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The Grounds for An American Environmentalism - Draft

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To my Dad,
Stuart Schroeder,
for taking me fishing.

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Preface

0.1 Country Libertarian

If you are a libertarian who lives in the country and appreciates the land; who like any libertarian wonders why or if one really must pay with taxation for services which seem to have very little to do with your life; but who nevertheless wonders why or if the earth must be subject to the ravage of heavy industry, for a corporate ideology; this work is written in defense of you. I here intend to give the grounds on which a 'Country' libertarian may defend the governments role in protecting the land, water,

and air from destruction. This is no simple task.

Our forefathers, whose work is the foundation on which most American-Libertarian theory is based, were not in a position to appreciate what would become of our earth 250 years later. They were very concerned with structuring a government 'by the people, for the people'; they were very concerned to avoid a State which would infringe upon the rights of its citizens for causes which were not the people's own; and were concerned to lay the groundwork for a free-market economy with upward mobility. It would not be until the time of Teddy Roosevelt that there would be sufficient appreciation of the destruction to the earth enabled by technology, at least among 'The White Man', to do anything about it at all.

Despite some appreciation, little has been done on a theoretical foundation for Libertarian thought which may encompass Environmentalist ideals. Part of the problem, of course, is that the *Corporate* libertarian does not *want* to address the environmental issue, and it is the

Corporate libertarian who holds the libertarian wallet. Another part of the problem is that a modern media rarely wishes to cover any position which embraces the 'L' word. The final part of the problem, which I seek to address here, is that people are so busy fighting from what they perceive to be their *interests* that they rarely stop to ask whether their position is *correct*.

0.2 Nozick

Among the few to have overcome these barriers is Robert Nozick in his 1975 National Book Award winning *Anarchy, State, and Utopia*. Without that work, this one would not exist. Nozick is a philosopher through and through and his text is challenging and rewarding. Couched in terms which pervade Western philosophical thinking on society, but uncommon to the layman, the casual or impatient reader is likely to find his work difficult to follow, if nevertheless interesting for its series of thought experiments. It stands as the current pinnacle of Libertarian

foundational thought, a buttress to the work of America's forefathers.

There is no need to have read Nozick prior to reading this work, but a certain familiarity with his American spirit helps. Nozick scopes a foundation for Libertarian thinking, working from the Lockean idea of *the state of nature*. Nozick's principle line of argument is that a "dominant protective agency" with a monopoly on the use of force arises from a "state of nature" to protect the rights of people within a geographic region and this minimal form of The State, but nothing further, is *justified*, in virtue of arising naturally by morally permissible steps.

Nevertheless, Nozick goes on to argue for the possibility of incorporating environmental protections. Should the question be one of *externalities*¹ of agreements in the economy hurting the property of a third party, then there are answers regarding how to mitigate through compensation. On the other hand, if the negative

¹Consequences of an agreement which are part of the agreement itself

externalities effect shared resources of the environment - earth, water, and air - then it appears that Nozick has nothing whatever to say. Principally, I read his coming up short as a question of the jurisdiction of The State.²

I hope to show here that there are good reasons to expand the jurisdiction of "The Minimal State" and, in the process, allow The State to mitigate risks with respect to the environment. I will not pretend to maintain such sparse initial assumptions as Nozick, but I hope to make clear that the spirit of the Nozick's state can be expanded into a tenable modern society, and in terms understandable to a wider audience.

²p. 79, *Anarchy, State, and Utopia*. The reason he has nothing to say may be the sentiment that the state is in the business of serving its client's individual protective services needs. It is in the business of adjudicating who gets to do what to whose property (including a persons body, its use, and time). It is arguably not in the business of adjudicating who gets to do what to what, when there is no owner of the 'to what'. We hope to overcome such restrictions.

0.3 Scope

This work is intended as a map of the foundations of environmentalism within libertarian ideology. It is not assumed to be complete, and thereby definitive; and while it is well thought out and constructed, it does not presume to confront all reasonable objections³; it is rather intended as a place for the libertarian to find their footing on a matter (matters) which in their heart they know they must incorporate into their thinking; that they can do so without an overhaul of principle, but rather with an expansion of scope, I take to be the fundamental achievement of this work.

This work may serve as a point of reference for policy makers in need of guidance; it may serve to spin new threads in libertarian philosophical thinking; it will hopefully, at the least, serve as a work one can point to for support should they have environmental sympathies but

³a hallmark of professional philosophy, such as Nozick's, which nevertheless leaves quite a bit out

corporate constituents; but fundamentally, it was a coming to terms with where I stand on a matter close to my heart.

Chapter 1

The Libertarian

1.1 Introducing the Libertarian

People have rights and those rights cannot be violated. This is the starting point of all libertarian theory. The basic justification for the existence of government is the protection of those rights. This protection of your rights includes - along with rights not to be caused physical harm or mental distress - property rights and the protection of an economic system of exchange, i.e.

the State's obligation that willful agreements be enforced. In short, there are both physical and economic rights to be protected.

The protection of your rights by the State takes a two-fold approach. First, it deals with disputes among the citizens whose geographic region it covers. Second, it must serve to protect the citizens within the geographic region from outside attack; more generally, it has a duty to protect the citizens in its jurisdiction from exterior threats which pose a risk to their rights. As normally construed, this presents justification for hallmark minimalism in Libertarian ideology: elected law makers, law enforcement (including courts), a standing Army, and little more.

The government generally has no jurisdiction on policies to punish its own people, except in cases where someone's rights or agreements have been violated. In short, there is no justification for the enforcement of victimless 'crimes' and policy must reflect that; furthermore, the appropriation of funds for other

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projects is deemed a violation of the (tax paying) citizens rights, and argument for the citizen not being obligated to pay (part of) their taxes. Without the states role as a protectorate of your rights, there would not be justification for e.g. the collection of taxes, at all, and the states role as protectorate of your rights represents its sole jurisdiction over social issues.

