CHAPTER ONE

RIGHTS AND DOLLARS

American society proclaims the worth of every human being. All citizens are guaranteed equal justice and equal political rights. Everyone has a pledge of speedy response from the fire department and access to national monuments. As American citizens, we are all members of the same club.

Yet at the same time, our institutions say "find a job or go hungry," "succeed or suffer." They prod us to get ahead of our neighbors economically after telling us to stay in line socially. They award prizes that allow the big winners to feed their pets better than the losers can feed their children.

Such is the double standard of a capitalist democracy, professing and pursuing an egalitarian political and social system and simultaneously generating gaping disparities in economic well-being. This mixture of equality and inequality sometimes smacks of inconsistency and even insincerity. Yet I believe that, in many cases, the institutional arrangements represent uneasy compromises rather than fundamental inconsistencies. The contrasts among American families in living standards and in material wealth reflect a system of rewards and penalties that is intended to encourage effort and channel it into socially productive activity. To the extent that the system succeeds, it generates an efficient economy. But that pursuit of efficiency necessarily creates inequalities. And hence society faces a tradeoff between equality and efficiency.

Tradeoffs are the central study of the economist. "You can't have your cake and eat it too" is a good candidate for the fundamental theorem of economic analysis. Producing more of one thing means using labor and capital that could be devoted to more output of something else. Consuming more now means saving less for the future. Working longer impinges on leisure. The crusade against inflation demands the sacrifice of output and employment—posing the tradeoff that now concerns the nation most seriously.

I have specialized throughout my career on the tradeoff between inflation and unemployment. To put it mildly, the search for a satisfactory way of managing it has not yet been successfully completed. I, for one, have not given up; indeed, I plan to spend the rest of my professional life on that problem. But in this essay I am wandering away from my usual concerns briefly to discuss an even more nagging and pervasive tradeoff, that between equality and efficiency. It is, in my view, our biggest socioeconomic tradeoff, and it plagues us in dozens of dimensions of social policy. We can't have our cake of market efficiency and share it equally.

To the economist, as to the engineer, efficiency means getting the most out of a given input. The inputs applied in production are human effort, the services of physical capital such as machines and buildings, and the endowments of nature like land and mineral resources. The outputs are thousands of different types of goods and services. If society finds a way, with the same inputs, to turn out more of some products (and no less of the others), it has scored an increase in efficiency.

This concept of efficiency implies that more is better, insofar as the "more" consists of items that people want to buy. In relying on the verdicts of consumers as indications of what they want, I, like other economists, accept people's choices as reasonably rational expressions of what makes them better off. To be sure, by a different set of criteria, it is appropriate to ask skeptically whether people are made better off (and thus whether society really becomes more efficient) through the production of more whiskey, more cigarettes, and more big cars. That inquiry raises several intriguing further questions. Why do people want the things they buy? How are their choices influenced by education, advertising, and the like? Are there criteria by which welfare can be appraised that are superior to the observation of the choices people make? Without defense and without apology, let me simply state that I will not explore those issues despite their importance. That merely reflects my choices, and I hope they are accepted as reasonably rational.

I have greater conviction in essentially ignoring a second type of criticism of the "more is better" concept of efficiency. Some warn that the economic growth that generates more output today may plunder the earth of its resources and make for lower standards of living in the future. Other economists have recently accepted the challenge of the "doomsday" school and, in my judgment, have effectively refuted its dire predictions.[1]

The concept of economic equality also poses its problems, which I shall explore more fully in chapter 3. Impressionistically, I shall speak of more or less equality as implying smaller or greater disparities among families in their maintainable standards of living, which in turn implies lesser or greater disparities in the distribution of income and wealth, relative to the needs of families of different sizes. Equal standards of living would not mean that people would choose to spend their incomes and allocate their wealth identically. Economic equality would not mean sameness or drabness or uniformity, because people have vastly different tastes and preferences. Within any income stratum today, some families spend far more on housing and far less on education than do others. Economic equality is obviously different from equality

1. See William D. Nordhaus, "World Dynamics: Measurement without Data," *Economic Journal,* Vol. 83 (December 1973), pp. 1156–83; and Robert M. Solow, "Is the End of the World at Hand?" in Andrew Weintraub, Eli Schwartz, and J. Richard Aronson (eds.), *The Economic Growth Controversy* (International Arts and Sciences Press, 1973), pp. 39–61.

of opportunity, as I shall use the terms, and I shall explore that distinction further in chapter 3.

The presence of a tradeoff between efficiency and equality does not mean that everything that is good for one is necessarily bad for the other. Measures that might soak the rich so much as to destroy investment and hence impair the quality and quantity of jobs for the poor could worsen both efficiency and equality. On the other hand, techniques that improve the productivity and earnings potential of unskilled workers might benefit society with greater efficiency *and* greater equality. Nonetheless, there are places where the two goals conflict, and those pose the problems. The conflicts in the economic sphere will be discussed in chapter 2, which will analyze the ways that the market creates inequality and efficiency jointly, and in chapter 4, which will examine the ways that federal policy attempts to nudge the distribution of wealth and income generated by the market toward greater equality by such measures as progressive taxation, social insurance, welfare, and jobs programs.

In this chapter, I will examine the ways in which American society promotes equality (and pays some costs in terms of efficiency) by establishing social and political rights that are distributed equally and universally and that are intended to be kept out of the marketplace. Those rights affect the functioning of the economy and, at the same time, their operation is affected by the market. They lie basically in the territory of the political scientist, which is rarely invaded by the economist. But at times the economist cannot afford to ignore them. The interrelationships between market institutions and inequality are clarified when set against the background of the entire social structure, including the areas where equality is given high priority.

