

## BACKING THE FOUNDERS: THE CASE FOR UNALIENABLE INDIVIDUAL RIGHTS

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### The American Founders' Central Contention

THE MOST IMPORTANT AND REVOLUTIONARY PASSAGE in the Declaration of Independence penned by the American Founders reads as follows:

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.

In this discussion I want very briefly to reflect upon that remark. I will sketch an argument in support of still holding that human beings do indeed have these rights, contrary to what many intellectuals argue in our time. (One of these is Professor Cass Sunstein of the Harvard Law School who heads the federal government's regulatory team. He holds that our rights are grants from the government!)

I need to note, as a start, that the Founders were very precise—they wrote that they “*hold* these truths to be self-evident” (my emphasis). They did not claim them to be self-evident most likely because they clearly are not. Many, many people see no reason to believe in the existence of these rights, nor in their unalienability, and not simply because they are blind. The reason is that those truths are complicated abstractions that need to be shown to be true *via* a complex chain of reasoning that rests on numerous controversial assumptions.

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I will proceed by sketching the case for the central political or public policy tenet of the Declaration, namely, that human individual liberty is indeed the sole public good and that so as “to secure these rights, governments are instituted among” us. (Here I merely summarize the case I make in my much longer treatment of the natural rights case for the free society which may be found in my two books, *Human Rights and Human Liberties, A Radical Reconsideration of the American Political Tradition, 2<sup>nd</sup> Edition* [Lanham, MD: University Press of America, 2011; first edition published in 1975], and *Individuals and Their Rights* [LaSalle, IL: Open Court Publishing Co., Inc., 1989]. It is in these works that the full details of the position I sketch here are presented. The present discussion is meant to be a reminder to champions of the free society that the defense advanced originally by John Locke is still a viable and important one, maybe superior to others advanced by utilitarians and positivists such as Ludwig von Mises and Milton Friedman.)

### **Freedom at Issue**

The basic human individual right to liberty—in the sense that each adult person is a sovereign citizen and no one has justified control of others’ actions without their permission—is still, objectively speaking, the highest political value, despite the relentless and often sophisticated and subtle contentions to the contrary. Mostly today it is communitarianism that stands against this position, as defended by the likes of Michael Sandel of Harvard University’s Department of Government and the host of the PBS-TV program “Justice.”

With the demise of Soviet socialism, many who have favored some version of collectivist human community organization are highly critical of what they call liberalism but what must be qualified as “classical” liberalism. This system, with which the United States of America has always been closely though not entirely uncontroversially associated, is once again taking it on the chin from innumerable theorists. For various reasons communitarians, market socialists and some tenacious democratic socialists reject the idea that human beings live most justly and are best off when they enjoy full protection of their right to sovereignty and liberty of action.

The skeptics, however, are wrong. Classical Liberalism’s natural rights based libertarian polity remains the best form of human community organization ever thought of by the human mind. Why?

Before addressing this question, let me propose that if there has been a persistent failure identified throughout human social life by successive generations—either explicitly or by implication—it has been that some

persons took it upon themselves to rule others. Slavery is clearly that kind of failure. Serfdom and the attendant class system is a close kin. Those who complained about industrialism in its early days were finding fault with what they saw as a system that was an extension of previous limitations on freedom. In so far as early industrialists relied on forcibly obtained feudal wealth and privilege, these critics had a telling albeit not quite coherent point.<sup>1</sup>

No doubt, the exact characterization of the limitation by some people of the liberty of others is a point of dispute dividing those with widely differing philosophies. Just what human political-economic freedom involves and what its protection requires is one of the most widely argued points in political thought. Should we try, by means of law, to secure every person's sovereignty, regardless of how capable he or she is of exercising it? Alternatively, should we strive, by means of certain political institutions (such as the welfare state) to alleviate all human misery, and thus "make people free" of all impediments to their flourishing in life? (This is a prominent thesis put forth by the likes of Professor Amartya Sen, with his *capabilities* approach to political economy. See his most recent exposition of his position in *The Idea of Justice* [Cambridge, MA: Harvard University Press, 2009].)

