



EQUALITY

The Unknown Ideal

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Notes

- [1] Murray N. Rothbard, *Power and Market: Government and the Economy* (Kansas City: Sheed Andrews and McMeel, 1977), p. 139.
- [2] Rothbard, *Power and Market*, pp. 215-216.
- [3] John Locke, *Second Treatise of Government* II. 4.
- [4] Locke, *Second Treatise* II. 6.
- [5] Locke, *Second Treatise* II. 7.
- [6] Roderick T. Long, “The Nature of Law, Part II: The Three Functions of Law,” *Formulations* #4 (Summer 1994), www.freenation.org; cf. Roderick T. Long, “The Benefits and Hazards of Dialectical Libertarianism,” p. 445n., in *Journal of Ayn Rand Studies* 2, no. 2 (Spring 2001), pp. 395-448.
- [7] Antony Flew, *The Politics of Procrustes: Contradictions of Enforced Equality* (Buffalo: Prometheus Books, 1981), p. 12.
- [8] “Introduction: The Roots of Individualist Feminism in 19th-Century America,” pp. 3, 23, in Wendy McElroy, ed., *Freedom, Feminism, and the State*, 2nd ed. (New York: Holmes & Meier, 1991), pp. 3-26.
- [9] Amartya Sen, *Inequality Reexamined* (Cambridge: Harvard University Press, 1992), pp. 21-23.
- [10] Ludwig von Mises, *Human Action* XXVII. 2.
- [11] Murray N. Rothbard, *Power and Market*, pp. 229-230.
- [12] Burton Watson, ed. & trans., *Mo Tzu: Basic Writings* (New York: Columbia University Press, 1963), pp. 50-51.

All men are created equal.

When Thomas Jefferson, in the Declaration of Independence, set out to enunciate the philosophical principles underlying the American Revolution — the principles of ‘76, as later generations would call them — that’s the one he put down first, as the foundation and justification of all the rest. Equality — not, as one might expect, liberty.

The original draft of the Declaration highlights the importance of equality still more clearly. The final and better-known version states:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.

But what Jefferson originally wrote was this:

We hold these truths to be sacred and undeniable: that all men are created equal and independent; that from that equal creation they derive rights inherent and inalienable, among which are the preservation of life, and liberty, and the pursuit of happiness.

As far as I can tell, the wording was changed for stylistic reasons rather than substantive ones. The final draft does flow more smoothly. But the original draft is more philosophically precise. By contrast with the final draft, where equality and liberty are presented simply as two fundamental principles, with their relation to one another left unclear, in the original draft the value of liberty is explicitly said to be secondary to, and derivative from, the value of equality.

Yet we who regard ourselves as the inheritors of the principles of ‘76 do not speak as often, or as warmly, about equality. We talk,

instead, about liberty; we call ourselves libertarians, not egalitarians. We don't give our books titles like *The Constitution of Equality*, or *For a New Equality*, or *How I Found Equality in an Unequal World*. By contrast, those who do most often invoke the language of equality in contemporary political discourse tend to be the enemies of the principles of '76, as we understand those principles. How could equality be our ideal, if it is also theirs?

The answer, of course, is that we need to specify: equality of *what*? equality in what respect? Our egalitarian opponents favor *socioeconomic* equality — sometimes interpreted as equality of socioeconomic *opportunity*, sometimes interpreted as equality of socioeconomic *outcome*. (The difference between the two becomes increasingly blurred these days as inequality of outcome is taken as *prima facie* evidence of inequality of opportunity.) What sort of equality do we stand for?

It is sometimes suggested that the libertarian version of equality is *legal* equality — equality before the law. And it is certainly true that the ideal of legal equality has been invoked by libertarians against various programs of a socioeconomically egalitarian stripe (such as labor laws and anti-discrimination laws that grant to employees, whilst denying to employers, the right to terminate the employer-employee relationship at will).

But legal equality as such is too limited to constitute the libertarian ideal. Just as socioeconomic egalitarians find legal equality inadequate because (in Anatole France's memorable phrase) it forbids the rich as well as the poor to sleep under bridges, so libertarians likewise would not be greatly cheered if the injustice of military conscription, for example, were extended from one sex to both; this would be an advance in legal equality, but hardly an advance in liberty. As Murray Rothbard writes:

[T]he justice of equality of treatment depends first of all on the justice of the treatment itself. Suppose, for example, that Jones, with his retinue, proposes to

only by implicitly projecting a kind of grotesque parody of the Catholic doctrine of transubstantiation: just as bread and wine must be transformed in their *essence* into the body and blood of Christ in order to play their necessary spiritual role, whilst at the same time they must retain the external *accidents* of bread and wine in order to play their necessary practical role, so the violence of the state, to be justified, must be transubstantiated in its essence into peaceful incantation, yet at the same time, to be effective, it must retain the external accidents of violence. (This *sacralization of state violence* explains how proponents of gun control, for example, can regard themselves as opponents of violence whilst at the same time threatening massive and systematic violence against peaceful citizens.)

