Taking Liberties: The Perils of "Moralizing" Freedom and Coercion in Social Theory and Practice

Introduction

In many political and social moralities *liberty* and *liberties* figure in one way or another as *basic*. One is therefore surprised to encounter so frequently in those very theories the claim that *liberty* and *voluntariness*, and their opposites *coercion* and *interference with liberty*, are "essentially moralized." Essential moralization is the thesis that the very conditions that constitute an action or practice as having some putatively basic non-moral right-making or wrong-making property contain an ineliminable reference to prior and independent moral rights and wrongs, which are conceptually and metaphysically distinct from those properties. I argue here that this is a bad practice in any social or political morality that purports to take liberty and coercion as normatively basic, because it renders these features of social and political institutions and practices strictly derivative, contrary to the theory's own intentions.

The kinds of liberties and foundational roles at risk can vary widely. Three dimensions of variation are especially important. First, liberty and liberties can figure either as intrinsic values to be maximized in "outcome-centered" consequentialist theories or as the ground of requirements and prohibitions in "agent-centered" or "side-constraint" theories. Second, classical liberal and contemporary libertarian theories focus exclusively on *negative* freedom-from-interference of the sorts specified in some bills or charters of political and civil rights and liberties, such as freedom of expression, assembly, worship, the vote, integrity of the person, due process, freedom to own property, and so on.[1] By contrast, more egalitarian sorts of liberalism and socialism include various *positive* liberties, such as the opportunities made possible by a decent level of material well-being,[2] or the capacity to engage in the exercise of autonomous

[1]The *locus classicus* is Isaiah Berlin, "Two Concepts of Liberty," in Berlin, *Four Essays on Liberty* (Oxford: Oxford University Press, 1969), pp. 118-72.

[2]For arguments that the deprivation of material opportunities undermines (positive) liberties, see Joel Feinberg, *Social Philosophy* (Englewood Cliffs, N.J.: Prentice-Hall,

decision-making.[3] Third, some social theories stress the foundational role of liberty in general, while others stress the foundational role of specific liberties in particular. The latter emphasis predominates in most contemporary social and political moralities, which tend to take only some liberties seriously.[4]

This third dimension of variation intersects with the first and plays out in two interestingly different ways. On the one hand, political philosophers like T.M. Scanlon, Charles Taylor, and even John Rawls differentiate among the important and less important liberties in terms of their intrinsic value or the sorts of interests they serve.[5] On the other hand, liberals like Ronald Dworkin rely on strictly non-value-grounded arguments for the "utility-trumping" power of certain kinds of liberty claims.[6] Both sorts of reasons for the shift from liberty to liberties raise important issues for liberalism and libertarianism, but they do not affect the argument of the present paper, because the essential moralization of specific liberties is as problematic as that of liberty in general.[7]

The argument here draws upon a kind of right-making-property-

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1973), chap. 1; David Miller, *Market, State, and Community: Theoretical Foundations of Market Socialism* (Oxford: Oxford University Press, 1989), chap. 1; and John Christman, "Liberalism and Individual Positive Freedom," *Ethics* 101 (1991): 343-59.

[3]J.S. Mill stresses this theme in *On Liberty*, first published 1859, chap. 3. That said, it should be noted that the precise nature and status of liberty in Mill's utilitarianism is notoriously complex. He accords great *instrumental* value to the "negative" liberties, much to the distress of deontological critics who fear the utilitarian sacrifice of liberty to happiness. But, in key places Mill reassuringly accords *intrinsic* value to "positive" liberty, that is, autonomy or (as he calls it) "individuality," which he conceives of as the exercise of the human capacities for perception, discrimination, and judgment.

[4]In previous work on coercive relationships, starting with David Zimmerman, "Coercive Wage Offers," *Philosophy & Public Affairs* 10 (1981): 121-45, I was not sufficiently sensitive to the distinction between these approaches. I am indebted to Alan Wertheimer for reminding me of its importance in recent liberal theory in his "Demoralizing Coercive Agreements: A Reply to Zimmerman," *APA Newsletter on Law and Philosophy* 94 (1994): 96-99, p. 97.

[5]See T.M. Scanlon, "Freedom of Expression and Categories of Expression," *University of Pittsburgh Law Review* 40 (1979): 519-50; Charles Taylor, "What's Wrong with Negative Liberty," in A. Ryan (ed.), *The Idea of Freedom: Essays in Honour of Isaiah Berlin* (Oxford: Oxford University Press, 1979), pp. 175-93; and John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), esp. Lecture VIII. I say "even Rawls" because he is famous for insisting upon the "priority of the right over the good." However, he places this idea at risk when he shifts from his earlier emphasis on liberty (in *A Theory of Justice* [Cambridge, Mass.: Harvard University Press, 1971]) to specific liberties (in *Political Liberalism*), and then grounds the selection of the latter on the *goods* they protect.

[6]See Ronald Dworkin, "What Rights Do We Have?" in Dworkin, *Taking Rights Seriously* (Cambridge, Mass.: Harvard University Press, 1977), pp. 266-78.

[7]In D. Zimmerman, "Property Foundationalism in Ethics," unpublished manuscript, I discuss in detail how these conflicting deontological strategies play out.

foundationalism in the structure of political and social moralities. Here is a particularly transparent example of the essential moralizing tendency this kind of foundationalism opposes. Cheyney Ryan insists that person P's harsh, credible threat to inflict terrible harm upon person Q (if Q does A) counts as coercive only if P's making and/or carrying out the threat is morally unjustified. Thus on this analysis, P has not coerced Q into refraining from A-ing, therefore Q has freely refrained, even if Q refrains only because he wants to avoid the threatened harm. For example, where Q is assaulting P's wife and P prevents him from continuing to do so by threatening to shoot him, it is "absurd," Ryan insists, to suppose that P has coerced Q into stopping the assault.[8]

I would suggest, in reply, that the only absurdity here is the idea that the righteous P has *not* coerced the evil Q. Many political and social philosophers embrace essentially moralized conceptions of liberty, voluntariness, interference with liberty, coercion, and related notions. Some have similarly absurd implications. All have objectionable implications. In this paper I offer several diagnoses for the frequency of this moralizing practice, show why it is dangerous, and suggest ways to avoid it

The essential moralization of liberty, coercion, and their cognates is a bad idea, because the very *non*-moral properties that are supposed to ground the rightness or wrongness of social action and political practice—by these theories' own lights—are rendered impotent to do any basic work of their own as right- or wrong-making considerations. This worry applies to a wide range of contemporary liberal and libertarian political and social moralities, as well as to some versions of socialism. (Fascists, Leninists, and other authoritarians have also been known to engage in the practice, but their motives are more obviously spurious).

Here are some fairly typical examples of the practice from a range of theories in the recent literature.[9]

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[8]Cheyney C. Ryan, "The Normative Concept of Coercion," *Mind* 89 (1980): 481-98, p. 483. An anonymous referee for *Social Theory and Practice* suggests that a moralized account of liberty and coercion can avoid this sort of counterintuitive implication if is reformulated as follows: Liberty consists in not being subject to the sorts of treatment that would violate one's rights *unless there is some special justification for one's being subject to such treatment.* The italicized part is supposed to differentiate this account from one like Ryan's. However, it palpably fails to do so. It too entails (counterintuitively) that "the suppressed aggressor is *not* being coerced and the justly imprisoned murderer is *not* undergoing a loss of liberty." For, in each case there is manifestly "some special justification for one's being subject to such treatment." But according to the specified condition, that is precisely what determines that the coerced aggressor and the imprisoned murderer are *not* suffering from a loss of liberty. The italicized part adds nothing to Ryan's account.

[9]See also: Robert Nozick, "Coercion," in S. Morgenbesser, P. Suppes, and M. White (eds.), *Philosophy, Science, and Method: Essays on Honor of Ernest Nagel* (New York: St. Martin's Press, 1969); F. Knight, *Freedom and Reform: Essays in Economics and*

1. "Z [a worker] is faced with working or starving; the choices and actions of all other persons do not add up to providing Z with some other option ... Does Z choose to work voluntarily? ... Z does choose voluntarily if the other individuals A through Y [the capitalists and the other workers who got the better jobs] each acted voluntarily and within their rights."[10]

2. "When P proposes to trade his x for Q's y, and when Q agrees to the trade, then P's offer counts as coercive if: 1. P knows that Q is rationally reluctant to give y to P for x; and 2. Either Q knows that he has a right to x on easier terms, or Q knows that P would have given x to Q on easier terms, if the chance had not arisen to trade x for y."[11]

3. "At the most general level, there are two views about coercion. One view holds that coercion claims are essentially value-free, that whether one *is* coerced into doing something is an ordinary empirical judgment. Another view holds that coercion claims are moralized, that they involve moral judgments at their core. I argue that the second view is correct."[12]

4. "I assume that whether someone is coerced depends on whether others have acted wrongly in structuring his situation."[13]

5. "A proposal is not coercive if it offers what the proponent has a right to offer or not if he chooses. It is coercive if it proposes a wrong to the object of the proposal."[14]

6. "We can find no element of threat in the butcher's proposal to raise his price as long as we suppose that he is not, in making this proposal taking improper advantage of a situation in which he has the customer in his power."[15]

7. "Most (but not all) coercion occurs where someone deliberately reduces the options of another to a morally unacceptable level for the purpose of making some action a prudential imperative."[16]

Social Philosophy (Harper: New York, 1947), pp. 10, 11; J. Murphy, "Consent, Coercion and Hard Choices," *Virginia Law Review* 67 (1981): 79-102, p. 82; P. Westin, "'Freedom' and 'Coercion': Vice and Virtue Words," *Duke Law Journal* 85 (1985): 541-93. I hope that this list and the quotations in the text bring home the point that the essential moralization of liberty concepts is not an isolated practice in political and social philosophy.