In general, the libertarian spirit of governance is live and let live. There is nothing in this to indicate that you can't or shouldn't make a difference in other ways where your government doesn't have the jurisdiction to enforce the 'positive' projects you wish to promote. In fact, that is often the morally right thing to do. Entitlements can often be handled by private sector volunteerism and better. The point is that the people cannot be coerced to support entitlement causes they prefer not to support, any more than they should be forced to tithe to a State Church.

1.1.1 Rights

What are your rights, more precisely? These are 1) a right to live and resources necessary for life, e.g. clean Air and Water; 2) a certain right to personal space allowing for the exercise of your will (i.e. allowing yourself not to be coerced) and the maintenance of your existence (e.g. acquisition of food and sleep); 3) a right to hold property when justly acquired; 4) a right to enter into agreements with regard to the exchange of property, labor, and time with others and have the other party abide by the agreements; 5) a right not to be coerced into any such similar (perhaps one-sided) exchange; 6) and a right to privacy¹. Infringements on these rights we may call 'boundary crossings'. The completeness of this list is debatable, but

¹*to the extent that it allows for the entering of agreements willfully by parties without systemic interference (a.k.a. persecution) against at least one of them.* This casts privacy in economic terms, which is where, in my experience, it belongs; and has the happy result that it can be quantified for compensatory sake. This makes 6 a comparable economic equivalent of 2.

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what we seek is a simple list on which more extensive legislation (e.g. a constitution), can be based.

It is also a fundamental and difficult question as to *who* has these rights. Certainly ordinary people have these rights. What of the intellectually challenged? What of children? What of animals? What of aliens from another galaxy? These are all important questions and I believe the answer to be *it depends*. Certainly children, animals and the intellectually challenged count for *something*. Certainly the killing of Dolphins for sport, for instance, is not morally acceptable. But providing a graded evaluation of the scope of "agent's rights" seems rather difficult.

In general, however, the State cannot infringe on the rights of agents, whether those agent's are under their jurisdiction (clients) or otherwise. It may not have the obligation to protect the rights of those not under its jurisdiction, as it does with those under its jurisdiction, but it has the obligation, nevertheless, not to 'boundary cross' on any agents, whomever (ex-

cept in enforcement of the rights of citizens/agents). This obligation to protect their citizens rights and obligation not to boundary cross on anyone, defines the states role. Though it may remain of some debate what constitutes a right and what does not, the scope of governance is defined by this negative list of what cannot be done to whom. The Libertarian does not necessarily believe that there are not other moral obligations on agents, but in general, these obligations are not the domain of governance, e.g. they are the domain of a - very separate - Church or other private organization (or individual), who may nevertheless *not use force* to get their way.

1.1.2 Expanding the Scope

State Intelligence of every nation and generation may have dreamt a morally overbearing government filled with 'justice' adjudicated in all respects from on high, but I consider it fine form to say when they are wrong. This role is embodied in the work of our constitutional forefathers,

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whom I consider fellow Libertarians.² Nevertheless, I think there are simple generalizations of principle which justify an expanded scope of governance in traditionally non-Libertarian directions, but on Libertarian grounds. The three candidate dimensions for expansion are: Risk, Time, and Space.

Before evaluating these dimensions of expansion for validity on Libertarian grounds, it should be noted that it is rare that any Libertarian *wants* to exclude them. Certainly our forefathers: 1) (Risk) understood that mitigation of *risk* to infringement of rights - prior to any actual violation - often needed to be part of the codified law; 2) (Time) would never profess to not care about future generations; and 3) (Space) understood the importance managing and mitigating sources of risk abroad. When taking dialectical positions against, say, advocates for the

²Such a service, as indicated, is also provided by Robert Nozick in *Anarchy, State and Utopia*, and much of the foundation for my own positions stems from his work on the foundations of (non-conservative) Libertarian ideals.

synthesis of church and state, it may have often been important to stand on very narrow Libertarian grounds of protection of citizens rights. For this reason, perhaps, the narrow positions have often come to define the modern Libertarian, as a means of pulling from one polemic toward the center. Nevertheless, I hope to show that the expansion is theoretically justified, on Libertarian grounds, even if the Libertarian is traditionally more austere.

It need be noted at the start that this is not simply an intellectual exercise. American politics needs a firm footing on which to spread governance in the direction of current affairs with, intuitively, very heavy moral weight, such as environmental policy, health care, and education; as well as further guidance on how to deal with traditional stalwart Libertarian positions, such as border defense and immigration, when these appear to involve an unmanageable task. It is true that America has always compromised on their austerity to some extent, but a theoretical inability to handle the above issues on Libertar-

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ian grounds, given their weight, poses a systemic threat to a traditional American way, when alternatives contend to cover them with ease by incorporating a more full-bodied moralism.

I here intend to show that there is footing to be found in the American spirit of governance, on many issues commonly excluded from its scope, and in a way which appears logistically feasible. It should thereby be middle ground on which American lawmakers can reach agreement. One might note that I am very deliberately not looking to the Constitution, Bill of Rights, or The Federalist Papers for this justification, as these documents often quite clearly contains issues of historical importance which occlude the underlying principles. I will leave it to interpreters to find the deeper principles within those documents which support the fundamental Libertarian position. It is that position (as expressed in sections above) on which I will rest my case for the expansion of the Libertarian scope. The above sections serve as an effective location from which to cast a wider net,

less bound by precedence and more firm in fundamentals. That this net can be cast is very important, given the tendency to view the Libertarian position as so polemic, it cannot cover basic issues close to the heart.

Chapter 2

Risk

2.1 Risk

It may be in the Libertarian tradition to define the government's jurisdiction on issues very stringently as enforcing the rights of its citizens with the basic law-order-military (LOM) institutions. But it is also necessary to introduce policies to mitigate *risk* to the rights of citizens, before an overt violation of these rights. Without this mitigation, basic LOM's tasks would be-

come unmanageable. This, for example, is why law enforcement have laws against blood alcohol level while driving, whether or not a person is driving recklessly or can otherwise 'hold their liquor'.¹

But if one allows for policies which mitigate risk to rights ('life and liberty') of clients, then one has opened the door, if not to entitlements, then to an array of policies which are often derided by the more corporate leaning of our Libertarians. In fact, that Healthcare mitigates risk to citizens (their lives) should go without saying. A case can, moreover, be made that in the modern society, citizens need education to help manage risks to their own lives, and therefore help the state in its cause. And that our primary focus, certain environmental protections mitigate risks to the air we breath and the water we drink, the same.