The answer usually depends on several factors but mainly on the view of human nature that underlies the analysis of freedom. Suppose that adult human beings are self-starters—that is, they have the capacity for *initiating* their conduct; i.e., they are essentially able to spur themselves into action (which would ready them for succeeding on their own at overcoming many challenges and even shortcomings or obstacles that they encounter in their lives). In that case it is the freedom from other person's intrusiveness within their social lives that serves as the major but also unnecessary block to their flourishing. Once protected in their right to freedom, their own efforts (and some measure of good luck) must make the difference and is expected to, since being free they could address other problems much better than if subjugated by others. If, however, we are all held back by outside forces, whether imposed by other people or by nature—so that without warding off these forces we shall remain literally helpless—then a different idea of human liberty needs to guide our legal system so as to help us flourish.

Indeed, within the tradition of liberal political theory the central debate has concerned the very nature of the sort of liberty that ought to be of

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<sup>1</sup>As consistent a libertarian as Father James Sadowsky argues for this in "Private Property and Collective Ownership," in Tibor R. Machan, ed., *The Libertarian Alternative* (Chicago: Nelson-Hall, 1974), pp. 119–33. He attributes the phenomenon to the inadequate rectification of feudal injustices in emerging quasi-capitalist systems.

political concern to us.<sup>2</sup> The classical liberal wing of this tradition has argued, more or less consistently, that the only type of human liberty worthy of specifically political concern<sup>3</sup> is the negative sort. The modern liberal wing has not embraced this view and has, indeed, deemed it too parochial. Human “positive” liberty means the freedom to advance toward the ideal that is fitting for oneself, usually with “society’s” help.<sup>4</sup> Thus the poor are not free even if no one actively oppresses them, no one steals from them to make them poor; the same holds for all those not equally positioned in life to attain their proper goals (whatever these may be). They are free only if their impediments are effectively removed even if this requires coercing others to serve in this mission.<sup>5</sup>

In this controversy classical liberals have held on to the restricted sense of the term “human liberty,” while modern liberals have held that it is best employed when used to mean much more than *not being intruded upon by others*. Modern liberals take it that human liberty means the condition of being enabled by others to make progress in one’s life. Indeed, the concept of liberty or freedom for them means choosing without any serious obstacles, not just without having others restrict one’s actions. Or, the freedom modern liberals have in mind means that whatever obstacles stand in the way of a person’s progress ought to be removed by whatever means are available in society. This, of course, requires that the resources to remove those impediments have to be obtained by the state and handed to those who suffer the impediments involved. Thus whereas for the old liberals the state is supposed to protect us from those who would intrude themselves upon us,

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<sup>2</sup>The former conception of freedom is usually designated as “negative,” while the latter as “positive,” suggesting that in the former case the (right to) freedom is from others’ intrusiveness in one’s life, actions and property, while in the latter the (right to) freedom is to do or be something. See, Tibor R. Machan, “Moral Myths and Basic Positive Rights,” *Tulane Studies in Philosophy* (1985), pp. 35–41, as well as the accompanying essays in that issue. See, also, the classic discussion by Isaiah Berlin, *Four Essays on Liberty* (London: Oxford University Press, 1969), chapter 3.

<sup>3</sup>That is, pertaining to the principles that ought to govern human actions vis-à-vis other persons in a community aiming for suitability to human flourishing.

<sup>4</sup>It is notable that some conservative political thinkers, e.g., Thomas Hill Greene, have also subscribed to the “positive” conception of liberty or freedom. Indeed, we can trace this conception all the way back to Plato. Consider Edmund Burke who proposed that “We are afraid to put men to live and trade each on his own private stock of reason, because we suspect that this stock in each man is small, and that the individuals would do better to avail themselves of the general bank of nations and of ages.” *Reflections on the Revolution in France* (Indianapolis: Hackett Publishing Co., 1987), p. 76.

<sup>5</sup>Even in popular discussions there is the position that someone who may not be prohibited to or prevented by others from, say, travel, but cannot afford or is otherwise unable to do it is not free to travel!

for the new liberals the state must itself intrude upon us if others can make use of what they like to call our surplus wealth. From protector of our rights the state, thus, became their violator.

The difference between the two liberal positions—and there can be others but those are not germane here—pertains mostly to how each views human nature. To see what kind of liberty is indeed vital—or which conception of liberty is most appropriate—the inquiry must begin with human nature. We need to have a clear notion of what a human being is, just for being human, to learn what kind of social life is suited for human flourishing.

### **Skepticism about Human Nature**

Yet, there is a problem here, as well. In an age when the most trendy idea in philosophy seems to be the kind of pragmatism in which talk of human nature is moot if not entirely confused, one cannot simply set off on a journey to discover human nature without first having to decide if that road is even open for travel. Deconstructionists, cultural relativists, pragmatists and the like tell us that the road is closed, we must rely on (usually culture bound) historical agreement, which itself is founded in not much more than accident. In that case there cannot be an answers to our inquiry about how we might best live with each other—it's all indeterminate, awaiting the outcome of helter-skelter convention.

