

## Why Does Inequality Matter?

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### Chapter 6: Equality, Liberty, and Coercion

One frequently heard objection to the pursuit of equality is that the promotion of equality involves unacceptable interference with individual liberty. This objection was made vividly by Robert Nozick with his Wilt Chamberlain example, and it has also been made by F. A. Hayek many others.<sup>1</sup> On the other hand, as I said in Lecture 1, one reason for objecting to economic inequality is that it leads to some people having an unacceptable degree of control over the lives of others. So freedom and liberty in one form or another can be appealed on both sides of debates about equality. My aim in this chapter is clarify this debate by examining the different ideas of liberty that are at issue and the reasons we have for caring about them.

As I said in Lecture 1, it is often not clear what reason there is for being concerned with equality itself—that is, with the difference between what some have and what others have—rather than simply being concerned to provide more for those who have less. Equality can seem like a pointless pattern, as Nozick put it, or something that people are concerned with only out of envy.

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<sup>1</sup> Give cites

<sup>2</sup> See, for example, Gerald Gaus's Fundamental Liberal Principle, which holds that "liberty is the moral status quo, in the sense that it requires no justification while limitations of it do."

<sup>3</sup> Cite Cohen and earlier writers?

<sup>4</sup> *The Constitution of Liberty*, pp. 20-21, 133.

<sup>5</sup> Robert Hale, "Coercion and Distribution in a Supposedly Non-coercive State," *Political Science Quarterly* 38 (1923), pp. 470-494. G. A. Cohen made the same point more recently in ... For discussion of Hale's view, see Barbara Fried, *The Progressive Assault on Laissez Faire: Robert Hale and the First Law and Economics Movement* Cambridge, MA: Harvard University Press, 1998).

<sup>6</sup> Although it may be that there is something morally objectionable about exchange, or at least something not ideal from a moral point of view, when it is understood simply in this

In the case of liberty, however, there seems to be no analogous difficulty. An interference with a person's liberty prevents that person from doing something that he or she wants to do. So, almost by definition, it is something that that person does not like, and probably has reason not to want.

This may be what lies behind the idea that interference with a person's liberty requires special justification, whereas failures to interfere do not.<sup>2</sup> If all we know about a policy is that it involves interference with a person's liberty, then there is, apparently, a reason against that policy. So in order for the policy to be justified, it must be shown why this apparent reason does not apply or that it is overridden by some other consideration. This does not show anything unique to liberty, however. It is equally true that if all we know about a policy is that if it followed some people will be left very poor, and much poorer than they would be under many alternative policies, then there is, apparently, a reason against this policy, which needs to be shown to not to apply or else to be overridden.

But even if this need for justification is not unique to interference with liberty, it does mark an apparent contrast with equality. Some may hold that any inequality requires justification, but this is at least not obvious.<sup>3</sup> A main theme of these lectures is that there are, in different cases, different reasons for objecting to inequality and that we need to inquire into what these reasons are. Similarly, there are different ways in which something can make a person unable to do what he or she wants, and different reasons for

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objecting to these conditions. To understand the possible conflicts between liberty and equality we need to understand the various reasons at work in each case.

I can be unable to do what I would like because I lack the necessary resources, which some individuals or institutions could provide, and perhaps even actively prevent me from having. I may be unable to get a job because I lack the necessary education and am unable to get this education because I cannot afford the tuition. Similarly, I may be unable to get where I want to go because I do not have a car, and I lack the money to buy or rent one.

Hayek insists that in cases of this kind I do not lack liberty but only lack the power to do what I want. To identify liberty with power of this kind would neglect what is central to it, he says, by making it the case that my liberty is always increased or decreased by an increase or decrease in my wealth. My *liberty* is interfered with, Hayek says, only when someone prevents me from doing what I want by physical constraint or coercion. This, he says, occurs when there is “such control of environment or circumstances of a person by another that, in order to avoid greater evil, he is forced to act not according to a coherent plan of his but to serve the ends of another.”<sup>4</sup>

Hayek is correct that this is something distinctively objectionable about (at least many cases of) coercion, and that this objectionable feature is not directly present in every case in which a person is unable to get what he or she wants because of lack of means. In the two examples I have given I am not prevented from getting an education or from getting where I would like to go because someone is threatening me with some sanction in order to get me to conform to his “plan” that I not do these things.

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<sup>4</sup> *The Constitution of Liberty*, pp. 20-21, 133.

But my inability to get what I want in these cases does depend on coercion. My lack of money makes me unable to do what I want because getting what I want depends on having or using something that is someone else's property, and that person will permit me to have or use that thing only in exchange for money. I can't simply take a car, because all the cars around belong to people, and the law forbids me from using them without the permission of the owners, and I will be subject to punishment if I do. So my lack of ability to get what I want without money depends on the existence of property rights, backed by coercion, and this will be so in all the cases in which, in Hayek's terms, my "power" to get what I want would be increased by an increase in my wealth.

