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978-1-107-60453-7 — New Essays in Political and Social Philosophy  
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Shaftesbury Road, Cambridge CB2 8EA, United Kingdom  
 One Liberty Plaza, 20th Floor, New York, NY 10006, USA  
 477 Williamstown Road, Port Melbourne, VIC 3207, Australia  
 314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India  
 103 Penang Road, #05–06/07, Visioncrest Commercial, Singapore 238467

Cambridge University Press is part of Cambridge University Press & Assessment,  
 a department of the University of Cambridge.

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[www.cambridge.org](http://www.cambridge.org)  
 Information on this title: [www.cambridge.org/9781107604537](http://www.cambridge.org/9781107604537)

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First published 2012

*A catalogue record for this publication is available from the British Library*

*Library of Congress Cataloging-in-Publication data*  
 New essays in political and social philosophy /  
 edited by Ellen Frankel Paul, Fred D. Miller, Jr, and Jeffrey Paul.

p. cm.  
 ISBN 978-1-107-60453-7

1. Political science--Philosophy. 2. Social sciences--Philosophy.  
 I. Paul, Ellen Frankel. II. Miller, Fred Dycus, 1944- III. Paul, Jeffrey.

JA71.N477 2012  
 320.01--dc23

ISBN 978-1-107-60453-7 Paperback

The essays in this book have also been published,  
 without introduction and index, in the semiannual journal  
*Social Philosophy & Policy*, Volume 29, Number 1,  
 which is available by subscription.

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## INTRODUCTION

Aristotle expressed the view that the political state exists by nature because human beings are political or social by nature. Thomas Hobbes maintained on the contrary that the political commonwealth arises from an artificial covenant, whereby a multitude authorizes a sovereign to rule over it. Whether it is a result of nature, the consequence of a choice to escape the state of nature, or the outcome of some other process of deliberation, the fact of human association gives rise to recurrent themes in political and social philosophy. The character and requirements of justice, the profile of political legitimacy, and the relationship between the powers of government and the rights of the governed are some of the subjects of ongoing consideration and debate in the disciplines of philosophy, political theory, economics, and law. This volume represents a contribution to the investigation of these issues of perennial interest and import, featuring essays whose authors hope to extend, deepen, and, in some cases, move in new directions, the current state of discussion.

The thirteen essays in this collection explore the foundations of political association, the nature of justice, and the character of the rights and liberties that individuals enjoy by virtue of membership in civil society. Some identify and examine misconceptions common in current thinking among political philosophers and laypersons alike. Some seek to clarify the role played in theory and in policy by concepts prominent in political thought such as ownership and property, or those perhaps less well entrenched, such as exploitation and genocide. Others propose new understandings of the work and influence of political philosophers, such as John Rawls, whose ideas are prevalent in ongoing debates. Still others inquire about the nature and justification of government action such as its criminalization of certain individual conduct, its exercise of coercion over the governed, and its restrictions on economic and other freedoms.

The collection opens with the essay “Political Liberty: Who Needs It?” by Jason Brennan. Brennan argues that although many theorists believe that the political liberties of voting and running for office are of special importance, in most cases these liberties prove not to be especially valuable. Philosophers, he notes, have argued that the political liberties are needed or at least useful for several purposes from which their value supposedly derives. These purposes are: to lead a full, human life; to have one’s social status and the social bases of self-respect secured; to make government responsive to one’s interests and generate preferred political outcomes; to participate in the process of social construction so that one can feel at home in the social world; to live autonomously as a member of society; to achieve education and enlightenment and take a broad view

of the world and others' interests; and to express oneself and one's attitudes about the political process and current states of affairs. Brennan considers and argues against each of these reasons adduced in favor of the value of the political liberties. Among his challenges is the argument that the political liberties are not, as such, needed for or part of flourishing, but that the extent to which they promote flourishing for each individual depends on that individual's particular conception of the good life. Regarding social status and respect, Brennan argues that it is a contingent psychological or cultural fact that the political liberties of voting and running for office are taken to confer status of this sort; he also maintains that the fact that people tend to make this connection is itself problematic and so not a source of value. Additionally, the argument that the rights to vote and run for office are valuable because their exercise provides incentive for politicians to act in such ways that encourage individual voters to support them fails, according to Brennan, because the impact on election results of any individual voter is negligible and, thus, cannot serve to motivate politicians. Brennan further argues that the exercise of one's political liberties to vote and run for office are neither necessary for nor the best way to participate in social construction; they are similarly neither necessary for living autonomously nor the best means to promote the value of autonomy.