There is indeed a political concomitant to such a view of what human nature is, namely, communitarianism. This view seems best to accommodate the rejection of the very possibility of objectivity concerning our efforts to come to know reality.

Assume, for a moment, as the prominent pragmatist the late Richard Rorty argued, that objectivity is a myth (because it would require for us to “climb out of our minds”). Suppose that in its place we must embrace solidarity or inter-subjective agreement we reach within our community.<sup>6</sup> Then it is impossible, in principle, to stand in opposition to the group or collective with some better idea an individual may have formulated, based on his or her objective assessment of some situation. Nor is it possible to assess the respective merits of the innumerable communities that solicit our loyalty as individuals who might become their members. This is because under this view good ideas are precisely those that a group collectively proclaims to be such. Since objectivity is impossible, no individual human being's mind could grasp what is true or right and set the results against the prevailing group or

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<sup>6</sup>Richard Rorty, *Objectivity, Relativism, and Truth* (Cambridge University Press, 1991).

decide among groups. The result of the impossibility of objectivity would, in part, be political paralysis.

### **Consequences of Anti-Objectivism**

So the pragmatist/communitarian approach is more of an evasion than a viable answer for us. To start with, it is self-defeating because by its own tenets its own pronouncements have no general validity. It also rests on a misconception of the human mind—as if it were a tool by which we shape rather than grasp reality. We do not know by altering the world; we know by apprehending or grasping it, leaving what we grasp unchanged unless we are careless and permit our prejudices to obstruct our understanding.

Some may be able to afford an uncritical view that takes the group's judgment for granted. Most people throughout history have had the need to get glimpses of what might be best in contrast to what the group proclaimed. And the preference for the collective's opinions as against any possible individual's objectively grounded opposition is no more than some the preference of some people as against those of others, with no valid claim to better standing.

Thus it is self-annihilating to insist on the view that the community is right, since no right and wrong can be established. We must look to another source for satisfactory answers, one that makes sense of the fact that sometimes communities are right as against some of their members, and at other times they are wrong and the few opponents or even just one such rebel may be correct, based on his or her willingness and skill at being objective or, in the context of ethics or politics, just.

Communities cannot be the court of last resort—they too often judge with bias and intolerance. The idea of substituting solidarity for objectivity would render the very idea of a dissident incoherent—all that would be left is what the Soviet officials claimed, namely, mentally ill members of the collective who had to be cured so as to rejoin the group.

### **Human Nature**

What, then, can we say about human nature that stands the test of objectivity—of meeting the standards of being true to our unprejudiced observations and experiences?

All acts of human inquiry, of the search for answers, however fruitless they may often seem, suggest an answer to our question. Human beings are by nature creative, not merely responsive. They do things on their own initiative—that would explain better than any thing else all our developments,

cultural changes, diversity of approaches to life, varied philosophies and religions, as well as much of our disagreements, conflicts, even animosities. No other animal appears to change and develop its environment and life circumstances so drastically and often and be so often at odds with members of its own species concerning what is the best thing to do. We, in contrast, are always coming up with new ideas, plans and solutions to problems, even if these were little more than the rejection of proposed solutions, the abandonment of theories, the denial of answers.

Still, as the ancient Greek Cratylus, Plato's first teacher, discovered (despite his adherence to Heraclitus's relativist doctrine), one couldn't function in this world without a system of communication. Common indicators, if not outright words, need to be employed—in his case, hand signals—just to make sense to one another. So, our relentless innovations—as well as our many disagreements—demonstrate our creative nature as human individuals, while our need for and reasonably successful practice of communication testify to our occupancy of common ground, our membership in an objectively determinate species in an objectively determinate reality.

We seem to be aware of this fact of human reality in many spheres, from strictly personal relations to international economics, from law to morality, in art as well as in science. Language clearly illustrates it—we need some stable principles for understanding and clear expression, but we also need the malleability that's part of every living language. In short, there is both the diversity that comes from individuality as well as some measure of uniformity that furthers community. This would appear to attest to both a common human nature and to the essential element of the individuality of each human being. (It is just what distinguishes human beings as rational animals that also alerts us to their individuality, since to be rational requires individual effort or initiative, something that places the particular individual in a decisive role in his or her life. This also explains best the frustration about never being able to guarantee that we will get people to think along certain lines, that we will finally persuade them—they always have the free will to reject, even very good arguments, or to come up with better ones.)

