue in support of public education, they do not agree with prohibitionists, who demand that only public education should be allowed in a society. For them, private schools should be allowed to co-exist with public schools on the condition that private schools, like public ones, teach the common set of democratic values to their students (Gutman 1987, 116). In their view, a mixed school system is better than either totally private or totally public school systems. However, government must set some standards with regards to what should be taught in private schools. These standards include: teaching religious toleration, respect among races and some cognitive skills that can make citizens function effectively in a democracy (Yudof 1983, 229). The right of government to regulate private school activities was confirmed by the US Supreme Court in the case of *Bob Jones University v. United States* in 1983 in which the court held that "government has a fundamental, overriding interest in eradicating racial discrimination in education" (Drennan, 1984, 561).

Egalitarian liberals also reject libertarians' proposal for strictly private education based on libertarians' claim that public education imposes a set of bureaucrats' view of the good on everyone. They argue that since school boards are elected and could be voted out of office, parents have democratic control over school administrators and over the curriculum. For libertarians to argue that

school policies are determined by bureaucrats as if parents have no input into what obtains in school districts, is for them, a misrepresentation of facts. For instance, Butts claims that

...the profession must recognize the legitimacy of parental participation, but should argue that such participation can be most effective in the long run when it is undertaken in the open arena of the political process of public institutions rather than in private contracting and bargaining with school owners and employers”. Butts goes further when he argues that “we have increasing evidence that parents and public interest groups can work constructively with public officials and education professionals in such cities as Seattle, Minneapolis, Indianapolis, Salt Lake City, and in many communities of California under the School Improvement Program” (Butts 1979, 8).

3.2 Conclusion

Considering all the above arguments, I find it important that for a democratic society to thrive, every child should have access to quality education as the level of education any society determines is necessary for its social and economic well-being. To this end, I am more persuaded by the egalitarian liberals’ argument that education should not be an exclusive preserve of either the state or private individuals or organizations. A political community that recognizes the value of diversity, pluralism and tolerance cannot afford to fully leave education in the care of private institutions, especially parochial ones. Neither can it afford not to recognize the right of parents to choose the type of education they want for their children by banning private schools. However, private schools must be made to comply with certain standards and curriculum under government regulations. They can teach whatever they want that is in compliance with democratic values, in addition to the minimum standards and requirements set by government.

On the other hand, I am convinced that the current system in which parental choice is restricted mostly by their geographical location is not the best for public education in America. It does make education almost a state monopoly which perhaps reduces competition and enhances inefficiencies. Government should change the rules and allow for competition among public schools by allowing parents to make a choice as to which public school they want their children to attend on the condition that the schools create standards by which they will admit students and that students who choose to

attend schools in distant places will make provision for their transportation. This will increase competition among schools as each will want to capture its share of the student population. This is the case in Nigeria, where schools compete for students and students are even allowed to attend public schools out of state, in most cases boarding schools where parents pay for feeding and housing.

With regards to free education, I do not see why the government should make education free for all irrespective of their economic background. I find this to constitute a huge expense on the part of the government and an inefficient way of using resources. As much as education could be seen as a public good with a lot of positive externalities which necessitates the current arrangement so is health, and general well-being. A prosperous nation cannot exist without a strong and healthy citizenry, yet the American government does not have a universal health care program for all. Even people on Medicare and Medicaid still have to pay out of pocket for some medicines and procedures. Government can introduce this system too in the education sector.

Free schooling should be means tested and only the poor should be allowed to have free education as it is with Medicaid and food stamps. Most people will agree that a country benefits when its citizens are well fed, but that does not mean the government must provide free food banks and food for all. Even in states with the highest levels of social welfare, food is not free for all. As the government of the United States means tests for recipients of welfare programs such as the Temporary Assistance for Needy Families, so they should do for poor families with regards to education.

Like vouchers given to poor families that can be used for food only and health cards for use in some health institutions of their choice, the government can do the same thing in educating the poor. The government can give vouchers that are only redeemable in schools, but as with food vouchers, it should be in any school of the parents' choice. Also, restricting parental choice of schools, mostly to the students' geographical area, under the guise that it fosters community and promotes interaction among various segments of society does not really achieve the end for which the policy is set up. For me, this is like a de facto segregation as people mostly live in neighborhoods, according to their social and economic status. The inner cities are populated mostly by the poor and minorities, in which case

only the children of these same groups will find themselves attending school together. The same thing applies to the suburbs, which are mostly populated by rich and middle class whites, reflected in the demography of their schools as well.

The arrangement also destroys the idea of the common good as people in rich neighborhoods may see the people in the inner cities as the “other” and will not really care about what goes on in their neighborhood and vice versa. If parents are allowed to choose, some poor parents may strive at all costs to send their children to better schools in better neighborhoods by making extra sacrifices and cutting down on the consumption of some other goods.

Finally, the idea by some liberals and communitarians that private schools destroy the idea of the common good in children is not totally correct. Some American presidents like George Bush and Barack Obama attended elite private elementary and high schools at one time or the other while growing up and both ended up attending elite private universities as well, yet they became presidents of the free world. There is not enough evidence to prove that children who attend private schools lack democratic values compared to the ones that attend public schools. The teaching and development of the democratic ethos are not the exclusive preserve of either public or private schools.

Restricting parental choice to either public or private schools limits their choices. Both public and private schools can coexist in a democratic society. This enhances competition and provides reasonable alternatives to both parents and students. Having more schools, both public and private also increase the job prospects of teachers and other workers in the education sector. Schools’ deregulation can be compared to the provision of other social goods like telephones, postal services, hospitals and shopping malls, the more the merrier.

In sum, education is such an important social good that it cannot be left solely in the hands of either the government or the private sector. All capable adult members of society should be stakeholders in education in an ideal society, and they should all be encouraged and willing to sacrifice to insure quality education for all children of school age. As society takes seriously outbreaks of epidemics, so it should take seriously the “epidemics” of ignorance and illiteracy. A society that does

not adequately educate its young is sitting on a keg of gunpowder, which will explode sooner or later. To safeguard the future of our democracy and civilization, we must put education on the front burner, not just as a matter of political rhetoric, but as a matter of practical public interest.

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CHAPTER 4

EQUALITY OF OPPORTUNITY

Equality of opportunity is a political ideal that prescribes that every member of a political society should have the same opportunity to pursue their dreams without any unwarranted hindrance from government and private actors (Arneson 2013). Individuals in societies under a situation of equality of opportunity should be able to aspire to whatever position they desire irrespective of their race, sex, sexual orientation or social status. However, there is a debate among political theorists about what counts as equality of opportunity. While libertarians argue that only formal equality of opportunity is compatible with liberty and hence just, egalitarian liberals argue for a more expansive idea of fair equality of opportunity.

By formal equality of opportunity, libertarians refer to a system in which there is no official barrier to aspiration. Barriers such as racism, sexism and social status are prohibited by law in public institutions. However, to libertarians, government does not have the right to legislate against discrimination for private businesses. To do so will be to violate employers' freedom of association. Businesses and private individuals under libertarianism are free to do whatever they want as long as they are not violating anyone's negative rights (Arneson 2015, 3, Duncan and Machan 2005, 65-73).

Because libertarians only support formal equality of opportunity, they are against a redistribution financed by taxes, the welfare state and affirmative action. Libertarians reject these programs, which are often supported by egalitarian liberals as a means of reducing economic inequality and increasing opportunities for the poor to improve their well-being. They claim that such programs violate individuals' rights to keep the proceeds of their labor. Unlike the egalitarian conception of justice, libertarians hold that justice is to mirror market outcomes and not correct for them.

For libertarians, the ideal of careers open to talents is just that. Careers should be opened to people who are equally talented, but government should make no attempt to tamper with the background situation of applicants. This implies that government should not, for instance, spend more money to equip schools in the inner cities in order to ensure that talented students in the inner cities

are able to catch up with their counterparts in the suburbs. Formal equality of opportunity is otherwise referred to as the nondiscrimination principle (Roemer 1998, 1).

On the other hand, egalitarian liberals conceive of equality of opportunity as “a level playing field” (Roemer, 1998, 1). By a level playing field, they mean a condition in which government may need to interfere to make the same level of opportunities available to people who are equally talented but who may be hampered by their social or economic status. A level playing field involves government funneling more resources to schools and pupils in the inner cities to improve opportunities for students who may be as talented as their counterparts in rich suburbs, but are limited by the poor environment in which they learn. For instance, Duncan argues that “if we want a fair society in which all citizens are treated as equals, we need a level training field as much as a level playing field” (Duncan and Machan 2005, 103).

As stated above, egalitarian liberals favor what they call fair equality of opportunity or substantive equality of opportunity (Rawls 1999: section 12 and Rawls 2001: section 13). According to Arneson (2015, 11), “fair equality of opportunity (FEO) is satisfied in a society just in case any individuals who have the same native talent and the same ambition will have the same prospects of success in competitions that determine who gets positions that generate superior benefits for their occupants.” For example, consider James and John who both have the same talent and are willing to become medical doctors, with James coming from a rich home where both parents are educated while John is from a minority group whose parents are uneducated and live in the poorest part of town. If fair equality of opportunity prevails, both should have the same prospects of achieving their dreams. According to Rawls, “assuming there is a distribution of natural assets, those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regardless of their initial place in the social system” (Rawls 1999, 63).

However, libertarians condemn Rawls’ fair equality of opportunity as unrealizable. For them, to attempt to equalize opportunities without taking into cognizance family background will lead to an invasion of the private sphere of family life. For instance, Brighthouse and Swift argue that parents have

a legitimate interest in helping their children to have good life prospects. This ranges from reading to their toddlers at night to sending their children to expensive private schools. There is no way any government can fully mitigate the difference this relationship between parents and children would have in the opportunities that are available to children (Brighthouse and Swift 2009, 54). In order to implement a fair equality of opportunity policy, parents and other guardian figures must either be prevented from raising their children in the best way they deem fit or government must enact policies that will totally offset parents' untoward influence on their children's chances. Either way, it will be a very costly and unattainable attempt (Arneson 2015, 14).

Fishkin refers to the above problem as a trilemma. By this, he means that the liberal conception of equality of opportunity based on merits and equal life chances is not compatible with family autonomy. Any two of the three may be compatible but the three cannot go together. According to him, "attempting to maintain all three assumptions--the principle of merit, equality of life chances, and the autonomy of the family--would be like attempting to hold a three-cornered stool when only two legs are available. No matter which two corners one chooses to hold up, the lack of the third is enough to undermine the whole structure" (Fishkin 1983, 6). For Fishkin, the solution is for liberals to accept "limited liberalism." In limited liberalism, policy makers make a choice of which two of the three components to combine on a case by case basis.

The debate on equality of opportunity also plays a central role in shaping the discourse about distributive justice (Arneson 2015, 28). For libertarians, distributive justice is achieved if there is no legal discrimination against people based on qualities such as race and sex that are irrelevant to peoples' ability to get jobs and participate in a market economy. In their conception, once all legal barriers are removed from peoples' paths in their pursuit of the good life, whatever comes out of the market process is just and people are free to keep the proceeds of their labor. The best way to achieve a just distribution in a society for libertarians is through markets. What matters is that the background institutions and processes are just. For instance, Nozick argues that:

1. A person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding
2. A person who acquires a holding in accordance with the principle of justice in transfer, from someone else entitled to the holding, is entitled to the holding.
3. No one is entitled to a holding except by (repeated) applications of 1 and 2.

In line with this principle, a distribution is just if everyone is entitled to their holdings under the distribution (Nozick 1974, 151).

Although Nozick recognizes that there have been acts of injustice in the past like colonization, theft, fraud and acquisition by force, he makes no specific provisions for how to rectify such past acts of injustice. However, he acknowledges that such injustices need to be rectified because they have effects on current holdings, making beneficiaries of such acquisitions possess what they hitherto should not have while the descendants of the recipients of those past injustices still live with the consequences like poverty and deprivation (Nozick 1973, 49).

Nozick's idea of justice in initial acquisition is based on Locke's claim that whatever a man mixes his labor with is his by right because he has a property in himself which makes him entitled to the product of his labor, which no one can deny him (Macpherson 1980). However, Locke's proviso is that in acquiring property there is "enough and as good left for others" (Sanders 1987, 372). Locke's proviso of "enough and good left for others" has been described by left-libertarians as infeasible. To them, it is infeasible because property, especially land, which is very crucial to production, is limited in quantity. To appropriate a piece of land is to deny its use to others. In the words of Fried "all property rights necessarily infringe the liberties of others, as all entail reciprocal burdens on others, and in a world of scarcity, such burdens are often substantial" (Fried 2004, 74). Against the background that it is impossible to leave enough and as good for others, left libertarians argue that the state should levy taxes on the use of natural resources such as land and water as their use or appropriation excludes other members of society. Left-libertarians, like their right wing counterparts, agree on self-ownership of individuals, but disagree on the ownership of natural resources. Unlike right libertarians, left

libertarians posit that “natural resources (land, air, water and mineral resources) belong to all in some egalitarian sense” (Vallentyne, et al. 2005, 201).

Unlike Nozick, who understands the problems of past injustices in acquisitions but fails to make adequate provisions for their remedy, egalitarian liberals argue that since past injustices have effects on current holdings and the availability of opportunity for groups who had been oppressed in the past, government must make amends for injustices of the past. Hence, their support for programs like affirmative action. The effects of past injustices were stated by Martin Luther King Jr. in his famous “I Have a Dream” speech delivered at Lincoln Memorial on August 28, 1963, a hundred years after the emancipation proclamation by Abraham Lincoln:

One hundred years later, the life of the Negro is still sadly crippled by the manacles of segregation and the chains of discrimination. One hundred years later, the Negro lives on a lonely island of poverty in the midst of a vast ocean of material prosperity. One hundred years later, the Negro still languishes in the corners of American society and finds himself an exile in his own land (Retrieved from YouTube).

For egalitarian liberals, the argument by libertarians that the only thing government needs to do to ensure equality of opportunity is remove all legal obstacles like racial discrimination from public institutions is not sufficient. They liken the situation to a race in which some contestants have had time to train adequately for the race, while others were just released from shackles on their legs and both are then put on the starting line of a race to compete. Such a competition in the view of egalitarian liberals cannot guarantee a fair result. For instance, while arguing in support of affirmative action, Dworkin argues that affirmative action is not only a recompense for past acts of injustice, but also a forward looking mechanism that promotes racial equality and fosters racial harmony (Dworkin 2000, 420).

As a forward looking mechanism, Dworkin claims that affirmative action helps hitherto unrepresented or underrepresented groups in some areas of the economy bridge the gap in such fields. The success of racial minorities or women in such fields as medicine, law and other professional callings serves as a psychological boost to them and other members of the group as they see that they

too could succeed. In other words, beneficiaries of affirmative action may become mentors and role models to young ones in their community. Also, diversity in schools and jobs fosters racial harmony by bringing together hitherto segregated people who can better understand one another through frequent interactions (Dworkin 2000, 386-426). Although de jure racial segregation officially ended decades ago, there is still a de facto segregation, especially residential, as many poor blacks and other minority groups are still trapped in poverty in the inner cities, and may not have any hope of upward mobility except through some radical government programs or intervention.

Libertarians argue that programs like affirmative action are unjust because no living black person was ever a slave and no living white person has ever held a slave (Yates 1995, 132). Programs like affirmative action therefore are punishing living whites for the offence of their ancestors and rewarding black people for the injustice done to their ancestors. For libertarians, the past is gone and we should all start on a clean slate that guarantees justice and equality for all. In reaction to libertarian claims that slavery and segregation are issues of the past, Dworkin quotes Justice Souter's ruling in *Adarand Constructors Inc. v. Peña* "the court has long accepted the view that constitutional authority to remedy past discrimination is not limited to the power to forbid its continuation, but extends to eliminating those effects that would otherwise persist" (Dworkin 2000, 420).

Dworkin also refutes the argument that affirmative action is an injustice to whites. According to him, affirmative action only does a marginal damage to non-preferred candidates for university admission, as there are many other rejected candidates of which any particular candidate is just one out of many. Even if race neutral standards are used in admission to elite universities and college "...the antecedent probability of admission of any particular white applicant would have risen only from about 25 percent to about 26.5 percent, because there were so many rejected white candidates at approximately the same level of test scores and other qualifications..." (Dworkin 2000, 401). This same argument can be logically applied to candidates for employment as there will be so many qualified on any given metric of assessment that if a candidate is preferred by affirmative action, only a marginal damage would have been done to any of the non-preferred candidates. In another case,

Johnson v. Transportation Agency of Santa Clara, The Supreme Court upheld, under Title VII of the Civil Rights Act, a voluntary affirmative action program intended to correct gender and racial imbalances in traditionally segregated job categories (Condrey 2005, 460).

This ruling also addressed one of the arguments libertarians use against affirmative action in hiring and college admissions decisions. Libertarians argue that affirmative action promotes mediocrity because it rewards people who are not qualified for a job or college admission with a position. In the above case, the Court ruled that both Diane Joyce, who was promoted over her male counterpart, and Paul Johnson, the plaintiff in the case, were qualified for the position. The agency, therefore, acted within its rights by choosing Diane Joyce over Paul Johnson because of her sex as long as they were both qualified for promotion to the office of a road dispatcher. The promotion of a female employee in this case was to correct for the gender imbalance in positions of authority in the Transportation agency. Similarly, Dworkin argues that while blacks admitted to elite colleges are well qualified, their white counterparts are “spectacularly” qualified. For Dworkin, it will be wrong to say that blacks admitted into elite colleges and universities through affirmative action are not qualified. According to him, some of the differences between blacks and whites in their Test scores and other admission requirements come from the social environment of blacks in the United States. Blacks are more likely to come from “worse--off households, and are more likely to leave college for financial reasons” (Dworkin 2000, 393). Dworkin further refutes the argument by libertarians that people who benefit from affirmative action are not qualified but are rewarded for their race or sex. He explains that records show that beneficiaries of affirmative action have gone on to succeed in their chosen careers and professions. With regards to college admissions, “the average SAT scores of black entrants to the most selective schools in 1989 were higher than the average of all matriculants in the same institution in 1951” (ibid, 392).