But to ignore or mask the violence upon which socioeconomic legislation necessarily rests is to acquiesce in the unconscionable subordination and subjection that such violence embodies. It is to treat those subordinated and subjected as mere means to the ends of those doing the subordinating, and thus to assume a legitimate inequality in power and jurisdiction between the two groups. The libertarian revulsion against such arrogant presumption is *ipso facto* an egalitarian impulse. Those who feel no such revulsion should not expect their egalitarian credentials to pass unquestioned; they may revere equality in theory, but they fail to recognize it in practice.

*For as we passed by, and beheld their devotions, we found an altar with this inscription, **TO THE UNKNOWN IDEAL**. What therefore they ignorantly worship, that declare we unto them.* For too long, we have allowed our misguided opponents to monopolize the banner of equality. We have more right to that banner than they do. The time has come to seize it back.

enslave a group of people. Are we to maintain that “justice” requires that each be enslaved equally? And suppose that someone has the good fortune to escape. Are we to condemn him for evading the equality of justice meted out to his fellows?[1]

By the same token, equality of *liberty* falls short of capturing the libertarian ideal. A world in which everyone had the same tiny amount of freedom would not be a libertarian one. We may speak, as Herbert Spencer did, of a law of equal freedom, but that law specifies not just liberty’s equalization but its *maximization*; it’s not the equality part that’s doing the real work. The law of equal freedom treats equality as, at most, a *constraint* on, rather than as the foundation of, maximum liberty.

I say “at most” because equal liberty is arguably a logical *consequence* of maximum liberty rather than any kind of constraint on it. To quote Rothbard once more:

If someone wants to urge every man to buy a car, he formulates his goal in that way — “Every man should buy a car” — rather than in such terms as: “All men should have equality in car buying.” ... Spencer’s Law of Equal Freedom is redundant. For if every man has freedom to do all that he wills, it follows from this very premise that no man’s freedom has been infringed or invaded.... The concept of “equality” has no rightful place in the “Law of Equal Freedom,” being replaceable by the logical quantifier “every.” The “Law of Equal Freedom” could well be renamed “The Law of Total Freedom.”[2]

But if neither legal equality nor equality of liberty is sufficient for a free society as we understand it, in what sense can it be from our equal creation that we derive our right to liberty?

For the answer to this question we must turn from Jefferson to Jefferson's source, John Locke, who tells us exactly what "equality" in the libertarian sense is: namely, a condition

wherein all the power and jurisdiction is reciprocal, no one having more than another, there being nothing more evident than that creatures of the same species and rank, promiscuously born to all the same advantages of nature, and the use of the same faculties, should also be equal one amongst another, without subordination or subjection....[3]

In short, the equality that Locke and Jefferson speak of is equality in authority: the prohibition of any "subordination or subjection" of one person to another. Since any interference by A with B's liberty constitutes a subordination or subjection of B to A, the right to liberty follows straightforwardly from the equality of "power and jurisdiction." As Locke explains:

[B]eing all equal and independent, no one ought to harm another in his life, health, liberty or possessions.... And, being furnished with like faculties, sharing all in one community of nature, there cannot be supposed any such subordination among us that may authorise us to destroy one another, as if we were made for one another's uses, as the inferior ranks of creatures are for ours.[4]

This is a notable pre-Kantian statement of the principle that human beings are not to be treated as mere means to the ends of others. (Observe, too, how Locke and Jefferson both invoke independence as a corollary of, or a gloss on, equality in authority.)

We can now see how socioeconomic equality and legal equality both fall short of the radicalism of Lockean equality. For neither of those forms of equality calls into question the authority of those who

to refute) the wealth of libertarian literature arguing that most of the other evils she cites can be prevented through nonstatist means. By these criteria, few statist qualify as innocent. To seek for alternatives to inequality in authority would be to acknowledge that statism involves such inequality *before* ascertaining that alternatives are available, and this would force upon the statist an unpleasant choice she prefers to avoid. Hence I regard statism as being, at least in most cases, a moral vice, rather than a mere cognitive mistake, in much the same way that racism and sexism are moral vices, not mere cognitive mistakes.