## **Politics**

What, if any, political consequences follow from this basic fact of the world?

First, we can be reasonably certain that there are some laws or principles of human community life that can serve as ideals for every human community to aspire to. By virtue of the fact that we are human beings, there

would be some features every decent, just human society would have to have in common. Indeed, the concern with human rights, expressed by various international organizations, is very probably a social articulation, albeit often muddled in its details, of the realization of this fact.

Our capacity for grasping such basic principles is highly disputed by all sorts of skeptics, yet such a stance is fraught with paradoxes since it, too, aims at grasping what is what about the human situation. We may proceed, then, with the inquiry, provided we do not expect something impossible from it, namely, *the final word* on the topic of basic principles. Human knowledge is not some concluding snapshot in no need of further touchups. It is, rather, the best assessment of the world we can come up with for our time and place. We know when what we have is the result of having done our very best to learn. And we know enough about ourselves by now to have learned some vital facts that should guide our political communities. (This is the view so well laid out by J. L. Austin in his famous paper “Other Minds.”<sup>7</sup>)

Second, while we have human nature as the source of stable facts for purposes of guiding our political organization, at the very same time we accommodate, also, the fact that change must always be anticipated. That is because the basic, natural human rights we can identify based on what we know about human nature spell out borders within which we are free to live and grow in each other’s company. Human rights—as expressed, for example, by the basic provisions of the American Bill of Rights—as prohibitions laid out against others, including (especially) against governments, aiming to safe-guard our liberty to make changes, to keep developing on all fronts of human existence.

### **Liberty and Generosity**

But, one might ask, if these rights are all a matter of protecting people so they may act freely, creatively, on their own initiative, what happens to those who are ill equipped, hampered—by handicaps, poverty, illness, bad fortune—in their abilities to be creative, to develop with some measure of success? Don’t they have human rights to be helped? Are they not entitled to support? In the terms of some political theorists, don’t those who need support have (positive) rights to welfare, security, and enablement?

To see why the idea of positive rights is a confused one, we need to consider at this point the important concept of compossibility: A compossible set of rights is a set of rights that are not in conflict; they can be

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<sup>7</sup>J.L. Austin, “Other Minds,” in *Philosophical Papers* (Oxford, UK: Oxford University Press, 1970).



respected and protected for everyone. One person's positive right to health care would be protectable but only if someone else's fails to be protected—goods and services are always scarce. Moreover, positive rights *necessarily contradict* negative rights. To protect the right to health care would involve not protecting the right to liberty of those who may not want to provide such health care. The negative rights position holds that while it may well be a good thing for everyone to have health care, it would be wrong to force doctors to provide it on terms to which they object, without their consent. Even if one might argue that in some drastic, emergency cases this does not hold, as a system of law upholding the set of negative rights—to life, liberty and property—is far more conducive to justice than the idea of protecting positive rights.

At most, then, what positive rights or entitlements are can only be understood, coherently, to be values sought by many, values they may obtain through their own effort or by means of other people's generosity, not as a right. Treating these values as rights or entitlements actually implies the need to place others into involuntary servitude.

Of course, the idea of a free society does not foreclose any efforts human beings want, indeed often ought, to make in behalf of others, quite the contrary. It is only free human beings who ultimately are enabled to creatively help their fellows, not because those fellows have a lean on their lives but because they are fellow human beings whose plight is understandable by those who enjoy their own capacities reasonably unimpaired.

### **The Prospects for Flourishing**

On the broad canvas of human history, persons who have been free have, in the main, been more helpful to the rest than those who have been coerced by governments to render service. Excepting perhaps some emergencies, governments ruin the plight of the needy by thwarting the creativity of the able and willing—including the creative and ambitious traits of the temporarily helpless—at least in the long run. Slaves don't make very efficient good Samaritans, nor do they exhibit much ambition.

So the prospects for both the fortunate and the less fortunate are greater if the human right to liberty is promoted, protected, and maintained within the various legal orders that guide different human communities.