Finally, Bowen and Bok refute libertarian arguments that affirmative action is wrong because it rewards people not on merit, but on the color of their skin and their sex. They argue that merit is not only based on test scores. Different organizations determine their standards of merit based on their

organizational goals. For instance, one's height could become a part of merit for basketball players, and for beauty contests, one's look is part of what counts as merit. They agree that it is wrong to choose someone for a competitive admission slot simply on the basis of his or her skin color as the Supreme Court ruled in the case of *Regents of California v. Bakke*. However, race could be a merit factor if no specific quota is given to any particular race, but considered along with other factors (Bowen and Bok 1998, 46).

In all, affirmative action as an instrument to achieve fair equality of opportunity has generated a lot of controversy in the United States. The Supreme Court and other lower courts have had to entertain many cases bordering on the fairness and legality of affirmative action in college admissions, job hiring and promotions, etc. However, the rulings have at different times favored both the opponents and supporters of affirmative action. While some rulings, like the *Regents of the University of California v. Bakke*, favor supporters of affirmative action, others like the case of the *City of Richmond v. Croson* favored opponents of affirmative action. The last has not been heard on affirmative action as the Supreme Court decided on June 29, 2015 to take up for the second time a challenge by a Texas woman, Abigail Fisher, to the use of affirmative action in the admission policies of the University of Texas. The case was finally decided in June, 2016 in favor of the University of Texas.

Moving beyond the specific example of affirmative action, egalitarian liberals offer other arguments in favor of equality of opportunity. Duncan rejects libertarians' idea that only formal equality of opportunity is compatible with liberty. He argues that people should not only have formal equality of opportunity, but they should also have what he calls "fairness rights" (Duncan & Machan 2005, 42). Fairness rights in Duncan's thought include "a right to fair access to economic opportunity, a right to fair access to personal security (for one's body and property), a right to fair access to political influence, and a right to fair access to criminal justice, (that is, a right to a fair trial)" (ibid, 52). These fairness rights according to Duncan are access rights. For instance, he argues that "fair access to economic opportunity will require some system of publicly funded education so that ignorance does not radically reduce the opportunities open to children of poor or negligent parents" (ibid).

Although he agrees with libertarians like Machan that “fairness rights” are like positive rights in that they require positive efforts of others, for Duncan, they are not exactly positive rights because they are not “rights to be made happy” as Machan claims. They are access rights. For instance, Duncan explains that a right to economic opportunity does not guarantee that one would be happy, one must work to make himself happy by making use of his opportunities. For Duncan, access rights are not rights against every person as libertarians conceive positive rights, but they are rights to human dignity. He rejects the idea that positive rights and negative rights cannot co-exist. According to him, the rights to fair trial or a right to fair access to economic opportunity do not in any way negate the right to life, liberty and property that libertarians hold dear (Duncan and Machan 2005, 53).

For egalitarian liberals, fair equality of opportunity requires that government maintain a regulatory environment and institutions that promote human dignity. Government, in their conception, should make laws that guarantee people are free from sexual harassment, have a safe work environment, and fair treatment at one’s place of work. They reject the idea of formal equality of opportunity that does not allow government to interfere with private business except on the violation of people’s negative rights.

For egalitarian liberals, the economic power held by employers can be used to oppress the weak and the poor if government fails to prevent such. The power to hire and fire in their view, can be sometimes likened to power over life and death. Because of power asymmetry, bosses can fire their employees for not giving in to their sexual demands or for having different political views, etc. Workers can also be made to work under very dangerous and inhuman conditions and can be poorly remunerated on structures where they have no other choice than to comply or be fired which could have dire consequences for them and their families. Libertarians agree that there may be employers who do not treat their workers fairly, but they argue that the market would rectify such atrocities. For them, markets have a way of correcting such injustices because such employers would not be able to keep the best workers. The loss of these workers to their competitors would result in economic losses for these employers who may eventually be driven out of business unless they change their practices.

For egalitarian liberals, the argument by libertarians that the market will cure these vices falls flat on its face in view of historical antecedents. Citing examples of the period before the industrial revolution, they argue that it is possible for employers not to care about the conditions of their workers. For instance, in London in 1856, the average work week was sixty-five hours a week, twelve hours a day between Monday and Friday and half day on Saturday. Many more people, they point out, worked even longer hours, many miners were sick and many died prematurely from black lung and lead poisoning, while many others became disfigured for life (Floud 1977, 23, 31, 78).

Egalitarian liberals further refute libertarians on the idea of the market as a cure for work place malpractices. In the absence of government regulations which ensures safe and dignified working environments, without which there cannot be fair equality of opportunity. They argue that without government laws and regulations, employers will engage in a “race to the bottom” in order to maximize profits. That is, employers would spend less of their resources to ensure a safe working environment in order to make more profits (Elliot and Freeman 2003, 37). For instance, the US Department of Labor claims that before the introduction of the Occupational Safety and Health Hazard Act in 1971, about 14,000 workers were killed on the job in 1970. However, with the introduction of OSHA, the number dropped to about 4,340 in 2009. If one takes into account that the workforce has increased drastically since the 1970s with additional 7.2 million worksites, the reduction in work related deaths becomes much more significant. In a similar vein, the DOL claims that workplace injuries and illness has been reduced from 11 per 100 workers in 1972 to 3.6 per 100 workers in 2009 (www.osha.gov/osha40/timeline.html). Liberals argue that but for government regulations, these workplace hazards would have continued unchecked as employers failed to provide a safe work environment for their workers to maximize profit (Arnold 2011, 262-282).

Arguing in favor of fair equality of opportunity, Rawls uses his concept of the original position. The original position argument is one that he believes will be acceptable to all in a pluralistic democracy as obtains in the United states and other advanced democracies. The original position consists of individuals who are free and equal, not knowing their position in real life. This is a thought

experiment in which people are to choose the principles of justice under which they would live in the real world. Because the people choosing do not know what their real positions would be, Rawls argues that they will choose: “(1). That each person has the same infeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible the same scheme of liberties for all; and (2). Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be the greatest benefit of the least-advantaged members of society” (Rawls 2001, 42).

For Rawls, the first principle is prior to the second principle and in the second, the principle of fair equality of opportunity is prior to the difference principle. By priority, Rawls means that the prior principles must be fully satisfied before giving consideration to the succeeding principles. Fair equality of opportunity for him is equal to liberal equality. To accomplish the aim of fair equality of opportunity, certain requirements must be placed on the background institutions beyond the libertarians’ natural liberty. Rawls argues that an idea of a free market without regulations is not compatible with a society of free and equal individuals. For him, political and legal institutions must be arranged such that there is not too much inequality among citizens which may lead to the political domination of the poor by the wealthy (Rawls 2001, 43–44, Cohen 1989, 727-751).

For libertarians, Rawls’ idea of fair equality of opportunity would lead to injustice. They argue that the only restrictions should only be on people who violate the negative rights of others, and that high levels of economic inequality are compatible with the idea of a free and equal society. In fact, it is the imposition of unconsented regulations that constitutes injustice to libertarians. They believe that free and equal individuals are free to contract among themselves, agreeing on the terms of contract and the free market mechanism. Whatever happens, the outcome of a free contract in a free market is just. For them, inequality promotes societal welfare because it rewards those who are talented for their talents and efforts. They claim that the talented are deserving of the outcome of the use of their talents because they create jobs and wealth for the community, which everybody, including the untalented, benefits from. For libertarians, justice mirrors nature. People should be rewarded for their innate

abilities, even if they did nothing to contribute to having such abilities. Their maxim is “from each as they choose to each as they are chosen” (Nozick 1974, 160). To take from the rich to benefit the poor or to reduce inequality and provide fair opportunity is tantamount to injustice, hence the claim that “taxation of earnings from labor is at par with forced labor” (Nozick 1974, 169).

Liberals reject the libertarian doctrine that justice should mirror nature. For them, justice should correct nature. To achieve fair equality of opportunity, egalitarian liberals argue in favor of caring for the disabled and the untalented. This is explained by Rawls’ difference principle and his idea of maximin, which requires that inequality should be allowed only if it maximally benefits. The idea of fair equality of opportunity, then, corrects for the arbitrariness of race, gender and class, but also talents (Cohen 1989, 729; Rawls 1985, 223-51). This idea is further buttressed by the requirement that each member of the society should have a dignified minimum under which nobody is allowed to fall.

Duncan, for example, argues that although poverty in many instances is due to imprudent decisions, not all poverty can be traced to imprudent decisions. Poverty in some cases is a result of past injustices and the cumulative effects of market outcomes or bad luck. Moreover, many poor people are working very hard but are trapped in poverty while many others live in poverty because they are unemployable due to old age and severe disability. He further argues that economic opportunities are not equal. According to him, many may seek employment but will not find it, especially during recessions (Duncan and Machan 2005, 113-116). Even in normal times, the way the economy is structured means some people will be involuntarily unemployed. He would follow Krugman that “if the unemployment rate dips too low, below what economists call the non-accelerating inflation rate of unemployment (NAIRU)—then the Federal Reserve will raise interest rates to slow down the economy, this deceleration in turn will bring the unemployment rate back up” (Paul Krugman, “Labor Pains,” *New York Times* magazine, May 24, 1999, 24-26).

As part of the requirements for a dignified social minimum, Duncan argues in favor of increasing the minimum wage. Many poor people in his view are trapped in a cycle of poverty,

especially blacks in the ghettos, not because they are not hardworking, but because despite their hard work, they cannot make ends meet because of poor remuneration. For him, people who are working hard and are trapped in poverty due to no fault on their part cannot be said to have a fair equality of opportunity. Children raised in such environments are sure not to fare as well as their counterparts from better environments (Duncan and Machan 2005, 117-119).

The lack of social safety nets, lack of medical insurance and other related deprivations for Duncan, are not compatible with fair equality of opportunity. Similarly, Dworkin holds that as free and equal citizens, society must demonstrate equal concern and equal respect for all. Equal concern requires that society should be concerned about the welfare of all its members and not just the well off. This leads him to argue for a universal health care for all Americans as well as an unemployment insurance scheme into which everyone pays in case anyone loses his or her job. The unemployment insurance will guarantee that in the case of job loss, no one becomes destitute. The pay each person will get if one happens to lose his job will be dependent on the premiums he paid into the scheme while working (Dworkin 2006, 1-26, 108). According to Dworkin, our tax scheme should reflect the assumption “that a community treats citizens with equal concern when its economic system allows them genuinely equal opportunities to design their lives according to their own values. They have equal opportunities, let us say, when their wealth and other resources depend on the value and costs of their choices, but not on their luck, including their genetic luck in parents and talents” (ibid, 108). The above quotation signifies the importance egalitarian liberals put on insuring that economic position of members of a society are not determined by arbitrary factors like luck and heredity, but by choice. However, Dworkin posits that his ideal of economic opportunity is not fully attainable for various reasons, but could be used as a guide for the purpose of a more legitimate scheme of taxation and distributive justice.

4.1 Equality of opportunity: My Critique

The term equality of opportunity is a very elastic term that could be used by any group or any form of society. From the hierarchical societies such as ancient Greece to our own modern society, the

idea of equality of opportunity runs through them all. For instance, Plato argued that justice is attained when everyone in society minds his business. He argued that people are separated by nature into different classes; the rulers and the ruled, slaves and free men. In such societies, equality of opportunity will entail that each class maintains its position without seeking to usurp or aspire to the position of others. For Plato, the classes may not be inherited but are determined by nature. Thus it is possible for a child born in the lower class to attain a guardian position if it is within its nature. This can be argued to be a form of equality of opportunity (formal equality of opportunity), but the question arises as to who determines whom nature has placed in one class or the other (Conford 1941, 60–70).

In a similar vein, Aristotle argued that “injustice arises when equals are treated unequally and also when unequals are treated equally” (Quoted in Frankel 1971, 193). Aristotle believed in a hierarchical society and when the rules of hierarchy are followed and each person is allowed the opportunity that is commensurate to his natural position, then formal equality of opportunity could be said to have been attained. This is one of the reason why many people reject the idea of formal equality of opportunity, because it is “compatible with the existence of bad rules and with highly stratified societies” (ibid). However, libertarians reject this conception of “formal equality of opportunity” that emphasizes social hierarchy. In their conception, equality of opportunity entails that all opportunities should be open to everyone in the society who possesses the relevant talent to take advantage of such opportunities. Libertarians reject any idea of natural hierarchy based on race, gender, or class, but are open to natural hierarchies of talent. For them, the talented should reap the rewards of their talents without hindrances or obstacles from society.

On the other hand, many other social and political philosophers have argued for a more expansive concept on equality of opportunity. Egalitarian liberals argue for fair equality of opportunity and maintain that they are in the right and that government must interfere with background institutions in order to provide a fair equality of opportunity for all (Rawls 1999). Socialists, communists and even utilitarians often argue about equality of opportunity. There is hardly any school of thought in political theory today that does not have one argument or the other in support of equality of opportunity, even

when their definitions and positions are very contradictory. The contradictory nature of different conceptions of equality of opportunity among various theorists prompted Tawney to observe that “the conception is one to which homage is paid by all, including those who resist most strenuously attempts to apply it” (quoted in Frankel 1971, 192). For Frankel, “equality of opportunity is everybody’s girl” (Ibid). In one way or the other, every society claims to strive to achieve equality of opportunity.

In practical terms, the idea of equality of opportunity could also be said to be suffering a setback in the United States. Women, minorities and the poor do not have similar opportunities as white men and children of the affluent. In fact, many people are stuck in poverty despite their efforts to improve their lives. To illustrate the level of inequality of opportunity between whites and blacks, President Obama, while addressing a crowd in Charleston, South Carolina at the funeral of late senator Clementa Pinckney and eight other black people shot dead by a white supremacist in June, 2015, observed that:

Maybe we now realize the way racial bias can infect us even when we don't realize it, so that we're guarding against not just racial slurs, but we're also guarding against the subtle impulse to call Johnny back for a job interview but not Jamal. ...By recognizing our common humanity by treating every child as important, regardless of the color of their skin or the station into which they were born, and to do what’s necessary to make opportunity real for every American -- by doing that, we express God’s grace (retrieved from www.whitehouse.gov).

In a similar vein, The Huffington Post, reported in its May 20, 2014 edition that the black jobless rate has consistently doubled the white jobless rate in the last sixty years and that black men are less likely to be represented in management and professional positions. The paper also claimed that black men are more likely to be suspected to have used drugs in the past, even when they have not been drug tested. Finally, the paper reported that one study found that applicants with black sounding names like Lakisha Washington and Jamal Jones were less likely to be called back for job interviews than people with white sounding names like Emily Walsh or Greg Baker, even when they all have the same qualifications. Still on the differences in opportunities available to Americans, Dworkin as well

as Bowen and Bok observe that blacks who attended the most selective elite colleges “found less well paid jobs” than their colleagues who are white, even when they had the same test scores and college grades (Dworkin 2000, 394; Bowen & Bok 1998, 123).

Below are graphs depicting the situation of black college graduates in the labor market.

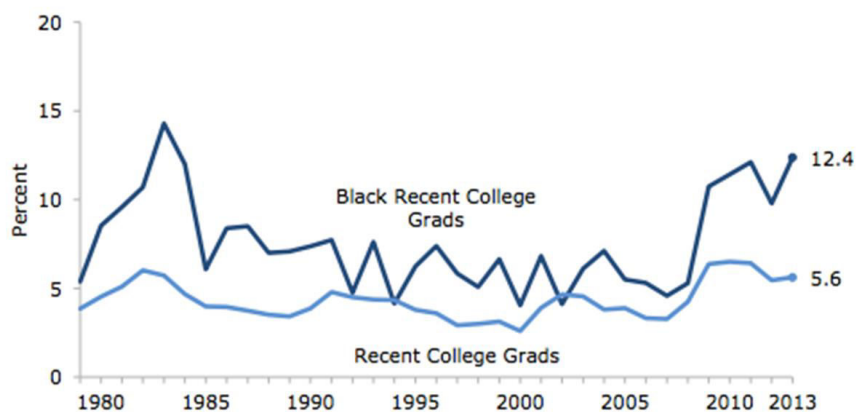


Figure 1. Unemployment rate, recent college graduates, 1979-2013

Source: National Bureau of Economic Research (Merged Outgoing Rotation Groups)

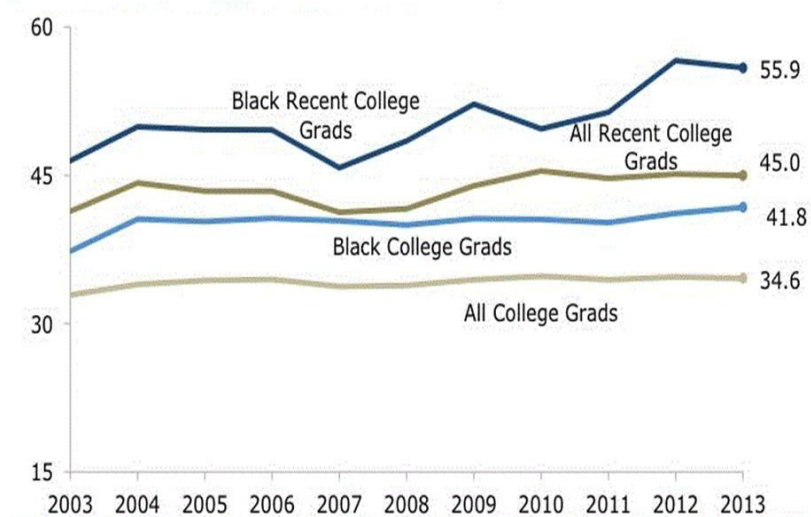


Figure 2. Underemployment Rate for College Graduates

Source: National Bureau of Economic Research

Another area where inequality of opportunity is very obvious is in the area of employment of women and their remuneration. According to Condrey, “women are segregated in the lower-paid nondiscretionary positions while men are segregated in higher paid posts with decision making authority” (Condrey 2005, 159). Women are found more in clerical, secretarial and low-end jobs. At the professional level, women are more likely to be found in human services in jobs like nursing or teaching, just as it was about a hundred years ago (ibid). Condrey further reveals that these traditional female jobs often pay less than traditional male jobs.

