

# LIBERTY, RESPONSIBILITY, AND PHILANTHROPY: INDIVIDUAL RESPONSIBILITY IN A FREE SOCIETY

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## I. INTRODUCTION

It is not for nothing that the subject of our symposium, "Liberty, Responsibility, and Philanthropy," invites us to reflect upon liberty and responsibility in the context of philanthropy. For philanthropy, which Webster defines as "a desire to help mankind, especially as shown by gifts to charitable or humanitarian institutions," is possible only where liberty and responsibility obtain: the liberty to make such gifts, without coercion, and, prior to that, to create the discretionary wherewithal to give and the eleemosynary institutions to which to give; and the responsibility to appreciate the point, the purpose, and the parameters of giving. Yet by juxtaposing liberty and responsibility, our subject suggests a certain tension as well, for liberty implies a right not to give every bit as much as it implies a right to give, whereas responsibility suggests, or at least is often thought to suggest, a certain lack of freedom--perhaps the absence of any such right to abstain, even an obligation to give "responsibly."

In the cluster of ideas that define our symposium, then, there is much to be sorted out, for the intellectual confusion that often surrounds the very human phenomenon of philanthropy too often leads not only to personal confusion but to public confusion as well--and, in particular, to public policy confusions encoded in law. Indeed, the philanthropic impulse, construed at least as a responsibility, has long been thought by many to underpin precisely that nexus between morality and law that serves as the springboard to the modern welfare state. In this view, public philanthropy, carried out through the state, is merely private philanthropy writ large, nothing more, nothing less. Much as we are responsible for engaging in a range of philanthropic activities in our private capacities, the argument runs, so we are similarly responsible in our public or political capacities.<sup>1</sup>

Yet that view of public philanthropy has never been universally accepted, however much it may have driven modern public policy.<sup>2</sup> In fact, the "philanthropy" of the modern welfare state raises a host of questions, not least the question whether the coerced transfers that constitute such philanthropy can go by that name without doing serious damage to the language. Again, does public responsibility for activities of a charitable or humanitarian character relieve us of our private or individual responsibility for such activities? Or does public responsibility instead change the purpose and character of private philanthropy? Indeed, what is the relation, if any, between public and private philanthropy--the moral as well as the practical relation?

Before we try to answer questions such as those, however, it would seem necessary to answer a logically prior question, namely, whether individuals are responsible for philanthropic activities. If they are, we will need also to know about the basis and character of that responsibility. Only then will we be in a position to determine whether private philanthropy can serve as a springboard to public philanthropy--whether the latter is indeed the former writ large--and what the relation between the two might be. What we need to examine at the outset, then, is the question of individual responsibility in a free society.

## II. INDIVIDUAL RESPONSIBILITY IN A FREE SOCIETY

To look into this narrower question about the responsibility of the individual in a free society we need to focus first on the character of the free society itself, then upon the meaning and character of individual responsibility within that society. More precisely, we need to have a clear understanding of those basic moral relationships that are described by our individual rights and obligations; to distinguish

obligations from responsibilities--although closely related, they are not the same; and then to determine how philanthropic acts and institutions fit into that moral framework. After that we will be in a better position to take up questions about public philanthropy: whether and how such an institution might be justified; what its character might be; and what implications the institution of public philanthropy might have for individual responsibility and for the free society itself.

#### **A. Rights and Obligations**

We look first, then, at the character of the free society, and in particular at the rights and obligations of individuals within such a society. Although it may seem presumptuous to speak of "the" free society, given the variety of societies around the world that today call themselves "free," we can nonetheless draw, from moral, political, and legal theory, a certain stylized or ideal picture, to which actual societies may be compared as being closer or further from the mark. This effort need not be entirely abstract, however. In fact, history affords us such a model in the form of the seminal phrases of the American Declaration of Independence, which inspired not only our own relatively free society but many others as well, however much each may have strayed from that ideal over the years.

In explicating those seminal phrases, then, we discover first that the picture is drawn with reference to moral principles that are said not simply to be true but to be self-evidently true. They purport to be truths of reason, that is, applicable not only to America and Americans but to all mankind, everywhere, at all times.<sup>3</sup> This is not the place to enter into the character and cogency of such ultimately abstruse epistemological claims. Suffice it to say that the propositions that follow, at least in their general formulations, have been sufficiently cogent to compel the assent of a wide range of people over a wide range of circumstances for quite some time, suggesting that they must be reaching something of the essence of the human condition as it relates to our moral and political relationships.

And what are those propositions? First, a premise of moral equality, as defined by our equal individual rights to life, liberty, and the pursuit of happiness. Second, the proposition that to secure those rights, we create governments. And third, entailed by the premise of moral equality, the conclusion that governments' powers are legitimate only if grounded in consent.

So rich is this picture with implications for our principal subject that it bears fuller explication. Notice first that the premise of moral equality takes as primitive the individual, as from a consideration of methodological simplicity it must; for the individual, however complex, is both logically prior to and simpler than the organizations or institutions he creates. Moreover, by starting with the individual rather than with the group, however defined, the free society recognizes the individual, both analytically and morally, as the fundamental unit of society, the logical and moral building block for everything else--family, association, society, state. This point cannot be overstated, especially when we reflect upon those systems and societies that proceed from some other premise.<sup>4</sup> For in beginning with the individual, the free society gives primacy, by definition, to the private realm of the individual, the original and fundamental locus of rights, obligations, and responsibilities. By implication, it is to the individual's rights, obligations, and responsibilities that we must ultimately return when deciding moral questions.

Notice too that the moral coin of this private, pre-governmental realm is rights--and, by implication, the obligations that stand correlative to rights--not values or non-right-related duties or responsibilities or any other term of moral discourse. This point too is crucial, and often leads to misunderstanding; for in keeping with the primacy of the private individual, it means that the fundamental interpersonal moral concept in a free society is at bottom a claim and that that claim is self-regarding. In essence, rights are justified claims about one's entitlements with respect to the actions of others, claims that others have an obligation to do or not do some particular thing.<sup>5</sup> In this basic sense, then, rights are "selfish"; yet they are also "moral" insofar as they connote a right-holder's evaluative and justificatory conception of some entitlement as well as a claim, stated as an obligation, upon the actions of another.<sup>6</sup> Indeed, who would deny that our "selfish" rights to life, liberty, property, association, and so on are anything but moral, notwithstanding their self-regarding character and their claim upon the actions of others?

