

Social Darwinism and Social Justice: Herbert Spencer on Our Duties to the Poor

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I. Introduction

Libertarians are not well known for their concern for the poor. It is, after all, a common libertarian belief that the tax-funded welfare payments to the poor are the moral equivalent of theft, or even forced labor, and thus necessarily illegitimate (Nozick, 1974; Rothbard, 1973). And two of the 20th century's most famous libertarian theorists, Robert Nozick and Friedrich Hayek, are famous (notorious?) for denying that the concept of distributive justice is even *coherent*, let alone morally defensible (Friedrich A. Hayek, 1976; Nozick, 1974). To those who believe that society owes aid to the poor as a matter of justice, and that state redistribution is an important mechanism for providing that aid, these beliefs might well appear to be sufficient evidence of libertarians' hard-heartedness. After all, if libertarians really cared about the poor, wouldn't they want the state to do more to help?

In recent years, a small group of libertarian theorists has begun to challenge this interpretation: to argue that libertarianism, properly understood, is *not* incompatible with the ideal of social justice (Tomasi, 2011), that it is not necessarily incompatible with the state provision of a social safety net (Zwolinski, forthcoming), and that it is certainly not incompatible with a serious moral concern for the welfare and dignity of the poor (Brennan, 2012).

In some ways, these ideas represent a departure from mainstream libertarian theory. They certainly look that way if we take the relatively hard-line, post-war American libertarianism of Murray Rothbard, Ayn Rand, and Robert Nozick as paradigmatic representations of that tradition (Nozick, 1974; Rand, 1961, 1964; Rothbard, 1982). But if we take a somewhat longer historical view of libertarianism, matters become considerably more complex. The libertarian intellectual tradition, as I have argued elsewhere, is both far more diverse, and far more *progressive*, than has generally been understood (Zwolinski & Tomasi, 2016).

An interesting illustration of the diversity, complexity, and progressivism of libertarian thought can be found in the writings of the late-nineteenth century philosopher and social theorist, Herbert Spencer. That I have chosen Spencer as the figure to represent the *progressive* nature of libertarianism will no doubt be surprising, even baffling, to many readers of this essay. Despite immense fame in his own time, little is remembered about the details of Spencer's social thought by academic philosophers today. But what *is* remembered is clear: Spencer was a social Darwinist, who was at best indifferent to, and perhaps positively *welcoming* of, the suffering and eventual extinction of the poor.

This belief reflects an interpretation of Spencer's thought that is common, and in many ways understandable. It is, nevertheless, also deeply mistaken. Spencer was not a social Darwinist; he was not opposed to charitable assistance to the poor; and he was not even necessarily opposed to what we would now describe as the idea of social justice. The social Darwinist interpretation of Spencer has dominated contemporary understandings of his thought not because of any historical merit, but simply because of the prominent articulation it was given by one influential critic, and the subsequent (and consequent) neglect that Spencer's work suffered by more serious scholars.

Getting Spencer's ideas right is thus an important exercise in intellectual history. We ought to understand the respects in which his ideas *were* deficient, but also to rediscover whatever insights those deficiencies may have previously blinded us to. We owe it to Spencer to understand his ideas correctly, and we owe it to ourselves to learn from those ideas what we can.

But a proper understanding of Spencer's social thought is not *merely* an exercise in intellectual history. In many ways, the 20th century criticism of and disdain for Spencer's thought mirrors the academic reaction to libertarian ideas more generally. Understanding where that criticism succeeds, and where it misses the mark, can thus potentially help us to understand the strengths and weaknesses of libertarianism as a contemporary social philosophy. And this is something that both critics and proponents of that doctrine ought to welcome.

II. Social Darwinism

The charge of "social Darwinism" is not limited to the target of Herbert Spencer, or even of libertarians more generally. But it is one typically reserved for the more libertarian *aspects* of the target at which it is directed. Even the mostly symbolic fiscal conservatism of the Republican Party in the United States, for instance, was enough to draw the charge from former labor secretary Robert Reich, who wrote in 2011 that "If one of the current crop of Republican hopefuls becomes president, and if regressive Republicans take over the House or Senate, or both, Social Darwinism is back." One year later, President Barack Obama leveled a similar charge against Republicans who supported a deficit-reduction package that would cut various social welfare programs while simultaneously extending certain Bush-era tax cuts. "Disguised as a deficit

reduction plan, it's really an attempt to impose a radical vision on our country. It is nothing but thinly-veiled Social Darwinism."¹

Phillip Thomson seems to have had a similar idea in mind over one hundred years earlier when he wrote the satirical poem, "The Political Economist and the Tramp."

Walking along a country road,
 While yet the morning air was damp,
 As unreflecting, on I strode,
 I marked approach the frequent tramp.
 The haggard, ragged careworn man
 Accosted me with plaintive tone,
 "I must have food—" he straight began;
 "Vile miscreant," I cried, "begone!
 'Tis contrary to every rule
 That I my fellows should assist;
 I'm of the scientific school,
 Political economist.
 Dost thou know, deluded one,
 What Adam Smith has clearly proved,
 That 'tis self-interest alone
 by which the wheels of life are moved?
 This competition is the law
 By which we either live or die;
 I've no demand thy labor for,
 Why, then, should I thy wants supply?
 And Herbert Spencer's active brain
 Shows how the social struggle ends;
 The weak die out the strong remain;
 'Tis this that nature's plan intends.
 Now really 'tis absurd of you
 To think I'd interfere at all;
 Just grasp the scientific view,
 The weakest must go to the wall."²

Thompson's poem captures the charge of social Darwinism in everything but name. The name itself would not be coined at all for another two years ---in Italian---and would not find its way into the English language until 1895 (Bellomy, 1984; Hodgson,

¹ "Remarks by the President at the Associated Press Luncheon," April 03, 2012, <http://www.whitehouse.gov/the-press-office/2012/04/03/remarks-president-associated-press-luncheon>). In making this charge, Obama echoed former Labor Secretary Robert Reich, who wrote in 2011 "If one of the current crop of Republican hopefuls becomes president, and if regressive Republicans take over the House or Senate, or both, Social Darwinism is back" ("The Rebirth of Social Darwinism," November 30, 2011, <http://robertreich.org/post/13567144944>).

