

Equal Negative Liberty and Welfare Rights

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In *Are Equal Liberty and Equality Compatible*, Jan Narveson and James Sterba insightfully debate whether a right to maximum equal negative liberty requires, or at least is compatible with, a right to welfare. Narveson argues that the two rights are incompatible, whereas Sterba argues that the rights are compatible and indeed that the right to maximum equal negative liberty *requires* a right to welfare.

I shall argue that, as a conceptual matter, in agreement with Sterba but not Narveson, that the right to negative liberty is compatible with the right to welfare. In agreement with Narveson, however, I further argue that the right to negative liberty does not conceptually *require* the right to welfare. Some of Sterba's discussion suggests that he believes that there is a conceptual requirement, but his real claim, I think, is that the *substantively correct* account of the right to negative liberty includes the right to welfare. Although I believe that something in the ballpark of this claim is true, I shall suggest instead that the correct account requires some kind of egalitarian sharing of natural resources.

There are two major issues in the book that I shall not address: (1) whether Hobbesian contractarianism supports a right to welfare (Sterba argues that it does and Narveson argues that it does not); and (2) whether, given the rights of future and distant people, the right to welfare leads, as Sterba argues, to a right to approximate substantive equality of condition. I shall focus solely on the question of whether the right to negative liberty requires, or is at least compatible with, the right to welfare.

1. Background

Let us start by clarifying the right to negative liberty and the right to welfare.

Both authors understand the right to liberty to be a right to the absence of forcible interference by others. The right is to *negative liberty* (as opposed to positive liberty) in that interferences from nature (e.g., natural congenital disabilities or lack of external resources imposed by nature) do not count as restrictions of one's liberty. Moreover, the right to negative liberty is a *negative right* in that it does not require others to take any positive action (e.g., to protect one's negative liberty). It can be satisfied by inaction. Finally, the right is *enforceable* in that those who infringe the rights of others lose some of their rights and those whose rights are infringed gain certain liberties to use force against infringers to protect their rights. In sum, each agent has an initial enforceable negative right to the maximum negative liberty that is compatible with all other agents having the same right (p. 130).

The other right at issue, the right to welfare, is a right to the absence of forcible interference by others when: (1) the agent is taking resources possessed by others, (2) it is not possible for the agent to satisfy her basic needs without non-consensually taking resources from others, and (3) the persons from whom the resources are taken do not need them to satisfy their basic needs. The right to welfare at issue here is weaker than a standard right to welfare in that it is a *negative right* rather than a positive right. It does not require others to take any action (e.g., to give the agent some resources). It only requires that others refrain from interference with the agent's taking of the needed resources. This negative right, it's worth noting, is to a kind of positive liberty: ability to satisfies one's basic needs, which requires more than the absence of

interference by others. Finally, the right to welfare is enforceable. Thus, the right to welfare is an enforceable negative right to a certain kind of positive liberty.

Above, I interpreted negative liberty as the absence of *forcible* interference with one's action. Although Narveson and Sterba often invoke the notion of force (pp. 134, 142, 179, 213, 218, 220, 243), sometimes they appeal simply to the notion of interference. Given that business and amorous competitors can interfere non-forcibly with one's actions, I suspect that they want to restrict their attention to forcible interference. In any case, I shall do so, since this will help us clarify the core issues.

There is, however, an important question about what counts as forcible interference. The clear cases, I believe, are those where there is forcible interference with the *body* of another (killing, striking, restraining, etc.). These involve some kind of physical impingement upon the body of the other. This might be striking someone with one's fist, causing a bullet to strike him, or spraying a poisonous gas in his face. It is much less clear when *taking external resources* forcibly interferes with another. For example, suppose that you gather an apple, store it for later consumption, and then I take it while you are away. Have I forcibly interfered with you? Have I restricted your negative liberty? Of course, if you fully own the apple, I will have infringed your property rights, but we are not here asking a moral question. We are asking the empirical question of whether I have forcibly interfered with you and thus restricted your negative empirical freedom. It is far from clear that I have. There is no action token of yours that I have physically prevented. I have merely done something that helps bring about a result that is different from the one you foresaw or intended. This happens all the time, as when you buy the only remaining chocolate bar, which I was intending to buy.

I believe that negative freedom in the empirical sense is best understood as the freedom to do things without forcible interference by others, where forcible interference is understood as physical interference with one's body (or threat thereof). One has a negative freedom to use a given resource just in case others will not forcibly interfere with one's body if one attempts to use it.

With this understanding, we can see that the Sterba is correct that the right to welfare is conceptually compatible with an enforceable negative right to maximum equal negative liberty. (Throughout, we are concerned only with the allocations of *initial* basic rights, prior to modifications in rights from contracts, wrongdoing, etc.) For illustration, let us suppose that that land is initially unowned but can be appropriated (at least partially) simply by staking a claim to it. Consider two possible appropriation rules:

R1: The person who first stakes a claim to land *fully* owns it with *full* rights of enforcement (to forcibly prevent others from using it without permission).

