

# LIBERALISM, PHILANTHROPY, AND PRACTICE: REALIGNING THE PHILANTHROPY OF THE REPUBLIC AND THE SOCIAL TEACHING OF THE CHURCH

*Rob Atkinson\**

You shall love the Lord your God with all your heart, and with all your soul, and with all your mind. This is the greatest and first commandment. And a second is like it; You shall love your neighbor as yourself. On these two commandments hang all the law and the prophets.

-Jesus<sup>1</sup>

Piety or holiness, Socrates, appears to me to be that part of justice which attends to the gods, as there is the other part of justice which attends to men.

-Plato<sup>2</sup>

*This Article seeks a common ground for theists of the Abrahamic religious faiths and agnostics in the Socratic philosophical tradition on the role that the liberal state should play in advancing the two coordinate aims of traditional philanthropy: helping society's least well off and advancing the highest forms of human excellence. It focuses particularly on Abrahamicists who are orthodox Catholics and Socratics who are left-liberals, distinguishing their broad views on the liberal state's proper philanthropic role from the far narrower views of libertarians and other right-liberals. It concludes that adherents of Catholic Social Teaching and advocates of secular left-liberalism can conscientiously work together toward a far greater governmental role in advancing philanthropy than is currently reflected in the United States's fiscal policy. To do otherwise is to impose a most perverse tax on both our society's most needy and its most generous. That, one hopes, is not who we are.*

---

\* Greenspan Marder Professor of Law, Florida State University. My thanks to Alexandra Akre (FSU Law 2016) for her invaluable research assistance. This Article is part of a larger symposium entitled *We Are What We Tax* held at Fordham University School of Law. For an overview of the symposium, see Mary Louise Fellows, Grace Heinecke & Linda Sugin, *Foreword: We Are What We Tax*, 84 *FORDHAM L. REV.* 2413 (2016).

1. *Matthew* 22:37b-40 (New Rev. Standard Version, Catholic Ed.) (noting Jesus's response to a lawyer, who asked which is the greatest commandment).

2. PLATO, *EUTHYPHRO* 81 (Benjamin Jowett trans., Heart's Int'l Library Co. ed. 1914) (noting Euthyphro's response to Socrates about the relation of piety to justice).

INTRODUCTION: ODD ONE OUT: AYN RAND, THOMAS AQUINAS, OR JOHN STUART MILL? .....	2636
I. “LIBERALISM”: IDENTIFYING ONE INDIGENOUS GENUS AND ITS FOUR DISTINCT SPECIES .....	2642
A. <i>The Indigenous Genus: Liberalism in Our Three-Sector Society</i> .....	2643
B. <i>The Species: Four Political Liberalisms from Four State Economic Functions</i> .....	2645
1. Two Market-Supporting Functions of the Liberal State ..	2645
a. <i>The Ricardian Function: Establishing and Sustaining the Market</i> .....	2645
b. <i>The Regulatory Function: Correcting Market Failures</i> .....	2646
2. Market Supplanting .....	2647
a. <i>The Redistributive Function</i> .....	2647
b. <i>The Aretist Function</i> .....	2647
3. Four Political Liberalisms .....	2648
4. The Third Sector’s Ideological Role .....	2648
II. PHILANTHROPIC ETHICS: TOWARD A PROPER REGARD FOR ALL “OTHERS” .....	2650
A. <i>From Many Ideologies to the One We Need: The School of Philanthropy That Mill and St. Thomas Share</i> .....	2650
B. <i>Philanthropic Ethics: The Proper Regard for Others</i> .....	2651
1. Philanthropy’s “Form”: Other-Regarding .....	2652
2. Philanthropy’s “Substance”: Promoting Human Excellence .....	2652
a. <i>Philanthropy’s Horizontal Orientation: Our Duties to Each Other</i> .....	2652
b. <i>Philanthropy’s Vertical Orientation: Our Duties to God</i> .....	2654
c. <i>Reconciling Socratic and Abrahamist Ethics</i> .....	2655
d. <i>Summary</i> .....	2657
III. PHILANTHROPIC POLITICS: TOWARD THE OPTIMALLY PHILANTHROPIC LIBERAL STATE .....	2658
A. <i>Mapping the Overlap of the Full Range of Philanthropy and the Permitted Purposes of the Liberal State</i> .....	2658
1. “Vertical” Philanthropy and Liberal State Purposes .....	2658
a. <i>The Respectfully Nonreligious Liberal State</i> .....	2659
b. <i>The Rationally Humanitarian Abrahamist Faith</i> .....	2660
2. “Horizontal” Philanthropy and Liberal State Purposes .....	2661
3. Summary .....	2662
B. <i>Assigning Philanthropic Tasks Among Our Society’s Three Sectors</i> .....	2662

1. The Standard Theory of Philanthropy: Descriptive Power and Normative Circularity .....	2663
2. Toward an Aristotelean—and Thomistic and Millelean—Mean.....	2664
<i>a. The Limiting Cases: Beyond Liberalism’s Farthest Right and Left</i> .....	2664
i. Ayn Rand’s Extreme: From the Ethics of Egoism to the Politics of Today’s “Republican” Party .....	2664
ii. Socrates’s Extreme: From the Ethics of Philanthropy to the Politics of Classical Republicanism.....	2665
<i>b. A Mean Between the Extremes: Mill and St. Thomas’s Common Ground</i> .....	2665
i. A Priori Limits on the Philanthropic Liberal State.....	2666
ii. A Posteriori Limits on the Philanthropic Liberal State.....	2667
CONCLUSION: LABORING TOGETHER IN THE VINEYARD (WHICH IS THE LORD’S, SOME OF US BELIEVE AND NONE OF US NEED DENY).....	2674

INTRODUCTION:  
ODD ONE OUT: AYN RAND,  
THOMAS AQUINAS, OR JOHN STUART MILL?