That management of risk needs to be embraced by a modern Libertarian government is,

¹In fact, Nozick's case for the existence of the State rests on warrant for mitigating risk.

I hope, clear, and will be codified in the following sections.

2.1.1 Extortion and Fraud

The inclusion of risk-to-rights presents, in principle, an expanse of potential policies beyond what the Libertarian is prepared to allow. This reluctance has a point. As with any concerned Libertarian, I will say that we must here be careful not to give in to a lazy mob.

If a group of people threaten violence for no reason, but can be appeased with a payout, should the state pay them in order to avoid the risk to the liberties of other citizens resulting from the possible violence? Doing so would, of course, set a precedent which is unsustainable, in the process of putting its citizens at moral hazard. We will show that there are principled reasons why the Libertarian does not provide such payouts later.

Of course, these threats needn't be so overt. Suppose that for your product, you can use element x or element y. Element x is cheaper,

but processing it presents a threat to the atmosphere. Element *y* is more expensive, but doesn't present this threat. Should the government pay the difference between the use of *y* and use of *x*, for the protection of the citizens rights to clean air? Perhaps. But now suppose that you intended to use *y* all along, and only brought up the question of using *x* for the sake of getting a payout from the government not to use *x*. In short, you bluffed your way into free money.

This is one of the Libertarian's primary concerns with entitlements, and now to covering risk-to-rights: that even in cases where they are intended to mitigate actual risks, they present an opportunity to extort the system. But fraud does not keep insurance companies out of business and extortion is a punishable crime. Any such 'unproductive exchange'², at least in principle, should be handled in much the same way.

²Nozick

2.1.2 Corruption of Character

Suppose, as a result of losing ones job, one cannot afford rent, and must either live on the street or be granted a place to stay with meals. People who live on the street represent a certain risk to society; as they have little or nothing, they (the argument goes) represent a greater threat to 'boundary cross' for the sake of feeding themselves; so being granted a place to stay with meals represents the mitigation of certain risks to the general population.

On the other hand, if they are granted a place to stay, they are effectively given less incentive to find work - at least for a time - and may be in a position to see how to 'game' the system, in the future, so that they can work less going forward. Therefore, one must ask whether, by paying people for the sake of risk mitigation, in this case, one isn't producing a greater burden on citizens in general. While this position may seem 'heartless', the Libertarian would view it as 'tough love'.

In short, while the Libertarian will deal di-

rectly with potential extortion, the Libertarian will deal with the charge that a policy involves a potential corruption of character indirectly, by leaving such programs to the private sector.

2.1.3 Don't Feed The Animals

Allowing for potential corruption of character is often the result of tying ourselves in legislative knots, which the Libertarian can lance with a very sharp sword.

Of course, not all programs which the Libertarian would classify as 'entitlements' actually present a risk of corruption. In general, one needs to make a distinction between things which the people *like* and things which the people *need*. If one is providing things which people need but don't like - say, a colonoscopy - the argument from corruption of character simply fails. A person does not become corrupt from good healthcare, pursuing higher education, or from having protections on clean air and water, even if they didn't work for those opportunities on their own. There are, in short, some pro-

grams that look like 'entitlements' which may mitigate risk-to-rights for citizens and don't involve a risk of corruption of character.

Is this to say the government is not to provide things which the people *like*? That seems a terribly difficult thing to *sell*, even if it is technically correct. How can a politician run on a campaign of *you get what you need, not what you like*, when others are buying their vote by giving them what they want? When you want a wild animal to come over to you, the easiest way is to give them food, but there is of course a reason for the sign *don't feed the animals*. They must have, and pass on, an ability to feed themselves. The modern politician is feeding the squirrels for their vote, and the squirrels are not going to be able to fend for themselves if we allow it. You can call it 'heartless', but it really is *tough love*.

The Libertarian cares more, not less, about the future of humanity. They must, however, at least acknowledge that mitigation of some risk-to-rights that historically they have labeled 'en-

titlements' are nevertheless within the jurisdiction of the State when it does not represent a potential corruption of character, or unmanageable opportunity for fraud or extortion.

2.1.4 A Logical Form

I want to present here a general form to any policy within a Libertarian sphere of governance. It is a logical structure, and any actual policy document will amount to a collection of such statements. The point of presenting this form is that if a policy cannot be put in this form, at least in principle, or, in this form, the policy cannot be justified, then so much the worse for that policy. That form is: restrict / obligate / provide that x , because of risk to y , enforceable by z , at cost c . In general a policy document then can be written as a list containing elements of the form $\langle r/o/p, x, y, z, c \rangle_i$, for all $i < n$, for some finite n .

Some entitlements can be written in this form, using some x and y . But any policy will entail another list of statements of the form: restrict-

ing / obligating / providing that x , creates risk y' . Any derivative risk y' will then need to be addressed with a further list of policy-tuples, $\langle r/o/p, x', y', z', c' \rangle$. If these risks y' cannot be mitigated, perhaps because of their systemic nature (corruption) then so much the worse for the original policy line $\langle r/o/p, x, y, z, c \rangle$ which created the subsequent y' .

Of course, one will never be able to provide a complete list of $\langle r/o/p, x', y', z', c' \rangle_j$, as that would entail recognizing all unwritten consequences of a policy. It would be nice to here insert a general theory of risk to handle unknown cases, but that is not something we have at our disposal. Nevertheless, applying this format would be an achievement in its own right. And should it cover important risks with an intuitively 'near complete' list of consequences, one can read off whether the policy would balance by tallying up the items c (here noting that tax obligations should be included as negative values of c) across all policies.³

³I do not claim primacy of such form. It is clear that

Transforming policy into lists of statements in this logical form is the Libertarian equivalent of trying to untie the legislative knot. If the knot cannot be untied, then the Libertarian applies their sword, and it is off to the private sector for such considerations. I will argue here that the 'entitlement' policy of Healthcare allows the knots to be untied in this fashion, by arguing that they fit this general logical form and do not *create* unmanageable risks of a systemic nature (corruption of character).