This self-regarding character of rights needs to be correctly understood and appreciated, especially in a discussion about liberty and philanthropy; for while the liberty that rights secure is ordinarily thought to be a good, and indeed a moral good, it is a good in the first instance for the right-holder, not necessarily for others, who might be better served, at least in the short-run, were the right-holder without some relevant liberty. The concept of "a right," then, is not in any essential way altruistic--an idea frequently associated with philanthropy. This does not mean that rights are in any way morally inferior, however. On the contrary, because they are grounded in the normative structure of human action, rights have a certain rational and objective quality about them, unlike the subjective values we may or may not have at any given time, such as altruism. Accordingly, rights describe our basic moral relationships with others--the entitlements we have against others, the obligations we have toward others--quite apart from whether any of us may or may not value those relationships and the rights and obligations that describe them. Rights, then, are quite different from values, which reflect not our normative relationships with others but our various judgments, attitudes, feelings, or sentiments about the world. Our values are what give point and meaning to life. Rights, by contrast, constitute the basic moral framework within which each of us lives his life, within which each of us pursues his values, however wise or foolish, enlightened or benighted, altruistic or selfish those values turn out to be.<sup>7</sup>

Having distinguished rights from values, at least in outline, we need now to move closer toward determining what our rights are. To do that, however, it would be useful first to distinguish general from special relationships, described, respectively, by general and special rights and obligations.<sup>8</sup> In essence, we stand generally related to each other insofar as we are strangers, as that term is understood in the classic Anglo-American common law. The general rights and obligations we hold, therefore, owe nothing to anything we may have done with respect to another or to anything that may have happened to us at the hands of another. Rather, we hold such rights and obligations simply in virtue of our being human. They are our natural rights and obligations, held against and owed to strangers generally. By contrast, special rights and obligations arise only in time, from particular events such as promises or crimes, and are held against or owed to the particular or special parties to the event that brought them into being. Special rights and obligations are not natural, then, but are created in time, in the process of which we alienate various of our natural rights and obligations, replacing them with special rights and obligations. This distinction between general and special relationships is crucial to keep in mind because it points to the source of and hence to the basic justification for our various rights and obligations.

What then are our rights in a free society? However variously described, and however complex their interpretation over the manifold circumstances of life, they all come down, in one way or another, to a single idea--property.<sup>9</sup> John Locke, the philosophical father of the American Revolution, put it well: "Lives, Liberties, and Estates, which I call by the general Name, Property."<sup>10</sup> Each of us can be said to possess a property in his life, including his body; his liberty or actions; and the property he acquires in the world--real or moveable, tangible or intangible--without violating the rights of others. When rights are reduced to property not only do they become more concrete but the task of distinguishing real from putative rights--of distinguishing rights from needs or wants or wishes--is made easier because we can always inquire into the character of the putative holding and, in particular, into whether it is held free and clear or instead is simply enjoyed at the pleasure of another. Moreover, this approach gives us a clearer conception of what it is to violate a right, namely, to take what belongs free and clear to another--his life, liberty, or property.<sup>11</sup>

In keeping with the premise of moral equality, these general rights are all held equally in the sense that no one's rights are superior to or take precedence over anyone else's. This does not mean, however, that differences in holdings will not arise and result in differences in opportunities. In fact, such differences are inevitable in a free society--indeed, are the mark of a free society, where individual differences in taste, ability, luck, and so on yield different individual holdings. It is important to recognize, moreover, that the attempt to equalize holdings through coercive redistributive measures, far from creating equal rights, creates a regime of unequal rights, a regime in which people are treated

unequally, the holdings of some being taken to enlarge the holdings of others, which is the very mark of an unfree society, as we will see later. Our general rights are equal rights, then, however unequal may be the results of our exercising them as we work our way through life.

Starting from this base of general relationships we can rationally construct or derive the whole of the private realm. To do this, however, we need to notice a characteristic of our general rights that will be very important when we turn more directly to the issues of philanthropy, namely, that the obligations correlative to those rights are all negative, are all not-doings.<sup>12</sup> The claim that a general right-holder is entitled to make upon the world of strangers, that is, is limited to their not taking what belongs to him--his life, liberty, or property. Were it otherwise, were we to be able to claim, by right, the affirmative assistance of strangers, we would undermine the very idea of a right, which is a self-regarding claim to what is ours, not a claim to what belongs to someone else. Moreover, we would have an inconsistent body of claims: we would be claiming, by right, what is ours while claiming as well what belongs to someone else, all the while that that other is also claiming what is his. No, the world of general relationships is not a world of conflicting claims, a world of inconsistent rights, but a world grounded in reason and hence a consistent world. It is a rational but rigorous world in which our only obligation toward our fellow man is to leave him alone, to not interfere with him, to not take what belongs to him, to let him plan and live his own life as he sees fit. This is his right, his only right, coextensive with our own against him. This is our obligation, our only obligation, coextensive with his toward us.

To say, however, that the basic world of common-law strangers is a world of live-and-let-live is not to say that those strangers may not come together. Rather, it is to say only that they may not come together through force, through taking what belongs to another. We come, then, to the two basic ways in which strangers come together to create special relationships--through force (or fraud, which is a complex variation of force) or voluntarily, through mutual consent. There are in turn two basic kinds of forced relationships: torts, which are takings that arise by accident; and crimes, which arise intentionally.

The voluntary relationships, where promise or contract constitute the foundation, are as various as human imagination and inventiveness permit--from marriages to commercial exchanges to associations, corporations, and on and on. Whether forced or voluntary, however, special relationships are "special"--in contrast with the general relationships from which they arise--because they are brought into being by some particular or special event--a tort, a contract, a marriage--and because the rights and obligations that describe them more precisely are held only by the particular or special parties to that event, not by all the world generally. Again, these are not our natural rights and obligations but the rights and obligations we create in time, against a background of natural rights and obligations.

And what are our special rights and obligations? Once again, however variously described over the manifold circumstances of life, they all come down to two basic ideas--which can be reduced in turn to conceptions of property. In the case of forced relationships, the right of the victim is to be made whole, to be returned to the status quo ante; the obligation of the tortfeasor or criminal is to do just that, which will rectify the wrong he committed when he violated his victim's general right to be left alone. In the case of voluntary relationships, the rights and obligations of the respective parties are, quite simply, whatever they have agreed to, explicitly or by implication, nothing more, nothing less.

In broad outline, then, the basic moral picture is complete, save for the complex issues of enforcement. It is a sketch of the rights and obligations each of us has in the private realm, prior to the creation of government. These are the rights there are to be enforced or secured--and all the rights there are--whatever the means for doing so. If we return to the Declaration of Independence we discover that only now--after the private world of rights has been set forth, rights that we get not from government but from nature and from what we make of nature--does the public realm enter the picture: "that to secure these rights, governments are instituted among men." Logically, of course, it is not necessary that government enter the picture: in fact, Locke was clear that every individual in the state of nature possesses the executive power, the right to enforce his own rights. But Locke and other of the classical theorists were also clear that the self-help measures of private enforcement entailed substantial risk of

uncertainty and mistake, risk that would be lessened, they believed, if each of us handed the executive power over to a single sovereign, called the state, which would then exercise that power on our behalf.<sup>13</sup>

That process of handing over--the process of creating the state--is fraught with difficulties, all related to the issue of consent. We will examine those difficulties shortly. For the moment, however, let us assume that the state, or public realm, has arisen legitimately from this private realm and that its function, its sole function, is to secure our rights, which it does by recognizing those rights through case or statutory law, then enforcing them through institutions of civil or criminal law. Having drawn a picture of the free society along lines envisioned by theorists of the classical liberal tradition--a society in which every individual has an equal right to plan and live his own life, to pursue his own values, free from the interference of others, including the state; having described in broad outline the rights and obligations that each of us has in such a society--the rights we have to be secured, quite apart from the further rights we have with respect to the processes necessary to securing them; we are now in a position to begin inquiring about individual responsibility in that society, which we will do by first distinguishing between obligations and responsibilities.