Even when women and men hold the same job with the same qualification, women are still paid lower wages than men (www.pewresearch.com, <http://money.cnn.com>, www.newsweek.com, www.nytimes.com). After controlling for every other factor that could be used to explain the gender wage gap, Hills (2013, 169-185) still finds that women are paid seventy-seven cents for each dollar a man earns. The gender gap affects not only wages, but also other benefits that accrue to workers other than wages. Women, according to the White House, are less likely to have health insurance from their employers than men, they are less likely to have access to paid leave and retirement saving plans, thus making it more likely for them to “leave without pay” (www.whitehouse.gov).

Below is a graph showing the percentage of men and women with a pension plan in 2013.

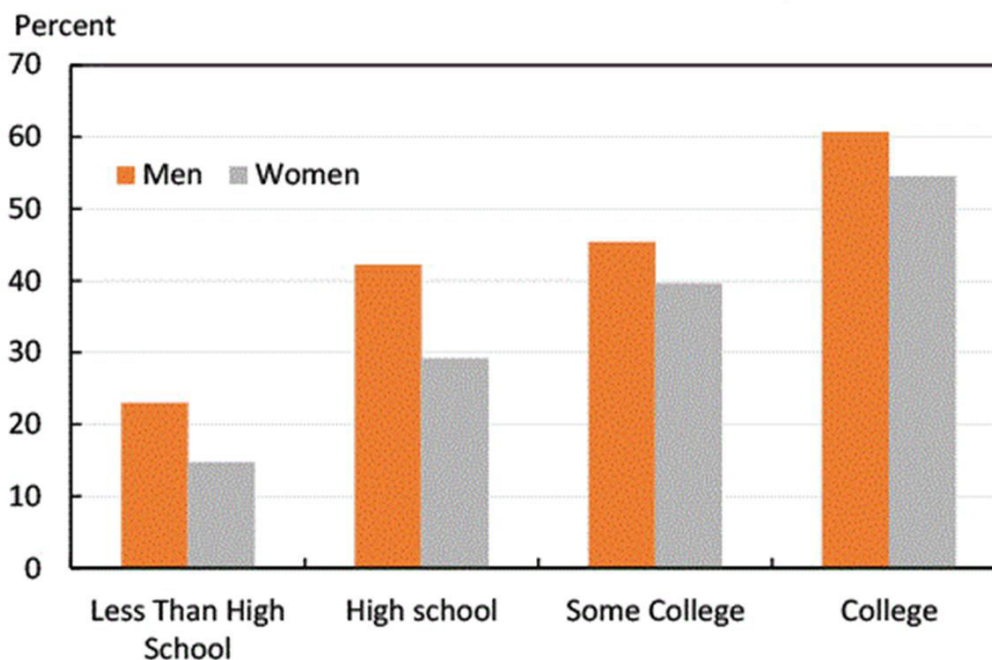


Figure 3. Percent of Individuals With a Pension Plan, 2013

Source: United States Office of Economic Impact and Diversity

Women are also more likely to be fired for their natural biological functions such as pregnancy and childbirth. In the absence of paid maternity leave and other family friendly work practices, many women are likely to be fired for being pregnant or for giving birth. Although, it is illegal to discriminate against women for being pregnant as provided by the Pregnancy Discrimination Act of 1978 (PDA), employers still find ways around the law sometimes by firing pregnant women when they are on leave as a part of a general reduction in the work force. In the case of Deborah Rhett and Carnegie Center Associates, the Appeals Court, Third Circuit, held that a firm has the right to fire an employee in order to cut operation costs. Rhett had sued her employers for discrimination because her position was cancelled when she was on maternity leave. She claimed the termination was a discriminatory act against her for being pregnant. (<http://casetext.com/case/in-re-carnegie-center-associates>, Greenberg 1998, 225).

For gays, lesbians, bisexuals and the transgender community (LGBT) in the U.S., the ideal of equality of opportunity is nothing but a mirage. It is still possible today to fire someone for being gay as there is no federal law that protect against discrimination of members of the LGBT community in the workplace (www.civilrights.org). According to Lara Durso, director of LGBT Progress campaign at the Center for American Progress, a liberal think tank, “about 10% of 662 lesbians, gay and bisexual workers who were randomly surveyed said they have been fired within the last five years due to their sexual preference. And 26% of 6,450 transgender workers who participated in a non-random survey say they've been fired.” She further explained that “In many states today it is legal for same sex couples to get married but to then be fired for getting married” (Isidore 2015). The above interview with Durso shows that, despite the progress made on civil rights issues members of the LGBT community still do not have the same opportunity as heterosexuals, not because they are less capable of performing to expectation on their jobs, but because of their sexual orientation.

Furthermore, making equal opportunity available to all is still a utopian dream when one considers the increasing level of wealth gap between the poor and the rich, especially between hourly wage workers and chief executive officers of the largest companies in the United States. Research shows that while the average worker has become more productive over the years, his wages have not caught up with the rate of inflation while that of the average CEO has increased about 300 times more than that of the average worker (www.washingtonpost.com). Writing in the Huffington Post on March 3, 2013, Ralph Nader observed that the CEO of Wal-Mart, Mike Duke, made approximately \$11, 000 an hour in a company where the minimum wage was \$7.25 an hour until it was recently increased in February 2015 to \$9.00. The income inequality between workers and CEOs has become a subject of hot debates in both the print and electronic media, yet the federal minimum wage still remains at \$7.25 an hour while Congress seems unwilling to do anything soon to better the condition of the average American worker.

Below is a graph showing income inequality in America between 1979 and 2007.

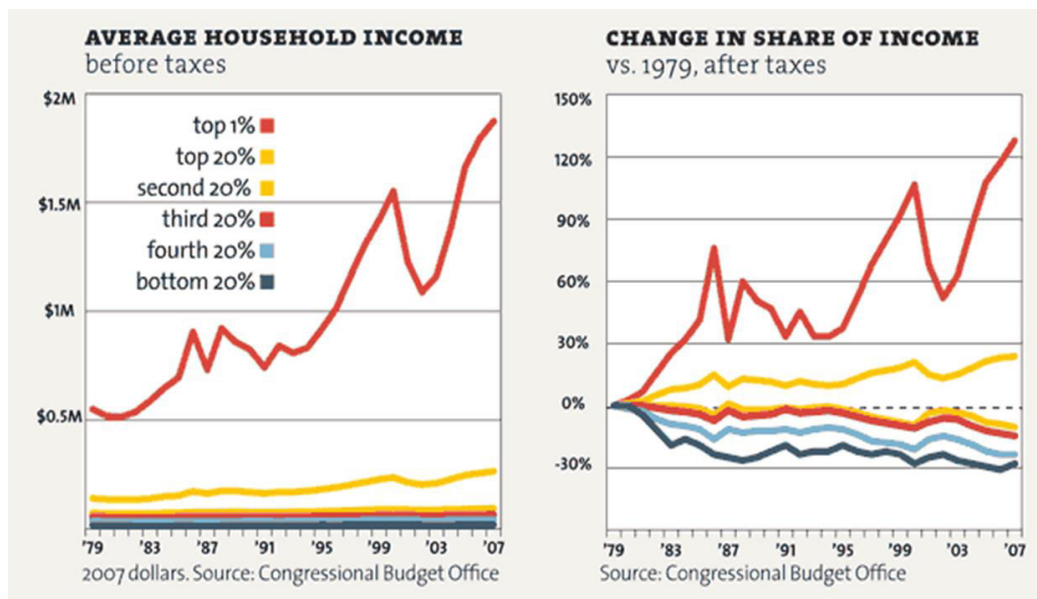


Figure 4. The representation of average household income and the change in share of income between 1979 and 2007

For libertarians, income inequality does not imply unequal opportunities. They argue that a rising tide lifts all boats and that not only have the rich become richer, the poor have also become richer. According to them, the poor in America drive cars, have cell phones, laptops, etc., which many wealthy people in third world countries do not have. They also argue that income inequality does not say much about upward mobility. They claim that most of the people at the lower rungs of the economic ladder are students and new entrants into jobs. Those at the lower rungs of the ladder eventually move up with more education and on-the-job experience. Another thing they claim is responsible for the wage gap in America is that jobs have now become more knowledge driven than they were a few decades ago. The American economy does not depend anymore on manufacturing but on services and technology. To this end, high school education, which was good enough to get people into the middle class in the past, is no longer enough to get people moving up in today's economy. Libertarians argue that if one goes to college and works hard, one will surely get ahead as witnessed in the greater success of people in generation x than that of their parents (Cox & Alm 2005, 343).

Libertarians' arguments about economic inequality seem persuasive at first glance. However, a closer look at the American economy reveals a different story. If libertarians are right that a rising

tide lifts all boats, why are some boats lifted much higher than others? The increase in income and wealth is supposed to be fairly equally distributed among workers in an industry. A situation where a CEO makes more than three hundred times what the average employee makes is not equitable. Are the CEOs now more than three hundred times more efficient than the average worker? The libertarian argument becomes less convincing when one looks at the last economic recession starting in 2008 that was triggered by the housing bubble. As more than eight hundred thousand workers were losing their jobs every month, the CEOs were not laid off. The too-big-to-fail banks like Citi, Bank of America, and insurance companies like AIG were bailed out with billions of dollars by the government. Despite the loss in profits of these companies, their CEOs received extra pay in bonus and salaries which outraged many Americans.

According to Paul Krugman, the recent skyrocketing of CEO pay in many cases does not depend on increased profits for their firms, but on white collar crimes like insider trading, mark to market and round tripping. It is however difficult for government to punish these crimes because many members of congress and the presidential campaigns were bankrolled by Wall Street. Bernie Sanders, a Vermont senator and presidential candidate for the Democratic Party, referred to this situation in the Democratic party presidential debate of 10/13/ 2015 when he said “congress doesn’t regulate Wall Street, Wall Street regulates congress” (www.cnn.com). Krugman further argues that too much concentration of wealth in the hands of a few does not bode well for American politics. According to him, “.... Money buys political influence; used cleverly, it also buys intellectual influence. A result is that growing income disparities in the United States, far from leading to demands to soak the rich, have been accompanied by a growing movement to let them keep more of their earnings and to pass their wealth to their children." Little wonder the Republicans are going after Social Security and Medicaid. As the rich become richer, the political class, especially the right wing, continues to make policies that do not favor the poor but are tilted in favor of the rich. This is a destruction of the idea of the common good and equality of opportunity.

Another measure of equality of opportunity is social mobility (Arneson 2015, 20). Thesaurus Dictionary defines social mobility as “The ability of individuals or groups to move upward or downward in status based on wealth, occupation, education, or some other social variables.” A high level of social mobility implies that the ideal of careers-open-to-talents has been approximately achieved, while a low level of social mobility implies the opposite, that is, a limited opportunity for those at the lower rungs of the ladder. In an upwardly mobile society, individuals’ life chances and social and economic status are not determined by the class to which their parents belong. Individuals could rise or fall from the social and economic class into which they were born. One of the claims for American exceptionalism was the high level of social mobility in the society. The high level of social mobility in the American society is one major reason why the redistributive tax policies of the U.S. are different from most of the other developed countries in Europe. The belief in the U.S. that one is not hindered by institutions of social hierarchy has highly influenced Americans attitudes towards government and prevented the development of radical labor movement (Ferrie 2005, 4; Piketty 1995, 551-552).

Unlike a century ago, social mobility in America has declined sharply. In his 2014 State of the Union address, President Obama observed that America’s “ladder of opportunity” is falling. Similarly, Paul Ryan, vice presidential candidate of the Republican Party in 2012, and Marco Rubio, a presidential aspirant of the same party for 2016 said last year that they were worried about the rate of social immobility in America today (The Economist, February 2014). According to the New York Times of January 23, 2014, social mobility is lower in America today than it is in Canada, Denmark and many European countries. A situation where most poor children are trapped in poverty and have little to no chance of escaping it, no matter how hard they try, cannot be said to reflect equality of opportunity.

Furthermore, equality of opportunity is an idea that is difficult to measure. If we are to go by the libertarian ideal of formal equality of opportunity, then America would be said to be a country that provides a high level of equality of opportunity since there are no laws on the books that prevent any

person or group of people from aspiring to whatever position they desire. However, in the absence of laws favoring discrimination of whatever kind, the question that arises is: how does society deal with social attitudes that are inherently discriminatory? Libertarians will definitely answer that the market will provide a solution to the question. In reality, however, the market has failed to provide answers to discriminatory practices against women, racial minorities, and the LGBT community in the U.S. Absent government intervention, markets have failed to provide a solution to the problem, and markets could add to the problem by encouraging a race to the bottom. If a firm decides to pay women and men equally or provide the same opportunity for white males on one hand and women and minorities on the other, the firm may become uncompetitive if other firms refuse to play by the rule. The problem of subtle discrimination remains an intractable one in American society today.

As for fair equality of opportunity as proposed by egalitarian liberals, one question that comes to mind is how far government should go in equalizing the background institutions or providing Duncan's fairness rights for children of different social backgrounds. Given state of scarce resources, the egalitarian liberals' suggestion that the state expend more resources to bring children of low socio-economic status to approximately the same level of opportunity with their counterparts from middle class and rich families will require a higher level of taxation, which will be highly resisted and could promote inter-class conflicts. Also, when exactly can we say that the background institutions are just? At what level of taxation? Should the rich be forced to pay for opportunity for the children of the poor? Even if background institutions such as educational opportunities are to a large extent equalized, the government cannot force people to live together. As long as there are gated communities, where the rich live in good environments with good schools, paid for by their taxes, the poor will continue to have less equality of opportunity as they are trapped in inner cities and poor neighborhoods. The appropriate solution is to encourage dialogue, which promotes social capital. Then the rich can voluntarily agree to pay more for the benefits of other members of society as fellow citizens who have common interests in the general well-being of all.

Finally, as long as children are raised in different homes, government can only try to a limited extent to promote equality of opportunity. It may be nearly impossible for children who come from two parent homes, who are read to by parents, and are enrolled in quality private and preparatory schools to have the same level of opportunities with children whose parents are divorced, use drugs and are imprisoned. Although the opportunities in a formal sense could be said to be the same for both groups of children, the former are better positioned to grab the opportunities available to them with both hands than the former. To this end, the ideal of full equality of opportunity remains a utopian goal in American society. Government can only try to bridge the gap and make more opportunities available to those at the lower rungs of the ladder by increasing funding to schools in the inner cities and programs that train young people in skills that would make them relevant to employers in the modern day labor market. Such programs include: minimum wage, paid family leave, affirmative action and early childhood education, etc.

Like all policy debates in political theory, the debate over equality of opportunity is a hard issue to resolve. I am more persuaded by the egalitarian liberals' position of fair equality of opportunity. However, the unresolved question is when does retributive taxation violates the property right of people. Is there an acceptable level of taxation, and if so, at what percentage of one's income and wealth? While the idea of a dignified minimum is a good ideal, there should be proper scrutiny for recipients of government aid to avoid abuse. Hardworking people should not feel that they are being punished for their success as this may destroy their incentives to work more, which is bad for society. The answer, for me, lies in finding the right balance between the general well-being of all citizens and maintaining a taxation level that encourages hard work and entrepreneurship.

The discussion of equality of opportunity leads us to another interesting topic of social and political philosophy--paternalism and moralism. In the next chapter, I will provide an analysis of libertarian views perfectionism and various policy questions like abortion and gay marriage.

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CHAPTER 5

LIBERTARIANS AND SOCIAL POLICY: WAR ON DRUGS, SAME-SEX MARRIAGE, AND ABORTION

From time immemorial to the present, the debate about individuals' conduct and its effects on society has continued unabated. This debate forms one of the central concerns of political theory. While some argue that society should make rules for individuals to follow, even in their privacy, others are of the opinion that there should be a distinction between private and public morality. In this chapter, I will examine the libertarians' view on the question of morality, individual rights and the legitimate scope of public authority. To what extent can government enforce moral rules without violating an individual's autonomy? Should the government be able to punish people for committing so called crimes that do not in any way encroach on the negative rights of others? These are the questions I will consider in this chapter, especially as they relate to the controversial issues of abortion, gay marriage and the war on drugs. I will also discuss the critiques of libertarian views on this question and discuss my own view at the end of the chapter.

The Oxford English Dictionary defines morality as principles concerning the distinction between right and wrong or good and bad behavior." It also defines it as "a particular system of values and principles of conduct, especially one held by a specified person or society" (<http://www.oxford-dictionaries.com-us-definition/american-english/morality>). Going by the definition above, it is obvious that every society and every rational individual has some way of differentiating rights from wrongs. This means of differentiation is what gives birth to different political doctrines.

For libertarians, the core of their philosophy is liberty. By liberty, libertarians mean that individuals are free to live their lives without interference from government or criminals as long as they do not violate the negative rights of others. To this end, they see individuals as morally autonomous. An autonomous individual is not answerable to the government or society in the course of his life, other than refraining from infringing on the rights of others and fulfilling obligations in which he willingly acquiesces. He is free to live as he deems fit as long as he recognizes the rights of

others to do same. This means that libertarians reject any form of moral or legal paternalism. By paternalism, we mean any law that is enacted to prevent individuals from hurting themselves or laws enacted to promote individuals' happiness or interests (Wasserstrom 1971, 108). Examples of such laws include the requirement that motorcyclists wear helmets or seat belt laws for car passengers.

