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Chapter 3: Forty Acres and a Mule? Implications of the Duty to Respect Person Independence

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Chapter 3: Forty Acres and a Mule?

Implications of Respect for Personal Independence

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[Milo Minderbinder] raised the price of food in his mess halls so high that all officers and enlisted men had to turn over all their pay to him in order to eat. Their alternative, there was an alternative, of course—since Milo detested coercion, and was a vocal champion of freedom of choice—was to starve. When he encountered a wave of enemy resistance to this attack, he stuck to his position without regard to safety or reputation, and gallantly invoked the law of supply and demand.

-Joseph Heller, *Catch-22*¹

Respect for ECSO freedom implies limits on how people can go about building community and on the powers government and private individuals can assert over individuals and resources, but it does not conflict with the desire to build a community or a government. The challenge of independentism is to build a community in an area while respecting the personal independence of everyone who happens to be stuck together in the area. This chapter discusses a few of the implications that follow from the respect for ECSO freedom.

As argued above, a group of people fails to fulfill the obligation to stay out of each other's way if their actions (individually or collectively; directly or indirectly; intentionally or unintentionally) prevent another person from maintaining core

wellbeing. Indirect force takes up most of this discussion because it is less well recognized by most modern democracies or most political philosophers than the other rights necessary to secure ECSO freedom. Most of what we need to do to ensure that everyone is free is to leave them alone with access to a sufficient amount of external assets to live a decent life. Some circumstances call for more, but most people most of the time would be just fine with that. I will argue for the duty to do more primarily by in compensation for our failure to stay out of each other's way.

To respect another individual's status as a free person is to recognize that other people have needs and not to prevent, interfere with, or put conditions on their efforts to meet those needs alone or with willing partners. If some group cannot avoid dominating resources, they can maintain respect for ECSO freedom by compensating individuals sufficiently for the lost access to resources that they are forced to accept. That compensation could come in the form of goods or cash income, sufficient to maintain a person's core wellbeing. Whether direct access to resources, in-kind compensation, or cash compensation is an appropriate strategy for safeguarding the effective component of ECSO freedom might vary depending on the institutional make-up of the economy. But this chapter argues that the most reasonable way to secure the effective component of ECSO freedom in a modern, industrial society is with some form of unconditional basic income guarantee.

A society that respects personal independence has a "voluntary-participation economy;" one that does not has a "mandatory-participation economy." Maintaining a voluntary-participation economy is a simple and not terribly demanding obligation, but most modern democracies and most theories of justice fail in it. Right-libertarians, who claim to be so concerned with freedom, fail in it, by allowing one group to use indirect force to get another group to serve them. Many liberal-egalitarians, who

claim to be so concerned with the disadvantaged, fail in it by using indirect force to serve the social project. Most forms of capitalism (even those with generous but conditional welfare systems) have mandatory participation economies, as do feudal, socialist, Leninist, or absolutist societies. Some forms of left-libertarianism or basic income capitalism have voluntary participation economies, as did most hunter-gatherer and simple agrarian societies.² The mandatory-participation economy has become so ubiquitous in recent centuries that it is hard to imagine an alternative. But most people lived in voluntary-participation economies until chiefs and kings gradually began claiming the right to deny people access to resources. The transformation began perhaps 7,000 years ago, and there are still remote parts of the world with traditional voluntary-participation economies.³

Sections 1-5 clarify and discuss implications of the theory of ECSO freedom. Section 6 makes the connection between ECSO freedom and basic income.

1. To say no to what?

ECSO freedom includes the effective power to say no to active cooperation. As noted above, it *does not* include the freedom to hold a title to all the resources you want *and* refuse conditions set by the people who will have the duty to respect your title to those resources. ECSO freedom includes unconditional access to enough external assets to meet basic needs, but it does not include the power to say no to taxes and regulations on people who wish to hold more than the minimum amount of external assets.

For the most part, people in western democracies are free from active participation in others' projects except when they are effectively forced by propertylessness. A propertyless person can legally attempt to attain what she needs to

survive by performing a service for someone who has property (work), by marrying or remaining married to someone willing to support them, by receiving gifts, by begging, by scavenging in garbage, and by meeting conditions imposed by a charity or a government agency. All of these, except scavenging and receiving gifts (if given unconditionally), are forms of active cooperation with others, and ECSO freedom is the power to refuse to do any of them. The primary focus of the argument here concerns forced labor market participation,⁴ both because work is a significant part of people's lives and because it is what the propertyless are usually expected to do.

However, work is not always the most significant thing that propertylessness can force a person to do. Marriage to the wrong person can be more onerous than many jobs. The arguments for the importance of ECSO freedom apply just as much to the freedom from any other conditions that could be put between the propertyless and the means of survival. Freedom from forced labor can be seen as an example for the freedom from all the things propertyless might force a person to do.

One reason to focus on employment is that it has a central importance in most people's lives. Labor can take up nearly half of a person's waking hours for most of her adult years, and concern with it fills up much more time. If people are unfree to decide when, how, whether, and under what conditions to join the labor market, they are unfree over such an enormous portion of their lives that their freedom to control their interactions in their off-hours can seem insignificant by comparison.

Another important reason for focusing on employment is that political philosophers are more likely to find it acceptable to force the propertyless to work than to force them to do other things such as marry or perform religious rituals. Unfortunate side effects of our societies' uses of propertylessness to coerce

individuals to participate in the labor market include some people's resort to begging, prostitution, foraging through garbage cans, and remaining in abusive marriages.

