Tomorrow *is for* FREEDOM

Thoughts on Freedom, Justice, and the Limits of Government

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Tomorrow Is for Freedom

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Note to the Reader

The four “Talks” in this collection are based on a series of impromptu lectures by Dr. Sharlow. Although the transcripts have been edited, most of the material retains the informal style of the original talks.

Talk 1. The Heart of Freedom

You have a right to be free. That right is the result of the simple fact that no one has any particular right to exercise power over you.

Think of it this way. Imagine someone is trying to exert power over you — for example, by forcing you to be silent about your political views, or by pushing you around in some other way. Now ask yourself some questions: What right does *he* have to do that? What makes him so special that he can do that and you can't? What makes him more special than you?*

Both you and he were born into the world. Both of you are alive. Why is it that he can push you around that way? What gives him that right?

The answer to these questions is simple. *Nothing* gives him that right over you. There's no factual basis for him to have that right. There is nothing in reality that could be a basis for his presumed right to push you around. And if there were such a basis, it would also give you a similar right to push him around. If he has a right to limit your freedom, then what gives him that right? Nothing! And if he claims to have that right, then why don't *you* also have the right to limit *his* freedom? He has no special right to exercise power over you. No difference between him and you can give him that right — not a title of nobility, not wearing a certain uniform, not skin color. None of these differences can give him special rights over you, because miscellaneous material things like titles, cloth, or

* In case anyone is wondering, my use of the male pronoun here is correct. Most rulers and dictators in history (so far) have been male.

pigments have nothing to do with the reality of freedom, which is beyond all those things. Freedom is larger than all of these things. None of the little details of personal differences can have any relevance to your right to freedom.

No one has a special right to exercise coercion toward others. No one has a right to exercise coercion at all, unless other people also have that right. It can't be the case that one person has a right to practice coercion in given circumstances, while another person in the same circumstances does not have that right. Another way of saying this is that no one has a greater right than anyone else to behave coercively toward others. There is nothing that could give anyone a greater right than anyone else to behave coercively in that particular situation. If a murderer attacks you with murderous intent, then you have a right to try to stop him — but anyone else in the same situation as you would have the same right. The facts of the situation can help to determine what is the right course of action, but there's nothing that gives one person a greater right to use coercion on others.

There are certain times when using force against others may be necessary. Self-defense is the main example of this. Perhaps it is the only valid example. But even if people sometimes have the right to use force or to exercise compulsion, it is still true that no one has these rights *more* than anyone else. There is nothing in the real world that would give anyone such a right when someone else does not have the same right. This is because the differences that set people apart from each other are factual differences that just don't connect to the abstract reality of freedom. For example, suppose that somebody has more money than you. That doesn't give him any special rights over you. For that matter, if he has less money than you, that doesn't give him special rights over you either. Money, or lack of money, doesn't give anyone special rights, because the idea of the *right to be free* doesn't have any real relation to the idea of *money*. Money and the right to be free are two different things — like apples and oranges. (Of course, in the flawed society we have today, your wealth determines how free you are allowed to be. But money doesn't give you a greater *right* to be free.) Another example is race or color. What does the idea of race have to do with the idea of freedom? Race is one thing; freedom is another thing.

It's like apples and oranges. Race cannot give a person more or less right to freedom. This is one of many reasons why racial discrimination is wrong.

There can be no factual grounds that would give someone else a right to reduce your liberty relative to their own liberty. What kinds of facts could possibly imply that someone has a right to force you go do something, or not to do something? They wouldn't be facts about cloth and thread, like the fact of wearing a certain uniform. They wouldn't be facts about color. They wouldn't be facts about titles of nobility. These things simply can't affect your right to the right to have freedom. Of course, someone might use these things as an excuse to try to take away your freedom. This happens all the time. People commit injustices for silly reasons all the time. But these reasons are wrong, because superficial things like uniforms, money, and skin color cannot give anyone a greater right to freedom than anyone else. These things have no logical connection to freedom, any more than (for example) triangularity has a connection to Tuesday. There is just no connection. Uniforms, titles of nobility, riches, skin color — all these irrelevant things just have no moral bearing on freedom. There are no concrete facts of this kind that can serve as valid excuses for anyone to restrict your freedom.

When you make a decision, you have to consider the facts of the situation. The concrete facts of the situation cannot give one person more rights than another person would have in the same circumstances. People of goodwill recognize this instinctively when they say (for example) that equality is a good thing, that racial discrimination is wrong, or that democracy is better than tyranny. People with bad intentions have found lots of reasons to deny freedom to others — and all of those reasons are wrong.

Even moral characteristics of people, like the moral virtues and vices, usually have little connection to liberty. Could a person's patience (supposedly a virtue) imply that he has a right to use force against you? It couldn't. Could a person's dishonesty (a vice) give him rights over you? It couldn't. Vices certainly cannot give someone superior rights over someone else. And although virtues may be admirable things to have, they don't confer a

right to limit someone else's liberty. A virtuous person does not automatically have the right to lord it over others — because freedom is something else again besides virtue, and is not tied in any direct way to the idea of virtue. The right to be free is not a result of whether you're naughty or nice.

Any limitation of the liberty of one person by another is unjustifiable, with one exception: your right to be free can be limited by someone else's right to be free.

No reason can ever give one person *special* rights to limit the liberty of others. By that I mean that in given circumstances, if a person has a right to limit the liberty of other people, then another person in the same circumstances would have a similar right. There's nothing that can give a person a special right — a special, personal right not shared by others — to exercise coercion over others in a given situation.

These statements might seem to demand the overthrow of all authority. It might seem as if I am saying there is no justification for any government, or there is no justification for stopping people from doing wicked things, or that everyone can do whatever they want all the time. Actually, I am not saying any of these things. There are many different people in the world, and sometimes the freedoms of different individuals come into conflict. In these instances, someone might not have the right to do whatever they want. In an often-repeated example: you have a right to swing your fist in the air, but if my nose is in the way, then your right is limited, because I have a right not to be punched in the nose. In this example, two different people have rights that seem to conflict. Normally, you have a right to swing your fist in the air. If you did this when you were alone, it would be as harmless as playing air guitar. But I have a right not be punched in the nose, which implies that your right to swing your fist in the air is limited. And in cases like this, involving a real conflict of rights, there must be some compromise — some limitation of one or both parties' rights. Your right to swing, which might be absolute if you were alone in the middle of the desert, becomes less absolute — less broad — when my nose happens to be in the way. It isn't only your rights that have to be respected. It's my

rights, too.

The view that freedom cannot be "limited" does not imply that there are no limits on what one may do. It implies that the only limits on what one may do — the only limits that others may insist upon — are the limits imposed by the freedom of others. Your freedom is limited only by the freedom of others. As the old saying goes, your freedom to swing your fist ends where my nose begins. And that's the *only* place where it ends.

This does not imply that you always have to put others before yourself. When I say that your right to swing your fist is limited by my right not to be hit in the nose, that doesn't mean that you always are obliged to put others before yourself. Just as your freedom is limited by the freedom of others, so the freedom of others is limited by your freedom, too. If you swing your fist, you have to look out for my nose — but if I swing my fist, I'll have to watch out for your nose, too. So it works both ways. And this is the whole point: nobody has a right to exercise coercion over others, if others don't also have similar rights. There are no grounds for justifying the limitation of the freedom of the individual, other than the reasonable limitation imposed by the freedoms of others. *The individual is entitled to the maximum amount of freedom that it is possible to exercise without limiting the freedoms of others. This principle is the fundamental principle of freedom.*

Note that this principle is about freedom, not about morality. I am not saying that it is morally right to do everything that doesn't limit the freedom of others. Your personal morality is a personal matter — something for you to decide. But when it comes to things that others can forbid you from doing or compel you to do, then the fundamental principle of freedom applies. It's wrong for other people to forbid you to do anything that doesn't infringe on their own freedoms. The things that are immoral for you to do are not necessarily the same as the things that other people may justifiably forbid you from doing.

The fundamental principle of freedom is a result of the fact there are no grounds for assigning one individual special or excess rights over another individual. This argument

may seem abstract. But there are other, more vivid ways to look at this conclusion. Consider a situation where someone is exercising power over you, making you do something. He claims that he has a right to do this. He justifies it from some supposed moral principles. But ask yourself this question: why should *he* have the right, when *you* do not have the right? What gives him this right? This question is the bottom line of freedom. *What gives him the right?* What gives someone else any rights over you? You are of the same intrinsic worth as this other person who's trying to put limits on your freedom. There are no factual grounds for supposing that you should have less freedom. So what gives him the right? Don't you have the right too? And shouldn't you have the power?

These ideas may seem radical. They may even seem destructive at first. You might wonder whether embracing these ideas would lead to social chaos. Am I saying there is no such thing as a legitimate social order? I am not. If we adopted the idea of freedom that I am proposing here, it wouldn't automatically result in chaos in the streets. It wouldn't automatically result in the overthrow of the government. It would result in widespread social change, and it would result in a drastically changed government. This change would be of a positive sort, and everybody would be better off because of it.

This idea of freedom that I have proposed here is different from some other ideas about why people have a right to be free. This idea that people's freedom is limited only by the freedom of others, and not by anything else, is not a new idea. I didn't invent this idea; it's an idea that's been around for some time. It's an important idea in political thought, especially in the part of the political spectrum called "libertarian."

There are also other ideas about the origin of freedom — why we have the right to be free. Some people say that we have a right to liberty because God gives us inalienable rights. I'm not going to question anyone's religious beliefs here, or argue for or against any religious beliefs. But even if God did grant us our rights, there would still be another, separate reason why we have the right to freedom: there is no factual basis for giving one

person special rights over another. This reason for freedom works for everyone, regardless of religious creed or lack of it. And anyone, believer or unbeliever, can use this reason to defend freedom. (Some believers might think it amounts to the same reason. A believer might think that God created a world in which there is no factual basis for one person to have extra rights over another.)

Another idea about the origin of freedom is the theory of natural rights, which says that our rights come from nature. (The idea that God gives us our rights is one version of this theory. There are other, less religious versions as well.) According to the theory of natural rights, we have rights because of what we are. The view of freedom that I am putting forward here is a version of this natural rights view — but it's a version that *assumes much less* than some other conceptions of natural rights. Ideas about natural rights sometimes lead toward the belief that rights are special qualities that nature somehow affixes to us, or that rights result from some specific quality of people, such as the ability to think. I am proposing that rights are much more than this. We have rights because of a fundamental fact: there are no grounds for someone else to have rights greater than yours. And this reason is valid, even if some other justification for freedom *also* is correct. If God creates you to be free, or if nature gives you natural rights, then you have rights — but you still have rights for another reason as well. There is a reason for freedom that's so basic that regardless of what you believe about nature or God, you can be certain that you have a right to be free. You have this right because there are no factual grounds that give anyone special rights over you.

This last point is important, because it disproves some of the claims that opponents of natural rights have made over the years. Some people claim the idea of natural rights depends on an outmoded conception of human nature. Or they don't believe in God, so they argue that there are no God-given rights. But all of these arguments are beside the point, because there is a reason for freedom that doesn't depend on any particular belief about human nature or about God. Freedom comes, not so much from something we have in our nature, but from our *lack* of something — the lack of any characteristics that

could justify one person's exercising special rights over another. No argument against freedom can knock down this idea of freedom, because the idea doesn't depend on any special beliefs. It just depends on the simple observation that there is nothing about a person that would give that person rights of coercion over others, that another person would not have in similar circumstances.

You don't have to worry about all the opponents of freedom and their reasons why you shouldn't be free. You can safely ignore people who say "I don't believe in natural rights, so therefore there's no reason to believe in freedom and no reason to fight for freedom." You can ignore the postmodernists and skeptics who say the old natural rights conception of freedom is out of date, so there's no basis for believing human in rights anymore. Just don't listen to the arguments against freedom. There is a reason why you have a right to freedom — a reason that is unshakable and independent of anyone's beliefs. This reason is simply the fact that there is no reason at all why two different people should have different rights to exercise coercive power over others in the same circumstances. It all comes back to the supreme question: "What gives him the right, if I don't have the right?"