A society that is both democratic and capitalistic has a split-level institutional structure, and both levels need to be surveyed. When only the capitalistic level is inspected, issues concerning the distribution of material welfare are out of focus. In an economy that is based primarily on private enterprise, public efforts to promote equality represent a deliberate interference with the results generated by the marketplace, and they are rarely costless. When the question is posed as: "Should the government tamper with the market?" the self-evident answer is a resounding "No." Not surprisingly, this is a common approach among anti-egalitarian writers. Forget that the Declaration of Independence proclaims the equality of human beings, ignore the Bill of Rights, and one can write that only intellectuals—as distinguished sharply from people—care much about equality.[2] With these blinders firmly in place, egalitarianism in economics can be investigated as though it were an idiosyncrasy, perhaps even a type of neurosis.[3]

It is just as one-sided to view enormous wealth or huge incomes as symptoms of vicious or evil behavior by their owners, or as an oversight of an egalitarian society. The institutions of a market economy promote such inequality, and they are as much a part of our social framework as the civil and political institutions that pursue egalitarian goals. To some, "profits" and "rich" may be dirty words, but their views have not prevailed in the rules of the economic game.

To get a proper perspective, even an economist with no training in other social sciences had better tread—or at least tiptoe—into social and political territory. And that is where I shall begin. I shall travel through the places where society deliberately opts for equality, noting the ways these choices compromise efficiency and curb the role of the market, and examining the reasons why society may choose to distribute some of its entitlements equally. I shall focus particularly on some of the difficulties in establishing

2. Irving Kristol, "About Equality," *Commentary,* Vol. 54 (November 1972), pp. 41–47.

3. Harry G. Johnson, "Some Micro-Economic Reflections on Income and Wealth Inequalities," *Annals of the American Academy of Political and Social Science,* Vol. 409 (September 1973), p. 54. Johnson attributes the concern with inequality, in part, to "a naive and basically infantile anthropomorphism."

and implementing the principle that the equally distributed rights ought not to be bought and sold for money.

THE DOMAIN OF RIGHTS

A vast number of entitlements and privileges are distributed universally and equally and free of charge to all adult citizens of the United States. Our laws bestow upon us the right to obtain equal justice, to exercise freedom of speech and religion, to vote, to take a spouse and procreate, to be free in our persons in the sense of immunity from enslavement, to disassociate ourselves from American society by emigration, as well as various claims on public services such as police protection and public education. For convenience, I shall call all of these universal entitlements "rights," recognizing that this is a broader use of the term than most political theorists employ and that it lumps together freedom of speech and free access to visit the Capitol.

Rights have their negative side as well, in the form of certain duties that are imposed on all citizens. For example, everyone has a responsibility to obey the law—anyone who would merely balance the cost of risking a prison sentence against the benefits obtainable from stealing a wallet is violating that duty. Military conscription and jury service are examples of duties assigned—in principle, if not always in practice—by random selection and not according to the preferences or status of individuals.

Features of Rights

An obvious feature of rights—in sharp contrast with economic assets—is that they are acquired and exercised without any monetary charge. Because citizens do not normally have to pay a price for using their rights,[4] they lack the usual incentive to economize

4. Money may be relevant indirectly. Visiting the Capitol involves the cost of transportation. More seriously, the cost of obtaining equal justice before the law creates problems discussed later in this chapter.

on exercising them. If the fire department charged for its services, people would be at least a little more reluctant to turn in an alarm and perhaps a bit more systematic about fire prevention. If speaking out on public issues had a price tag, citizens might be more thoughtful before they sounded off—and perhaps that would improve the quality of debate. But society does not try to ration the exercise of rights.

Second, because rights are universally distributed, they do not invoke the economist's principle of comparative advantage that tells people to specialize in the things they do particularly well. Everybody can get into the act, including some who are not talented actors. Some people with great skill in their civilian pursuits make hopelessly inept soldiers; thus, the draft cannot provide the most efficient army, yet it is the way we raise wartime military forces. Surely, voters do not have equal ability, equal information or education, or an equal stake in political decisions. Since those decisions are concentrated on taxing and spending, property owners and taxpayers may have a greater stake in them; that relative difference is ignored in the acceptance of universal suffrage. We have dismissed Edmund Burke's contention that a limitation of suffrage to property owners might help to ensure a thoughtful approach to social policy.[5] Similarly, although children are excluded from voting rights, we forgo the use of even a minimum test of competence like literacy as a qualification.

We have rejected John Stuart Mill's proposal that differential voting powers should be based on achievement and intelligence, despite his insistence that such a system was "not . . . necessarily invidious . . ."[6] Recently, a writer on the op-ed page of the *New York Times* reinvented Mill's wheel, proposing a "system of proportional representation that would weight each man's vote

5. Edmund Burke, *Reflections on the Revolution in France* (1st ed., 1790; Penguin Books, 1969), pp. 140–41.

6. John Stuart Mill, *Considerations on Representative Government* (1st ed., 1875; Bobbs-Merrill, 1958), p. 136.

in proportion to his demonstrated capability to make intelligent choices."[7] Such proposals imply that the division of labor is relevant to the distribution of voting rights, and given that fundamental premise, they might make sense. But rejecting that premise, many of us find them preposterous.

A third characteristic of rights is that they are not distributed as incentives, or as rewards and penalties. Unlike the dollar prizes of the marketplace or the nonpecuniary honors and awards elsewhere, extra rights and duties are not used to channel behavior into socially constructive pursuits. In principle, people could be offered extra votes or exemptions from the draft in recognition of outstanding performance, and those rewards might serve as added incentives to productive achievement. But only in a few limited and extreme cases, like the loss of the right to vote by convicted felons, does society establish a quid pro quo in the domain of rights.

A century ago, that advocate of thoroughgoing laissez-faire, Herbert Spencer, opposed a host of universally distributed public services, resting his criticisms on several grounds, including disincentive effects. Even public libraries drew his scorn.[8] After all, they offer people real income without requiring any effort in return. Indeed, free books may be doubly damned because they are a form of real income that increases the value of leisure. Spencer certainly was revealing some bizarre social attitudes, but he had a point in recognizing the inefficiency of rights.[9]

Fourth, the distribution of rights stresses equality even at the expense of equity and freedom. When people differ in capabilities, interests, and preferences, identical treatment is not equitable treatment, at least by some standards. It would be hard to

7. Joseph Farkas, "One Man, 1/4 Vote," *New York Times,* March 29, 1974.

8. Herbert Spencer, *The Man versus the State* (Appleton, 1884), p. 33.

9. To be sure, the efficiency argument is not clear-cut for public libraries, since access to books may build human capital.

defend the provision of public education out of tax revenue as equitable to the childless or the patrons of private schools, however compelling its other merits. People are not forced to exercise their rights—freedom of speech includes the right to be silent, and universal suffrage does not impose a requirement to go to the polls. But duties clearly encroach on freedom. Moreover, people are forcibly prevented from buying and selling rights; and that deprives them of freedom.