2. Dissent and disadvantage

This section clarifies my use of the terms dissent and disadvantaged. I use the term "dissenter" for a person who (for whatever reason) does not want to participate in the economy or the social project designated by whatever group dominates resources. There must be a difference between dissenter, who merely objects to the social project and wishes to be left out, and a parasite who wants to benefit at the expense of others or a criminal who wants to harm others.⁵ The term dissenter includes many different people, some having better complaints than others. A dissenter might be a potential worker who finds the rewards for participation are too low, the goals objectionable, or the conditions overbearing. A dissenter could also be many other things: someone who simply does not want to take orders from others; a care giver or a volunteer worker who believes that such unrewarded work should count as a contribution; an ethnic minority who believes society is too racist; racist who believes society isn't racist enough; a pretender who believes she is the legitimate monarch; an oppressed individual who does not wish to support her own oppression; and so on. Most reasons for dissent are moral or personal objections to the goals, methods, or terms of the social project. Probably everyone objects to at least one aspect of the social project, but few have objections so strong that they would refuse to participate if the rewards are appealing.

By disadvantaged, I mean anyone whose attributes are such that they are unable to participate or their options for participation involve low pay, low status, poor working conditions, lack of respect, and so on. Disadvantage might be one

reason for dissent, but not all disadvantaged people are dissenters, even if more of them should be. There is a great deal of overlap between the two and no great reason to determine which category and individual fits into.

The theory of ECSO freedom is an attempt to determine the minimum level of decency with which society should treat dissenters and the disadvantaged. The main thrust of the argument in this book is that society needs to have greater respect for the disadvantaged than many egalitarians propose and greater respect for dissenters than many “libertarians” propose. Society can deny dissenters many of the fruits of the joint project while respecting the ECSO freedom, but it cannot force dissenters to participate by denying them all access to the external assets they need. A society that respects ECSO freedom may use positive reward for participation, but only after everyone’s needs are met unconditionally.

3. The complexity of separating freedom and unfreedom

Freedom and unfreedom are complex concepts. Although a theory of status freedom identifies a threshold separating freedom and unfreedom, it is not possible to draw a fine line stating that a person with X number of liberties is fully free and a person with X minus one liberties is unfree. There is a large area of restricted or threatened freedom in between the two. As Chapter 2 argued, to insist on a fine line would assert the black-and-white fallacy.

The effective component of freedom must be obviously seen as a matter of degree,⁶ depending on the liberties people have and the penalties for exceeding them, but the same nearly all liberties. The more onerous the duties people are held to, the more their freedom is threatened. The greater the force applied to people who refuse participation, the more their freedom is threatened. Restrictions on some liberties

threaten freedom more than restrictions on others, and nearly all liberties can be threatened by degree.

A person in prison serving a life sentence is unfree, and a person outside is free. But suppose Skipper could be sentenced to spend six days and 23 hours each week in prison for the rest of his life but to be released for one hour each week. Or Skipper could be sentenced to spend half the week in jail or half the week out, or one hour in jail and the rest of the week out of jail. These situations fall into the murkier area of restricted freedom. If Skipper is sentenced to spend one minute per week in detention, he is close to being a free person even though one of his core liberties is restricted.

Time is not the only important determinant of whether a liberty is core or secondary: whether and how much an individual objects to what she is asked to do is also as important. Suppose Ginger opposes the death penalty on moral grounds. Suppose the vast majority of people in her country believe that the death penalty is the morally correct way to punish criminals, and every citizen has a duty to spend one hour every five years performing the unpleasant but necessary job of executing criminals, and they enforce this rule with the death penalty. Most people think nothing of complying with this rule. The amount of time that Ginger is forced to put aside is trivial, but what she is asked to do during that time is not trivial to her, and therefore, her freedom is seriously restricted (even if it is a trivial restriction in the opinion of everyone else). The same would be true if laws forced her to spend a trivial amount of time performing a significant religious ritual, or anything else that is objectionable beyond merely the lost time involved.⁷

Not all liberties affect a person's freedom in the status sense, as Chapter 2 argued with the example of the prisoner with access to DVDs. The same effect can be

seen in a free person. Suppose Mary Ann is a free person. An authority (sentencing her for some infraction) denies her access to some frivolous luxuries.⁸ This action makes her less free, but it does not threaten her status as a free person as making her a part-time prisoner would. The continuum of freedoms is multidimensional and not all dimensions affect ECSO freedom. Some dimensions of the continuum of liberties do not appear on a scale that measures freedom and unfreedom. This fact does not mean that those liberties are wholly unimportant, just that they don't affect this distinction.

ECSO freedom can also be lost and gained temporarily. A detainee is unfree for the time she is detained, but she regains her freedom as soon as she is released. A torture victim might not regain full freedom as soon as the torture stops if it creates lingering trauma. A labor contract in which the employer gained the power to keep the employee from quitting by physical force would temporarily sacrifice ECSO freedom, but one in which the penalty for breaking the contract involves only financial sacrifices that do not threaten core wellbeing creates no sacrifice of ECSO freedom.

Remember that ECSO freedom is the power to refuse active cooperation in the projects of others, and it brings with it the responsibility to respect everyone else's ECSO freedom. It requires control over some minimum amount of worldly resources, but ECSO freedom alone says nothing about anyone's claim to more than that amount of resources⁹ or about tradeoffs between secondary liberties. ECSO freedom is not immunity to all involuntary interaction with others, or the power to say no to anything one might object to. Therefore, some prohibitions, such as a restriction on a person's ability to impose something on someone else, can reduce her freedom without reducing her core liberties or threatening her status as a free person.