Talk 2. What Is the Government For?

The idea of freedom that I presented in the last chapter has major consequences for our beliefs about government. What is government for, and what should the government be doing? The person who is trying to restrict your freedom, whoever that person might be, might call on supposed moral principles as a justification for restricting your freedom. Maybe he's an agent of the government, and he says that because he represents the government, you have to obey him — you *must* obey him. But why *must* you do anything? Where does this *must* come from?

It might be true that you have to obey this person to keep out of trouble. You might have to obey him to avoid punishment by the government. But that's just a practical consideration. You do something, or don't do something, so you won't get punished. Apart from this practical issue, do you have any *moral* obligation to obey this person? Does the fact that he works for the government, and draws a paycheck from the government, give him any built-in right to force you to do something, and to harm you if you don't? Ask yourself this question: What does the idea of a government paycheck have to do with the idea of liberty?

It seems as though a government paycheck shouldn't imply the end of liberty. A government position does not make anyone superhuman. A government position doesn't give anyone extra rights, or any justification for exercising coercive force over others — unless everyone in similar circumstances would have that same right. As a practical matter, you may have to obey the government to avoid bad outcomes. But the fact that you have to do something for practical reasons does not imply that you have any real duty to do it. If you go broke, and you have to live on beans for a while to survive, that

doesn't imply that you have a moral obligation, a moral duty, to eat beans. It only means that eating beans is a temporary practical necessity. Similarly, sometimes it's a practical necessity to obey the government. So we are back to our original question: do you actually have a moral duty to obey the government?

This moral duty cannot come from any special rights possessed by the government. Government agents, like any other people, do not have any special right to restrict your freedom. Legislators, judges, police officers, and other government personnel have exactly the same rights, morally, as everyone else. *They're just people.* They have no more built-in right to exercise coercion over others than anyone else does. They're just people! Their right to swing their fists is limited by your nose.

This idea might seem radical at first. It might seem to run counter to everything we think we know about authority in government. It might seem to run counter to democracy as well. According to a widely accepted belief, government is necessary for the existence of civil society, and we, as citizens of the state, have a built-in duty to obey the government, at least under most conditions. Some people make exceptions — for example, some believe that if the government passes a wicked law, we have a duty to exercise civil disobedience against that law. But most people think that obeying the government is a moral obligation, which we have just because the government is the government. That's a common belief.

I will propose something a little different. I will propose that our only moral obligation to obey the government *comes from the obligation to respect the rights of other individuals.* I'm suggesting that the government is just a set of people — with nothing special about them, with no more rights over us than our next-door neighbor or the man who lives down the street. All people have rights. Our only obligation to obey the government comes from our obligation to respect those individual rights.

This idea is not new. It's just a version of the classic American idea of "government by

the people." It's not as radical as it seems.

Note that I am *not* saying that we should deliberately disobey the government. There might be good reasons indeed to obey the law — reasons that go far beyond the fear of punishment. For example, if everyone started ignoring all the laws all at once, social chaos might result. Also, some of the laws forbid real evils, like murder and robbery, that a person with a moral conscience would not want to commit. Later I will have more to say about the moral aspects of the law. For now, I'll just say that I'm *not* advocating any kind of sedition, violent rebellion, or chaos. I believe in nonviolent change. Also, I'm not arguing for anarchism — the belief that governments should not exist. (Incidentally, anarchism isn't what you've been told it is. Anarchism doesn't necessarily mean chaos; most anarchist thinkers think some social organization is necessary. And "anarchist" doesn't necessarily mean a promoter of violence. There are peaceful anarchists too. But I'm not promoting any kind of anarchism here.) I'm not claiming that we shouldn't have a government, or that we should abolish the government, or that the people should bring the government to nothing. There might be some very good reasons for a nation or a people to have a government of some kind. All I'm saying is that the justification for the existence of government *cannot* lie in the belief that the government has rights over us, or that we have something "built in" that requires us to obey the government. Such beliefs, though widely accepted, can't be true. In a moment I will discuss some possible reasons for a people or nation to have a government. For now, I'll just mention that the reason for the existence of the government *cannot* be that the government has special rights over citizens — rights that citizens don't have over other citizens. The government has no special rights of this kind.

It's a strange thought, I know. But wearing a certain uniform or drawing a government paycheck does not make you a god. Government people are only human, with all the rights — and only the rights — that humanness entails.

There are two potentially good reasons for the existence of a government — for having

some degree of government. One reason is that government seems to be a practical necessity for the defense of the rights of individuals. Often, a government can prevent the infringement of the rights of individuals in situations where the individuals can't defend themselves very well. For example, if an armed assailant is about to attack you, the police officer might be able to stop that. You might not be able to get out of that situation yourself, by your own powers. But if a police officer is nearby, you have a better chance of escaping. Knowing that there are police officers should make you feel better in a world in which criminals are a reality, because there is someone who can help you with crime situations. It appears that having some kind of government is necessary or at least good, because there are certain self-defense tasks that an individual acting separately can't do well. But it is important to remember that the government has an excuse for this only because the people (individuals) have rights of self-defense. The government is simply exercising your right of self-defense on your behalf.

Another possible reason for the existence of a government is that a government seems necessary for other purposes besides the defense of individual rights. There may be other things that individuals acting alone would find it hard to do. Building roads is the classic example of this; there are other examples too. There are some things that would be difficult for the individual, or for a few individuals together, to do. In today's world, government fills in and does those tasks. If we didn't have a government, we'd have to ask ourselves how these things are going to get done. Fortunately, there is a known answer to this question. Libertarian thinkers have pointed out that a country, or a society with a government, has two parts: the government, and civil society.[*] Civil society consists of all the groupings and social arrangements that people make without being ordered to do so by the government. That includes families, clubs, associations, religious organizations, charities, businesses, and so forth. Libertarian thinkers have pointed out that civil society can create useful institutions of this sort, even without any government

[*] See Boaz, *Libertarianism: a Primer* (especially ch. 7), and Thomas Paine, *Common Sense.*

pressure.[**] People are social beings; people can get a lot of work done through agreements and compacts among themselves, even without the government. So, why couldn't people do most of the functions of society through voluntary compacts, instead of through government? One can imagine the people in a town, for example, coming together and deciding to build a water plant, with pipes running into the homes of all those who subscribe to the water service. The people would have to contract out most of the work (unless they were all plumbers), but they could get it done. One can imagine people in an area forming a road-building club, with everyone pitching in some money to hire road builders and buy the needed materials. Perhaps civil society could handle most so-called government functions this way — with government stepping in only to make sure that disputes get resolved, and that no one gets cheated out of anything.

The idea of placing so-called government functions into the hands of voluntary associations is an old theme in libertarian thought. Opponents of this idea have raised serious objections to it. I won't try to review all the arguments for and against, but let me address one or two main objections and errors. First, note that this way of doing things is not the same as what politicians call "privatization." What politicians today call privatization amounts to handing over the functions of government to business corporations. For-profit corporations sometimes have a predatory disregard for human well-being. What I am proposing here is that *people* own public works — not the government, and not some greedy company either. Second, one might ask whether the scheme I am proposing will work in practice. For example: how can the road-building organization build roads when it lacks the power of eminent domain? The answer is that it will have to buy the land for the road, just as you or I would have to do if we wanted some land! And maybe there would have to be some compromises about the exact location of the road. (Maybe the road will have to go around the houses of the retirees who won't move, instead of through them.) But the road will get built anyhow! And if the neighbors who build it are wise, they will let anyone use that road. If they try to

[**] See Boaz, *Libertarianism: a Primer*, especially pp. 136-142 and 239.

restrict it to themselves only, they will cut off their own opportunities for visitors and business contacts.

We, the people, can work out the details of arrangements to do the functions that government now does. Thus, the defense of individual rights is the only function for which government is truly necessary. Most so-called government functions can be done in other ways instead. One might think these other ways would lead to confusion and conflict. But can anyone who has dealt with government bureaucracies say that they are free of confusion and conflict?

There are limits to what the government legitimately can do. The government has no built-in right to harm people, to punish people, or to use force against people. In fact, the government itself, as an organization, *does not have any rights at all.* Only individuals have rights. An organization, or a multiperson assembly like the government, does not have any rights of its own, apart from the rights of the people in the organization. And the people in the government are only human. They do not have any more right to use force or to do harm than does anyone else. No person has a greater right to coerce others than does any other person. It follows that the people in the government — the people who make up the government — have no more right to behave coercively than does any other citizen of the society that they govern. The government itself doesn't have any rights. Only the people in it have rights. And government officials don't have any more rights than the rest of us.

There's a common belief that government people, by being government functionaries, can do things that would be wrong if the rest of us did them — like imprisoning people. However, that belief is only an urban legend. The government is right in its use of force only when it acts on behalf of someone who has a right to use force already. Here is an example. If somebody is about to try to kill me, I have a right to use force to defend myself. I have a right to defend my life, and I am justified in defending myself. Now suppose that instead of trying to disarm the potential murderer myself, I've hired someone

to do this work for me. I've hired someone to fend off criminals who are trying to attack me. This person whom I've hired can act on my behalf to exercise rights that I already have. I have a right to exercise my rights, and I can hire somebody to help me with that and to do the necessary deeds for me. There's nothing wrong with that. And that's exactly what happens when the members of a community hire a police officer to defend them from criminals. If the police officer tackles the murderer before the murderer can shoot you, then the police officer is doing something that you would have had a right to do, but probably were unable to do. In practice, you might not be able to defend yourself, but maybe the police officer can defend you. So there's nothing wrong with the people having a police officer. It's just that the police officer doesn't have any extra rights by being part of the government. The police officer has rights that already exist in the people.

This doesn't mean that everything the police officer supposedly does on your behalf is right. Obviously, police officers sometimes do wrong. But it does mean that the police officer is right in defending you from bodily harm. The whole point of this example is that it sometimes is permissible for government functionaries to exercise coercive power — but only when it would be right for citizens to exercise the same power themselves. Government functionaries don't have any rights over others, any more than does anyone else — any more than does an ordinary decent citizen, or a criminal, or anyone else! What's more, the government can exercise this coercive power only when absolutely necessary. Any *unnecessary* use of force, or doing of harm, is wrong. An unnecessary attack on anyone is not a good thing, and is not morally justified. An attack on someone is justified only when it's necessary to defend someone's rights. This means, for example, that government functionaries can defend you from bodily harm, from theft, or from other kinds of violations of your rights. They can do this because you already have a right to defend yourself from these things. That's the only reason they have that right. Beyond those limits, government functionaries do not have a right to force people to do things or not to do things. For example, the government does not have a right to prevent you, under pain of punishment, from expressing your political ideas. The reason the

government doesn't have that right — or, rather, that government functionaries don't have that right — is because other citizens don't have that right either. Nobody has that right. Later I'll have more to say about freedom of speech. For now, let's just say that because you have freedom of speech, the government doesn't have right to infringe that freedom. And the fact that the government is the government doesn't change that. Also, government functionaries don't have a right to forbid harmless activities that infringe no one's rights. Those who remember the overthrow of the Taliban government in Afghanistan may recall that the Taliban used to forbid people to fly kites. Forbidding people to fly kites is way outside the legitimate function of any government.

If I ever speak of the "rights" of government, or of the government having a "right" to do something, I am speaking loosely. What I actually mean is the rights of government functionaries, such as police officers. The government itself does not have rights. Only people have rights.

What Government Should Not Be

Besides asking "What should the government be?", we can ask "What should the government *not* be?"

There have been many different arguments and ideas about what justifies the existence of governments. During the Middle Ages, many people believed that governments exist because God had put them there. This belief was tied in with the idea of the "divine right of kings," which said that kings have a right to rule because God gives them that right. Today, hardly anyone in the Western world believes in the divine right of kings — and it's a good thing that they don't. And yet, many people believe that God created the government, and that we should obey the government because God tells us to.