Libertarians generally agree with the idea that the only justified state is a minimal one, referred to as a night watchman state by Nozick (Nozick 1974, 179). The minimal state, for libertarians, only exists to protect individuals from criminals and to enforce contracts. Any government activity beyond the prevention of crime and enforcement of contracts, including the enforcement of morality, violates individuals' autonomy and cannot be justified. Libertarians agree with Mill that:

... the sole end to end for which mankind are warranted individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community against his will is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot be rightfully compelled to do or forbear because it will be better for him to do so, because it will make him happier, because in the opinions of others, to do so would be wise, or even right... (Mill 1869, Chapter 1).

For libertarians, each person is the best judge of his action. Although he may be wrong, he cannot be forced to change his views or actions as long as they do not encroach on the negative rights of other. They agree that interested members of society could try to persuade erring members from doing what is morally wrong by reasoning with them or avoiding their company, but the coercive apparatus of government should not be used to force individuals to act against their beliefs or interests if such beliefs or interests are compatible with the non-interference rights of others. In a pluralistic environment like ours, to use the power of government to enforce a particular moral way of life, for libertarians, is to impose on everyone the conception of morality of a particular group. Government should be neutral on the good life.

The idea of government neutrality on the good life appears strange to perfectionists. Unlike libertarians, perfectionists have as the central part of their philosophy the promotion of virtue and attainment of the human good. They define virtue as the "various habits or dispositions essential to

achieving that good” (Lund 2002, p. 611). The question then becomes: What is the good? Many perfectionists answer that the good is embedded in human nature. This also raises the question of what is human nature. An easy or a universal definition of the both the good and human nature is difficult to come by, even for perfectionists. However, Hurka (1993, 5) posits that goods such as friendship, knowledge, and completing challenging tasks are intrinsic human goods.

For Aristotle, the good is the ability to participate in self-government and the engagement of one’s faculties in philosophical contemplation, while for Marx, the good is conscious communal creation, that is, production, and for Aquinas, the good is the attainment of beatitude, the union of the soul with God. Going by the various conceptions of the good, even among prominent perfectionists, it becomes difficult to actually say with precision what the good is for all people, at all times and in all places.

Libertarians rightfully reject the perfectionists’ idea of the good because it is vague and elusive. One problem with the good as posited by perfectionists is that it fails to take into consideration the differences among people of different races, cultures, religions and various backgrounds. For libertarians, perfectionism is wrong because it puts the good before the right. The good in this case is as it is defined by some people. These people are seen as authority figures on the good life. For liberals generally (this include liberal egalitarians and libertarians), the idea is that of rulers being “in authority” with the consent of the governed rather than being “an authority.”

Being in authority, in the liberal conception, is based on the consent of the people and is limited to the terms of office for those in authority. “An authority” on the other hand has unlimited powers. He or she is gifted with the uncommon abilities, maybe metaphysical, spiritual or any other special claim to authority, which is not open to all, but to the special person or class. This class of people cannot be challenged and they decide for the whole what the common good is. To have a person or group as an authority, for liberals, is a violation of the principle of equality, which liberals hold dear. For instance, Dworkin argues that the state should be neutral on the good life because not doing so violates the idea of equal respect and concern for all (Dworkin 1978 and Dworkin 1985).

Dworkin argues that when people argue about some ethical good, there is no way to decide who is right or wrong. In such a situation, the morally right thing to do is for government to stay neutral and allow each person to live in accordance with his conception of what is good, if that does not interfere with the rights of others. The right in this case, as always in the liberal conception is prior to the good. Dworkin rejects the perfectionist idea that a non-unanimous conception of the good leads to societal disintegration. For him, there is a difference between “saying someone has a right to do something and saying that it is the right thing for him to do” (Dworkin 1978, 188). For example, people have a right to gamble in some states in America, but that does not mean that gambling is the right thing for them to do. To have a right to do something means one has a right not to be interfered with in doing such a thing, even though doing it may be wrong.

The principle of equal respect and concern requires that people have a right to author their lives and lead them as they want. Others may disagree with their choice of lifestyle and they can remonstrate with them, but government has no right to force them to live against a freely chosen way of life as long as they do not violate the non-interference rights of others. Dworkin also argues using an ideal he calls the “endorsement constraint.” For him, no activity or lifestyle is worthwhile for people if they do not endorse it. Dworkin makes two arguments for endorsement constraint. One is that “a good life is a skillful performance” (Clarke 2006, 114). For Dworkin, “it is a skillful performance that counts, not mere external results, and the right motive or sense is necessary to the right performance” (Dworkin 2000, 248). His second argument for the endorsement constraint, he calls the value of ethical integrity as a necessary condition of the good life. In Dworkin’s view, one lives a life of ethical integrity when one:

Lives out of the conviction that his life, in its central features, is an appropriate one, that no other life he might live would be a plainly better response to the parameters of his ethical situation rightly judged (Dworkin 2002, 270).

This means that one fails the test of ethical integrity if he feels he lacks conviction for the life he lives and that his life is directed by others, even when he does not subscribe to their view of the good life.

Like Dworkin, Rawls also rejects perfectionism. In line with other social contract theorists, Rawls proposes a hypothetical contract in an original position in which people are to make a decision about the principles of justice that they will like to govern their lives. However, this agreement is to be made behind the veil of ignorance. In the original position and under the veil of ignorance, no one knows what his position, status, or the conception of the good will be on the other side. Consequently, Rawls argue that in the original position, people will choose the scheme of liberties that is compatible with a maximum amount of liberty for others. (Rawls 1971, Rawls 2001).

Against this backdrop, Rawls opines that no one under the veil would choose a principle of governance based on comprehensive religious, philosophical or moral view as the governing principle, since he does not know whether he will agree with such principles when the veil is removed. The choice behind the veil does not prevent people from having a comprehensive religious or moral view for their individual lives. However, it prevents them from choosing any comprehensive religious or moral principle as the general principle of governance.

Perfectionists and communitarians, however reject the Rawls principle of justice. They claim that a hypothetical contract does not represent an actual contract and that no one lives by an unchosen hypothetical contract. They also argue that there are risk prone individuals, who though they may not know what their position will be after the veil is lifted, will risk choosing their true preference in case things happen to favor them after the veil has been removed. Finally, George argues that Rawls is wrong. According to him, by denying people in the original position any commitments and idea of the good, Rawls smuggles in a strong “liberal individualist presupposition” as well as promotes his own liberal conception of the good life, thereby becoming guilty of the bias he hopes to eradicate in the first instance by constructing his hypothetical contract (George 1993, 133).

This debate between perfectionists and anti-perfectionists, especially libertarians, about the role of government in enforcing moral laws leads us to examine the application of both claims to the war on drugs as undertaken by the US. Government in the last several decades.

According to Eric Schneider of the Politico Magazine, the war on drugs has been waged for about a century in the United States (www.politico.com/magazine). The war on drugs has constituted campaign rhetoric for many presidential candidates, especially those running on the platform of the Republican Party who always engage the use of hard rhetoric in order to be seen as tough on crime. For example, Richard Nixon as the president of the United States declared a war on drugs on June 17, 1971. Nixon in his speech claimed that drug abuse is a “national emergency,” labelling it “public enemy number one” and declared a “total offensive” (Epstein, 1977, quoted in Wisotsky 1986, 3).

In a similar vein, Ronald Reagan declared a war on drugs in a speech delivered at the Department of Justice, Washington, D.C. He vowed an “unshakable commitment to do what is necessary to end the drug menace” in America (The New York Times, 10/15/1982, A 20).

The war on drugs is based on many assumptions. One such assumption is a paternalistic assumption that drug use increases ill health. For instance, Husak claims that “protecting our physical and mental health is one of the most important functions of the state” (Husak and Marneffe 2005, 41). Libertarians will agree to this claim from a non-interference view. That is, government should protect people from criminals who may cause their victims bodily and mental injury. However, Husak lays out the view that this claim in perfectionists’ thought goes beyond the negative conception of the protection of “our physical and mental health” to the positive conception of protection. Indeed, the argument here is that government has a duty of protecting us from ourselves. For perfectionists and others in this school of thought, government should protect individuals from physical and mental injury that they could bring upon themselves by engaging in the use of drugs.

Although some libertarians may agree that drug use may endanger one’s health, they disagree that government has a duty to protect people from themselves. For them, individuals are the best judges of their interests. Even if people engage in activities that are harmful to themselves, they should not

be prohibited from engaging in such activities as long as they do no to harm others. Furthermore, libertarians argue that drug use is a choice and that drug users make an informed choice as they are “aware of the real (as opposed to imagined) dangers” of drug use (Bandow 2012, 258). Bandow claims that the dangers to users is exaggerated in order to justify the enormous resources spent by the government to prosecute the war on drugs.

Some libertarians also argue that to justify the war on drugs as a way of ensuring a healthy citizenry is hypocritical and amounts to a double standard. For example, Husak argues that alcohol and cigarettes are far more dangerous than drugs. Citing the Office of National Drug Control Policy (ONDCP), he claims that while use of illicit drugs is responsible for 25,000 deaths yearly, at least 430,000 people die from smoking tobacco substances and another 100,000 die from the consumption of alcohol, yet alcohol and tobacco are legal (Husak & Marneffe 2005, 48). According to him, the majority of these deaths are caused by other factors related to drug use such as HIV/AIDS and hepatitis resulting from sharing needles. He claims that “illicit drugs themselves cause remarkably few fatalities” (ibid). On the claim that illicit drugs are addictive, Bandow argues that it is wrong to equate drug use to drug abuse. According to Bandow, “most drug users are not abusers. Contrary to popular assumptions, the vast majority of drug users enjoy productive, balanced lives” (Bandow 2012, 259). Like Bandow, Wisotsky debunks the claim that cocaine is addictive. He posits that only between 10 to 20 percent of cocaine users become addicted to it. He asked: “does it make sense to call cocaine addictive when 80 percent of those who use it do not become addicted?” (Wisotsky 1986, xviii).

Libertarians also reject prevention of crime as a justification for the war on drugs. Proponents of the war on drugs often argue that drug use triggers criminal behavior, especially violent crimes. For libertarians, this claim is unfounded as they believe that “no drug appears to be strongly crimogenic” (Bandow 2012, p. 256). Libertarians agree that, while some drugs may “impair judgement and reduce inhibition,” a blanket ban on the use of drugs is unacceptable as “drugs vary in their effects” making selective prohibition a more reasonable option (ibid, 257). Moreover, Bandow claims that no drug leads to a high level of crime among users. In fact, Bandow claims that alcohol is more likely to lead

people to commit crime than illicit drugs. Rather than drugs causing crimes, libertarians claim that it is drug prohibition that causes more crimes (Ostrowski 1991, 304-305; 314-315 quoted in Bandow 2012, 257).

For Husak, prohibitionists often associate three types of crimes with drug use. The first of such crimes are violent crimes. Supporters of the war on drugs usually link violent crimes like murder, arson and kidnapping to gangs and warlords who fight over turf and control of territories. However, Husak refutes this argument by claiming that these crimes are systemic and not caused by the use of drugs per se. By systemic, he means that because of prohibition, drugs are only available in the black market. Consequently, whenever something goes wrong among costumers and the producers, there is no legal means of settling their disputes other than resorting to self-help. Whenever people resort to self-help, Husak claims that violence should be expected as experienced during the days of alcohol prohibition. (Husak & Marneffe 2005, 66-67).

Husak also argues that not all black markets transactions are violent. For instance, according to him, there is a black market in gambling in the US which is not very violent. He also claims that the rate of drug use and black market activities in Australia is at a similar level with the US, but the level of violence associated with the Australian black market is not anywhere near that of the US. To this end, the high level of violence associated with drugs in the US, for him, is misleading. He argues that there are other factors that make violent crimes very high in the US such as easy access to guns and the fact that many violent criminals in the US are already predisposed to violence. "When an innocent child is killed in a drive-by shooting between rival dealers, we are quick to blame the drugs, but reluctant to mention other factors -- most notably, guns. These violent acts might just as well be attributed to America's gun culture as to our drug culture." he claims (Husak 2002, 86).

Another type of crime prohibitionists associate with drug use is property crime (Husak 2002, p. 86-87, Husak & Marneffe 2005, 66-67). Prohibitionists claim that drug addiction causes addicts to steal. For instance, Husak argues that some experts claim that "virtually all of the economic crime in New York City was committed by heroin addicts who needed to finance their habits" (Husak 2002,

p.86). These claims have however been contradicted by libertarians. For instance, Hospers argues that drug addicts commit property crimes, not necessarily because of addiction, but because of prohibition. He argues that prohibition makes the price of drugs like marijuana and heroin too high for addicts to afford. Therefore, they resort to stealing to satisfy their drug cravings. For Hospers, if drug use is decriminalized, there will be a high reduction in property crime in New York City (Hospers 2005, 6).

Arguing in a similar vein, Husak explains that just about 25 percent of prison inmates who used illegal drugs and committed property crimes say their drug use led them to steal. Many of them had been committing crimes before they started using drugs (Husak 2002, 87). Even William Bennett, the first drug czar in the first Bush administration admits that “many drug-related felonies are committed by people in crime before they started taking drugs” (Bennett 1998, 66).

The third type of crime associated with drug use, according to Husak, is psychopharmacological. Prohibitionists claim this type of crime results from the reduced inhibition and impaired judgement of users. Thus, drug users are prone to do what they would not have otherwise done if not for the influence of drugs (Husak 2002, 88-90, Husak & Marneffe 2005, 69). According to Bennett, “the fact is that under the influence of drugs, normal people do not act normally, and abnormal people behave in chilling and horrible ways” (Bennett 1998, 66). Libertarians reject this claim. For instance, Husak argues that contrary to prohibitionists’ claim that drugs impair users’ judgement and make them commit crimes, drugs like heroin and marijuana make people passive, not violent (Husak 2002, 88-90). Bandow also makes a similar point. According to Bandow, “many illicit substances, such as marijuana and heroin, encourage passivity” (Bandow, 2012, 270). Both Bandow and Husak agree that alcohol is more related to psychopharmacological crimes than are marijuana and heroin. According to the National Center on Addiction and Substance Abuse report (NCASA), in 1998, 21 percent of inmates in state jails or prisons convicted for violent crime were under the influence of alcohol and no other drug at the time they committed their crime. On the other hand, only 3 percent were under the influence of cocaine or crack alone while 1 percent were under the influence of heroin (Quoted in Husak 2012, 89).

Although libertarians agree that drug use is not directly related to committing crimes, they do not disagree that drug use could have negative externalities on others. However, such negative externalities, other than crimes, cannot be punished by law. For instance, drug users may become couch potatoes, not willing to work and support their families in some cases, or may cause their parents and friends to be sad because social norms and values do not view drug use positively. This, for libertarians is simply a concern for the drug users and their families and should not be government's business. Bandow made the point clearly when he stated that “most people at one time or another have grave doubts about the behavior of family and friends. Nevertheless, rarely does anyone call forth the power of the state to limit the other person’s choices” (Bandow 2012, 260).

Finally, prohibitionists argue that even if drug use is not related to crime, it is simply immoral. Arguing on the ground of morality, Wilson stated that “drug use is wrong because it is immoral and it is immoral because it enslaves the mind and destroys the soul” (Quoted in Husak & Marneffe 2005, 71). Marneffe made a similar declaration that “drug use, or at least heavy drug use, impedes the development and exercise of these capacities, and so, the thought goes, should be discouraged for this reason. Personally I agree that the best life for us is one that develops our higher human capacities fully” (Husak and Marneffe 2005, 133). Marneffe went further to worry about “the risk to some individuals of losing important opportunities, the loss of which would significantly dim their life prospects” (ibid).

Libertarians clearly reject claims, such as the above, as paternalistic and moralistic. Bandow, for instance, argues that “government is not well equipped to judge sin, assessing which behaviors are most likely to enslave the mind and destroy the soul, let alone decide on economic potential” (Bandow 2012, 261). In a similar vein, Szasz opines that the war on drugs in America is not based on rationality, but on “the Judeo-Christian (and especially Puritan) struggle against temptation, combined with the passion for the immediate satisfaction of needs, have generated an unusually intense ambivalence about a host of pleasure-producing acts and objects, illicit drugs being but one” (Szasz in Wisotsky 1986, xv).

For libertarians, liberty trumps virtue. Libertarians posit that people should be free to act as they want in a free society as long as they do not encroach on the rights of others to do same and are not denying them their rights to life, liberty and property. “. . .In a liberal society, they should remain free to act, that is, they should have a right to engage in immoral acts where the immorality is directed at themselves, not others” (Bandow 2012, 259). Similarly, Hill argues that “the right of the individual to do as he pleases takes precedence over the good of the individual, where the ‘good’ is measured by some standards external to the agent’s own wishes” (Quoted in Bandow 2012, 260). Still on the rejection of moralism and paternalism as they relate to drug use, Husak opines that jailing people is not the right way to “protect” them from themselves (Husak and Marneffe 2005, 41-53).

Libertarians also argue that criminalizing drug use is wrong because it turns otherwise innocent people into criminals. For them, there is no intrinsic wrong in the use of drugs. What constitutes crime for libertarians are only those activities that violate the negative rights of others. They opine that the coercive apparatus of government should not be used to punish people for “victimless crimes”. The war on drugs, according to libertarians, has destroyed the lives of many people, their families and communities for no other reason other than drug possession. The most affected of these communities is the black community (Eldredge 1998, 119). For instance, Bandow argues that while African-Americans make up about 13 percent of the population, they account for 34 percent of drug arrests and 45 percent of state prisoners serving time for drug offences (Bandow 2012, 270). Bandow claims that the rate of incarceration of blacks further decimates a community that is already suffering from lack of opportunities and higher level of poverty than any other community in America.

For libertarians, the war on drugs is a war on Americans. Husak argues that there cannot be war on drugs but on people. The war, after all, cannot really be a war on drugs, since drugs cannot be arrested, prosecuted, or punished. The war is against persons who use drugs. As such, the war is a civil war, fought against 28 million Americans who use illegal drugs annually. And unlike previous battles in this apparently endless war, current campaigns target casual users as well as abusers (Husak 1992, 2).