[10]Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), p. 263.

[11]Daniel Lyons, "Welcome Threats and Coercive Offers," *Philosophy* 50 (1975): 425-36; p. 436.

[12]Alan Wertheimer, *Coercion* (Princeton: Princeton University Press, 1987), p. xi.

[13]George Sher, *Desert* (Princeton: Princeton University Press, 1987), chap. 3, p. 48.

[14]Charles Fried, *Contract as Promise* (Cambridge, Mass.: Harvard University Press, 1981), p. 97.

[15]Harry Frankfurt, "Coercion and Moral Responsibility," in T. Honderich (ed.), *Essays on Freedom of Action* (London: Routledge and Kegan Paul, 1973), pp. 65-86; p. 71.

[16]Mark Fowler, "Coercion and Practical Reason," *Social Theory and Practice* 8 (1982): 329-55; p. 333.

8. "But terms like 'coercion' and 'domination' point beyond operational discussion. How can one know that the use of force is 'coercive,' [without] specify[ing] against whom—criminals, foreign powers, oppressed classes and nationalities, former oppressor classes—it is to be employed, or assess which aspects of citizen conduct are being inhibited without some reflection on the state's complex impact on human well-being?"[17]

1. Essential Moralization vs. Right-Making Property Foundationalism

There is a crucial difference between essential moralization, a conceptual or metaphysical feature of a moral theory's avowedly basic right- or wrong-making properties, and such a property's moral status within that theory as substantively and basically right-making or wrong-making. The pivotal idea comes to this. A concept or property is essentially moralized relative to a normative theory just in case a specification of its content or conditions of application makes ineliminable reference to the most general moral normative properties, right/wrong, required/prohibited, and morally good/bad. Thus,

(i) If the theory features a normative judgment of the form: "x is right because it is P" in which the property of *P*-hood is taken to be *basically* right-making (similarly down the line for the other general terms of normative assessment), and

(ii) If it turns out that the theory's own account of what it is for an action, institution, character trait, or the like to be an instance of *P*-hood makes ineliminable reference to (instances of) any of the moral normative properties in question under that description, then

(iii) The concept *P* or property *P*-hood is essentially moralized relative to that theory.[18]

The kind of right-making-property-foundationalism that essential moralization puts at risk is not the justificatory kind that we associate with evidential grounding, nor is it the metaphysical kind that we associate with moral realism. It does no doubt have some epistemological and ontological implications, but it is nonetheless compatible with coherence theories of moral justification and with most versions of meta-ethical

[17]Alan Gilbert, *Democratic Individuality* (Cambridge: Cambridge University Press, 1990), p. 424.

[18]There are also several varieties of *shallow* moralization, which are common in ethics but not nearly as problematic as the deep or essential kind. For detailed discussion of these varieties, see D. Zimmerman, "Survey Article: The Perils of Value-Ladenness in Politics, Science and Philosophy," *Journal of Political Philosophy* 9 (2001): 217-47.

irrealism. In the absence of a detailed explanation here,[19] an analogy might help. The concepts of mass, force, and acceleration are all basic or foundational in Newtonian mechanics. However, this structural fact about the theory does not in itself settle epistemological disputes between foundationalists and coherentists about how Newtonian mechanics is to be justified, nor does it settle ontological disputes between realists and irrealists about the metaphysical status of the extensive magnitudes basic to the theory.

Property foundationalism in ethics can be captured in two related cautions. First, if the very non-moral property *P* that your normative theory cites as right-making or wrong-making at its ostensibly deepest level turns out to be essentially moralized, then statements of the form "because x is P" can never figure as the terminus of moral reason-giving within the framework of the theory despite its advertised normative allegiances. For, if the moralizing theorist grounds the resulting moral claim in some right- or wrong-making non-moral property *Q* from a radically different sort of normative theory, then *P* is consigned in his theory to a strictly derivative role as right- or wrong-making. Call this "the cross-normative grounding problem."

Second, if essential moralization gets out of hand and goes all the way down simultaneously in all moral theories, then there remain no features of the non-moral world upon which any of them can ground their most basic normative judgments. That is to say, if the very non-moral properties these theories cite at their deepest level as the ones that really matter are themselves essentially norm-laden, and if the normative judgments that figure in *their* analysis are themselves in turn essentially norm-laden, and so on all the way down, then these normative theories turn out to be about nothing at all. Call this "the regress-to-indeterminacy problem."[20]

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[19]For the details, see D. Zimmerman, "Property Foundationalism in Ethics."

[20]The sort of essential moralization that generates regress-to-indeterminacy involves the specification of the content of one's putatively basic right- or wrong-making properties in terms of the very properties of rightness or wrongness. It does not involve the perfectly sensible enterprise of explicating in distinctly evaluative terms why some right- or wrong-making property is worth caring about. Thus, there is no danger of regress-to-indeterminacy if a theorist grounds the basic status of liberty or certain liberties in her theory on the intrinsic value of liberty in general or on specific intrinsic goods protected by specific liberties, such as expression, assembly or worship. To be sure, for an avowed and resolute agent-centered, side-constraint deontologist, who wishes to avoid any hint of outcome-centered consequentialism in her normative theory, this kind of explication may create the more local problem of "cross-normative grounding." However, that is quite distinct from the kind of essential moralization I most wish to caution against in the present paper. I include this note to allay the worries of an anonymous referee for *Social Theory and Practice* who is under the impression that in avoiding essential moralization one must also forgo the opportunity to give "an illuminating account of liberty which explains why we value liberty or demand respect for it." This is not the case. If a liberal or liber-

2. The Two Perils of Essential Moralization

Neither the weak nor the strong implication is very appealing. At best, your normative theory is not about what you thought it was about. If you are a liberal or libertarian consequentialist, then cross-normative grounding means that the outcome you thought was basic (say, maximizing instances of liberty-enjoyment) is really grounded in some property from a deontological morality (say, preventing the violation of a right to X).[21] If you are a liberal or libertarian deontologist, it means that an obligation-grounding side-constraint or other non-consequentialist principle that you thought was basic (say, not violating the right to X) is really grounded in some consequentialist property (say, maximizing instances of the intrinsic good X that the right protects).[22] If you defend a liberal or libertarian political or social morality of either stripe and persist in essentially moralizing your liberty concepts, then your political or social morality is not really based on liberty at all.

Moral theories do have at least one function that would not be undermined by cross-normative grounding, namely, to provide action-guides on particular occasions, for in ethics there is an analogue to the local underdetermination of theory by data. Thus, consequentialists and deontologists frequently offer the same ground-level practical advice to agents in moral doubt. For example, both might advise (respectively) that it would be morally wrong for a legislature to pass a law that would criminalize the burning of the national flag or permit the expropriation of private property under the doctrine of eminent domain. The action-guiding function of their theories is not undermined by cross-normative essential moralization (unless, of course, it goes all the way down simultaneously in *both* sorts of theories). The reason is that any legislator

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tarian deontologist is willing to risk allowing "the priority of the good over the right," then she may avail herself such an opportunity without also risking regress-to-indeterminacy. (See nn. 5 and 22 for some remarks about how the less serious cross-normative grounding problem arises for John Rawls's and Judith Thomson's deontological theories.)

[21]For example, some commentators take J.S. Mill to construe *harming* as the *violation of a right*. See: G.L. Williams, "Mill's Principle of Liberty, *Political Studies* 24 (1976): 132-40; and J.C. Rees, "A Re-Reading of Mill on Liberty," *Political Studies* 13 (1960): 113-29. If this reading were correct, then Mill would have inserted into the deep structure of his utilitarian normative theory *basic* deontological principles. For effective criticism of this interpretation of Mill as a deontological essential moralizer, see D.G. Brown, "Mill on Harm to Others' Interests," *Political Studies* 26 (1978): 396-99.

[22]An example of cross-normative grounding in this other direction can be found in J.J. Thomson, "Some Ruminations on Rights," in J. Thomson and W. Parent (eds.), *Rights, Restitution and Risk* (Cambridge, Mass.: Harvard University Press, 1986); see especially her "Condition T," p. 59. I discuss this aspect of Thomson's account of rights in D. Zimmerman, "Property Foundationalism in Ethics."

who is racked by doubt will have managed to do the right thing in voting against one or the other of these proposed laws, regardless of whether the basic reason that really justifies her vote is consequentialist or deontological.

Thus, if it should turn out that either a utilitarian or a deontologist advising the legislators were to make the nasty discovery that his or her putatively most basic right- and wrong-making properties were actually essentially moralized with elements from the other kind of theory, this would be more of a theoretical shock to them than a problem of practical ethics for us or for the puzzled legislator. In pursuing the themes of cross-normative grounding via essential moralization in social and political theories, I assume that moral theories in general are not just action-guides, but also have the "Socratic" function of helping us to determine not only what we should do on a particular occasion, but also why.

When pressed to the limit, essential moralization has the highest cost of all, namely the complete indeterminacy of moral content of a moral theory, that is to say, the very loss of a world of non-moral facts for the moral facts to be grounded in. However, virtually everyone believes that rightness and wrongness are somehow grounded in non-moral features of the world, if not of this world then at least of the next, if not reductively then at least superveniently. Not even intuitionists about goodness, like G.E. Moore, or about rightness, like W.D. Ross, were prepared to allow their favored "non-natural" moral properties to float *that* free of the non-moral properties and facts upon which they are supposed to supervene.[23]

My real worry is not that swarms of social theorists actually advocate cross-normative grounding or essential moralization of liberty concepts all the way down and across the board. It is, rather, that all too many of them are entirely too casual about advocating or at least putting up with it. Some years ago I argued that the essential moralization of *coercion* sows considerable confusion in political and social philosophy.[24] However, essential moralizing persists at such a rate among political and social philosophers who officially accord a basic role to liberty or liberties, that a fuller treatment of the practice and its perils is called for.