This talk is not the place for me to argue questions of religious faith. But those who believe God creates the government should consider the following point. Many of the

people who argue for a religious government also believe that God is good. Now if God is good, would God create a government that's not good? If God creates governments at all, then He only creates good governments. But the best government is the one that places only an absolute minimum of constraints on the people — the kind of government that I've been describing here. Thus, if God did create or support a government, that government would be one that places the least possible constraint on the people, and in which the government functionaries don't exercise any rights they don't have. This is the only kind of government that would have God's backing. If you believe that God is good or that God knows best, you can't get around this conclusion.

Everybody has their own beliefs about these matters. My personal belief is that government is a human invention. But this much is clear: even if God did create governments, then if God is good, God would create a government that is truly free. So the medieval arguments for the divine right of kings, and the modern versions in which people argue that God makes us obey a cruel and coercive government — these arguments are just wrong.

Another common belief about government is the belief that government exists to prevent wrongdoing. According to this belief, the government exists to prevent people from doing wrong, or to make people good. Both left-wingers and right-wingers often believe this sort of thing. Many right-wingers want to ban behavior that they regard as immoral — such as drinking, loose sex, and foul language. Left-wingers often want to ban things that *they* consider immoral — such as "politically incorrect" language, or criticisms against illegal immigration. The leftists and rightists don't just disapprove of these things. They don't just want to protest about these things, and express their own views. Instead, they want to *ban* these things, and enforce their bans with punishments. When the left does that, it's called "political correctness." The far right does the same thing, but the items they want to ban are different.

The far left and the far right have a lot in common. Actually, they're almost the same,

because they hold the same twisted belief: that the government has the right to prevent people from being naughty. Both the far left and the far right believe that preventing immorality (whatever *they* think is immoral) is a legitimate function of the government. This is just plain wrong!

Government officials *do not* have a right to stop you from doing something just because someone feels that what you are doing is immoral. The only wrongs that the government can stop are wrongs that involve the actual harming of another person — in other words, actions that involve the fist going farther than the limit of the nose. Those are the wrongs the government can stop. It's legitimate for government functionaries to use their power to defend the victims of these real wrongs. But outside these exceptions, the government (or an official of the government) does not have any right to interfere with your behavior, even if that behavior is immoral. The purpose of the government is not to force people to be good.

Immoral behavior is an occasion for government intervention only when the behavior involves harm to an innocent victim. And by "harm" I don't mean just expressing a disagreeable thought; I don't mean that people should be thrown in jail for saying something mean. The left especially has a strong tendency to do that nowadays — to try to punish people for saying something "insensitive." The only time the government can act coercively is when a harm is being done that would justify coercive action by the victim. The government can protect people and property. If there's a situation in which the victim would be right in using force to stop the perpetrator, then the government can do that too, on behalf of the victim. But if there is a situation that wouldn't justify an individual's use of force, then the government doesn't have a right to use force either. Actually, I should say the government functionaries don't have that right — since the government itself doesn't have any rights, and "the rights of the government" is only a manner of speaking. The government can justly exercise coercive power only while acting on someone's behalf — helping someone exercise rights that they already have.

The government should not have the power to interfere in your life any more than is absolutely necessary for protecting the legitimate rights of others. This means the government has no business at all interfering in your life, with one exception. The exception is the protection of the rights of other people. If you try to shoot someone, or steal from someone, or something like that, then the government can stop you. The government can take measures just as drastic as the measures the individual could take in defending himself or herself.

Thus, the proper exercise of government power is limited. If a citizen can't justly do something, then the government can't justly do it either. All the government can do is help people exercise their rights. In general, the government (meaning government functionaries) does not have a right to do anything that other citizens would not have a right to do if they were able. This is the nature of government power, as it should be and could be. This is the only permissible kind of government power.

Talk 3. Justice, Injustice, and the Law

How should a government govern? There are two possible known ways for a government to work. Either it can govern by fiat, like the kings of ancient times, or it can govern according to some form of law. Of these two ways, the rule of law is better. Rule by fiat leads almost automatically to infringements of people's freedom. Also, if there are no laws, people don't know what's expected of them. If you have a ruler who can arbitrarily tell you what to do, then it's impossible to predict when you're going to be in trouble with the government. You could be doing something that seems perfectly legal, and then the ruler could have a bad day and decide that he doesn't like what you did, and you could be in serious trouble. With a system of laws in place, at least you should be able to know what's allowed and what's forbidden. Thus, the rule of law is better than arbitrary government. It's the best way that we know of to operate a government — according to law of some kind, instead of according to fiat. Also, laws are necessary for the same reason that a club has to have bylaws. Without some rules, there's a constant disagreement about the procedures for doing things.

A system of law seems necessary for a good government. However, not just any system of law will do. The laws must have certain characteristics, or else they will not be in accord with freedom. One characteristic the law has to have is that laws should allow the government to act only when it's justifiable for the government to act. As I said in an earlier talk, governments have only one legitimate purpose: protecting people's rights on behalf of the people. A proper system of law has to be in accord with that purpose. The law can't let the government coerce people more than that purpose would allow. This means, for example, that it's all right to have a law against murder, but it's not all right to have laws against actions like swearing when you're alone. A person who tries to stop their neighbors from swearing in private has a name. That name is *busybody*. And a

government that becomes a busybody is more than a nuisance — it's a positive danger to freedom, and even to human existence. If there are things the government can't forbid people to do, then a proper system of law can't forbid people to do those things. In other words, the law cannot allow any limitation of freedom that the one legitimate purpose of government cannot justify.

Another characteristic that a just legal system must have is what we could call *knowability*. The law is knowable if it is possible for a person to know what the law says. No one should ever get in trouble because of a law that they could not have known about. It is a grievous injustice to punish someone, or take legal action against someone, for breaking a law that they could not have known about.

No one should ever run afoul of the law because of an unknowable law. This means, among other things, that there cannot be any secret laws — laws that are not published and easily available to the public. But a law doesn't have to be completely secret to be unknowable. A law that is too complicated, or buried among too many other laws, can be a secret law for all practical purposes. If an ordinary citizen could not, as a practical matter, have known about the law, then the law is not knowable. A law that only legal experts can find in the books, or that only legal experts can interpret correctly, is a secret for all practical purposes. It's wrong to prosecute anyone for breaking a secret law, even if the "secrecy" of the law comes from the fact that the law is too complicated for an ordinary citizen to find or understand. To be just, the law must be knowable — actually knowable, in practice — to ordinary citizens.

Today's legal systems do not always have this characteristic of knowability. In the United States, for example, there are government regulatory regimes that have ridiculously complex codes of law. The infamous United States tax law is one example of this. The maze of regulations for various types of business provide other examples. These regulatory regimes can punish you severely for violating some rule that you didn't even know about! Some of these sets of regulations have large gray areas, and are so

complex that even experienced lawyers have trouble figuring them out. Yet the penalties attached to these laws can be severe. Laws like these are completely unjust and need to be changed!

It should be possible for an individual — even a nonlawyer — to know what the law is. If it's not possible for an individual to find and understand a law, then that law is unjust. Here, "possible to find" means possible for individual people to find, through reasonable effort, as a practical reality — not just possible in theory, or possible for lawyers. To understand the law, you shouldn't have to go to law school, or spend all your time doing legal research you don't have time for (while you also work a full-time job), or hire an expensive lawyer you can't afford. *The law should be understandable for the people who have to obey it. Otherwise, how can there be any realistic obligation to obey the law?* A law for which you are held responsible, when you cannot know what that law is, is an unjust law. Period.

There's an old saying that "ignorance of the law is no excuse." In present-day legal systems, this is an impossible standard. If the people cannot know, in practical fact, what the law is, then ignorance of the law *is* an excuse for breaking the law — and it's a good excuse. One of the most important characteristics the law must have is the characteristic of knowability. The law must be set up in such a way that you can know, personally, what the law is. And you shouldn't have to hire a lawyer to do that, either.

Lawyers are very helpful when you're trying to do something specific within the legal system. I am not trying to bash lawyers. But you should not need a lawyer to know what you're legally forbidden to do. You should be able to figure that out by looking up the law yourself. A legal system that you are forced to obey, even though you can't know for certain what the law is, is a desperate injustice. You should be able to go to the law, and look up what you want to do, and find out whether it is legal. You shouldn't have to hire a lawyer and spend a lot of money to find out what's legal. Today you have to hire a lawyer for all but the simplest legal issues — and sometimes the lawyer doesn't even

know the answer for sure, because the law is too complicated even for trained experts. Regulatory law in the United States is like that; sometimes it's almost impossible to tell what's what. Different competent experts can have different interpretations. This is just plain wrong. If the law tells you that you can't do something, then the law should say so out loud instead of hiding the fact.

The ideal law code would exist in a format — such as a single, carefully indexed, relatively small set of books — that makes it possible for ordinary people to look things up and find out for certain what the rules are. For example, if you want to start a small business, you should be able to look up "business" in the law books, and find a section containing a listing of all the laws governing businesses. This would contain the laws governing all businesses in general, and subheadings for particular areas, like particular kinds of businesses. People would be responsible only for the laws published in these law books. It would be possible to look up everything that you need to know about the law, in the law books. People would be responsible only for the laws that were in these books, and that were correctly indexed there. This way, you could not get into trouble over a law that you don't know about or don't understand. Also, if you could prove the code was poorly indexed, so you couldn't find what you were looking for after a reasonable effort, then you wouldn't be responsible. Besides protecting the people from undeserved trouble, this would have a valuable side effect: it would force legislators to keep the laws simple, so all the laws could be written in one set of understandable books.

This idea of a *fully knowable* system of law is different from what we have today. The law codes in the United States and many other countries are based largely on the common law — a traditional system of law based on the customs of the people. Much of modern law is based on case law (made up by the courts as they go along) as well as statutory law (passed by legislators). Case law and common law have the disadvantage that they are not knowable. The courts make case law. Then you go to court, and the court can define the law while you're in court. You can end up in trouble for something that was not clearly and unquestionably illegal before you went to court. You may get convicted of an

offense that was not an offense in the law books before you went to court. That is dead wrong! That means that you can't know the law. You can't know whether you're obeying the law, and you can't know ahead of time whether you're going to get in trouble for a given act. *I repeat: that is dead wrong!*

The government cannot do anything to you that you don't know in advance it is allowed to do. That is a basic principle of justice. It's a principle based on fairness and common sense. Any violation of this principle is a violation of human decency. Both case law and common law, when taken beyond certain limits, can violate this principle. Common law is based on the idea that the customs and traditions of the people can become legally binding. However, unless those traditions are written down as a legal code, they are not knowable — and you shouldn't be held responsible for them.

I'm proposing that we get the elusive common law rulings out of our legal systems, and have a system of *statutory* law, in which people are responsible only for what's in the written law. That way, if you're brought into court, the court can't decide that what you did was illegal unless there was a law on the books saying it was illegal. You can always know in advance whether what you are doing is illegal, and you can always stay out of trouble just by obeying the written law. And the law shouldn't have any gray areas. You shouldn't get in trouble for anything unless the law says *plainly and clearly* that what you are doing is illegal. If there's an unclear area in the law, if it's unclear whether something is legal, then that's a defect in the law. The legislature has to correct that defect; a court can't do it by deciding unexpectedly against you. If something was left out of the law, and something that should be an offense is not listed as an offense, then the legislature might later correct that omission. But a court can't decide, at your expense, that something you did is an offense when the law didn't clearly say it was an offense. In a just legal system, the courts can't get you in trouble after the fact. You can't get in trouble unless you could have known ahead of time, by reading the law, that your actions are illegal. A system that doesn't have this characteristic is somewhat like the rule of the ancient absolute kings, where the king could have a bad day and throw you in a dungeon.

That is not justice. The law code has to be completely knowable to the people. It has to be transparent.