² Phillips Thomson, "The Political Economist and the Tramp," *Labor Standard* (New York), 14 December 1878.

2004). Certainly, Spencer never described *himself* as a “social Darwinist.” Indeed, so far as we know, it is term that no political thinker has *ever* used to describe their own position. From its beginning, “social Darwinism” was a phrase people used almost exclusively to describe ideas with which they disagreed. In fact, the expression of disagreement often appears to be the *only* fixed element of the phrase’s meaning. Different people at different times disliked and disagreed with different things, and “social Darwinism” thus came at times to be a shorthand way of referring to ideas as various as racism, militarism, support of eugenics, indifference to the plight of the poor, an excessively biological view of humanity, or support of *laissez-faire* (Bellomy, 1984; Leonard, 2005c, 2009c).

The precise meaning of the term is barely more fixed today than it was over a century ago. But its transmission into popular political discourse, its association with the defense of *laissez-faire* and, most especially, its attachment to the thought of Herbert Spencer and the American sociologist William Graham Sumner, can all be traced back to the work of a single intellectual historian: Richard Hofstadter. During the 1940s, first in the pages of the *New England Quarterly* and later in his influential book, *Social Darwinism in American Thought*, Hofstadter deployed the term in a forceful and eloquent critique of trends he found disturbing in American sociological and political thought. In so doing, Hofstadter popularized and defined the paradigmatic use of the term ever since (Hofstadter, 1941, 1992).³

For Hofstadter, as for others who had used the term before him, the primary function of the term “social Darwinism” was the expression of contempt for ideas he disliked. And Hofstadter disliked the political idea of *laissez-faire* with a passion. A former member of Columbia University’s Communist Party unit, Hofstadter wrote to friends that he “hate[d] capitalism and everything that goes with it” (Hofstadter, 1992). In Spencer and Sumner, Hofstadter found two men who stood for everything he detested in social thought, and who fought bitterly against that which he himself prized – a progressive economy directed by enlightened expert rule. According to Hofstadter, these men found in the Darwinian idea of a struggle for existence “a new sanction for economic competition,” and in “the survival of the fittest a new argument in opposition to state aid for the weak” (Hofstadter, 1941, p. 457).

On Hofstadter’s reading, Spencer saw in the theory of evolution a ready-made justification for *laissez-faire* capitalism. After all, on Darwin’s view the spontaneous, “unplanned” evolution of the human species (and other well-adapted animals) was achieved through an unchecked process of competition. What better way to help along the evolution of the human species than to allow the competitive forces of capitalism to operate unchecked? The struggle for survival under capitalism is completely natural. Just as non-human animals compete within the natural environment, human animals must be allowed to compete in the economic environment. Let the free market separate the strong

³ The influence of Hofstadter’s work has been noted by virtually all historians of “social Darwinism” such as Bellomy and Leonard. One of the most persuasive demonstrations, however, can be found in Geoffrey Hodgson’s bibliometric analysis, which traces use of the term before and after the 1940s, and uncovers an explosion in the term’s popularity following Hofstadter’s work. See (Hodgson, 2004, pp. especially pp. 445-448).

from the weak and, through the harsh discipline of competition, market forces will refine the species by weeding out the lazy and the less talented individuals. Within markets, as in the natural world, the effects of unchecked competition on the weak and less able may seem harsh. But any attempts to ameliorate the condition of the weak must necessarily come at the expense of the strong, and for that reason must retard the progress of the species as a whole. State assistance to the poor (and perhaps even charity of an entirely voluntary nature) are thus to be condemned. Such well-meaning initiatives are objectionable not only because they are inefficient. Worse, they threaten to impede, or even reverse, the evolutionary progress of the human race.

Thus, as one recent critic puts it, Spencer the “social Darwinist” believes that the poor are “unfit to survive and should be eliminated,” and *this* was his grounds for arguing against state aid (Fleischacker, 2004, pp. 87-88).

III. The Case Against Herbert Spencer

Hofstadter’s charge had enough plausibility to make it stick. After all, it was Herbert Spencer, and not Charles Darwin, who originally coined the phrase, “the survival of the fittest,” and it was this phrase more than anything else to which the critics of “social Darwinism” seem to have latched on. Spencer first used the term in his 1864 *Principles of Biology*, writing that “This survival of the fittest, which I have here sought to express in mechanical terms, is that which Mr. Darwin has called 'natural selection', or the preservation of favored races in the struggle for life” (vol. 1, pp. 444-445). Darwin, in turn, first used the phrase in his 1868 book on *The Variation of Animals and Plants Under Domestication*, where he wrote that “This preservation, during the battle for life, of varieties which possess any advantage in structure, constitution, or instinct, I have called Natural Selection; and Mr. Herbert Spencer has well expressed the same idea by the Survival of the Fittest.” Darwin would later incorporate the phrase into the 5th edition of *The Origin of the Species* in 1869.

Unfortunately for Spencer, his discussion of the survival of the fittest was not his only memorable passage. When it came to discussing the question of social obligations toward the poor and the weak, Spencer had a tendency to invoke broadly evolutionary ideas in a way that practically *invited* an uncharitable reading. This is especially true of his earliest treatise in social and political theory, *Social Statics* [1851], from which almost all of the most objectionable passages cited by his critics have been drawn.