For the most part, we will have to consider reductions of core liberties that do not make a person entirely unfree, but that do threaten her status as a free person and move her into the area of restricted freedom. If ECSO freedom requires an independent option that is not “thoroughly bad in an absolute sense,” the question becomes: how bad does an alternative have to be before it becomes thoroughly bad? That question is the subject of Section 6. The same problem of drawing a fine distinction between black and white exists when drawing a distinction between “acceptable or reasonable” and “thoroughly bad in an absolute sense.” There is an important difference between force and the absence of force, even though there is a large grey area of partial force in between them. If a person’s independent option is thoroughly bad, her social participation is forced, and she is unfree. If it is reasonable or acceptable, she has ECSO freedom. But there is a large grey area in between, where her freedom is restricted or threatened. Like black and white, light and dark, or bass and treble; freedom and unfreedom identify ranges on a continuum. The goal is not to find a nonarbitrary cutoff point (which is impossible) but to find an area in which an arbitrary cutoff point would lie safely in the light grey area away from any serious threat to (or restriction on) individuals’ ECSO freedom.

4. Alienation of ECSO freedom

The issue of so-called “self-alienation” of self-ownership applies to ECSO freedom as well. The question is whether a person can sign a contract sacrificing their self-ownership, by selling themselves into slavery or indentured servitude. This issue has wider implications for ECSO freedom because it applies not only to authorizing direct force but also the authorization of indirect force: to whether a person can mortgage their claim to the resources they need to maintain core wellbeing.

According to Arthur Kuflik, Kant, Locke, Rousseau, and Spinoza all oppose self-alienation for various reasons and to various extents.¹⁰ John Stuart Mill and John Gray also argue against self-alienation.¹¹ Those who are sympathetic with the potential validity of self-alienation usually justify it on the basis of some right of contract¹² or something like a right to waive rights.¹³

The term “self-alienation,” is a misnomer. No one can alienate their status freedom by themselves. They can sign a piece of paper declaring the intention to alienate their freedom, but if they change their mind, *someone else* has to *force* them to make that declaration into the genuine alienation of their status as free individuals. A person can choose to do everything another person says, but that is not the alienation of status freedom. It is merely the exercise freedom for the benefit of another. To genuinely alienate freedom, a person must put herself in the situation in which she is no longer free to choose. That is, to alienate status freedom, she must find an authority to interfere with her ability to choose in the future, if and when she changes her mind. The authority is what alienates her freedom, and it only acts to restrict her freedom when she disagrees. At best “self-alienation” should be called “self-contracted alienation.”

Under JPA government’s primary duty is to protect people’s most important freedoms from interference, to protect their status freedom. The promotion of positive opportunities is a secondary goal. The ability to sign an enforceable contract is a positive opportunity. A government completely dedicated to nothing but the protection of negative freedom would enforce no contracts at all. Pure caveat emptor would then be applied to all contracts. Parties are free to sign any contracts they want, but if they know from the outset that no contracts are enforceable, they have no claim to say that anyone “interfered” with them by breaking a contract.

It would probably be foolish to prioritize negative freedom to the point at which the government enforced no contracts, but expanding people's positive opportunities is a lesser priority than protecting their core freedoms from interference. Therefore, the government must not take positive action to enforce unconscionable contracts including those alienating status freedom. Nor should it reduce its protection of people from the interference of others by allowing a private authority to interfere with them on the grounds that in the past they signed a contract alienating their status freedom.

Some authors argue that the refusal to enforce a contract alienating one's self-ownership is somehow paternalistic. The refusal to enforce slavery contracts has nothing to do with paternalism but with a consistent application of the protection of core freedom from interference. A slavery contract is not in the same category as a law against smoking designed to prevent a person from harming herself. The future harm from smoking is a natural effect of smoking. Contracts have no natural effects; they only authorize the use of force. When the government considers whether to use that force, the choice is not between freedom and paternalism but between two freedoms. The choice for the government is which freedom is more important to protect: the freedom to have made an enforceable contract in the past, or the freedom from coercion now. Which is the government's greater responsibility? The answer depends on the importance of the liberties in question, not the order in which the actions occur. If the government's greater responsibility is to protect people's status as free individuals, it has a duty to avoid using its power to coerce people to fulfill an agreement alienating that status. There is nothing paternalistic about the refusal to force an unwilling person to be a slave.

If the above argument holds, government must not enforce any contract setting ECSO freedom aside, whether it was a marriage, service, or financial contract. Applying this argument about self-alienation to ECSO freedom implies that any contract alienating personal independence is also unenforceable. Individuals would have the right to declare bankruptcy while keeping enough property to secure their ECSO freedom—bankruptcy without fear of destitution. Assuming that a basic income is in place and set just at the level that secures a person’s basic needs, it could not be used as collateral for a loan, and would be a protected asset in the event of bankruptcy (with possible exceptions noted below). However, if the basic income is set higher than that level, a portion of it could be used as security for a loan and could be seized in the event of bankruptcy.

This argument does not prohibit all possible denial of status freedom. Self-defense might justify imprisonment of aggressors. Negligence, accidental bodily harm, and paternity also might be grounds for an obligation for one person to work for another’s benefit. This book does not explore these issues, but clearly an application of JPA would imply that any such enforcement be the minimum necessary for self-defense and maximally humane.

5. Moral Duty and Status Freedom

Although this book puts off a detailed discussion of active duties until Part Two, this section briefly argues that the enforcement of active moral duties restricts a person’s status as a free individual. That enforcement might well be justified, but we need to recognize the sacrifice it involves.