This seems like a radical idea. If the people carried out this proposal, it would change the nature of law. But at the same time, this idea isn't so radical. Many democratic nations already have prohibitions agains *ex post facto* laws — that is, laws that punish conduct that occurred before the law came into effect. All new law created by courts is, in effect, *ex post facto* law. Law of this sort might outlaw conduct that was not clearly illegal before the court decision.

If the governments of the world adopted fully knowable systems of law, the nature of law itself would change. One effect of this change would be a much-needed *simplification* of the law. This applies especially to administrative and regulatory law. In many countries today, regulatory agencies put out frighteningly long lists of regulations. These regulations often are partly arbitrary, and often are vague and impossible to figure out. The classic example of this is tax law in the United States. These regulations are so complicated that a common citizen cannot, in practice, know the law — because there's just too much law to understand. Even lawyers are hard-pressed to understand these laws; a lawyer has to be a specialist to know all the regulations, and even specialists can disagree just because the law is too complicated. This is a violation of the principle that the law should be knowable. To be knowable, the law also has to be simple enough that it can be knowable, in practical fact, to an individual who is not a lawyer.

If we imposed the standard of knowability on legal systems, then most of the little detailed regulations would simply have to go away. And that would be a good thing. Without a knowable legal system, a country become a prison that confines you with all kinds of regulations that you can't possibly understand and obey. If knowability to the individual were a standard on the legal system, there would simply be a lot less regulations, and a lot less laws. And that would be a good thing. Losing all those regulations would not make society fall apart. Society would be better off without them.

We need to pare the legal code down to a core of laws that are truly important. The set of laws should be simple enough that all laws are fully knowable. If any serious vagueness in the law turns up during a court case, then the case should be dismissed. That is, if a law is vague, then any person prosecuted under that law must be given the benefit of the doubt. If the law is vague about whether what they did was illegal, then the court should assume that it was *not* illegal. This policy would stop the practically *ex post facto* prosecutions that are possible today. Also, it would encourage legislators to get the vagueness out of the laws — since any law that was vague in a serious way wouldn't stand up in court. Then gray areas of the law would no longer be areas of fear for the people.

In conclusion, we need to go over to a statutory system of law, and get case law and common law out of the system as much as possible. We need to make that statutory system fully knowable and transparent, and simple enough to be understandable to the individual who is not a lawyer. Any system of law that does not meet these standards is not a fully legitimate system of law.

Rethinking Punishment

One important fact about the law, as it exists today, is the fact that the law is not knowable. Another important fact is that the law, as it stands today, contains punishments.

Punishment is the traditional method for dealing with violations of the law. In all countries, there is a criminal legal system and a civil legal system; in some societies, these two systems overlap. The criminal system metes out punishment; sometimes the civil system does too. Traditionally, punishment is society's response to crime. This response is so ingrained that the words "crime" and "punishment" go together in our minds. But is punishment the best method for dealing with crime? What is punishment,

anyhow?

Punishment has several aims. One aim is *retribution*, which means making the offender suffer in retaliation for the crime. Another aim is *deterrence*, which means making the offender suffer for the crime so other offenders, or the same offender at a later time, will be scared off. Deterrence takes two forms. There is *individual deterrence*, which means doing something bad to the offender so the offender doesn't want to offend again. And there is *collective deterrence*, which involves doing something bad to the offender so other potential criminals are frightened and don't want to offend. Collective deterrence seems to be the main goal of most criminal legal systems today.

Another goal of punishment is *incapacitation*, which means taking a criminal out of society so the criminal can't commit more crimes. Yet another goal of punishment is *rehabilitation*, which means getting the criminal to stop being a criminal and become a productive member of society. I would not call rehabilitation a form of punishment at all. If the goal of a criminal sentence were solely rehabilitation, we couldn't really call that sentence a punishment. It would be more like a treatment, or education.

What about the morality of these supposed aims of punishment? The most important moral fact about punishment is that *retribution never is a proper aim of legal punishment.* Retribution is *never* a proper goal for *any* legal action. Many thinkers over the ages have asked whether revenge or retribution is right. Is it ever right for an individual to take vengeance on a wrongdoer who picks on that individual? I'm not going to try to answer that general question here. I will just point out that vengeance is a morally questionable act. I wouldn't want to live in a world in which people are taking vengeance all the time. But even if individuals did sometimes have a right to take vengeance, the act of vengeance is something the government *cannot do for* the individual. Earlier I said the government can help the individual enforce his or her rights. But regardless of whether the individual has some right to take retribution, the government cannot enforce this right.

There are many reasons the government cannot take vengeance. The main reason is a reason of conscience. The systematic harming of a person by a crowd is much more repulsive than a private, one-on-one act of vengeance. It's one thing for an individual to go out and harm a perpetrator who wronged that individual. I'm not saying that this individual vengeance is right; I'm not promoting "street justice." But regardless of how right or wrong individual vengeance might be, a mob systematically destroying a person is a whole different story. It is a wrong much worse than an individual act of vengeance. If you ask me for an argument for this claim, I will not present any philosophical rhetoric. I will simply say, "Search your conscience." Civilized people do not let crowds — mobs, human dog-packs — harm and damage an isolated, captive victim. And a government is a human group. It is not civilized behavior to let a group — even an elected one — inflict vengeance on a captive victim. Truly civilized people are likely to find this fact intuitively correct, if they think about it long enough.

When a group punishes an individual, that's an act of *bullying*. When you're a child on the playground and you're confronted by bullies (as too many children are), you become aware that it's unfair to have several people picking on one person at the same time. An especially nasty form of bullying is the bullying of a lone person by a mob. Many against one is not a fair fight. And the lowest, most vile form of bullying is a many-against-one attack in which a crowd deliberately harms a person for the sake of causing suffering. It is simply not right to have a mob gang up and do harm to a single person. It is just as offensive when the machinery of government punishes a particular individual. The fact that the individual did something wrong does not make this act less offensive.

Note that I am not saying that society should do nothing about criminals. When I talk about "bullying," I am not talking about putting a dangerous criminal in an institution to protect the innocent. I am talking only about *retribution* — the retribution aim of punishment.

Another reason the government doesn't have a right to take retribution is that putting the

revenge power in the hands of the government makes the government *far too powerful and dangerous*. If the government has this power, then the government can do bad things to you, just for the joy of making you suffer. This means that if the government makes a mistake — for example, if they convict you of a crime you didn't do, or if they pass a bad law (like the old laws allowing slavery) — then the government can do really bad things to you. Retribution gives the government powers that are too large for the real world — a world in which people make mistakes. Letting the government wield this power is like letting someone swing a hammer in the air inside a small, crowded room. The power of retribution is too much power for the government to have in a world in which people are vulnerable.

There have been many cases of wrongful criminal convictions by the courts. One often hears of people getting convicted of crimes, being put in prison for many years, and then being proven innocent through scientific DNA evidence. If we let the government take retribution, then the government can do terrible things to you by mistake. This risk is not a tiny, ignorable risk. Unjust convictions happen all the time! The risk to the individual is simply too great. Personally, I would prefer not to live in a society in which the government can deliberately do serious harm to you. As long as we live in a world in which people make mistakes, the government should not have this kind of power. It's too dangerous.

A third reason for rejecting the retribution aim of punishment is the simple fact that it does not do any good. There's an old saying that "two wrongs don't make a right." Retribution against the offender does not cancel the offender's crime. It does not help the victim. Retribution does not even aim to prevent future crimes. It may have deterrent effects, but deterrence is a different purpose of punishment. Retribution, in itself, does nothing positive. Why do wrong to the criminal in retaliation for a wrong? Do we really need another wrong? Some might say the criminal "deserves it" — but does that mean that we have a right to do it?

There are many reasons why retribution is not a valid purpose for punishment. Governments should not be in the retribution business. If punishment is necessary at all, it has to serve other aims besides retribution.

Incidentally, my remarks about the individual's "right" to take revenge do *not* mean that individuals really have that right. I made those remarks only to make a point about the difference between individual and government revenge. Personally, I don't believe in revenge — at least not in serious revenge, as opposed to mild and harmless forms of "revenge" (just bugging someone who has bugged you). I do not believe that an individual has any right to take serious, harmful revenge. And that's another reason I don't believe the government has the right to take retribution

People who discuss the morality of punishment often overlook an important fact. This is that many of the punishments dealt out by governments are absolutely horrible. When we talk about these serious punishments, we talk about numbers — X number of years in jail or whatever. We talk about this as though it were just a number, like a basketball score or something. In reality, these punishments have horrible effects on people's lives — horrible, unbelievable, incurable effects. I may talk more later about the punishments used in today's society, and why they are completely unacceptable. But for now I'd like to review some other supposed purposes for punishment, and see if any of them hold water.

Deterrence is another supposed purpose of punishment. In legal systems today, deterrence is the main purpose of punishment. Deterrence is wrong.

Deterrence is wrong. That's what I said.

There are two kinds of deterrence: individual deterrence and collective deterrence. Let me talk about collective deterrence first, because that's the main purpose of most criminal "justice" systems. Collective deterrence is where the government does something bad to

the criminal so other would-be criminals will think twice before committing crimes. This is just wrong. Here's why. If someone deserves punishment, then the correct amount of punishment is whatever that criminal deserves for that crime. It's always unjust to inflict a punishment greater than that. So if someone deserves punishment, you have to mete out a punishment that's fair for that particular criminal and crime. But if you add on punishment just to scare other criminals, then you are punishing that person for crimes that other criminals might commit in the future. And that's wrong, *because it's wrong to punish someone for someone else's crimes.* If punishment is ever right, then going beyond the amount that's deserved is wrong.

I'm not saying that anyone deserves punishment. That's a separate question. My point is that even if punishment were right, it would be wrong to add more punishment to deter future offenders. That extra punishment violates an important moral principle: that no one should be punished for the crimes of another. The punishment must fit the criminal and the crime. The punishment must not be based on some imagined future crimes that other criminals might commit someday. To punish with the intent of deterrence is, in effect, to punish someone for the future crimes of others — and even for possible crimes that someone else might or might not commit someday. And it is *seriously* unjust to punish someone for future crimes, for the crimes of others, or for possible future crimes that might not ever happen. Thus, the collective deterrence aim of punishment is simply unjust.

There's also a form of deterrence called *individual* deterrence, which means doing something to the offender so the offender won't want to offend again in the future. This is not quite as ridiculous as collective deterrence, because at least a person gets punished for his own future crimes, instead of the future crimes of another. But it still isn't right, because it's a punishment aimed at stopping a *future* crime — a crime that hasn't been committed, and may never be committed. It's a punishment governed by the severity of future crimes, instead of by the severity of the crime that happened. So it's unjust because it punishes people for crimes they haven't committed. It makes people suffer for

crimes they might eventually commit. And that's silly.

The only form of individual deterrence that might be justifiable is deterrence aimed at making the criminal "go straight" — that is, making the criminal into a good citizen. To do this, we would have to be sure the punishment did not cause permanent harm to the offender. If the aim is to straighten out the criminal, then what you want to do is get the criminal straightened out and made into a good citizen, and not permanently damaged. This, I think, is the idea behind the juvenile "boot camps" tried in the United States. One aim of these camps is to instill discipline into young people who have committed crimes. These boot camps also have a deterrent effect, because they are difficult and unpleasant to go through. But juvenile boot camp is a punishment that's meant to be positive, and to straighten people out, rather than to damage them further. Even so, individual deterrence is morally questionable, because it bases the severity of the punishment on possible future crimes of the offender — crimes that haven't happened yet. The aim is to scare offenders out of doing crimes that they haven't done, but might do someday. Therefore, imaginary future crimes are controlling the intensity of the punishment. That's not right. Also, if you want to straighten people out and keep people from committing crimes, then you should use a strategy of rehabilitation, which works specifically to straighten people out. This would be much better than a strategy of individual deterrence. So the individual deterrence aim of punishment is wrong, even when the goal behind it is positive.