But, again like racism and sexism, statism is the kind of moral vice that tends to enter the soul through self-deception, semi-conscious osmosis, and a kind of Arendtian banality, rather than through a forthright embrace; it is a form of spiritual blindness that can, and does, infect even those who are largely sincere and well-meaning. (Nor do I mean to suggest that libertarians are generally more virtuous than statist. Justice is only one virtue among many, and libertarianism is only one application of justice; so the only self-congratulatory moral we can draw is that we score higher on one aspect of one virtue than our statist colleagues do.)

What form does this spiritual blindness take? On the one hand, statist ideology must render the violence of the state *invisible*, in order to disguise the affront to equality it represents. Hence statist tend to treat governmental edicts as though they were *incantations*, passing directly from decree to result, without the inconvenience of means; since in the real world the chief means employed by government is violence, threatened and actual, cloaking state decrees and their violent implementation in the garb of incantation disguises both the *immorality* and the *inefficiency* of statism by ignoring the messy path from decree to result.

Yet on the other hand, the effectiveness of governmental edicts depends precisely on people being all too *aware* of the force backing up those edicts. Hence statism can maintain its plausibility

to differences in bargaining power, when these derive from market factors, become so amazingly oblivious to the constraint on choice, and differential bargaining power, represented by the armed might of the state, empowered to enforce its demands by legalized violence.

The fifth-century B.C. Chinese philosopher Mo-tzu once remarked that if someone can recognize an act of unjust aggression when it is perpetrated by one individual against another, but not when the same act is perpetrated by an organized group of individuals, such a person must be confused about right and wrong.[12] Socioeconomic egalitarians, then, must likewise be under some sort of confusion. But what, and why?

A cynic might respond that socioeconomic egalitarians are not confused at all; their supposed devotion to equality is simply a disguise for powerlust, and they exempt the state from their criticisms because they plan to wield its reins, or at least to get in good with those who do. This strikes me as a fair analysis of some, but *only* some, socioeconomic egalitarians. Most of the socioeconomic egalitarians I know personally are sincere in their egalitarianism and well-meaning in their statism.

I don't mean by this that they are entirely innocent; after all, an innocent statist would have to be one who says: "I recognize — as who could not? — that the coercive subordination of individuals to the state by the means of systematic legalized violence and the threat thereof is a great evil. But this evil is, unfortunately, necessary in order to prevent evils still greater." A statist who took this point of view could not be *cheerful* about her statism, but on the contrary would have to conduct herself with the tragic solemnity of Agamemnon sacrificing his daughter to save the fleet.

The innocent statist, too, could hardly permit herself to reach this grim conclusion without first investigating possible alternatives — which, for a statist in the academy, would have to involve carefully researching and trying to refute (and desperately hoping to be *unable*

administer the legal system; such administrators are merely required to ensure equality, of the relevant sort, *among those administered*. Thus socioeconomic equality, despite the bold claims of its adherents, does no more to challenge the existing power structure than does legal equality. Both forms of equality call upon that power structure to do certain things; but in so doing, they both assume, and indeed require, an inequality in authority between those who administer the legal framework and everybody else.

The libertarian version of equality is not circumscribed in this way. As Locke sees, equality in authority entails denying to the legal system's administrators — and thus to the legal system itself — any powers beyond those possessed by private citizens:

[T]he execution of the law of nature is in that state put into every man's hands, whereby every one has a right to punish the transgressors of that law to such a degree as may hinder its violation.... For in that state of perfect equality, where naturally there is no superiority or jurisdiction of one over another, what any may do in prosecution of that law, every one must needs have a right to do.[5]

Lockean equality involves not merely equality *before* legislators, judges, and police, but, far more crucially, equality *with* legislators, judges, and police.

By this standard Murray Rothbard, in his advocacy of anarcho-capitalism, turns out to have been one of the most consistent and thoroughgoing egalitarian theorists of all time. As the author of *Egalitarianism as a Revolt Against Nature*, Rothbard might very well turn over in his grave to hear himself so described; but, as we shall see, what Ayn Rand used to say of capitalism applies *a fortiori* to equality: equality, properly understood, is in many ways an *unknown ideal* — unknown both to its defenders and to its detractors.