The importance of "background coercion" of this kind was emphasized long ago by Robert Hale.<sup>5</sup> Hale went on to say, less plausibly, that whenever a party to an arrangement agrees to certain terms only because the other party's insistence makes this necessary, the first party is coerced into doing this. If, in the example I gave, I hand over money that I would otherwise use to buy food in order to rent the car I need to get to a job interview, Hale would say that I am coerced into making this payment. He is quick to add that this does not mean that what the rental agency does in such a case is impermissible, or that the contract I make with them is invalid because not voluntary. Whether something involves coercion in this sense and whether it is wrong are, he says, two separate questions. But it does seem to strain common usage, and perhaps to drain

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<sup>5</sup> Robert Hale, "Coercion and Distribution in a Supposedly Non-coercive State," *Political Science Quarterly* 38 (1923), pp. 470-494. G. A. Cohen made the same point more recently in ... For discussion of Hale's view, see Barbara Fried, *The Progressive Assault on Laissez Faire: Robert Hale and the First Law and Economics Movement* Cambridge, MA: Harvard University Press, 1998).

the idea of coercion of much of its force, to say that every case of mutually beneficial *quid pro quo* exchange is coercive.<sup>6</sup>

What Hayek's distinction between liberty and power calls attention to is not a distinction between coercion and other ways in which a person might be made unable to do what he or she wants, but rather a distinction between two reasons for objecting to factors that prevent one from doing what one wants to do, whether these factors amount to coercion or not. On the one hand, one has reason to object to a valued option being made unavailable, or available only at greater cost or risk. The strength of this reason depends simply on the strength of the reason for wanting to have the option in question. But there is also an independent objection to being under the control of another person and subject to his or her will in the way that Hayek describes.<sup>7</sup> Reasons for objecting to this vary, depending not only on the value of the options that is made less available but also on other factors such as:

1. One's relation with the person in question: it may be less (or perhaps in some cases more) objectionable to be under the control of a family member, or someone one loves, than under the control of a stranger, or someone with whom one has a long-standing adversarial relationship.

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<sup>6</sup> Although it may be that there is something morally objectionable about exchange, or at least something not ideal from a moral point of view, when it is understood simply in this *quid pro quo* way. For an investigation of how exchange might lack this objectionable feature, see A. J. Julius, "The Possibility of Exchange."

<sup>7</sup> This reason has been emphasized by political philosophers writing in the republican tradition. See, for example, Philip Pettit, *Republicanism*, and *Just Freedom*, and Quentin Skinner, *Liberty before Liberalism*, Chapter 2, esp. p. 84.

2. The amount of discretion that the person who is controlling one has. As Hayek observes, coercion is less objectionable when it is regulated by law.<sup>8</sup> This may be in part because that renders the interference more predictable, allowing one to plan in a way that takes it into account. But there is, in addition to this, a personal element: one stands in a different, and more objectionable, relationship to a person who can command one to do whatever he or she wishes than one does to a person who can command only in ways, and for reasons, that are set by laws that that person did not choose and cannot change. In cases of the former kind one is dependent on that person's will in a particularly objectionable way.
3. The aspect of one's life that is subject to control. It is worse to have someone dictate how one will lead one's personal life—for example whom one will marry—than to have someone determine other limits on what one may do, such as how close to the edge of one's property one may build a house. One reason for this is that the meaning of many personal choices, such as the decision whom to marry, is altered, and often undermined, if it is made by or strongly influenced by, someone else (whether this influence is exercised through threats or through offers, such as offers of money, or a job.) It can be important that such choices depend only on one's own reasons, and reasons of a particular kind (e.g. not financial gain.)

The distinction Hayek draws is thus deeper than the distinction between coercion and other limits on a person's ability to get what he or she wants. This can be seen from the fact that we need to consider objections of both of the kinds I am distinguishing in

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<sup>8</sup> *The Constitution of Liberty*, p. ... Philip Pettit also emphasizes that what is objectionable about unfreedom is being subject to the arbitrary will of another.

order to understand what is objectionable about coercion and in order to decide when it can nonetheless be justified.

In most cases, coercion is subject to objections of both of these kinds. Indeed, objections to coercion seem to depend on three factors. (1) the value of the option that is foreclosed, or made less available, and one's entitlement to engage in it; (2) the magnitude of what one will lose if one does not comply with the demand that is made, and one's entitlement not to lose this thing; and (3) the fact that complying with the demand involves being under the control of this other person.