That important principle—that rights cannot be bought and sold—is the final characteristic on my list. The owner may not trade a right away to another individual either for extra helpings of other rights or for money or goods. Such bans fly in the face of the economist's traditional approach to the maximization of welfare. As James Tobin of Yale University put it, "Any good second year graduate student in economics could write a short examination paper proving that voluntary transactions in votes would increase the welfare of the sellers as well as the buyers."[10]

It takes only a little imagination to envision many new markets in rights that might arise if trades were permitted. The ban on indentured service is an obviously coercive limitation on free trade; it discourages investments by businessmen in the training and skills of their employees, and prevents bargains that might be beneficial to both the seller of his person and the buyer. The one-person, one-spouse rule could be altered to permit voluntary exchange by giving each person a marketable ticket to a spouse rather than a nontransferable right to marry one (and no more than one) person at a time. Since jury trials are expensive, society might offer any defendant who waived that right some portion of the savings. Trade in military draft obligations is easy to conceive and, in fact, has occurred in the past. Even the obligation to obey

10. James Tobin, "On Limiting the Domain of Inequality," *Journal of Law and Economics,* Vol. 13 (October 1970), p. 269.

the law might be made marketable, as it was, in a figurative sense, when the Church sold indulgences during the Middle Ages.[11]

In short, the domain of rights is full of infringements on the calculus of economic efficiency. Our rights can be viewed as inefficient, because they preclude prices that would promote economizing, choices that would invoke comparative advantage, incentives that would augment socially productive effort, and trades that potentially would benefit buyer and seller alike.

The Reasons for Rights

Why then does society establish these "inefficient" rights? The justifications for rights take three routes—libertarian, pluralistic, and humanistic.

LIBERTY. To the advocate of laissez-faire, many rights protect the individual citizen against the encroachment of the state, and thus convey benefits that far outweigh any cost of economic inefficiency. Freedom of speech and religion must be universal and unconditional; regulation, limitation, or discrimination with respect to them would vest discretionary authority in the government. Any condition for eligibility to vote that cannot be settled by the presentation of a birth certificate would give powers to some public official who might have an interest in keeping certain people out of the polling booth. Even if a literacy test administered by an objective deity would be desirable, one administered by a bureaucracy would be intolerable. The nice thing about universality and equality is that they are identifiable and objective criteria and hence hard to abuse. Thus, the libertarian embraces equality not because he cares at all for equality but because he cares a great

11. According to the *Encyclopaedia Britannica,* it is a "popular misconception" that an indulgence granted "permission to commit sin." It is suggested instead that "an indulgence can perhaps be best compared to a pardoning of part of the sentence of a prisoner who has performed some good work not directly connected with either his crime or his sentence." By any interpretation, the purchaser of the indulgence was buying some amelioration of the usual workings of holy law.

deal about a limited government whose powers are circumscribed by explicit and objective rules. To him, rights are seen mainly as rights conferred on the individual *against* the state, and this view prevails explicitly regarding individual rights in the marketplace.[12]

This explanation for equally distributed rights can take care of only part of the domain that is in fact defined by existing American institutions. It cannot explain why citizens entrust power to the state to prevent other individuals from encroaching on their freedoms. It cannot explain the whole sphere of civil liberties or public services. Nor can it explain government-imposed bans on the voluntary exchange of rights.

The traditional rationale for public interference with market exchange and for the public provision of services rests on so-called "externalities," which involve the interests of third parties.[13] Environmental regulations are necessary because the pollution of the air and the water by one individual harms innocent bystanders. The production of services for national defense and lighthouses cannot be left to private enterprise because there is no effective way to keep the benefits channeled to the buyers and away from the nonbuyers. No one can be permitted to bargain away his right to call the fire department in return for a tax cut, because his next-door neighbor would be made worse off. While that ban on exchange seems adequately explained by externalities, many of the other bans—for example, that on vote trading—do not.[14] Even

12. See the discussion of various aspects of this issue in F. A. Hayek, *The Constitution of Liberty* (University of Chicago Press, 1960), pp. 85–88, 103–07, 116–17, 153–55.

13. For a classical discussion of externalities, see A. C. Pigou, *The Economics of Welfare* (Macmillan, 1920), pp. 115–16.

14. An interesting (but, to me, unpersuasive) justification of the ban on vote trading as a deterrent to potential monopoly is presented by James M. Buchanan and Gordon Tullock, *The Calculus of Consent* (University of Michigan Press, 1962), pp. 270–74. Their discussion helps to clarify the nature of the externalities in vote trading. Consider the following: If Ann buys Bob's vote, she gains power over Carl, and Carl can be made worse off (or, if Ann is his ally, better off). Hence it is sometimes claimed that an externality exists. But if Ann bought Bob's vote in an auction

with the invocation of externalities, liberty cannot single-handedly explain the full range of rights in American society.