Take, for instance, the following lines, which were seized upon by Hofstadter and almost every critic of Spencer and social Darwinism since as damning evidence of Spencer’s callous indifference to the fate of the weak (Hofstadter, 1992).

Partly by weeding out those of lowest development, and partly by subjecting those who remain to the never-ceasing discipline of experience, nature secures the growth of a race who shall both understand the conditions of existence, and be able to act up to them... Who, indeed, after pulling off the coloured glasses of prejudice, and thrusting out of sight his pet projects, can help seeing the folly of these endeavours to protect men against themselves? A sad population of imbeciles would our schemers fill the world with, could their plans last. A sorry

kind of human constitution would they make for us—a constitution lacking the power to uphold itself, and requiring to be kept alive by superintendence from without—a constitution continually going wrong, and needing to be set right again—a constitution even tending to self-destruction. Why the whole effort of nature is to get rid of such—to clear the world of them, and make room for better. Nature demands that every being shall be self-sufficing. He on whom his own stupidity, or vice, or idleness, entails loss of life, must, in the generalizations of philosophy, be classed with the victims of weak viscera or malformed limbs. In his case, as in the others, there exists a fatal non-adaptation; and it matters not in the abstract whether it be a moral, an intellectual, or a corporeal one. Beings thus imperfect are nature's failures, and are recalled by her laws when found to be such. Along with the rest they are put upon trial. *If they are sufficiently complete to live, they do live, and it is well they should live. If they are not sufficiently complete to live, they die, and it is best they should die.* (Spencer, 1995, pp. 337, 338-339, 339-340, emphasis added)

Elsewhere in the same book, Spencer writes that “the poverty of the incapable, the distresses that come upon the imprudent, the starvation of the idle, and those shouldering aside of the weak by the strong, which leave so many ‘in shallows and miseries’ are the decrees of a large, far-seeing benevolence” (Spencer, 1995, p. 289). “Under the natural order of things,” Spencer writes, “society is constantly excreting its unhealthy, imbecile, slow, vacillating, faithless members.” The interferences of well-meaning men, he held, “stops this purifying process [and] even increases the vitiation, absolutely encourag[ing] the multiplication of the reckless and incompetent” (Spencer, 1995, pp. 289-290).

Thus, Spencer argued in *Social Statics*, laws which seek to relieve the suffering of the poor by funds raised through taxation are absolutely impermissible, imposing as they do an unjustifiable limitation on the liberty of the well-off in order to render succor to the weak (Spencer, 1995, p. 278). Poor Laws, just like restrictions on freedom of commerce (including restrictions intended to protect workers from exploitation) are forbidden by the fundamental principle of political morality – the law of equal freedom.

Whether or not these beliefs are indicative of an underlying “social Darwinism” – and most serious scholars of Spencer have now concluded that they are not (Bannister, 1973; Bellomy, 1984; Leonard, 2009c; Weinstein, 2012) – they seem, at the very least, indicative of a callous indifference to the plight of the poor. And to the extent that such indifference played an important role, for Spencer, in the justification of libertarian political and economic institutions, whatever repugnance we attach to it might well seem to extend to those institutions as well. If Spencer's libertarianism was essentially hard-hearted, perhaps this is not because Spencer was exceptionally cruel, but rather because he was exceptionally *consistent*.

IV. Spencer's Ethics in Context – Evolutionary Libertarianism

Before embracing this conclusion, however, it is important that we fully appreciate two important elements that pervade Spencer's social and political thought. The first is its deeply *evolutionary* character. The second is the nature of his thoroughgoing and principled commitment to libertarian freedom.

Understanding the evolutionary character of Spencer's thought can help us to better understand what he meant by such phrases as "the survival of the fittest." To many a modern ear, that phrase suggests a kind of moral endorsement of violent and cunning struggle, and a necessary approval of whatever happens to emerge out of that struggle. If the rich are succeeding while the poor have failed, it must be because the rich are "fit" and the poor are not. And so it is *good* that the rich are flourishing, and it is *good* that the poor are dying out.

For Spencer, however, appeals to "the survival of the fittest" were purely *descriptive* in nature. To label an organism as "fit" is to make a largely formal statement about its adaptation to the conditions of survival in a particular environment. It does *not* imply any sort of normative judgment about the value of the organism, or the goodness of its survival. On this point, Spencer was explicit.

The law is not the survival of the 'better' or the 'stronger' ... It is the survival of those which are constitutionally fittest to thrive under the conditions in which they are placed; and very often that which, humanly speaking, is inferiority, causes the survival. (Spencer, 1873a, p. 340)

Fitness was thus not only descriptive (rather than normative), but *relative* (rather than absolute). The biological and characterological traits that constitute fitness for one environment or stage of human development might well be wholly inappropriate for another. And, indeed, Spencer believed that human beings were in the process of a transition between two radically different stages of development, and that human morals, economic institutions and political systems were adjusting accordingly.

Human societies were evolving, Spencer thought, from *militancy* to *industrialism*. The former type of society was appropriate to those periods of human history marked by frequent violent conflict. Their organization was centralized and hierarchical, and their mode of operation was highly coercive. This was necessary, Spencer argued, to effectively mobilize the persons and resources of society in order to carry out the primary purpose that this sort of society emerged to fulfill: defensive and offensive war. Industrial societies, on the other hand, emerge out of the peace and security that earlier militant forms of society made possible. Freed from the constant necessity of fighting and preparing to fight, industrial societies could afford to devote their attention to the protection of individual liberty, and the powers of government could be restrained by institutions of representative, decentralized government, and economic *laissez-faire* (Mingardi, 2011, pp. 56-63; Spencer, 1900, chapters XVII-XVIII).