In his essay "State Coercion and Force," Christopher W. Morris also identifies and attempts to dispel what he regards as a misconception common in contemporary political theory—that governments are necessarily coercive. The importance of the misconception, Morris argues, is that the coercive nature of states both makes it very difficult to justify them and constrains the type of justifications suitable to the task. Morris argues that it is a mistake to think that states are "by definition" coercive and contends that coercion and force are conceptually distinct from the idea of a state; that is, the existence of states without coercion is in principle conceivable. Morris considers the possibility that states are viewed as essentially coercive because laws may be viewed as essentially coercive by virtue of their conjunction with sanctions. However, since an account that ties law centrally to coercion by sanctions is problematic in its own right because it fails adequately to capture the normative character of a law as a rule rather than a command, and also because there are counterexamples to the conjunction of law and sanctions (such as power-conferring laws), this conjunction is unavailable as support for an argument that the political power of states more generally is always coercive. Morris explains that the coercive features of both law and political power in general serve as incentive to those who might otherwise not be motivated to comply with the rules, and thereby also serve to assure the governed that others will more likely conform. The role that coercion plays, however, is decidedly secondary, Morris thinks, to the authority of the state rather than central as many political theorists have supposed. Morris

contends that legitimate states, therefore, will have less need to employ coercion because they will achieve greater compliance because of the authority connected with their legitimacy. Morris concludes that the importance of state coercion and force has been exaggerated in contemporary political thought while the centrality of the authority of states has been underappreciated.

John Tomasi's contribution to this volume, "Democratic Legitimacy and Economic Liberty," focuses on the implications for private economic liberty of a deliberative or democratic approach to political legitimacy. On this approach, political and social institutions are considered just and legitimate insofar as they are acceptable in principle to those individuals who lead their lives within them. Democratic legitimacy requires basic rights so that the moral powers of citizens can be fully developed. Democratic theorists tend to limit the economic behaviors that count as basic rights, however, and consequently attenuate economic liberties. In contrast, Tomasi argues that democratic legitimacy requires robust economic liberties—liberties of working and owning, and other liberties subsumed under these—that are constitutionally protected to the same extent the political and civil liberties enjoyed by democratic citizens are protected. Tomasi argues that once democratic theorists acknowledge that some economic liberties are basic rights, they are required by parity of reason to admit a broader class of economic behavior under the purview of constitutionally protected basic rights. Thus, for instance, the same reasoning that leads democratic theorists to include the right to own personal *nonproductive* property among the basic rights—namely, that ownership rights can promote personal security, provide for basic needs in the form of food, clothing, and shelter, can be an expression of identity, and so on—also suggests that personal *productive* property should be counted among basic rights. Tomasi's conclusion that democratic legitimacy requires robust economic liberties upholds the value of personal economic liberty characteristic of classical liberalism, while at the same time embracing the democratic or deliberative standards of political legitimacy associated with John Rawls and others.

In his contribution to this volume, "Who Owns What? Some Reflections on the Foundation of Political Philosophy," Lloyd P. Gerson argues that neither a doctrine of rights nor a doctrine of justice can provide an adequate foundation for political philosophy because such doctrines are either justified on the basis of some further doctrine, negating their claim to be foundational, or they depend on intuitions that differ in important ways across individuals. Instead, he argues, all political philosophical theories must rest on the recognition of the existence of moral agents as individual members of a natural kind capable of entering into associations with other moral agents. According to Gerson, moral agency and self-ownership are virtually equivalent, and in order for there to be any

political or other associations, there must be a mutual recognition of self-ownership. From moral agency and self-ownership, Gerson deduces property ownership. He defines a state of affairs as just, then, when and only when there is no aggression against moral agents. And the only nonarbitrary right is that of ownership—self-ownership and property ownership. Thus, A has a right to p means: to deprive A of p is unjust. Gerson concludes that rights are founded on justice, justice is founded on property, and property is founded on self-ownership. The recognition of self-ownership is a necessary condition for the mutual recognition of moral agency, the only possible basis for the existence of human associations. Thus, Gerson argues, rights and justice are derivative or dependent concepts; they are not basic or foundational.