Consider first the standard case of a robber with a gun, who confronts you, saying, "Your money or your life!" In this case there are, first, your reasons for wanting to keep your money, and for wanting to stay alive. In addition, there is the fact that, quite independently of any question about coercion, you are entitled to keep your money and the robber has no right to kill you. This seems to me enough to conclude that what the robber is doing is impermissible. There is, in addition, your reason for objecting to being "under the control of" the robber. It is humiliating to have to submit to such a demand. But although this reason is present, it does not seem to me the determinative element.

By contrast, consider the case of an employer, who has good economic reasons for reducing his work force, who tells a worker that he will not fire her if she is willing to have sex with him. In this case, the worker is not entitled to continued employment and the employer (leaving aside the permissibility of coercion, which is the question at issue) has the right to fire her. The impermissibility of what the employer does is explained by the impermissibility of using his right to fire the worker to compel her to act in accord with a plan of his, in a way that is particularly objectionable, for reasons I have

mentioned. The conclusion to draw from this is that although for reasons of economic efficiency (and perhaps other reasons as well) employers must have the right to decide whom to hire and fire, it is impermissible for them to use this power in the way just described (or, for that matter, to use it as a way of extorting gifts or other favors from employees or potential employees.)

Consider now the coercion involved in the criminal law. Criminal law raises serious problems of justification because the penalties it inflicts—such as imprisonment, loss of property and perhaps even loss of life—involve very serious losses that individuals are normally entitled not to suffer. Many criminal laws nonetheless seem to many people to be clearly justified because of the protection that these laws provide and also because the particular forms of behavior that are sanctioned—such as murder and armed robbery—are ones that they would never think of engaging in anyway. The fact that being subject to such laws involves being controlled by others does not seem to be a crucial factor.

In many cases in which people have objections to laws, such as to environmental laws, zoning codes, occupational health and safety regulations, and, more to the present point, tax laws, their objections are based mainly on the value of the opportunities that are foreclosed, rather than on the fact that obeying these laws involves being controlled by some other agent. Where an objection of the latter kind comes most to the fore most clearly is in the case of laws regulating personal conduct, such as laws against drug use, and laws requiring motorcyclists to wear helmets. Here, in addition to the loss of a valued opportunity, there is reasonable resentment against being told “how to live one’s life.” And one may have reason to feel this resentment even if one does not value the



opportunity in question (even if say, one would never think of riding one's motorcycle without a helmet.)

It is not clear whether all three of the factors I have listed must be present in order for something to count as coercion. Is it coercion if your rich uncle says he will buy you a car if you give up your plans to get married right away? You may want very much to get married, and you are entitled to do so without your uncle's consent. On the other hand, you have no entitlement to the car he is offering to give you (and threatening to withhold.) What makes the case seem like coercion, however, is mainly the element of being under your uncle's control with respect to your decision whether or not to get married. This is a kind of decision that you have particularly strong reason to want to make on your own, independent of others' control or influence.

I do not believe that anything important depends on whether an action or policy counts as coercion or not. The crucial question is whether this action or policy is impermissible, and why. This depends on whether the person issuing the demand is or is not justified in making the other person's compliance with his demands a condition for not suffering the threatened loss. This question is not helpfully answered by asking whether a demand of the kind in question would be coercive. Rather, we need to consider the reasons, of the kinds I have listed, that individuals have for wanting not to be subject to such demands, and on the other hand the reasons for allowing such demands to be made. I will discuss some examples of this later in this lecture. My present point is that the reasons that count against demands that might be called coercive are quite varied, and include reasons for wanting certain opportunities to be available (reasons for wanting

what Hayek called power) as well as reasons for objecting to being controlled by another person.

With these ideas about liberty and coercion as background, let me turn now to the question of conflicts between liberty and the promotion of equality. One way of promoting equality is through redistributive taxation, which takes resources from some in order to provide benefits for others. Another way of promoting equality, or avoiding inequality, is through what might be called *predistribution*, that is to say, through the laws and policies that determine individuals' pretax incomes.<sup>9</sup> One of the main things that Rawls' Difference Principle, for example, is supposed to apply to is the aspects of a Basic Structure that generate inequality in pretax income and wealth. Laws protecting intellectual property are a good example. Shareholders of Disney and Merck would not be as wealthy as they are today if the patents and copyrights held by those companies did not last as long as they do. Less extensive rights to intellectual property would, arguably, lead to less inequality. For reasons I will discuss, predistribution is the more fundamental question. But since redistributive taxation receives much attention I will consider it first.

Taxation may seem a prime example of interference with liberty. Paying part of one's income as taxes, when the alternative is a fine or imprisonment, leaves one less able to do things that one would want to do. In addition, it often involves being forced to serve the aims of another rather than one's own—to pay for wars one disapproves of, to provide benefits to others whom one believes do not deserve these benefits, or to pay for projects, such as sports stadiums or museums, that one believes to be wasteful. Being required by law to pay one's rent, or to pay other debts one has incurred, would not be

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<sup>9</sup> I take the term from Jacob S. Hacker, "The institutional foundations of middle-class democracy."

objectionable in this way, insofar as these debts were undertaken voluntarily, in pursuit of one's own ends, rather than forced on one by another's will.

