

## SHOULD LIBERTARIANS REJECT THE FREE MARKET? ON OLSARETTI'S POSITIVE ANSWER

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LIBERTARIANS should reject the free market.<sup>1</sup> Their principles require it. These bold claims are what Serena Olsaretti argues for in a book and a series of articles.<sup>2</sup> According to her, libertarians are wrong to believe that the free market—a market unconstrained by regulation and redistributive taxation—is compatible with the liberty of each individual to lead their life according to their own choices.<sup>3</sup> The thrust of Olsaretti's argument is that libertarians rely on a problematic account of voluntary action. As part of this argument, she develops an alternative account of voluntary action. As she sees it, if the libertarian

- 1 Throughout this essay, by “libertarianism” I mean *right*-libertarianism. All libertarians are committed to the view that each person has full ownership over their body and mind, and that this places significant constraints on what governments may do. But libertarians differ over ownership of external resources (resources external to anyone's body and mind). Right-libertarians favor a regime of robust private property rights that is insensitive to considerations of inequality, while *left*-libertarians favor a regime of property rights that is highly sensitive to considerations of inequality. For authors and their works that are representative of right-libertarianism, see Machan, *Individuals and Their Rights*; Mack, “Moral Individualism and Libertarian Theory”; Narveson, *The Libertarian Idea*; Nozick, *Anarchy, State, and Utopia*; Rothbard, *For a New Liberty*. For authors and their works that are representative of left-libertarianism, see Otsuka, *Libertarianism without Inequality*; Steiner, *An Essay on Rights*; Vallentyne, Steiner, and Otsuka, “Why Left-Libertarianism Is Not Incoherent, Indeterminate, or Irrelevant”; Van Parijs, *Real Freedom for All*. Also see the anthologies by Vallentyne and Steiner, *The Origins of Left-Libertarianism* and *Left-Libertarianism and Its Critics*.
- 2 Olsaretti, *Liberty, Desert and the Market*, “Freedom, Force, and Choice,” “Debate,” “Coercion and Libertarianism,” and “Rescuing Justice and Equality from Libertarianism.”
- 3 I am using “free market” in the same sense as Olsaretti—namely, to “refer to the free or unregulated process whereby full private property rights are exchanged, so that goods and services over which people have rights are transferred and exchanged at whatever conditions the individuals whose rights these are choose” (*Liberty, Desert and the Market*, 2).

accepts her account of voluntary action, then the libertarian must abandon their opposition to redistributive taxation and government regulation of the market.

In what follows, I argue that by accepting her account of voluntary action, libertarians are not compelled to alter their position in the way that she claims. In fact, I argue that by accepting her account of voluntary action, libertarians would be compelled to alter their position in a way that Olsaretti would probably find objectionable.<sup>4</sup>

### 1. OLSARETTI'S ARGUMENT

Olsaretti takes the core commitment of libertarians to be the right of self-ownership.<sup>5</sup> The right of self-ownership grants each individual the freedom to lead their life according to their voluntary choices. This implies that any interference with a person's freedom requires their voluntary consent (except when interference is necessary to ensure respect for libertarian rights), and, therefore, any enforceable obligation (beyond the obligation to respect libertarian rights) must be voluntarily chosen.<sup>6</sup> But voluntariness is not just necessary for the assumption of an enforceable obligation, it is also sufficient. So if I have an enforceable obligation to provide you some good or service, that can only be because I voluntarily agreed to provide you that good or service. Additionally, what good or service I am to provide you, and under what conditions, is irrelevant (assuming it does not involve a violation of anyone's libertarian rights). It is sufficient that I voluntarily agreed to provide that good or service. This idea, "that voluntariness is a necessary and sufficient condition for the legitimacy of nearly all obligations and interference with individuals," Olsaretti dubs the *voluntariness requirement*.<sup>7</sup>