The revolution that changed the bulk of the Western world from feudal to a constitutional individualist order—attempting to secure the sovereignty not of collectives or elites but of every individual—has reached Eastern Europe, much of Asia, Latin America and even portions of Africa. This so

called bourgeois revolution—when referred to by historicists such as Marxists—is the main, central, and crucial turnover of political institutions in recorded history—it shifts power from groups of human beings to individual human beings. It is the revolution that rejects the essence of nearly all old orders, namely, the view that humanity is either some whole entity (deriving in part from its characterization as a Platonic ideal standing above all particular persons) or a collection of smaller groups arranged in a hierarchical order. What is put in place of these collectivist conceptions by the “bourgeois” revolutions of the last three centuries is humanistic individualism, the view that any individual adult human being is equal in worth to any other when it comes to the possession of the rights to life, liberty and property.

Of course, to flesh out a detailed meaning of such a revolution takes time and patience and has encountered as well as will continue to encounter massive setbacks. The twentieth century has seen major backlashes already, in fascism and communism, as well as less significant but often equally noisy attempts at small time collectivist states (e.g., Iran’s theocracy).

Nevertheless, the revolution has made enormous impact on the world and by any reasonable assessment—which excludes, for example, measuring human flourishing by impossible, ineffable standards—has accounted for the production of a better life on earth throughout the globe. (Of course, because of population growth, this can only mean that the percentage of human flourishing has improved, even though large numbers of persons are still in dire straits.)

There is no guaranteed progress in human life. Persons are capable of leading destructive as well as flourishing lives and it is always up to them, to some extent, which they will choose to lead (even if in free societies there is greater likelihood that they will make the better choices). No revolution, in any sphere, is irreversible. To sustain it must always be a feat of human effort, an effort presuming a diverse division of labor.

One such area of sustaining labor is political thought. And on that front few can doubt that in our time massive work is being done to undo the revolution. We have few prominent intellectuals, outside of economics, defending the principles of the bourgeois revolution. And the economists’ efforts cannot be sufficient since they lack the crucial ethical component—one can agree that *laissez-faire* is more productive than its economic alternatives while still dispute the moral climate that *laissez-faire* supposedly promotes—e.g., consumerism, hedonism, etc. One needs to show that prosperity, which *laissez-faire* enhances, is something worthwhile, not merely a greed driven objective, crass materialism. In political philosophy there is

much support for some kind of democratic socialism or, at least, the democratic welfare state. Communitarianism—that euphemistic version of socialism—is on the rise, promising a benign version of the collectivist menace. Such support usually follows conclusions about the corrosive nature of capitalism, individualism and competition. To counter such contentions it is not sufficient to reiterate that laissez-faire is economically superior to socialism, communitarianism, fascism, etc.

### Communitarian Counter-Revolution

Individualism, as well, is being belittled more actively than it has been in recent decades—usually by distorting it to mean some kind of legacy of atomism. Books by Charles Taylor and Robert Bellah and his colleagues<sup>8</sup> attempt to demonstrate the point Karl Marx made in his essay “On the Jewish Question,” namely that to acknowledge human beings as essentially individuals means identifying them as isolated social atoms or hermits and that this is destructive of community life. That there is a richer, much more socially compatible yet still fundamentally individualist conception of human life (unlike what we have inherited from Thomas Hobbes and classical and neo-classical economic science) is largely ignored, perhaps because the goal of such critics is to advance to some form of collectivism, never mind the shape of individualism.<sup>9</sup>

Perhaps the most vocal outcry about classical liberal individualism focuses on problems of community within the framework of this political outlook. Without delving into this matter at length, it needs to be noted that because individuality is central to human nature, classical liberalism is not able to advance some general or universal theory of voluntary community life. Indeed, as Robert Nozick observed,<sup>10</sup> what distinguishes the libertarian

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<sup>8</sup>Charles Taylor, “Atomism,” in *Philosophy and the Human Sciences* (Cambridge: Cambridge University Press, 1985); Robert Bellah, et al., *Habits of the Heart, Individualism and Commitment in American Life* (New York: Harper & Row, 1985) and *The Good Society* (New York: Harper & Row, 1991). One might take note, also, of the recent development of organizations, with the leadership of Professor Amitai Etzioni, devoted to the furthering of what is called communitarianism. See the journal published to this end, called *The Responsive Community*, under Professor Etzioni’s editorship, as well as his book *The Spirit of Community* (New York: Crown, 1993).

<sup>9</sup>For a detailed discussion of some of the points mentioned above, see Tibor R. Machan, *Capitalism and Individualism, Reframing the Argument for the Free Society* (New York: St. Martin’s Press, 1990). In this work I identify what I call “classical” individualism, so as to distinguish it from the *homo economicus*, neo-Hobbesian version that is the usual target of critics such as Karl Marx, Michael Foucault, Thomas Spragens, Jr., and Amitai Etzioni.