PLURALISM. Another route into the domain of rights, stressing pluralism and diversification, can be sketched along lines developed by my teacher, Karl Polanyi. As he saw it, the network of relationships in a viable society had to rest on a broad base of human motives and human interests. Material gain is (at most) one of the many motives propelling economic activity. In turn, the economy is only one aspect of society and must be "embedded into" a successful society. Polanyi deplored a "market society" in which all other relationships would be subordinated to the marketplace.[15] Rights can then be viewed as a protection against the market domination that would arise if everything could be bought and sold for money. Everyone but an economist knows without asking why money shouldn't buy some things. But an economist has to ask that question. Every asset that lies in the scope of the market is measured by a single yardstick calibrated in dollars. All tradable goods and services are assigned their prices, and their values all become dimensionally comparable: a book is ten loaves of bread or two dozen bottles of beer. The imperialism of the market's

market, she would have acquired it only by outbidding Carl—Carl had the opportunity to internalize the cost, and his failure to outbid Ann shows that the benefits to him weren't worth the cost. On the other hand, if the transaction did not take place in an auction market, and Carl had no opportunity to bid, then the welfare cost to him of losing that opportunity has nothing to do with the particular characteristics of votes. If Bob sold Ann strawberries that Carl might have liked to purchase, that would have imposed a welfare cost on him too. Thus, power over a third party is not the correct way to describe the externality. Rather, it arises because of the special feature of votes as tradable commodities—that winner takes all. The swing vote is worth everything, and all others are worth nothing. The value of Carl's vote depends on how the remaining votes are distributed between his allies and opponents. In that sense, any trading between allies and opponents has an external effect on every vote holder who is not engaged in the transaction.

15. Karl Polanyi, "Our Obsolete Market Mentality," in George Dalton (ed.), *Primitive, Archaic, and Modern Economies* (Beacon, 1971), pp. 59–77. Polanyi was not much impressed by the effectiveness of democratic political institutions in circumscribing the domain of the marketplace. Hence, he viewed laissez-faire capitalism as a market society.

valuation accounts for its contribution, and for its threat to other institutions. It can destroy every other value in sight. If votes were traded at the same price as toasters, they would be worth no more than toasters and would lose their social significance.

Society refuses to turn itself into a giant vending machine that delivers anything and everything in return for the proper number of coins. When members of my profession sometimes lose sight of this principle, they invite the nastiest definition of an economist: the person who knows the price of everything and the value of nothing. Society needs to keep the market in its place. The domain of rights is part of the checks and balances on the market designed to preserve values that are not denominated in dollars. For the same reasons that an investor holds many different stocks and bonds in his portfolio, society diversifies its mechanisms for distribution and allocation. It won't put all of its eggs in the market's basket.[16]

One of these mechanisms is the rights bestowed on all the citizens. Another set consists of various nonmonetary distinctions that are awarded unequally in recognition of achievement but that are not allowed to bear price tags. Precisely because they cannot be bought for money, Olympic medals and Phi Beta Kappa keys have special value as motivating forces. Still another set of mechanisms consists of voluntary arrangements among individuals that are based on affection and fraternity. People want friendship and love for "themselves," and not for their money. The bond between friends is not merely bilateral philanthropy nor a mutual-assistance contract. These diversified mechanisms keep the

16. This is the same reasoning that leads to my conviction that real gross national product should not and cannot measure social welfare. See Arthur M. Okun, "Social Welfare Has No Price Tag," *Survey of Current Business,* Vol. 51 (July 1971), Pt. 2, pp. 129–33. In both cases, I am arguing that social welfare is a vector and cannot be adequately described by a scalar. As a result, I am a strong advocate of multidimensional social indicators and a strong opponent of attempts to translate every dimension of social progress and retrogression into a dollar magnitude. That latter endeavor is an act of imperialism by economists, in my judgment.

market in its place and keep society from becoming a giant vending machine. They are the glue that holds society together.

HUMANISM. A third explanation for rights stresses their recognition of the human dignity of all citizens. John Rawls, the Harvard philosopher, has developed that rationale brilliantly, deriving a principle of "equality in the assignment of basic rights and duties"[17] from a theory of the social contract. Rawls asks what kind of a social constitution would be adopted if all the framers of the rules operated in ignorance of their class position in the future society and of their relative standing with respect to assets and abilities. In such an "original position," in Rawls' term, the shared sense of justice as fairness could prevail with no distortion from self-interest, since all participants would be mutually disinterested. He concludes that these founding fathers and mothers would opt for equality in the "basic liberties" that relate to the freedom of the individual to follow his conscience, express his own moral principles, and participate in social decisions.

In Rawls' voluntary association, every member wants to ensure the recognition of the principles of self-respect and of fairness for all citizens, because that recognition protects him. The basic liberties are equally distributed because people value equality as a type of "mutual respect . . . owed to human beings as moral persons."[18] These rights that are obtained without a quid pro quo recognize the worth of every citizen in the society. They go along with membership in the club. They then become the hallmarks of affiliation, a part of human dignity, and take on added significance for that reason. Because they are entitlements and not handouts, people can accept them freely without feeling like freeloaders.

The libertarian, pluralistic, and humanistic explanations of rights are not inconsistent; in modern American society, all three considerations play a role in the domain of rights. The preference

17. John Rawls, *A Theory of Justice* (Harvard University Press, 1971), p. 14 and chap. 4.

18. Ibid., p. 511; see also pp. 60, 250.

for equality à la Rawls is one of the elements underlying the character and the scope of rights. The nature of the rights established by our institutions reveals that equality is one of our social values.

The Scope of Rights

How and where does society draw the boundary lines between the domain of rights and that of the marketplace? It is tempting to say that rights deal with noneconomic assets while the market handles economic assets. But that is circular. Since rights may not be bought and sold for dollars, and since they are distributed freely to citizens, they automatically lack the price-tag hallmark of economic "things." In that sense, rights define and delimit the range of economic assets. The Emancipation Proclamation took human beings off the list of commodities for which the market could set price tags. Less dramatically, if fire departments operated as public utilities and thus charged for their services, they would be viewed in economic terms. Because these services are provided as a right, they are pulled outside the framework of the market. But they nonetheless involve the use of labor and capital; they are paid for collectively through taxation; and their resource costs make them "economic."

To be sure, resource costs influence the boundary line. Any entitlement is more likely to be established as a right when it has relatively low resource costs, when economizing and comparative advantage and the other verities of the marketplace are relatively unimportant compared with the significance of broad sharing and common access.[19] It is much less expensive, in every sense, to fulfill the right to free speech than a "right" to free food. But society does provide some costly or resource-using rights, like public education. And one way proponents of equality seek to narrow the differences in standards of living among Americans is to lengthen

19. Even the dividing line between the trivial "right" of free parking spaces and the economic good of metered parking fits this description. For the former, economizing through a price tag isn't worthwhile.

the list of resource-using rights. A government obligation to provide suitable housing or adequate diets for every citizen would, in effect, set a higher basic minimum of real income for all families. The advocacy of new rights can be carried to extremes. I once got into a heated debate with an audience of medical administrators when, taking what I viewed as an outlandish example, I suggested that any national health program should not grant me at public expense all the pairs of eyeglasses I might like. I learned to my surprise that they favored an unlimited right to eyeglasses.