Self-ownership and the voluntariness requirement are not the only things libertarians believe in. Libertarians also believe that individuals should be free to acquire full ownership rights over external resources, and that these rights are nearly absolute. It is this belief that has drawn the most attention from libertarianism's critics.<sup>8</sup> But Olsaretti's attention lies elsewhere. She does not chal-

4 For different criticisms of Olsaretti's argument, see Barnes, "Why Is Coercion Unjust?"; Garnett, "Coercion," 572–73.

5 Olsaretti, *Liberty, Desert and the Market*, 91.

6 By "enforceable obligation" I mean an obligation that it is permissible to compel someone, through the threat of physical force, to comply with. As Olsaretti puts it, "Having enforceable obligations makes one liable to legitimate interference" (*Liberty, Desert and the Market*, 110n3).

7 Olsaretti, *Liberty, Desert and the Market*, 89.

8 For just a few examples, see Christman, *The Myth of Property*; Cohen, *Self-Ownership, Free-*

lenge the libertarian's theory of property acquisition, nor does she challenge the theory of self-ownership or the voluntariness requirement. What Olsaretti challenges is the libertarian's assumption that the free market uniquely satisfies the voluntariness requirement.<sup>9</sup>

Olsaretti criticizes libertarians for having a flawed conception of voluntary action. These criticisms, however, are not my focus.<sup>10</sup> My focus is on Olsaretti's alternative account of voluntary action. She presents this account, strictly speaking, in terms of what makes an action *nonvoluntary*. According to her, "a choice is non-voluntary if and only if it is made because the alternatives which the chooser believes she faces are unacceptable."<sup>11</sup> This analysis includes a number of components that require elaboration.

With respect to what makes an alternative unacceptable, Olsaretti assumes that there is an objective fact of the matter.<sup>12</sup> An agent's believing that her alternatives are unacceptable does not make them so. Although she does not give a complete account of what makes an alternative objectively unacceptable, Olsaretti does think an example would be an alternative that required an agent to forego her basic needs (e.g., food, water, shelter).<sup>13</sup>

Now, although an agent's beliefs do not make her alternatives unacceptable, it is not necessary that her alternatives actually be such in order for her to act nonvoluntarily. An agent may act nonvoluntarily when she mistakenly believes that her alternatives are objectively unacceptable.<sup>14</sup> Her mistake would not lie in her belief about the criteria for what makes an alternative objectively unacceptable. Rather, her mistake would lie in her belief that the alternatives available to her match those criteria. Hence, an agent may act nonvoluntarily when she incorrectly believes that an alternative involves sacrificing her basic needs.

Finally, although an agent may believe that she only faces (objectively) unacceptable alternatives—and she may be right—that does not necessarily mean that her action is nonvoluntary. In order for an agent to be forced into doing something, she must do it *because* she believes there are no acceptable alterna-

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*dom, and Equality*, chs. 3–4; Gibbard, "Natural Property Rights"; O'Neill, "Nozick's Entitlements"; Ryan, "Yours, Mine, and Ours."

9 Olsaretti, *Liberty, Desert and the Market*, 96.

10 Chapter 5 of *Liberty, Desert and the Market* contains the majority of Olsaretti's criticisms. Chapter 6 also contains such criticisms but is primarily devoted to defending her own account of voluntary action. Also see Olsaretti, "Freedom, Force, and Choice."

11 Olsaretti, "Debate," 114.

12 Olsaretti, *Liberty, Desert and the Market*, 153.

13 Olsaretti, *Liberty, Desert and the Market*, 119, 154.

14 Olsaretti, "Debate," 113–14.

tives.<sup>15</sup> An agent may do  $x$  while believing that there are no acceptable alternatives, yet not have been forced to do  $x$ , if they would have chosen to do  $x$  even had there been acceptable alternatives. Hence, an agent may work at a particular job knowing that the alternative is starvation. But if the agent would still work at this job in the face of acceptable alternatives, then they work at this job voluntarily.