### **B. Obligations and Responsibilities**

As noted earlier, "obligation" and "responsibility," although closely related, are nonetheless distinct moral notions. Viewed from the perspective of the free society, they are doubtless thought to be related because they both connote a certain unfreedom. Even in a free society of the kind just depicted, that is, moral obligations and responsibilities are not lightly avoided or evaded, especially if they are reflected in the legal code of the society and hence are legal obligations and responsibilities as well. For not only might there be private or public sanctions for the failure to satisfy one's obligations or responsibilities, which would further restrict one's opportunities or liberty, but even if performed, making sanctions unnecessary, obligations and responsibilities are ordinarily thought to be other-regarding and hence to be restrictions on the pursuit of one's self-interest. To be sure, from a more enlightened perspective we often restrict our freedom to enlarge our freedom--we are thus ordinarily thought to be more free under a rule of law than outside such a rule. Nevertheless, in their immediate significations, "obligation" and "responsibility" share this idea of being restrictions on liberty, even when from some evaluative perspective we may want to satisfy them or when doing so enlarges freedom by ensuring order and the satisfaction of expectations that order makes possible.

Still, there are important differences between "obligation" and "responsibility" that need to be drawn out if we are to understand how those ideas function in the philanthropic context. Most important, "obligation" is a relatively more precise idea, grounded as it is in the theory of rights and hence in the rational foundations of that theory, not in values, with all their subjectivity. Looked at analytically, as noted earlier, obligations stand correlative to rights: for one person to have a right just means that some other person has an obligation correlative to that right. Because rights are relationships and are claimed against obligation-holders, without the latter there would be no right-holders. There are no "free rights," then, for rights and obligations constitute a zero-sum game.

Beyond this analytical point, however, is a deeper issue relating to the foundation of rights and obligations in principles of reason. For that foundation gives rights a certain objectivity, rooted as they are in considerations of logical necessity: in fact, on pain of self-contradiction do we deny the justification of the rights and obligations of ourselves and others.<sup>14</sup> That objectivity means in turn that rights, and the law that recognizes them, constitute a much surer foundation for public policy than would be the case were that policy based on shifting subjective values. In fact, law rooted in rights and hence in reason will sometimes find itself opposed to, and by, shifting "social values." Because values, whether individual or "social," enjoy nothing like the epistemological foundations we find for rights and obligations, they constitute a far more arbitrary basis for public or legal policy than do rights and obligations. Stated differently, we institute government to secure our rights, which are grounded in reason, not to secure "our" values, about which we understandably disagree.

Turning now to "responsibility," we discover that this idea, both analytically and in usage, is much less precise. One such usage, correlating "rights and responsibilities," should be addressed at the outset, however, for it stems from a pre-modern conception of "rights," yet a conception that endures today through certain strains of legal positivism. On this view, by implication, discussions about the "natural imprescriptible rights of man are rhetorical nonsense; nonsense upon stilts!"<sup>15</sup> as Jeremy Bentham put it. The only "rights" we have, that is, are the rights the sovereign recognizes and hence, in this sense, gives us, whether that sovereign be God, in the theocratic tradition, or the king, in the monarchical tradition, or a parliamentary majority, in the democratic tradition. Having thus "received" our rights, not from nature but by "grant" from the sovereign, they are "ours" to exercise and enjoy--provided we exercise them "responsibly," failing which they may be withdrawn. Thus the right to free speech or the right to enter into business or any other right we might cite is enjoyed only as long as it is exercised "responsibly," according to some value criterion of the sovereign. "Responsibility" functions here, then, not at all like "obligation" in the classical liberal tradition but rather as a condition for the receipt and retention of a right. In fact, rights themselves function not like entitlements but like privileges, which can be withdrawn at the discretion of privilege grantor.

Even in its contemporary versions, then, this sense of "responsibility" will not concern us here; for it stems from an older, authoritarian tradition and hence is not really reflective of the idea of responsibility in a free society--a society that starts with the individual and with the individual's rights against the world. On the modern view, the individual alienates his rights only through voluntary agreement--as with contracts, in which case they are replaced by other, special rights--or through committing a tort or a crime--and then only to the extent necessary to make his victim whole again. And in either case, whether through agreement or through committing a wrong, the right is alienated not because its exercise offends someone's values but because the non-arbitrary principles on which the right is grounded require the relevant shift in moral and hence in legal relationships. The individual alienated his right, on principles known to and, in theory, agreed upon by the individual himself.

Two additional, closely related senses of "responsibility" need to be raised as well, for although they are not directly relevant to discussions about philanthropy, they sometimes intrude upon those discussions, creating confusion when they do. Those senses, unlike the sense just discussed, are in the modern tradition and in fact are themselves closely related to "obligation." On one hand, we speak of individuals acting freely, or from free will, and hence of their being responsible for their actions; they are, in this sense, the "authors" of their actions. On the other hand, they are also the authors of the consequences of those actions and so are said to be responsible for those consequences, which leads, almost imperceptibly, to the second sense in which they are responsible, namely, when we say they are "liable" for those consequences. In either case, however, whether we are talking about authorship of actions or consequences or about liability for those consequences, the use of "responsibility" in all of this is akin to "obligation." Because the individual is the author of or responsible for his actions and their consequences he is also obligated or responsible for the contractual, tortious, or criminal consequences he brings about. Here, "responsibility" functions closely enough to "obligation" to be all but synonymous.

Confusion arises, however, when we move into the charitable or philanthropic area of human activity and find these two senses of "responsibility" and the term "obligation" freely substituted, often in an effort to claim more of the individual than, strictly speaking, he is obligated to do. For such an effort trades on the obligatory character of "obligation," rooted in principles of reason, importing it into the discretionary area of "responsibility," thus making the individual "liable" for more than reason will support, liable for consequences that have no relation to anything he may have done. There is all the difference in the world between saying that an individual is "responsible" for the wrong he has done and saying he is "responsible" for helping the poor, just as there is between saying that he has an obligation to right the wrong he has done and an "obligation" to help the poor. The first two formulations reflect the ambiguity in "responsibility"; the latter of the second two formulations reflects a misuse of

"obligation." The better formulation, for reasons already raised and others about to be discussed, is this: the individual has an obligation to right his wrongs and a responsibility to help the poor. That stops the illicit trade. That gets the ideas right.

We come, then, to the sense of "responsibility" that does concern us, the sense we ordinarily intend when we speak of our responsibility for charitable or other philanthropic activities. Clearly, this sense has nothing to do with the "responsible" exercise of "rights"--or privileges. Nor does it relate really to "responsibility" in the sense of authorship (of our actions and their consequences) or liability (for those consequences). Rather, we leave now the strict realm of reason--where the denial of certain conclusions leads to self-contradiction--and move instead toward two quite different grounds for philanthropic responsibility, one stemming from ancient conceptions of "self-development," the other from more modern conceptions of "humanity," or what David Hume called that "fellow-feeling with others."<sup>16</sup> Although they share certain common elements, those two foundations for private philanthropy are nonetheless distinct.

