

Autonomy and Rights: The Moral Foundations of Liberalism
by Horacio Spector

A Review by

Matt Zwolinski
University of San Diego
San Diego CA 92110
mzwolinski@san Diego.edu

Forthcoming in modified form in *The Journal of Value Inquiry*

Libertarian political philosophy has come a long way since 1974, when Robert Nozick's *Anarchy, State, and Utopia* was the only book available on the subject written by an academic philosopher.¹ Now, there are dozens of books exploring, defending, and critiquing libertarian ideas.² Most of these books, however, devote their almost exclusive attention to the distinctively *political* aspects of libertarianism – its theory of limited political authority, its condemnation of state-run economic planning and redistribution, and so forth. Questions of moral foundations are either given extremely short shrift or, following Nozick's somewhat unfortunate model, set aside altogether.

Of course, as libertarians should be the first to recognize, there is nothing objectionable *per se* in the division of philosophical labor. It's hard to do everything in a single book, and besides, there are some good reasons for libertarians to give priority to the political aspects of their theory in their writing. For starters, it allows them to free-ride on the numerous and useful contributions that non-philosophers

¹ I use the term 'libertarian' here rather broadly, to refer to a rough group of political theories that converge on a cluster of normative, empirical, and methodological beliefs such as the belief in the general efficiency of market mechanisms, the belief that at best only a very limited state is legitimate, the belief that negative liberty is the only thing that may legitimately be demanded from others as a matter of political right, and so on. While the term 'libertarian' can and often is used in this broad sense, it will often be useful to distinguish between libertarians who believe that a minimal state (one providing police, courts, and a military) but no more is justified, anarcho-capitalists who believe that *no* state is justified, and classical liberals who believe that a state slightly larger than the minimal one (often one which provides for various economic public goods or limited redistribution) is justified. For a more thorough analysis of these concepts, see (Mack & Gaus, 2004) and (Zwolinski, 2008a).

² Some of the more notable of these books are (Barnett, 1998; Barry, 1986; Epstein, 1998; Friedman, 1989; Lomasky, 1987; Narveson, 1988; Rasmussen & Den Uyl, 2005; Schmidtz, 2006).

have made to the understanding of political and economic institutions. Friedrich Hayek's philosophical musings on the nature of coercion may be scarcely deserving of even the scant attention they receive from philosophers today, but his economic insights into the information-producing and information-conveying nature of the price system and his analysis of spontaneous order in complex systems were nothing short of brilliant.³ Similarly, work by Gordon Tullock, James Buchanan, and others in the public choice school of economics is an important resource for advocates of limited government.⁴ Libertarian philosophers can make important contributions by exploring and developing the implications of insights like these for the traditional problems of political philosophy.

Perhaps a more significant advantage of focusing on the political is that it allows libertarianism to be defended, in Rawlsian terms, as a *political* doctrine rather than a *comprehensive* one.⁵ Rhetorically, it is easier to defend a certain controversial view of the nature and function of the state if the success of one's defense doesn't depend on *other* controversial views about the consequentialist or deontological structure of morality, the metaethical status of moral norms, and so on. And more substantively, the justification of libertarianism is actually stronger to the extent that its support does not require strict adherence to one comprehensive doctrine when many other conflicting but reasonable comprehensive doctrines are held by members of one's society. Libertarian political institutions require coercion for their enforcement just like any other set of political institutions, and it is arguably a core commitment of liberalism that coercion must be justified to those on whom it is imposed.⁶ To the extent that it is possible to justify libertarianism on the basis of a broad overlapping

³ See, generally, (Hayek, 1945, 1994). Gerald Gaus has written several fascinating essays exploring the implications of Hayek's thought for moral and social philosophy (Gaus, 2006, 2007b).

⁴ The classic work in this field is (Buchanan & Tullock, 1962).

⁵ On this distinction, see (Rawls, 1993, pp. 4-11). The advantages of this approach to libertarianism have been defended explicitly by Randy Barnett in (Barnett, 2004) and to a certain extent by Gerald Gaus (Gaus, 2003, 2007a).

⁶ See, for instance (Eberle, 2002, p. 54)

consensus of reasonable views, rather than a single exclusive comprehensive doctrine, it is desirable that philosophers should do so.