While Gerson identifies ownership as central to the foundation of political philosophy, the author of the next essay in the volume, Donald C. Hubin, calls into question the appropriateness of extending the concept of property to controversial issues concerning reproduction and parental rights. In “Human Reproductive Interests: Puzzles at the Periphery of the Property Paradigm,” Hubin argues that although the question of ownership and property rights is important in addressing many issues of public policy, the attempt to subsume all questions of rights under what he calls “the property paradigm” exerts a distorting influence on debates about a variety of complex moral issues. More specifically, he regards as problematic the application of the property paradigm to discussion of the nature and basis of parental rights. Hubin notes that the fact that parental rights are not best understood as property rights is now widely acknowledged. However, while the property paradigm no longer exerts much influence in contemporary discussions of parental rights, it still plays a significant role in discussions of reproductive rights and can, consequently, also have additional implications for parental rights and obligations. Hubin believes that focusing on the question of the ownership of gametes, in particular of sperm, tends to warp the moral dialogue concerning reproductive rights in cases such as posthumous reproduction. He further argues that when disputes arise over whether sperm can be used for reproductive purposes in cases in which it has been transferred by intercourse, policy and legal resolutions of such disputes should not be based on pronouncements or assumptions about ownership and the nature of transfers of ownership. Hubin concludes that these sensitive moral debates are better framed in terms of individuals’ legitimate interests than in terms of property.

In “Why Free Trade is Required by Justice,” Fernando R. Tesón argues that free trade is required by any plausible conception of justice and that it is supported by a host of consequentialist and deontological reasons. Empirically, trade increases global and national wealth, and in particular improves the situation of the poor. Morally, those who benefit from protectionist laws—which can take the form of tariffs, import and export



licenses, subsidies, government procurement rules, national security requirements, and so on—are not deserving beneficiaries of wealth redistribution under any defensible conception of justice. Tesón examines both economic theory and evidence, and argues that both amply warrant the view that trade is beneficial. Further, he argues that protectionism by rich countries is harmful, not only to those countries' own consumers, but to producers in poor countries. Given this, and given the fact that protectionism is almost always the result of political pressure by inefficient producers, he concludes that there is no good reason to support it. Tesón notes that protectionism by poor countries is equally harmful. Relying on the institutionalist literature, he shows that protectionism is a problematic institution that contributes to economic stagnation in those countries which practice it. Finally, Tesón suggests that critics who oppose free trade because of the plight of the poor have a mistaken view of the causes of that plight and fail to recognize the evidence that freeing world markets actually improves the lives of the poor.

In his essay “Structural Exploitation,” Matt Zwolinski examines the nature of worker exploitation. He notes that it is commonly claimed that workers in sweatshops—understood as places of employment whose working conditions or labor and/or compensation practices are *prima facie* morally objectionable—are wrongfully exploited by their employers. Economists typically respond to this claim by pointing out that sweatshops provide their workers with tremendous benefits, more benefits than most workers elsewhere in the economy receive. Since the desperate life circumstances that motivate workers to seek employment in sweatshops are very frequently a result of injustice, however, Zwolinski considers whether the wrongfulness of sweatshop exploitation is to be found not in the discrete interaction between a sweatshop and its employees, but rather in the unjust political and economic institutions that form the background structure against which such interaction takes place. He tries to assess what role, if any, considerations of background injustice should play in the correct understanding of exploitation. He concludes that while background or structural injustice is, of course, a matter of import in itself, it does not typically matter for determining whether a sweatshop is acting exploitatively, and it does not typically matter in a way that grounds any kind of special moral responsibility or fault on the part of sweatshops or the multinational enterprises with which they contract.