2.1.5 Health Care

Healthcare can be handled, in some form, non-problematically within the scope of Libertarian governance. That risks to people's health is a valid y , should go without saying. Moreover, that there are various candidate x which can

various budget committees have piecemeal solutions with spreadsheets which balance. Nevertheless, I find it unlikely that anyone has lobbied for a general form across government on Libertarian principles, so there is likely something to be acknowledged in it.

serve the purpose of mitigating risks to people's health is clear. I do not hereby intend to launch into a full fledged discussion of the merits of Obamacare or other schemes. My concern is simply to argue that there are policies of the form $\langle r/o/p, x, y, z, c \rangle_i$ which cover risks to people's health and that the further risks they produce, y' , are not *prima facie* unmanageable by amendments $\langle r/o/p, x', y', z', c' \rangle_j$. Therefore, the Libertarian should consider healthcare policy within the scope of governance.

Before we consider the y' created by healthcare policy, it can be noted that from a very high level, the costs of mitigating these y' *cannot* outweigh healthcare governance *in some form*. Large populations have a history of being completely decimated by communicable disease; whether it was the Bubonic Plague in the Old World or the Spanish Flu in the New - citizens of nations have been eradicated by the introduction of disease just as they have been destroyed by war. A person with e.g. Eboli cannot forego being diagnosed for financial concerns given the speed

at which it spreads. A network for managing communicable disease is therefore essentially an issue of protecting all citizens right to life.

That as it is, do we check a citizen who may be sick for a communicable disease, and send them away if their issue is non-communicable? Their right to a healthy life would seem covered, communicable or not. On the other hand, where the Libertarian may wish to put their foot down, is in the area of addiction and other ailments produced by risky behavior. If you are base jumping into Yosemite Valley and need to be airlifted to a hospital where your stay lasts months as they piece you together - who should get the bill? It seems rather absurd that the citizenry should be subsidizing your base jumping endeavors. One might argue the same for anyone who want's to 'give heroin a try', when they know just how awful the condition *they are giving themselves* is. Of course, it is human nature to blame the victim, so in such considerations we must also reflect on whether we are seeing matters the way we want to see them, rather

than the way they are. Nevertheless, it appears the Libertarian here has a point. It may appear that healthcare governance could overdo it, by promoting risky behavior.

The point is really the same whether two parties are involved or one. If after a night of heavy drinking, person A slams their car into person B, and person B lands in the hospital, we may put person A in jail for any number of reasons - but included in their punishment ought to be the cost of the healthcare of person B, as well as themselves. In short, in the base jumping case, it should be part of the punishment of the person, in addition to their self inflicted pain and suffering, that they pay for their healthcare. It is sometimes a difficult matter to discern what is an innocent risk and what is not, nevertheless, this is no more difficult than discerning what is considered 'reckless' and what is not, in the current court of law, and our health care system has a long history of dealing with related issues of fraud (albeit imperfectly).

In short, the Libertarian healthcare system

would not promote 'free' healthcare for all - i.e. covered only by taxes - under every circumstance. In particular, it would hold some people accountable for healthcare costs, depending on their liability for the healthcare. This should generally be enough to cover any risks to corruption of character, while allowing for governance over a system which represents a clear component of National Security.

The general form of this section was to show that, as an example, healthcare policies actually address a risk y to the rights of its citizenry, and show that addressing this risk does not create the further risk of corruption of character or any other clear systemic (unmanageable) risk, which would arguably infringe on (other) citizens rights; concluding that the policy is within the scope of Libertarian governance.

2.1.6 Taxation and Convolution

It is an important issue how one is to deal with competing y when the mitigation of y must be handled with costs c from the same fixed (tax)

bucket. In general, it is better to independently apply a tax at the source of the problem, when this is possible (as with roads (car permits), alcohol and other drugs (purchase), and many infringements on the environment (e.g. carbon tax)). When this is not possible, I have not proposed any guidance on a preference ordering on rights except to note that life is a precondition for liberty. I would rather like to insist *it is possible* to collect at the source in most cases and our tax system quite simply serves to make the decision making of lawmakers opaque when it should not be.

The problem of pulling from a single tax bucket is part of a more general issue: convolution. It may be argued that a given policy may cover more than one y or y is only partially covered by a given $\langle r/o/p, x \rangle$, or z actually includes an overhead which needs to be split among multiple $\langle r/o/p, x, z \rangle$, etc. But there is nothing preventing variable from being instead a *set* if this is absolutely necessary, or coverage of a y being a *degree*. This is, I will

admit, something of an ideal to aspire to and should not be given up as 'just too hard' because law makers want instead to game the American public. I will not have much to say here on these subtleties or fixing a broken tax system, except what is indicated in this section.

2.1.7 Environmental Policy

One might have hoped that appeal to the more aesthetic or adventurous aspects of human existence would have provided motivational justification enough, but it is a threat to basic human rights for clean air and water, which will force society to act on environmental issues. In this respect, the risk-to-rights Libertarian framework is right in tune. Nevertheless, it does not take us very far unless future generations are also in scope.

Chapter 3

Future

3.1 Future

Should our government institute forward-looking concerns for the rights of future generations? A lot turns on the answer to this question; specifically, instituting concerns for environmental issues rests heavily on our answer to this question. Current humans on the planet may be feeling certain adverse effects from environmental destruction, but in all likelihood *their* lives

will go on largely unimpeded by environmental issues given the status quo. But leaving the issues to future generations is likely to leave them in over their heads (excuse the dark pun). How can future generations presume to be covered by a state correctly centered on individual rights? This question is more complicated than you may imagine. This is the question of the scope of the state's jurisdiction *in time*.