Since Locke's day, libertarians have been divided into two camps. Some, like Rothbard, have embraced Lockean equality as an absolute standard to which any legal system should be held. Others, following Locke himself, have regarded pure Lockean equality as an unworkable constraint on a legal system, and so have favored surrendering just enough Lockean equality to make practicable the legal protection of the Lockean equality that remains.

My own sympathies lie with the first group; in my view, Locke's arguments for the incompatibility of Lockean equality with a functioning legal order all commit either the fallacy of composition or the fallacy of misplaced concreteness.[6] (For example, from the claim *everybody should submit his disputes to a third-party judge*, Locke fallaciously infers *there should be a third-party judge to whom everyone submits his disputes*, which is like moving from *everyone likes at least one TV show* to *there's at least one TV show that everyone likes*.)

But even if the second group were right, and it *were* necessary to give up some Lockean equality in order to protect the rest, it would at least still be true that any powers unique to government that go *beyond* what is strictly necessary for a working legal system constitute an unjustified affront to human equality. Both groups seek, at any rate, to minimize departures from Lockean equality. Hence libertarians have traditionally directed their ire against the inequalities in authority that exist between, on the one hand, the average person, and, on the other hand, the legal system's administrators (as well as their cronies, the private beneficiaries of government privilege). As Antony Flew writes:

[W]hat the various ruling élites determine to be fitting ... may or may not turn out to be equality between all those who are so dependent. But as between those who give and those who receive the commands ... there can of course be no equality at all.[7]

reason. For, as Rothbard points out, this combination of ideas is inconsistent:

A refuses to make an exchange with B. What are we to say ... if B brandishes a gun and orders A to make the exchange? ... B is committing violence; there is no question about that.... [T]his violence is either invasive and therefore unjust, or defensive and therefore just. If we adopt the "economic-power" argument, we must choose the latter position; if we reject it, we must adopt the former.... The "middle-of-the-road" statist cannot logically say that there are "many forms" of unjustified coercion. He must choose one or the other and take his stand accordingly. Either he must say that there is only one form of illegal coercion — overt physical violence — or he must say that there is only one form of illegal coercion — refusal to exchange.[11]

To expand on Rothbard's point: a prohibition on all, or even on most, cases of Lockean inequality is not consistent with recognizing *both* socioeconomic inequality *and* initiatory force as forms of Lockean inequality, because an effective ban on socioeconomic inequality *requires* the endorsement of systematic initiatory force on a massive scale. Hence socioeconomic egalitarians, if they wish to be consistent, can offer their ideal only as a replacement of Lockean equality, not as an extension of it. (The same point applies to those statist who say that negative rights are all very well, but we need positive rights *too* — as though every positive right added didn't mean one more negative right removed.)

Given the vast inequality in authority between the state apparatus and its subjects — given, for that matter, the vast *socioeconomic* inequality between them — how is it that so many who think of themselves as dedicated above all to human equality so readily become apologists for the state? Libertarians are often baffled at how those who appear so sensitive to constraints on choice, and

authority emerges.

The Hobbesian jungle might represent equal *opportunity* for authority, but in *this* context the libertarian favors equality of *outcome*. (That, incidentally, is why the right to liberty is *inalienable*.) Only *defensive* uses of force are justified, since these restore equality in authority rather than violating it. By the same token, an idealized democracy in which every citizen had an equal chance to get into a position of political power would also represent only equal opportunity for authority, not equality of outcome, and so would likewise offend against Lockean equality. To a libertarian, the saying “anyone can grow up to become president,” if it were true, would have the same cheery ring as “anyone might be the next person to assault you.”

Inequality in authority is far more offensive, from a moral point of view, than mere socioeconomic inequality; hence, whenever the demands of socioeconomic equality conflict with the demands of libertarian equality, which they generally do, preference must be given to the latter.

So I assert. I think this claim can be argued for, not just asserted. But I shall not argue for it at present — both because my time today is limited, and because in a certain sense I do not *need* to argue for it. For socioeconomic egalitarians themselves show, by their actions if not their words, that they regard inequality in authority as a greater evil than socioeconomic inequality. Most socioeconomic egalitarians of my acquaintance would certainly be more outraged at being robbed or assaulted by a colleague than at learning that the colleague was receiving a higher salary. Hence *in practice* they clearly recognize which of these inequalities is the greater evil. Indeed, most socioeconomic egalitarians govern their everyday personal interactions by a scrupulous adherence to libertarian principles, and they expect the same treatment in return.