There is something else wrong with deterrence: it turns the fear of punishment into a reason for not committing crimes. There is a common belief that the fear of punishment is the reason to obey the law. This idea, or feeling, is so commonplace that it's hard for us to think about the law without it. But if we can step out of our mental box for a moment, maybe we can find better reasons for obeying the law. Try to imagine a world where the fear of punishment is *not* the main reason for obeying the law. If we eliminate fear as the main reason for obeying the law, then maybe conscience will kick in. Maybe some people will say, "Hey, this law is there for a reason, and if I don't obey it I'm going against what's right." Maybe it'll be easier to encourage people to be law-abiding if the

law isn't all about fear. Maybe this attitude would spill over from law to morality, and people would become more moral. If we didn't use deterrence as the basic force in society, then perhaps people would become more moral as well as more law-abiding. Who knows? Many people today obey the law, not because they give a darn about the rule of law, but because they are afraid. And that's not good. If we can possibly avoid this state of affairs, we should avoid it.

The only aims of punishment that might still be valid are rehabilitation and incapacitation. "Incapacitation" is the term for preventing criminals from committing more crimes — usually by placing them in a jail or other institution. Incapacitation is a valid aim of punishment. Obviously, there are some criminals who are too dangerous to be free. If dangerous criminals are not under guard, they are likely to commit more crimes. If we fail to confine such criminals, we are committing a grave offense against innocent people.

To decide who needs to be in an institution (and for how long), we need to think about what they did and why they did it. If somebody commits a murder in the heat of passion, and it's unlikely that they'll do it again, that's one thing. A cold-blooded murderer or a terrorist is something else entirely. There are some people who have become so evil that they need to be put away and kept away. But that has to do with the incapacitation aim of punishment, not with the retribution and deterrence aims. It is possible to lock up those who are dangerous without deliberately using jail as a way to terrify people out of committing future crimes.

The remaining aim of punishment is rehabilitation — trying to turn a criminal into an honest citizen. This is an extremely important aim. The rehabilitation aim of criminal sentencing is valid because many people who commit crimes are able to become honest citizens again. For example, there are kids who join gangs because the kids live in a neighborhood where you have to join a gang to be safe. The gangs force these kids to join. Once they're in the gang, the kids get coerced into doing other things they shouldn't

be doing. There are people who don't know how to make a living, who don't have the personal skills to hold a job. Because they can't support themselves, they end up stealing, or even dealing drugs. There are people who get involved with drugs because they are ignorant of the real dangers of drugs. These are only a few of the groups of offenders who might be saved by rehabilitation. They are not the dirty rats of the world. They have simply gotten into the habit of crime.

Rehabilitation of the offender is a valid goal. If the law concentrated on rehabilitation, and on incapacitation when necessary, then the justice system would not be about punishment at all. Rehabilitation and incapacitation are not the same as punishment. The aim of these two goals is not to punish, but to reform the guilty and to protect the innocent. Rehabilitation is a positive, productive aim. Incapacitation is a necessary measure at times. But neither one of these goals really is punishment. The word "punishment" implies making somebody suffer for the sake of making them suffer. If someone is placed in an institution because they're too dangerous to be free, then obviously they'll suffer because of that — but the suffering isn't the aim. Even if we minimize that suffering, we would be carrying out the aim of incapacitation. That's not really a punishment. Rehabilitation and incapacitation are not really punishment goals, even though they're considered goals of punishment.

If we abandon deterrence and retribution as aims of punishment, then we are left with a vision of a system that really doesn't punish at all. This system does not *aim* to make anyone suffer. It confines the dangerous criminals and tries to rehabilitate all offenders. That would be a just system.

If "punishment" means incapacitation and rehabilitation, then punishment is acceptable. But if "punishment" means punishment as we normally understand it, then punishment is wrong. Put away the dangerous thugs, yes. Put them somewhere. Don't put them into inhumane, hellhole prisons, as we often do today. Just put them in an institution where we can prevent them from committing crimes. And if there is any hope of rehabilitating

them, we'll try to rehabilitate them.

These ideas sound radical. I'm talking about abolishing punishment as we know it, and replacing it with something much more positive and practical. This suggestion immediately raises a question: How are we going to stop crime if we don't have punishment as a deterrent? To find the answer to this question, we have to think twice about our assumptions. We're all used to thinking of the law as keeping society in check through fear. Because of this thinking, the idea of giving up punishment sounds like a terribly radical idea. It sounds like I'm supporting social chaos, or coddling criminals, or being soft on crime. But I am not recommending any of these. *I am only suggesting a better way to stop crime.* I have said that we need to institutionalize criminals who present a real danger to society. I have said that we need to try to rehabilitate criminals and turn them back into honest citizens whenever possible. If we carry out this agenda properly, it will stop crime more effectively than our present system of fear.

Besides capturing and dealing with criminals, we need to prevent crime. We need to address the so-called "root causes" of crime. Nowadays, if you say that we need to address the root causes of crime, people immediately call you a liberal. Actually, the idea of addressing root causes is neither a liberal idea nor a conservative one. It's simply a sensible idea. This is not a liberal versus conservative issue. It is an issue of humanity versus inhumanity. People are responsible beings. They're responsible for their actions most of the time. But no one has *complete* free will. Forces that limit free will include social conditioning, ignorance, and misinformation. External influences can make people less responsible for their actions than they should be. People's free will is limited by the society they are in, the neighborhood they are in, the abuse they suffered as children, and many other causes. There are all kinds of reasons why people "go bad."

Both the liberal and the conservative views of crime are partly right. Usually, conservatives stress personal responsibility, while liberals stress the root causes of crime. Both of these views are valid. People are responsible, but not completely responsible, for

their own actions. There are limits to free will. If we were completely in control of our own fates, we would be all-powerful gods. We are not.

One of the most damaging root causes of crime is poverty. If we could end poverty, most crime would end too. Later I'll say more about poverty and economic freedom.

The idea of reform or rehabilitation of offenders has a long history. Prison reformers have tried to spread this idea around the world. Today, many people think rehabilitation has failed. This opinion is popular only because rehabilitation never got an honest try! *Most prisons are hellholes. This is true even in countries that regard themselves as free.* Even if a few minimum-security prisons are fairly humane, most prisons still are hellholes. In most prisons, prisoners don't have a chance to reform. They only get worse. If we gave rehabilitation an honest try, and were serious about it, then it would work. One of the first steps toward this goal is to get people out of prison who shouldn't be there at all. There are many "victimless crime" offenders, and other offenders too, who should never be in prison to begin with. There is no need to put them there for the safety of society, because they are not very dangerous. If we got all these unnecessary prisoners out of prison, then we could work on real rehabilitation of convicts, instead just of locking up all these random people.

The most important fact about punishment is this: the punishments inflicted by present-day governments are *absolutely inhuman*. No matter what you've heard, most prisons are hellholes — even in countries that call themselves civilized. If we are civilized, decent people, we should feel outraged by the things that go on in prisons! Here are two of the very common atrocities that happen in many American prisons (and presumably in the prisons of many other countries as well). These are not rare events; they happen all the time.

> *Homosexual rape.* This appears to be so common in American prisons that you could say the real punishment for crime in America is homosexual gang rape.

Medical neglect. There was an instance in which a prisoner was unable to get treatment while his pelvic region was being eaten by flesh-eating bacteria.[*] In another case, a prisoner suffered a major blood clot and severe bleeding, but was sent away from the prison infirmary – no doctor was called.[**] These cases are not unique. There are many, many cases of medical neglect in America's prisons.

In addition to these intolerable horrors, there are thousands of lesser beatings and degradations that go on all the time, inflicted both by uncontrolled, unsupervised inmates and by the guards themselves.

Yes, it does happen in America. Don't kid yourself that it doesn't.

A civilized nation cannot tolerate any of this! There are some evils that civilized people simply cannot sit still for. We must unite in protest — *now*. Even if most of the prisoners are guilty of crimes, we still cannot tolerate these atrocities. *No one, but no one,* deserves to be raped or deprived of medical care. A country that tolerates these atrocities should be ashamed to call itself civilized or moral.

When a judge sentences you to prison, the punishment is prison. The punishment is not rape. It is not being allowed to lie around sick while your body decays. It is not beatings and degradation by guards, or by other inmates whom the guards are failing to supervise. The evils that go on in prison are intolerable. The people have every right to insist that the government stop these evils. We should be exercising our rights of protest to stop these atrocities that take place every day in our own lands. We should impeach, recall, or vote out any government official who refuses to take a stand against these atrocities.

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[*] "Ex-inmate sues state over disfigurement," *The Seattle Times*, Nov. 5, 2007.

[**] "Prison's medicine in short supply," *Las Vegas Sun*, Feb. 1, 2006.

Regardless of one's views on retribution, there are certain punishments that a civilized people cannot inflict, period. If those punishments are likely to happen in prison, then regardless of what the sentence on the court papers says, those barbarous punishments are the ones that the court really ordered. I am sure that many judges know that prison rape is common. It's hard to believe that they don't know. *We* know, so why wouldn't *they* know? They know that they are sending young people away to be sexually broken. Don't kid yourself — the judges know. Any judge who would knowingly do this is a monster, and is responsible (along with the rapist) for the rape.

We must stop this continuing horror that is happening in the supposedly civilized countries of the world. Civilized people cannot inflict barbarous punishments, period. Nor can we tolerate such punishments when they happen. And a barbarous punishment doesn't have to be a punishment written into the law code. If it's likely to happen to a prisoner, then it's actually part of the punishment, no matter what the court paperwork says about the sentence. The people have a right, and a duty, to stop this.

Earlier I said that retribution and deterrence are not proper aims of punishment. But even if these were valid aims, there still would be certain punishments that no one should inflict, no matter what. Today these punishments are inflicted all the time. And the people should be furious about it.

In general, punishment should produce the least harm necessary to achieve its aim. The purpose of punishment, as I've said before, is not to make criminals suffer. The correct purposes of criminal sentencing are incapacitation and rehabilitation. Those are the only valid purposes of legal action against criminal offenders. Those two purposes are positive and useful. We should not subject anyone, innocent or guilty, to atrocities. No one, no matter how bad, deserves to be raped, or abandoned without medical care. We, as a civilized people, cannot impose a punishment of that sort. It just simply can't be done. Nor can we tolerate such a punishment when others impose it.

Besides the abuses and atrocities that go on in prison, there are other grave injustices that go on all the time in today's nations. One of these wrongs is the present-day use of criminal records. *Nowadays, every punishment, except for some very minor ones, is lifelong.* Because of criminal records, an offender doesn't only get punished during a prison term, but also is exiled from mainstream society for life. We cannot let this injustice continue! If the judge says one year in jail, then the sentence is one year in jail — not a lifetime of separation from society. If we would not impose a life sentence for a particular crime, then we should not confine the offender for life with a criminal record.

Right now in America there is a frightening growth of the idea of subjecting offenders to public labeling and social outcasting. This happens especially with sex offenders. Some governments keep public databases of these offenders. Sex crimes include some of the most horrible of crimes, especially when the crimes involve children. But even though protection against sex predators is necessary, these public databases are unacceptable. *They are morally equivalent to the old-time punishments of branding and the "scarlet letter." Like those punishments, the databases are morally wrong.*

Some will say I am being insensitive to the victims of sex crimes. I don't mean to be insensitive at all. I am in full sympathy with the victims of sex crimes, and I have no sympathy for the perpetrators. But there is a right way and a wrong way to solve every problem. All I am saying is that the public databases are the wrong way. If there is a need to separate someone from society for life — if they are so dangerous that they shouldn't rejoin society — then they should remain in a jail or another institution. If we are not willing to jail them for life, then we cannot imprison them for life through public labeling.

If certain criminals are too dangerous to be out on the street, then they shouldn't be out on the street. Sometimes it is necessary to remove an offender from society. For certain brutal and unreformable offenders, we may even have to remove them from society permanently. We should do this as rarely as possible, but it still might be necessary for

the most gruesome criminals and crimes. I don't want child rapists or terrorists to be walking around free. But if we're going to remove someone from society for life, let's at least be honest about it. Public labeling, public offender databases, and other forms of the scarlet letter should not occur in a civilized society.