More recent data available shows an estimate 24.6 million Americans from age 12 above use illegal drugs monthly (<https://www.drugabuse.gov/publications/drugfacts/nationwide-trends>). Others like MacCoun and Reuter have also argued that if the war on drugs were to be waged less aggressively, the damage to the American society would have been less. According to them, “The extraordinary prices of cocaine and heroin, the massive involvement of young minority males in center cities, foreign corruption, and the violence of drug trades are all plausibly much increased by the nation’s decision to be highly punitive toward these drugs” (MacCoun and Reuter 2001,127). The war on drugs, libertarians further argue, is a threat to civil liberties, not only of drug users, but also of all Americans. By nature, drug prohibition is enforced by draconian techniques: drones, informants, surveillance, wire taps and sudden raids. One effect of the drug war has been the militarization of many police departments in America.

Finally, libertarians argue that the most obvious cost of enforcement is financial. Enforcement of drug laws makes the government hire more personnel like police, judges, prison workers, lawyers to defend indigent drug users, and it also involves building of physical structures like courts and jails to try to keep offenders off the street. The cost of all these is enormous. According to Miron and Waldo, legalizing drugs would save the US government about \$41.3 billion yearly on enforcement of prohibition while there would be an increase in government revenue from taxes on drugs to the tune of \$46.7 billion (Miron & Waldo 2010). Bandow argues that for government to throw away such money is indeed very foolish (Bandow 2012). As a political doctrine of individual liberty and small government, there is no room in libertarianism for the war on drugs.

Like the war on drugs, gay marriage is another divisive issue in the American society today to which we now turn. The issue of gay marriage has for a long time been very contentious in America and most other human societies. Ancient Greek philosophers like Socrates, Plato and Aristotle, while acknowledging that some men are prone to gay relationships, all deny gay sex as natural, shameful, and debasing (Finnis 1993, 1055). For instance, Socrates allows a relationship between men and boys

but it should be limited to “mind and eye contact,” and may not lead to “terminal gratification”, that is, sex (Ibid, 1056; Vlastos 1991, 38-39).

As in ancient times, the issue of gay marriage continues to be hotly debated and divisive in contemporary American society. Opponents of gay marriage today argue that homosexuality is against the laws of nature (Finnis 1991, George and Bradley 1995, George 2001). For such theorists, the telos of the male and female genital union in an act of sexual intercourse is only realizable in a heterosexual marriage. It is only in a heterosexual marriage that the “one flesh” union is achievable. For them, sex in a heterosexual marital relationship is unitive. They argue that sex outside the committed marital relationship of a man and woman is “self-alienating” and self-damaging (George 2001, 79; George and Bradley 1995, 301). They posit that the goal of sex in a marriage is the “good of the marriage itself” (George 2001, 78). George continues further by stating that “the central and justifying point of sex is not pleasure (or even the sharing of pleasure) per se, however much sexual pleasure is sought – rightly sought – as an aspect of the perfection of marital union; the point of sex, rather, is marriage itself, considered as a bodily (‘one flesh’) union of persons consummated and actualized by acts that are reproductive in type” (George 2001, 79).

For George and other contemporary natural law theorists, any form of sex that is not “reproductive in type” is immoral. This means that they reject gay sex, oral sex and masturbation or mutual masturbation. Although non marital heterosexual sexual acts may be “reproductive in type,” they also reject them as immoral. However, that is beyond the scope of this work. They further argue that homosexual sex is not an end in itself but is a means to an end. For them, to use one’s sexual organ as a means to an end – pleasure -- is destructive of the end of marriage, and thus, to human flourishing. Sex, in their view, is an end in itself in a marital relationship between a man and a woman.

According to Finnis,

In reality, whatever generous hopes and dreams and thoughts of giving with which some same-sex partners may surround their sexual acts, those acts cannot express or do more than is expressed or done if two strangers engage in such activity to give pleasure, or a prostitute pleasures a client to give

him pleasure for in return for money, or (say) a man masturbates to give himself pleasure and a fantasy of more human relationship after a grueling day on the assembly line (Finnis 1993, 1067).

This type of sex, that is, homosexual sex and all other forms of non-marital sex, are intended for pleasure. This to the natural law theorists is unacceptable and tantamount to hedonism. For them, sexual pleasure is not an end to be sought in itself. Although sexual pleasure may be experienced in a marital relationship, it is a by-product of the relationship and cannot stand alone. For a sexual act to fulfill its purpose, it must be self-giving, and this self-giving is only realizable in marriage. According to Finnis, “sexual acts cannot in reality be self-giving unless they are acts by which a man and a woman actualize and experience sexually the real giving of themselves to each other -- in biological, affective and volitional union in mutual commitment, both open-ended and exclusive -- which like both Plato and Aristotle and most peoples we call marriage” (ibid).

Like Finnis, George and Bradley reject pleasure as “an intrinsic good.” They argue that pleasure may serve as a motivation for an action, but it cannot “provide a basic reason for acting.” For them, pleasure does not appeal to peoples’ rationality but to their “sentient part of the self”. They then posit that “pleasure must be distinguished from basic human goods, such as knowledge and, as we argue, marriage, which provide rational (as well as emotional) motivation” (George and Bradley 1995, 315-316). They thus reject the possibility of gay marriage. Gay marriage, they argue, is naturally impossible because the only morally acceptable form of sexuality truly possible is heterosexual as seen in the nature of the penis and vagina. Sodomy, they argue is “intrinsically non-marital” (George and Bradley 1995, 313).

Like the natural law theorists, the Department of Public Health in Massachusetts in the case of *Hillary Goodridge & Others vs. Department of Public Health* before the Supreme Court of Massachusetts in 2003 argued that prohibiting same sex marriage would (1) provide a “favorable setting for procreation”; (2) ensure the optimal setting for child rearing defined by the department as “a two-parent family with one parent of each sex”; and (3) preserve scarce state and private financial resources (Sandel 2007, 379). The first point in this case is similar to the view of St. Augustine and

the natural law theory of Thomas Aquinas who both view sex as naturally intended for procreation only in a heterosexual marriage (Finnis 1993; <http://www-.iep.utm.edu/sexualit-/#H9>).

Finally, opponents of gay marriage argue that marriage is a social institution that has traditionally been known as a sexual relationship between a man and a woman sanctioned by society. For instance, George claims that marriage is traditionally understood to mean “a two-in- one flesh communion of persons that is consummated and actualized by acts that are reproductive in type” (George 2001, 77). Those who argue that marriage has been traditionally between a man and woman posit that legalizing gay marriage would destroy an age old tradition. They argue that we have a duty to uphold institutions that were handed over to us by previous generations and pass it down intact to future generations if those institutions are in accordance with the laws of nature. Dobson, for instance, argues that the effect of legalization of gay marriage in Europe has had a devastating effect on traditional families.”... The institution of marriage in those countries is rapidly dying with most young people cohabiting or choosing to remain single” (Dobson 2004, 2). To ensure the survival of traditional marriage, therefore, the state should use the instrumentality of the law to prohibit gay marriage, traditionalists claim.

In a similar vein, Finnis argues that legalizing gay marriage would mean that the state is promoting a homosexual lifestyle and corrupting the youth. For him, states are supposed to make laws that promote virtue and discourage vices. Allowing gay marriage is destructive of the shared meaning and “common good” of marriage as an age old social institution (Finnis 1993, 1076). Likewise, George posits that the law cannot be neutral when it comes to moral debates like the issue of gay marriage. Moral neutrality in the face of competing conceptions of marriage is self-defeating, he claims. For him, “a sound law of marriage is not one that aspires to moral neutrality; it is one that is in line with moral truth” (George 2001, 89). The moral truth in George’s view is that marriage is only between a man and a woman; anything short of this is immoral. The state, therefore, should act through its laws to promote virtue and discourage vice by enforcing a ban on gay marriage and recognizing as the only form of marriage a monogamous union between a man and a woman.

As expected, libertarians and other liberals reject all the arguments of natural law theorists and other opponents of gay marriage. First, they argue that perfectionism is wrong. Prohibiting homosexual conduct or gay marriage, in their view, violates individuals' freedom. The only reason government can prohibit in action in libertarians' view is if it encroaches on the negative rights of others. Other than that, libertarians argue that people are free to do whatever they wish as long as they respect the right of others to do same.

For instance, the Libertarian Party platform for 2016 states that "individuals own their own bodies and have rights over them that other individuals, groups, and governments may not violate. Individuals have the freedom and responsibility to decide what they knowingly and voluntarily consume, and what risks they accept to their own health, finances, safety, or life." (www.lp.org/platform).

In a similar vein, Hamowy (2008, 319) holds that marriage is a contract. Like every other contract, he argues, people should be able to enter a contract with anyone of their choice, as long as the terms and conditions are acceptable to both parties. Szasz, rejects prohibition of gay marriage. He maintains that the rejection of gay marriage in the Western culture has nothing to do with nature or normalcy as prohibitionists often claim that homosexuality is "unnatural" and "abnormal," but is rather in line with the Judeo-Christian influence which rejects pleasure seeking as an intrinsic evil. According to him, "the church opposed homosexuality not only, or even primarily, because it was 'abnormal' or 'unnatural,' but rather because it satisfied carnal lust and yielded bodily pleasure" (Quoted in Raico 1976, 5).

Szasz argues further that the criminalization of gay marriage or relationships is a result of the society's willingness to impose the will of the majority on the minority. The homosexual in this case is seen as a scapegoat, and has to be seen as "the other" and less than human in order to validate the officially sanctioned group, the heterosexuals. He claims that the society dehumanizes homosexuals because "the male homosexual, by virtue of his homosexuality, refuses to authenticate woman as the desirable sex object, and the heterosexual as the unquestionable embodiment of sexual normality"

(Szasz 1970, 241). In the same vein, Szasz maintains that “a standing feature of human history has been man’s greed to rob his neighbor of the meaning he has given his life.... Our ancestors were, and we remain, existential or spiritual cannibals. As a rule, we live off the meaning others give their lives, validating our humanity by invalidating theirs” (Szasz 1997, 286-287). For the libertarian, an individual is the best judge of his interests. To impose the will of others on an individual, even if those others are in the majority, violates his autonomy and treats him as a means to others’ ends.

In rejecting the natural law theorists’ claim about the “evil of homosexuality,” Macedo, though a liberal perfectionist, argues as libertarians would, that reference to natural laws as a reason for prohibiting gay marriage amounts to a double standard. Since, as he calls them, “the new natural lawyers” argue that only sex that is “reproductive in type” is sex in accordance with the laws of nature, Macedo asks: What then is the essence of sex among sterile or old couples if it cannot lead to procreation? According to him, “.... how can we justify this favored treatment of sterile heterosexuals given that their bodies, like those of homosexuals, can form no ‘single reproductive principle,’ ‘no real unity’?” He continues further that “if there is no possibility of procreation, then sterile couples are, like homosexuals, incapable of sex acts ‘open to procreation’” (Macedo 1995, 278).

In Macedo’s conception, the goal of sex in sterile and old couples cannot be procreation, but promotion of friendship, celebration of love and other “marital” goods which are also open to gay couples. Since the natural law theorists could not argue for the proscription of sterile heterosexual marriage, it is not fair to do so for homosexuals, he opines.

For Macedo, the realm of sexuality, either heterosexual, contracepted sex or gay sex belongs to the private realm which the state has no business in regulating as long as it is consensual. He argues that many people will find unreasonable the natural law theorists’ claims that engaging in pleasure for its own sake is wrong. He compares sex to eating and claims that we sometimes eat for the pleasure of eating, especially when we eat with our friends. Eating, he claims, cements friendship. This also applies to sex in a relationship, either homosexual or heterosexual (Macedo 1995).

Macedo also argues that the claim that homosexuality is “unnatural” is untrue. According to him, even Finnis, George and Grisez, all natural law theorists, agree that some people are born naturally attracted sexually to members of the same sex. If homosexuality is “unnatural,” how then do we explain that some people are born gay? Because some people are born gay, Macedo holds that it would be unreasonable to claim that homosexuality is “unnatural.” It would therefore be wrong to deny gays and lesbians the fulfilment of their nature by banning gay marriage (Macedo 1995, 265).

Finally, Kinsley argues that the answer to the controversy about gay marriage is to privatize marriage. In other words, that government should “end the institution of government sanctioned marriage.” According to him, “If marriage were an entirely private affair, all the disputes over gay marriage would become irrelevant. Gay marriage would not have the official sanction of government, but neither would straight marriage” (Kinsley 2003, A 23). Kinsley’s argument is in line with the general libertarian point of limited government. Government in libertarians’ conception should only exist to protect individuals from criminals and enforce contracts.

Likewise, Hamowy explains that marriage had always been a societal issue before the Council of Trent in 1563 ordered that all Catholic marriages be performed in the church before at least two witnesses (Hamowy 2008, 317). It was the Reformation that made marriage subordinate to civil authorities. To this end, he argues that marriage should be returned to the pre 1563 era where society defines marriage and determines which marriages are valid or not. A marriage may be valid in one society in accordance with its rules and invalid in another society. Here again is Kinsley on marriage:

Let churches and other religious institutions continue to offer marriage licenses. Let department stores and casinos get into the act if they want. Let each organization decide for itself what kinds of couples it wants to offer marriage to. Let couples celebrate their union in any way they choose and consider themselves married whenever they want. Let others be free to consider them not married, under rules these others may prefer. And yes, if three people want to get married, or one person wants to marry herself, and someone else wants to conduct a ceremony and declare them married, let ‘em. If you and your government aren’t implicated, what do you care? (Kinsley 2003, A 23).

Kinsley’s position summarizes the libertarians’ stance on marriage, even though, he is not one.

Although the moral debate about homosexuality continues in the United States, the Supreme Court has finally settled the matter in favor of gay couples. However, before the Supreme Court finally settled the matter in June of 2015, various courts at the lower level had declared a ban on gay marriage as discriminatory and unconstitutional. For instance, the Supreme Court of Massachusetts in the case cited above, held that prohibition of same-sex marriage on the ground that procreation is impossible among gay couples is unjustified. The judges held that there is no requirement that couples be fertile or be interested in procreation before signing the dotted line. If so, it would be unfair to require procreation as a condition for homosexuals before allowing them to get married. On the claim that children fare better in heterosexual marriages, the court held that the Department of Public Health was only affirming a stereotype which has no basis in law.

The court also rejected the traditional definition of marriage. According to the court, “certainly our decision today marks a significant change in the definition of marriage as it has been inherited from the common law, and understood by many societies for centuries. But it does not disturb the fundamental value of marriage in our society” (Quoted in Sandel 2007, 382). The court rejected the claim that gay marriage undermines the institution of marriage. Rather, the judges ruled that allowing gay marriage does not in any way abolish the institution of marriage. The court held that extending the right of marriage to gays rather than undermining marriage “reinforces the importance of marriage to individuals and communities.” In their words, “that same-sex couples are willing to embrace marriage’s solemn obligation of exclusivity, mutual support, and commitment to one another is a testament to the enduring place of marriage in our laws and in the human spirit” (ibid).

Finally, the judges ruled that “limiting the protection, benefits, and obligations of civil marriage to opposite-sex couples violates the basic premises of individual liberty and equality under law protected by the Massachusetts Constitution” (Quoted in Sandel 2007, 382). The rulings of the different courts in many states, however did not apply all over the country until the final decision by the Supreme Court of the United States (SCOTUS) on June 26, 2015.

The SCOTUS ruling on gay marriage shows that the division over same-sex marriage is not limited to society alone. The sharp division also played out in the court's ruling as five justices upheld the right of gay couples to marry against four of their colleagues. In writing the majority opinion, Justice Kennedy affirmed that "No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice and family." Kennedy went on to say, "In forming a marital union, two people become something greater than they once were, and their hope is not to be condemned to live in loneliness, excluded from one of civilization's oldest institutions. They ask for equal dignity in the eyes of the law. The Constitution grants them that right" (Quoted in www.cnn.com). With this ruling, the SCOTUS put to rest once and for all the controversy about the legality of gay marriage in the US. However, the debate about the morality of the matter continues unabated.

Other than the issue of gay marriage, one other social issues that readily divides the American people is the issue of abortion. To this we now turn our discussion. From ancient times, the issue of abortion has been a contentious one in most human societies. For instance, Aristotle saw abortion as a means of population control while others like St. Ambrose were familiar with people who used abortion as a way of avoiding dividing their patrimony among many children (Noonan 1967, 86). Both Augustine and Aquinas also weighed in on the issue of abortion. While Augustine referred to abortion as homicide, Aquinas called it a sin against nature, especially post-quickening (Ibid, 96, 101).

In modern times, the debate over the morality of abortion has become more pronounced in the US since the Supreme Court ruling on *Roe v. Wade* in 1973. In the majority ruling delivered by Justice Blackmun, the Court held that a woman has a right to abortion during the early months of pregnancy and placed abortion within that period as a matter of women's privacy (Heymann & Barzelay 1973, p. 765). The issue became so contentious that Justice Blackmun continued receiving death threats and hate mail to the extent that a bullet was fired into his house at some point (Arthur 2005, p. 179).

In recent times, the contention over abortion has led to cases of violence in many instances. According to CNN reports, 8 murders have been committed by anti-abortionists between 1977 and

2014. In the same period, there have been 17 attempted murders, 42 bombings and 182 cases of arson (www.cnn.com). As recently as September of 2015, there was an arson attack on the Planned Parenthood office in Pullman, Washington (Allen 2015). The latest of the attacks on a Planned Parenthood facility happened on November 27, 2015 in Colorado Springs, Colorado. While many Americans were busy shopping on this day, which was a Black Friday, a fifty-seven-year-old man, Robert Lewis Dear, at about 11:30 am stormed a Planned Parenthood office in Colorado Springs engaging police officers for six hours. At the end of the day, three people including a police officer were shot dead by Dear and ten others were injured (Turkewitz & Mueller 2015). The debate has crept into the 2016 presidential debate with the Republicans planning to defund Planned Parenthood if elected while the Democrats regard abortion as women's reproductive right, which means it is better left to each woman to decide.