The intended upshot of all of this is that if Olsaretti is correct about what makes an action nonvoluntary, then libertarians should abandon their commitment to the free market. This is because the market often involves choices made by individuals, typically low-income, that are made because these individuals believe (correctly, in most cases) that there are no acceptable alternatives. As Olsaretti puts it:

Insofar as libertarians take the voluntariness of choice to be a necessary condition for the legitimacy of interference with individuals, so that only voluntary choices are justice-preserving and responsibility-grounding, they then have reason to support not the free market, in which the voluntariness of many choices is vitiated, but rather those circumstances in which every one is provided with a range of acceptable options and is thereby enabled to make voluntary choices.<sup>16</sup>

“Those circumstances,” according to Olsaretti, require both government regulations of the market and a government-funded safety net.<sup>17</sup>

## 2. A CRITIQUE OF OLSARETTI'S ARGUMENT

Olsaretti claims that if libertarians were to accept her account of voluntary action, they would be forced to give up their embrace of the free market in favor of government regulation and a social safety net. However, nothing Olsaretti argues counts against the claim that government regulation and redistribution, because they are coercive, violate the voluntariness requirement. Therefore, libertarians can consistently say, while accepting Olsaretti's account of voluntary action, that it is wrong to subject someone to taxation and regulation in order to give others “a range of acceptable options.”

Not only do government regulation and redistribution violate the voluntariness requirement, but the case of a person working just to subsist does *not* violate the voluntariness requirement. How so? Because the voluntariness requirement

15 Olsaretti, *Liberty, Desert and the Market*, 156.

16 Olsaretti, *Liberty, Desert and the Market*, 137.

17 Olsaretti, *Liberty, Desert and the Market*, 164.

is a rule governing when it is acceptable to interfere with someone. The fact that a person takes a job in order to subsist does not, as such, involve interference with them. Additionally, the sheer fact that a person cannot meet their basic needs is not a violation of the voluntariness requirement. Letting a person starve, however reprehensible, is not an interference with them. So were the libertarian to get past the coerciveness of government regulation and redistribution, they still would not be compelled to endorse a social safety net, despite accepting Olsaretti's account of voluntary action.

The case of a person working in order to subsist is only relevant to the voluntariness requirement if a contract or exchange is involved. Herein lies a change to the libertarian's view that they would be compelled to make if they adopted Olsaretti's account of voluntary action. The libertarian would have to revise their stance on contracts. In particular, they would have to treat as unenforceable all contracts and exchanges entered into because one of the parties believed they had no acceptable alternative. This would include all contracts and exchanges involving parties who are extremely poor (even ones where *all* the parties are extremely poor). Yet to not enforce such contracts or exchanges would create a major barrier to the extremely poor ever lifting themselves out of poverty.<sup>18</sup>

Now consider a trope that Olsaretti often uses. The trope is that of a worker who works a hazardous job for low wages because the alternative to not working is starvation.<sup>19</sup> What would the revised libertarian view (the libertarian view that includes Olsaretti's account of voluntary action) say about this trope?

If we imagine that this worker is an at-will employee, then it is unclear how justice is being disrupted, even on the revised libertarian view. The very nature of employment-at-will is that the employee is not locked into any agreement—they can quit at any time. Only the employer incurs an enforceable obligation—namely, the obligation to pay the employee for any labor provided.<sup>20</sup> The em-

18 According to Nobel laureates Abhijit V. Banerjee and Esther Duflo, the lack of stable, timely, and low-cost contract enforcement in developing nations explains why moneylenders charge poor borrowers high interest rates ("The Economic Lives of the Poor," 155–56). This lack of access to cheap credit makes it virtually impossible for the extremely poor to start businesses. This is especially tragic given the entrepreneurial spirit manifested, albeit on a small scale, by so many poor people in developing nations. In addition to the piece by Banerjee and Duflo, see Collins et al., *Portfolios of the Poor*; Rutherford, *The Poor and Their Money*.