Eventually, Spencer thought, both human beings and human societies would reach a stage of perfection. And as Spencer makes clear but has often been misunderstood by casual readers, it is *only that stage of perfection* to which the doctrines of his *Social Statics* were meant to apply (Spencer, 1995, p. 51). The result, as W.L. Miller notes, has been a great deal of confusion regarding the nature of this work and its place in Spencer's thought more generally (Miller, 1982, p. 484). One cannot simply take moral principles that are appropriate for human beings in their highest stage of evolutionary development, and for societies untainted by injustice or imperfection of any sort, and apply them to *our* society, with all its immorality and imperfections. And one thus cannot assume that any

of the practical precepts laid down in *Social Statics* were meant to be applied to the society of Spencer's time, or to ours.

Nevertheless, it is clear that the *ideal* morality toward which Spencer thought humanity was progressing was a libertarian one. For Spencer, the fundamental moral principle was a "law of equal freedom" which holds that "every man may claim the fullest liberty to exercise his faculties compatible with the possession of a like liberty by every other man" (Spencer, 1995, p. 69). This principle, the 20th century libertarian theorist Murray Rothbard would approvingly note, "does not attempt to make every individual's total condition equal – an absolutely impossible task; instead, but advocates liberty – a condition of absence of coercion over person and property for every man" (Rothbard, 1970, p. 215).

Spencer's commitment to equal freedom is obviously incompatible with social Darwinism understood as a kind of "might makes right," "law of the jungle" philosophy.

If every man has freedom to do all that he wills, provided he infringes not the equal freedom of any other man, it is manifest that he has a claim to his life: for without it he can do nothing that he has willed; and to his personal liberty: for the withdrawal of it partially, if not wholly, restrains him from the fulfilment of his will. It is just as clear, too, that each man is forbidden to deprive his fellow of life or liberty: inasmuch as he cannot do this without breaking the law, which, in asserting his freedom, declares that he shall not infringe "the equal freedom of any other." For he who is killed or enslaved is obviously no longer equally free with his killer or enslaver. (Spencer, 1995, p. 102)

A philosophical opposition to killing or enslaving others hardly strikes us as distinctive or worthy of note today. And yet, Spencer's firm libertarian commitment to non-aggression actually *did* set his system apart from many rival political ideologies of his day. Unlike many progressives of their era, for example, Spencer was strongly opposed to military imperialism, whether aimed at the glorification of the United States or at the civilization of supposedly "barbaric" peoples. Imperialism, Spencer argued, was really a kind of piracy writ large – a policy carried out largely for the benefit of "rich owners of colonial property," involving unjustifiable "deeds of blood and rapine" and the exploitation of "the poor, starved, overburdened people" (Spencer, 1981g, pp. 220-221; 1995, chapter 27). As for those ordinary citizens who volunteer to fight in imperialistic wars, Spencer had nothing but disdain: "When men hire themselves out to shoot other men to order, asking nothing about the justice of their cause, I don't care if they are shot themselves" (Spencer, 1902, p. 126).

Moreover, whatever commitment he may have had to the biological advancement of the human race, Spencer was firmly opposed to the use of coercive central planning in order to achieve that advancement. And in this respect, too, he appears to have had a more genuinely progressive position than that held by the so-called progressives of their day. Oliver Wendell Holmes, in his dissenting opinion in *Lochner v NY*, used Spencer, or the popular image of him, to attack the American constitutional doctrine of economic liberty: "the 14th amendment does not enact Mr. Herbert Spencer's *Social Statics*". Yet it was Holmes who penned the infamous majority opinion in *Buck v. Bell*, in which the Supreme Court upheld a Virginia law allowing the state to forcibly sterilize persons

deemed to be mentally or morally unfit. In his majority opinion, Holmes argued that mandatory sterilization was justified “for the health and protection of the state.” (In Holmes’s chilling verdict regarding proposed forced sterilization of Carey Buck: “three generations of idiots is enough.”) Spencer, in contrast, neither trusted the wisdom or virtue of political elites to guide evolution along its proper path, nor would he tolerate the use of coercion to achieve that end, no matter how desirable or attainable it might actually be (Bernstein & Leonard, 2009; Leonard, 2005a, 2005c, 2009a, 2009c).

The connection between eugenicism and progressivism illuminates a more general point. It is not merely that Spencer was capable of advocating on behalf of socially and economically vulnerable groups *in spite of* his libertarianism. It is, rather, precisely *because* of his principled libertarian commitment to equal freedom that Spencer’s insisted on treating those groups with *more* respect and concern than was common among more mainstream ideological positions.

Perhaps nowhere is this point more clear than in Spencer’s discussion of the moral questions pertaining to the treatment of women and children. The law of equal freedom, Spencer held, guarantees to each individual the right to exercise his or her faculties to the *fullest extent possible*, compatible with the like liberty of others. Thus, even if those who claim that women and children are mentally inferior to grown men turned out to be correct, this would in no way diminish their *moral* status.

The fullest endowment of rights that any being can possess, is perfect freedom to exercise all his faculties. And if each of two beings possesses perfect freedom to exercise all his faculties ... the rights of the two are equal; no matter whether their faculties are equal or not. For, to say that the rights of the one are less than those of the other, because his faculties are fewer, is to say that he has no right to exercise the faculties he has not got! – a curious compound of truism and absurdity. (Spencer, 1995, p. 156)

Perhaps surprisingly, Spencer did not stop at advocating merely *formal* equality of women before the law. Such formal equality was an important part of what morality required, and thus Spencer advocated extending to women the rights of property and franchise that were frequently withheld from them.⁴ But Spencer’s critique of inequality