All this being said, however, it is refreshing to read a book by a libertarian philosopher that leaves public goods and prisoner's dilemmas to the economists, and spends its time instead delving deeply into the core philosophic questions raised by the libertarian doctrine. Such a book is Horatio Spector's *Autonomy and Rights: The Moral Foundations of Classical Liberalism*.⁷ Spector's book, originally published in 1992, has recently been re-released in a new paperback edition. It goes without saying that this book deserves close attention from those philosophers with an interest in libertarian theory. But even moral philosophers with little interest in political issues will find much of value here. This is a book about the deep foundations of libertarianism, and Spector brings both a wide knowledge of the philosophical literature and a careful and thorough method of analysis to issues such as the relationship between moral demands and practical reason, the nature of rights and their relations to moral duties, and the nature and moral significance of the distinction between actions and omissions.

Spector's primary argumentative goal in this book is to defend what he calls the "basic libertarian thesis." This thesis holds that "individuals have moral rights involving...the moral impermissibility of interfering with their choices and actions ... [and that] negative rights...prevail as a rule over other moral reasons that may compete with them."⁸ This thesis is a tough sell for most crowds, but Spector makes a wise initial move by distancing himself early on from any kind of simplistic moral monism. Negative liberty is an important value, but it Spector does not claim that it is the *only* important value. Nor does he make what some have taken to be a defining claim of libertarianism – that negative rights are the only kinds of rights that exist. This position Spector decries as "ethically

⁷ (Spector, 1992)

⁸ (Spector, 1992, p. 7)

radical and barely credible.”⁹ We should therefore not understand the basic libertarian thesis as claiming that negative liberty and negative rights are the only sources of moral reasons to which we must be responsive. The libertarian thesis is about which moral claims ought to be enforced by *political* mechanisms, and it is grounded not in the denial of other moral values, but in a concern that any attempt to promote those values through political mechanisms will violate individual rights or encroach upon some more important value such as freedom or welfare.¹⁰

Given that Spector rejects the idea that negative liberty is the only important moral value, it is natural that he rejects the idea that libertarianism is justified insofar as it maximizes negative liberty. This doctrine, which finds its most notable libertarian advocate in Jan Narveson, Spector refers to as ‘negative liberalism,’ and the first two chapters of this book are devoted to refining and then rebutting it.¹¹ The first of these chapters is an extremely useful review of some of the most important debates regarding the concept of negative liberty. The basic core of this concept – that of non-interference – is simple enough. But as is well known to philosophers who have dabbled in this area, this surface-level simplicity masks a whole host of difficult questions. First, what is it that is not to be interfered with? Actions? Desires? Possible desires? Is a slave who just happens to want to do everything his master is ready to force him to do free? Second, which of the various sources of interference are to count as freedom-reducing? A wall, your first, and a crippling agoraphobia can all prevent me from getting the cupcake I desire – but do they all count as restrictions on my freedom? Third, supposing that we limit our discussion to the actions of human beings, which of their actions count as freedom-reducing? Classical liberals have generally sought to draw a distinction between persuasion and coercion, where

⁹ (Spector, 1992, p. 3)

¹⁰ (Spector, 1992, p. 4)

¹¹ See (Narveson, 1988)

the latter is held to be freedom-reducing while the former is not.¹² Similarly, and perhaps more problematically, libertarians hold that someone who is fired from what was perhaps his only available job has not had his freedom reduced, while someone who is taxed a small portion of his extremely large income has. What, if any, theoretical account of freedom-reducing acts can sustain these distinctions?

Spector provides plausible enough answers to all of these questions, and thus builds for himself a useful account of negative liberty that he will go on to utilize in his own positive account. Essentially, his concept of negative freedom is such “(1) both physical compulsion and threats curtail the negative freedom of the victim, in that they restrict his repertoire of options; (2) the restriction of a possible course of action is sufficient to cause a loss of negative freedom, irrespective of whether or not the said course of action is really desired by the victim, and (3) any act, be it deliberate, negligent, or accidental – but not an omission – may in principle constitute an interference with freedom.”¹³

Although this concept plays a key role in Spector’s position, it is not the role assigned to it by the doctrine of negative liberalism. A libertarian doctrine grounded on the simple *maximization* of negative liberty is, according to Spector, unstable in two ways. The first kind of instability Spector labels ‘conceptual.’ Spector’s analysis here draws on MacCallum’s influential tripartite analysis of liberty, wherein any claim of liberty – negative or positive – can be understood in terms of some subject *P* who is or is not free from some constraint *A* to do or not do some action *X*. The debate between advocates of negative and positive liberty, Spector correctly asserts, centers on the range of the value *A* – what sorts of constraints are to count as freedom-reducing? Positive liberals hold that “any sort of impediment or obstruction in the way of an action, such as lack of economic means, physical disability, or the coercion of other people” counts as freedom-reducing, while negative liberals limit the range to