When we decide what to do with convicted criminals, we have to think about some moral facts first. One of these facts is that collective punishment is wrong. If somebody commits a crime, you might do something to the criminal, but you don't go out and kill or harm the criminal's family. Some primitive law codes declared whole families guilty because of the crimes of some of their members. Today we know that this kind of "justice" is unacceptable. *But governments today do the same thing — even in so-called advanced countries!* What do you think happens when the government drags the wage earner of a family off to jail? What happens to the family? Do our government officials think about this? And even if the government were to replace the person's wages for the family, what happens to the family emotionally? What happens to the children's emotional development, with its lifelong effects? What happens to the spouse, emotionally and sexually? Governments don't care about this. People of conscience do think about it — and they are angry.

When you impose severe punishment, and especially imprisonment, on one individual, often you are dropping a bomb on a family. That is unacceptable.

The way out of all these injustices is to redesign our treatment of offenders so it is positive and useful rather than punitive. Our response to the criminal has to center on the effort to make the offender a better person. It has to do so with the least possible strain on the offender's family. And it has to do so with the least harm to the offender — because the government, even when it deals with criminals in a strong way, does not have a right to impose deliberate retribution.

Some of the injustices of criminal law happen outside prison. These include the extra

punishments the law slips in on top of a prison sentence. Some things that look like afterthoughts to a prison sentence can be worse than the prison sentence itself. For example, a court might put a prisoner in jail for a temporary sentence, and then force the released prisoner to pay millions of dollars in restitution. Unless the former convict is a millionaire, this ends the person's life. Imposing an unpayable debt on a person is just a dishonest way of putting a person in prison for life. Just try to imagine life with a million-dollar debt hanging over your head. Try to form a new relationship, or go back to school, or buy a car, or do anything at all, with a million-dollar debt hanging over your head. Excessive restitution is nothing but a way of putting people in prison for life. We shouldn't do it. If we find a criminal who's dangerous and will not change, then we should consider removing them from society indefinitely. But if a criminal is not bad enough to go to jail for life, then we cannot impose a life-destroying, no-hope-again sentence such as unpayable lifelong debt — or, for that matter, public labeling.

We need to replace the existing system of criminal justice with a new, morally acceptable system. We can think of this new system in two ways. We can think of it as a new approach to punishment, in which punishment is positive instead of retributive, and the suffering caused by punishment is kept to a minimum. But we also can think of it as *the abolition of punishment.* If the actions taken against criminal offenders are not meant to cause suffering, but only to defend the innocent, then these actions are not really punishments at all. This second way of thinking is better. It helps us understand what we should aim for. We are trying to build a society without punishment. We will take action against criminals whenever we need to — but we will not do it to punish. We will have higher aims.

Punishment should be a thing of the past. Punishment is a leftover from ancient times, when the law of retribution, or "an eye for an eye," was the law. In ancient times, people believed that retribution was necessary for religious reasons. Some people still think that "an eye for an eye" is necessary for religious reasons. Personally, I don't believe in using religion as an excuse for cruelty. This talk is not about religion, and I am not going to

attack anyone's sincerely held beliefs. But to those who believe in retribution on religious grounds, I have this to say: Search your conscience. Think about whether you can support a legal system in which young people who commit minor offenses are sent away to be raped. Think about whether you can believe in a system in which a youth who makes one stupid mistake can end up with a lifelong criminal record that causes him to come to nothing in life. Think about these things, and then see if you still believe that God has anything to do with the criminal "justice" system. The system we have today does not belong to heaven. It belongs to hell.

The approach to criminal law that I am proposing is not only morally better than the one we have now. *It also will be more effective in stopping crime.* Some people who hear these ideas may think I am being soft on crime. Actually, I am being tough on crime — but in the right way. I realize that we must do something about crime, and the sooner the better. I realize that we have to get serious criminals out of circulation. I am not against stopping crime. I am only claiming that we have no business exacting retribution or governing by terror, and that governments should not commit injustices and atrocities in the name of stopping crime.

Rehabilitating criminals is good for society. How could it not be good? It's obvious that if you turn criminals into noncriminals, that's good for society. The way to get tough on crime is not through more punishment, but through sentencing that points in the right direction and keeps society safe. The best way to do this is to make rehabilitation the focus while ending retribution and deterrence. Our most urgent task is to stop the unjust punishments and horrific prison conditions that exist today. These measures will reduce crime more than the currently popular terror approach to stopping crime.

What Is Justice, Anyhow?

Many people think the purpose of law is justice. People speak of the "justice system," as though justice were the aim of the criminal and civil law. But what is justice? What is

just, and what is unjust?

Justice, in one sense of the word, is fairness. This is the justice that people have in mind when they speak of "social justice" — a term that refers to fairness in society, and especially to economic equality and the struggle against discrimination. But "justice" as practiced by the civil and criminal law is something different from fairness. Of course the law should aim to be fair; it shouldn't promote unfair practices like racial discrimination. But the main purpose of a system of justice, if it really is a system of justice and not something else, is *to put things back the way they should be*. When wrongdoing happens, the system should try to redress the wrong. Doing more wrong is not the right way to redress a wrong. The best way is to try to fix the situation so it is at least as good as it was before the wrong happened. This is constructive justice — justice of a constructive and positive kind. The legitimate purpose of a system of justice is not to make offenders suffer. (This is true regardless of whether you think criminals deserve to suffer. No matter what criminals deserve, there are certain things that a civilized society simply cannot do.) As I explained before, making perpetrators suffer is not a legitimate aim of criminal law. The purpose of criminal law is to protect society. Another purpose of criminal and civil law is to try to set things right after a wrong is done. If we sincerely want justice, then we should have a legal system that tries to set things right. We should try to rehabilitate the criminal. We should try to reduce the effects of crime on the victim. We should protect the victim's rights. And we should try to prevent crimes from happening.

The Faults of Civil Law

Now, about the civil law. Most modern legal systems have two main parts: a system of criminal law, and a system of civil law. (There are other parts also, but here I'll discuss these two.) The criminal system deals with crimes, which are supposed to be wrongs against society or breaches of the peace. The traditional response to crime is punishment. We must replace punishment with a more positive response. The civil system, which is

what I am talking about now, is different from the criminal system. The main purpose of the civil system is to redress economic harm. If a wrongful act causes someone to lose money, or to be injured in some other way, then the civil system decides who will pay for that damage.

If we are going to have civil law at all, then the only legitimate purpose of that law is the redress of actual economic harm. Today, the civil law serves many other purposes — most of which are wrong. The main evil in today's civil law is the idea that a civil court can assess punitive damages against a defendant. These are damages that are meant to punish, instead of to repair any actual harm. *The very idea of punitive damages is wrong and unjust.* It is wrong for the government to punish anyone who has not committed a crime. Yet that is what the civil system does today; it can force you to pay punitive damages even if you have not been convicted of any crime. (A tort — an act for which you can be sued under civil law — often is not a crime.) If the law can punish at all, it must punish through the criminal law. I am not saying the criminal law should punish. I have said that punishment (as we know it) is the wrong way to deal with crime. But if punishment is going to happen, the civil courts should not impose it!

The civil law is not the criminal law. Civil defendants are not criminal defendants. Even if they lose the lawsuit and have to pay money, they still are not criminals, because the offenses with which civil law deals are not crimes. The law calls these offenses "torts." A civil wrong (a tort) is not the same as a crime. There is no justification for treating civil defendants like criminals.

Another great evil in the civil law is the idea of forcing people to pay damages for "pain and suffering." Civil courts should not be allowed to award these damages — or at least the damages should be strictly limited. Pain and suffering are parts of life. It's unfortunate when someone suffers, especially when someone suffers excruciating pain. But money cannot undo pain. And once the courts start awarding unlimited damages for pain and suffering, they probably will end up forcing someone to pay money just because

they hurt someone's feelings. This happens in America today. People file lawsuits over emotional suffering — and sometimes the courts listen to this, and extract a lot of money from someone as a result. Once we allow the possibility of awarding arbitrary money damages for pain and suffering, we are on a slippery slope that will end with people suing each other over an insult. Because of such lawsuits, life is unsafe for everyone in America today.

Pain and suffering damages are wrong because the sole legitimate purpose of the civil law is to redress *financially measurable* wrongs. If a court awards money damages at all, it should do so only to compensate for actual financial harm. When someone does something wrong to you, and that wrongdoing costs you money, then it seems more fair for the wrongdoer to pay the expenses that for you to have to pay them. But this is the only instance in which money awards in lawsuits might be just. And even then, there should be reasonable limits to the award.

There should be limits on the money that a court can award in a lawsuit. Today, civil liability can drive people into lifelong ruin. Imagine what it is like to make some small mistake that isn't even a crime, and then to be put under millions of dollars of debt by a lawsuit. Often, they can collect this money from you for many years, or even for the rest of your life. For some lawsuits, even bankruptcy will not erase all of the debt. Unless you are a millionaire, a large, permanent financial judgment means that your life is over. Most likely, you will never again own anything significant. You will never own a home. Possibly you will never even own another car. If you are a young person starting out, you will never marry or have children. (Just try to find a marriage partner when you will have almost no money for the rest of your life.) Doing this to anyone is absolutely evil and inexcusable. We must change the system now — not gradually, but now. *The civil law system must be changed! Conscience will not let us rest until we have changed it!*

The civil law is not supposed to be the criminal law. It has no business punishing anyone for any reason. Yet today, it can sentence you to a hopeless lifetime worse than death. A

lifetime of never being able to have even the basics that make a worthwhile life. A life sentence of misery and despair, all because of some mistake that isn't even a crime under the law!

The civil law is a crime! The people should no longer remain silent about it!

Civil liability should end at some point. It should be finite. And it should be something that a person can pay off within a short time, not taking their whole lifetime. If they can't pay it off within a few years at most, then the rest of the liability should just be canceled.

If the defendant in a lawsuit is found liable, but can't pay the damages in a reasonable time, then there should be another way to compensate the victim. One way would be to make sure that everyone has liability insurance. Recently there has been much discussion of the idea of universal health insurance. What about a universal insurance that would pay for damages that couldn't be collected in a lawsuit? If someone wrongfully injures you and causes you $100,000 in expenses, then they should try to pay you for it. But if they can't pay you, and can't be made to pay you in a way that is acceptable to a humane conscience, then the insurance would kick in and pay the rest of your bills. This insurance wouldn't even have to be a liability insurance. It could even be a no-fault insurance that pays for damage done to you by the acts of others.

The idea of universal insurance is a touchy subject. It sounds like socialism. But there is no reason why this has to be a government program! People could get together and form their own *nonprofit* insurance cooperatives. The people in a community could form one cooperative of this kind — or several competing cooperatives. It is possible to have universal insurance without involuntary, government-run insurance. So universal insurance doesn't necessarily lead to socialism, and doesn't necessarily need private for-profit insurance companies. The people could do it themselves. The poor would not be left out, because the premiums could be on a sliding scale.

The cost of this universal insurance is a big concern. If we took all the multimillion-dollar liability judgments that are awarded these days, and tried to cover them with a universal liability insurance of some sort, the cost might be tremendous. But this will not happen if we ban the civil courts from awarding damages for anything but actual financial harm.

If the civil courts could award judgments only for actual financial harm, then most court judgments would be small. If people were not allowed to sue over trivial things like insults, then many lawsuits would never happen. If the courts refused to award damages for self-inflicted harm, then even more lawsuits would go away.

There have been many lawsuits in which people brought harm on themselves, either through intentional action or by sheer unfortunate accident, and then sued someone else and won. There have been many such lawsuits in the United States. Some of them are well known and were highly publicized in the media. In America, it's possible to sue a restaurant because you accidentally spill hot coffee on yourself and it burns you. In America, it's possible to win money from a tobacco company because *you* smoked all your life and eventually developed health problems. If people were not allowed to win lawsuit damages for things that were caused mostly by sheer bad luck or by their own actions, things that were not clearly someone else's fault, then the total costs of lawsuits probably would go way, way down.