R2: The person who first stakes a claim to land *fully* owns it with full rights of enforcement, *except that* others have enforceable claim-rights to use the land when (1) it is not possible for them to satisfy their basic needs without non-consensually taking resources from someone, and (2) using the land leaves enough resources for the owner to satisfy his basic needs. (The property rights here are less than full to the extent necessary to be compatible with the exception clause.)

Which appropriation rule provides rights to more basic (equal) negative freedom for agents? Sterba's key point, with which I agree, is that neither rule provides rights to unequivocally more basic negative freedom than the other. The first, but not the second, rule

gives each person an enforceable right to the negative freedom to use resources he has appropriated even when others need them for their basic needs. The second rule, but not the first, gives each person an enforceable right to the negative freedom to use resources that others have appropriated, when she needs them for her basic needs.

If these are the only two possible appropriation rules, then each is compatible with an enforceable right to maximum equal negative liberty. More generally, when one considers all the possible appropriation rules, there will be many rules compatible with an enforceable right to maximal equal negative liberty (each providing more of some negative liberties and less of others), and the above two rules will be among them. Hence, Sterba is correct that the right to welfare is conceptually compatible with the right to liberty. As he notes (p. 256): “The difference between our accounts, therefore, is not found in the general formulation of the basic right to liberty, but rather in what we each think people are entitled to by first appropriations, legally enforced contracts, and productive activities.”

The analysis above also shows (in agreement with Narveson this time) that the right to liberty does not *conceptually entail* the right to welfare. This is because there are many ways of having an enforceable right to maximum equal liberty, and, although some include the right to welfare, some do not.

I had originally thought that Sterba was claiming that the right to liberty was conceptually required by the right to welfare, but I now believe that this is not his claim. Sterba’s claim is rather that the *correct* moral theory includes the right to welfare (as well as the right to liberty). He defends this view by appealing to a morally loaded ought-implies-can principle according to which: If S ought to do X, then she is able to do X *and it is not unreasonable to expect her to do so* (p. 15). On the basis of this principle, Sterba argues that it is unreasonable to expect the needy

to refrain from taking needed surplus resources from the rich but not unreasonable to expect the rich to refrain from forcibly preventing them from doing so. Hence, he concludes that the correct moral theory will include an enforceable right to welfare (along with less than full property rights).

The important point here is that the above ought-implies-can principle is much stronger than the standard principle (which only requires ability to do). As Sterba acknowledges (p. 255), this is a “morally loaded” principle and hence much more controversial. Although there is much of interest here, I will not attempt to directly assess this argument. Nor will I address his “non-question-begging argument”, pp. 97-106) in favor of the same conclusion. Instead, I will close by putting the issue in a larger context.

Let us continue to focus on the rights of appropriation that are compatible with an initial enforceable right to maximum equal negative liberty. Above, I identified two such principles: an enforceable right to full private property in the resources claimed (defended by Narveson) and the slightly weaker enforceable right to almost-full (full except when needed by others) private property (defended by Sterba). Of course, there are many other possibilities. Let me identify one other:

R3: The person who first stakes a claim to land fully owns it with full rights of enforcement, *provided that* this leaves enough for others to have an equally valuable share of land (or provides adequate compensation).

Like the Narveson-friendly R1, R3 allows individuals to acquire enforceable full ownership of land, but, unlike R1, the rights are conditional on no more than an equally valuable

share being claimed (or adequate compensation being provided). As long as the condition is met, R3 provides the same negative liberties as R1. Like R1, but unlike the Sterba-friendly R2, it does not give others the negative liberty to take what they need to satisfy their basic needs.

The enforceable right to maximum equal negative liberty is conceptually compatible with R1, R2, R3, and many other appropriation rules (as well as many other rules governing transfers of rights, etc.). Thus, even if we assume that there is a right to negative liberty, it is an open moral question what form it takes. Narveson wrongly believes that there is only one form that the right can take. Sterba rightly emphasizes that there are many forms it can take, and then appeals to his morally-loaded ought-implies can principle (or his non-question-begging argument) to narrow it down. I haven't addressed this aspect of Sterba's argument, but I'm skeptical of the principle (and supporting argument). My own inclination is to think that the issue of the moral power to acquire property rights in natural resources (such as land) needs to be addressed explicitly as an independent moral issue. Moreover, I believe that something in the ballpark of R3 (more exactly: an equal opportunity for wellbeing version) provides the correct account. Nonetheless, if the choice were simply between the full private ownership of R1 and the almost-full private ownership of R2 (with exceptions based on need), then R2 is, I think, more likely to be correct. Either claims of need, or claims of equality, temper the moral power to acquire rights over natural resources.

Obviously, these are controversial issues. One of the virtues of the book by Narveson and Sterba is that it helps clarify the core issues involved in the right to negative liberty.