Forgive me for beginning with a subject that may seem a bit off topic, if not out of date: Congressman Paul Ryan's speech at Georgetown University during the 2012 presidential campaign.<sup>3</sup> You will recall that Representative Ryan, then the Republican Party's vice presidential nominee, tried to pass the wolf of Ayn Rand's hand-me-down Nietzscheanism off in the sheep's clothing of Catholic Social Doctrine.<sup>4</sup> But very good shepherds on the Georgetown faculty were on their guard; their joint letter politely—pastorally, it is fair to say—sent Representative Ryan back to remedial catechism class.<sup>5</sup>

The letter itself made two very basic points: Ayn Rand's philosophy is insistently antireligious and egoistic; Catholic Social Doctrine is emphatically theistic and philanthropic.<sup>6</sup> That letter was a fine—I dare say loving—corrective for those faculty defenders of the faith to deliver to a fellow Catholic; Representative Ryan, to his credit, seems to have taken the message very much to heart.<sup>7</sup> That may, in the eyes of the Republican Right, make him unfit for his party's presidential nomination;<sup>8</sup> it may also, in the eyes of his Church, mark the saving of his soul.

I quite agree that Rand's brand of libertarian conservatism—and Ryan's and many another—cannot be reconciled with Catholic Social Teaching. But what, you may well wonder, has my take on that episode got to do with my Article for this symposium? The Georgetown faculty's exchange with Representative Ryan, after all, was a dispute among Catholics in good standing over basic points of Catholic doctrine; this is supposed to be an article on philanthropy for a critical tax conference at Fordham University School of Law.

3. See Rep. Paul Ryan, Remarks at Georgetown University (Apr. 26, 2012), <http://dailycaller.com/2012/04/26/full-text-of-paul-ryan-remarks-at-georgetown-university/> [<http://perma.cc/95HP-M8TR>].

4. See *id.*; Letter from Georgetown Univ. to Rep. Paul Ryan (Apr. 24, 2012) [hereinafter Georgetown Letter], <https://docs.google.com/document/d/1JRLM7Jh9PnrxtafWYENXdAmxnXd4gQJMYTu3H4TFHA/edit?pli=1> [<https://perma.cc/ZP2X-TN3V>].

5. See Georgetown Letter, *supra* note 4; see also Laurie Goodstein, *Georgetown Faculty Latest to Chide Ryan*, N.Y. TIMES (Apr. 24, 2012, 1:42 PM), <http://thecaucus.blogs.nytimes.com/2012/04/24/georgetown-faculty-latest-to-chide-ryan/> [<http://perma.cc/PT73-WTDT>].

6. See Georgetown Letter, *supra* note 4.

7. See Jennifer Burns, *Atlas Spurned*, N.Y. TIMES (Aug. 14, 2012), <http://www.nytimes.com/2012/08/15/opinion/ayn-rand-wouldnt-approve-of-paul-ryan.html> [<http://perma.cc/T4WU-RP5S>].

8. Then again, maybe not. See Darrell Delamaide, Opinion, *Republican Presidential Nominee Could Be the Guy Who Isn't Running*, MARKETWATCH (Jan. 6, 2016, 9:41 AM), <http://www.marketwatch.com/story/republican-presidential-nominee-could-be-the-guy-who-isnt-running-2016-01-06> [<http://perma.cc/P97P-5T3U>]; David M. Herszenhorn & Carl Hulse, *Desperate G.O.P. Appeals to Ryan on Speaker's Job*, N.Y. TIMES (Oct. 9, 2015), <http://www.nytimes.com/2015/10/10/us/politics/desperate-gop-appeals-to-ryan-on-speakers-job.html> (discussing the Republican Party's plea with Ryan to run for Speaker of the House) [<http://perma.cc/TJ5A-4946>].

What's more—and maybe worse—I have to confess that I myself am not a Catholic in good standing, at least by current Catholic standards. Worse than that, I share the dubious boast of Melville's Ishmael: "*I was . . . born and bred in the bosom of the infallible Presbyterian Church.*"<sup>9</sup> Perhaps worst of all, I also must confess that the fate that many good Catholics fear for adherents to Protestantism in general has definitely befallen this Presbyterian in particular: I have lapsed into deep agnosticism, if not full-blown atheism, and the political counterpart of those apostasies, far-left liberalism.<sup>10</sup> So why should someone of my beliefs, or doubts, enter a debate about Catholic Social Teaching in a forum about federal taxation?