⁴ Spencer advocated extending the right to vote to women in the original 1851 edition of *Social Statics*. However, he would later appear to change his mind on the issue, dropping the claim from the 1892 edition of *Social Statics*, and explicitly arguing against it in chapter 20 of his 1897 *Principles of Ethics*. There, he argued that political rights come along with political responsibilities, and until women exercised the same responsibilities as men (specifically, military service), they cannot legitimately claim the same rights. Much earlier, in 1867, Spencer expressed a different argument in a letter to John Stuart Mill, writing that voting rights are “simply means to an end,” that end being “real liberty,” which could only be secured by “the limitations of the functions of the state.” Because women “as a mass, are habitually on the side of authority,” giving them the vote would likely “stimulate all kinds of state administrations, the great mass of which are necessarily antagonistic to personal freedom.” Spencer still viewed the extension of the franchise to women as a moral ideal, to be pursued in the long-term. But because of the dire threat to liberty he saw posed by socialism, he withheld support for it as “an

extended beyond *legal* inequality to encompass *domestic* inequality as well. Thus Spencer condemned not only “despotism in the state” but “despotism in the family,” writing that:

The arbitrary rule of one human being over another, no matter in what form it may appear, is fast getting recognised as essentially rude and brutal...A further increase of this same refinement will show men that there is a fatal incongruity between the matrimonial servitude which our law recognises, and the relationship that ought to exist between husband and wife. Surely if he who possesses any generosity of nature dislikes speaking to a hired domestic in a tone of authority—if he cannot bear assuming towards his friend the behaviour of a superior—how utterly repugnant to him should it be, to make himself ruler over one on whose behalf all his kindly sentiments are specially enlisted; one to whom he is bound by the strongest attachment that his nature is capable of; and for whose rights and dignity he ought to have the most active sympathy! (Spencer, 1995, pp. 146-147)

So Spencer had some surprisingly progressive views on a wide range of issues. Still, one might reasonably wonder whether all this is enough to overcome our initial concern about Spencer’s indifference to problems of human need and suffering. At most, these examples show that Spencer’s libertarian beliefs *sometimes* led him to advocate on behalf of the vulnerable. But perhaps those same beliefs *more often* interfered with such advocacy. After all, Spencer’s commitment to equal freedom required him to reject measures that sought to aid the poor through taxation or other limitations on or infringements of the rights of private property. Libertarian rights, for Spencer, served as an absolute constraint on the pursuit even of desirable social goals. To many, then, it will still seem that Spencer’s system, and libertarianism more generally, is ultimately incompatible with the fullest, most desirable form of concern for the poor and vulnerable.

IV. Soft-Hearted Reasons for Hard-Headed Policy

Why, then, did Spencer oppose state aid? And why did he sometimes go even further than his libertarian principles required and caution against purely *voluntary* charity?

Part of the story concerns a distinction, common to the Victorian Age in which Spencer was writing, between the deserving and undeserving poor. In a free society, people sometimes become poor through no serious fault of their own. But sometimes poverty is the result of poor choices and irresponsible behavior. In such cases, Spencer thought that using the power of the state to compel someone else to come to that person’s aid is both ineffective and unjust. It is ineffective because giving more money to someone who is poor because of his own irresponsibility fails to address the person’s problem in a

immediate measure, or even as a measure to be shortly taken.” See his letter to J.S. Mill, August 9, 1867, in (Duncan & Spencer, 1908, pp. 138-139) Unfortunately, Spencer was not the only libertarian thinker to stake out an (uncharacteristically) reactionary position on the issue of women’s suffrage. The 19th century American libertarian anarchist Lysander Spooner famously argued that since all legislation (as opposed to natural law) is necessarily unjust, *no one* should have the right to vote. See (Spooner, 1877).

long-term way. It is unjust because it penalizes the prudent in order to reward the irresponsible. In expressing these points, Spencer's language could often be quite blunt, especially by the standards of contemporary academic discourse. But the idea that the poor have a claim of justice against others only insofar as their poverty is the result of bad luck, and not insofar as it is the result of bad choices, is one with which even many contemporary egalitarian philosophers would not disagree (Arneson, 1997). And no parent who has struggled to teach their children to become prudent and self-reliant, no one who has ever sought to aid a friend struggling with addiction, no teacher who has ever tried to help a student master difficult material, will argue with Spencer's general claims about the moral hazards of overprotectiveness, even if we might quarrel with the way he applies those lessons to particular cases (Spencer, 1995, pp. 289, 338).

Thus, Spencer held that even well intentioned efforts at state aid would be objectionable on grounds of both justice and expediency. But he frequently pushed his argument further, insisting that many, perhaps most, state policies were *not* well-intentioned. Whatever rhetoric politicians might employ to justify a policy, and however they might describe its aims, the true guiding force of state policy, Spencer argued, is the self-interest of the legislators who create it. "It is a tolerably well-ascertained fact that men are still selfish. And that beings answering to this epithet will employ the power placed in their hands for their own advantage is self-evident" (Spencer, 1995, p. 195). And the self-interest of legislators, Spencer recognized, is generally best served by aligning with the interests of the wealthy and powerful, not with those of the poor and weak. For those latter groups, then, legislation is more likely to be a source of continuing oppression than of salvation.

The specific examples that Spencer chooses to illustrate his point about state power and legislative self-interest are instructive. One who accepted the popular caricature of Spencer as social Darwinist might have expected him to illustrate his point with stories of the greedy but shiftless poor using political power to appropriate the wealth of the virtuous and industrious rich. Instead, almost all of Spencer's examples involve the use of state power to benefit the rich and powerful at the expense of the poor and marginalized. Thus Spencer describes how the English Enclosure Acts ran roughshod over "the claims of the poor cottagers;" he decries the privileging of landed interests in electoral politics and tax law; he condemns the disparate legal treatment of "gentleman sinecurists" and simple workmen, and so on (Spencer, 1995, p. 196). Thus Spencer held that it would be folly for the poor to look to the state for relief, or for society to entrust the state with power in the hopes that it would be used on behalf of the poor. State power is and always will be used for state interests, and state interests are rarely advanced by spending scarce resources on economically and socially marginalized groups.