19 Some places where this trope can be found include Olsaretti, *Liberty, Desert and the Market*, 119–20, 124–25, 127–28, 156, 160, and "Freedom, Force, and Choice," 58–59, 61–62, 72, 74.

20 If the employee is paid before providing any labor, then, absent providing such labor, they have an enforceable obligation to (at least) return the money they were paid. This enforceable obligation is consistent with the revised libertarian view because voluntary consent is not required for the enforceable obligation to respect a person's libertarian rights, and

ployer does have the right to fire the employee. But firing the employee only involves withholding a benefit from them and, as such, does not violate the voluntariness requirement.

Now, suppose that our worker and all of their co-workers organize a union and successfully negotiate employment contracts providing for better pay and benefits, as well as better hours and working conditions. Suppose further that part of this contract includes the provision that every employee must be a member of the union and must pay union dues (taken out of each worker's paycheck). Our worker's new employment contract is justice disrupting on the revised libertarian view. Our worker has nonvoluntarily incurred an enforceable obligation to pay union dues, therefore the voluntariness requirement is violated. (We are still assuming that the worker has no acceptable alternative to working the job they have.) Interestingly, our worker's new employment contract would not be considered justice disrupting on the traditional libertarian view.<sup>21</sup>

### 3. POSSIBLE REPLIES

I have argued that the libertarian would not be forced to accept government regulation and redistribution were they to adopt Olsaretti's account of voluntary action. This is based on two claims: (1) government regulation and redistribution violate the voluntariness requirement, and (2) the case of a person working in order to subsist does *not* violate the voluntariness requirement.

In reply to the first claim, Olsaretti could argue that, although government regulation and redistribution are coercive mechanisms, they are not necessarily ruled out by the voluntariness requirement. This is because, on her account, a person acts voluntarily even when they have no acceptable alternative, as long as they do not do what they do *because* they have no acceptable alternative. So just because citizens face legal penalties if they do not pay their taxes or comply with certain regulations does not mean that they do these things nonvoluntarily. Their payment of taxes and compliance with regulations is still voluntary if what motivates them is not fear of punishment but a sense of justice.<sup>22</sup>

Yet someone could use this same reasoning to argue against the necessity of

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the employee would be violating the employer's libertarian rights by not working and then keeping the money.

21 That is, if we assume that the government did not force the employer to bargain with the union, and the union did not use violence, or the threat of violence, to intimidate the employer or any worker.

22 Olsaretti could make a similar point about union workers who have no acceptable alternative to working and paying union dues.

government regulation and redistribution by saying that just because we know that a destitute person has no acceptable alternative to working a low-paying, hazardous job does not mean that their choice to work at that job is not voluntary. In response, Olsaretti might say that we can assume that any destitute person working at such a job is not doing so voluntarily. Besides, even if they were, the point of regulation and redistribution is to *ensure* that everyone is making voluntary choices.

But then should we not avoid market regulations and redistributive taxation so as to make sure the voluntariness requirement is satisfied? Also, if we were sure that all citizens are sufficiently moved by a sense of justice to pay taxes and comply with regulations, then there would be no need for legal penalties to serve as incentives. This is just another way of saying that there would be no need for taxes and regulations.<sup>23</sup> Thus, any situation where we can be sure that government regulation and redistribution satisfy the voluntariness requirement is also a situation where government regulation and redistribution are not needed.

Moving on to the second claim (that the case of a person working in order to subsist does *not* violate the voluntariness requirement), Olsaretti could concede the point. However, she could argue that if we go back to what motivates the voluntariness requirement in the first place—namely, the right of self-ownership and the attendant idea that people’s actions should be the result of their voluntary choices—then by adopting her account of voluntary action, libertarians would be forced to endorse government regulation and redistribution.