Without saying where moral duties come from and how they are justified, suppose that there is a moral duty and a person is ethically obliged to perform it

whether or not she is willing to do so. For example, suppose a person has a moral obligation to save a child from drowning.¹⁴ Forcing her to fulfill this duty restricts her status as a free person, even if it is for ethically justified reasons. For example, an infant begins to drown. Just then, by coincidence, Bob reaches the age and maturity level at which he is capable of being a fully responsible adult. Bob is the only person who can save the infant. A bystander, who is not physically able to save the child herself, and who has neither time nor ability to explain the gravity of the situation to Bob, forces Bob at gunpoint to save the child. One second after Bob fulfills his obligation, by another coincidence, he dies of a brain aneurism. What role did freedom play in Bob's adult life? None: freedom is about making choices; Bob made no unforced choices. His life was entirely determined by some other moral value. His short adult life was morally valuable and well spent, but freedom played no part in it. The fulfillment of his obligation to save the child took all of the time he would have had available to make adult choices. Therefore, even if his forced participation was justified, it must have come at the expense of his freedom. Enforcement of moral duties involves a sacrifice in freedom.

There are at least two ways to justify duties that restrict ECSO freedom. One is the argument that a competing value (such as respect for life, fairness, or the obligation to help the needy) is more important than the restrictions that duty imposes on a person's status as free. Another is Kagan's argument that greater actual freedom might be achieved by holding people to some duties.¹⁵ For example, suppose the jury system was the only mechanism capable of preventing the government from imposing arbitrary imprisonment. If so, the small restriction on persons' status freedom (a few days every few years on jury duty) is necessary to prevent a larger restriction of persons' status freedom (arbitrary imprisonment). However, the power to force people

to do things is extremely vulnerable to error and abuse. It should be applied rarely, minimally, and only when clearly necessary.

It might be impossible to have a society in which everyone's core freedoms are completely unrestricted, but we have to be aware that, as much as we search for accord, there will be disagreement over many basic issues. Enforcement will involve one group forcing another to serve its goals. If we understand the sacrifices involved, we have good reason to minimize restrictions on core freedoms and to take every sacrifice seriously.

6. From human need to basic income

Personal independence requires unconditional access to a sufficient amount of external assets to meet one's basic needs. This section examines what policies are necessary to secure that access. This question breaks down into two more: how much do people need, and what method should we use to ensure they have what they need. Section A addresses the first question by examining prominent theories of human need. Section B examines the second question by considering three alternatives: distribution of raw resources, in-kind direct provision of goods, and an unconditional basic income guarantee. Although all three of these strategies are possible in some circumstances, I argue that only a basic income guarantee is workable strategy to protect independence in a modern, industrial economy. Section C connects the argument for provision of cash and services with my contention that the theory of status freedom as ECSO freedom is built on a negative conception of scalar freedom.

A. Theories of Need

Good theories of need exist in the political theory literature. Therefore it is not necessary to advance a new theory of human need. This chapter simply applies the

theories of human need by Martha Nussbaum, by Len Doyal and Ian Gough, and by Ingrid Robeyns.¹⁶ Although the three theories take different approaches, they have a great deal of overlap,¹⁷ and they imply similar level of need fulfillment. I have elsewhere discussed how these theories can be used to formulate the characteristics of an acceptable exit option. This section (along with section B) summarizes the argument from that article.¹⁸

Nussbaum's theory of need (called "basic human functioning" or "central human capability") is based on Sen's conceptions of "functionings" and "capabilities." Functionings are parts of the state of a person, particularly the various things that she manages to do or be in leading a life. Capabilities are the alternative combinations of functionings from which a person can choose.¹⁹ Nussbaum specifies a list of basic capabilities that can be used to define a threshold of minimum acceptable human functioning or need.

In a series of works, Nussbaum has proposed and refined a list of ten basic human functional capabilities or central human capabilities:

1. **Life.** Being able to live to the end of a human life of normal length; not dying prematurely, or before one's life is so reduced as to be not worth living.
2. **Bodily Health.** Being able to have good health, including reproductive health; to be adequately nourished; to have adequate shelter.
3. **Bodily Integrity.** Being able to move freely from place to place; to be secure against violent assault, including sexual assault and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction.

4. **Senses, Imagination, and Thought.** Being able to use the senses, to imagine, think, and reason ... Being able to use one's mind in ways protected by guarantees of freedom of expression with respect to both political and artistic speech, and freedom of religious exercise. Being able to have pleasurable experiences and to avoid nonbeneficial pain.

5. **Emotions.** Being able to have attachments to things and people outside ourselves...

6. **Practical Reason.** Being able to form a conception of the good and to engage in critical reflection about the planning of one's life. (This entails protection for the liberty of conscience and religious observance.)

7. **Affiliation.**

A. Being able to live with and toward others, to recognize and show concern for other human beings, to engage in various forms of social interaction; to be able to imagine the situation of another...

B. Having the social bases of self-respect and nonhumiliation; being able to be treated as a dignified being whose worth is equal to that of others...

8. **Other Species.** Being able to live with concern for and in relation to animals, plants, and the world of nature.

9. **Play.** Being able to laugh, to play, to enjoy recreational activities.

10. **Control Over One's Environment.**

A. Political. Being able to participate effectively in political choices that govern one's life; ... protections of free speech and association.

B. Material. Being able to hold property (both land and movable goods), and having property rights on an equal basis with others; having the right to seek

employment on an equal basis with others; having the freedom from unwarranted search and seizure...²⁰

The argument in this book is not premised on the full acceptance of Nussbaum's reasoning. The only part of it I employ here is her identification of human need as these ten functional capabilities. Robeyns employs Nussbaum's approach with a slightly different list of basic capabilities. Doyal and Gough do not frame their discussion in terms of functional capabilities. Instead, they derive a list of basic instrumental goods necessary to secure two broad, basic needs—physical survival and personal autonomy. These needs are universal, but they must be satisfied in different ways in different cultures and environments. Gough observes that every item on their list has some equivalent on Nussbaum's list (and vice versa) except for play and concern for nature, which appear only on Nussbaum's list. Robeyns also remarks on the similarities, and so I do not go into the details of Robeyns's and Doyal and Gough's lists here.²¹

For my purposes, it is helpful to group these capabilities into three broad categories. This is not a new theory of need, but simply a categorization of the needs listed in these theories.