But by far the most important aspect of Spencer's critique of poverty-relief programs was derived from the twin ideas of complexity and unintended consequences – two ideas that would take an increasingly prominent role in libertarian thought during the twentieth century, especially in the work of Friedrich Hayek (Friedrich A Hayek, 1971; Friedrich A. Hayek, 1976, 1994). For Spencer, society is best understood as constituted by a complex web of individuals, organizations, and causal relationships. When we think about various social evils and what might be done to address them, our attention naturally focuses on certain particular elements of that web. But in focusing in this way, we easily

forget that “each phenomenon is a link in an infinite series—is the result of myriads of preceding phenomena, and will have a share in producing myriads of succeeding ones.” Because phenomena are complexly interrelated, it is always the case that “in disturbing any natural chain of sequences, [legislators] are not only modifying the result next in succession, but all the future results into which this will enter as a part-cause” (Spencer, 1981a, p. 280).

Social systems thus exhibit a complexity that is “utterly beyond human grasp” (Spencer, 1981a, p. 280). And thus, “[w]e need feel no surprise, then, that in their efforts to cure specific evils, legislators have continually caused collateral evils they never looked for” (Spencer, 1981a, p. 282). Legislation is a blunt tool, well-designed, perhaps, to deal with average events, but extremely ill-suited for adapting itself to the constant changes and surprises of a complex social world (Spencer, 1981a, p. 289). For Spencer, the attempt to stamp out evil by means of legislation was akin to an attempt to straighten out a wrought-iron plate with a hammer:

[I]t sticks up a little here towards the left—“cockles,” as we say. How shall we flatten it? Obviously, you reply, by hitting down on the part that is prominent. Well, here is a hammer, and I give the plate a blow as you advise. Harder, you say. Still no effect. Another stroke? Well, there is one, and another, and another. The prominence remains, you see: the evil is as great as ever—greater, indeed. But this is not all. Look at the warp which the plate has got near the opposite edge. Where it was flat before it is now curved. A pretty bungle we have made of it. Instead of curing the original defect, we have produced a second ... The required process is less simple than you thought. Even a sheet of metal is not to be successfully dealt with after those common-sense methods in which you have so much confidence. What, then, shall we say about a society? “Do you think I am easier to be played on than a pipe?” asks Hamlet. Is humanity more readily straightened than an iron plate? (Spencer, 1873c, pp. 270-271)

Thus, the attempt to prevent drunkenness among the working poor by placing restrictive licenses on the sale of gin leads merely to black markets, new forms of crime and violence, and an actual *increase* in the production and consumption of liquor (Spencer, 1873c, pp. 270-271). Thus, the attempt to ensure that the poor receive quality housing by mandating various requirements of structure and space leads the poor to be priced out of the rental market and crowded together in unregulated quarters “unfit for human habitation” (Spencer, 1981a, pp. 278-279). And, thus, the attempt to render banking secure by means of legislative restrictions and guarantees leads lenders and borrowers alike to act recklessly. After all, if the state is watching to ensure that lenders behave responsibly, and waiting to pick up the tab in the case that they don’t, why should borrowers exert much effort in assessing and comparing the stability of potential lenders? And why should lenders expend much effort in *being* stable? And so, Spencer famously wrote, “the ultimate result of shielding men from the effects of their folly, is to fill the world with fools” (Spencer, 1864, p. 320).

Even when legislation accomplishes its intended aims, it does so at a cost. Resources devoted to one social aim must necessarily be diverted from some other. And the complexity of social systems combined with the fact that legislators are spending *other* people’s money means that the cost of those forgone opportunities will very rarely be recognized, let alone properly weighed against the expected benefits of the proposed

legislative action (Spencer, 1981a, pp. 287-289, 315). This is akin to the distinction emphasized by the French economist Fredric Bastiat between “What is Seen and What is Not Seen,” in his 1848 essay of that name. The actions of legislators, in Bastiat’s terms, are driven almost entirely by what they *see* – by “proximate causes and immediate effects” – and almost not all by what is *unseen* – the spontaneous workings of social forces, indirect and remote effects of policies, and the lost opportunities of time, wealth, and labor consumed by state action (Bastiat, 1995).

Spencer’s objection was thus not to charity as such. Rather, his objection to *coercive* “charity,” and to *injudicious* charity (Spencer, 1995, pp. 285-286, 291). Aid to the poor that is extracted from persons against their will, or aid that actually *harms* the poor rather than helping them, is to be condemned by considerations of morality and expediency alike.

V. Libertarian Charity

But opposition to coercive and injudicious charity leaves plenty of conceptual room for the advocacy of charity that is voluntary and effective. And, indeed, Spencer was a consistent and sometimes impassioned proponent of precisely that.

Spencer’s advocacy of voluntary, effective charity was present in his work from the very beginning. But his discussions of the issue in *Social Statics* were often lost to readers amidst the harsher passages reviewed in section III above. In his later work, *The Principles of Ethics*, Spencer would express regret regarding the “very erroneous impression” produced by his earlier work.

In its full scope, the moral system to be set forth unites sternness with kindness; but thus far attention has been drawn almost wholly to the sternness. Extreme misapprehensions and gross misstatements have hence resulted. (Spencer, 1978, p. 30)

Throughout his career, Spencer expressed his approval of charity that was voluntary, and which would help to relieve suffering without creating further suffering as an unintended byproduct. Because of his concern to avoid moral hazard, Spencer was most enthusiastic regarding charity to victims of brute bad luck. Since the suffering of such individuals is entirely (or mostly) outside of their control, we need not worry so much about our aid generating perverse incentives, and therefore can, and should, give freely.