Economists run into such surprises frequently. Nearly all members of my profession would favor some reliance on "effluent fees"—prices imposed on pollutants—rather than total commitment to complex, detailed regulations, as a means of allocating the safe and tolerable amount of discharge into air and water. But most legislators denounce such proposals as selling licenses to pollute to the rich. Suggestions that stiffer tolls might unclog our highways and bridges get a hostile reception. Arguments that interest rates should be flexible enough to clear financial markets that have ample competition are greeted with derision. Apparently, many public officials and their constituents want these items to be treated as rights and kept out of the marketplace. On a first reaction, I am baffled: When money buys bread and baby's shoes, why should it not buy these things? On second thought, a glimmer of understanding shines through. I think some of the critics are most concerned about extending the list of marketable assets, in general, rather than about including these particular items. They believe the scope of the marketplace is already too great, and they oppose any changes that would add new dimensions of economic inequality.

THE FUZZY RIGHT TO SURVIVAL. While I am not persuaded by the arguments for many proposed new rights, the case for a right to survival is compelling. The assurance of dignity for every member of the society requires a right to a decent existence—to some minimum standard of nutrition, health care, and other essentials of life. Starvation and dignity do not mix well. The principle that the market should not legislate life and death is a cliché. I do not know anyone today who would disagree, in principle, that every person, regardless of merit or ability to pay, should receive medical care and food in the face of serious illness or malnutrition. Attitudes about this issue have changed dramatically during the past century. At least some devotees of laissez-faire capitalism in the nineteenth century opposed in principle any *right* to survival, beyond the right to beg from private philanthropists.[20] To them, economic efficiency required the forceful implementation of the rule that those who do not work shall not eat.

Although the right to survival now seems to be generally accepted, it has not been explicitly written into our statute books. It has been kept fuzzy, because its fulfillment could be very expensive. A formal and clear commitment that individuals could count on would increase the number who call for help. Uncertainty holds down the resource cost. To the needy, help is where they find it. Sometimes, it is found more easily from philanthropic organizations than from public emergency facilities. Sometimes, it is available only through some demeaning proof of dire need—thus imposing a toll of shame in lieu of cash, or a sacrifice of pride for a dinner.

Ever since the days of the New Deal, however, the federal government has increasingly assumed some of these obligations and formalized some commitments. In particular, the right to some

20. Herbert Spencer, for example, wrote in *Social Statics and Man versus the State,* published in 1884: "The command 'if any would not work neither should he eat,' is simply a Christian enunciation of that universal law of Nature under which life has reached its present height—the law that a creature not energetic enough to maintain itself must die. . . ." Spencer was even skeptical of private philanthropy, arguing against the "injudicious charity" that permits "the recipients to elude the necessities of our social existence." These passages are cited in *Introduction to Contemporary Civilization in the West,* A Source Book Prepared by the Contemporary Civilization Staff of Columbia University, Vol. 2 (Columbia University Press, 1946), pp. 553, 555. Polanyi offers other examples of eighteenth and nineteenth century extremism in *The Great Transformation* (Farrar, 1944; Beacon, 1957), pp. 86–118, passim. Rereading the old-time libertarians made me realize how moderate most of the contemporary brand is by comparison.

minimum standard of consumption has been established for the elderly. The evolution of old-age retirement benefits into a right is instructive. The basic philosophy of social security has been and remains contributory, stressing the obligation of people to provide for themselves. Initially, those who had not been covered by the contributory system during their working careers were not entitled to benefits upon their retirement. For the first time, legislation enacted in 1966 bestowed some minimum benefits on all Americans over the age of 72, regardless of whether they had ever contributed to the system. Since then, the level of minimal entitlements has been increased and the age requirement reduced to 65 through additional programs that supplement the standard system of old-age benefits. Currently, the principle of contribution serves mainly to preserve pride while fulfilling the right to survival.[21]

Issues surrounding the extension and implementation of a formal right to a decent existence are the heart of today's controversies about health insurance, the negative income tax, and welfare reform. Fulfilling that right is an urgent and feasible step toward economic equality in America, and I shall discuss that issue in detail in chapter 4.

Rights of survival set floors under the consumption of the various items identified as essential. They thus preserve some incentives for economizing, and leave considerable scope for the marketplace in determining the production and distribution of food, health care, housing, and the like, for the majority of citizens who wish to, and are able to, spend more than the basic minimum that is guaranteed to all. In this respect they differ from free firefighting services, which are essentially unlimited and adequate to serve the needs of virtually all citizens. They also contrast with those political and civil rights that money is not allowed to buy.

21. The establishment of old-age payroll-tax "contributions" as mandatory is also interesting. Once society decides it will not let old people starve (regardless of any previous profligacy or imprudence on their part), it cannot realistically permit workers to opt out of the social security system.