The idea of self-development stems from the "virtuous man" tradition of ethics, rooted not in the individualistic, adversarial conception of rights, which we inherited from the common law and the Enlightenment, nor even in the external standards approach to ethics, as found in the Judeo-Christian tradition, but in the Greek conception of the good man as one who follows or develops his human nature.

Man is a political animal, Aristotle argued, whose "proper function" or "purpose" or "responsibility" is to develop himself to his fullest potential within his polity or political order. That means acting in accordance with the virtues. One such virtue is generosity, which is the mean between the extremes or vices of extravagance and stinginess. Generosity, then, is something one engages in on the way to becoming a good man. At the same time, one has a more direct responsibility to oneself as well; after all, this is an ethic of self-development. That can lead to conflict, however, for as Aristotle observes, "a generous man has a strong tendency to go to such excess that he leaves too little for himself."<sup>17</sup> The tension between those two responsibilities is resolved by looking to the virtuous man for guidance, the man who "will give to the right people, the right amount, at the right time, and do everything else that is implied in correct giving."<sup>18</sup>

One can question how much guidance that solution affords while at the same time recognizing that the idea of "self-development" is still very much with us as a foundation or rationale for private philanthropy. Indeed, shorn from its Greek political setting--wherein ethics was a function of politics, and the distinction between the individual and the polity was much less clear than it is today--the "ethic" of self-development, which may be closer to an "aesthetic" than to our modern understanding of ethics, is an attractive way of looking at our odyssey through life. For the idea is to make the most of oneself over the course of that odyssey. But we are not isolated individuals--methodologically useful as that starting point may be for constructive ethics. Rather, we are social animals, living in a polis, if you will, where our lives take on richness as a function, in some measure, of our relationships with others. Without those relationships, including the ones that arise from generosity, our lives would be the poorer, presumably, for they would not be moving toward their "natural end" in all of its richness, as Aristotle might put it.

We need to recognize, however, that those responsibilities we have that arise from the idea of self-development are self-regarding at bottom. Although Aristotle does say that "we praise men for being humanitarians or 'lovers of their fellow men',"<sup>19</sup> that love and the generosity manifested by it are "natural" in the virtuous man, not something arising out of "duty" and against interest as today we would understand those ideas. In fact, it is rather more out of self-love that one performs generous acts. One is tempted to translate this self-love into duty-to-self, but that would be straining both the Greek view and our own more modern understanding of our responsibility to develop ourselves.

When we turn to the second rationale for private philanthropy, however, we are moving away from self-love, for the most part, and toward a foundation that is largely other-regarding. The Christian idea of "brotherly love" comes to mind here, of course; but in the 18th century views of David Hume we find a philosophical treatment of this second foundation for responsibility. In answer to the question

why the interests of others should interest us, Hume says that "we have humanity or a fellow feeling with others," which we experience as "a principle in human nature."<sup>20</sup> This social sympathy in human nature is the ultimate principle in morals, Hume continues. In operation, the thought of pleasures and pains in others arouses sentiments of humanity and benevolence in us. Nor is this benevolence a disguised form of self-love; it is real, Hume believes, a function of our humanity, which in turn dictates our obligations toward others. Self-love and humanity are thus never ultimately opposed, for those who seek their true self-interest will find it in practices such as benevolence, which reflect their true humanity.

In focusing on our humanity, on our fellow feeling with others, Hume believes he has justified not simply philanthropic responsibilities but philanthropic obligations. To be sure, he seems to treat the "obligation" of benevolence as a matter for moral approbation and disapprobation only, not as a matter for legal sanctions. Nevertheless, others may treat it more seriously. Because moral obligation serves often as a model for legal obligation and hence as a springboard to legal sanctions, we would do well to look more closely at Hume's argument.

That argument turns, as we have seen, on our humanity or fellow feeling with others. As such, it would entail an obligation of benevolence--with all the universality the idea of "obligation" connotes--only if the sentiment were universal and the derivation sound. Plainly, however, neither is the case. For although the thought of pleasures and pains in others does arouse sentiments of humanity and benevolence in most of us, that connection is not universal, which means that those without the requisite sentiments are left to wonder what the basis of any such obligation might be with respect to themselves. Moreover, even if those sentiments were universal, it is far from clear how the move from the fact of the sentiment to the "ought" of the obligation--the move from description to prescription--is carried out. Hume's own "is/ought" admonition is now before him.<sup>21</sup>

Much as with the argument from self-development, then, the argument from humanity affords no real foundation for any obligation of benevolence, much less beneficence. Indeed, given the prominence and power of moral skepticism in the history of ethics, we have enough difficulty justifying even our ordinary obligations to respect the life, liberty, and property of others without having to go further to justify obligations of beneficence. In fact, as we saw earlier, given that we can advance fairly rigorous arguments to justify those basic obligations and their correlative rights, any obligations of beneficence would conflict with those rights, resulting in an inconsistent set of rights and obligations and hence in no justification at all.

But if arguments from self-development and from humanity fail to justify obligations of beneficence, do they justify our having a weaker responsibility to engage in philanthropic activities? Plainly, insofar as "justification" implies the production of arguments and reasons that compel assent on pain of self-contradiction, the answer must be no. In fact, as should already be clear, the reasons adduced in arguments from self-development and humanity are all rooted in values, values that purport in some sense to be universal, to be sure, but values nonetheless. And as economists are fond of reminding us, there is no accounting for taste, a conclusion philosophers have been hard pressed to deny. Given the inherent subjectivity of values, then, the most we seem to be able to say--at least at a general, justificatory level--is that if you hold those values, you ought to pursue them, other things being equal. That is not a terribly inspiring conclusion, of course, but candor requires it. For as with any argument, the conclusion can be no more compelling than the premises. And here the evaluative premises simply fail to compel universal assent.

That means that the recalcitrant, the individual who values neither himself (self-love) nor others (humanity), will be largely immune to arguments urging him toward philanthropic responsibilities. In fact, once we know his tastes, there is really little more to say to such an individual, save perhaps to criticize those tastes and the processes through which they were formed. Yet even when we do hold the values associated with self-development and humanity--namely, love of self and love of others--such that if we professed the values but failed to act in accordance with them we could be said to be acting inconsistently, there is still a great deal of latitude as to what those values entail in the way of specific

behavior. We come at last, then, to the question what our individual responsibility is in a free society, especially in the area of philanthropy, and what considerations might help us to better appreciate the character and scope of that responsibility.