At the core of the contention over abortion is the humanity of a fetus and the right of a woman to control her body. Is a fetus human or better still, when does life begin? If a fetus is human and it is generally agreed upon that humans have a right to life, then, it is immoral and it should be illegal to abort it. If not, then, there is no point of debate. Second, if a fetus is human, under what conditions could it be aborted and when does the right of the fetus to life supersede the right of its mother to control her body (Thompson 1971, 47-66)?

Aristotle, for instance, allows abortion for population control. However, the abortion must be carried out before life and sensation. Aristotle posits that life and sensation occurs in boys after forty days and eighty days in girls (Dickison 1973). Like Aristotle, Aquinas also agrees that life does not fully begin at conception. According to him, "seed and what is not seed is determined by sensation and movement" (Quoted in Noonan 1967, p. 102). Since in its early stages, a fetus does not have sensation and cannot move, it is yet to become human in Aquinas' view. However, he rejects abortion on the ground of potentiality. Although, a zygote is not ensouled, that is, human in his conception, it has the potential of becoming human. For him, it is against nature to destroy a potential human being "because even the beasts look for offspring" (Quoted in Noonan 1967, 101).

Although Thompson concedes for the sake of argument that a fetus is a person, she only agrees because it is difficult to draw the line when a fetus becomes a person. However, before conceding, she holds that the argument is a slippery slope argument. For her, a baby is not a person at conception. She likens the argument that a fetus is a person to the argument that an acorn is an oak tree. According to her “it does not follow that acorns are oak trees or that we had better say they are” (Thompson 1971, 47).

Unlike Thompson, Warren argues that the status of the fetus is central in the debate on abortion (Warren 1973, 43). For her, a fetus is not a person. She argues that to be a person, one must have certain traits, which a fetus does not have. These traits are: (1) consciousness, especially the capacity to feel pain, (2) reasoning, that is, the ability to solve problems, (3) self-motivated activity, which does not include reflex actions like the fetus may have in response to stimuli, but rather self-motivated activities engaged in deliberately, (4) the capacity to communicate on a number of topics, and (5) the presence of self-concepts and self-awareness, either racial, individual or both (Ibid, 53).

Warren argues that since a fetus does not satisfy the above conditions, it has no right to life because it is not a person. She goes further to say that anyone who claims a fetus is a person despite not fulfilling her five conditions “would thereby demonstrate that he had no notion of what a person is--perhaps because he had confused the concept of a person with that of genetic humanity” (Ibid). Like Warren, Tooley argues that life does not begin until one has desires and mental experiences which one consciously wants to continue. These, he claims, the fetus does not have. Not only does a fetus lack these characteristics, newborns also lack them. Therefore, he argues that infanticide should also be allowed (Tooley 1972, 45-46).

While some argue that life begins at conception and others like Warren argue that one cannot be counted a person until birth, others claim that both sides are wrong and that life begins between conception and birth. This group uses different means of measuring when life begins. For instance, some opine that life begins at quickening, others argue that life only begins when a fetus is viable, that is, able to survive on its own outside the mother’s womb (Wertheimer 1971, 70-74). The contention

on when life begins still rages on. It was against this backdrop that Justice Blackmun in delivering the majority judgement in *Roe V. Wade* explained that the issue of when life begins has been debated from time immemorial and that theologians, doctors and biologists have never reached a consensus. Therefore, the court was not ready to go into the debate about when life begins (Arthur 2005, 179 - 183).

Other than the debate about the moral status of the fetus, the other ground on which proponents of abortion argue that abortion is right is on the self-ownership of the mother. This group places the right of the fetus side by side with that of the mother and argues that the right of the mother supersedes the right of the fetus. This is the point most compatible with libertarianism. Those who hold this view argue that since women have a property in their bodies, no other consideration could take preeminence over women's right to their bodies. To this end, a woman has the right to request and have an abortion at will. According to Warren, "a woman's right to protect her health, happiness, freedom, and even her life by terminating an unwanted pregnancy will always override whatever right to life it may be appropriate to ascribe to a fetus, even a fully developed one" (Warren 1973, 61). She goes further to state that "laws which restrict the right to obtain an abortion or limit the period of pregnancy during which an abortion may be performed are a wholly unjustified violation of a woman's most basic moral and constitutional rights" (Ibid).

Like Warren, Thompson argues that women cannot be forced to keep a pregnancy they do not want. She likens a fetus and a pregnant woman to a famous violinist and a stranger. In her analogy, Thompson asks her readers to imagine that a famous violinist has a rare blood condition and while sleeping, a stranger was forcibly connected to the violinist's bloodstream to allow the violinist to survive. If the stranger detaches himself, the violinist would die. Thompson then asks if one is morally obligated to tie himself down to the violinist for a period until he is cured? She answers in the negative. For her, if the stranger detaches himself from the violinist, the stranger has not done anything wrong because he has a right to his life. In the same manner, a fetus has no right to a woman's body. She points out that a fetus' right to life does not guarantee it a right to use someone else's body as a means

to life. To this end, she argues that as a self-owner, a woman has the right to abortion at any time during the pregnancy (Thompson 1971, 47-66).

Many libertarians agree with Thompson's analogy. However, there are other libertarians who argue on the concept of self-ownership that the fetus also owns itself and has a right to life, which overrides a woman's right to her body. This group, which calls itself Libertarians for Life (LFL), argues that libertarianism is about responsibility. If a woman knowingly engages in sexual intercourse with the probability of pregnancy, even if she uses contraception, she is responsible for the outcome of her decision. Since her decision in the case of pregnancy affects another life, she has a duty to protect the life of the child. In this line Gordon likens a pregnant woman and her fetus to a creditor and a debtor. The woman is the debtor and the fetus is the creditor. To this end, he argues that "life, liberty, and the pursuit of happiness does not mean that we may escape our obligations by killing our creditor" (Gordon 1999, 122). In Gordon's view, abortion imposes an unchosen duty likened to slavery upon children by requiring them "to die to serve another's purpose." For him, the womb is the child's home and it has a right to be there (Ibid).

Similarly, Paul argues that the most fundamental right is the right to life. This right in his view is inviolable. It is a natural right and by aborting a fetus, the greatest injustice has been committed. He claims that by granting some the right to kill others, in this case, a woman having a right to abort her baby, is for government to set a group against another. In his words, "abortion on demand is the ultimate state tyranny; the state simply declares that certain classes of human beings are not persons, and therefore not entitled to the protection of the law" (Paul 1981, p. 12). He likens state concession of a woman's right to abortion as the protecting the "rights" of some to kill others just like the courts in times past "protected the property rights" of slave owners (Ibid).

As with many other issues, all libertarians do not belong to the same school of thought on the abortion debate, as shown above. Arguing from the same premise of self-ownership and the negative right to life, both pro-choice libertarians and anti-abortion libertarians, like Gordon and Paul, arrive at different conclusions.

5.1 Libertarians and Morality: My critique

The war on drugs is a hotly debated issue in American politics today with both sides making contradictory claims about the necessity of the program. While proponents of legalization argue that the war on drugs is not effective, creates victims and break up families, as well as being racist in outcome, opponents of legalization argue in favor of the status quo. For supporters of the status quo, the war on drugs is effective. It protects the society from crime, discourages would be drug users from taking drugs because of the fear of punishment and has reduced the number of drug users. Although both sides disagree on the effectiveness and necessity of the war on drugs, they agree that indiscriminate use of drugs or drug addiction is not good, even dangerous for individuals. However, opponents of the war argue that the decision to use drugs or not is a personal decision and as adults, people should be responsible for their actions. For the libertarian, any action that does not harm any other party should not be criminalized.

For me, the war on drugs is misdirected. It is a misdirected war because drug use is not a crime in itself, it is a crime because it is prohibited. It falls into the group of what lawyers call *mala prohibita*, that is, acts that are wrong because they are prohibited by law and not inherently wrong. Examples include driving on the wrong side of the road or gambling. Unlike *mala prohibita*, *mala in se* acts are bad in themselves and are agreed upon by all to be wrong. Such acts include rape, murder and theft (Ross 2000, 5). Acts that are wrong in themselves are not debatable, they are universally wrong. Such wrongs, for libertarians, are the ones referred to as violating the negative rights of others. They are acts that infringe on the liberty of others and by nature are crimes that have victims. Libertarians generally oppose criminalizing victimless crimes. The use of the words “illicit drugs or illegal drugs” in itself shows that there is nothing inherently wrong with drug use other than its criminalization by government. By using such terms, scholars writing in favor of the status quo are making value judgements, imputing their values into a debate that should otherwise be characterized by considering the facts and aiming to get the objective truth. If not, why don’t they use words like “illegal rape or illicit theft?” It would be obvious to anyone that words like illegal rape or illicit theft are tautological

because rape and theft are both inherently wrong morally and legally and do not need to be described as such again.

Also, punishing drug addicts, for me, amounts to a case of double jeopardy. Addiction itself is already a problem for the addicts and their loved ones. Why, then, should the state increase the burdens of these folks by jailing someone who is already suffering? The attitude of government to addicts when compared to their attitude to other groups that need help makes one to see a double standard. For instance, we do not jail people who are suicidal, rather we support them and provide them with resources that help them to get out of their problems. Instead of jailing addicts, government, concerned citizens and civil society groups can create and fund rehabilitation centers that can help people overcome their addiction.

Not only is jailing addicts and drug users a double standard, the matter can be well handled by the society, instead of the state. The state should concentrate its resources on more positive endeavors like better funding for education, rebuilding crumbling infrastructures and only use its resources and coercive power to punish real crimes that infringe on the rights of others. Society has informal resources like ostracizing drug addicts, refusing to socialize with drug users and addicts and other similar non-coercive means of enforcing morality. Punishing drug users because drug use makes “people more disposed to criminal behavior” as argued by supporters of the war on drugs is preemptive. It is like arresting young men and boys in their late teen because statistically they are more likely to commit crimes than any other group. If we do not jail people for being potential criminals, why jail drug users for the crimes they have not committed? Everyone agrees that crime is not good for society, but what should be punished is the crime itself, not the potential to commit crime, which is what the state does when it punishes drug users for no other crime than drug use or possession.

Furthermore, the war on drugs is overtly paternalistic. Drug use is no more dangerous than many other activities that we value and celebrate as a country. Between the months of September and November 2015, no less than nine deaths have occurred in Elementary and High School sporting activities (cnn.com). The victims range from the age of 9 to 16, but the government and society have

not banned sports in schools. Every year Americans engage in activities that are dangerous but valued by society. Thousands of people go mountaineering, skating, hunting, and shooting, etc., yet they are cheered by and encouraged in such dangerous activities and rescued if they get into trouble. But when drug users get into trouble, they cannot seek government help because they are sure that the only “help” they would get would be jail time. There are other games that young people engage in, like binge drinking, reckless sexual activities among teenagers and young college students, which expose many to the risk of sexually transmitted infections (Cooper 2002, 101; Brown and Vanabe 2007, 2940). In many cases, these activities are socially tolerated and viewed as part of the college experience.

The war on drugs, as shown by statistics, is much skewed against racial minorities and the poor. Data show that blacks and whites consume drugs at similar rates, but blacks are more likely to be jailed and have longer sentences than whites for the same offense (Blumstein 1993). The war on drugs has decimated many black communities making many children fatherless and many black women single mothers. To worsen their situation, when these convicts are released from prison, they have a bleak future and are more likely to return to a life of crime because in most cases they cannot get jobs or housing, and are not eligible for many social services (Sphon & Holleran 2002, 329).

In a similar vein, the poor are more likely to get jail time for drug use than the rich. Some American politicians, sports and media figures have admitted to using drugs in the past. For example, Bill Clinton, Jeb Bush, Barrack Obama and Michael Bloomberg are just a few American politicians who have admitted to using recreational drugs at one time or the other in their lives. One wonders what would have become of these people if they had been caught and sentenced for their activities in those times. Unlike these popular and successful Americans, many others are unfortunate to have been caught using drugs and have their life prospects ruined because of a simple youthful indiscretion. To this end, it is not wrong to argue that the war on drugs has not been fair in its effect on the poor and minorities in the US.

Below is a graph showing the disparities in arrests for drug offense between blacks and whites despite similar rate of drug use between the two groups.

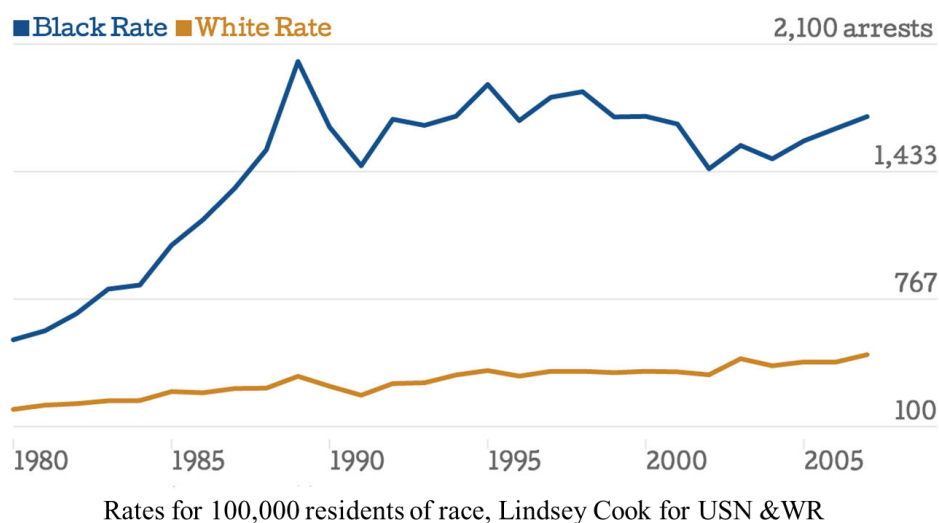


Figure 5. United States Rates of Adult Drug Arrests

Source: Human Rights Watch

On same-sex marriage, renowned legal and moral philosophers like George, Bradley, and Finnis argue that homosexuality is unnatural because it is not reproductive or unitive in type (Finnis 1993, George and Bradley 1995; George 2001). To claim that a same-sex relationship is unnatural is to equate naturalness to morality. Nature is amoral. It is humans that ascribe morality to natural entities or behavior. There is nothing unnatural about same-sex relationship. Anything unnatural is anything impossible. If something is possible in nature, then, it is natural. For instance, it is unnatural to flap one's arms and fly to the moon. It is simply impossible in nature for humans to fly, but if something is possible like same sex copulation, then, it is meaningless to say that it is unnatural.

Not only is same-sex intercourse possible, scientists have found same-sex behaviors among animals like dolphins, and both George and Bradley agree that some people are by nature attracted to members of the same sex. One wonders, then, what they mean by "unnatural?" If some people are innately attracted to members of the same sex, is that not a proof that a same-sex relationship is natural? Although, most people are heterosexual, it does not mean that homosexuality is unnatural because there are few homosexuals compared to heterosexuals. In the past, people have argued that

being left-handed is not natural because there are few left-handed people in the general population but today it is hard to find anyone who still think so.

Finally, opponents of same-sex marriage argue that sexual relationship outside of heterosexual marriage is directed toward a selfish end, and is therefore immoral (George 2001). The question that comes to my mind is: who determines the purpose of sex and defines its morality or otherwise? George and others in the natural law tradition are only trying to impose their moral view on all of us. This is not only conceited; it is dangerous to social harmony in a multicultural society like ours. The purpose of sex should be decided by people who willingly engage in intercourse. As long as the relationship is between consenting adults, the end to which their intercourse is aimed is irrelevant. It is their personal business, and the state as decided in many cases, has no business in interfering with people's privacy, as long as no crime is committed in the process. George and his colleagues are the ones to be accused of selfishness for thinking that we all owe them our lives and should live by the dictates of their consciences. Each person's life is his to dispose of and everyone should be free to live as he wants, either soberly or riotously, as long as nobody's rights are violated in the process. I agree with libertarians that we are unencumbered selves. Unencumbered by culture, religion or any other unchosen obligations, we should be free to live our lives as we want, free from government and societal interference.

On abortion, I am inclined to believe that life begins at conception. My position is based on the fact, that but for abortion or illness, a day old fertilized egg is the same person that grows into adulthood. Therefore, to debate over when life begins is an ingenuous way of supporting abortion. Sexual intercourse other than in the case of rape and incest is a pleasurable activity that people choose to engage in. As responsible adults, one should be ready to face the consequences of his or her actions, and every rational person knows that with every sex act comes the risk of pregnancy, even with the use of contraception. To this end, there is technically nothing like unwanted pregnancies. I only agree to the term unwanted pregnancy in cases of rape or incest. Other than these, to consciously engage in sexual intercourse is to leave room, no matter how small, for the possibility of pregnancy.

While not being a perfectionist who is worried about preventing sexual “corruption,” I worry about the right of babies to life. Although pro-choice theorists claim that a fetus does not have a right to life on the accounts of its dependency on its mother and lack of characteristics grounding rights, the argument is a slippery slope. Is dependency a criterion for choosing who lives? If yes, then babies, people in comas, severely disabled individuals and many old people do not have a right to life. To me, concern for the fetus trumps the liberty of the mother. By knowingly engaging in sex, a woman should be ready to bear temporary inconveniences of pregnancy. It only lasts for nine months compared to the loss of someone’s life. Thompson’s analogy of the violinist does not apply here because no one is responsible for the violinist’s condition, but in the case of a fetus, the mother and father are directly responsible for its being, except in the cases of rape.

Although, I do not subscribe to criminal prosecution of women who abort because it is imprudent and will increase the risks of more women seeking abortions from quacks, I support moral campaigns on mass media to discourage abortion because it violates fetus’ right to life. As a community of people, we all value altruism and praise people for self-sacrifice and altruistic acts. We should extend the same attitude to pregnant women and their pregnancies. The society should promote a moral view that a mother should be willing to sacrifice her convenience for the life of her baby, albeit temporarily. Government, civil society groups and willing individuals can also provide more resources to indigent women in pregnancy. This can discourage more women from having an abortion. We should bear in mind that abortion is not free, it costs either the state, health providers, insurance companies and individuals some money to do the procedure. Some of the resources used for abortion can be directed to the care of pregnant women and children. This, I hope, can reduce the reasons for some women wanting to have an abortion. The goal is to keep abortion “safe, legal and rare.”