It might be responded that we can nonetheless owe these taxes, insofar as they are levied by a legitimate political and legal order which has authorized the expenditures that these taxes are used to pay for. The money that one must give up in paying taxes is therefore, like the money one owes in rent, not money one is entitled to keep and do with as one wishes. This response might be said to be question-begging, because it assumes the legitimacy of the tax laws, which is exactly the point at issue. But the claim that one is entitled to one's pre-tax income also presupposes the legitimacy of the particular political and legal framework within which this pre-tax income was earned. Tax laws are part of that framework, and have the same legal basis as the rest of it, including laws defining property rights. So it does not make sense to claim that taxation is illegitimate because it takes away what, *according to that legal framework*, belongs to a person.<sup>10</sup>

So the best way of understanding the objection to redistributive taxation is not that it is objectionable because it takes away part of the pretax income that people have earned in the actual legal system in which they live (a system that may not be fully just.) The objection should be, rather, that an economic system that allows for redistributive taxation is, for that reason, unjust (and the pre-tax incomes earned within it are therefore to some degree morally tainted.)<sup>11</sup>

Any plausible view permits *some* forms of taxation, however. Suppose that some view holds, for example, that (only) taxes to pay for law enforcement and national

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<sup>10</sup> This is the point made by Murphy and Nagel in *The Myth of Ownership*, arguing against what they call "everyday libertarianism." See esp. pp. 31-38.

<sup>11</sup> Murphy and Nagel discuss this form of libertarianism, as opposed to "everyday" libertarianism, on pp. 64-66.

defense are legitimate. Laws requiring individuals to pay just these taxes, on pain of legal penalties such as fines or imprisonment, would therefore not, on this view, be counted as objectionable interferences with individual liberty. These laws would diminish individuals' means to pursue their ends in one way, by reducing their disposable income, although they might increase it in other ways, through the protection they make possible.

But the pretax income that individuals would be deprived of by these laws would not be something they are entitled to keep, any more than they are entitled not to pay their rent or their other debts. This is not because their right to keep the money that is needed to pay these taxes is *overridden* by other considerations. One's right to keep the money needed to pay one's rent is not overridden by the claims of one's landlord. Rather, one does not have such a right because of the lease one has entered into.

What this means is that (according to a view of the kind I am assuming) one possible reason for objecting to these coercive tax laws—that they make a valued alternative less available—is removed. If one is not entitled to keep one's money rather than paying these taxes, then one cannot object to this alternative's being foreclosed. Nor, as far as I can see, would this involve being subject to the will of another in an unacceptable way. There remains the question of whether the state is justified in inflicting some punishment on those who do not pay. This depends on the severity of the punishment. If the punishment is not too severe to be justified by the need to secure compliance with the practice in question, those subject to this penalty have due notice, hence adequate opportunity to avoid it, and if it is inflicted only after due process, then it seems to me to be justified.

Generalizing from this case, I conclude that the enforcement of tax laws *per se* is not the issue. If one owes something, it is not an objectionable interference with one's liberty to be required to pay it. The question is what taxes one can legitimately be said to owe. It would be misleading to say that this is a question of what one's property rights are. The money you use to pay your rent, or your taxes, has to be *your* money—money that it would be wrong for someone else to remove from your bank account. But tax laws, along with the laws defining property rights, are part of the basic institutions of a society—the framework within which individuals' pretax incomes, as well as the tax they owes on these incomes, is determined. So the question of the legitimacy of taxation in general, and of redistributive taxation in particular, is a part of what I called earlier the question of predistribution—that is to say, of the legitimacy of a framework of this kind.<sup>12</sup>

How is this question of legitimacy to be answered? One idea would be that it depends in part on whether that framework is compatible with property rights that individuals have independent of any social institution. This is not currently the most widely held view.<sup>13</sup> But it is worth considering why it should be appealing.

One reason for its appeal might be the thought that social institutions defining property are open to moral criticism—they cannot, legitimately, define these rights in just any way. It may seem that this criticism must be based on rights that individuals have independent of any such institutions, and a right to property seems one obvious

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<sup>12</sup> This is another way of putting one of the main points of Murphy and Nagel's book. But *Redistribution and Predistribution* would have been a less snappy title than *The Myth of Ownership*.

<sup>13</sup> It is rejected by Hayek, Milton Friedman, and more recently, Gerald Gaus. Dissenters include Nozick, Eric Mack, and Loren Lomasky (?) Give citations.

candidate. A second, more specific supporting reason is that one can imagine actions that are clearly wrong, quite independent of any social institutions, and seem to be wrong because they involve violation of property rights.