If we stopped unnecessary lawsuits, and limited the damages in other lawsuits to the actual money lost, then the civil law would be extremely cheap compared to the way it is today. And then society, the people, could afford to cover the expenses of people who have legitimate claims and who can't extract the money from the perpetrator in a morally permissible way. We could set up a universal insurance, or several competing universal insurances, to cover these expenses. If you get sued, you would not have to pay forever. The liability would cut off at a certain point. After that, the victim could depend on the insurance to pay the bills.

The idea of universal liability insurance, or universal damage insurance, might sound socialistic. But it doesn't have to be socialistic at all. What could be more capitalistic than covering yourself for unforeseen expenses? And anyway, the program would not have to come from the government. It could be carried out by community-based nonprofit insurance consortiums. People could opt out of it and carry private insurance instead — though it would be best not to leave it all in the hands of for-profit companies.

Regardless of what we think about insurance, it's clear that we must reform the civil law — and the sooner the better. We need to change it now.

In many civil lawsuits, a court could order actions that actually set the damage right. This would be better than trying to compensate for the damage by throwing money at it. I'm thinking in particular of cases of libel and slander. Money will not repair the reputation of a person who has been libeled or slandered. It would be better for the liable party to make a public retraction of the libelous or slanderous statement. This isn't a new idea; it actually has been done. When the harm involves damage to reputation, there are ways to correct the damage that actually do help to fix damage. Money judgments do not do this. In libel and slander cases, as in all legal cases, money judgments should not go beyond the money the victim actually lost. If someone loses their job because someone else published a false statement that they were alcoholic, then there might be monetary damages in store, but only for the salary and benefits they lost.

Other ideas in civil law also need rethinking. "Strict liability" is one of those ideas. Strict liability is liability that a court can impose without proof of fault. A classic example is when a water glass shatters in someone's hand for no visible reason, and causes an injury. The injured person may have a claim against the manufacturer of the water glass, even if they can't prove the manufacturer was sloppy in making the glass. Strict liability occurs in various kinds of legal cases, but especially in product liability cases.

Strict liability is an odd idea because it involves forcing someone to pay for an *unproven offense*. If strict liability ever is justified, it is justified only in cases where the damage obviously resulted from some action or some neglect. However, there are few cases like this in real life. Take the example of the exploding water glass. When the glass explodes in your hand, you don't know why it exploded. You assume the problem came from a manufacturing defect, but you don't *know* that it did. There could be all kinds of events, both likely and unlikely, that could cause a glass to break. For example, there could have been a bad electrical connection under the surface where the glass was sitting. This bad connection heated the glass unevenly without your knowing it, and the glass exploded from uneven heating. There could be some little odd event that happened in the room and caused the glass to break. Maybe you set the glass down on a counter before you picked it up, and you didn't realize the counter was hot enough to cause uneven heating in the glass. Why should a manufacturer pay for these odd events that were not under the manufacturer's control? The question becomes especially pressing when the manufacturer is a small business that can't survive a big lawsuit — and that is the source of livelihood for a family.

Strict liability is a questionable idea. The idea of liability without fault is very odd. There's something unjust about forcing someone to pay lawsuit damages without proof of fault. If strict liability ever is allowed, it should exist only when there is a strict, logical, convincing reason for believing the damage was someone's fault. Except in such cases, strict liability should be off limits.

Negligence is another treacherous idea in civil law. According to the legal doctrine of negligence, you can be fully responsible for harm that happens because of your carelessness, even if you didn't mean to cause any harm. If you violated a legally recognized duty to be careful, then you were negligent. However, in real life, many accidents are no one's fault. Things happen because people are not paying attention — but sometimes people *can't* pay attention. Psychologists and brain scientists know there are limits to our ability to pay attention. The capacity of the human mind to pay attention

is far more limited than we usually realize. It is stupid to claim that everybody needs to be paying attention all the time to everything that's going on around them. Yet this is almost what the law of negligence does. Often, the law says that if something bad happens because you weren't paying attention, then you are responsible. In reality, you might not be responsible at all. Maybe you couldn't pay attention at that moment because something else that seemed threatening popped up in your field of vision. Who knows? How can a court be sure you it was your fault when they weren't in your head at the time?

We have to cut down the role of negligence in civil law. We have to restrict liability for negligence to cases in which there was a *clear, unquestionable* duty to be careful about something, and a *clear, unquestionable* possibility of being careful to the needed degree. We need to restrict liability to cases in which the swings and distractions built into the human brain and body could not have caused the negligence. If we allow liability for negligence at all, then we need to limit it to cases in which the failure to be careful was unnecessary and avoidable.

The damages awarded in lawsuits are not the only costs imposed by civil law. The costs of litigating a case — especially the cost of hiring lawyers — often is higher than the cost of the damages in the case. This is wrong. If you think you have a legitimate reason to take a problem to court, you should not need to have money to do that!

Justice has to be free. If justice is not free, then it is not justice at all. The victims of legal wrongs should be able to use the machinery of justice without paying any money themselves. Otherwise, the law is not just and does not fully support freedom. In today's legal system, the greatest threat to people's well-being often comes from the legal fees, instead of from the damage awards that could result from the lawsuit. If somebody sues you you're probably going to be out many thousands of dollars just for the legal fees for defending yourself. Even you win the lawsuit, you may well be out tens of thousands of dollars. Will your kids still be able to go to college?

It is possible for someone to destroy you and your family by suing you — *even if you win the lawsuit.*

This is the way the law works today. The people should not put up with it.

One way to fix this is to make the person who sues you pay all of your expenses if you win. In other words, if they sue you, and then they lose the case, *they* should pay the expenses — not you. They harmed you by suing you, so they can pay for it. This is not a new idea; one hears it in discussions of tort reform, and it actually happens now in some court cases, when attorney's fees are awarded. It sounds like a good idea, but we have to be careful with it. This proposal would make it dangerous for poor people to sue, even when they have a legitimate claim. For example, sometimes people do have a legitimate claim against a big company. In these legitimate cases, people should be able to sue without fear that if they happen to lose, they'll be ruined by the other side's legal fees.

The best way to reduce the high cost of justice is to simplify the law so we won't need lawyers as much as we do now. Earlier I said that law should be knowable. This means the law should be simple and well-organized, so a citizen without legal training can read the law and understand it. *For most legal matters, you should not need a lawyer at all.* I'm not bashing lawyers here. I'm just saying the law should not be so complicated that you need to see a lawyer about every little thing you want to do. The law should be knowable and understandable to the people. If it were, then lawyers would become much less necessary. It would be much easier for individuals to defend themselves when sued, or to sue when they have a legitimate cause, without spending much money.

There are several steps we can take to make justice free. First, we need to simplify the law and make it knowable. That will take care of most of the problem. Then we can rebuild the system so that when lawyers are necessary, the defendant in the case doesn't need to pay for them. The idea of a universal insurance, which I discussed earlier, could help with this. Also, we should think more carefully about the idea of putting some or all

the expenses back on to the suing party. A little while ago, I said that this isn't necessarily a good idea. But perhaps it would be a good idea if we carried it out the right way. One possible way: we could set it up so the quality of the lawsuit (decided by a court before the actual lawsuit begins) determines who pays the legal fees. If a lawsuit was based on anything less than very strong evidence, the plaintiff would have to pay the defendant's expenses.

As I said earlier, the idea of a universal insurance may seem socialistic to some, but actually it is not socialistic at all. Universal insurance doesn't have to mean government insurance. But we should think about letting the government cover these legal expenses. If the government includes a system of justice, then the administration of justice is one of the jobs of the government. Perhaps the cost of justice should come out of the government budget. That wouldn't be socialism.

If you get sued and win, you should not have to pay a penny. If you sue someone for a legitimate and well-supported reason, you should not have to live in fear that you will be hit with terrible expenses if you lose. These conditions can exist only if justice is free. Justice must be free, or else it's not justice.

Talk 4. The Foundation of Freedom

A free government is not the only requirement for a free society. A free political system is essential, but a free economic system also is essential. People are not truly free unless they are economically free.

Are you really free? Think about it. Depending on which country you live in, you may be able to vote and to voice your opinions. But are you really free when you have to ask someone else's permission before you can eat?

Unless you are rich, you probably have to apply for a job before you can eat. This means that you *need to ask someone's permission before you are allowed to eat!* Just think about it!

We take it for granted that you have to get a job to support yourself. We think this is a normal part of life. What happens if you try to question this? What happens if you ask whether it's right to force someone to get a job before they are allowed to eat? If you start to ask questions like this, people will accuse you of being lazy, or of being a socialist, or of wanting something for nothing, or of being anti-business. Yet, when you think about it, it's only common sense to ask this question: *Why should I have to apply for a company's permission before I can eat?*

In a truly free society, you would not have to ask anyone's permission to survive. I am not against work (I have done a lot of it myself and I plan to do more). I am not promoting any form of laziness. I am not against businesses or companies (I'll talk more about those later). I am not against having a job. I'm just saying that there's something

wrong with a society in which most people need to apply to someone else for permission to live. In our present society, we do this all the time, and we don't think anything of it because we're so used to it. We've grown up expecting that we would have to get a job someday. And we think that's the way it's always been and always will be. But there's something downright wrong about a society in which you have to ask someone permission before you are able to eat.

In the society we have today, most of us have to apply for a job so that we can eat. The only exceptions are those born rich, and those who start their own businesses. To work on starting your own business, you must either have a job on the side, or have enough resources to be without a job. Not many people have enough resources to do without a job. So whether or not we are starting our own businesses, most of us need to get a job. For most of us, the only other practical way to eat is to apply for welfare — a much less desirable alternative than work. And even then, you're applying for someone else's (the government's) permission before you eat. In any case, you have to ask permission before the economic system will let you survive. This should not be!

You have a right to live. You were born into this world like anybody else, rich or poor. You are part of this world, and you have a right to live on part of this world. *You are a co-owner of the world.* And you have a right to your share of the products of this world. It's wrong for somebody else to hog all the wealth, and then tell you, "Now you have to come to my office and file an application before you can have a piece of the products of the earth. You have to come to me to survive." You shouldn't have to go through this! You shouldn't have to depend on charity, but you shouldn't have to depend on a job either. And you shouldn't have to spend your whole life busting your tail trying to save enough money to escape from the economic system. Because you were born on this planet, you have a right to be here, and you have a right to make your way here. You shouldn't need anyone's permission to do that.

As I said before, I am not against work. Work is a part of life; the very act of getting food

involves effort, whether you buy the food or grow your own. But you should not have to apply to someone else to do the work necessary to support yourself. You should be able to live your life and make a living without first getting permission from an employer.

This seems like a new, radical way of thinking about life. Actually, it's not a new idea. The idea that you shouldn't have to work for someone else is a very old idea in the history of human thinking about freedom. Many people have recognized the truth of this idea — but they didn't get as much publicity as the conventional capitalists and socialists.

In the twentieth century, the world was divided between capitalists and socialists. At bottom, neither the capitalists nor the socialists believed that people have a right to live on this planet. The socialists sometimes gave lip service to this idea, but in practice, they made everyone work for the government. Socialism and communism are simply forms of capitalism in which the government owns all the capital. They are worse than conventional capitalism because they put all the wealth under the boot of a single dictatorial power. Capitalists claim to be the opposite of socialists. Yet capitalism, as we know it today, is much like socialism. The main difference is that capitalism tends to place most or all of the property in the hands of a few rich companies, while socialism places most or all of the property in the hands of the government. Take your pick.

A proper economic system would not be socialistic, but it would not be like conventional capitalism either. In a good economic system, you would not be have to ask permission of anyone to eat. You would be able to make your own way in the world. You would be able to work for yourself instead of for a boss. You wouldn't have to fill in a job application before you could start living.

When thinking about whether you're free, also consider this fact. In our present system, you have to play by someone else's rules before you are allowed to eat. You have to go in to a job, and while there, you have to do as you're told. If you don't agree to all this, you starve — or you get forced on to welfare or charity, where you again have to ask for

permission to eat.