The next two essays in the collection address issues of interpretation and provide analysis of the deeply influential work of John Rawls on the concept of justice. In “Rescuing Justice From Equality,” Steven Wall discusses Rawls's concept of justice in general and one of the two Rawlsian principles of justice—the difference principle—in particular. He argues that the difference principle—roughly, the principle which holds that social and economic benefits should be arranged in such a way that is of greatest possible benefit to a representative person of the least advan-

tagged class in society—presents an interpretive puzzle. The difference principle seems to require both Pareto-efficient improvements that benefit the worst-off and to permit arrangements that fail to maximize social and economic benefits to the worst-off. Wall notes that this puzzle underscores an ambiguity in Rawls's difference principle. On one reading, the principle favors a maximizing injunction which requires opting for the alternative that maximizes the position of the worst-off members of society relative to the other alternatives. On another reading, however, the difference principle seems primarily to embrace an ideal of reciprocity that the better-off should not gain from the arrangement of social and economic benefits unless the arrangement also improves the lot of the worse-off, or at least does not come at their expense. Wall notes that these alternative interpretations of the difference principle will recommend corresponding alternative regime-types and policy prescriptions within regime-types, and so the puzzle invites a rational reconstruction of Rawls's position. Pursuing the reconstructive project, Wall concludes by making a case for the position that the difference principle should be viewed as a maximizing principle of justice that assigns strong priority to the worst-off group, and contains no trace of commitment to equality as a distributive norm.

Christopher Heath Wellman also pursues an interpretive project in his contribution to this volume. In his essay, "Reinterpreting Rawls's *The Law of Peoples*," Wellman argues that critics of John Rawls's *The Law of Peoples* wrongly presume that Rawls sought to offer a comprehensive theory of global justice, when he meant more minimally to respond to a specific practical problem: "How can we eliminate the great evils of human history?" While Wellman concedes that his reading of Rawls is not uniformly supported by all aspects of the text, he suggests that *The Law of Peoples* is a rich and complex work that does not univocally recommend any single reading, and maintains that his construal squares with Rawls's own description of the project. More importantly, he notes that his interpretation is recommended by the principle of charity, insofar as it suggests plausible responses to commonly-voiced objections to Rawls's work. In other words, if Rawls is understood in *The Law of Peoples* as providing a comprehensive theory of global justice, then many of the standard criticisms appear quite damning. However, Wellman concludes, if the aim of the book is the more modest one of recommending how liberal (and decent) societies might permissibly organize their foreign policies so as to help eliminate unjust war, oppression, religious persecution and the denial of liberty of conscience, starvation, poverty, and genocide and mass murder, then Rawls's book is not problematic in the ways that so many have supposed.

In "Responsible Choices, Desert-Based Legal Institutions, and the Challenges of Contemporary Neuroscience," Michael S. Moore examines the ways in which contemporary understandings in neuroscience present

challenges to the basic way we think of ourselves in ordinary thought, morality, and the law. He describes the legal institutions, including both the political philosophy these legal institutions enshrine and the commonsense folk psychology they presuppose, that are challenged in this way by neuroscience. Three kinds of data produced by contemporary neuroscience are thought particularly to challenge commonsense views of ourselves in morals and law and Moore describes these in turn. He also distinguishes four major and several minor kinds of challenge that neuroscientific data can reasonably be interpreted to present. The major challenges are: first, the challenge of reductionism, that we are merely machines; second, the challenge of determinism, that we are caused to choose and act as we do by brain states that we do not control; third, the challenge of epiphenomenalism, that our choices do not cause our actions because our brains are the real cause of those actions; and fourth, the challenge of fallibilism, that we do not have direct access to those of our mental states that do cause our actions, nor are we infallible in such knowledge as we do have of them.