To cap it all, government should make laws that promote family friendly practices in work places. This alone can help many women to make a choice of keeping their babies because they do not have to choose between their career and a family life (Condrey 2005). It is disconcerting that the US is the only major country that does not have a comprehensive maternity leave policy for mothers. With

its status as the richest, most industrialized country in the world, the US can afford to give pregnant women time off with pay to give birth and nurse their babies for a period of time before returning to work. The only thing standing in the way of a maternity leave policy in the US is just the political will. If the political will is present, the goal can be achieved. Not only will a policy on paid maternity leave benefit women more, it will benefit the economy more as women don't have to choose between their jobs and raising a family. It will also boost women's commitment to their jobs (Ibid). The debate on family friendly practices in the work place is a debate worth having in America today.

Having discussed the contentious debate between perfectionists and anti-perfectionists, I am persuaded that anti-perfectionism is more compatible with liberty and should be the principle of governance in a democratic country like ours. Examples abound of the cruelty of perfectionist regimes in times past, as well as in modern times. In countries like Saudi Arabia and Iran, homosexuality is still a crime, punishable by death. Likewise, in Nigeria, Uganda, and Kenya, homosexuality is punishable by imprisonment. In Uganda, the punishment is life in jail, while in Nigeria and Kenya, gays and lesbians are subject to fourteen years in prison if found guilty. It is a tremendous waste of resources for countries like Kenya and Nigeria that have not been able to effectively tackle terrorism and provide basic infrastructures for their people to be devoting their resources to fighting their countrymen and women, who are not criminals, but just have a lifestyle different from the majority!

Another problem with perfectionism is that it fails to take into consideration the differences between different people, times and places. Perfectionists assume that there is a human good as well as a universal view of human nature. However, there is no objective human nature other than the physical and biological characteristics of human beings. Not only that, human beings are not animals that are controlled by instincts. We are by nature rational and reflective beings, who have the capacity to weigh our thoughts and actions, and choose those which are most compatible with the ends we set for ourselves. Our ends will vary depending on our age, social status, the time and place we live, and we should be able to live according to our choices, as long as we respect the right of others to do same.

Also, perfectionism is mostly based on unexamined comprehensive religious, philosophical and cultural worldviews. The good and human nature are defined in various religious scriptures and cultures. These definitions are not often subject to debate or reason, but are accepted at face value as matters of faith or as a necessary condition for being a member of a community. In modern times, some of these beliefs have been subject to debates to which we can find no agreeable answers. Therefore, imposing perfectionists' view of the good on all is imposing the view of a group on all and sundry, even when some disagree with such a view. In some cases, this view is even the view of a powerful minority, but it becomes the law for everybody because the minority is backed by the coercive apparatus of government.

Finally, I find anti-perfectionism as most compatible with liberty because it guarantees freedom for all. If perfectionists have their way, we would all live in the same manner. Such life will definitely be very boring because there will be no variety and there will be no alternatives to choose from. It will be difficult or impossible to evaluate our lives in a perfectionist society, because there are no alternative lifestyles that we can compare ours to. In an anti-perfectionist society, however, everyone is free to live as he wants. People will have more choices, and even when they agree to the same ends, they can compare different means of reaching them and choose the most plausible one.

Not only that, in an anti-perfectionist society, people with perfectionist's worldview can still have their say as well as their way in their personal lives, only that they cannot force their views on everyone. For example, people who are against homosexual relationships, drug use and abortion, are not forced to abandon their views. They can choose to remain heterosexuals, refrain from using drugs and carry their pregnancies to term, and if in the future they change their minds, they can adopt any other lifestyle or moral code that suits them. Likewise, people who are pro-choice, gay and drug users are free to turn a new leaf if they find their former lives unworthy.

Indeed, there have been some cases of gays becoming heterosexuals, as well as repentant pro-choice activists and drug addicts, who now try to reason with others to embrace their new lifestyles. This is the essence of freedom. People should be free to choose their ends at any point in their adult

lives, if such ends are compatible with the non-interference with the rights of others. Denying them this choice interferes with their lives as freely choosing beings, and in my view, it partly denies their humanity. The ability to choose is a fundamental human right, which should not be denied to any reasonable adult under the guise of perfectionism.

I now turn to the next chapter in which I will discuss libertarians and democracy.

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CHAPTER 6

LIBERTARIANS AND DEMOCRACY

The issues of governance and government have always topped the minds of political philosophers. The question of the right relationship between the government and individuals occupies a prominent position in political theory, and with that, questions the proper form for that government. While some argue that the state is prior to the individual, others opine that the individual is prior to the state. Aristotle, for instance, thought that the state is natural and does not need any explanation (Carneiro 1993). On the other hand, social contract theorists like Hobbes, Locke, and Rousseau argue that the state is not natural, but that it arose out of a contract by people in the state of nature (Kymlicka 2002). Other than the origin of the state, another prominent question of political theorists is, who should rule and how decisions about social and economic policies are to be made.

Unlike the theorists who take the existence of the state for granted, libertarians are often suspicious of the state. With regards to government, there are two types of libertarians, the anarcho-libertarians and limited government libertarians, also known as minarchists. While anarchists argue that the state is morally dubious and practically unnecessary as its existence often threatens the liberty of people, minarchists hold that although the state poses a threat to liberty, it is a necessary evil. Because the state is a necessary evil, minarchists want the government to exist only as protectors of negative rights and enforcer of contracts, that is, a minimal state. To them, any government that goes beyond these few duties of a state is a moral aberration, whatever its form.

For anarcho-libertarians, the state cannot be justified. They argue that prior to the existence of the state, people lived in families as in small communities and that each member was equal to the other. According to them, human society then was not in the form of a state but an association. The state, they argue, came into existence because the strong wanted to control and dominate the weak and that the state is always an aggressor (Goldman 1940, Block 2007 and Rothbard 1977). To this end, the state, they claim, is always a violator of individuals' negative rights. For instance, Goldman claims that "the state, every government whatever its form, character or color -- be it absolute or constitutional,

monarchy or republic, fascist, Nazi or Bolshevik—is by its very nature conservative, static, intolerant of change and opposed to it” (Goldman 1940, 4). However, the claim that before states came into being, all people lived in families and were equal is demonstrably false or at best controversial. Going from known human history, most societies were patriarchal, where men were the heads of their homes as well as rulers of society.

The conservative nature of the state in the anarcho-libertarian’s view makes it unacceptable for the state to share its power with any other actors. This is the reason for the state’s opposition to individual sovereignty, they argue. The idea of individual liberty is not compatible with state sovereignty; therefore, the state, they claim, would not allow individuals to be free from its hold because individual freedom limits the state’s power. The state, they hold, exists by coercion. If it is not coercive, it is no longer a state, but an association. Since they are opposed to any form of coercion, other than to protect individuals from criminals, anarcho-libertarians are opposed to government of any kind. In the place of government, they argue in favor of protective associations from which people voluntarily purchase protective services.

Anarcho-libertarians also reject the state or government because they claim that government is always inefficient. They reject the notion that government is necessary to provide public goods which markets fail to provide. First, they disagree with the concept of public goods. They argue that the distinction between public and private goods is arbitrary. For instance, they claim that some of today’s private goods were classified as public goods in the past. Examples include television which was formerly provided on public airwaves by government and funded by taxes, but is increasingly becoming a private good with the entrance of cable television into the market (Hoppe 1989).

Second, Hoppe argues that the provision of public goods by government leads to inefficiency. According to him, since prices help to determine the allocation of resources and the value of goods, government provision of public goods cannot be efficient because there is no way to measure the true price of such goods. As long as government allocation of resources is not determined by profit or loss, government can continually allocate resources to provide goods that are not wanted or needed by the

people. If people are not willing to pay for a good, then it is not valuable to them. Forcing them to pay taxes to provide such goods is inefficient because the money they pay in taxes for such goods cannot be used to purchase other things in the market, which may take priority for them over the government-produced public good. Still on the problem of allocation of resources, Hoppe argues that the basic economic problem of what to produce, where to produce, how to produce and for whom to produce cannot be answered by the government. For instance, in its monopolistic provision of security, he claims that it will be difficult for government to appropriately allocate resources to the various aspects of security provision because security is not a lump sum whole but can be supplied in marginal units. For example, different people, in his view attach importance to different levels of security based on their past experience. Should the government provide more security against robbery, rape and murder or should government provide more against cybercrimes, fraud, polluters or natural disasters? (Hoppe 1989, 35).

Hoppe also claims that the problem of how much to produce can only be answered arbitrarily by government in the absence of the market, especially with regard to security. How many police officers do we need, ten or one and how much should they be paid? Should the police spend more time and energy chasing robbers, patrolling streets or arresting victimless criminals like prostitutes and drug users? How many judges should there be? Should we have more judges handling divorce cases or criminal cases? Hoppe argues that matters like the above cannot be resolved without the market.

Finally, Hoppe argues that the quality of public goods is nothing to write home about because there is no direct bearing between their provision and consumers' satisfaction. Citing examples from police officers and judges, he claims that the ubiquitous cases of police brutality continue unabated because police remuneration is not based on their market value. In his view, if police jobs depended on customer satisfaction, then incidents of police brutality will be reduced because customers will not patronize security firms that do not treat them with dignity. The judicial process, he claims, is also very slow because there is no direct relationship between the consumers and the producers (judges). If

the judicial process were to be operated according to market principles, judges would attend to cases with dispatch, as anything short of that will make them lose their customers (Ibid).

The question then arises, in the presence of anarchy, how do we protect ourselves from criminals and enforce contracts? Anarcho-libertarians answer this question by proposing a market solution. To them, the market is a quid pro quo and it is a solution to every problem. They argue that anarchy is not chaos. It is only the absence of government, giving individuals the opportunity to choose how to govern their lives. They suggest a system of “polycentric laws” (Brennan 2012, 58). They claim that with polycentric laws, multiple organizations provide laws in any given area and individuals are free to shop among these various providers. They argue that if conflicts happen among different customers of the various laws, they will approach an arbitration panel endorsed by all the parties because they would not want to engage in violent conflicts (Ibid). Brennan rejects the claim that a polycentric legal system will be chaotic. Instead of chaos, he claims that most of the best laws we have today actually evolved from polycentric legal systems. According to him, property, merchants, commercial and tort laws of common law countries like England, the US, Canada, and Australia evolved in a polycentric legal system without the state’s involvement. These laws, according to Brennan regulated commerce for centuries before government finally adopted them.

He also cites medieval England as an example of a successful polycentric legal system. According to him, in medieval England, the king, the lords and the church ran competing courts. Disputants were at liberty to bring their cases before any of these courts. The courts made profits by their reputation for making the best decisions. Although both parties want to win, he argues, they are also both interested in a court that will reach a decision they can both live with. In our own time, Brennan claims that we already have a sort of polycentric legal system, albeit a limited one, in which disputants like universities, landlords and tenants, or banks and their customers seek conflict resolution by boycotting the state legal system and instead opting for private resolution through mutually agreed upon arbitration panels (Brennan 2012).

Unlike anarcho-libertarians, minarchists argue that society without the state may be chaotic. Minarchists build their doctrine of government on the social contract theory of John Locke. Unlike the Hobbesian state of nature where life was “solitary, poor, nasty, brutish and short” and a “war of all against all” (Hobbes, 1651) and where only a powerful government like an absolute monarchy can ensure an orderly society, Locke’s state of nature was safe and secure but only needed a government to punish those who deviate from the natural moral norms including respecting the property rights of others (Locke 1689, sections 2, 7, 8, 123, 126).

For them, although the state has a monopoly on coercion, it is given to it by the consent of the people and it may be withdrawn by the people if the power is abused. For instance, the American Declaration of Independence, based on Locke’s philosophy, reads thus:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. ...That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed ...That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness (Jefferson 1776).

The Bill of Rights was introduced into the American Constitution by the founders to restrain the government’s power over individuals. It is against this backdrop that libertarians like Machan and Nozick argue in favor of a limited government that protects the negative rights of citizens and enforces contracts (Nozick 1974, Machan 2002). Although both anarcho-libertarians and minarchists have a distrust for government, minarchists hold that government is inevitable for a free society, and they then argue that democracy is the best form of government, since it is the most compatible with negative liberty.

However, limited-government libertarians are very aware of the dangers of democracy. Like Tocqueville, they are aware that democracy may lead to “majority tyranny.” In their view, the purpose of democracy is the limitation of government power over the individual. They argue that democracy

is not an end in itself, but a means to an end. For example, Hayek argues that “If it is to survive, democracy must recognize that it is not the fountain of justice and that it needs to acknowledge a conception of justice which does not necessarily manifest itself in the popular view on every particular issue” (Hayek 1960, 117). For Hayek, democracy is a means to secure justice, and not justice in itself, which he defines as impartiality.

Like Hayek, Machan opines that democracy, if it trumps liberty, is self-destructing. Citing the example of the Weimar republic, democracy put Hitler in power, and he turned out to be a monster who lacked total respect for liberty. Machan claims that “democracy is just as capable of being totalitarian as is a dictatorship, only with democracy it seems less unjust, given that this little bit of liberty is still intact, namely, to take part in the vote” (Machan 2011, 61). Machan observes that there is a danger today as most institutions of government and education focus not on liberty, but on democracy, thereby treating democracy as an end in itself and not a means to an end. “In caring about democracy mainly or only, the more robust liberty that everyone is entitled to as a matter of his or her human nature is now seriously neglected” (Ibid). To this end, Machan and other limited-government libertarians call for a return to renewed focus on liberty as the end of government and the reduction of the excessive power the state has come to wield over the years under the guise of democracy.

Like other minarchists, Von Mises also agrees that democracy is a necessary evil. He rejects the idea that democracy enhances people’s dignity because they can participate in self-government. He compares government to the division of labor. For him, there is no problem if only a class of professional politicians rule. Just as everyone cannot be a police officer, and there is no shame in not being a police officer, everyone cannot be in government or participate in governance, and there is no shame in that too. The only advantage democracy has over other forms of government, in his thought, is that democracy is the only form of government where it is possible for the governed to peacefully change those in power.

Mises argues that in other forms of government, government also depends on the will of the people, but mostly because of the fear of violent uprisings. “There is, therefore, in every form of polity

a means for making the government at least ultimately dependent on the will of the governed, viz, civil war, revolution, insurrection. But it is just this expedient that liberalism wants to avoid” (Von Mises and Greaves 2014, 21). For him, what matters most is economic development. However, there cannot be economic development in the face of political instability. To this end, democracy is the most tolerable form of government because it is the most stable.

Friedman also agrees with Von Mises on the essence of classical liberalism. He prefers the term liberalism which encompasses free market and democracy. He argues that there is a logical relationship between economic freedom and political freedom. For him, economic freedom is both an end in itself and a means to an end, political freedom. According to him:

Economic arrangements play a dual role in the promotion of a free society. On the one hand, freedom in economic arrangement is itself a component of freedom broadly understood, so economic freedom is an end in itself. In the second place, economic freedom is also an indispensable means toward the achievement of political freedom (Friedman 1962, 8).

The most important thing, however, is economic freedom, which mostly corresponds with political freedom. Friedman argues that the type of arrangement that promotes economic freedom directly, that is, capitalism, is that which also promotes political freedom “because it separates economic power from political power and in this way enables the one to offset the other” (Ibid, 9). According to him, all through history, all politically free societies have also been organized along the free market principles. Free markets, though a necessary condition for political freedom, are not sufficient to guarantee political freedom, and he cites Germany in the 1930s, where there was economic freedom, but political liberties were not guaranteed for all citizens.

Although, there is a relationship between economic freedom and political freedom, the relationship is complex and not unilateral, he argues. Political freedom, he claims can be detrimental to economic freedom if the majority votes to promote economic equality. He sees this situation as the bane of most democratic states in the twentieth century. In most of Europe and the United States, the

emphasis has been shifted from freedom to equality. Thus, the state has embarked on welfare programs that stifle economic freedom by taxing people to fund the welfare programs of the state.

It is against this backdrop that Friedman, Hayek and others rose up to defend individual freedom. For these theorists, the emphasis is on individual freedom and economic freedom as a means to political freedom. They define political freedom mainly as civil liberties and negative rights, and ignore or downplay any more positive conceptions in which freedom might include the opportunity to collectively define answers to questions of education and equality of opportunity. In their view, democracy, if it goes beyond the protection of negative rights and enforcement of contracts freely entered into, is unjust and a violation of freedom. For Friedman, democracy promotes conformity without unanimity while markets promote diversity with unanimity. According to him, economic freedom is like proportional representation in political organizations. One can vote for the goods of his choice, provided he has the means to purchase them, but in a democracy no one can get all he wants because government policies and programs come in a package. One may vote for policy A, but has no way of separating A from policy B, even if he does not like B. Not only that, one has to accept the will of the majority, even if it is contrary to one's wishes. Because markets enhance diversity without obstructing individual freedom, Friedman argues that government should be limited strictly to its role as an enforcer of negative rights and contracts and allow markets to provide all other needs of people.

Finally, going from the above, Brennan argues that political liberties are not necessary or that important. He claims that what most people want are civil liberties and economic freedom. As long as most people are free in their daily lives, Brennan claims that they have little or nothing to worry about political liberties. For him, modern political theorists are only biased in favor of political liberties because they view everyone through the prism of their own preference. According to him, "it is a contingent, psychological or cultural fact that people tend to associate human dignity with political power" (Brennan 2001, 8).

6.1 Critique of Libertarians' View of Democracy

Democracy as an ideal has been a controversial topic among political philosophers from the early Greeks until recently when the idea has become more acceptable as the best form of government to most political theorists and scholars. For classical perfectionists like Aristotle, the idea of expansive negative liberty, which is the basis of libertarianism, amounts to corruption. They reject the notion of anarchy because they believe that the average person is not capable of self-government. To this end, they argue for government as a means of controlling people and making them live a life of virtue. To them, government does not exist only to protect people's negative rights, but also to promote the common good.