¹² See, for the classic discussion (Mill, 1978)

¹³ (Spector, 1992, p. 29)

“restrictions imposed actively by other people.”¹⁴ Spector argues, however, that if *this* is all that the debate between negative and positive liberals comes down to, then the negative liberal is in trouble. For if both positive and negative liberty are merely particular instances of a more general concept of liberty, then negative liberty isn’t really *essentially* different from positive liberty, and the burden is on the negative liberal to explain why *some* kinds of constraints on *P* with regard to action *X* are more worrisome or deserving of prevention/condemnation than others.

Attempting to meet this explanatory burden, however, throws the negative liberal into a second type of instability – what Spector calls “value instability.” The problem here is that the negative liberal wishes to claim that we necessarily have reason to condemn all violations of negative liberty, but also that this reason is not equally a reason to promote positive liberty. But what feature is it that all violations of negative liberty have that constitutes this reason? The only value-relevant fact that *necessarily* follows from a violation of negative liberty, Spector argues, is a “contraction of the menu of options” of the victim.¹⁵ But this result likewise characterizes a loss of positive freedom. Hence, Spector concludes, the negative liberal is unable to provide any justification for his concern with negative liberty that does not equally justify a concern with positive liberty. And if positive liberty matters just as much as negative liberty, then negative liberalism’s exclusive focus on maximizing the latter seems unwarranted.

Spector’s dismissal of negative liberalism moves a little quickly, but seems squarely on the right track. There is an obvious commonality, long played upon by critics of libertarianism, between losses of negative liberty and losses of positive liberty in that both involve a contraction on people’s range of options. If, as MacCallum argues, a contraction of one’s options is the core of the concept of liberty,

¹⁴ (Spector, 1992, p. 55)

¹⁵ (Spector, 1992, p. 59)

then explaining why one sort of constraint is more significant or troubling than another requires appeal to some value other than liberty itself. It might be that violations of negative liberty are more degrading, or that they constitute an impermissible using of persons as means, or that they tend to have predictably nasty side effects. The point Spector is making – or the point he ought to be making, it seems – is not that it is impossible to give such an explanation. The point is that in giving such an explanation one abandons the project of grounding libertarianism on negative liberty as a foundational concept. Negative liberty is important *because* it instantiates or promotes some other more basic value. And if it is important *because* it promotes or instantiates some other value, it is only important *to the extent that* it promotes or instantiates that other value – and positive liberty will be equally important to the extent that it promotes or instantiates it. More empirically-minded readers like myself will think that this is just as it ought to be. If a strong case can be made for negative liberty, it will need to be a case made in light of full examination of the way in which negative liberty promotes or fails to promote our other values, compared with the alternative of positive liberty. But Spector is looking for an argument that does not depend upon contingent or empirical considerations and so this route is unavailable to him.

The third and fourth chapters of this book set out the core elements of Spector's preferred defense of libertarianism. Chapter three sets out a deontological theory of practical reasoning, shows its connection to a theory of moral rights, and sets forth Spector's conception of autonomy and its connection with positive freedom. The fourth chapter defends the idea – essential to the kind of deontological libertarianism Spector wishes to endorse – that there is a morally significant distinction

between acts and omissions. Or, more precisely, that “the duty not to actively attack positive freedom prevails over the duty to prevent any injury to positive freedom.”¹⁶

Much of the argumentative work draws on the kind of far-fetched intuition pumps employed by Judith Thomson and Frances Kamm. The literature on these kinds of thought experiments has greatly expanded since the time of this book’s publication, and I am less than fully convinced that much of use has or will come of it. What is truly promising and interesting in these chapters, however, is the strand of argument – most fully developed in the final chapter – that attempts to draw a connection between the separateness of persons and a kind of deontological agent-relativity.