In his essay “Genocide and Crimes against Humanity: Dispelling the Conceptual Fog,” Andrew Altman clarifies the concepts of genocide and crimes against humanity, taking care to distinguish their legal meanings and their meanings in moral parlance. Altman points out that genocide and crimes against humanity are among the core crimes of international law, but that they also carry great moral resonance due to their link to the atrocities of the Nazi regime and to other egregious episodes of mass violence. Despite their prevalence, Altman observes that the concepts of genocide and crimes against humanity are not well understood, even by the international lawyers and jurists who are most concerned with them. He draws a number of distinctions aimed at clarifying the concepts. He suggests that it is important to maintain the distinction between the legal and moral concepts of genocide because each plays its own distinctive role in social life. The legal concept of genocide must, thus, be useful in ways the moral concept need not be for purposes of guiding behavior whose non-compliance will be met with legal punishment. Altman distinguishes three concepts of genocide—the existing legal concept, the ideal legal concept, and the moral concept—and two concepts of crimes against humanity—the cultural model and the discrimination model. He criticizes the current legal concept of genocide and, using the idea of discrimination, proposes a model for developing a more adequate legal concept and for better understanding the moral concept. Altman also criticizes in his essay the moral concept of crimes against humanity, which, he argues, many thinkers have conflated with the legal concept of such crimes.

The nature of the limits of criminal law is the subject of Gerald Dworkin’s essay in this collection, “Harm and the Volenti Principle.” Dworkin takes the work of Joel Feinberg as the basis for his discussion and considers the question whether there are any principles that deter-

mine what actions should be treated as criminal. He examines Feinberg's candidate principles—a harm to others principle, which regulates conduct on the basis of its harmfulness to other people, and an offense principle, which regulates certain kinds of offensive conduct—as well as a third principle, the Volenti Principle, which states that one cannot be harmed by conduct to which one has consented. Dworkin explores various issues that arise in connection with these three principles. He explores the possibility and implications of criminalizing some types of consensual conduct without appealing to a principle of criminalization that prescribes the prohibition of consensual behavior on the basis that it is in some sense thought immoral. He looks to the Volenti principle as a possible way to address the prohibition of the types of consensual conduct in question.

In the final paper of the volume, "Education and the Modern State," Anthony O'Hear criticizes the nature of contemporary education under the influence of Darwin's evolutionary theory and the views of philosopher John Dewey. He maintains that it is problematic that current trends in education reveal a failure to appreciate the value of exposure to and engagement with the products of a wide range of great thinkers of the past. O'Hear explores the ways in which modern democratic states are likely to be inimical to traditional liberal education. He objects to the creation of educational settings on a model of participatory democracy as well as the ultimate goal of this model, namely, to educate students to be good participants in democratic political life. This approach is troubling in part, he thinks, because it fails to treat education or cultivation of the mind as worthwhile in itself, but also because there seems no reason to think that this sort of educational system generates better citizens or even ones with any interest in politics at all. Drawing on theoretical considerations and recent history, he shows how any attempt to promote traditional educational values through state interventions, such as national curricula or state regulation, is bound to be unsuccessful. O'Hear concludes that the preservation of liberal education will best be served by the wholesale removal of education from the progressive state and its bureaucracies.

Issues in political and social philosophy persist in capturing the interest of contemporary thinkers and inspiring them to enter ongoing debates in novel ways. The thirteen essays in this volume address a constellation of themes in ways which, it is hoped, will contribute constructively to the shape and trajectory of these important discussions.

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#### ACKNOWLEDGMENTS

The editors wish to acknowledge several individuals at the Social Philosophy and Policy Center, Bowling Green State University, who provided invaluable assistance in the preparation of this volume. They include Graduate Research Assistant Christoph Hanisch, Mary Dilsaver, and Terrie Weaver.

The editors also extend special thanks to Administrative Editor Tamara Sharp, for her patient attention to detail, and to Managing Editor Pamela Phillips, for providing editorial assistance above and beyond the call of duty.

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## CONTRIBUTORS

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**Anthony O'Hear** is Professor of Philosophy at the University of Buckingham and Director of The Royal Institute of Philosophy. He has served as a senior advisor to five British Secretaries of State for Education. His books include *Beyond Evolution: Human Nature and the Limits of Evolutionary Explanation* (1997), *The Great Books: A Journey through 2,500 Years of the West's Classic Literature* (2008, 2009), *The Landscape of Humanity: Art, Culture, Politics* (2008), and *The School of Freedom: A Liberal Education Reader from Plato to the Present Day* [with Marc Sidwell] (2009). He is also editor of the journal *Philosophy*.