1. **Access to the goods or resources necessary to secure life and health:** nutritional food, clean water, protective housing, safe physical and work environments, appropriate clothing, a healthy environment, and appropriate health care (Nussbaum's 1, 2, 3, and 8).

2. **Access to noneconomic interaction with other willing people:** the need to form meaningful relationships with others (Nussbaum's 5, 7 and the sexual and transportation portions of 2).
3. **General access to resources:** being able to use the five senses; being able to imagine, to think, and to reason, being able to form a conception of the good and to engage in critical reflection about the planning of one's own life, being able to laugh, to play, to enjoy recreational activities, being able to live one's own life and nobody else's; being able to live one's own life in one's very own surroundings and context (Nussbaum's 4, 6, 9, 10).

If a person has these capabilities without doing someone else's bidding, she has the exit option necessary to secure personal independence. If she chooses to work for someone else from that starting position, she does so voluntarily.

The first of these categories is the need for the goods (or the resources with which to produce the goods) that secure survival and health. Importantly, none of the theories of need discussed above limits needs to the purely physical needs of this category. An alternative that provides just enough resources to meet one's physical needs, but makes it impossible or extremely difficult to form relationships with others, to plan a conception of the good life in one's own surroundings is thoroughly bad in an absolute sense. Although it may not be as immediately distressing as one that denies physical needs, it will eventually become very pressing. Such a default position would not provide an adequate exit option.

The intrinsic need to interact with other people is captured by the second category. Many, if not all, of the goods required by the other two categories of need can be produced better in cooperation with other people. Human cooperation is

instrumental but not intrinsic to securing the goods to satisfy those categories of need. Satisfying the human need to interact with other people requires civil rights, and access to goods such as transportation, communication, and public spaces. These goods are instrumental to forming personal relationships just as cooperative relationships can be instrumental to producing goods. The government can guarantee access to the goods necessary to facilitate personal interaction and the civil rights that allow willing people to interact, but short of paying people to be each other's friends, it cannot guarantee that others will be willing to interact. Therefore, the government can directly secure the first category of need, but it can only secure access to the second category.

This third category can be summarized as a person's need for resources to pursue her conception of the good life. It encompasses anything for which a person might need resources other than to secure her physical survival and maintain relationships with other people. This category of need introduces a difficulty, because a threshold is much less apparent in it than in the other two categories. The more resources a person has, the greater her ability to direct them toward her conception of the good life. Determining a cutoff point is difficult but not necessarily insoluble. The next few paragraphs propose a way to do so.

It would be helpful to be able to measure need in money. Although money does not always secure the same functioning for everyone, Sen argues that the cautious use of the money measure can work if guided by understanding of the capabilities approach:

As long as minimal capabilities can be achieved by enhancing income level ...
it will be possible (for the specified personal and social characteristics) to

identify the minimally adequate income for reaching the minimally acceptable capability levels. Once this correspondence is established it would not really matter whether poverty is defined in terms of a failure of basic capability or as a failure to have the *corresponding* minimally adequate income.²²

Sen warns that money is at best a rough measure of capability. Income will not necessarily reveal the lack of capability experienced by a disabled person or the lack of freedom experienced by disadvantaged groups. It is not money per se that a person needs but the specific capabilities that can be secured by a given amount of money.

Access to the first category of need can be measured fairly well in money. Access to the second requires civil rights and a few (often publicly provided) goods such as transportation, communication, and public spaces. The third category of need is difficult to measure in money, even if it can be largely secured by money. However, once a competent adult assures her family's physical survival, she can direct any additional resources to achieving the third category of need. Therefore, an income that is safely beyond serious pressure on physical needs gives an individual at least some ability to reflect, play, and live her own life.

Mohammed Sharif examines the work behavior of families in less developed countries in a way that can be useful for a threshold that includes the third category of need. He finds a point of distress at which reductions in wages cause entire families including children to forego physical rest so that they can increase their hours of work to maintain consumption as wages fall. Total income, at the point where this behavior begins, "can be considered to provide an estimate of their subsistence—the lowest income free of distress"²³ As difficult as it is to determine an exact cutoff point, it is possible to say that a person who is constantly struggling to keep her family fed,

sheltered, and safe does not have her needs met, and a person who has enough so that they are clearly not struggling for these needs has the ability to direct the surplus toward planning their conception of the good life. Thus, physical needs can provide a rough guide to the required level of income.

However, the money measured revealing safety from immediate distress is not everything. Quality is also important. Although people might not be desperate to obtain available housing and food, the quality of goods and food they can obtain could be so low that it fails to meet their needs. How can we be sure that the available goods are of adequate quality? For this problem, we would have to keep an eye on statistical measures. If a significant number of people have food and shelter but suffer from malnutrition, accidents, the cold, infant mortality, epidemics, etc., their needs are not adequately secured.

Therefore, we could get an estimate of the necessary cash income by looking the prices of a few basic commodities. Assuming the assessment is done in a country that follows the prevailing conventions among industrialized nations of providing free education, health care, thoroughfares, and public spaces; normally-abled individuals would require enough money for the rental of a basic but safe house or apartment, an adequate diet, basic clothing, reasonable transportation, plus enough extra so that they do not exhibit signs of economic distress. Those with disabilities or special needs would require something more.