To a certain extent, Spector’s argument here follows a familiar pattern in liberal theorizing.¹⁷ The idea is that theories like utilitarianism make a mistake in supposing that morality is about maximizing some abstract aggregate like happiness or the good. This mistake, Spector speculates, results from an ambiguity in predications such as “positive freedom is good.” What such statements really mean, he argues, is not that “the whole of all the instances” of the universal name is good, but that each instance of it – yours, mine, hers – is good.¹⁸ Once we recognize that we are predicating goodness of positive freedom in a distributive, rather than a collective sense, we should lose the temptation to assume that all instances of positive freedom must – since they are all equally parts of a valuable whole – be of equal value. The mere fact that they are instances of the *same* value does not imply that they are of *equal* value.¹⁹ And if different instances of positive freedom cannot be presumed to be of equal value, the consequentialist approach of trading of some positive freedom here for a greater amount there does not get off the ground.

¹⁶ (Spector, 1992, p. 101)

¹⁷ See, for the two most famous examples of this pattern, (Rawls, 1971, p. 27) and (Nozick, 1974, pp. 32-33).

¹⁸ (Spector, 1992, p. 156)

¹⁹ (Spector, 1992, p. 157)

In fact, Spector wants to go farther than saying that different instances of positive freedom cannot be presumed to be of equal value. He wants to in fact say that different instances of positive freedom *cannot* be of equal value. They are, instead, of “distinct worth, which means that the positive freedom of any person is neither of greater nor lesser value than, nor of equal value to, the positive freedom of any other.”²⁰ They are, in other words, incomparable.

But this is almost certainly going too far. What Spector has shown, at most, is the invalidity of one possible reason for thinking that all instances of positive freedom are of equal value. It is true that we cannot conclude from the mere fact that two instances of positive freedom have the same *kind* of value that they therefore have the same *amount* of value. But this failure does not show that two instances of positive freedom *cannot* be of equal value, much less that they must be incomparable. Indeed, it is not at all clear that incomparability is where a classical liberal like Spector should want to end up. For we do want to say that when our choice is between promoting the positive freedom of one versus promoting the positive freedom of five, then all else being equal, we have greater reason to aid the greater number. As I have argued elsewhere, the liberal objection to aggregative consequentialism should not be construed as an objection to trade-offs *per se* but as an objection to the *kinds* of trade-offs consequentialism endorses, and the failure of consequentialism to consider separate persons as anything other than repositories of utility (or positive freedom, or whatever).²¹ The proper barrier to the sort of trade-offs advocated by the consequentialist is not that we cannot *compare* the values at stake, but that we cannot *act* on that comparison in the way the consequentialist wants us to.

²⁰ (Spector, 1992, p. 159)

²¹ (Zwolinski, 2008b, pp. 149-150)

But this argumentative route does not seem open to Spector, who wishes to ground deontological constraints on value-claims.²² If, as Spector wants to insist, the sole source of our obligation not to kill *X* is the value of *X*'s life, then if we can determine that the value of *Y* and *Z*'s life is greater and that we can only achieve one or the other, then why *not* kill *X*?

Spector wants to resolve this problem, and the cluster of similar problems located around the “paradox of deontology,” by appealing to the agential dimension of the separateness of persons. I found this to be one of the most interesting and suggestive portions of the book’s overall argument, but one which is ultimately underdeveloped. For Spector, a “comprehensive theory of personal separateness” will have two aspects – one which reflects our role as “beneficiaries or victims of the actions of others,” and another which reflects our role as “beings choosing and acting.”²³ We respect the separateness of persons as victims or *beneficiaries* through a system of rights as side-constraints.²⁴ This line of argument is not terribly new. What is novel in Spector’s analysis is his claim that respect for our separateness as *agents* entails that whatever deontic restrictions bind us will be agent-relative restrictions – that is, they will give me reason not to kill that is not equally reason to prevent a greater number of people from being killed. Spector’s argument here is brief and suggestive, but I do not wish to take issue with it. What I do wish to suggest is that *truly* taking our separateness as agents seriously threatens to undermine the idea of deontic restrictions altogether – agent-relative or otherwise. For if what we want to take seriously is the fact that I am my own person, with my own projects, interests, and desires, then it is difficult to see why I should be bound by a set of deontic restraints the justification of which does not depend at all on those projects, interest and desires, and which indeed might require that I sacrifice them altogether for the sake of conformity to the moral law. Spector happily helps

²² (Spector, 1992, p. 73)

²³ (Spector, 1992, pp. 154, 177)

²⁴ See (Spector, 1992, pp. 177-178). I make a similar argument in (Zwolinski, 2008b, pp. 153-158)

himself to Bernard Williams' argument that utilitarianism undermines integrity,²⁵ but seems not have realized that precisely the same objection applies to the variety of deontology he winds up endorsing.²⁶ The difficulty here seems to stem from Spector's attempt to combine an agent-relative account of deontic restraints with an agent-neutral account of value, together with the attempt to ground deontic restraints in value-claims. I suspect but cannot argue that a full respect for the separateness of persons requires recognition of the agent-relativity of both restraints and values. And if this is so, this will entail either rejecting deontic restraints altogether, or grounding them in some way other than the values they preserve.