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[23]The notion of *normative grounding* invoked here needs further clarification, especially as it contrasts with ontological notions like reduction and supervenience and epistemic ones like evidential justification. I try to provide the needed clarification in D. Zimmerman, "Property Foundationalism in Ethics."

[24]In D. Zimmerman, "Coercive Wage Offers." I press the point further in D. Zimmerman, "More on Coercive Wage Offers: A Reply to Alexander," *Philosophy & Public Affairs* 12 (1983): 165-71, and in D. Zimmerman, "Demoralizing Coercive Agreements," *American Philosophical Association Newsletter on Law and Philosophy* 94 (1994): 88-96.

3. Why Would Anyone Moralize Liberty Concepts?

By this point in my cautionary tale, a question will no doubt have occurred to the persistent reader. If the perils of essential moralization are indeed as serious as I claim, then why is there so much of it around, especially in liberal and libertarian political and social theories?

One answer is that social and political philosophers sometimes engage in the practice for what they take to be good *conceptual* and *moral* reasons. That is, they aim to accommodate as many strong intuitions as possible about which social relationships preserve liberty (however construed) and which are coercive. This involves the attempt to achieve "reflective equilibrium" in a social and political theory. This is a good thing.

Another answer is that classical liberals and contemporary libertarians, who wish to defend an austere minimal state that protects a narrow set of negative liberties and nothing more extensive, have good strategic and polemical reasons to moralize liberty and coercion concepts. They typically argue that the preservation of negative liberty and the movement towards socioeconomic equality sharply conflict. Resolute defenders of social safety nets and other welfare institutions that tend towards social equality have (at least) three responses to this claim. First, some simply accept it. In their justification of the fair and decent society, they are prepared to say "so much the worse for the relative weight of negative liberty." Second, some accord some value to negative liberty, concede that there is indeed a conflict between negative liberty and social equality, but attempt to compensate for the loss of the former by placing their bets on one notion or another of positive liberty. Third, the egalitarian may argue that the movement towards greater socioeconomic equality actually strengthens the network of negative liberties. Dialectically, this third response is the most convincing of all because it engages the proponent of the minimal state on his own ground, namely, in the maximal preservation of negative liberty and the minimization of coercion.[25] However, this third response has a chance of succeeding only if some non-moralized account of negative liberty and interference-with-negative-liberty (i.e., coercion) is correct.

3.1. Strategic and Polemical Considerations

The strategic and polemical phase of the dialectic often plays out as follows. Suppose that two social philosophers of differing ideological per-

[25]The most prominent contemporary proponent of this response is Ronald Dworkin. See his "What Rights Do We Have?" in Dworkin, *Taking Rights Seriously* (Cambridge, Mass.: Harvard University Press, 1977), pp. 266-78. For more detail, see Dworkin, "What is Equality? Parts I and II," *Philosophy & Public Affairs* 10 (1981): 185-246, 283-345.

suasions, who usually limit themselves to theoretical disagreement, find themselves embroiled in a decidely practical dispute, say, over access to a path that runs through the estate of one of them. The practical issue is whether it was fair for "Milton" suddenly to erect a fence across the path, which now blocks the hitherto easy access "Gerry" and many others customarily enjoyed to many public facilities and amenities. (Now everyone has to take an extraordinarily inconvenient roundabout route.) Suppose further that both disputants agree that such moral claims about socioeconomic fairness are to be grounded solely in a principle that requires the maximization of negative freedom from interference by others. Milton is a libertarian consequentialist[26] who insists that laissez faire capitalism is the only system that fits the bill because, compared to its socialist and welfarist rivals, it maximizes the "sovereignty" of all concerned—consumers, owners, and producers.[27] Gerry also values negative liberties, but he sharply disagrees with Milton on the empirical claim about laissez faire capitalism. He points out that the enterprise of maintaining property relations requires the deployment of coercive power to limit the liberty of those who neither own nor control certain resources in whatever efforts they might undertake to change the existing distribution.[28]

If pressed, Gerry would be eager to argue that socialist and welfare liberal alternatives do much better in satisfying the basic principle that he and Milton espouse as the sole moral basis for socioeconomic justice. However, for the time being he is content to point out that it is far from obvious that laissez faire capitalism is the one system of property relations that maximizes even individual negative liberty. For good or ill, rightly or wrongly, laws that protect one person's private property from

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[26]One might think that "libertarian consequentialism" is a contradiction in terms, but it is not. (In differentiating the position from his own side-constraint theory, Nozick refers to it as "a utilitarianism of rights": *Anarchy, State, and Utopia*, p. 28.) Some libertarians alternate between defenses of laissez faire capitalism grounded in deontological side-constraints and defenses grounded in value-maximizing principles, where the value to be maximized is individual liberty. This is especially true of libertarians like (the real) Milton Friedman and Ayn Rand, who make frequent appeal to efficiency arguments, and who expend slight effort in distinguishing between side-constraint deontology and outcome-centered maximizing consequentialism, much less between the latter and the sort of utilitarianism that stresses the maximization of economic well-being as opposed to liberty. All of these conflations are to be found in Friedman, *Capitalism and Freedom* (Chicago: University of Chicago Press, 1962), as well as in Rand, *The Virtue of Selfishness* (New York, New American Library, 1965), and Rand, *Capitalism: The Unknown Ideal* (New York: New American Library, 1966).

[27]The real Milton Friedman offers an argument like this on the laissez faire side of the debate in *Capitalism and Freedom*.

[28]The real Gerry Cohen offers an argument like this on the egalitarian side in his "Capitalism, Freedom and the Proletariat," in A. Ryan, (ed.), *The Idea of Freedom*, pp. 7-25. I employ a different version of this dialogue in D. Zimmerman, "Survey Article."

the appropriation and/or use of others do, after all, interfere so persistently with the freedom of the latter.[29]

Milton replies that such laws do nothing of the sort, because they simply prevent the non-owners from doing what it would be morally wrong of them to do in the first place, namely, to seize or otherwise illicitly use the property of the rightful owners. Limiting such predatory actions, he insists, is no deprivation of negative liberty properly so-called, because genuine negative liberty is the state of being unconstrained to do what one is morally permitted to do in the first place. Having made his case, Milton promptly calls the police and insists that they arrest Gerry and other trespassers who are climbing over his new fence.

In making this polemical move, Milton essentially moralizes the key right- and wrong-making properties of negative liberty and the interference-with-negative-liberty. In the context of the debate it is not such a bad move, because it makes it much easier for him resolutely to defend laissez faire property relations on the moral grounds agreed upon. However, Gerry has his wits about him, so he points out that Milton has stacked the deck in favor of his claim that capitalist property relations embody the negative liberty-maximizing system. For, first, Milton has analyzed the key wrong-making property in such a way that the fence and the police count as an interference with Gerry's negative freedom to cross that corner of Milton's estate only if Gerry is morally justified in using the customary path. Second, Milton simply assumes that Gerry (and the others) would not be morally justified to use force to change the existing property relations. On these suppositions, of course, it follows that the actions Milton and the police take do not involve coercion or the interference with anyone's negative liberty, properly so-called.

Judging from how Milton argues his case, one would expect a typical champion of negative liberty, Isaiah Berlin, for example, to say things like this: "I am normally free to the degree to which no man or body of men interferes with my activity *in pursuing those ends I may rightfully pursue* ... Coercion implies the deliberate interference of other human beings within the area in which I could otherwise act *within the bounds of what I am morally permitted to do. The pursuit of wrongful ends does not count as freedom. The interference with my wrongful activity does not count as coercion.*"[30] But Berlin does not say that. He resolutely em-

[29]The issue is not whether it is appropriate to characterize laissez faire capitalism as an especially coercive socioeconomic system, but rather whether that system is better than the sort of egalitarianism Gerry wishes to defend when measured against the negative freedom-maximizing principle that Milton and Gerry both take to be the appropriate standard. I point this out to allay the worries of an anonymous referee for *Social Theory and Practice* about the fairness of the example to Milton's cause.

[30]Moralized version of Berlin, "Two Concepts of Liberty," p. 122; italicized words

braces essentially *non*-moralized conceptions of liberty and coercion.

Milton's strategy for morally defending laissez faire property relations clearly depends on the essential moralization of liberty and its cognates, and on the availability of prior and independent moral grounds for establishing the moral rightness of those property relations. However, this moralizing move is illegitimate in the context of this particular debate precisely because no such prior and independent moral grounds are available to either party, because (by hypothesis) they have both agreed at the outset that the sole justification for a social distribution of benefits and burdens is its comparative success in maximizing the overall balance of negative liberties over interferences-with-negative-liberties. For this principle to function as basic in the debate the key right- and wrong-making properties must be essentially non-moralized.

I hope that the sort of strategic and dialectical motives for essentially moralizing liberty concepts that Milton has in the dialogue just rehearsed strike the fair-minded person as ad hoc (at best). However, there are philosophically more substantial and respectable reasons for injecting prior and independent moral elements into one's very account of what constitutes social and political actions and practices as negatively free or uncoerced.

3.2. Moral and Conceptual Considerations

A dialectically more legitimate reason for essentially moralizing these concepts appeals to moral and conceptual intuitions in conjunction with an ideologically neutral constraint of explanatory coherence or "wide reflective equilibrium." The defenders of this general approach maintain that an essentially moralized account of these notions accommodates a larger number of important moral and conceptual intuitions about social and political liberty and coercion than any non-moralized competitor.

To my knowledge, no one has yet worked out a comprehensive account of coercive social relationships along these lines.[31] However, there is a moralized theory of liberty and coercion in the current literature that takes a somewhat narrower, but still impressively ambitious, focus. In his important book *Coercion*, Alan Wertheimer argues that "an adequate philosophical theory of coercion emerges from an analysis of the way coercion claims have been adjudicated in the law."[32] He argues, further,

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interpolated.