Nor will it do to reply that socioeconomic *inequality* is itself a form of inequality in authority, and so should be forbidden for the same

Wendy McElroy has traced the interplay within the feminist movement of three distinct egalitarian ideals: a “mainstream” ideal — equality before the law — and two more “radical” ideals — socioeconomic equality, which McElroy identifies as a socialist or Marxist ideal, and what I have been calling equality in authority, which McElroy identifies as an individualist or libertarian ideal:

[T]he meaning of equality differs within the feminist movement. Throughout most of its history, American mainstream feminism considered equality to mean equal treatment under existing laws and equal representation within existing institutions. The focus was not to change the status quo in a basic sense, but rather to be included within it. The more radical feminists protested that existing laws and institutions were the source of injustice and, thus, could not be reformed.... [T]heir concepts of equality reflected this. To the individualist, equality was a political term referring to the protection of individual rights; that is, protection of the moral jurisdiction every human being has over his or her own body. To socialist-feminists, it was a socio-economic term.... While Marxist class analysis uses the relationship to the mode of production as its point of reference, libertarian class analysis uses the relationship to the political means as its standard. Society is divided into two classes: those who use the political means, which is force, to acquire wealth or power and those who use the economic means, which requires voluntary interaction. The former is the ruling class which lives off the labor and wealth of the latter.[8]

From a libertarian standpoint, socioeconomic egalitarians turn out, embarrassingly enough, to be apologists for the ruling class.

That libertarian resistance to socioeconomically egalitarian

proposals is itself based on an egalitarian ideal is seldom recognized. It is nonetheless true. The only socioeconomic egalitarian I know of who recognises this is Amartya Sen; yet Sen is the exception that proves the rule. For he too misses the point: he glosses libertarian equality as *equality of liberty*, an interpretation we've already seen to be inadequate. Here is how Sen sees the issue:

Not only are libertarian thinkers ... seen as anti-egalitarian, but they are diagnosed as anti-egalitarian precisely because of their overriding concern with liberty.... [T]his way of seeing the relationship between equality and liberty is altogether faulty. Libertarians must think it important that people should have liberty. Given this, questions would immediately arise regarding: who, how much, how distributed, how equal? Thus the issue of equality immediately arises as a supplement to the assertion of the importance of liberty. The libertarian proposal has to be completed by going on to characterize the distribution of rights among the people involved. In fact, the libertarian demands for liberty typically include important features of 'equal liberty', e.g. the insistence on equal immunity from interference by others.... Liberty is among the possible fields of application of equality, and equality is among the possible patterns of distribution of liberty.[9]

Sen's analysis is confused here, for two reasons. First, as we've already seen, equality of liberty is not a *supplement* to the value of liberty, but simply *follows* from the ideal of total liberty. (Sen's failure to recognize this may be due to his thinking of liberty in positive terms, as freedom to do this or that, in which case the need to respect others' liberty would be a limitation on one's own liberty, thus rendering total liberty for all impossible. But if liberty is understood in negative terms, as freedom *from* coercive interference, then total liberty for all is entirely possible.) Second, Sen treats liberty as something that libertarians just happen to value, and to

which egalitarian considerations are subsequently applied — not recognizing that liberty itself is grounded in a concern for equality in the Lockean sense.

The case against socioeconomically egalitarian legislation is, as I said, an egalitarian one; for such legislation invariably involves the coercive subordination or subjection of dissenting individuals to the taxes and regulations imposed by government decision makers, and thus presupposes an inequality in authority between the former and the latter. As Ludwig von Mises writes:

It is important to remember that government interference always means either violent action or the threat of such action. The funds that a government spends for whatever purposes are levied by taxation. And taxes are paid because the taxpayers are afraid of offering resistance to the tax gatherers. They know that any disobedience or resistance is hopeless. As long as this is the state of affairs, the government is able to collect the money that it wants to spend. Government is in the last resort the employment of armed men, of policemen, gendarmes, soldiers, prison guards, and hangmen. The essential feature of government is the enforcement of its decrees by beating, killing, and imprisoning. Those who are asking for more government interference are asking ultimately for more compulsion and less freedom.[10]

Nor would an anarchistic version of socialism fare any better; as long as some people are imposing redistributive policies by force or threat of force on unconsenting others, we have inequality in authority between the coercers and the coerced, regardless of whether those doing the coercing are public citizens or private individuals, and regardless of whether they represent a majority or a minority. Nor would a Hobbesian jungle, where anyone is free to impose her will on anyone else, embody equality in authority; for as soon as one person *does* succeed in subordinating another, an inequality in