B. Capability in cash, kind, or raw resources

If Section A correctly identifies the minimum capability level of an adequate exit option, the final question is what policy best secures that level of capability? An exit option requires *unconditional* access to resources. Arguments throughout this book indicate that a guaranteed government job might provide an exit from the

private labor market, but it would not provide an exit from mandatory service. Unconditional access could be provided by benefits in cash or in kind or by direct access to raw resources. This section tentatively argues that some form of basic income guarantee is the best policy to secure an exit option in a complex industrial economy.

There is an enormous literature on the basic income guarantee, and therefore it is not necessary to go into it in detail here.²⁴ Economists often argue that cash transfers are Pareto superior to in-kind benefits, and therefore at least potentially better for both the payer and the recipient than in-kind benefits.²⁵ Pareto superiority does not imply that they should always be preferred to in-kind benefits, if some important value is at stake. At least some of the goods on the list need to be provided in kind, such as childhood education and public spaces. Most nations provide healthcare in kind, perhaps because of market failure.²⁶ However, most of the goods necessary to secure life and general access to resources are difficult to supply in kind. Living one's own life is personal; it is different for everyone. The individual might decide to make do with slightly worse housing for slightly better food or slightly worse of both to use resources to achieve some other centrally important goal. A rigid system of in-kind benefits would keep individuals from making those decisions, and reduce their ability to control their lives.

In-kind benefits have also been criticized for segregating or stigmatizing recipients. Stigma may not be as problematic for securing a minimally adequate exit option as it is for redistribution based on other reasons, but stigma could be a barrier to forming human relationships. If the goal of redistribution is to allow individuals to refuse forced service, without punishing them for doing so, the possibilities of stigma and unnecessarily restricted freedom to live as individuals wish provide a reason to

favor a basic income guarantee over in-kind transfers even if both can potentially provide the necessary exit option.

The argument for an exit option implies the need for freedom from forced work in the sense of one person being forced to serve another; it does not imply that people have any right to be free from the need to work in the sense of toil—applying effort to turn raw resources into consumption. The provision of raw resources is one way to provide an exit option and to satisfy people who believe that everyone (without sufficient wealth) must work for their subsistence. In some cases, access to resources may be exactly what those who are unwilling to join the prevailing economic system want. Colin Ward argues for an anarchist society with the right to squat in unused buildings; to self-build housing on available land; to produce food on allotments; and even mutual aid groups to provide for some of their own healthcare, education, and daycare. James Robertson argues for self-organized and self-controlled “ownwork” .²⁷

However, there are problems with the attempt to secure an exit option by the provision of raw resources. An exit option might prove to be far more expensive to provide in raw resources than in cash. Modern capitalism is both very hungry for resources and very good at turning resources into consumption products. Therefore, it is probably far cheaper for a capitalist society to secure an exit option by providing enough cash to buy goods than it would be to secure an exit option by providing enough resources for individuals to produce those goods themselves. This fact is capable of transforming a claim to resources into a claim to cash that can be used to buy goods and services from other people.

The land-demanding anarchists might prefer the larger amount of land to the smaller amount of basic income guarantee and might fear that if society provides just

enough income so that an individual can attain their basic needs by purchasing the cheapest products, it makes only one lifestyle possible. To put it simply: if the basic income makes only one lifestyle possible, it is set too low. Recall that basic needs are not limited to physical needs, and one category of needs on the list above is general access to resources. If people have a basic income guarantee safely above the bare minimum they need to survive, they might not have enough to buy all the land they would want, but they would have the flexibility to put what they have toward alternative lifestyles and to combine it with other similarly situated people. It would be difficult to give people raw resources and give them great flexibility about how and where to use them without allowing them to turn the resources into cash. Money is flexible because money buys every good on the market. It might be possible to make resource grants at least somewhat flexible with the provision of some kind of resource voucher, but it would be simpler to skip that step and start with cash.

Two other problems with raw resources also give reason to provide cash instead. First, the provision of raw resources has the potential to be both punitive and stigmatizing. Second, the attempt to secure an exit option by the provision of raw resources might require a long-term or even a lifetime commitment on the part of the person who would like to make use of an exit option. A basic income guarantee allows people to move seamlessly in and out of the labor force as the need may be. Thus, although all three policies have the potential to secure the physical conditions of voluntary trade, the basic income guarantee is likely to be the most effective and least expensive.

C. The negative freedom argument for the basic income guarantee

I describe above the main argument connecting a negative conception of freedom to the positive provision of cash and services: cash and/or services replace

direct access to resources. No group either private or public has a natural right to dominate resources in an area or worldwide. Any group that otherwise dominates resources takes on the responsibility to compensate others sufficiently to maintain their independence. This obligation is chosen: if they want to get out of the responsibility to pay that compensation, they may stop dominating resources. When a group dominates resources, it takes on a great deal of duties to those who dissent from or are disadvantaged by the rules made over resources. These duties are necessary to justify the enforcement of property rights and the laws that any ruling coalition imposes on everyone regardless of whether they support the coalition's power or are able to obtain a significant amount of resources under the rules it creates.

One might suppose that I have taken this argument further than it can go. One might get the impression from the negative freedom argument that the resource-dominating group in, say, New York has the responsibility to do no more than to provide a stretch of land in Alaska where one might eek out a living as a subsistence farmer or a hunter-gatherer. Even if this were enough, I don't think societies could provide it. There are six billion people in the world, perhaps a billion of them with extremely low living standards, including shanty dwellers in the lesser-developed countries and the homeless in developed countries. If there were land available in Alaska where a person might make a decent living as a subsistence farmer or hunter-gatherer, no doubt someone would take it. The United States forcibly stopped people from living as hunter-gatherers in the Nineteenth Century and it stopped making land available for new farmers to homestead in the Twentieth Century, not because nobody wanted the land but because the government didn't believe enough land was available.