BANS ON EXCHANGE. Once political and civil rights are seen as integral to human dignity, it becomes clear why they shouldn't be bought or sold for money. If someone can buy your vote, or your favorable draft number, or a contract for your indentured service, he can buy part of your dignity; he can buy power over you. By prohibiting your sale of rights, society is encroaching on your freedom, but it is also protecting you from others who might want to take your rights away. Your creditors cannot make you part with your dignity. They cannot force you into trades that are made as a last resort, which could not be fair trades and which would be distorted by vast differences in the bargaining power of the participants and by the desperation that spawns them. Any rational person who would sign a contract for indentured service must be in desperate straits. Similarly, anyone taking out a loan to cover basic consumption needs must be operating under extreme pressure; hence the religious bans on usury during the Middle Ages.[22]

Whenever the law bans trades of last resort, it shuts some potential escape valve for the person in desperate straits. In shutting the valve, society implies that there must be better ways of preventing or alleviating that desperation. When, for example, child labor was restricted, widowed mothers and disabled fathers were deprived of the opportunity to make ends meet out of the earnings of their young children. When the battle over child labor was fought in Great Britain, the proponents of the ban viewed it as part of a larger program in which society would provide the disadvantaged with aid in another and better form.[23]

Minimum-wage laws and work-safety legislation can be viewed most fruitfully as further examples of prohibitions on exchanges born of desperation, extending the logic of the ban on indentured service. Some economists strain to understand the sources of

22. See Henri Pirenne, *Economic and Social History of Medieval Europe* (Harcourt, Brace, 1937), pp. 137–38.

23. See Pigou, *Economics of Welfare,* pp. 788–90.

minimum-wage laws:[24] Are they justified as an offset to monopoly power in hiring labor? Do they emerge out of a conspiracy by skilled workers to reduce the job opportunities of the unskilled? Or are they urged by the skilled on the premise that wages will be raised all along the line as customary differentials are preserved? Are they well-intentioned but misguided efforts to help the poor? Similarly, some economists wonder whether work-safety legislation is warranted by lack of information about on-the-job dangers.

As I read the laws, they declare that anyone who takes an absurdly underpaid or extremely risky job must be acting out of desperation. That desperation may result from ignorance, immobility, or genuine lack of alternatives, but it should be kept out of the marketplace. Recognizing that objective still leaves plenty of room for debate about the proper scope of these laws. With these bans, society assumes a commitment to provide jobs that are not excessively risky or woefully underpaid. That commitment is often regrettably unfulfilled, and perhaps, if it were fulfilled, the bans would be unnecessary. Still, closing a bad escape valve may be an efficient way of promoting the development of better ones through the political process.

Prohibitions on exchange thus protect a variety of rights and institutions from contamination by the market. But they can also be manipulated to insulate unequal, oppressive, and hierarchical institutions from ventilation by the market. Historically, caste positions, feudal obligations, entailed land, and guild memberships have been maintained among the things that money should not buy and sell. Those bans served to promote inequality as well as economic inefficiency. Indeed, across the spectrum of primitive,

24. A summary of the diverse justifications of economists and others for minimum-wage laws is contained in David E. Kaun, "The Fair Labour Standards Act," *South African Journal of Economics,* Vol. 33 (June 1965), pp. 131–39. For a discussion of the efficacy of minimum-wage laws in alleviating poverty and in offsetting employer control in the labor market, see George J. Stigler, "The Economics of Minimum Wage Legislation," *American Economic Review,* Vol. 36 (June 1946), pp. 358–65.

ancient, medieval, and modern societies, the market has been restricted more often to preserve unequal power and distinction for the few than to guarantee equal rights for the many.[25] Tyrants, warriors, religious zealots, and dictators rarely tolerated the rivalry of the marketplace in their ordered societies. The social consequences of keeping the market in its place can be good or bad, depending on what is put in the other places. The determination to fill many of them with equal rights is a unique characteristic of a democracy.

TRANSGRESSION OF DOLLARS ON RIGHTS

In fact, money can buy a great many things that are not supposed to be for sale in our democracy. Performance and principle contrast sharply. The marketplace transgresses on virtually every right. Money buys legal services that can obtain preferred treatment before the law; it buys platforms that give extra weight to the owner's freedom of speech; it buys influence with elected officials and thus compromises the principle of one person, one vote. The market is permitted to legislate life and death, as evidenced, for example, by infant mortality rates for the poor that are more than one and one-half times those for middle-income Americans.[26]

Even though money generally cannot buy extra helpings of rights directly, it can buy services that, in effect, produce more or better rights. Some kinds of political lobbying, for example, constitute a socially undesirable production process for "counterfeiting"

25. Polanyi's discussions of past social arrangements illustrate this point again and again. But I doubt that he would agree with my generalization. Money arrangements generally get the lowest grades in his evaluation. Charles Kindleberger, a fellow admirer of Polanyi, also notes critically his eagerness to conclude that ". . . interferences in the market economy are justified by the need to preserve the pattern of society and the status of its members." See Charles P. Kindleberger, "The Great Transformation," *Daedalus,* Vol. 103 (Winter 1974), p. 50.

26. Evelyn M. Kitagawa and Philip M. Hauser, *Differential Mortality in the United States: A Study in Socioeconomic Epidemiology* (Harvard University Press, 1973), p. 28.

votes. There are two basic kinds of remedies. One of these countervails the resources available to the rich by providing publicly financed resources to the poor. So long as the rich are able to draw on their own resources, that approach sets a floor without the ceiling needed to achieve *full* equality. The alternative remedy involves upside-down economics—it tries to make the socially undesirable production process less "efficient" so that it becomes more difficult to counterfeit rights. I shall try to illustrate the principles and problems in a few areas.

Equality before the Law

Although it is generally regarded as one of the most sacred rights, equality before the law is often violated. Undoubtedly, the disadvantaged position of the poor before the law stems from many sources; for example, better education and information help affluent people to take full advantage of the legal system as a means of realizing their goals and ambitions. But one element of the disadvantage is readily identifiable, namely, the inequality of representation by lawyers.[27] When a poor defendant comes before the bar of justice accompanied by a public defender or assigned counsel, he clearly has a handicap relative to the wealthy defendant represented by a highly qualified, high-priced lawyer of his choice. Equality before the law deserves a top priority ranking among our rights. To fulfill that right, even minimally, calls for an enormous and costly expansion of legal services for advising and defending the poor.

27. See, for example, Jerome E. Carlin, Jan Howard, and Sheldon L. Messinger, "Civil Justice and the Poor: Issues for Sociological Research," *Law and Society Review,* Vol. 1 (November 1966), pp. 9–90. They point out that "a large proportion of poor defendants (particularly in misdemeanor cases) are not represented at all. Moreover, when counsel is provided he frequently has neither the resources, the skill nor the incentive to defend his client effectively; and he usually enters the case too late to make any real difference in the outcome. Indeed, the generally higher rate of guilty pleas and prison sentences among defendants represented by assigned counsel or the public defender suggest[s] that these attorneys may actually undermine their clients' position . . ." (p. 56).