Suppose that a family clears some land and raises crops to survive the winter, and that they do this without wronging anyone else—leaving “enough and as good” for others, as Locke would say. If a band of armed men then come along and take the crops this is clearly wrong. To put the matter in contractualist terms, any principle that permitted such an action is one that it would be reasonable to reject.

The reasons for rejecting such a principle are the reasons that people in the position of the family have to be able to provide for themselves, and to be sufficiently confident of having use of certain objects in the future to make it rational to invest time and energy in making those objects usable. These reasons are sufficient reasons for rejecting such a principle because people in the position of those who take the crops have no comparably strong reasons for insisting on being permitted to act in this way. Because they have been left with “enough and as good,” the robbers had the opportunity to provide for themselves in the same way that the family is doing.

The reasons for rejecting such a principle—reasons for wanting to have control over objects that are needed to provide for one’s life, and in having the stable of control over these possessions over time that is needed to plan, and to carry out one’s projects—are among our most basic personal interests in property and are the reasons that make rights of personal property so important.<sup>14</sup> So it is natural to conclude that the imagined action is wrong because it violates the property rights of the family. But this is a mistake.

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<sup>14</sup> Cite Freeman and Rawls on the right to hold personal property as a basic liberty.

The wrongfulness of violating property rights differs in several ways from the “natural” wrongfulness of interference with interests that make property important.

There can be obvious natural wrongs of the kind I described because there are cases in which it is clear that the perpetrators have interfered with the victim and done this in circumstances in which they have no justification. But in many cases it is not clear what constitutes interference. Have I interfered with you if I tunnel under your land to mine ore deposits that you had no idea were there? Have I interfered with you if I dig a well near our property line to extract oil, most of which lies under your land? One thing that social institutions of property do is to define rights of control over land and other objects that serve the basic interests in property that I have listed. If established institutions do this in a defensible way, then it is wrong to violate the rights they define, whether or not this particular violation actually involves an interference with the victim’s life and activities, in a sense of interference that is independent of this institution, and this can be wrong whether or not the agent had, in that particular case, alternatives that offered “enough and as good.”

Institutionally defined property rights also include the power to transfer—to confer on others an exclusive right to use of an object that does not depend on whether a third party’s use of that object would interfere, in a sense independent of that institution, with its use by the person to whom the object is transferred. Nor does the exclusive right to use that the transferee acquires depend on the idea that there is “enough and as good” available to the person who is excluded from using that object. The fact of transfer itself is taken to confer the right to exclude. This allows for the possibility that the main reason the person has for wanting the transferred object may be just to have the power to exclude

others from its use, in order to demand a higher price from them for using it perhaps holding it until some later date at which greater demand or scarcity of supply causes the price to rise. Holding for future exchange is a kind of use, but it is a kind of use that is itself dependent on (rather than merely protected by) the power to exclude.

Finally, institutions can create property rights that are justified instrumentally on grounds other than the need to protect what I called earlier our most basic personal interests in property. Intellectual property rights are an extreme example of this. These rights are created by custom or legislation, and can then be transferred and exchanged.

If by property rights one means rights that go beyond claims to non-interference in the ways just described, and that include the power to transfer such rights to others, then all property rights depend on social institutions. But from the fact that there are no “natural” property rights it does not follow that institutions can fashion and revise property rights in any way at all without being subject to moral criticism.<sup>15</sup> There are limits to the ways in which institutions can define property rights, because these rights must be justified by the way they serve, protect, and more generally are compatible with, important interests. These interests include, but go beyond, what I called above our most basic personal interests in property, which as I have argued can be the basis for wrongs that are independent of any institutions.

Whether a system of property rights in the fully extended form I have described is justifiable, and violations of the rights it defines are therefore wrongful, depends on the effects of the system of holdings and exchange that it creates. Such a system is justifiable if the benefits it provides are sufficiently important to make it unreasonable for people to

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<sup>15</sup> As some critics of Murphy and Nagel’s book, *The Myth of Ownership* mistakenly interpreted their view as implying.



object to being excluded from access to objects and other opportunities in the way that this system would. Considerations of liberty, of various sorts, play a role in answering this question, along with considerations of economic efficiency. Insofar as there are reasons for objecting to inequality, because of its consequences or on other grounds, there would seem to be no reason why these should not, in principle, play a role as well. The legitimacy of a system of rights depends on how all of these reasons balance out. I have argued that giving paramount weight to reasons for objecting to being told what to do by others, as opposed to reasons to want to have certain options available, is false to the normative facts about the reasons people have for objecting to coercion. Giving priority to these reasons would thus distort this balancing process, and do so in a way that unjustifiably favors those who have more resources.