To that charity which may be described as helping men to help themselves, [my argument] makes no objection—countenances it rather. And in helping men to help themselves, there remains abundant scope for the exercise of a people’s sympathies. Accidents will still supply victims on whom generosity may be legitimately expended. Men thrown upon their backs by unforeseen events, men who have failed for want of knowledge inaccessible to them, men ruined by the dishonesty of others, and men in whom hope long delayed has made the heart sick, may, with advantage to all parties, be assisted. Even the prodigal, after severe hardship has branded his memory with the unbending conditions of social life to which he must submit, may properly have another trial afforded him. And, although by these ameliorations the process of adaptation must be remotely interfered with, yet in the majority of cases, it

will not be so much retarded in one direction as it will be advanced in another.
(Spencer, 1995, pp. 291-292)

Success and failure in life, Spencer recognized, are not always a matter of virtue or vice, skill or ineptitude. Of course those who are successful would like to *believe* that their success is due entirely to their own merit, and that the failings of the poor due entirely to their own deficiencies. But Spencer had little patience with this sort of self-congratulatory rationalization for stinginess.

It is very easy for you, O respectable citizen, seated in your easy chair, with your feet on the fender, to hold forth on the misconduct of the people – very easy for you to censure their extravagant and vicious habits... It is no honor to you that you do not spend your savings in sensual gratification; you have pleasures enough without. But what would you do if placed in the position of the laborer? How would these virtues of yours stand the wear and tear of poverty? Where would your prudence and self-denial be if you were deprived of all the hopes that now stimulate you...? Let us see you tied to an irksome employment from dawn till dusk; fed on meager food, and scarcely enough of that... Suppose your savings had to be made, not, as now, out of surplus income, but out of wages already insufficient for necessities; and then consider whether to be provident would be as easy as you at present find it. Conceive yourself one of a despised class contemptuously termed “the great unwashed”; stigmatized as brutish, stolid, vicious ... and then say whether the desire to be respectable would be as practically operative on you as now... How offensive it is to hear some pert, self-approving personage, who thanks God that he is not as other men are, passing harsh sentence on his poor, hard-worked, heavily burdened fellow countrymen...(Spencer, 1995, pp. 203-205)

In these passages, Spencer displays a real empathy with the plight of the poor. And he recognizes, moreover, that aid to the poor can be and sometimes is a matter of moral *duty* – not merely a sort of supererogatory virtue. It is, to be sure, an *imperfect* duty of beneficence, rather than a perfect duty of justice, and it is for this reason that Spencer believes that it is not a duty that may properly be enforced by means of coercion. But this classification is simply a reflection of the fact that ascertaining the conditions in which aid is appropriate requires the exercise of flexible moral judgment, rather than fixed, absolute rules (Spencer, 1978, pp. 375, 405-406). It certainly does not suggest that he thought these duties *unimportant*.⁵

⁵ Spencer’s *Social Statics* was explicitly designed as a work about what philosophers would now describe as perfect duties of justice under conditions of ideal theory. Accordingly, there is little discussion of beneficence within its pages. See, for a discussion, (Spencer, 1995, p. Part I) In his later and more substantial work on ethics, however, Spencer devoted eight full chapters to the discussion of “negative beneficence,” and another ten to “positive beneficence.” His discussion of the latter category of action includes pleas for children to devote greater care to parents in their old age, aid to the sick and injured, succor to the ill-used and endangered, and relief to the poor and destitute. See (Spencer, 1978, p. Parts V and VI).

VI. Libertarian Social Justice?

Even critics of libertarianism may well concede that the doctrine is compatible with the advocacy of purely private, voluntary charity. But, even if this is so, libertarianism would certainly seem to be deeply incompatible with a more robust notion of *social justice*. It cannot admit that it makes sense to speak of the justice or injustice of social institutions as distinct from the justice or injustice of the particular actions of individuals. And it cannot hold that the needs or suffering of some give rise to a claim of justice against society as a whole, regardless of whether those needs or suffering were the product of wrongdoing by some assignable individual.

As applied to Spencer, this assessment is *largely* correct. The most well-developed contemporary libertarian theories of social justice are constructivist in nature. Tomasi's theory, for example, follows that of John Rawls in holding that the principles of justice that ought to govern the basic structure of society are those that would be chosen by rational individuals in an initial condition of freedom and equality (Tomasi, 2011).⁶ Spencer's theory, in contrast, is probably best read as grounded in a kind of indirect utilitarianism (Gray, 1982; Weinstein, 1998). He is therefore committed to holding that people's legitimate moral claims on each other are a function of the aggregate consequences such claims would produce, and in a way that is largely independent of the *distribution* of such consequences.

Largely, but perhaps not entirely. In one fascinating passage from *Social Statics*, for instance, Spencer seems to suggest that even if justice is entirely a matter of individual rights, nevertheless there is a sense in which injustices against "the humblest" cry out for a special sort of concern. Consider this excerpt from Spencer's discussion of allowing working class citizens to vote, and notice how he responds to the objection that this would lead to policies hostile to the interests of the wealthy.