[31]The most explicit application of the method of wide reflective equilibrium to the analysis of liberty and coercion concepts is to be found in Christine Swanton, *Freedom: A Coherence Theory* (Indianapolis: Hackett, 1992). As far as I can tell, she takes no explicit position on the question of essential moralization.

[32]Wertheimer, *Coercion*, p. xi.

that the theory of coercion that emerges from an analysis of adjudication in a wide range of areas of criminal and civil law—encompassing contracts, torts, blackmail and coercive speech, confessions and searches, plea bargaining, duress and necessity as defenses—is thoroughly moralized. I have already quoted his central thesis in my list of moralized liberty-claims in the Introduction ("coercion claims are moralized, ... they involve moral judgments at their core").

Wertheimer does acknowledge that the truth conditions of claims in the law about interference with liberty and coercion sometimes vary with context of use, so that at least some are non-moralized (more on this later). However, he argues that the moralized conception predominates. To show how, he offers a "two-pronged" theory of coercion-claims in the law. He grants that in some contexts, U.S. and British courts have ruled that *non*-normative conditions alone constitute P's proposal as coercive and Q's compliance as coerced.[33] However he insists that in most judicial determinations these courts have opted for an essentially moralized analysis of coercion according to which P coerces Q only if

(i) *The Proposal Prong*: P is *morally wrong* to make the threat or offer with which Q complies,[34] and/or

(ii) *The Choice Prong*: Q's compliance is *morally invalidated* by conditions under which P made his proposal.[35]

Thus, it is one thing if P is an overzealous police detective who threatens suspect Q with the proverbial truncheon in the interrogation box. In this context (so the contextualist story goes) the truth conditions of "P coerces Q" do require that in issuing the threat P commits some independently specifiable moral wrong against Q, which itself is a necessary condition for invalidating Q's consent. It is quite another thing, however, if P is an officer of a legitimate state who threatens a recalcitrant taxpayer Q with a heavy fine or prison if he does not pay up forthwith. In this very different sort of context (the contextualist story continues) P coerces Q and Q's compliance is unfree if Q complies simply to avoid the penalty, even though in issuing the threat P has not wronged Q and Q is not morally entitled to raise the issue of the validity of the voluntariness of his compliance.

Wertheimer is, understandably, unwilling to accept all the implications of a uniformly moralized account of coercion, especially the counterintuitive idea that a legitimate state never coerces its citizens into doing what they otherwise would not want to do, as in the case of the recalcitrant taxpayer.[36] He also takes special pains to disavow anything so

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[33]Wertheimer, "Demoralizing Coercive Agreements: A Reply to Zimmerman."

[34]Wertheimer, *Coercion*, pp. 38 ff.

[35]Ibid. pp. 272 ff.

[36]Wertheimer forthrightly acknowledges that this is a potential problem for any *fully*

strong as Ryan's purely moralized conception with its bizarre implications. His solution is to "contextualize" claims about voluntary and coerced choices. In his words:

> Justified coercion is possible because the truth conditions of the coercion claim embedded in "The state is justified in coercing citizens to pay taxes" are not identical with the truth conditions of the coercion claim embedded in "B's agreement is not binding because A coerced B."[37]

4. Are Liberty and Coercion Claims Ambiguous?

Generally, the attempt to block otherwise awkward implications of a theory by invoking the semantic ambiguity of key terms is ad hoc, unless the ambiguity claim can be motivated on independent theoretical grounds. A full-blown account of semantic ambiguity would be an awful lot to ask of a defender of a theory of liberty and coercion. Therefore, it is a good thing that one is not required here, and that we can rest content with good reasons to accept the particular thesis that "P coerced Q" is genuinely ambiguous, in much the fashion of that old stand-by, "The bank is empty."

To this end, Wertheimer argues that a completely non-moralized description of coercive state powers has counterintuitive implications:

> It is one thing for the law to say, "We're going to force you to pay taxes whether you like it or not." That is a case when the state can justifiably coerce one to do something. But it is quite another thing for the law to say, "we're going to force you to plead guilty whether you like it or not," because we do not think that the state can justifiably coerce one to plead guilty or to waive one's right to a trial. We must be able to say with a straight face—that one's plea was not coerced.[38]

He generates these ambiguity claims from the two components of a typical coercion claim just noted, the proposal prong and the choice prong.

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moralized theory of coercion (p. 256). However, he is confident that a context-relative ambiguity thesis solves it. For a recent argument that laws backed by threat of sanction are not really coercive, see William A. Edmundson, *Three Anarchical Fallacies: An Essay on Political Authority* (Cambridge: Cambridge University Press, 1998). (I thank Wertheimer for drawing my attention to this argument in personal communication.) In this dispute, it is crucial that we not conflate two distinct questions: 1) *Conceptual*: Is compliance to laws backed by threats ever coerced? And 2) *Moral*: Is such coercion morally justifiable, perhaps on the grounds that the citizens of the state either did give, or would have been rational to have given, uncoerced consent to living under such coercive laws? It simply does not follow that a citizen is not coerced at time t when he complies with a threat that backs a law to which he himself gave, or rationally would have given, uncoerced consent at time t-1. (That is the point of referring to certain social security payment plans as "non-voluntary.")

[37]Wertheimer, *Coercion*, p. 255.

[38]Wertheimer, "Demoralizing Coercive Agreements: A Reply to Zimmerman," p. 98.

The *proposal* prong generates certain substantive normative judgments about which threats or offers the state is permitted to issue to its citizens. These entail conclusions about whether the truth conditions of certain threats issued by the state in different kinds of contexts are moralized or not. In those contexts where state coercion is deemed substantively morally legitimate, one concludes that the truth-conditions of "The state secured B's compliance via the harsh and credible threat to impose penalty X" are conceptually non-moralized. One concludes further that the state did indeed coerce B, but by appealing to one of our original substantive normative judgments, one also concludes that this instance of coercion is morally legitimate. However, in those contexts in which state coercion has been deemed substantively morally illegitimate, one concludes that the truth-conditions of this sentence-type are essentially moralized. One concludes further that the state here also coerced B, but by appealing again to another of the original substantive normative judgments, one concludes that this instance of coercion is not morally legitimate.

The *choice* prong generates a set of judgments about the rights that must be protected by the constitution (or by how it plays out in the legal system) based on our general underlying political morality. Thus, because one embraces the prior moral belief that citizens have no moral right to hold onto the money they are legally obligated to pay under existing (fair) tax laws, one concludes that the satisfaction-conditions of "... coerced ..." in the sentence-frame "The IRS coerced B to pay his back taxes" do not make essential and ineliminable reference to the wrongness of the IRS's issuing the threat of prison to citizens who otherwise would not pay up. But, because one embraces the conflicting prior moral belief that citizens do have a moral right not to incriminate themselves, one concludes that the satisfaction-conditions of "... coerced ..." in the sentence-frame "The prosecutor coerced B into taking the plea bargain (or, into testifying at his own trial)" do make essential and ineliminable reference to the wrongness of the prosecutor's issuing the threat of (the longer term of) prison.

Wertheimer sums up his ambiguity claim as follows:

> In most coercion contexts, B's action would change his moral or legal status—were it not for the coercion. He would, for example, be obligated to do something he was otherwise not obligated to do. By contrast, the state's coercive threats typically give B prudential reasons to do what he is morally obligated to do in any case (not kill, not steal, pay his taxes and so forth). Because the coercion does not change B's moral status, whether the state is exercising coercion is not problematic. Put slightly differently, the moral considerations that (help) determine whether someone is coerced (in the sorts of responsibility-affecting contexts on which I have focused) are importantly distinct from the sorts of moral considerations that figure in the justification of state coercion.[39]

[39]Wertheimer, *Coercion*, p. 256.

This multiple-context theory account of the semantic ambiguity of "voluntary" and "coerced" does indeed yield moralized and non-moralized truth-conditions for sentences like "the state secured B's compliance by issuing a harsh and credible threat," as used in different kinds of contexts. However, the proffered differentiating criterion does not work very well in the cases at hand. Consider again how it is supposed to play out in the tax case and in some of the plea bargaining cases. The IRS threatens taxpayer B with ten years in jail unless he pays up. On the multiple-context ambiguity account, the government has issued a conceptually non-moralized, substantively permissible threat to which B has succumbed. The proposal has this status by virtue of the fact that B has no independent right to keep the money and is thus *not entitled to reopen the question closed for him by the government's threat.* In *The State of North Carolina v. Alford*, on the other hand, the prosecutor "threatened" to try Alford for capital murder unless he agreed to plead guilty to non-capital murder. On the multiple-context ambiguity account, the state has issued a conceptually moralized, substantively permissible offer, which Alford has voluntarily accepted, by virtue of the fact that he has no independent right to be prosecuted for the lesser charge and is thus *not entitled to reopen a question closed for him by the government's offer.*

Something has gone wrong. The *analysans* in each case (picked out by the italicized clauses) is precisely parallel: by hypothesis, neither taxpayer B nor defendant Alford is entitled to better terms than those offered by the government official involved. But on the multiple-context semantic ambiguity thesis, that is precisely what is supposed to determine whether the government official's proposal is a (non-moralized) coercive threat or a (moralized) non-coercive threat or offer. But since the moral standing of the person who faces the choice prong is identical in each case, that cannot be the factor that conceptually differentiates non-moralized from moralized proposals.