To see this process in more detail, consider first the case of rights to hold personal property. We have strong reason to want to be able to use, and to exclude others from using, the space in which we live, and the objects that we need to carry out our lives. We have strong reason to want to be able to count on being able to use in the future, and exclude others from using, objects that we need to carry out our projects. Ways of defining, or redefining, property rights are open to serious moral objection if they are incompatible with these most basic reasons. This does not mean that, for any project I might have, a legal system is open to objection if it does not give me the kind of control over objects that I need in order to carry out that project. Giving me that kind of control might be incompatible with the reasons that others have to carry out *their* projects. What it does mean is that a defensible system of property rights needs to define those rights in a way that is responsive to the reasons of this kind that *everyone* has. There are, often,

different ways of doing this. And there may be ways of doing some of these things that do not involve property rights. Our reasons for wanting control over our living space might be served by a system of leasing that did not, like a property right, include the power to sell. But whatever system of laws or customs serves the role of protecting these interests, there is serious objection to changing it in ways that would make it fail to do so. And this might be so even if this change would promote economic equality in some way.<sup>16</sup>

Now consider, at the opposite extreme, so to speak, the process of justification in the case of laws creating intellectual property rights. Patent and copyright laws forbid people from doing certain things—for example, from manufacturing and selling certain drugs, or from reproducing certain texts or images. They thus render these people less able to do what they want (decreasing what Hayek calls their power) by subjecting them to directives backed by the threat of punishment (decreasing what Hayek called their liberty.) They thus also decrease the power of others, who would like to take these drugs or enjoy these images, by making these things less cheaply available.

On the other side, these rights to exclude provide income for the holders of patents and copyrights, contributing to their ability to get the things they want. Making these rights more extensive (for example, by making patents and copyrights last longer, or making them apply across a wider geographical area) would make holders of these rights richer, increasing this ability. It may also increase inequality. So *if* there are

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<sup>16</sup> This is the point that Rawls makes by including rights to hold personal property among the rights of the person that are part of his first principle of Equal Basic Liberties, which cannot be abrogated even to promote fulfillment of his Difference Principle. See Samuel Freeman, “Capitalism in the Classical and High Liberal Traditions,” *Social Philosophy & Policy* (2011), pp. 19, 31-32.

reasons for avoiding or reducing this inequality (based, perhaps, on its effects), these would be reasons for making these rights less extensive. Doing this would not, as far as I can see, be open to objection on the ground that it reduced liberty, since there are considerations of liberty, of various sorts, on both sides of the question. Less extensive rights decrease the ability of right holders to get what they want while increasing the corresponding ability of others. The degree to which people are dictated to by the state seems to be the same under either arrangement.

If anything, it appears that, questions of equality aside, considerations of liberty would *call* for making these rights less extensive. At least they do not provide an objection to doing so. The main reason for making patents and copyrights last longer is that they are needed to provide incentives to produce products that will be useful. So if there is a conflict here it is between the benefits that could be provided in this way (increases in some people's "power" to get what they want) and considerations favoring equality.

I believe that this description of the process of justification applies in general to questions about the moral limits on the definition of property rights. It is a complicated matter how this process comes out in individual cases, but it seems at least clear that considerations of equality have *a* role to play, and that they are not ruled out by the fact that they sometimes conflict with considerations of liberty. This conflict seems more direct in cases in which inequality is generated by particular transactions between individuals, and in which equality can be promoted either by restricting these transactions or taxing the income that results from them. This is made clear in Nozick's Wilt Chamberlain example. The collective effect of the transactions between Wilt and his fans

is a significant degree of economic inequality. If this inequality is something there is reason to avoid, this cannot be done by forbidding what Wilt's fans do. What good is money if one can't spend it on tickets to basketball games if that is what one wants to do? So it seems that the only way to avoid this increase in inequality is to tax Wilt's earnings. What determines whether this is permissible? This is a special case of the more general question of individuals' claims to keep the full amount that they receive through various transactions. I will consider first the case of profits on the exchange of property, and then return to the case of payment for services.

Take the case of profits from the sale of one's house, since that is a case in which the personal reasons justifying of property rights are particularly strong. Individuals have strong reason to have control of the space in which they live, to be able to use it when they wish and to exclude others from it when they wish to do so. This is among what I called earlier one of their most basic reasons for concern with property. They also have strong reason to want to be able to choose where to live and to change living places if they want to do so. In the light of these reasons, a defensible system of rights must provide for individuals to have the ability to exclude others from their personal space, and must not require them to live in certain places or forbid them from moving should they wish to do so.

It remains the case that not everyone can live where they would most like. A system of property rights in housing, transferable on the market, is one obvious way of solving this problem. Such a system preserves stability of control over one's living space since people are free not to move unless they are offered a price that makes moving seem desirable to them (i.e., something that at least meets their "reserve price.") Allocating

scarce housing to those who are willing to pay more for it makes sense insofar as it results in an allocation of resources that is responsive to individuals' different tastes in housing and to the different values they place on housing as compared with other goods. (At least it has this effect insofar as the marginal utility of money is roughly the same for different individuals. This may not be so when wealth and income are very unequal.)