Even were there no answer to this, the evidence would still preponderate in favour of popular enfranchisement. For what at the utmost does the argument amount to? Just this:—that the few must continue to trespass against the many, lest the many should trespass against the few. The well fed, the luxuriously housed and clothed, the placemen and pensioners, may perhaps think it better that the masses should suffer for their benefit (as they do) than that they should suffer for the benefit of the masses (as they might). But would a just arbitrator say this? Would he not say, on the contrary, that even if their respective members were blessed with equal

⁶ Interestingly, Tomasi suggests that Friedrich Hayek, despite his frequent assaults on the idea of "social justice," might not have differed much from Rawls on this point. He notes that Hayek concedes that there is a "genuine problem of justice in connection with the deliberate design of political institutions, the problem to which Professor John Rawls has recently devoted an important book," and that the disagreement between his own account and Rawls' is "more verbal than substantive" and that he and Rawls "agree on what is to me the essential point." He also notes that Hayek apparently developed on his own a principle very much like that expressed in Rawls' conception of the original position, namely that "we should regard as the most desirable order of society one which we would choose if we knew that our initial position in it would be decided purely by chance." See (Friedrich A. Hayek, 1976, pp. xii, 100, 132, 188-189)

advantages, the minority ought to be sacrificed rather than the majority; but that as the most numerous are at the same time the least favoured, their claim becomes still more imperative. Surely, if one of the two parties must submit to injustice, it ought to be the rich hundreds, and not the poor thousands. (Spencer, 1995, p. 198)

This is far from a full-fledged theory of social justice. But it is equally far from the crude social Darwinism that is usually associated with Herbert Spencer. And it does seem to be at least a step in the *direction* of a theory of social justice – something akin to the “preferential option for the poor” endorsed by the United States Conference of Catholic Bishops in their *Economic Justice for All*.

Consider, also, Spencer’s little-noticed treatment of the Poor Law in his later work, *The Principles of Ethics*. That treatment begins in a familiar way, reaffirming Spencer’s long-held belief that “relief of the poor from public funds raised by rates, is, if considered apart from certain antecedents to be presently named, inconsistent with that limitation of state functions which ethics insists upon” (Spencer, 1978, p. 394).

So far, this is just Libertarianism 101. Taxation violates individual freedom, and therefore tax-funded welfare is morally impermissible. But wait, what exactly is Spencer referring to as “certain antecedents to be presently named”? In the next paragraph, he says that what he has in mind are the conditions that existed in feudal and prefeudal times in which the serfs had certain established rights to the produce of the soil. The abolishment of serfdom freed the serf from his tie to his lord’s land, but it also destroyed his claim upon the produce of the soil. This, Spencer argued, was a kind of injustice. “Entire usurpation of the land by the landlord, and entire appropriation of the laborer, were unjust” (Spencer, 1978, p. 394). The Poor Law sought to compensate the laboring classes for this injustice and thus may, to that extent, “be said to have an equitable basis,” and the relief that it offers is thus “something more than a charitable dole” (Spencer, 1978, p. 394). That “something more,” I think it is reasonable to infer, is a requirement of *justice*. And insofar as it is a requirement of justice based on class membership (the tax would be paid by the landowning class to the laboring class), rather than the specific behaviors of particular individuals, it seems not too implausible to construe it as a claim of *social justice*.

Almost a hundred years later, the libertarian philosopher Robert Nozick would suggest that perhaps something like a Rawlsian difference principle or other “patterned principles of justice” could serve as “rough rules of thumb meant to approximate the general results of applying the principle of rectification of injustice” (Nozick, 1974, pp. 230-231). The convergence between Spencer and Nozick on this point suggests what might be a fruitful way forward in developing a libertarian account of social justice. Even if such a principle cannot be defended in terms of the kind of first-best ideal society described by Spencer in his *Social Statics*, it may well be defensible in our decidedly *non-ideal* reality, as a rough-and-ready mechanism for providing approximate compensation to those whose libertarian rights were violated in the generation of the present distribution of wealth and other resources.

VI. Conclusion

Today, advocates of social justice focus their efforts almost entirely on thinking about what the state can *do* to help the poor more – enforcing laws against non-discrimination, providing greater educational opportunities, and of course, redistributing wealth. And understood in this way, it is hard to accept either Spencer's theory or libertarianism more generally as a plausible theory of social justice.

Historically, however, the greatest social injustices were not a matter of things that the state failed to do *for* the poor, but rather things that the state actively did *to* them. And in this respect, both Spencer's theory and libertarianism more generally look much more viable. Spencer's libertarianism is a theory devoted to ending oppression, not to equalizing opportunity or well-being (Anderson, 1999). And its principled commitment to non-aggression, as Spencer's thought demonstrates, put libertarians in a strong position to condemn many of the most dangerous and destructive forms of oppression practiced against the most vulnerable classes of persons.

To many modern advocates of social justice, this will not be enough. Of course, they hold, it is good to despise imperialism, to oppose eugenics, and to advocate for the negative freedom of women and children. But it would be better if the state did *more* – if it did not merely refrain from oppressing, but took the further positive steps involved in *aiding* the poor, the vulnerable, and the marginalized.

This is a formidable challenge for the libertarian. But it is one to which Spencer has articulated a powerful response. The belief that the state ought to be entrusted with the power to render positive aid to the poor presupposes both that the state is *capable* of rendering such aid, and that it can be *trusted* to do so. And neither of these presuppositions, Spencer argued, are warranted. Considerations of complexity and moral hazard make it likely that genuine efforts by the state to improve the condition of the poor will be ineffective. And the fact that legislators are often motivated by self-interest means that power entrusted to the state will often be used on *behalf* of the state and the state's interests, which interests are very often antagonistic with those of the poor and vulnerable.

The charge that Spencer is indifferent to the suffering of the poor cannot stand up to a close scrutiny of his views. A full view of Spencer's writings gives every indication of an author who was capable of real empathy with the suffering of the vulnerable. And his system of thought sometimes reflects that sympathy in direct and obvious ways – as his consistent and well-developed endorsement of a positive duty of beneficence makes clear. Even when it does not, however, it is not because the sympathy was lacking. Rather, it was because Spencer thought our duty to aid must be matched by a duty to *know what we are doing* so that the aid we render might be effective rather than counterproductive (Spencer, 1978, p. 213). Reasonable people can disagree with Spencer about the correct application of this cautionary principle to particular cases. But Spencer's caution, his concern with moral desert, and his emphasis on the importance of non-aggression and the long-term sustainability of aid, must be *some* part of any reasonable modern conception of social justice.

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