Money and Political Power

How do large corporations and wealthy individuals throw their weight around unduly in the political process? There is no obvious and natural mechanism that conveys extra helpings of votes to the wealthy—any more than to the good-looking or the especially virtuous. Obviously, one route by which money buys political power is through direct and indirect payments to political decisionmakers. On the best available evidence, most congressmen do not take outright bribes; yet they do seek campaign funds by means that are legal but that nevertheless bestow additional helpings of votes on those who can afford, and who have the interest, to contribute large sums. These contributions have important and pervasive influences on the behavior and attitudes of officials, even of honest and scrupulous officials. I have heard the directors of financing in a campaign organization urge a liberal Democrat to stay away from loophole-closing tax reform as a campaign issue because it would antagonize wealthy potential contributors. Another example was provided by super-rich Howard Hughes, who bought blue chips in the form of a diversified portfolio of campaign contributions to candidates of both parties in an apparent effort to influence particular regional and industrial policies.

CAMPAIGN FINANCING. Full disclosure of contributions is not enough to prevent serious transgression. A drastic limitation on the amount of financial aid that any one individual or organization can give candidates seems essential to equality at the polls. And if large contributors are not allowed to pick up the tab for the opinions and information that should flow in political campaigns, then the taxpayer must. The public financing of campaigns for the Congress and the Presidency is an indispensable ingredient in any satisfactory recipe for reform. And the initial legislative action to provide public financing was the most important law passed in 1974.

To be sure, designing a sound plan for public financing poses tough problems: the taxpayer should not be forced to buy an expensive podium for the vegetarian party, and neither should his funds serve to entrench and rigidify our currently predominant two parties. But, as I read the arguments against public financing, the real controversy is fundamental.[28] Opponents of public financing want primarily to preserve the freedom of individuals to spend their money, if and as they choose, in order to influence the outcome of elections. In my view, that is something money should not buy. Thus, society must erect a sign that clearly says "no trespassing" on the right of universal suffrage.

Restrictions on campaign contributions can reduce significantly the political power of the super-rich. Of course, some of the wealthy will find ways to defy the spirit of the law by selling the congressman products at a discount, by hiring his nephew, and by developing dodges that are far more ingenious than any I could possibly concoct. But, if necessary, the law against bribes can be clarified and extended. And limitations on contributions help to unmask some types of payments that have been explained away as "campaign assistance."

LOBBYING. Restricting contributions will still leave people and corporations many ways to show the intensity of their feelings about issues and candidates. Some of these ways are good for the process of deliberation; some are bad; some are questionable. And all involve some expenditures of money: even a letter to a congressman takes a postage stamp. The key questions in appraising the legitimacy of lobbying activities are: How does the lobbyist make his case for or against proposed policy actions? What are his instruments of persuasion?

As a means by which people (and business firms, unions, and associations) can show *how much* they care about particular political decisions, lobbying is a legitimate—indeed, valuable—input in the political process. And that includes promises and threats

28. See, for example, the arguments in Ralph K. Winter, Jr., in association with John R. Bolton, *Campaign Financing and Political Freedom* (American Enterprise Institute, 1973).

about how the pleaders will vote in the next election. Lobbying is also a legitimate way to convey evidence about the favorable or unfavorable consequences for the nation of a particular bill or executive action. Of course, much of the evidence will be self-serving. Some briefs I have seen written by economists, predicting that a certain action will give us heaven or hell, just couldn't represent the earnest professional judgment of the authors. But the safeguards against such pleading must lie in the good sense (and informed skepticism) of the public official and in stronger professional codes of ethics, rather than in laws to ban unsound or insincere argumentation.

Lobbying is intolerable when the means of persuasion are promises of direct or indirect payments of a pecuniary character (money, gifts, job patronage, honoraria, and the like) in return for the official's decision. Much of lobbying has been linked to the promise of campaign contributions, and restrictions on the latter should help to reduce *some* of the worst lobbying pressures. Beyond that, a code of conduct is needed to establish the boundaries of fair relationships between legislators and executive officials, on the one hand, and lobbying groups, on the other. For one thing, that code ought to keep any former public official out of the lobbying game for several years after leaving office, thus precluding the temptation to build good will as an investment for future employment.

If the uses of fat checkbooks in the political process can be tightly regulated, the plutocracy will lose much of its political punch. The captains and giants of industry are a tiny part of the electorate, and they are reined in by the public's natural skepticism about, and antagonism against, their particular interests and pleadings. The majority of the folks back home tend to believe that what's good for General Motors *can't* be good for the country, and that gives a congressman incentives to oppose publicly positions advocated by General Motors. Indeed, as the wealthy see it, knee-jerk populism gives them an unfair handicap in national debates. I would guess that it comes close to evening the score.

It is harder to even the score in cases where the wealthy have subtle influences on groups of middle-class voters. Employees, stockholders, suppliers, and neighbors of large corporations may become dependent on them and hence become exponents of positions favored by the rich and the powerful. These interdependencies arise because the American economy does not fit the textbook's purely competitive model in which everybody has the option of taking an alternative job that is virtually as good as the one he holds, or the option of selling to an alternative customer willing to buy the product at the going price. The interests of stockholders of multinational companies were furthered by U.S. government actions to undercut the Chilean socialist regime that sought to expropriate Anaconda and ITT. Employees of the steel industry have interests in curbs on imported steel, even when such measures are bad for labor on the whole. To the extent that these are the genuine interests of the small stockholders and the workers, their expression in the political process is perfectly appropriate. On the other hand, through the subtle dependencies of many average Americans on them, the wealthy can obtain undue political leverage.