The (very strong) case for property rights in housing thus rests in part on the most basic personal reasons for concern with property, and in part on efficiency considerations of the kind just mentioned, to which one might add that such a system helps to insure an appropriate amount of housing, since if housing is scarce rising prices will attract more investment in residential construction.

The question is whether the property rights in housing that these considerations support preclude taxes on the profits from resale of one's house. It seems to me that they do not, although they place limits on what this tax could be. First, it is essential that buyers and sellers know in advance what they will pay and receive. (Reasonable expectations should be protected.) Second, it is essential that sellers receive at least their reserve price, and that buyers not be forced to pay more than the property is worth to them. Third, the efficiency properties of the market depend on its being the case that if some would-be buyers are willing to pay more than the seller would get more, even after taxes, by selling to them. Taxes therefore cannot take away all of a seller's gains beyond his or her reserve price. But it does not follow from this that the seller must be allowed to keep the full amount that the buyer pays.

What the buyer is willing to pay will depend, of course, on how much money the buyer has, but also on the availability of other housing that is just as desirable. So what I

have just concluded is that the reasons supporting property rights in housing do not support the conclusion that a seller is entitled to the full scarcity premium of his or her property.

Any such tax would, in Nozick's phrase, interfere with certain "capitalist acts between consenting adults" by preventing transactions in which the seller is able to keep exactly what the buyer pays. But the interests of buyers and sellers in being able to make exactly this kind of transaction seem quite weak in comparison with the other interests in property rights that I have mentioned.

This may seem unsatisfactory. A tax on real estate transactions the proceeds of which go straight into the President's personal bank account seems objectionable, even if the limits just mentioned were observed. Moreover, such a tax would seem objectionable even if it were well known in advance of any transaction and, I think, even if the law in question were enacted by a democratically elected legislature. Can what is objectionable about this be explained without appeal to the idea that sellers' property rights entitle them to the full amount of what others are willing to pay for their property? (Or, what seems less plausible, that buyers are entitled not to pay more than what the seller actually receives?)

It seems to me that such a tax is objectionable because, first, sellers have reason to want to keep more of what buyers are willing to give them, so some reason has to be given for their not getting this. Second, there is no good reason why sellers should receive less or buyers pay more in order for the President to benefit in this way from every transaction. So if some taxes on gains from exchange are just, it must be because,

in addition to being known in advance and enacted through fair procedures, they are supported by good reasons.

The two classes of reasons that come to mind are reasons arising from the conditions required by the legitimacy of the system of property rights and exchange itself and reasons for promoting important public goods. I will focus on reasons of the former kind, because the taxes they support are the most likely to be redistributive and because this is where considerations of equality are most likely to play a role. In order for the system of property rights I have just described to be responsive to the basic personal reasons that everyone has in regard to housing, the housing market must not make the poorest members of the society unable to afford housing at all. So some provision of public housing, or some more general guarantee of minimum basic income, may be required as a condition for the system as a whole to be justifiable.

If profits from inventing in housing may generate significant inequality. If this inequality has negative consequences of the kinds I have discussed in other chapters, then taxing income from the sale of property might be the best way of controlling these negative externalities. As long as this is done within the limits described above, it would have the advantage of not interfering with the important reasons individuals have to want to choose and control their own housing, or with the efficiency of assigning housing to those who are most willing to pay for it. My purpose here is not to describe or assess all these reasons. The point is rather that the reasons supporting property rights in housing provide no objection in principle to taxes on profits from exchange.

I turn now to the question of taxes on income from one's job. Here we can begin with the importance of "free choice of occupation." Everyone has a strong reason to be

able to choose how to spend his or her productive energies. This provides strong reason to reject laws or policies that allow people to be forced to work at a particular, job, and everyone should be free to quit if he or she chooses. But what do ‘forced’ and ‘free’ mean here? It would be unacceptable to legally require individuals to work at certain jobs (except, perhaps, for emergency cases like military draft.) But individuals also have reason to want to be placed good conditions for choosing their careers. That is, good reasons, of the kinds I discussed in Chapter 4, to want to be informed about the kinds of work they might do, to be able to acquire the qualifications for work that they are suited for.

On the other hand, just as with housing, people can’t expect to always have exactly the jobs they want. A market in employment allows people to choose jobs against a background of wages that reflect the costs to others of their choices. No one has to work for less than his or her reserve wage (given the alternatives) and employers do not have to pay more than a worker is worth to them. In such a system, workers with particular skills are allocated efficiently (i.e. in a way that is responsive to demand for these skills.) This system allows for flexibility: labor will be shifted to different uses as the market requires, as demand and technology change.