My disagreements with its conclusions notwithstanding, this is a insightful and important work in moral and political philosophy, and one which both advocates and critics of libertarianism cannot afford to miss.

- Barnett, R. E. (1998). *The Structure of Liberty: Justice and the Rule of Law*. Oxford: Oxford University Press.
- Barnett, R. E. (2004). The Moral Foundations of Modern Libertarianism. In P. Berkowitz (Ed.), *Varieties of Conservatism in America*. Stanford: Hoover Press.
- Barry, N. P. (1986). *On Classical Liberalism and Libertarianism*. London: Macmillan.
- Buchanan, J., & Tullock, G. (1962). *The Calculus of Consent*. Ann Arbor: University of Michigan Press.
- Eberle, C. J. (2002). *Religious Conviction in Liberal Politics*. Cambridge: Cambridge University Press.
- Epstein, R. A. (1998). *Principles for a Free Society: Reconciling Individual Liberty with the Common Good*. New York: Basic Books.
- Friedman, D. (1989). *The Machinery of Freedom: Guide to Radical Capitalism* (2nd ed.). La Salle, IL: Open Court.
- Gaus, G. (2003). Liberal Neutrality: A Radical and Compelling Principle. In G. Klosko & S. Wall (Eds.), *Perfectionism and Neutrality* (pp. 137-165). Lanham, MD: Rowman & Littlefield.
- Gaus, G. (2006). Hayek on the Evolution of Society and Mind. In E. Feser (Ed.), *The Cambridge Companion to Hayek*. Cambridge: Cambridge University Press.
- Gaus, G. (2007a). On Justifying the Liberties of the Moderns: A Case of Old Wine in New Bottles. *Social Philosophy and Policy*, 25(1).
- Gaus, G. (2007b). Social Complexity and Evolved Moral Principles. In P. McNamara (Ed.), *Liberalism, Conservatism, and Hayek's Idea of Spontaneous Order*. London: Palgrave Macmillan.
- Hayek, F. A. (1945). The Use of Knowledge in Society. *American Economic Review*, 35(4), 519-530.

²⁵ (Spector, 1992, pp. 163-165)

²⁶ On this point, see (Williams, 1981)

- Hayek, F. A. (1994). The Theory of Complex Phenomena. In M. Martin & L. C. McIntyre (Eds.), *Readings in the Philosophy of Social Science* (pp. 55-70). Cambridge, MA: MIT Press.
- Lomasky, L. E. (1987). *Persons, Rights, and the Moral Community*. Oxford: Oxford-Univ-Pr.
- Mack, E., & Gaus, G. (2004). Classical Liberalism and Libertarianism: The Liberty Tradition. In G. Gaus & C. Kukathas (Eds.), *Handbook of Political Theory* (pp. 115-130). London: Sage.
- Mill, J. S. (1978). *On Liberty*. Indianapolis: Hackett.
- Narveson, J. (1988). *The Libertarian Idea*. Philadelphia: Temple University Press.
- Nozick, R. (1974). *Anarchy, State, and Utopia*. New York: Basic Books.
- Rasmussen, D. B., & Den Uyl, D. J. (2005). *Norms of Liberty: A Perfectionist Basis for Non-perfectionist Politics*. University Park, PA: Penn State University Press.
- Rawls, J. (1971). *A Theory of Justice* (1st ed.). Cambridge: Belknap Press.
- Rawls, J. (1993). *Political Liberalism*. New York: Columbia University Press.
- Schmidtz, D. (2006). *Elements of Justice*. Cambridge: Cambridge University Press.
- Spector, H. (1992). *Autonomy and Rights*. Oxford: Oxford University Press.
- Williams, B. (1981). Persons, Character and Morality. In *Moral Luck*. Cambridge: Cambridge University Press.
- Zwolinski, M. (2008a). Libertarianism. *The Internet Encyclopedia of Philosophy*, from <http://www.iep.utm.edu/l/libetar.htm>
- Zwolinski, M. (2008b). The Separateness of Persons and Liberal Theory. *Journal of Value Inquiry*, 42(2), 147-165.