Now if the right of self-ownership includes the right that our choices be voluntary, then taxation is ruled out for reasons already mentioned. On the other hand, things look more promising for Olsaretti with respect to regulations, specifically regulations governing wages and working conditions. As Olsaretti sees it, an employer who offers a destitute person low-paying, hazardous work because they know that person has no acceptable alternative is “intentionally and avoidably contributing to another person’s being forced.”<sup>24</sup> In virtue of im-

23 In order to better coordinate their efforts, such citizens may want to have the government run welfare programs and set recommendations for wage rates and working conditions. As long as there are no legal penalties for not giving money to these programs or for not complying with these recommendations, then these programs and recommendations would be permissible on the traditional libertarian view.

24 Olsaretti says this in the context of addressing a criticism by Gordon Barnes. Olsaretti claims that some offers are unjust because they involve the subordination of one person’s will to another (*Liberty, Desert and the Market*, 146). As a counterexample, Barnes presents the following thought experiment:

You and I are wandering in the desert, and we run into each other. You are lost, and you have no idea how to get out of the desert. However, I know the territory, and so

pinging on a person's freedom to lead their life according to their own voluntary choices, such an offer violates the right of self-ownership.

I think one can dispute the claim that an employer who makes such an offer is "intentionally and avoidably contributing to another person's being forced."<sup>25</sup> However, I will not press that objection here. I will simply say that if the libertarian were to rule out such offers (not just the enforcement of contracts and exchanges that result from them), then we still have a view that looks worse for the poor than the traditional libertarian view. It is still the case that all contracts and exchanges between the extremely poor would be deemed unenforceable, and that government redistribution of wealth would be ruled out. The only thing that looks good for the poor now is that if they get job offers, those jobs will have to pay a certain minimum, and the working conditions will have to meet certain standards. But if businesses cannot afford to pay higher wages and provide better working conditions, then those jobs will not exist, and there will be no safety net to fall back on.<sup>26</sup>

#### 4. CONCLUSION

Libertarians support a society where all people's choices are freely made. Libertarians also support the free market. Olsaretti claims that they cannot have it

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I know my way out. I offer to let you follow me out of the desert. Since you have no alternative, it seems that your will is now subordinate to mine, at least if you want to get out of the desert. However, it is just as clear that there is no injustice in this situation. (*Why Is Coercion Unjust?* 463)

In response (this is where the quote in the text is from), Olsaretti says:

We could hold that someone's *intentionally and avoidably contributing* to another person's *being forced* is necessary for a forced exchange to be justice-disrupting. . . . On this view, there is an important difference between Barnes' desert case . . . and the case in which I offer to let you follow me out of the desert only if you sign a contract with which you bind yourself to work for me at subsistence wages for the next decade. In the latter but not in the former case, I am intentionally contributing to making it the case that you make a forced choice. In the latter but not the former case there is an injustice, because *I set the terms of the offer* in such a way that your choice to accept them is forced. (*Coercion and Libertarianism*, 298)

- 25 In her example mentioned in the previous note, it is not clear how Olsaretti is guilty of "intentionally and avoidably contributing" to you being forced. What contributes to you being forced is that you are lost in the desert (that is why you have no acceptable alternative). Olsaretti does not say in her example that she is responsible for you being lost in the desert.
- 26 My thanks to an anonymous reviewer for encouraging me to address the two replies I have discussed in this section.



both ways. Given her account of voluntary action, libertarians should see that a society where all people's choices are freely made is not a free market society, but, rather, is a society that involves government regulation of the market and a government-funded safety net.

I have argued, however, that Olsaretti is wrong about the implications of a libertarian view that includes her account of voluntary action. Even *if* this revised version of libertarianism countenanced certain kinds of market regulations (and I remain skeptical), it would condemn a government-funded safety net and attempts by the poor to better their own condition by entering into legally enforceable contracts and exchanges. If libertarians are to be convinced that they should reject the free market in favor of something like social democracy, then the thesis of self-ownership, the voluntariness requirement, or their view on property rights will need to be challenged. Keeping those features of libertarianism in place, while adopting Olsaretti's account of voluntary action, leads to a view that is far harsher to the poor than the kind of libertarianism she set out to critique.<sup>27</sup>

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