Until now, you may have thought you were free. But are you?

It is easy to make the mistake of thinking you are free just because something besides the government is forcing you to work. Maybe the government doesn't force you to do the things you're forced to do on the job. But even if you have a free government, if you have to get permission from someone before you are allowed to eat, then you're not free. The fact you are oppressed by an economic system, and not by the government or the law, doesn't make you free. And the fact that the penalty for disobedience is not jail, but instead involves getting fired and losing your home and possibly starving in the street — that doesn't change the fact that you're not free. If you have to play by their rules and you have no choice in the matter, then you're not free.

After hearing this argument, somebody will say, "Well, you're free because you don't have to take the job. If you don't like the job, you could take another job instead." There are two problems with that response. One problem is that when you take another job, you'll still be told what to do, on pain of possibly losing your job. So even if you have some choice of which job to take, you still don't have a choice about having a job. The other problem is that you usually *don't* have a choice of what job you take. Working people know this; many political theorists do not seem to know it. Most working people know that when you need a job, you usually have to take whatever job you're offered before your savings run out. You usually do not have any choice at all about taking a job. Unless you are very fortunate, you have to take what you can get.

Are you free? You are not free if someone else can decide whether you ever own a home. You are not free if someone else has the power to decide whether you can ever afford to have children. And yet in this society, someone else decides these matters for you all the time. The mechanism that makes these decisions is called the job market. At bottom, the job market is just a bunch of businesses — mostly corporations, and mostly dominated by

large corporations. They're the ones that really make your life decisions for you. Calling this set of companies the "job market" makes it sound as though this market is a big impersonal machine that no one can control. That's not true. Those who have the power to deny us food, control us. They even hold your children hostage. Their decisions about your job determine whether you can afford food and medicine for your children.

I am 100 percent against communism and socialism. Communism has proven itself to be murderous and dictatorial. Despite what some communists say, the mass murders and enslavements in communist nations are not aberrations from true communism — they *are* true communism. Socialism has many forms, ranging from communism to some mild democratic forms of socialism. However, socialism of any kind leads to government intrusions on personal liberty.

Despite the weaknesses of socialism and communism, I also oppose capitalism *as we know it today*. I can't stomach a system in which people are born into the world, and then are told they don't have a right to exist because they are not useful to a corporation. We are in economic servitude — a servitude that controls our lives, but which we don't recognize as servitude, because we've been in it too long. We think that this servitude is the natural order of things. It is not. It is a human invention. We can uninvent it.

The answer to economic slavery is an economy in which *everyone owns enough private property to support themselves*. This will not be socialism. It will not be an economy in which "the people" collectively control the means of production. (When socialists talk about "the people" owning everything, you can be sure they mean the government.) I'm proposing a system that is capitalistic, but in which *everyone is in the capitalist class*.

In today's so-called "free" economies, most of the wealth is controlled by a very few. A small rich class owns most of the means of production — the equipment and resources for making things, for producing what we need to live. In the system I am proposing, the rich would still be free to be rich, but *everyone* would own enough of the means of

production to live and to live well. The means of production should not be in the hands of a single social class!

By saying this, I am not bashing the rich, and I am not bashing companies. If anyone is making an honest effort to start a company or to get rich, that's great! I'm just saying that in a good society, everyone would own private property, and would own enough of the means of production to support themselves.

I realize that this idea may sound impractical at first. The main reason it sounds impractical is the widespread belief in incurable scarcity — the belief that there are not enough resources on this planet to go around. We have this idea that there's not enough to go around, so the thought that everyone should be self-sufficient, and able to support themselves through self-employment, seems like a pipe dream. Actually, there is nothing impractical about this idea. The only reason the idea sounds foolish is because we have the idea of *scarcity* deeply embedded in our minds. In reality, the earth is an abundant place. There's an enormous amount of land in this world. There's an enormous amount of sea, on which people also can live if they have to. An enormous amount of solar energy pours into the earth every day. Most of the scarcity in the world comes from a lack of intelligent use of natural resources.

Our Earth has abundant resources. The universe outside Earth has even greater resources. Most of the resources outside Earth will have to wait for future space exploration, but one of them — solar energy — is available to us now. The proper use of these resources will allow humanity to live in freedom on the Earth, and eventually on other worlds. I am not proposing that we exploit the environment destructively, as we do all too often today. Conservation is vital for the future. I am only suggesting that if we use the available resources the right way, all people could own parts of the means of production. This system would be 100% capitalistic, but it would not be like the "capitalism" that we have today. In this new system, everyone who comes into the world would be an owner of the Earth — an owner of enough resources to enable survival.

Everyone should be a self-supporting owner of part of the means of production. This idea is not new. It is the basis of the economic philosophy called *distributivism* or *distributism*. Distributism is an old and well-documented economic theory.[*] Unfortunately, most distributist thinkers have combined the self-sufficiency ideas with other ideas that are not as good.[**] But the main idea of the distributists — that freedom and social justice depend on individual self-sufficiency — is a good one. Political freedom is necessary for a free society, but it is not enough. We need economic freedom as well.

Capitalism is basically on the right track. Private individuals have a right to become as rich as they want, within the limits of law and ethics. There is nothing wrong with getting rich! But everyone, whether rich or not, should own the means of production — not in a collective, socialistic way, but privately. Everyone should own a part of the means of the production as private property. This part should be at least large enough to let that person get by. This is a form of capitalism based on *universal* private property. It is real capitalism, instead of the false capitalism we have today.[***]

We need more capitalism, and more widely distributed capitalism. We need a capitalism of the common people, instead of the semi-feudal capitalism we have today, where there's a wealthy class and the rest of us are subordinate to that class. We need to dismantle this feudalistic system and replace it with a system in which everyone is a capitalist. And then, if people also want to make more money than they can make by just supporting themselves, they will be free to do so. They can start businesses and try to get rich. There's nothing wrong with getting richer than you need to be!

There's nothing wrong with getting rich. What is wrong is the power that the economic

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[*] Seminal works on this theory include Chesterton, *The Outline of Sanity*, and Belloc, *The Servile State*.

[* *] For example, the social conservatism found in the works of Chesterton and Belloc.

[***] This verdict on today's capitalism is essentially Chesterton's (*The Outline of Sanity*, pp. 5-8).

system holds over people of ordinary means. Most of this power would vanish if people were able to support themselves without the consent of others! Universal self-sufficiency is the solution to this problem.

A society based on universal self-sufficiency would be less likely to have a corrupt government. In the system we have now, most people live in fear of not having enough money. Most of us learn at an early age that you have to scrape for money, by any means necessary, or starve. This attitude pervades our entire society. It even infects those who no longer are short of money. This leads to widespread greed. If people didn't grow up in fear of poverty, then our society's obsession with wealth (and with dishonest ways of getting wealth) would decrease.

The communists used to say that society should give "to each according to his need." Like most of the ideas of the communists, this is dead wrong. How can society ever know what a person's needs are? Maybe you have some great dream that will benefit everyone. Maybe you need a billion dollars to make this dream come true. If this is the case, then you *need* a billion dollars! You have every right to go out and try to make a billion dollars for yourself!

Nowadays, as I speak, there are people building private spaceships. They're extending the space exploration effort outside the government umbrella. They're starting private space programs, building rockets on their own. And then there are the people who start drug companies. There are people who want to start companies to fight cancer, AIDS or Alzheimer's disease. There may be people who want to become rich so they can become philanthropists and help to fight these diseases. Why stand in their way? If someone needs a billion dollars for some reason of their own, then let them get as rich as they want! As long as the aim is lawful and the means are lawful, why not?

So I say, let people get as rich as they want. Someone may need to become superrich, for some perfectly good and noble reason that the rest of us don't fully understand.

The economic system that I'm proposing is not a utopia. It's based on common sense. In that system, many of the means of production would be in the hands of individuals, not collectively, but as private property. Each of us would have enough to get by and to engage in some useful trade. If people wanted to get richer than that, they would be free to do so. In an economic system of this sort, the workers will be free. If you work for company, you'll be able to quit your job without starving. You won't need a job, so you won't have to take a bad job. Then the job market will no longer be one-sided — it will be two-sided. The employers will be able to hire who they want, as they do now. But the workers also will have a choice. They will be able to accept offers from the employers they want, and reject the rest. If the employers don't treat the workers well, they will soon be hard up for workers. This will end most or all of the unjust exploitation of workers that goes on today. Companies won't profit from such behavior.

Present-day companies exploit workers because they can get by with it. The workers have to work for them, or go hungry. The worker needs the company, but the company doesn't need the worker. Of course, the company needs workers, but it doesn't need any particular worker. It doesn't need *you*. Under the new system, the worker doesn't need the company either. Thus, the relationship between worker and the company will be mutual instead of one-sided. Either one can back out of the relationship without ruining the other one. The exploitation of workers will stop in its tracks, because the workers will be able to walk out — to "vote with their feet," as the saying goes. If they don't like the company, they'll be able to leave. Today, only some workers can do that; many, and perhaps, most, of us are stuck in jobs. That's a characteristic of capitalism as we know it today. Capitalism with universal self-sufficiency will be different.

Capitalism with universal self-sufficiency is capitalism at its best. It is not a threat to productive business efforts or to wealthy individuals. People usually want more than they currently have. Some may call this greed, but it's not greed. The desire to increase one's wealth is a good thing. It's natural. When everyone is self-sufficient, people will still will be free to start businesses and make money. Workers will not be tied down by a

vicious job market. Employers will benefit too! They will be able to hire workers who want the job, instead of workers who have to apply for the job because they're desperate for a paycheck. Companies will find that they have better workforces — for the same reason that volunteer armies typically fight better than drafted armies.

Universal self-sufficiency will benefit workers and businesses. It will be good for the rich, who will be able to hire willing workers instead of unwilling workers. It will be good for the poor, who will no longer have to be very poor. It will be good for the middle class, who will no longer have to worry so much about job security. Universal self-sufficiency is good for everyone. Why would anyone want to oppose it?

Capitalism, as we know it today, is not really capitalism. As some distributists have pointed out, it's really economic *oligarchy*.* "Oligarchy" is a word that means rule by the few. In the past, many countries suffered under the rule of a class of hereditary nobles. Today we have an economic oligarchy. Rich companies control most of the means of production, and many of the people have nearly nothing. Our society is not economically free. If we had real capitalism instead of the quasi-feudal system we have today — if we had capitalism for everybody, instead of a capitalism for the few — then we would be able to have true freedom. And that's what we need to aim for.

When we build the self-sufficient society, we will have to enable the poor and the middle class to own a slice of the means of production. We will *not* do this by confiscating wealth from the rich. That's what the communists do — they rob the rich to give to the poor, like a sick version of Robin Hood. We do not wish to rob anyone. We will achieve universal self-sufficiency through a process of peaceful change. We will gradually buy out more and more resources, and distribute them to the poor and the middle class in the proper way. We probably need to form our own companies that can buy up resources and distribute them to individuals. We can put together some economic "powerhouses" —

* I am not sure which distributist thinker first pointed this out.

companies that can buy back land and other resources and place it in the hands of free individuals. People will get together and pool some money, and buy the means of production for themselves! These groups also could buy land and resources from governments when possible.

Another way to bring about universal self-sufficiency is to help people to become self-employed. We could form support organizations to help with this. We could encourage legislators to pass laws that make it easier for people to become and remain economically self-sufficient. For example, we could exempt self-employed individuals, acting on their own behalf, from business taxes, regulations, and liabilities of various kinds. We could change regulations about bankruptcy and debt collection so that people who own farmland couldn't lose it.

Some radicals, especially on the left, have tried violent revolution as a path to economic change. That is a bad path. Violence harms the innocent, and in any case cannot produce the results we want. It is not our way. Instead, we need to make an effort to buy back large parts of this earth from the few who own it. That is one good way to move toward universal self-sufficiency, and to create a true capitalism that supports genuine economic freedom.

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