The ambiguity thesis looks more plausible in cases in which the person receiving the proposal *is* entitled to better terms. Consider *in re Garrity*, in which a prosecutor presented a police officer with the following difficult choice: testify in a ticket-fixing trial and thereby open yourself to self-incrimination, or invoke your Fifth Amendment right not to testify but lose your job. On appeal, the Court ruled that Garrity was coerced into testifying. In upholding this ruling, the U.S. Supreme Court invoked the idea that "the option to lose [one's] means of livelihood or to pay the penalty of self-incrimination is the *antithesis of a free choice* ..."[40] Despite the non-moralized sound of the Court's own language, Wertheimer insists that "the Court claims Garrity was coerced precisely because but

[40]Ibid., p. 128; emphasis in original.

only because the state was *not* entitled to put him to that choice, a view which rests on a moralized account of coercion."[41] But does their decision rest on an essentially moralized conception of coercion or simply on a substantive legal judgment that the prosecutor should not have subjected Garrity to such a hard choice? The court's own language strongly suggests the latter explanation, which supports a non-moralized construal of the notion of coercion at issue.

So far, so good, but the non-moralized reading of these cases still has some explaining to do. Contrast *Alford* and *Garrity*. The Courts (eventually) ruled that, whereas Garrity was coerced into incriminating himself, Alford was not coerced into taking the plea. The moralizer's explanation of this difference is that in each case the Court was employing an essentially moralized concept of coercion, according to which a person is coerced only if he was not entitled to a better deal. How does the non-moralizer explain it? Elsewhere,[42] I explain this difference in terms of the existence or non-existence of prior substantive rights to use certain kinds of pressure (but not others) to coerce individuals into taking pleas or testifying. On this reading, both Garrity and Alford were coerced, the one unjustifiably, the other justifiably (as in the case of taxpayer B).

The non-moralizer's background claim is that most bills and charters of rights against interference with liberty contain plenty of excepting conditions which justify coercion under certain circumstances, and which courts frequently acknowledge. To this sort of move, Wertheimer replies: "But the Court could *not* simply claim that the prosecutor was substantively entitled to force Alford to plead guilty, because it is a basic constitutional right that one cannot be forced to plead guilty."[43] Quite so. The Court could not *simply* say that there was prosecutorial coercion and leave it at that. They would also have to find some way to differentiate between constitutionally acceptable and unacceptable coercion. In fact, courts often do precisely that by employing qualifiers like "not *offensively* coercive," as in *Simmonds Precision Products v. U.S.* (1975).[44]

Wertheimer opts for a multiple-context theory of coercion because at the end of the day "we must be able to say—with a straight face—that one's plea was not coerced."[45] There is something to this, but there are already good explanations short of semantic ambiguity for our reluctance to use such emotionally charged words as "coerced" and "forced" in talking about plea bargains. These terms already have strong negative

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[41]Wertheimer, "Demoralizing Coercive Agreements: A Reply to Zimmerman," p. 98; emphasis in the original.

[42]I elaborate on this theme in D. Zimmerman, "Demoralizing Coercive Agreements."

[43]Wertheimer, "Demoralizing Coercive Agreements: A Reply to Zimmerman," p. 98.

[44]Wertheimer, *Coercion*, p. 41.

[45]Wertheimer, "Demoralizing Coercive Agreements: A Reply to Zimmerman," p. 98.

illocutionary force, which tends to make officials wary about using them when it comes time to defend their legal decisions. However, this linguistic fact is better explained in substantive normative terms, for there is a standing prima facie presumption in many social and political moralities against coercive interference with liberty or with certain kinds of liberties, a presumption that even a legitimate state must overcome.

To be sure, the sentence "The prosecutor coerced Alford into pleading guilty to second-degree murder by threatening to try him for capital murder" does have a harsh sound. So, it is no great surprise that liberals and libertarians are reluctant to use such language in characterizing the legally acceptable behavior of officers of the court. Why, then, are we so willing to use it so freely in characterizing what the IRS or the cop on the beat does, but so reluctant to use it to characterize what the prosecutor or the cop in the interrogation room does? I think that this involves a relatively unproblematic appeal to the pragmatics of legal discourse, more of a problem for the study of legal rhetoric than semantics. This is the sort of datum that a theory of illocutionary forces nicely explains. Therefore, one has no need to moralize the very semantic content of "liberty" or "coercion," certainly not on the grounds that such a reading coheres better with Anglo-American judicial usage.

Wertheimer argues that Anglo-American courts typically construe coercion claims as essentially moralized across a wide spectrum of the law, encompassing contracts, torts, blackmail and coercive speech, confessions and searches, plea bargaining, duress and necessity as defenses in criminal law.[46] However, he does not appreciate that if this were true, and if legal analysis were indeed the key to philosophical analysis, then there would not remain nearly enough non-moralized appeals to liberty and coercion in the law to secure the foundational role of those concepts in liberal and libertarian legal theory.[47]

I turn now to a consideration of the perils of essential moralization in

[46]My own analysis suggests that most of Wertheimer's moralized readings of the applicable legal decisions cannot be sustained, because the large majority of the cases he cites are distinctly *non*-moralized. Wertheimer replies that even where it appears otherwise, "courts typically and *implicitly* rely on a moralized account of coercion" (Demoralizing Coercive Agreements: A Reply to Zimmerman," p. 97). However, any appeal to what courts *implicitly* mean is unnecessary in the present dialectical context, not because we should honor the dictates of "strict constructionist" judicial interpretation, but simply because so many of the decisions Wertheimer takes to be moralized *obviously* invoke non-moralized conceptions of coercion. I suggest that it is no more than interpretive common sense to take the courts' plain language at face value. I address this interpretive point in D. Zimmerman, "Demoralizing Coercive Agreements."

[47]Wertheimer, "Demoralizing Coercive Agreements: A Reply to Zimmerman," p. 96. Wertheimer and I have already debated in print the issues involving essential moralization, but I fear that the deepest issues dividing us still need clarification—thus the further discussion of his views in the present essay.

several kinds of social and political theories. Cross-normative grounding and essential moralization-to-the-point-of-indeterminacy can break out in both consequentialist and deontological social theories.

5. Essential Moralizing in Liberal and Libertarian Consequentialism

In *consequentialist* social theories the structure of the problem involves the "gimmicking-up" of the intrinsic value-function so that it surreptitiously ranges over *deontological* requirements or prohibitions.[48] Here is the recipe. Where an agent S faces alternative actions a, b, c, ... n, act-consequentialism (to keep things relatively simple) requires him to perform the action that will bring about at least as high an overall balance of good over bad consequences, weighed by probabilities, as any of the other actions in the feasibility set. But if the normative theory is to be genuinely consequentialist, then the "metric" of values to be maximized and disvalues to be minimized better not make essential reference to explicitly moral rights and wrongs, or the whole consequentialist attempt to ground moral rightness in a further kind of fact about the world would run into trouble. This is not a point about the generally empiricist tenor of utilitarianism consequentialism. The further kind of fact in question can be *irreducibly evaluative*. (Moore was, after all, a consequentialist, even a kind of utilitarian.) It simply better not be *irreducibly morally normative*, or the consequentialist would be vainly attempting to ground claims about the right in claims about the right.

That approach either sends him round in a circle (such that S's doing a rather than b, c, ... n is morally right because it produces at least as high a balance of value over disvalue, where these include basic moral rights and wrongs). Or, it sends him whirling into a regress, such that the moral rights and wrongs that the right-making intrinsic value-function ranges over are grounded in still another value-function that ranges over still further moral rights and wrongs, and so on all the way down. Or, it forces the consequentialist simply to come clean and admit that the intrinsic value-function has been "gimmicked-up" to look like a genuinely consequentialist maximizing function, when in reality it ranges over a grab-bag of basic normative principles that include the deontological requirements and prohibitions that the consequentialist has all along insisted derive their moral weight solely from the intrinsic *non*-moral[49]

[48]For an illuminating account of such "gimmicked-up" value functions, see Nozick, "Moral Structures and Moral Complications," reprinted in R. Nozick, *Socratic Puzzles* (Cambridge, Mass.: Harvard University Press, 1997), pp. 201-48.

[49]For an effective explanation of the "circularity problem," which requires that the values a utilitarian aims to maximize be *non*-moral, see W.K. Frankena, *Ethics* (Englewood Cliffs, N.J.: Prentice-Hall, 1973), p. 13.

values they produce.

To illustrate: Suppose that the liberal or libertarian consequentialist includes among the benefits and harms, values and disvalues over which his value-function ranges such elements as the fact that a right has been protected/violated, a truth/lie told, and so on for any deontological requirement or prohibition you would care to name. He then assigns a "utility-number" of 1 to the non-violation of the right, 0 to its violation, 1 to telling the truth, 0 to telling a lie, and so on down the list of deontological requirements/prohibitions. It is then child's play to gimmick-up a utility-function that takes as its values (in the mathematical sense) the numbers assigned to these items. The result: The theory says that S does the morally right thing when he does a rather than b, c, ... n, *because in doing a he "maximizes utility."* But it's all a sham, because the "utilitarian" is tacitly acknowledging the basic normative weight of such specifically deontological considerations as not violating rights and telling the truth.

6. Essential Moralizing in Libertarian Deontology

I now turn to the vicissitudes of essential moralization in deontological libertarianism where the practice is most common (for the ideological reasons explained in section 3.1), and its structure interestingly complicated. There is a standing deontological prohibition against interfering with the freely taken, autonomous decisions of other persons, subject to all the usual qualifications about what they propose to do with their liberty or liberties. Thus, it is intrinsically (prima facie) wrong for one person to interfere with another's physical movements or to manipulate that other person's psychological constitution without his consent. This prohibition also includes the (mis)use of punitive inducements in coercing the other, in forcing him to act under duress, and the like. The usual deontological requirements also involve, if only slightly less obviously, the basic obligation not to interfere with the liberty or liberties of others. Thus, there is a standing (prima facie) deontological requirement to honor commitments and undertakings to other persons, subject to all the usual qualifications about how they were entered into. These requirements typically generate deontological prohibitions against interfering with that other person's freedom to go about his business within the terms of the prior undertaking.