<sup>10</sup>Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), Part III, “Utopia.”

political order is its hospitality to numerous experiments in human community life. And, indeed, what we find in a moderately free nation such as the United States of America is the presence of innumerable overlapping human communities to which nearly all citizens simultaneously belong. Yet, it is arguable that the only human community as such—suitable to any and every human beings—is one that does not impose particular community goals on its citizenry. It makes it legally and otherwise possible, however, to develop innumerable communities—churches, clubs, neighborhoods, corporations, professional associations, fraternities, political parties, etc., etc. This is just what would expect in light of the fact of the essential individuality and uniqueness of human beings—that this aspect of their nature be reflected in the variety of communities their interaction generates.

Accordingly, every effort needs to be made by men and women, all of whom at least implicitly set themselves the task of flourishing here on earth, not to allow the backsliding to become dominant through contemporary culture. Such an effort must, however, be made without resorting to any violation of the individualist principles—e.g., without censorship. It must be a matter of relentless argument and application of the principles of individualism to public policies and private conduct.

Unless the momentum is maintained in sustaining the political revolution that has turned human legal institutions toward supporting the flourishing of all human individuals here on earth, there will be massive reversals toward class warfare and oppression. Some signs of those reversals are evident already and the diminished prominence of individualism among American intellectuals and political figures has made the advance of this revolution less likely now than it had been earlier. One can only hope that members of the intelligentsia will not continue be mesmerized by alternative systems that promise them greater powers over others in the name of chimerical politics, culture and economics. Calls for civility and virtue that in fact replace the initiative of human individuals and their voluntary associations with state power impede rather than advance the humanistic objectives that impelled the founders of the American republic to put freedom first, as the central public good to which nothing else must be sacrificed.

## **Conclusion**

So let me summarize the natural rights position: Human life requires that an individual live rationally because that is what living the life of a human being amounts to and that is to what a person commits himself when he chooses to live. The natural rights theory outlined here is based on an ethical

view in terms of which the morally good human life consists of a person living rationally. Success, excellence, or happiness (in the sense of full flourishing as a human being), is best pursued by choosing to live in accordance with the requirements of one's nature as a rational animal.

This is where natural rights emerge for human beings as the basic principles of their communities. What, if anything, does the fact of our moral nature—our responsibility to choose to do what is right—tell us about human community life? That only a human community the fundamental organizing principles of which incorporate the basic facts of human morality can be said to accord with human nature, be conducive to human moral goodness and thus be characterized as fitting or just. Such communities are not however ones, that are populated only by good human beings. (That could come about by way of accident: people might accidentally gather together and all at once be at their best, regardless of the organizational characteristics—constitution—of their community.) A good human community is such that it makes moral goodness more than accidentally possible while living among others human beings and thus enhances human goodness. This is where natural rights surface.

The just political community is what it is because it accurately reflects the requirements of human nature within the context of community life—that is, it meets the requirements of morally sovereign individuals by means of respecting and protecting individual human rights to life, liberty and property and dignity. These rights are the standards of justice for the organization of a human community life. They spell out everyone's sphere of authority, one's freedom within the community of other human beings.<sup>11</sup>

If one appreciates fully enough that adult human beings possess a moral nature—whereby it is crucial that they make their own decisions within their sphere of authority, circumscribed by their negative rights—then one can see why a just political and legal system would provide primarily protective rather than active or directive policies. Given the naturalist basis of

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<sup>11</sup>That these (negative) rights—ones that put up prohibitions for all concerning what may be done to another human being—can be the foundation of justice is disputed often on the grounds that justice requires greater activism, not merely protection from untoward acts. A just state or government would, accordingly, engage in certain promotional activities—legislate appropriate conduct, further the good behavior of its citizens, repair past social wrongs, etc. How, then, could the administration of a system of basically negative rights—i.e., protecting against people's intrusiveness such as murder, assault, robbery, fraud, embezzlement, kidnapping, and adjudicating charges of the commission of such deeds—count as the maintenance of justice? Because anything more would amount to treating people paternalistically, as if they were all children in need of being cared for by adults all of whom just happen to be officials of the state!

this idea of justice and given the idea of human nature that makes the best sense, it would appear evident that a just system must be engaged in securing peace and the respect of negative rights rather than promote certain ends or objectives, something only individual choices may facilitate.