### C. Individual Responsibility and Philanthropy

Having distinguished "obligation" from "responsibility," having located the foundations of philanthropic responsibility in considerations of self-development and humanity, we take up next the question what our responsibilities are in a free society by asking first what they are with respect to our obligations. That is not as straightforward a question as may at first appear. The simple answer, of course, is that we have a responsibility, in the first instance, to satisfy our obligations, after which we are responsible to some extent for philanthropic activities. That answer is largely but not entirely correct. For there will be times when we will have a responsibility not to satisfy our obligations, which amounts to a responsibility to violate or at least to override the rights of others.<sup>22</sup>

To see how this can be so, we need to recall, again, the different foundations of "obligation" and "responsibility." Derived from the normative structure of human action, rights and obligations are grounded in principles of reason such that to deny their justification is to contradict oneself, whereas our philanthropic responsibilities are a function of such values as love of self or love of others. As a point of reason, then, we must admit that we have the obligations that can in fact be shown to be justified. To say this, however, is not to say that we must satisfy those obligations in our behavior, where "must" has the force of "ought to." In fact, with perfect consistency we can say that we ought to satisfy our obligations--because they are justified by principles of reason--yet we ought not to satisfy those obligations--because other, nonrational considerations justify our not doing so. The term "ought" is thus systematically ambiguous; it is capable of being derived from different and sometimes conflicting moral criteria.

We come, then, to one of the great questions of ethics--whether ethics is a unitary subject, or whether instead it is marked by duality,<sup>23</sup> not unlike micro-physics with its wave/particle explanations. In the more sophisticated versions of the liberal tradition, with certain notable exceptions,<sup>24</sup> we find duality, reflected both analytically and operationally in the distinction between rights and values: rights describing the basic moral and legal framework, the context within which ordinary intercourse takes place; values giving force and meaning both to that intercourse and to the structure itself. We can defend an individual's right to speak, for example, based upon principles of reason, yet at the same time condemn his speech from a consideration of values. We permit that speech not because we necessarily value it but because it is performed by right; because those who speak value their speech, at the micro level; and because, at the macro level, most of us value a regime in which rights are respected. Under extraordinary circumstances, however, values may supersede rights, as happens in the law when equity intrudes upon law. Indeed, only a fanatic--or one who thinks the right and the good can somehow be "blended" into a unitary system--would argue that rights are absolute, that they always and in all circumstances trump values. Sometimes values trump rights--not by right, but in violation of rights, because were it otherwise the consequences would be too overwhelming to endure. We hope those occasions are rare, of course. But we cannot deny that they arise. Nor can we deny that a sound judgment is necessary to distinguish the ordinary from the extraordinary, much as the judge requires such judgment before invoking principles of equity.

In ordinary circumstances, then, our responsibility to satisfy our obligations toward others is a function of our love of self--including a respect for the consistency that reason requires--or our love of others--including an empathetic respect for the rights of others--or in many of us, doubtless, a function of both rationales. On occasion, however, those same foundations --self-love, pertaining not as much to consistency as to a vague sense of "virtue," and love of others--will propel us to override certain rights of others, where the consequences of our not doing so would be unbearable. On such occasions, again, it will not avail to say that the overriding is done by right. On the contrary, the knowledge that rights are being violated, and the attendant inconsistency between our behavior and the rational order, should act to

constrain such deviations from that order. Reason affords an answer for every situation; not every answer, however, can be lived with.

What these reflections point to as well, of course, is a distinction between justification and motivation. We can demonstrate, from reason, what rights and obligations people have. It is quite another matter, however, to motivate people to respect those rights and obligations. To be sure, whether from self-love or from love of others, most people will be moved to satisfy their obligations--which is why it is so important to be clear about what those obligations are. In many cases, however, the self-love that so motivates people will be of the thinnest sort, rooted not in the rich Greek idea of self-development but in the mere wish to avoid moral and legal sanctions. And in some people, not even the threat of sanctions will motivate.

When we turn to philanthropic acts, however, we appeal to the same motivating forces--self-love and love of others--but those forces are shorn not only from legal sanctions but from justifications grounded in reason. It is one thing to motivate people to satisfy the obligations that can be justified rationally, that is, quite another to motivate them to acts that enjoy no such foundation. We cannot demonstrate an obligation to help the poor, for example, as we can an obligation not to harm the poor (or anyone else). The philanthropic appeal, therefore, is essentially to motivation, not to reason in the strict sense of the idea. This is not to say that there are no "reasons" to which to point toward motivating people to philanthropic acts. It is to say only, and again, that those reasons come down in the end to appeals to values, which means that their hortatory force will be more emotive than rational.

Having recognized that, however, one is tempted to say that it would be presumptuous to say more. For if a cardinal principle of the liberal order, in light of the inherent subjectivity of values, is respect for and tolerance of differing values, then what ground could there be for criticism of the values of others? Any criticism would seem to suggest, at least in the end, that some values are better than others, which would seem in turn to fly in the face of the liberal vision. Still, we can and do criticize--from the perspective of "higher" or "better" values--and we will here. In doing so, however, we will have to bear in mind that those criticisms all take place from the evaluative point of view. Reasonable people will disagree, as should be expected when there is no ultimate rationality to the matter.<sup>25</sup>

Within that evaluative context, however, there is a place for reason. In fact, the form of argument that is appropriate to such a context is essentially of the ends/means variety. Taking ends as given, we try to better understand those ends and then discover the various means that might further them. In doing so, however, we sometimes find that a given mean, which may have been followed, will only frustrate the end it purports to serve. That suggests either that the connection between mean and end has not been fully grasped or that the putative end may not be the real end. It should be noted, however, that in all of this the "science" is most inexact, and is probably better left to social scientists, especially economists, than to philosophers.

Turning then to self-development as a foundation for philanthropic acts, the idea, again, is to recognize and appreciate one's "natural purpose" in life, including the social side of one's being, one's place in the community, and one's responsibilities to the community within which one lives one's life and develops oneself. Again, we are not obligated to take on such responsibilities. The appeal, rather, is to a broad, "enlightened" sense of self-interest, taking that sentiment as "natural." One might even try to reduce the matter to a crude utilitarian calculus: a community that affords more pleasure than pain and the widest possible opportunity for self-development, broadly understood, is better, all things considered, than one that does not. The means one selects toward those ends, therefore, must be judged according as they may or may not serve to encourage the ends and one's development, in turn, within such a community.

Within this general framework, the variety of possibilities is all but infinite, of course, starting with the end of self-development itself. While it is true that we all have a social side, that side varies widely from individual to individual. Some seem quite content living the life of the recluse, while others are altogether gregarious. Those extremes, as well as the countless points and variations in between, will

result in a wide variety of views about what it means to develop oneself to the fullest, and hence in a wide variety of means toward those differing conceptions of the end. Some will feel constrained to be generous toward the arts, thereby not only indulging the virtue of generosity itself but also affording themselves an opportunity to develop in that respect; others will be generous toward the poor, perhaps thus alleviating pain they might feel from knowledge of the suffering of others; still others will be "generous" with their own leisure, finding this the most agreeable path toward self-development. And when we turn to the idea of "community," here too nothing is written in stone. It is probably no accident that most philanthropy is local; but the scope of one's "community" is open to substantial interpretation.