A deontological libertarianism (or liberalism, for that matter) without liberty or liberties to figure in its basic principle(s) is a social or political morality without a subject matter. Consider the implications of a serious, across-the-board essential moralization of liberty and coercion concepts in such theories.

6.1. In Historical-Entitlement Theories

Let us focus on the historical-entitlement theory of the sort Nozick used to champion. Consider the implications of his famous claim already quoted (in the Introduction) from *Anarchy, State, and Utopia*:

> Z [a worker] is faced with working or starving; the choices and actions of all other persons do not add up to providing Z with some other option ... Does Z choose to work voluntarily? ... Z does choose voluntarily if the other individuals A through Y [the capitalists and the other workers who got the better jobs] each acted voluntarily and within their rights.[50]

Putting to one side for the moment the possible circularity or regress the reference to the voluntariness of the actions of A through Y may set in motion, we may take Nozick to be insisting (in much the same fashion as Ryan) that A-Y conjointly render Z's choice involuntary only if in the process leading up to and causing Z's plight some person in that group did not act within his rights. (Or, on a weaker and more general moral reading, only if someone in the set did something morally wrong that causally contributed to Z's plight.)

Suppose that deep within the necessary and sufficient conditions for what counts as a person's acting freely or unfreely, without interference or under duress (and so on) there occurs a conceptually ineliminable reference to some prior and/or independent moral right or wrong, say, to some distinct deontological requirement or prohibition. If the liberties protected in Nozick's model society are essentially moralized all the way back to the state of nature, then there will be no way to determine on purely *non*-normative grounds, say, in terms of physical actions and/or psychological influences, whether the collective actions of persons A through Y count as a genuine interference with person Z's freedom. This logical implication of Nozick's own official account of acting non-voluntarily is not good for his theory, because the essential moralization of its foundational concept renders the theory indeterminate in content.

To do Nozick's dialectical situation justice, one must note that there are actually two ways essential moralization might enter his theory at this foundational level. The moral prohibition he conceptually embeds in his foundational property of voluntariness might be a reiteration of the prohibition against non-interference. On the other hand, it might involve some prohibition distinct from the deontological prohibition on interference.

The passage quoted from *Anarchy, State, and Utopia* leaves open both possibilities. First, suppose that the deontological constraints on persons A through Y are exhausted by the prohibition against interfering

[50]Nozick, *Anarchy, State, and Utopia*, p. 263.

with the liberty of other persons. Suppose, in other words, that the history leading to the allocation of capital and wage-labor that consigns Z to his sad fate has been normatively impeccable (by the historical-entitlement theory's own lights), both at the point of original acquisition and throughout all the transfers since then. Thus, it satisfies throughout this history one prohibition: no person has committed an illicit border-crossing against another person. At the end of the story there crouches Z slopping out the muck in the bitter cold for a pittance.

I am not so much concerned with the moral attractiveness of this libertarian story as I am with its coherence. Note that we cannot determine whether Z has acted voluntarily in accepting the awful job he is stuck with until we have already determined whether every other person A though Y has previously acted within his rights. (For, recall that *voluntarily* is supposed to be essentially moralized.) On this working supposition, there is one and only one relevant deontological right/obligation pair, namely, Z's acting free of interference and A through Y's not interfering with Z's free action. Thus, on Nozick's condition, Z acts voluntarily just in case all of the other people in the picture, A through Y, have acted voluntarily and have not violated the prohibition against illicit interference with anyone's liberty.

However, now things start to get sticky, for how can the moralizing libertarian determine whether (say) person Y has managed to act voluntarily and without violating the deontological prohibition against interference unless he has already determined whether persons A through X have managed to act voluntarily and without violating the prohibition against interference? And how is he to determine *that* unless he can determine whether the persons related to each other within the group consisting of A through W have managed to act voluntarily and to avoid violating that very prohibition during the history that yields the final allocation up to and including X's allotment, and so on back to Z's?

We started this stage of the argument with the supposition that the only deontological norm in the picture was the prohibition against illicit interference with liberty. But we now find it hard on that basis alone to determine whether one person's (W's) action in relation to another's (X's) counts as an interference with that other person's liberty, let alone an illicit interference, without a prior determination of whether W was acting voluntarily and within his rights. But we cannot determine that unless we have already determined whether everybody else, A through V, who has interacted with someone or other during the history (some of them with W) have done so voluntarily and without violating the deontological prohibition against interference ... and so on back to when there were just a few people in the state of nature hard at the task of "original acquisition."

So far, the essentially moralized theory is coherent, if tantalizingly open-ended. Its sole deontological prohibition is against interference with liberty. Moreover, the status of any act as voluntary or involuntary is (by the theory's own stipulation) determined by whether the person who affects another person's choices has violated that very prohibition. But still, each step in the process of determining the freedom or unfreedom of an action in terms of prior non-violation or violation of the prohibition against interference can simply pass the explanatory buck back to the previous step. But (as the man said) the buck has to stop somewhere. My point is that the essential moralization of liberty and its cognates in this kind of theory renders a satisfactory terminus impossible, because there is nowhere for the buck to stop that actually grounds its deepest moral claims about justice in claims about the requirement not to interfere with liberty. Let me explain.

Nozick's historical-entitlement theory of justice is recursive, so in fixing the status of some bit of behavior as involving interference or not, it does have resources other than the principle of non-interference as this figures in "justice in transfer." Therefore, in assessing the voluntariness of the choices made earlier and earlier in the history, it can factor into the essential moralization of voluntariness whatever principles of "justice in original acquisition" are available. On the supposition that the sole foundational norm in the theory prohibits interference with liberty, the story might go something like this.

The original souls sweating it out in the state of nature are morally constrained in what they are permitted to acquire from it. Nozick is notoriously non-committal in *Anarchy, State, and Utopia* about what the constraints are, but even without the details we can develop our story. Suppose that those constraints include some version either of the principle of "first occupancy" or of "mixing one's labor with nature," with some version of the "Lockean Proviso" thrown in. Thus, the original souls are morally permitted to acquire as many previously unheld bits of nature as they can manage to occupy or to mix their labor with (whatever these notions entail), as long as they "leave enough and as good" for the rest of their fellows (however much that is). Over and above that, the Lockean Proviso at the very least prohibits each person in the state of nature from preventing any other person from acquiring (or using) what he is entitled to under its terms. But that is simply to say that each is prohibited from interfering with the liberty of any other to acquire (or use) what he is entitled to under the Lockean Proviso. So, at the very foundation of the historical-entitlement theory of justice we find yet again the prohibition against interference with liberty.

If this very prohibition is conjoined with the essential moralization of the concept of liberty itself, then bringing the story to a satisfactory de-

nouement is a big problem for the historical-entitlement deontologist. The reason is that down this deep in the structure of a theory that essentially moralizes its foundational concepts there is no longer anywhere to pass the buck in specifying their content. For we are taking seriously the essential moralizer's claim that non-normative factors on their own are insufficient to establish that one person has interfered with the liberty of another. Back in the state of nature, the deontological principles of justice in original acquisition prohibit anyone from interfering with the liberty of anyone else to acquire the holdings he is entitled to under the principles of first occupancy and/or mixing one's labor, and under the Lockean Proviso.

However, in an essentially moralized historical-entitlement theory of justice, no purely factual description of what A is doing to B, or B to C, or C do D ... down on to what Y is doing to Z, can determine whether A is interfering with B's liberty, or B with C's and so on to whether Y is interfering with Z's. For, recall that in this theory, interfering with liberty is stipulated to be an essentially moralized notion (albeit with some descriptive content). Therefore, without a prior determination of when or whether the deontological principles of original acquisition and/or use are violated, one cannot determine when or whether the deontological principles of original acquisition and/or use are violated.[51] Essential moralization entails that no merely physical or psychological factors (specified non-morally) are sufficient to establish that one person in the state of nature has interfered with the liberty of another, or placed him in a position of involuntary choice, or coerced him. Thus, essential moralization renders the very content of *liberty* and *coercion* foundationally indeterminate. However, an indeterminate concept cannot do any foundational work in a deontological moral theory. Either the historical-entitlement version of libertarian deontology is at least a coherent (leave aside plausible) moral perspective, or the liberty it is based on cannot be essentially moralized. The choice is that stark.[52]

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[51]Nozick acknowledges that applying some version of the Lockean Proviso in the state of nature leads to a regress, a problem he attempts to solve by introducing a distinction between stronger "acquisition" and weaker "use" versions. See *Anarchy, State, and Utopia*, pp. 174-78. However, the regress I identify here is different, in that it can be generated even on the weaker version.

[52]To be sure, the Nozick of *Anarchy, State, and Utopia* does have the option of construing the state of nature "in a way that permits a naturalistic reduction," in the words of an anonymous referee for *Social Theory and Practice*. However, such non-moralization of liberty and coercion at the base of the theory would create serious problems for Nozick's defense of the *minimal* state and no stronger.

6.2. In Deontological Current Time-Slice and Patterned Theories

One might suppose that this problem of regress-to-indeterminacy plagues only deontological theories with historical-entitlement recursive structures; and thus presents no particular problem to theorists of justice who appeal instead to patterned and current time-slice principles.[53] However, this is not true. To be sure, such alternative normative structures, even when essentially moralized, do contain principles other than the straightforward prohibition against interference with liberty. Therefore, they are not so immediately vulnerable to regress-down-to-indeterminateness of liberty and coercion concepts, because at the bottom of their chains of justification such theories can employ other deontological principles to give the essentially moralized concepts of *liberty* and *coercion* determinate non-moral content.