Classical perfectionists reject the notion that the right is prior to the good. The good in their conception is prior to the right. To know what rights a person has, we must first know the good. The right is that which promotes the good. In their view of the good, the individual is relegated to the background in favor of the society. Rulers should not be appointed by elections or based on popularity, but on virtue. Plato and Aristotle both despise democracy because they claim that the people (demos) are often ignorant. They both reject because it rests on equality for unequals. They argue that there is hierarchy in nature and those who must govern are those who have been chosen by nature to govern and have been trained specifically for the art of governance. Plato, for instance, posited that because the public (demos) is uneducated and ignorant, if they are allowed to choose their governors, they will choose those who will not restrain them from vices, who will not obey their consciences but allow them to continue living viciously. The leaders on their part will acquiesce to the demand of their followers because they want to retain their power (Plato, 588).

Like Plato, Aristotle also rejects democracy as a good form of government. While discussing the various types of constitutions, Aristotle listed monarchy, polity and aristocracy as good forms of constitution and tyranny, oligarchy and democracy as deviant forms. He condemns democracy because it makes unequal people equal. In his view, the majority, who are often poor, are largely driven by their class interest rather than the public interest (Aristotle, 3.1279a21-b 19, Lintott 1992).

Although Aristotle condemns democracy, he prefers democracy as the best option among the bad forms of government and could be said to even have democratic dispositions. Democracy, he wrote, is the most tolerable of all the deviant constitutions. In a democracy, the aggregate wisdom of the majority might surpass the wisdom of a king or that of a minority ruling class, he opines (Aristotle 3.1281a40ff). He compares majority decision on issues to a potluck where the various types of foods supplied by different individuals will be tastier than the food prepared by a single person. He also argued that the people are better judges of laws because they are often the ones most affected by them. Aristotle further argued that the best form of government is one in which people rule and are ruled in turn. He makes room for majority participation in government. In fact, he defines a citizen as one who partakes in governance (The Politics, 6.1317b2, 2.1261a22-1261b6).

In comparison to libertarians, who despise government as a violator of rights and put primacy on the negative rights of people, allowing government only as a last resort whose duty is to protect people's negative rights and enforce contracts, classical theorists reject such view of government as perverse and corrupt. The idea of individual rights does not feature in the philosophy of early classical theorists like Plato and Aristotle. Their main concern is with the promotion of virtue and the common good, and they argue that a society which focuses on the individual at the expense of the community will soon disintegrate.

Like the Greeks, present day communitarians or classical republicans also reject the libertarian idea of the atomistic individual. They argue that government is an important part of any society and that the role of the government, among other things, involves the promotion of virtue. However, for them, the best form of government is deliberative democracy. The republic, in their view, should involve the participation of every capable adult. For them, participation in self-government promotes virtue and the common good (Sandel 1996, 201-203). For Sandel, the idea of the unencumbered self who owes no obligations to anyone other than the ones he freely chooses is responsible for the decay in American public life today. This has led to an increase in crime, drug abuse and a high level of frustration that pervades the land. According to Sandel:

The sense of disempowerment that afflicts citizens of the procedural republic may reflect the loss of agency that results when liberty is detached from self-government and located in the will of an independent self, unencumbered by moral or communal ties it has not chosen. Such a self, liberated though it be from the burden of identities it has not chosen, entitled though it be to the range of rights assured by the welfare state, may nonetheless find itself overwhelmed as it turns to face the world on its own resources. (Ibid, 203).

Unlike libertarians, liberal egalitarians do not see democratic government only as a necessary evil, but also as a good that helps individuals to also achieve the ends they set for themselves. While libertarians are fixated on negative rights and enforcement of contracts, liberal egalitarians, although they agree wholly with libertarians on the importance of both, go on to often place more emphasis on positive rights including aspects of democratic governance and political liberties. For them, the right to participate in self-government should be a given. Not only is the right to participate in self-government by voting and being able to aspire to any political position a means to an end, like libertarians believe, it is an end in itself.

For instance, Rawls argues that in the original position everyone will choose the maximum amount of liberties compatible with the maximum liberties for all. Although he did not name democracy as the type of government that will be chosen in the original position, one can easily infer that it is only a democracy that grants the maximum amount of liberties compatible to the maximum liberties of all for everyone (Rawls 2001). For liberal egalitarians, economic justice is necessary for political liberties. This makes Rawls argue for “the fair value” of political liberties. To have fair value of political liberties, he argues that certain institutions should be put in place, such as public financing of elections and free network time to guarantee "that all have a fair opportunity to hold public office and to affect the outcome of elections, and the like." (Rawls 2001, 149).

In sum, the major difference between libertarians and liberal egalitarians on democracy is mostly on the importance of the role of government in the economy. While libertarians argue that government has no role in the economy other than to protect people from coercion and enforce

contracts, liberal egalitarians argue that government has a duty to protect the weak and ensure that everyone has a fair shot and a dignified minimum standard of living as human beings. I will not discuss this difference further in this chapter as it has already been treated in great detail in chapter three.

At first glance, the libertarian idea of anarchy appeals to many people, especially the young. However, it is not a plausible idea. First, libertarians argue in support of negative rights, claiming that people can voluntarily enter into contractual agreements to protect themselves from aggression, but the idea of a negative right is only metaphoric. There can be no claim to a right if there is no mechanism of enforcement. In most of known human history, the agency that protects these rights has often been the government. To this end, all negative rights are also positive rights because they are rights only when they are protected (Lee 2008). In spite of its imperfections, government has evolved over the centuries, and for some, liberal democracy is the pinnacle of human civilization (Fukuyama 1989).

Although democracy is not perfect, neither is any human endeavor. Mature democracy is the most amenable to freedom. In a mature democracy, government is responsive to the people because its officials are elected by the people. To safeguard their position, democratic leaders have an incentive to act according to the will of the majority. Even Aristotle, despite his critique of democracy in his day, observed that the majority may be superior to the minority in their wisdom. Libertarians may argue like Tocqueville that democracy is susceptible to the “tyranny of the majority,” but mature democracies have built institutions that protect the minority from the whims and caprices of the majority. In fact, a mature democracy cannot exist without the guarantee of individual rights enshrined in its constitution.

Another advantage of democracy is that it is the most compatible with world peace and stability. Mature democracies do not go to war with each other. This is because they both share norms of cooperation and compromise which prevent disagreement among them from resulting in violent conflicts. For more than two hundred years, no two mature democracies have gone to war with each other, even though there have been lesser conflicts among democratic dyads (Maoz and Russett 1993). Also, democracies have institutions that make it harder for their leaders to mobilize for wars without

necessary justifications. To mobilize its citizens for war, democratic leaders must gauge public opinion. If the public is against war, a democratic leader embarks on it at her own peril. Furthermore, the president or the prime minister is not the sole decision maker in a democracy. For a declaration of war, democratic leaders are expected to seek permission from the legislative arm, and the legislators in turn are answerable to their constituents. These institutional hurdles make it less likely for democracies to be involved in war with each other, although they often go to war with non-democratic states (De Mesquita, Morrow, Siverson and Smith 1999; Maoz and Russett 1993; Layne 1994). If democracies do not go to war with each other, it implies that if there are more democratic states in the international system, there will be a drastic reduction in war, making for a more peaceful and stable world. Libertarians, however, doubt the democratic peace theory. They claim that rather than democracy causing peace, it is peace that causes democracy, and peace come from trade. They agree with Gartzke that economic development and free trade lessens interstate military disputes. For them, the term capitalist peace should replace the concept of democratic peace (Gartzke 2007).

Finally, libertarians, both anarchists and minarchists, are tapping into a legitimate frustration of many people across the world over government. No doubt, governments like Stalin's, Mao's and the Khmer Rouge have been responsible for the deaths of millions of people, and in recent times, the Arab Spring was a demonstration of the failure of dictatorship to promote peace and human welfare. On the democratic front, especially in the United States, Occupy Wall Street, the Black Lives Matter movement, and demonstrations in Ferguson, Missouri and Baltimore, Maryland show that democracy, even in the oldest constitutional democracy, still has a long way to go in engendering peaceful cohabitations among members of different ethnic and social groups. However, one should note that none of these events led to or will lead to total chaos in the country as there are institutions capable of resolving the conflicts.

The gridlock in Washington also makes many Americans frustrated and distrustful of government. This also plays into the libertarians' narrative of the ineffectiveness of government and the need to eradicate government or in this case, to limit the scope of government. The argument is a

plausible one. Of necessity, a very large and diverse country like the US cannot have one size fits all government. To this end, an all-powerful federal government cannot necessarily provide easy solutions to the various problems of different groups. More power needs to be given back to the states and local communities to control their fate. It is obvious as seen in the most recent democratic experience of America that states like Idaho and New York hardly have a lot in common. America is divided along party lines, Blue, purple and red states, as well as divisions of size and rural versus urban states. There is also ethnic and racial division. States like California, Texas, and New York that are very large and diverse do not have the same outlook as states like Wyoming, Utah and Idaho that are highly homogenous and rural. It cannot be expected that representatives of these states too will have much common ground in Congress. Little wonder, then, that Rousseau suggested that for democracy to be effective, it must have a manageable size. It must be big enough to sustain itself, but not so big that it is impossible or difficult to govern.

Rousseau argued that when a state is too big, governance become costlier and laws become more difficult to enforce. Also, he opined that when a state becomes too big, people become exhausted from following different orders from the different levels of government. Furthermore, the people lose affection for their leaders when the state is too big because their laws cannot be suitable for people who live in different regions and have various customs (Rousseau, Book II, Chapters VIII-XII). This is applicable to modern day America and there is a need for government reforms that put into consideration the size of America and its diversity. The more power is devolved to the states and local communities, especially on very important matters, the less will be the frustration with government.

However, despite all the problems associated with democracy, it is still the most legitimate form of government. Democracy is popular because it confers legitimacy on the government and provides for a peaceful transition from one administration to another. Even libertarians recognize this fact. Democracy is so popular to the extent that even dictators like Saddam Hussein and many communist regimes hold elections to provide them with a semblance of legitimacy. While the fear of libertarians about the domination of the minority by the majority may be genuine, democracy has a

way of resolving its internal conflict and contradictions. Democracy is not static but dynamic. A clear example is the US democracy that has been able to transform itself from a slave owning democracy to a free society for all. Although there are still some problems, they can also be overcome with time. The main solution is to find an equilibrium between the size of government and individual freedom. We need a government that is big enough to protect people both from criminals and the impersonal forces of the markets in the economic sphere and small enough not to threaten their liberty.

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CHAPTER 7

CONCLUSION

The primary objective of this work has been to examine Libertarians' proposals for the question of how best to organize our political society, and how best to handle some specific policy questions. I have also examined the positions of libertarians' critics on the same issues before making my proposals on what I think are the best solutions to the problems.

In all, I have examined the views of libertarians and their critics on education, equality of opportunity, social questions and on democracy. The libertarian position can be summarized as the need for a minimal government, that is, the night watchman state that does nothing more than protect people's negative rights and enforce contracts. Anything beyond this is tantamount to an overreach, and a moral violation of rights by government. Government, in this view, is always an evil that can only be tolerated by limiting it. For libertarians, government is always a violator of rights and when given the opportunity to take a step, it walks miles. Therefore, the safest thing to do is to limit it.

Other than being a violator of rights, libertarians also argue that government is always ineffective and inefficient in whatever it does. To solve these problems, they suggest that the market is the only cure. For them, markets have the capacity to meet all the various needs of people. Against this backdrop, they are opposed to any form of government regulation of markets. Markets, they posit, have the ability to self-regulate. The only need for government, therefore, is to provide a legal atmosphere for free transactions and ensure that individuals live up to the contracts they have freely entered into. If this is done, whatever outcomes the market produce are regarded as just.

Since markets are capable of meeting people's needs, libertarians reject government policies involving state control of education. Government, in their view, is the problem with education and not the solution. If government gets out of providing education and taxing everyone to pay for it, the quality of education will improve as parents and students will have various options to choose from provided by the market. If the provision of education is left to the market, there will be no need for government to impose uniform standards as parents can choose the standards they see as the most

suitable for their wards. This system of private education, they argue, will improve diversity, efficiency and effectiveness because it will introduce competition among providers which is a necessary condition for improved products.

I have argued that education, contrary to libertarians' claim, is an issue that is too sensitive to be totally left in private hands. Because education is a form of a public good, total control of education by market forces can diminish opportunities for the poor, who incidentally are the most in need of quality education. Poor quality of education or total lack of education for the poor will lead to a lot of negative externalities for the country. Also, total control of education by private organizations will definitely destroy any idea of the common good left in our society today as there will be no arena for the children of the rich and the poor to interact. To this end, while I cannot argue in support of a system in which there is only public education as it violates the rights of parents and their wards to choose the form of education most suitable for them, I also cannot argue that education should be left totally in the hands of parents or private organizations.

The answer, for me, is a combination of both private and public systems of education as both are not mutually exclusive. Government can do more to increase parental choice of schools for their children by lifting the artificial restriction that makes it compulsory for students to attend public schools only in their locale. However, parents will be responsible for transportation and boarding of their wards if they choose to send them to schools in distant places. This system will lead to more competition among schools in providing better services for students, thereby leading to greater efficiency in the education system.

Similar to their stand on education, libertarians reject government redistributive and welfare policies as means of enhancing equality of opportunity. They argue that all government should do is to ensure formal equality of opportunity, which means that government laws and policies prohibit racism, sexism, and all forms of public discrimination in the society. However, they argue that government cannot prohibit racism or any other type of discrimination for private parties. To do this will be to violate the individual's right to associate with whomever they choose. Libertarians claim

that they do not support racial or gender discrimination but that the market will cure these vices if government agrees. For instance, they argue that a white business owner who refuses to hire blacks or other racial minorities limits the pool of potential talents that may boost his business. In discriminating against racial minorities, a business owner will likely lose some great talents to his competitors, making the business owner rethink things if he wants his business to remain competitive.

As usual, the libertarian idea of formal equality of opportunity seems attractive on its face. However, history has shown that without government intervention, it is almost impossible for the dominant class to relinquish power to the weak in society. Many members of the dominant class find it insulting to share their power and privileges with others, whom they consider inferior. Even with anti-discrimination laws in the US, some organizations still find ways of discriminating against racial minorities and women in employment, housing and other areas. The issue of structural racism is still very much with us today. Consequently, government needs to enforce its anti-discrimination laws more rigorously and create an atmosphere for dialogue because laws alone are not enough to change people's hearts. To this end, I share Rawls view of the "fair equality of opportunity" as a more plausible solution to the debate on equality of opportunity.

On the issue of social policy, libertarians reject all forms of government paternalism and moralism. For them, the only offenses government should prohibit are those that infringe on the negative rights of others. Once the negative rights of people are protected, government, they argue, has no business in making laws that punish people for being gay, using drugs or aborting pregnancies. Government cannot legislate against these activities because they are private acts of individuals that do not encroach on the rights of others. Libertarians argue that people have a property right in their persons and can therefore do whatever they like with their bodies and their possessions as long as they are not encroaching on others.

I agree generally with libertarians and other defenders of anti-perfectionism and public neutrality on the good life. However, government neutrality on the good life does not mean that the society cannot have a conception of the good life. Society can have its own idea of the good life and

can use other mechanisms of persuading citizens to that, as long as it is done in a non-coercive manner. For instance, a church may excommunicate a member for being gay, but the church cannot have the right to jail him or cause him any bodily or psychological injury because of his sexual orientation.

Finally, on democracy, most libertarians opine that since government is only a necessary evil, democracy is the most tolerable form of government because it is the least of all government evils. To this end, as said earlier, libertarians argue that only a minimal government is necessary. This minimal government only carries out the duties of a night watchman. It protects people from crime and ensures that they abide by the terms of the contracts they voluntarily entered into. Apart from these two legitimate activities of government, they believe that government should get out of the way of free individuals living their lives and allow everyone to live as they deem fit. They argue in favor of markets over voting and collective deliberation.

This critique of democracy, however, is very strange to many political philosophers. Communitarians and other perfectionists, for example, abhor the idea of free and unencumbered individuals. They argue that there is no such thing as unencumbered individuals because no one is an island. Every person, they claim, is born into a family, a society or a religious group. They are bound by a communal chord and have unchosen rights and responsibilities as members of society. Communitarians argue that the only way one can be truly free is in a participatory communal context. Freedom is the freedom to have a voice in settling public questions.

Liberal egalitarians also reject the libertarian critique of democracy. Liberal egalitarians and libertarians both have their roots in classical liberalism. However, their main bone of contention is the role of government in society and the meaning of freedom. While libertarians see no place for government in society other than to prevent crime and enforce contracts, liberal egalitarians view government as an instrument of good and social justice, including the dignity of the free and equal citizen which can be respected only with democratic participation.

One basic problem I find with libertarianism is their idea that humans are simply producers and consumers with no other interests apart from these two and also with no group interest. Some

research on human behavior has shown that people are not just selfish individuals, who think only about themselves, but that people sometimes do act in a manner that shows self-sacrifice to promote the good of others. The idea of the common good that libertarians so much despise has led many people to give up their personal comfort to serve in the military, join the fire department and even to donate organs to sick people and those injured in accidents. The extreme individualism promoted by libertarians does not square with real human beings' existence in social groups where self-sacrifice, group interest and reciprocity are often the norms.

Having considered the positions of libertarians and their critics and having offered necessary suggestions, there are still a lot of unanswered questions. Political theorists are still grappling with the question of how best to organize our political society. The answer, for me, lies in finding the right balance between individual freedom and the role of government. Finding this equilibrium, however, has proven elusive over the centuries. Therefore, we are still searching for the appropriate political philosophy that puts this question to rest once and for all. This is the task of modern political theorists, and I wish us good luck as the search continues.