Reflections on "community" do lead, however, to an argument from "benefits received" that fits more or less within the self-development ethic. We are all members of some community, the argument runs, from which we have drawn substantial benefits, especially in our earlier years. That has resulted, if not in an obligation, at least in a "responsibility" to "pay back" the community, to leave it richer than we found it.<sup>26</sup> The argument is thus self-regarding insofar as it turns upon benefits received by the would-be benefactor, which generate responsibilities in turn. Anyone who has graduated from a private college or university has felt the full force of this argument at the time of alumni solicitations. Although it appeals to notions of gratitude, it could also be thought of as an argument from "self-development on the installment plan"; for apart from the generosity serving as its own "reward" as a current contribution to one's full flourishing, it is also a retroactive contribution, as it were, to the development that took place earlier.

Although self-development, in virtue of its self-regarding character, may seem to some not to reflect what we understand today to be the essential foundation of philanthropy, it appears nevertheless to have a certain discipline about it that may be missing from philanthropy arising more from other-regarding motives. For if it is the interest of the benefactor that is ultimately to be served by his beneficence, then we should imagine him to be more circumspect about the effects of his beneficence than he might be if he were only an incidental beneficiary or were more removed from his beneficence. One might ask, of course, how the benefactor could be both benefactor and beneficiary. The question serves only to bring out the point, however, that in benefitting himself by benefitting others, the benefactor, when driven by a concern for self-development, has some personal measure by which to assess the efficacy of the means he has selected. Indeed, philanthropy that is ultimately self-regarding has a better When we turn to philanthropy arising from feelings of humanity, we move closer to what today we often think of as the core of philanthropy. At the same time, the issues become no more apparent or precise. In fact, we need look no further than to Hume himself to read: Giving alms to common beggars is naturally praised, because it seems to carry relief to the distressed and indigent. But when we observe the encouragement thence arising to idleness and debauchery, we regard that species of charity rather as a weakness than a virtue.<sup>27</sup> A weakness? Presumably, then, charity must be informed by some discipline if it is to be virtuous. But what discipline?

Here, it seems, we need to return to the "humanity" that is the source of our "responsibility" toward others. The "fellow feeling with others" that is the mark of that humanity is a recognition that those others, like ourselves, are engaged in their own odysseys through life, over the course of which the lottery of life--regarding natural endowments, health, fortune, and so on--takes its toll, for better or for worse. Some things are within our power to control. Other things are not. In empathizing with others we assume that they, like us, prefer the better to the worse, that they are able to judge that distinction, and judge further the means that will bring about the better. Any or all of those assumptions may prove unsound, of course, in which case we have to determine whether the malfunction is correctable and, if so, at what cost. Some situations will call for correction; others, in complete candor, are beyond correction. Our responsibilities in those different situations cannot be determined in general; they are functions instead of particular facts and complex, sometimes brutal assessments of costs and benefits. As such, they are best made by those closest to the situation.

When the above assumptions prove sound, however, then we are dealing not so much perhaps with psychological or cognitive disability as with misfortune of the kind that can strike any otherwise normally functioning individual. Although many of those misfortunes can be insured against through risk-sharing arrangements, we seem nevertheless to feel more empathy in such cases than in those involving psychological or cognitive disability, perhaps because we identify more with the individuals involved ("There but for the grace of God go I."), perhaps because the situations seem less intractable, perhaps because the element of self-help that is often latent in such cases makes them more attractive as candidates for our beneficence.

In either case, however, our humanity, properly engaged, seems to be informed by some sense of the norm and by a wish to encourage movement toward that norm, where possible. Those ideas and ideals constitute the discipline that makes our philanthropy "responsible." Thus, if we exercise our responsibilities responsibly, as it were, we will try to refine the idea of the norm for humanity and the means that best serve that norm. Clearly, human beings flourish best under conditions of freedom, and in particular under conditions that do not shield them from the natural signals of productive and unproductive behavior. When our philanthropy shields people from those signals, as Hume suggested, it does neither them nor us any real good. To the contrary, so far is it from a reflection of our humanity to create such situations as to be its very opposite. Our chief philanthropic responsibility, then, is to exercise responsible philanthropy, philanthropy that recognizes the human condition in its full, rich complexity, and encourages individuals both toward the norm and toward their full human potential.

In summary, in a truly free society we are responsible in the first instance, save on rare occasions, for meeting our obligations to respect the lives, liberties, and property of others and to keep our agreements. (If everyone did that, the need for philanthropy would be considerably lessened.) There are no general philanthropic obligations, nor certainly any general rights of recipience. But as human beings living in communities, most of us do feel a responsibility to engage in philanthropic acts, whether from an enlightened love of self or a more direct love of others. In its most enlightened form, that responsibility will be driven and disciplined by an understanding of the requirements of the human condition.

### III. INDIVIDUAL RESPONSIBILITY IN A LESS FREE SOCIETY

But we do not live in a free society. Or better, the society in which we live, although free relative to much of the world, has systematic biases nonetheless toward unfreedom. We need now to outline those biases, then consider their implications for individual responsibility.

#### A. Legitimacy and the Origins of the State

Earlier we outlined our rights and obligations and then assumed that a state, or public realm, had arisen legitimately from that private realm and that its function, its sole function, was to secure those rights by enforcing those obligations. We now suspend that assumption and return to the Declaration of Independence, where we see that the powers of the state--and, by implication, the state itself--are legitimate only if grounded in consent: ". . . that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed" (emphasis added). By implication, powers not so derived are not legitimate. This must be so if we begin with the individual; with a premise of moral equality, defined by equal moral rights; and hence with a requirement that no association be forced, that association come about through consent. If that requirement applies to ordinary relationships, one imagines it applies a fortiori to the relationships that give rise to government and governmental acts. Yet that requirement, save in rare cases, cannot be met, even in a democracy. Let us see why. One case in which the consent requirement is satisfied, of course, is that of unanimity.<sup>28</sup>

If we all agree to be bound by a given power, no one can be heard to complain. But that case is so rare as to be inconsequential. The ordinary situation, in a democracy, is one of majority rule. But majorities per se, however large, carry no moral weight, not if the individual counts. Nor did the classical theorists ever think they did, for they grounded the authority of the majority not in its numbers but in prior unanimous consent to be bound thereafter by the majority (or by some other fraction of the whole). Much as in

private associations--from clubs to corporations--there must be consent going in if there is to be legitimacy coming out.

Yet there, precisely, is the problem: save for those in the original position, who could hardly bind their progeny, and recent immigrants, original consent of the kind that can bind individuals cannot be found. Nor will it do to say of the rest of us that we stayed, therefore we are bound. For the argument from so-called tacit consent comes down to the majority putting the minority to a choice between two of its entitlements: its right to stay where it is and its right not to come under the will of the majority save by its own unforced consent. The argument from "tacit consent," in short, is patently circular.

We arrive, then, at a surprising conclusion--at least for those who have never thought about it--that even majoritarian democracy has an air of illegitimacy about it. For in the great range of cases--those involving native-born citizens not parties to the original agreement--the "consent" reflected in periodic elections of selected officials is not only highly attenuated but not at all grounded. When we add the findings from public choice theory, decision theory, and elsewhere to the effect that rarely even do majorities rule, we come to appreciate the insight of the classical theorists, that government, far from being an instrument for doing good--the view we inherited from the Progressive Era--is a necessary evil--necessary because of the problems of private enforcement in the state of nature, but evil because the consent requirement, which alone could make government legitimate, can never really be satisfied. There is just nothing to be said to the person who does not want to join our state, who wants simply to be left alone. We should be candid enough to admit that we force him to join, plain and simple.