Other deontological requirements and prohibitions that might be enlisted to fix the naturalized content of the moralized conceptions include (inter alia) the principles of fidelity, gratitude, compensation, and retribution.[54] They also include those patterned and end-state or current time-slice principles of justice that the historical-entitlement theorist so resolutely rejects,[55] such as the principle of complete equality, the difference principle, or variations on the theme of equality of opportunity. Using any of them to fill out the essentially moralized concepts of *liberty* and *interfering with liberty* would not please the Nozick of *Anarchy, State, and Utopia*, but that is hardly the point here. In any event, his argument already explicitly appeals to one such principle, but without advertising the fact. To be sure, the Lockean Proviso is not an "end-state" principle of justice, but it is, one might say, a "beginning-state" principle, every bit as much a current time-slice or patterned principle of justice as the other ones Nozick rejected.

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[53]For an explanation of these categories in the theory of justice, see *Anarchy, State, and Utopia*, chap. 7.

[54]For a classic account of such deontological principles, see W.D. Ross, *The Right and the Good* (Oxford: Oxford University Press, 1930).

[55]Nozick, *Anarchy, State, and Utopia*, pp. 153-74, 183-231. Nozick denies that the Lockean Proviso is a current time-slice principle (however early or late the "slice" might be reckoned), because "it focuses on a particular way that appropriative actions affect others, and not on the structure of the situation that results" (p. 181). Nevertheless, it is obviously a *patterned* principle of a kind he so resolutely rejects in Rawls's theory. More specifically, it is a principle that sets a minimum floor on opportunities for original acquisition. Though less egalitarian than strong principles of equality of opportunity, it nonetheless has the same form as principles of opportunity-distribution that more strongly constrain socially and naturally grounded inequalities in the life-prospects of people once the history of transfers is well underway. I was prodded to draw this distinction among patterned principles of equality of opportunity-distribution by the comments of an anonymous referee for *Social Theory and Practice*.

This second essentially moralizing strategy can work only if the content of any supplementary principles enlisted for the purpose makes no essential reference to liberty and interference with liberty. However, chances of that are nil, because typical deontological requirements and prohibitions permit, even require *enforcement*. This requirement clearly brings back into the picture yet another essential reference to liberty and interference with liberty. For example, current time-slice and patterned principles of distributive justice require that distributions of benefits and burdens not only conform to the prescribed distribution-profile or pattern (equality, limited inequalities with a safety net or the like), but also that this profile or pattern be maintained by force if necessary. The "ideal" or "perfect compliance" component of the theory of justice establishes the required profile or pattern; the "non-ideal" or "partial compliance" component establishes the appropriate enforceable readjustments.[56]

However, the game now gets dicey for the deontological essential moralizer, because the content of these principles of redistribution and rectification must make essential reference to interference with the liberty or liberties of certain people. Some of them are people whose entitlements under the ideal-principles have been interfered with, the others are people who have done the interfering and who now must be stopped. But one can see the problem that faces even a deontological essential moralizer who is more egalitarian than Nozick, for it is simply not possible to determine whether (say) robber A's behavior toward victim B even counts as interfering with B's liberty (say to keep his own well-gotten gains), or whether state official C's behavior (in restraining A) even counts as interfering with A's liberty to get away with his robbery, unless we have already determined whether A's behavior and C's behavior are morally justified under the terms of the theory of justice itself. But, given the essential moralization of *liberty* and *coercion,* there is no normative Archimedean point left in the theory for making these determinations. And since the theory (by hypothesis) essentially moralizes *P interferes with Q's liberty*, no non-normative specification of P's behavior toward Q is sufficient to make the determination. Thus, the very content of the putatively foundational concept remains indeterminate.

So much for pure essential moralization in deontological theories. Now let us add a bit of realism to the dialectical picture.

7. Mix-and-Match Deontology for Libertarians

Thus far, I have been operating under an extraordinarily restrictive assumption, namely that the deontological theories in question adopt a *pure*

[56]This distinction is prominent in Rawls, *A Theory of Justice*, pp. 8-9 and elsewhere.

essential moralization of the key properties of *liberty*, *coercion*, and the like. That is to say, I have been assuming that these theories hold that *all* occurrences of liberty concepts are essentially moralized. To be sure, if we take them at their word, that is precisely what theorists like Ryan and the Nozick of *Anarchy, State, and Utopia* do advocate. But this degree of purity has not been the rule. More often, essentially moralized accounts of liberty concepts are mixed in one of two ways. Either the theorist adopts a disjunctive moralized/non-moralized baseline against which to determine whether a proposal is coercive, or he advocates a purely moralized account for only some contexts of interference with liberty and coercion. In section 3.2 I argued against multiple-context mixed moralized theories. Here I turn to multiple-baseline mixed accounts.

Such theories hold that when a person P moves a person Q from a "pre-proposal situation" (before P's threat or offer is even on the table) to the "proposal situation" (in which Q must respond to it in one way or another), P coerces Q only if Q's pre-proposal situation was either the "normally expected" or the "morally required" course of events.[57] Adding non-moralized conditions does help proponents of mixed accounts to avoid implications they find unpalatable. By opting for the one-baseline account of *Anarchy, State, and Utopia* rather than the two-baseline account of "Coercion," Nozick is able to head off the problem of deep indeterminacy outlined in section 6.1. However, this gain comes at considerable cost. In *Anarchy, State, and Utopia* Nozick famously attempted to vindicate the "minimal-night-watchman-state" of laissez faire capitalism and none stronger. He wrote his pioneering study, "Coercion," a few years before that. It is interesting to speculate how his moral indictment of egalitarian brands of liberalism might have fared if he had employed his earlier and more complex account of coercion. Not well, I think, for his later indictment depends crucially on his holding fast to a pure essentially moralized concept of liberty and its loss. Let me explain.

At its deepest level Nozick's earlier multiple-baseline account of coercive relationships is more non-moralized than he ever explicitly acknowledges. As he himself suggests, when the "normally expected" and "morally required" baselines are different, Q's own preferences break the tie. Therefore, at the deepest level of the theory what crucially determines whether Q's compliance with P's proposal is coerced is which of

[57]Nozick, "Coercion." In Daniel Lyons's disjunctive version of the multiple-baseline theory, P coerces Q only if P could, would, or should have provided Q with some benefit on easier terms than are involved in the threat or offer ("Welcome Threats and Coercive Offers"). For more on the logic of this position, see D. Zimmerman, "Coercive Wage Offers." There are always additional conditions in such a theory: for example, that Q complies with the terms of the threat or offer because he wishes to avoid the consequences of not doing so.

these two kinds of pre-proposal situations Q would rather be in, which is a psychological state of Q to be specified *non*-normatively.[58] Thus, for Nozick himself (circa 1969) *coercion* and *interference with liberty* are *non*-moralized concepts, though he does not advertise the fact. Perhaps this is because the non-moralized account does not yield the result he tries to defend in *Anarchy, State, and Utopia*, namely that persons A through Y in the state of nature do not interfere with Z's attempt at original acquisition. For, given what we may safely assume to be Z's preference not to be left out in the cold shoveling muck for a pittance, Z does *not* "choose to work [at such a miserable job] voluntarily." Therefore, the actions of persons A through Y, which (as Nozick notes) "do not add up to providing Z with some other option," do nonetheless interfere with his liberty.

Nozick obscures this harsh fact by using such anodyne language to describe the collective effects of the actions of A through Y on Z's available choices. Among the souls who sweat it out in the state of nature attempting to acquire original holdings, some succeed, some fail. Some who succeed do things that actually *prevent* those who fail from acquiring the holdings they have their eye on, like getting there "sooner" than the others (as in the Oklahoma land rush), erecting physical barriers to their entry, issuing credible threats about the consequences of their trying to cross them, and so on. Earlier, the worry was that within the restrictions imposed by a pure moralized account of interference with liberty and coercion the deontologist would be without the resources necessary to determine when persons in the state of nature were or were not limited in the voluntariness of their choices by what the others around them were doing to them, characterized in purely non-moralized terms. Indeterminateness of this sort is not the problem now, because in mixed multiple-baseline accounts of coercion the historical-entitlement theorist has the resource he previously lacked for drawing the necessary distinctions, namely, the non-moralized baseline.[59] Therefore, he can distinguish between coercive and non-coercive interference with others in physical terms, for example, in terms of who does what to whom, and in the psychological terms Nozick introduced in "Coercion" involving the effect of P's threat on Q's options, given Q's preference-structure and his ability

[58]Nozick, "Coercion." That is to say, in specifying the content of Q's preference, there is no need to use the phrase "morally required." Thus there is no ineliminable reference to P's prior and independent moral wrongs to Q, not even in indirect discourse.

[59]This move works smoothly, however, only if we can solve the problem of how to select from the many possible and non-equivalent interpretations of the "normally expected" course of events that figure in setting this *non*-moral baseline. For a detailed discussion of the options, see Joel Feinberg, *Harm to Self* (Oxford: Oxford University Press, 1986), pp. 219-28.

to satisfy it. These relationships in the state of nature are all specifiable (or so I claim) in impeccably non-moral terms, therefore indeterminacy at the base of the theory is no longer a problem.

But now a multiple-baseline historical-entitlement theorist who wishes to ground the minimal state and none stronger faces another problem, for he needs a *substantive principle of justice* for distinguishing between morally permissible and impermissible "border-crossings" and "border-crossing preventions." Suppose that P erects a physical barrier that prevents Q from entering and cultivating a particular plot of land. Or suppose that there is no actual fence, but P threatens to club Q to death if he crosses a certain line P has drawn around the plot. By taking actions like these, P thereby renders Q unfree to satisfy some of his preferences. So, P has limited Q's freedom. To be sure, that leaves open the crucial normative question of whether the fence-building, club-wielding P has *permissibly or impermissibly* limited Q's freedom to occupy that particular parcel of land. In Nozick's original scheme this is precisely where the Lockean Proviso is supposed to do some real moral work. But, as noted earlier, it is a "beginning state" patterned principle of justice, to place alongside all the other current time-slice and patterned principles Nozick so resolutely rejects.