Note, again, that a concern for future generations and/or the environment is distinct from the position that *our government* should institute concerns for future generations and/or the environment. The distinction lies in what one believes to be the bounds of governance. While the state must operate within moral bounds, it is not justifiably the supreme moral authority (thank God!) over right and wrong. As a result, should there be a positive change which the people want to see in their society, they should look to themselves and not necessarily their Government, which is in the business of protecting their rights, but not in the business of

otherwise telling you what you should do within that scope. As that is, it is possible that the government should not be in the business of protecting rights of future generations (until they exist), but should leave that to the people.

3.1.1 Utilitarianism

We start with a brief introduction of what is typically considered a position rival to Libertarianism: Utilitarianism. Political utilitarianism is the position that the objective of government is to maximize *happiness* or some other related metric, for its citizens. On this ground, decisions within government are to be made for an aggregate 'Good'. This notion can often be contrasted with Libertarianism, which most frequently is not cast as the maximization of anything. Rather Libertarianism most commonly holds the treatment of others (the protection of their rights) as a set of fixed 'side constraints', which are set apart at the start, and cannot be violated. Nothing more. Here we will note that the idea of maximization could also be applied,

with a certain Libertarian spirit, to *rights*.¹ Namely, one may wish to design society to maximize *life at liberty*. The distinction can be depicted with the differing responses to a familiar scenario.

If an angry mob could be placated with the death of an innocent man, the 'side constraint' view would maintain that government should not kill the innocent man to avert the risk to the rights of others who may be in the way of the angry mob (so much the worse for Pontius Pilot); by our previous consideration, the state will have to deal with such a case of risk-to-rights as one of extortion, prosecuting the proper representatives within the angry mob (the source of the threat). However, if we are considering the possibility of maximizing rights, rather than ruling out boundary crossings entirely, we open up the possibility of allowing such violations (a sacrificial lamb) for the greater 'Good' (greater aggregate liberty).

¹If you find the notion of maximizing happiness has a certain intuitive appeal, we will shortly come to strong arguments why it is not a proper foundation for a society.

The argument for the sacrificial lamb will fail from a Libertarian perspective on grounds of overt, intentional rights violations. But I did not bring up the notion of Utilitarianism with respect to rights in order to swiftly knock it down. This notion is mentioned here for the fact that if one wishes a Libertarian government institute future regarding considerations, it appears that one cannot avoid Utilitarianism with respect to the rights for future generations. After all, it is difficult to include future *individuals* in decision making, if we do not now know of their existence!

3.1.2 Children

One may ask whether future generations rights are to be protected in the same way that children's rights are to be protected. Children are not tax paying citizens and have more limited rights. They cannot seek to represent themselves in government through a voting process; they have certain restrictions placed on their mobility for the sake of risk mitigation to other

of their rights (e.g. to life and protection from coercion); etc. In short, although children do not yet contribute to the State, the State must protect the rights of children, both by means of risk-to-rights legislation and prosecuting direct offenders of those rights.²

It goes without saying that the most basic rights to clean air and water, they share with adults. While arguably they have more expanded rights in some areas - to shelter, sleep, and food - for their status as the future citizenry, not yet able to fully fend for themselves. These considerations would seem to apply equally to future generations of people who do not yet exist at all. But these considerations, I must argue, are essentially different.

How are we to weigh two legislative options when one entails a lower probability on the *existence* of one future individual's life compared to another's? What if that legislation 'makes up for it' by entailing a higher probability on oth-

²There are, notably, strong considerations here for the protection of Animal rights as well.

ers' lives, further into the future? Any lowering of the probability of a future persons existence would certainly be a violation of that future person's rights! We cannot even start to consider future individuals in our decision making unless we are allowed to make decisions which weigh the probability of their very existence. We cannot, therefore, use an individuals rights as 'side constraints' in current decision making on policy when that person does not yet exist, for any policy itself will violate *someone's* most basic claim: whether the individual gets the opportunity to live at all!

With children, we can apply protection of rights as inviolable side constraints, but with a future generation which does not yet exist, any protection of their rights will influence *some future individuals* very claim on any rights at all, for it will influence their existence.³ If a pol-

³One may wish to note that this may only be deemed a rights violation as long as at least one person has, as a result of choosing one policy over another alternative, a lower probability of existence. But such is generally assumed the case, even when the policies seem 'fair'.

icy necessarily influences a future persons existence, that policy is essentially not protecting rights as inviolable side constraints. The precise moment in gestation at which we must flip the switch from what is necessarily Utilitarian thinking about future generations to the protection of human rights as inviolable side constraints is what makes the abortion issue of such prominence.⁴

3.1.3 Hybrid Policy

Current policies cannot protect the rights of citizens who do not yet exist with a 'side constraint' mechanism forbidding boundary crossings. They can protect the rights of citizens should they exist. And they can promote the existence of some⁵, future citizenry on rights-maximizing (Utilitarian) grounds. But they cannot fully protect the rights of citizens who do

⁴I will not have more to say about it here, except to note that once a fetus develops its nervous system, there should be no further questions regarding its status.

⁵In some respects, essentially interchangeable

not yet exist. This might seem as good a reason as any to limit the scope of governance to the concerns of the existing citizenry, excluding future generations, and letting the private sector determine the rest. But that it is *difficult* to include future generations is not an argument that future generations should not be of concern in governance.

To be clear, that we cannot apply the protection of future generations rights as side constraints does not mean that we cannot apply protection on their rights as side constraints *once they exist*; so we are not contradicting ourselves, in principle. The question we are faced with is whether some form of utilitarianism with respect to governance over the rights of future generations is appropriate, or is the suggestion inert for the fact that it would entail an infringement on rights protected as side constraints for the current citizenry. Can the current citizenry have their rights infringed upon for the mitigation of risk to future generations *on rights-utilitarian*

grounds within the Libertarian state?⁶

Given the perceived importance of future generations, it is very tempting, as a means of forcing our opponents hand, to appeal to the dreaded *moral intuition* in lieu of firm footing. In what follows, I will do my best to avoid that. Instead we ask what the Libertarian values and why. And whether this can serve as a ground for the institution of future regarding governmental policy.