### **B. Legitimate and Illegitimate Public Activities**

If this ineluctable air of illegitimacy surrounds government as such, even the most democratic of governments, whose functions are limited to securing our rights, then it follows that any expansion of government's functions will carry that same air of illegitimacy with it. If securing our rights as a collective undertaking entails forced association, then every other collective undertaking--building roads, delivering mail, providing education, and on and on--will likewise entail forced association and so be tinged with illegitimacy, a point we notice as soon as we ask whose values the undertaking should reflect. For a majority's determination to have some service provided through government, however worthy that service may be, simply violates the rights of those who wish only to be left alone. If we want to minimize illegitimacy, therefore, we will leave as much as possible to the private sector, where it can be done through voluntary association.

Within this inherently illegitimate framework, however, we can distinguish nevertheless between degrees of legitimacy--or better, degrees of illegitimacy. In general, we can call a government service "legitimate"--setting aside the illegitimacy that arises from its being provided through the state--if it is something individuals could do by right in the state of nature and it is provided generally and equally.<sup>29</sup> Thus, securing rights--and the police power generally, if limited to this function--passes the test, for individuals in the state of nature have an independent right to secure their rights, and the service is provided generally and equally. When individuals come in from the state of nature, in theory, they simply ask the state to provide this service for them. Again, not all make that request, which is why the institutional illegitimacy arises. But the activity itself is not inherently illegitimate. Because such activities are only once illegitimate, from a consideration of institutional illegitimacy, let us call them otherwise legitimate.

When we move, however, from something like the police power to a power like eminent domain, we have an undertaking that is twice illegitimate: first because exercised through the state; and second because no one in the state of nature could possibly have such a power. No one could ever condemn another's property, by right, however noble his purpose, even if he did compensate that person. Eminent domain uses people for the public good. Its saving grace is the requirement that people so used be compensated. Compensation cannot right the wrong, even if it does mitigate its effect.

Once we move, however, to the vast redistributive powers that characterize the modern state, even in its freest versions, we face undertakings that are three times illegitimate: first because they are

exercised through the state rather than through the private sector; second because no one in the state of nature could ever exercise such powers, could ever take from some to give to others, however noble his purpose; and third, unlike with eminent domain, the people whose rights are thus violated are never compensated in mitigation of the violation. Nor will democratic process justify these transfers; for as we saw above, arguments from consent simply strain credulity, at least with respect to those who object. These are, in a word, naked takings--precisely what governments are instituted to prevent, but today precisely what they do.

### C. "Public Philanthropy"

The redistributive powers of the modern state have come to be all but endless, of course, both in variety and scope. On the takings side, taxes constitute the most universal element. But liberty, property, labor, and opportunities are taken as well. On the distribution side, the goods and services afforded by those takings include everything from health care to education, welfare, art, music, foreign aid, agricultural price supports, protection from economic competition, and on and on as far as the imagination will go. But however varied or unique those transfers are, they all come down to a common element: an exchange that might or might not have taken place voluntarily in the private sector--we can never know--is forced to take place through the public sector.

Many of these exchanges exhibit features not unlike those found in private philanthropy. They frequently take from the better off and give to the worse off. They afford goods or services that recipients are often not able or willing to command in the marketplace. And the objects sought to be advanced are often the same as those of private philanthropy: health, education, welfare, the arts, and so on. At the same time, these exchanges often exhibit features not found, or found less often, in private philanthropy. Transfers that support education and the arts, for example, often go from the worse off to the better off, and the objects sought to be advanced in many cases are never found advanced by private philanthropy.

The question arises, however, whether we want to call those public transfers, even the ones that most mimic private philanthropy, "philanthropic." After all, private philanthropy proceeds from affection, from love of self or others, not from the threat of legal sanction. It is thus voluntary, not forced, which means in addition that the benefactor perceives a benefit to himself not produced by a forced association. Moreover, private philanthropy involves a more or less direct relationship between benefactor and beneficiary--or at least eleemosynary institution; with public transfers the relationship is with a public revenue collecting agency or a public enforcement agency (in the case of nonmonetary takings). Again, with private philanthropy the benefactor himself determines when and how to give; with public transfers, public institutions make those determinations. Yet again, private benefactors can often more directly monitor and control the effects of their beneficence, which rarely is the case with public transfers. Finally, recipients of private philanthropy understand and ordinarily appreciate its discretionary character, an appreciation that often disappears when benefits become legal "entitlements." For these several reasons, then, it is altogether inappropriate--and indeed an abuse of language--to call such public transfers "philanthropy." However noble or otherwise worthy the ends that purport to justify them, they are, again, takings.

Clearly, then, the idea that private philanthropy can serve as a springboard to "public philanthropy" is strained at best. These public transfers are simply not "philanthropy" in any ordinary sense of that word. Moreover, and more important, there is no obligation to engage in philanthropic activities, as we saw earlier, and hence no right of recipience against others. Thus if the principal function of government is to secure our rights by enforcing obligations, there is no such right to be secured nor any such obligation to be enforced. Governments can invent such a right out of whole cloth, of course, which they often do in the tradition of legal positivism. That is not the same, however, as justifying the right and the use of force that necessarily accompanies it.

But apart from any obligation to engage in philanthropy, can our private responsibility to do so serve as a springboard to "public philanthropy"? The straightforward answer is no; for again,

philanthropic responsibilities are not obligations and hence are not appropriate candidates for legal enforcement--not least because their cognitive foundations, as we saw earlier, are much less secure than those of obligations. It will be recalled, however, that there are times when we have a responsibility to override rights. If this is true in the private domain, it may also be true in the public domain.

Before drawing any such inference, however, we need to recognize that the move from private to public here is even more fraught with peril than in the case of enforcement generally. For the unclarity of our private philanthropic responsibilities, and the accompanying call for individual discretion, are only magnified when weighed as public "responsibilities." (After all, love of self and others, as collective phenomena, are metaphorical ideas at best.) As a general prescription, then, just as our private responsibility to override rights should arise only in extraordinary circumstances, so a fortiori should any such public responsibility. Thus, occasions may occur when it will be necessary, as a public undertaking, to override rights in the name of "public philanthropy," because the failure to do so would result in unbearable consequences; but a very strong presumption against any such overriding should be recognized, and a heavy burden of proof should be met before any such program is undertaken. Out of respect for both the rights of citizens and the welfare of would-be recipients, who will flourish best under conditions of freedom, "public philanthropy" should be a very last resort.

#### **D. Individual Responsibility In a Redistributive State**

In the modern state, of course, those cautions have been largely ignored. Conceiving of the state not as a necessary evil but as an instrument for doing good, especially in an "evil" private sector, the progeny of the Progressive Era have turned increasingly to the state not as a last but as a first resort, asking it to address an endless list of "social problems," real and imagined. Thus we have not only public support for the poor, but public support for the opera; not only subsidized shelter for the homeless, but subsidized education for the rich. Indeed, entanglement with the state, and with the forced association it represents, is today all but impossible to avoid.