But there are several reasons why land on the edge of human habitation is not enough. First, they are likely to be punitive. Simply making land available is a viable option in horticultural or hunter-gatherer societies that under-use their resources so that dissenters can simply walk out of the village to find available land, but not in a modern globalized economy where available land (if any) would be in a remote and possibly inhospitable location. Remember that the idea is to leave someone out of the social project, not to punish them or deprive them of their ability to meet their needs. Banishment is a punishment. It is the attempt to interfere with the second category of need: the ability to form relationships with others. Resource grants are punitive if they involve separating the receiver from other people who wish to associate with her. Forcing people to leave their home community in order to exit a joint project can have the effect of denying them access to the second category of need (access to noneconomic interaction with other willing people). It is one thing if all the other individuals decide independently that they are not willing to interact with someone who refuses to cooperate in a joint economic project, but quite another for the government to interfere with individuals' desire to interact.

Second, once banishment is ruled out, it becomes obvious that the provision of raw resources is prohibitively expensive. New York City could not grant direct access to local land to *even one* of the 40,000 people who seek beds at its homeless shelters every night. The rent on the amount of land necessary to support one person with direct access to raw resources would go a long way to supporting the income of nearly every homeless person in New York. However, it might be possible to grant people resources a little farther away while simultaneously granting them access to transportation so that they can maintain relationships with others.

Third, provision of raw resources might have the effect of putting people in the position of choosing *between* their ECSO freedom and social participation. It is important that people maintain independence throughout their lives; it is not enough that they have the option to choose to live independently once in their lives. Much of the economic distress that threatens people's independence in modern societies comes temporarily or at least unexpectedly during economic downturns. Such a worker would need access at least to temporary cash or in-kind benefits, but this argument doesn't necessarily preclude moving to a raw resource policy for a longer-term exit option.

Fourth, the freedom that an individual is being compensated for is not merely the freedom to live independently but the freedom to choose who they interact with and under what rules. There is no reason to limit what people might do with resources to subsistence farming or hunting and gathering. If we're going to grant people resources, we have to accept that they can combine and use them any way they wish. Given sufficient access to resources, dissenting individuals could provide things like education, transportation, and medical care for each other. Furthermore, establishing a certain kind of system (such as a market economy) makes certain things appropriate that would not be appropriate in a different kind of system. The kind of skills and knowledge a person needs differs in a post-industrial economy than it is in an industrial economy, an agricultural economy or any other economy. To the extent to which these skills and knowledge are essential to maintaining basic human functioning in a given society, the group that dominates resources takes on the responsibility to educate people appropriately for the kind of society their resource domination has created. A similar argument can be made for appropriate transportation.

7. Conclusion

This chapter has discussed several implications of the theory of ECSO freedom. The last section discusses the policy implications of the effective component of ECSO freedom. It argues that in some circumstances, personal independence could conceivably be secured by in-kind grants or raw resources. But in a modern, industrial economy, this status is best secured by an unconditional basic income guarantee large enough to secure housing, food, clothing, and basic transportation, plus enough more that individuals do not display signs of economic distress.

Under this theory, the basic income should be thought of as compensation for what would otherwise be the failure to satisfy the duty to stay out of each other's way, transforming that negative claim into a positive claim to cash that can be used to buy services. In the same way a negative claim that no one breaks your leg can transform into a positive claim to cash if someone does in fact break it. Under this theory, the obligation to pay compensation runs from those who would otherwise dominate resources to those who are in some way disadvantaged or would otherwise have been made propertyless by resource domination.

¹ J. Heller, *Catch-22* (New York: Simon & Schuster, 1996).

² Nurit Bird-David, "Sociality and Immediacy: or, past and present conversations on bands," *Man* 29, no. 3 (1994); Tim Ingold, David Riches, and James Woodburn, eds., *Hunters and gatherers 1: History, Evolution and Social Change* (Oxford: Berg Publishing, 1988); Tim Ingold, David Riches, and James Woodburn, eds., 1988. *Hunters and gatherers 2: Property, Power and Ideology* (Oxford: Berg Publishing, 1988); Allen Johnson and Timothy Earle, *The Evolution of Human Societies: From Foraging Group to Agrarian State*, Second Edition ed. (Stanford: Stanford University Press, 2000).

³ Karl Widerquist, "What Does Prehistoric Anthropology have to do with Modern Political Philosophy? Evidence of Five False Claims," in *USBIG Discussion Paper Series* (USBIG Network, 2010).

⁴ Or any kind of forced labor, work, employment, or service, whether in a market or not.

⁵ I will not address the enormous issue of the distinction between a criminal and a dissenter.

⁶ M. Jedenheim-Edling (2005). "The Compatibility of Effective Self-Ownership and Joint World Ownership." *Journal of Political Philosophy* 13 (3), 284-304, especially p. 287.

⁷ It is difficult to determine what is and is not trivial under such circumstances.

⁸ Assume for the sake of argument that everyone including Mary Ann agrees that they are frivolous luxuries.

⁹ The issue of property in external assets is the primary subject of Part Two of this book.

¹⁰ A. Kuflik, "The Inalienability of Autonomy," *Philosophy and Public Affairs* 13(1984).

¹¹ John Stuart Mill, *The Essential Works of John Stuart Mill* (New York: Bantam Books, 1965), p. 348; J. Gray, *Mill on Liberty: A Defense* (London: Routledge & Kegan Paul, 1983), p. 93.

¹² Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), p. 331.