These considerations—the reasons individuals have to want to be able to choose their own professions, and the efficiency advantages of a market in labor—do not count against taxing a portion of earnings, within certain limits. In addition to those I have mentioned, free choice of occupation requires that individuals should be able to earn more by working more or taking a second job if they prefer<sup>17</sup> To prevent this, by taxing

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<sup>17</sup> As argued by Anthony Atkinson, CITE



away all the extra income they could earn above a certain amount, would not be justifiable, given the reasons that individuals have to be able to act on their different preferences between work, leisure, and other forms of consumption.

It might be argued, however, that an entity with the power to tax a part of what others are willing to pay a person for his labor would be a partial owner of that person's labor, and that this would be akin to slavery because incompatible with the idea of self-ownership—that individuals are the sole owners of their energies and talents and have sole discretion about how these are to be used.<sup>18</sup> To assess this argument we need to ask what makes the idea of self-ownership appealing, and whether the reasons that lie behind its appeal support the idea that individuals are entitled to the full amount of what others are willing to pay for their services. This is just applying to self-ownership the same method I have been applying to the idea of equality throughout these lectures, and in this chapter to ideas of liberty and coercion, namely to try to identify the reasons that give these concepts their importance and to ask when these reasons apply.

I believe that what is legitimate in the idea of self-ownership is fully captured by considerations I have mentioned: the reasons people have to be able to choose occupation, to be able to quit a job if they wish, and so on. These reasons explain why institutions such as slavery that deny free choice of occupation are illegitimate. But it does not follow from these considerations that workers are entitled to the “full value” of what they do—to the top wage that employers would be willing to pay, as determined by

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<sup>18</sup> The claim about slavery was famously made by Robert Nozick in *Anarchy, State, and Utopia*, pp. 169-172. G. A. Cohen develops the idea of self-ownership as the best interpretation of Nozick's position, and argues that it does rule out taxation of earnings, although he then goes on to reject the thesis that we are self-owners in this sense. See *Self-Ownership, Freedom and Equality* (Cambridge: Cambridge University Press, 1995), Chapters 9, 10.

the demand for their services and the scarcity of the skills they have to offer. Taxing a portion of people's earnings is not ruled out by these reasons, and so can be legitimate if there is good reason for it.<sup>19</sup>

Central among these reasons, as I have said, is the need to provide the conditions required in order for the system of property and market exchange through which one's income is earned to be legitimate. I have mentioned a number of such reasons above, including those provided by the negative externalities of high levels of inequality. Taxing a person for these reasons is not correctly described as forcing him to use resources that are legitimately his to help others. Rather, these taxes reflect the limits on the claims to resources that he can come to have within a legitimate system of property and market exchange.

Two particular reasons for taxation are relevant to the present discussion of self-ownership. The efficiency of a market economy requires that employers have the power to direct what their workers do, and the power to hire or fire workers in response to changes in technology and market conditions. These powers diminish individuals' ability to determine over how their talents and energies are used. This affects all workers to some extent, but is particularly severe for those who have the lowest level of marketable skills.

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<sup>19</sup> Here I am in at least partial agreement with what David Gauthier says in *Morals by Agreement* (Oxford: Oxford University Press, 1986), pp. 272-276. G. A. Cohen argues, against Gauthier, that self-ownership is incompatible with taxes on income because "persons are exclusive owners of what they own only if they are entitled to set the terms on which they will exchange what they own with one another." (Op. cit., 221) If "set the terms" not only means "receive what one expects to receive in making the transaction" but also "receive everything that others are willing to pay," then this does rule out taxation. But this is not supported by the reasons I have mentioned that form the basis of the appeal of "self-ownership," and explain why slavery is wrong.

These powers are therefore things that workers have reasons—the basic reasons lying behind the idea of self-ownership—to object to. Even if these are not sufficient reason to reject such powers, given the arguments in their favor, they are good reason to want to limit their effects on individuals' control over their own lives. This can, to some extent, be done by providing good public education, enabling individuals to develop a wider range of skills, hence a wider range of possible forms of employment, and by providing a higher level of public services for all, including benefits for those who are unemployed and help in retraining to take new jobs. Taxes on income to provide these benefits will prevent individuals from receiving the full amount that others are willing to pay them for what they do. But looking at the matter purely from the point of view of “self-ownership” broadly understood, what these individuals give up is vastly less important than the gain to those who receive the benefits that these taxes make possible.

Understanding self-ownership as a “side-constraint” that must not be violated blocks comparisons of this kind. But in order to decide whether we should accept such a constraint, we need to look, as I have been doing, at the reasons lying behind it. When we do this, we can see that there is no reason to accept a constraint in this general form.