⁶You may try and avoid this conundrum by saying, if there will be people at time t , then any infringement of their rights caused at time $t - n$ would be subject to punishment at time t ; but in order to avoid risk to rights at time t , one should prosecute offenders at time $t - n$. Of course, we cannot ask *risk to whom?* We frankly do not know. But it nevertheless does not matter *whom* provided it is *somebody*. I don't give a lot of weight to this slight of hand as a method of avoiding utilitarian considerations, after all, if we cannot say *whom* will even exist, then it is difficult to argue this is anything other than utilitarianism in another guise. Namely, we are saying it is 'better' someone exists *and if they do* we need to protect their rights too.

3.1.4 Life At Liberty

If anything, the libertarian *values* "life at liberty". So we must ask, why does the Libertarian value *life at liberty* as opposed to *life in slavery*? There is some temptation here to appeal to *happiness*; namely, that a life at liberty is a precondition for the pursuit - and ultimate attainment of - happiness. If liberty is even conducive to happiness is a long debated issue, but it is worth noting here, for the sake of dispensing with traditional happiness-maximizing utilitarianism, that *happiness is not what one really wants*. You would not trade your life as it is to be a *brain in a vat* in which all of your many and varied ephemeral desires were forever fulfilled in a virtual reality⁷. This sort of life may be conducive to happiness - how could it not be? - but it is not a life we would trade our own for, as it is *meaningless*.

Of course, questioning *the meaning of life* would seem a black hole to further analysis, but

⁷Nozick and other's before him have made this point

it has its point. In the past - and in other governments today - the State, through the Church, wanted to tell you the meaning of your life. One of the most significant contributions of our forefathers to the progress of humanity was to leave this question open ended for the people to pursue. Doing so was arguably not a means of maximizing aggregate *happiness*, but allowed the people to seek the real meaning of their lives - whatever that may be and if they can find it.

A life at liberty allows the people a certain *epistemic freedom*⁸ to pursue, intellectually, the determination of the meaning of life; while giving people enough physical freedom to then enact that meaning and promote it, if found. Of course, it may be the case that one naturally enacts that meaning without first determining that meaning. And it may be that if one manages to determine the meaning, they may nevertheless fail to enact it. But our forefathers gave

⁸I take this phrase from a former advisor, Gila Sher, who is using it as the title of a forthcoming book; I have no reason to believe she intends to use it in the same manner.

us a wonderful gift when they *admitted* they did not know that meaning, but that it was left up to us to pursue, only within certain basic bounds (respect for others rights).

Life at liberty is a codification of how an individual in society is to be treated by the State without the presumption of knowledge of *the meaning of life*. The presumption of this knowledge had previously been leveraged by e.g. the English State, through the Anglican Church, to *get the people to do what the powerful wanted them to do*. In America, Jefferson had to persist in the fight against those tempted to such abuse. This I understand the fundamental content of Jefferson's words in their context: *I have sworn upon the altar of God, eternal hostility against every form of tyranny over the mind of man*. Preserving *life at liberty* protects people from that tyranny, at least until humanity is able to determine the true *meaning of life*, and can follow its pursuit. The Libertarian, then, must allow for the protection of individuals from facing sacrifices for a State cause which they do

not view as in line with the meaning of life. We know it today as "The Separation of Church and State", but rarely do people stop to appreciate just how fundamental it is to our nation.

So long as we do not know the meaning of life, the value of *life at liberty* to the pursuit of the meaning of life is no less for being in the future. This, then, is a fundamental reason for valuing future *life at liberty*. If we did know the meaning of life, we could also value a (future) life in those terms. And this is a distinct (future) possibility. Certainly the Libertarian is not going to say that humanity cannot come to terms with the meaning of life, in fact, protecting this pursuit is arguably what Liberty is really all about! Nevertheless, given the history of abuse of this concept by the State, it is difficult to see how the State could form its institutions around a discerned meaning of life, even if widely agreed upon by the smartest people in the nation or the world. This would seem the proper place for private sector involvement.⁹

⁹I do not wish to claim the historical accuracy of mak-

As one can imagine, there are innumerable subtleties to questions regarding possible theories of the meaning of life. One might think that there is a certain, single theory which will value all life the same. One might imagine there is a single theory, but according to which current life is more important than future life. One might imagine a theory in which people and intelligent life are more important than other forms of life, and others in which they are not. One might imagine that there is no single theory at all, but each citizen can "make their own meaning" in life and abide by it. What is important is that all people covered by the State's protection of rights have (according to some potential theory, singularly correct or otherwise) some potentially

ing Jefferson the protector of "the pursuit of the meaning of life", when he is forever linked to "the pursuit of happiness". Nevertheless, given the arguments against utilitarianism with respect to happiness (and the necessity of using utilitarian positions for future regarding policy), the pursuit of a meaningful life, I have argued, is the best substitute, our real pursuit, and not outside Jefferson's spirit.

meaningful life. If they do, then they ought be covered, and this includes future generations.

3.1.5 Ode to Jefferson

Our forefathers were well aware of the possible deceptions of the state and the need to mitigate the distrust that traditional, unbalanced power structures engendered. From this came America's basic institutions and an insistence on a representative system of government. As a result, America has been aptly touted as a 'Champion of Democracy'. This together with the Free Market Economy, has been the signature of America throughout the world. What is sometimes ignored by a predominantly Christian American populace, is a willingness to admit that *they did not know the meaning of your life*. And the importance of this admittance.

Our forefathers allowed for the greatest question to be pursued independently, by the people. What have we done with that? I think Jefferson would be rolling in his grave if he knew that the question of the meaning of life - if any one cares

at all - often amounts to a battle of air-time, first, and an interpretation of ancient works he himself had access to over 250 years ago, second. He was a man of letters and likely envisioned an eventual rational answer to this, the greatest question in the universe, with progressive steps and over time.

Nevertheless, enough has been said to make the point that based on what the Libertarian must value - *life at liberty in quest of a meaningful life* - future generations matter all the same, and are therefore within its jurisdiction.¹⁰

¹⁰It is also clear that if one would prefer to scratch the 'in quest of a meaningful life' part, they *can't*. Without it, there would be little argument for freedom, as codified in a *life at liberty*, as opposed to oppression exemplified in a *life in slavery*; principally because *happiness* fails the test of *what we really want*. This does not mean that this meaningful life needs to be consciously sought nor does it mean that one does not live a meaningful life in virtue of living at liberty. Nor is any of that incompatible with happiness!