Consider a hypothetical example. The vice president of a large manufacturing corporation walks into the office of a congressman whose district is plagued by high unemployment. The corporate representative explains that his firm is contemplating the construction of a plant in the congressman's district, and is investigating the various aspects of that location decision. Naturally, the firm wants to know the climate of the district to estimate heating bills, and similarly it wants to assess the political climate. It is not unreasonable to ask whether the firm is going to be represented by a friendly congressman who will view its interests sympathetically. The congressman is tempted to pledge his friendship and help, perhaps solely to protect the interests of his constituents in the availability of good jobs. Although nobody is doing anything wrong, I find something wrong with this picture. And yet I cannot prescribe a code of conduct that would distinguish clearly between right ways and wrong ways for legislators to pursue the interests of their constituents in their relationships with big business.

Similar problems arise from the power of interest groups that have large memberships and therefore control many votes. Independent oil producers, farmers, teachers, homebuilders, unionized workers, and welfare recipients all have organizations in Washington working to pass or oppose some laws. So do various groups with particularly strong avocational interests, like gun enthusiasts and the owners of private aircraft. Not all of these groups are rich, but they all have focused objectives. They will support or oppose vigorously a candidate according to his stand on the particular issues close to their hearts. Intensity of preferences is the name of their game; and it is a legitimate game, intended to balance the inherent bias of democracy in favor of actions that benefit the majority a little even when they hurt a small minority a great deal.[29]

Yet these groups seem to tilt the balance in the other direction, often obtaining benefits for the relatively few they represent at the expense of the unorganized majority. Their power is enhanced by the costliness of information about the legislative process. Only the rare milk consumer knows how his congressman votes on dairy price supports, but every milk producer does. But voter-organizing and voter-informing are usually reinforced by candidate-funding. In their repeated efforts to raise dairy support prices during the late sixties and early seventies, the associations of milk producers did not rely exclusively on their ability to marshal the votes of their members; they threw in the secret ingredient of large campaign contributions. The Watergate revelations about dollar-enriched milk products help to clarify why 200,000 milk producers have usually beaten 200,000,000 milk consumers in the political process.

29. This point is argued strongly by Buchanan and Tullock, *Calculus of Consent;* see, for example, p. 127.

CONSUMER POWER. When money transgresses equal political rights, the consumer most often is the victim. Some of the remedies lie in strengthening the countervailing power of the consumer against the producer. Voluntary associations of consumers have grown in strength during the past decade; and, on balance, I believe they have been constructive. Occasionally, articulate consumer advocates have pushed through legislation that most American consumers did not want, like the mandatory interlock ignition system, but they have been promptly reversed.[30] And Congress has realized that no single person speaks for the consumer.

The proposed Consumer Protection Agency—a publicly financed office of consumer advocacy—is one worthwhile step to strengthen the public's power. The bill to create that agency was brutally filibustered to death in 1974, but it should come alive in the near future.

At the local level, opening a line of communication for the individual to his government through a personal representative—the ombudsman system—is an appealing way to help fulfill the rights to public services. As the husband of a part-time ombudsperson, I have been regaled with anecdotes about services performed by the government of the District of Columbia in response to telephone calls from citizens. Often the expression of appreciation that follows seems out of proportion to the specific mission accomplished; the fulfillment of the person's request is especially valuable as a demonstration that rights can be validated. In addition, such a system gives the top local officials a useful tally of the public's specific complaints and concerns.

The Corrective Strategy

My purpose is not to advance specific remedies, but to highlight the general problem of transgression as an urgent one that

30. I also regret that consumer advocates pay so little attention to the harm imposed on consumers by anticompetitive laws, like barriers to imports, resale price maintenance, and the like. I suppose it is harder to dramatize these damaging institutions than to expose unsafe products or false advertising.

requires a serious and concerted attack by political scientists, lawyers, economists, and the public at large. Some transgressions of money on rights make a mockery of America's commitment to civil liberties and democracy. Some of our most cherished rights are auctioned off to the highest bidder. These transgressions may be as important a source of cynicism, radicalism, and alienation as the vast disparities in material living standards between rich and poor. Yet pitifully little effort has gone into devising measures that would narrow the gap between principle and practice.

The key remedies must be specific aids and sanctions rather than general efforts to curb bigness and wealth. Breaking a $20 billion corporation into ten $2 billion pieces still leaves entities large enough to transgress political rights, if such actions are tolerated by the law. Even if the most ambitious program of progressive taxation were enacted, Howard Hughes would retain more than enough money to produce counterfeit votes. It is no easy task to formulate and enforce specific and detailed rules of the game that would prevent him from spending money to acquire undue power. But I find that route far more promising than one that seeks to curb his power by taking his money away. The case for progressive taxation rests on other grounds, which I shall discuss in chapter 4.

In some limited ways, restrictions on the scope of economic activities by the wealthy may help to curb their power. The more markets a corporation operates in and the more congressional districts it provides jobs and orders for, the greater the opportunities for the plutocrats to obtain undue political power. In this respect, conglomerate corporations like ITT are perhaps the most dangerous ones. In retrospect, the conglomerate merger movement deserved more attention than it received from many economists, who viewed it complacently because it did not reduce the extent of competition within industries. A more determined effort to limit size and scope can thus help a little. But the basic transgressions of the marketplace on equal rights must be curbed by specific, detailed rules on what money should not buy.

Even so, transgression cannot be totally eliminated. Money will still impinge to some degree because that undesirable production process will retain some efficiency in producing counterfeit rights. In that sense, it seems impossible to achieve Rawls' "lexical ordering,"[31] which insists that equality in the domain of basic liberties should never be compromised by inequality of other assets. Thus, I cannot quarrel with the radical's verdict that complete equality is unattainable in anything unless it is attained in everything. But if the transgression problem is approached with less-than-perfectionist objectives, the outlook is much brighter. The thousand-dollar-a-day lawyer need not be a grave threat if adequate public defenders are available. The opportunity for a wealthy individual to take advertising space in the newspaper to expound his views on social issues is no great encroachment on the freedom of speech of others. Buying advertising space is tolerable; buying legislators is intolerable. I am hopeful that a concerted and focused program of specific remedies can correct the serious transgressions of dollars on the domain of rights, and I am convinced that the construction of such a program should be the top priority for social reformers.

31. Rawls, *Theory of Justice,* pp. 302–03.