¹³ Hillel Steiner, *An Essay on Rights* (Oxford: Blackwell, 1994), pp. 64-65, 71-72, 232-233.

¹⁴ Peter Singer, "Famine, Affluence, and Morality," *Philosophy & Public Affairs* 1, no. 3 (1972).

¹⁵ S. Kagan, "The Argument From Liberty," in *In Harm's Way: Essays in Honor of Joel Feinberg*, ed. J. L. Coleman and A. Buchanan (Cambridge: Cambridge University Press, 1994).

¹⁶ M. C. Nussbaum, "Human Capabilities, Female Human Beings," in *Women, Culture and Development: A Study in Human Capabilities*, ed. M. C. Nussbaum and J. Glover (Oxford: Clarendon Press, 1995); M. C. Nussbaum, *Sex and Social Justice* (Oxford: Oxford University Press, 1999); M. C. Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge: Cambridge University Press, 2000); M. C. Nussbaum, "Capabilities as Fundamental Entitlements: Sen and Social Justice," *Feminist Economics* 9 (2003); L. Doyal and I. Gough, *A Theory of Human Need* (London: MacMillan Education LTD, 1991); Ingrid Robeyns, "Sen's Capability Approach and Gender Inequality: Selecting Relevant Capabilities," *Feminist Economics* 9, no. 2-3 (2003). Robeyns compares her theory to Doyal and Gough, Nussbaum, and several others and remarks on the extensive overlap.

¹⁷ I. Gough, *Lists and Thresholds: Comparing the Doyal-Gough Theory of Human Need with Nussbaum's Capabilities Approach* (Bath, UK: WeD Working Paper 01, 2003).

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- ¹⁸ Karl Widerquist, "The Physical Basis of Voluntary Trade," *Human Rights Review* 11, no. 1 (2010).
- ¹⁹ Amartya Sen, "Capability and Well-Being," in *The Quality of Life*, ed. A. Sen (Oxford: Clarendon Press, 1993), pp. 41-42.
- ²⁰ Nussbaum (1995), pp. 83-86; Nussbaum (2003), pp. 41-42
- ²¹ For a more detailed comparison, see Widerquist (2010).
- ²² Sen (1993).
- ²³ M. Sharif, *Work Behavior of the World's Poor: Theory, Evidence and Policy* (Aldershot: Ashgate, 2003), p. 76.
- ²⁴ For a description of how basic income guarantee might work and how much it might cost see Irwin Garfinkel, Chien-Chung Huang, and W. Naidich, "The Effects of a Basic Income Guarantee on Poverty and Income Distribution," in *Redesigning Distribution: Basic Income and Stakeholder Grants as Cornerstones of a More Egalitarian Capitalism*, ed. Bruce Ackerman, Anne Alstott, and Philippe Van Parijs (New York: Verso, 2005); Anthony Atkinson, *Public Economics in Action: The Basic Income/Flat Tax Proposal* (Oxford: Clarendon Press, 1995). For a history of the idea see John Cunliffe, Guido Erreygers, and Walter Van Trier, "Basic Income: Pedigree and Problems," in *Real Libertarianism Assessed*, ed. Andrew Reeve and Andrew Williams (New York: Palgrave MacMillan, 2003).. For a debate of issues surrounding basic income guarantee see Guy Standing, *Beyond the New Paternalism: Basic security as a right* (New York: Verso, 2002); Robert J. Van der Veen and Philippe Van Parijs, "A Capitalist Road to Communism," *Theory and Society* 15, no. 5 (1986); Philippe Van Parijs, *Arguing for Basic Income: Ethical Foundations for a Radical Reform* (New York: Verso, 1992); Philippe Van Parijs, *Real Freedom for All: What (If Anything) Can Justify Capitalism?* (Oxford: Oxford University Press, 1995); Philippe Van Parijs, *What's Wrong With a Free Lunch?* (Boston: Beacon Press, 2001); Philippe Van Parijs, *Basic Income: A Simple and Powerful Idea for the 21st Century* (Madison, WI2002); Eva Harman, "Can It Start Small, but End BIG? Expanding Social Assistance in South Africa," *Human Rights Review* 7, no. 4 (2006). and (self citation 2006b and self citation 2005).
- ²⁵ L. C. Thurow, "Cash Versus In-Kind Transfers," *The American Economic Review* 64, no. 2 (1974).
- ²⁶ There is evidence of market failure in the health care industry, M. V. Pauly, "Taxation, Health Insurance, and Market Failure in the Medical Economy," *Journal of Economic Literature* 24, no. 2 (1986); J. Hurley, "An overview of the normative economics of the health sector," in *Handbook of*

Health Economics, ed. A. J. Culyer and J. P. Newhouse (Oxford: Elsevier, 2000), but there is also a widespread belief that medical care should be provided outside the market because of their importance, B. R. Bergmann, "A Swedish-Style Welfare State or Basic Income: Which Should Have Priority?," *Politics and Society* 32, no. 1 (2004); L. C. Thurow, "Government Expenditures: Cash or In-Kind Aid?," *Philosophy and Public Affairs* 5, no. 4 (1976).

²⁷ D. Hardy and C. Ward, *Arcadia for All: The Legacy of a Makeshift Landscape* (London: Mansell, 1984); D. Crouch and C. Ward, *The Allotment: Its Landscape and Culture* (Nottingham: Mushroom, 1994); C. Ward, *Anarchy in action* (London: Allen and Unwin, 1973); Stuart White, "A Relevant Anarchism? The Social Philosophy of Colin Ward," in *Manuscript* (Jesus College, Oxford 2006).; J. Robertson, *Future Work* (Aldershot, UK: Gower, 1985).