3.1.6 Environmental Policy

Allowing for the above considerations, there is room for stronger environmental protections within Libertarian ideology. Nevertheless, the conclusions of this argument do not go quite far enough. In particular, today the worst offenders against the environment are outside of our country. Even if we have reason to protect future citizenry, how is it that the State has grounds to operate outside of its geographical jurisdiction to do so? We ask this question in the next section.

Chapter 4

World

4.1 World

While it may be part of Libertarian traditions to shudder borders and resort to isolationism to keep problems out, in order to protect our citizens rights we often *do* extend our geographic jurisdiction. That we find this necessary is evident by our involvement in virtually every world affair of the twentieth century and beyond, first against Facisim and then against Communism,

finally against Terrorism. The presumed justification is that the principles of rights-risk mitigation for the citizenry within the geographic jurisdiction extend the spatial jurisdiction to include areas outside of the governments geographic borders. This necessity is strongly supported by the threat (risk) to the rights of the citizenry posed today by nuclear weapons, which cannot simply be mitigated by border control.

If one views the e.g. nuclear issue as justifying such an expanded geographical scope, and one allows for the institution of forward looking generational concerns, then it must be admitted that environmental issues similarly present a justification for the expansion of geographical scope, because of the clear risk to the conditions of life for (future) citizenry. The Libertarian, to date, has not been forced to accept this expanse. The reluctance to accept this expanse is that 1) the environmental threat is slow and creeping, and rarely, if ever, appears 'imminent'; and 2) it appears to entail a set of restrictions on the world free-market economy which

would inevitably, to some extent, slow it down; and 3) our country has been able to forge ahead quickly (in generational terms) in part by being free from these restrictions - to implore other countries to proceed with environmental awareness is a very difficult sell unless and until standards of living rise to those of the West; and 4) even if our government has a certain claim on jurisdiction, that claim appears to be limited by not only what our modeling tells us with respect to risk to rights of future citizenry, but how that weighs against the claim of the foreign government to protect their future and current citizenry, according to *their* models.

While the above paragraph addresses the environmental issue in particular, the four problems of lack of urgency, restricting commerce, poor precedent (by the West), and (what may be called) the joint modeling problem are often the same across the board. These same problems, for instance, apply naturally in addressing the issue of Human Trafficking, where the lack of urgency results from transactions taking place out

of sight; restrictions on fair and sound commerce would result from risk-mitigating measures intended to address the problems; America has, arguably, set a bad precedent (Slavery), in the process of getting ahead; and what some view as a rights violation, others may view as an opportunity: coming to terms with modeling of rights violations in what could be a competitive situation may be difficult, to say the least.

These considerations lend practical support to the notion that the prospect for positive change should belong with the people (the private sector), rather than the institution of Government. But, again, that it is *difficult* to expand jurisdiction beyond our borders does not mean that government is not *responsible* for doing so, when there are risks to the (future) citizenry. We have soundly argued that the State is responsible for this expansion. Nevertheless, the State has a great number of impediments to fulfilling this responsibility.

Our focus, therefore, unlike the previous section, is on these impediments to enforcing citi-

zens rights with action in foreign lands and less our justification for doing so. But the considerations are not simply practical. As Libertarians bound by respect for human rights, we will see that reconciling protection of citizens rights with policies of foreign countries who also respect human rights can be difficult if not impossible, *even in principle*.

4.1.1 Imminent Threats

One may note that if there is urgency, there is rarely a concern for restricting commerce, a history of poor precedent, or modeling accuracy. Knowing this, leadership has a history of overusing the 'Imminent Threat' moniker to leap-frog any push back it may get from an informed public; while some real people, posing real threats have made a point of flying under the radar, so as to not license the 'Imminent Threat' label; and other real people are pushed to the brink so that they can have the label applied to them for political purposes. While the general public has alert fatigue from the 'Imminent Threat'

label and rarely pays it any attention, our government uses it as weapon to allocate resources where and when they want them.

There are, of course, real issues which should not be bound by concerns for precedent; in some cases, there may be no precedent at all; in other cases, the precedent is outdated or otherwise misrepresentative; in further cases, the threat challenges the conditions for liberty (i.e. life) on such a wide scale that it actually needs to be addressed, regardless; sometimes the urgency is real, despite the time which one would like in order to vet the models and decisions.

But when the public hears 'Imminent Threat', how is it that they are to *trust* that this threat is actually a risk to the rights of the citizenry? They are supposed to trust what their elected representatives tell them, because, after all, they elected them. But the obvious - though nevertheless shocking - truth is that your elected representatives are generally not qualified to assess what is a threat and what is not; they are simply reiterating what they are told by people already

in government in terms which make themselves look as good, smart, and competent as possible to you, their constituent audience.

We will take up the issue of representation later. But it bears noting here that as bad and spectacular as e.g. Terrorism can be, we cannot waste our sense of urgency on what is becoming a fact of modern life, unless and until urgency-with-a-plan is required to overcome the systemic issue (or at least in part).

4.1.2 Restricting Commerce and Precedence

Allowing prying eyes into a free-market economy is detrimental to its viscosity. Knowing this, the suggestion that there must be monitoring and prosecuting of economic violations (in drug or human trafficking, in environmental destruction, etc.) by a foreign country against *themselves* in order to protect the future citizenry of *our* nation is likely to fall on deaf ears. If we can convince foreign nations to conduct this for the sake of *their* (future) citizenry, then we stand a

chance of meeting our objectives, but it would clearly be the more strategic move for them to insist that *we* pay *them*, for the economic costs that they would incur.