The rise of the ubiquitous state is not without consequence for private philanthropy, however, and for individual responsibility generally. As a practical matter, the "crowding-out" effect of public transfers has been well documented.<sup>30</sup> When we see government providing "philanthropic" goods and services that might otherwise be provided by the private sector, we feel less inclined to provide those things ourselves. Moreover, because we are forced to pay for public transfer programs in any event, through tax and other enforcement systems, we have that much less discretionary income to spend on private efforts, even if we did want to supplement public programs.

Ironically, if there were anything approaching an even substitution of public for private funds, yielding an equal effect, proponents of public programs might have a start, in light of the free-rider problem, toward justifying those programs. But not only do public programs, in general, yield less return on the investment; they also distort the entire philanthropic relationship. This last, in fact, is doubtless the most pernicious effect of the rise of "public philanthropy." For when institutional attention replaces personal attention, when bureaucracy replaces community, then public programs, far from meeting needs, only expand needs. The irony, in short, is that public transfers, instituted to address social problems, have only exacerbated social problems.<sup>31</sup>

None of this should surprise once we recognize the incentive structures public programs put in place, which have been well documented in the economic literature. For as noted earlier, any arrangement that frustrates a system of natural economic signals is bound to produce irrational economic behavior--although within the arrangement the behavior is entirely rational. The relevant question, then, is not whether "public philanthropy" relieves us of our private philanthropic responsibilities but how those responsibilities are changed by the perverse presence of "public philanthropy." And here, if we are serious about love of self and love of others, the last thing we want is private efforts that serve only to perpetuate that public mistake, consigning ever larger numbers of us to lives of quiet desperation. Whether out of self-love or love of others, then, our chief responsibility in a less free society is to move

that society toward greater freedom, thereby expanding the opportunity of each of us to follow his own odyssey of self-development.

#### NOTES

1. See, e.g., Alan Gewirth, "Private Philanthropy and Positive Rights," *Social Philosophy & Policy* 4 (2) (Spring 1987): 69-71.
2. See, e.g., Jan Narveson, *The Libertarian Idea* (Philadelphia: Temple University Press, 1988), pp. 263-68.
3. See Paul K. Conkin, *Self-Evident Truths* (Bloomington and London: Indiana University Press, 1974).
4. See, e.g., Philip T. Grier, *Marxist Ethical Theory in the Soviet Union* (Boston and Dordrecht, Holland: D. Reidel Publishing Company, 1978).
5. See Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, ed. Walter Wheeler Cook (New Haven and London: Yale University Press, 1946).
6. See Alan Gewirth, "The Normative Structure of Human Action," *Review of Metaphysics* 25 (December 1971): 238-61.
7. See Roger Pilon, "Capitalism and Rights: An Essay toward Fine Tuning the Moral Foundations of the Free Society," *Journal of Business Ethics* 1 (1982) 29-42.
8. This distinction is discussed more fully in H.L.A. Hart, "Are There Any Natural Rights?" *Philosophical Review* 64 (April 1955): 175-91.
9. See Roger Pilon, "Ordering Rights Consistently: Or What We Do and Do Not Have Rights To," *Georgia Law Review* 13 (Summer 1979): 1171-96.
10. John Locke, *Second Treatise of Government*, in Peter Laslett, ed., *John Locke: Two Treatises of Government*, rev. ed. (New York: Mentor, 1965), p. 395.
11. I have applied this theory over a wide range of issues in Roger Pilon, "Corporations and Rights: On Treating Corporate People Justly," *Georgia Law Review* 13 (Summer 1979): 1245-1370.
12. These issues are developed more fully in Pilon, "Ordering Rights Consistently," pp. 1176-86; and Narveson, *The Libertarian Ideal*, pp. 56-61. See also Maurice Cranston, "Human Rights, Real and Supposed," in *Political Theory and the Rights of Man*, ed. D.D. Raphael (Bloomington and London: Indiana University Press, 1967), pp. 43-53. But cf. Gewirth, "Private Philanthropy"; and Alan Gewirth *Reason and Morality* (Chicago and London: University of Chicago Press, 1978), pp. 217-30.
13. For an exploration of some of the problems of enforcement in the state of nature see Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), Part I.
14. See generally Gewirth, *Reason and Morality*; and Roger Pilon, "On Moral and Legal Justification," *Southwestern University Law Review* 11 (1979): 1327-44.
15. Jeremy Bentham, "Anarchical Fallacies," in *Collected Works*, ed. John Bowring (Edinburgh: William Tait, 1843), 2:501.
16. David Hume, *An Inquiry Concerning the Principles of Morals* (1751), ed. Charles W. Hendel (Indianapolis and New York: Bobbs-Merrill, 1957), p. 47, n. 1.
17. Aristotle, *Nicomachean Ethics*, ed. Martin Ostwald (Indianapolis and New York: Bobbs-Merrill, 1962), p. 85.
18. *Ibid.*, p. 84.
19. *Ibid.*, p. 215.
20. Hume, *Inquiry*, op. cit.
21. David Hume, *Treatise of Human Nature* (1739), ed. L.A. Selby-Bigge (Oxford: Clarendon Press, 1888), pp. 469-70.
22. I have discussed this question more fully in Pilon, "Ordering Rights," pp. 1193-96.
23. Cf. W.D. Ross, *The Right and the Good* (Oxford: Clarendon Press, 1930).
24. See Gewirth, *Reason and Morality*.
25. Notice the difference between this perspective--where rights are objective, values subjective--and the kind of moral relativism that collapses rights and values, treating them both as subjective.
26. Variations of this argument can be found as early as in Plato's *Crito*.
27. Hume, *Inquiry*, p. 13.
28. The arguments that follow are developed more fully in Roger Pilon, *Human Rights and Politico-Economic Systems* (Washington, D.C.: Cato's Letters Number 4, Cato Institute, 1988), pp. 13-18. For a different approach to the same end, see Robert Paul Wolff, *In Defense of Anarchism* (New York and London: Harper & Row, 1980).
29. See Roger Pilon, "Property Rights, Takings, and a Free Society," *Harvard Journal of Law and Public Policy* 6 (Summer 1983): 165-95; Richard A. Epstein, *Takings: Private Property and the Power of Eminent Domain* (Cambridge, Massachusetts and London: Harvard University Press, 1985); and Ellen Frankel Paul, *Property Rights and Eminent Domain* (New Brunswick, New Jersey and Oxford: Transaction Books, 1987).
30. See, e.g., Russell D. Roberts, "A Positive Model of Private Charity and Public Transfers," *Journal of Political Economy* 92 (1984): 136-48; and Burton A. Abrams and Mark D. Schitz, "The 'Crowding-Out' Effect of Government Transfers on Private Charitable Contributions," *Public Choice* 33 (1978): 29-39.
31. See generally Charles Murray, *In Pursuit of Happiness and Good Government* (New York and London: Simon and Schuster, 1988).