These considerations to one side, other troubling questions face the historical-entitlement theorist at this crucial point in the story. When agents in a certain state of nature, who start out with certain innate endowments and are blessed or burdened by their own portions of good or bad luck, apply such a current-time-slice or patterned principle to themselves at time t, a profile of holdings will eventually emerge at time t+1. Given the range of possible variations in the original state and in the historical circumstances between t and t+1, it is impossible to say in advance what that emergent profile will be, and even more difficult to say how much equality or inequality it will involve. At t+1 the principles of "justice in transfer" kick in ("No force, no fraud"), yielding still another profile of holdings at t+2, and so on. But if one patterned or current time-slice principle is allowed to operate in the state of nature to determine what counts as a fair distribution-profile at t+1, then what principled reason can the historical-entitlement theorist give for excluding precisely parallel patterned or "middle state" principles of equality of opportunity from operating at t+1 and thereafter?

This is not just a point about the internal consistency of the theory (though it is that). For, note that in the present dialectical context the mixed historical-entitlement theorist needs some "beginning-state" patterned principle to operate in the state of nature (i.e., the Lockean Proviso) if he is to achieve the very determinateness in the putatively foundational properties of liberty and interference with liberty that a purely

moralized account of these properties did not give him. Moreover, because one of the principles of justice in transfer forbids force, there is further pressure on the historical-entitlement theorist to abjure a purely moralized account of *freely chosen* and *coerced* later in the history of property-acquisition, once his agents are out of the state of nature at t+2 and thereafter. For, if the purely moralized account of these properties renders their content and applicability indeterminate at the beginning of the story, it is hard to see how it could make them any more determinate later in it.

The upshot is that a mixed, multiple-baseline historical-entitlement theorist faces a dilemma. If his basic right- and wrong-making properties are to have any determinate content, then he needs a non-moralized account of *free* and *unfree* action, *voluntary* and *coerced* choice and the like. This is precisely the attraction of an account of coercion equipped with a non-moralized baseline. But the gain of such determinateness comes at the cost of acknowledging the foundational role of non-historical-entitlement principles, like the "beginning-state" Lockean Proviso and any others that may be needed in the state of nature to determine which interferences with liberty are permissible and which are not. But odds are good that such principles justify far more than the minimal state.

8. What Is at Stake: The Foundational Role of Liberty and Coercion in Social and Political Theories

They say that in philosophy two responses to a thesis are typical: "Oh, yeah?" and "So what?"[60] My thesis about the ineliminable role of non-moralized liberty and coercion concepts in the deep structure of liberal, libertarian, and some socialist theories is liable to elicit (at least) the second response. Consider again the contrasting moralized and non-moralized accounts of the plea bargaining case[61] that figures prominently in Wertheimer's discussion:

1. The prosecutor did not coerce Alford [in the essentially moralized

[60]Nicholas Sturgeon reports this in "What Difference Does It Make Whether Moral Realism is True?" *Southern Journal of Philosophy* 24 (1986): 115-41.

[61]I develop the argument in some detail for plea bargaining and for contract cases in section 3.2 of the present paper and in D. Zimmerman, "Demoralizing Coercive Agreements." For a recent argument for a non-moralized account of the coerciveness of plea bargaining, see Michael Gorr, "The Morality of Plea Bargaining," *Social Theory and Practice* 26 (2000): 129-51, p. 133. Gorr notes that he and I share the non-moralizing perspective, but embrace different kinds of non-moralized accounts of coercion. In the present context, however, this difference is less important than the similarity. Non-moralizers of the world unite!

sense] into accepting the guilty plea for the lesser charge, therefore he was substantively justified morally and legally in offering the plea, because: a) He was morally and legally entitled to bring the heavier charge, and b) Alford was not morally or legally entitled to be tried on the lesser charge.

2. The prosecutor did coerce Alford [in the essentially *non*-moralized sense] into accepting the guilty plea for the lesser charge, but he was substantively justified morally and legally in doing so for the same reasons as under 1), viz. a) and b).

Note that these two coercion claims are extensionally equivalent. That fact might well prompt social philosophers hitherto uninvolved in debates over whether coercive political and social relationships are or are not essentially moralized to wonder what the big deal is supposed to be. If the ground-level judgments entailed by moralized and non-moralized theories of liberty, coercion, and like notions are identical (i.e., that the prosecutor did no wrong and that the plea bargain is legally valid), then so what if we embrace essentially non-moralized concepts of liberty, coercion and their cognates instead of essentially moralized ones? Wertheimer himself takes this stance when he suggests that the issue between moralizers and non-moralizers is mainly aesthetic.[62]

This question brings us full circle to the important issue of what normative moral theories are for. If their only role were to give us sound practical advice about what institutions to create and support, where these are specified at very low levels of generality, then there might not be much of an issue here. But if moral theories also have the "Socratic" role of explaining why we should embrace certain institutions and reject others, that is, to understand what the basic right- and wrong-making non-moral properties of a justified political and social system are, then the dispute between the essential moralizer and non-moralizer over liberty, coercion and like notions matters a lot.

For consider: In all political and social moralities but principled anarchism the state is permitted and sometimes even required to use coercion (*non*-normatively conceived) to achieve certain ends, like enforcing more-or-less just criminal and civil laws. Some of these laws protect the usual set of "negative" liberties specified in most liberal bills and charters of rights and liberties, such as the freedoms of expression, assembly, worship, the vote, integrity of the person, due process, and so on. In more egalitarian, welfarist versions of liberalism they also include laws that protect "positive" freedom to enjoy at least a decent level of well-being. However, in any but an anarchist or "ultraminimalist" society or polity, these rights are legally enforceable. Moreover, the force in question must

[62]Wertheimer, *Coercion*, p. 310.

eventually be construed as essentially non-moralized for fear of vicious regress or indeterminacy of content. Therefore, the liberties that these enforceable rights protect must also be construed as essentially non-moralized.

Wertheimer suggests that often many of the central moral questions that political and social decision-makers face are "not whether [certain] offers are, in some sense, coercive" but rather whether society has "an obligation to provide [such vulnerable people] with better alternatives." He argues further that "*no* account of coercion [on its own] could begin to determine whether these practices should be prohibited without answering just these (sorts of) questions."[63] This is a real insight. Many moral disputes in social and political philosophy—say, over whether poor people should be permitted to sell their organs for transplant—are probably better framed directly as problems of distributive justice, rather than as problems about whether vulnerable people are coerced when they enter into such transactions. The property foundationalist argues that liberty and coercion are *among* the basic right-making and wrong-making properties in liberal and libertarian social and political moralities, not that they are the *only* ones.

However, the insight does not support a deflationary conclusion about the merely aesthetic interest of the choice between moralized and non-moralized concepts of liberty and coercion. Nor is the point strengthened by the suggestion that on a moralized account, "there is not much of interest left to the pre-analytic concept of coercion. But there is compensation. The remaining issues that take its place are very interesting indeed."[64] Wertheimer is certainly correct about the intrinsic moral importance of those remaining issues, like the justice and injustice of patterns of distribution quite apart from the question of who coerces whom. (Otherwise, the egalitarian "Gerry" could not have much of case at the end of the day for substantial mandatory downward redistribution of wealth and income.)

However, the shift of direct emphasis in political debate from freedom to justice, and back again, is hardly a mere matter of taste. For even if the essentially moralized account of liberty and coercion were correct for a wide range of legal contexts involving the invalidation of consent, it could not function on its own in the deep structure of any political or social morality that takes liberty to be basic in any of the ways we have considered. For, as we have seen, essentially moralized properties cannot do any foundational work of their own. Therefore, if liberty is basic in a social or political morality, then any essentially moralized liberty con-

[63]Ibid.
[64]Ibid.

cepts in the theory must be embedded in a broader framework that spells out the morally acceptable scope and limits of political and social sources of coercive power—understood in non-moralized fashion—in determining who gets what and who does what to whom. Liberal and libertarian political and social morality cannot even pose, much less answer, important questions about what sort of theory of justice, whether historical-entitlement, patterned, current-time-slice, or some combination of them, is morally demanded, if they do not already have in hand a battery of thoroughly non-moralized liberty and coercion concepts.

It is difficult to say with any precision how much essential moralization a social or political theory can absorb before it runs afoul of the perils of vicious regress and indeterminacy of content. In any event, the answer has to be, not much. For if liberty and coercion are to figure in the deep structure of a social or political morality as a basic value or the core of a basic side-constraint, then the theory requires a robustly large complement of essentially non-moralized liberty and coercion claims. This is especially true of theories labeled *liberal* or *libertarian.*

The outstanding question is this: Do any of the robustly moralized political and social theories I have considered in this paper leave enough room for the foundational role of liberty and coercion? The obvious follow-up is: compared to what?[65] The answer has to be: compared to what plunges such theories into vicious regress or indeterminacy of content, and thereby subverts the grounding role of liberty and liberties. In this dialectical context even a little bit is too much. If your social or political morality takes liberty and coercion to be basic right-making and wrong-making properties, then your liberty concepts better be thoroughly non-moralized.[66]

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[65]In the immortal words of the late Henny Youngman, king of the one-liners. Explaining jokes is generally a bad idea even if they are pretty good ones, but since most humor is local, the need sometimes arises. For readers unacquainted with Henny, the original goes like this: "A man asked me: 'How's your wife?' I said: 'Compared to what?'." (Non-sexist versions are available—if worth adapting in the first place.)

[66]I thank Robert Goodin, Alan Wertheimer, and two anonymous readers for *Social Theory and Practice* for helpful comments in the preparation of this paper.