If a nation has enormous coal resources and little else in the way of fuel products, you can tell such nations that they shouldn't, for the sake of their future citizenry, use those resources to fuel their economy, but they are not likely to abide unless they are *given* another means of fueling their economy in exchange. This issue, and others, is made all the more difficult by the fact that the West did not self-impose such environmental restrictions as it ascended the economic ladder. It is very difficult to tell people not to do what we have already done, when we are not ready and willing to give up the economic ends we have achieved.

Note that the hypothetical foreign nation is *not* extorting the West. They are protecting the rights of their current citizenry, while in a bargaining position to ignore their future citizenry for the fact that future citizenry has the same

interests as our own future citizenry.¹ This is not to say, however, that they should be given a free pass. They should at least be liable for the expenses incurred for enforcing the necessary protections.

This is part of the answer for why (at least some of) the concessions to Asia in The Paris Accord were warranted, on Libertarian grounds.

4.1.3 Modeling and Diplomacy

Suppose, for the moment, that the various nations of the world are able to agree on the list of human rights. Each State then has the responsibility not to violate the rights of the citizenry of the world, and each State has the responsibility to prosecute violations of the rights of *their* citizens, wherever those violators may be. We have not here concluded that a nation, N1, whose citizen, C1, has violated the rights of other non-citizens, C2 from N2 (or other agents outside of

¹If the country above had ample hydro-electric to fuel their economy, but insisted on coal in order to get the payout, *that* would be extortion.

their jurisdiction) must cooperate in the punishment of their citizen, C1, by other governments, N2. We might call this further principle 'No Harbor' (for that fact that N1 would only be under pressure to comply if C1 was in or returned to N1).

Of course, human rights transcend borders. If a citizen of one country violates the human rights of an existing citizen of another country, it is well within libertarian principle that 'No Harbor' applies. Similarly, if a citizen of one country is prosecuted for a crime in another country, which was not a rights violation of any sort (e.g. it was a victimless crime), the country of the prosecuted citizen arguably has the responsibility to defend this citizen from prosecution. We might call this latter, 'Safe Harbor'. Both 'No Harbor' and 'Safe Harbor' are potentially and simultaneously valid on Libertarian grounds.

Suppose, however, that no country involved has any unjust laws (all laws involve some victim whose rights are violated, therefore no pros-

ecution will call for Safe Harbor), *but* different nations have different positions on the direction of the future and therefore, even if they both try to maximize aggregate future rights of their citizenry, what is a crime in one territory is not necessarily a crime in another. In such cases, is the citizen of one country to expect defense from their country if they commit a violation within a foreign jurisdiction, if the violation would not be a violation in their home country? There appears no right answer so long as the difference in the system of laws is with respect to *how* to maximize aggregate future rights.

The Libertarian must admit that we are at a stalemate unless the lawmakers of the various nations can agree on *how* to maximize aggregate future liberty. If that seems a difficult task because we cannot all agree to maximize future aggregate liberty in the first place, it seems a *profoundly* difficult task given, say, jihad. But one Libertarian country can at least allow for another Libertarian country to operate on its own terms, provided they apply protection of

rights to *all existing* people, citizens or otherwise. It is then the responsibility of a visitor to tread cautiously or know the laws, which is really sound advice in all cases, and is a policy consistent with both Safe Harbor and No Harbor.

However, this seems to entail that it is within Libertarian ideals for e.g. *Americans* to take their companies overseas in order to find less constrained environmental policies, morally reprehensible as that may seem. The grounds on which to prevent this, without further rights violations, is unclear. What a country can do is show that another country is not, by any measure, maximizing future rights of its citizenry, and/or disown the businessman (revoke their citizenship).²

²Of course, establishing the former would be grounds for the latter, but the State may further insist that the citizen cannot contradict its vision of the future, so in this case, revoke it simply if the maximization is different.

4.1.4 Representation

It is an important question how we can reconcile visions of the future across nations, including the rights of future generations, in order to mitigate the conflicts mentioned in the previous section. Even should America be finally free from the threat of Communism or Terrorism in the world (and it is free from neither), the UN, International Courts, and World Governance generally would serve the purpose of reconciling visions of the future among Libertarian nations. The Libertarian could view governance at this level as a scaling up of our governing system within an independent Libertarian nation. In principle, such reconciliation between representatives of constituent nations is no different than reconciliation between representatives of states in the US federal government.³

³As with all representation, I will argue, we would have to ask who is capable of being responsible for evaluating the risks and their models (matters of 'the head'), as well as whom is representative of a population (matters of 'the heart'). These should generally be people who

We can now bring this together with the prior notion that what the libertarian values is *life at liberty in quest of a meaningful life*. There is nothing in this claim that what the Libertarian cares about is *America*. The Libertarian, in so far as they are Libertarian and not representing constituents, does not care more for an individual in the state they live in, say Wisconsin, as opposed to another state, say Missouri. This fact is congruent to the notion of a hierarchy in world Libertarian representation. The Libertarian cares no more for an American than a Tanzanian, provided they are not formally representing America. What they care about are the American-Libertarian ideals applying to all existing individuals and - as best we can - all future individuals. That one should not meddle in the affairs of other territories but for the risks they pose to your current and future citizens, still holds true *provided policies don't conflict*,

prove themselves worthy according to *test* in the former case and according to *vote* in the latter. Sometimes we should insist these people are one and the same.

but that there will be conflict (at a minimum regarding the future), is given, and for this reason we need a means of reconciliation from the individual, to the community, to the state, to the country, to the World, with the relevant risks (and representatives) accorded to the relevant levels.

If one thing is clear from the modern world, it is that risks are rarely isolated, and need to be addressed at higher levels of geographical jurisdiction as necessary. For this, there need be a mechanism for some nations to apply political pressure on others, when the latter present risks to the former. That mechanism calls for a scaling of American-Libertarian governance to higher jurisdictions. When that governance does not exist, it can be justified for nations whose citizens rights - future or otherwise - are violated to act autonomously, though this is the lesser option in matters of grand scale (at least for risk mitigation).

4.1.5 Environmental Policy

We have gone far enough to include robust, future-regarding Environmental measures within the scope of Libertarian governance. In the process we have, however, come to realize that battles will inevitably arise about the future despite (not because of) an adherence to the protection of rights.