The connection between the Paul Ryan episode at Georgetown and this symposium at Fordham is the thesis of my Article: my left-liberal politics, even my lapsed-Presbyterian theology, share a huge common ground with Catholic Social Teaching; that common ground is philanthropy, my assigned symposium topic. Whether left-liberals and Catholics in good standing put aside their differences to defend together that common philanthropic ground will determine the outcome of the 2016 election and thus, at least in the middle run, the fate of our nation and the world.

Representative Ryan was not, of course, just speaking to fellow Catholics at Georgetown, nor was he merely addressing there the finer points of Catholic theology. He was trying to enlist good Catholics and other conscientious Christians and Jews in the crusade of far-right liberals to roll the philanthropic state of the New Deal coalition back into the Lochnerian, if not Dickensian, dystopia of Austrian economic models<sup>11</sup> and Ayn Rand's adolescent fantasy.<sup>12</sup> The Georgetown faculty letter nicely showed that the nineteenth century night-watchman state is not the ideal political community of Catholic Social Teaching.<sup>13</sup> I want to show, in this Article, that the ideal political community of Catholic Social Teaching is, by contrast, very much the philanthropic republic of a wide band of left-liberalism.

That philanthropic republic is not only entirely compatible with Catholic Social Teaching, but also grounded in the same sources. Borrowing a page from another Catholic in good standing, Alasdair MacIntyre, I want to remind you that behind left-liberalism's substantive philanthropic agenda lie both classical philosophy's emphasis on social justice and the Abrahamist faith's insistence on a redeeming love of all humankind.<sup>14</sup>

---

9. HERMAN MELVILLE, *MOBY-DICK* 85 (Charles Feidelson, Jr. ed., Bobbs-Merrill Co., Inc. 1964) (1851) (emphasis added).

10. See, e.g., J. BALMES, *PROTESTANTISM AND CATHOLICITY COMPARED IN THEIR EFFECTS ON THE CIVILISATION OF EUROPE* 35 (C.J. Hanford & R. Kershaw trans., 1849).

11. For a fuller elaboration of the Austrian economic model, see LUDWIG VON MISES, *HUMAN ACTION: A TREATISE ON ECONOMICS* (3d ed. 1963).

12. See Ryan, *supra* note 3 (explaining how a return to "free-enterprise" policies is consistent with his Catholic values).

13. See Georgetown Letter, *supra* note 4.

14. See generally ALASDAIR MACINTYRE, *AFTER VIRTUE: A STUDY IN MORAL THEORY* (2d ed. 1984) [hereinafter MACINTYRE, *AFTER VIRTUE*]; ALASDAIR MACINTYRE, *WHOSE JUSTICE? WHICH RATIONALITY?* (1988) [hereinafter MACINTYRE, *WHOSE JUSTICE*].

Beyond that, I want to show that the common ground of left-liberalism and Catholic Social Teaching is a shared sense, not only of the proper scope of philanthropy, but also of the liberal state's role in promoting philanthropy. Orthodox Catholics, every bit as much as left-liberals, believe that philanthropy is the work not only of private parties, alone and in private philanthropic organizations, but also of an activist state,<sup>15</sup> a philanthropic republic.<sup>16</sup>

In contrast to Ayn Rand's egoism, then, the philanthropy of the classics and the scriptures offers a common ground for Orthodox Catholics and secular left-liberals.<sup>17</sup> But that leaves the second problem the Georgetown letter found with Rand's thought: it is antireligious.<sup>18</sup> Would this not preclude an alliance between Orthodox Catholics and any liberals, left or right, since liberalism is fundamentally nonreligious? Emphatically not. Our analysis needs to show that liberalism, though necessarily nonreligious, is not necessarily antireligious. Liberalism of all stripes, even the farthest right, is theoretically nontheistic, but liberalism of no stripe, including the farthest left, need be antitheistic, in either theory or practice. As our own constitutional regime will remind us, a liberal state can be neutral toward religion without being hostile to it.<sup>19</sup>

In showing why far-left liberalism shares far more philanthropic ground with Catholic Social Teaching than far-right liberalism, it will help to have paradigms for each position; Representative Ryan has given us two of the three we need: Ayn Rand and St. Thomas Aquinas.

Choosing Rand as the champion of Ryan's far-right liberalism may not seem entirely fair. After all, Representative Ryan did not specifically embrace her in his speech; what's more, when the Georgetown letter pointed out that this *anti-Madonna* seemed the source of his policies, Ryan immediately distanced himself from her.<sup>20</sup> But the overlap of his views and hers was obvious enough, and it took journalists very little time to find instances, in other contexts, where Ryan had undeniably embraced Rand's views, particularly on the state's role in economics.<sup>21</sup> And her view of that

---

15. Georgetown Letter, *supra* note 4 (noting that the Catholic principle of "subsidiarity" . . . demands that higher levels of government provide help . . . when communities and local governments face problems beyond their means [such as] economic crises, high unemployment, endemic poverty and hunger").

16. See Rob Atkinson, *The Future of Philanthropy: Questioning Today's Orthodoxies, Re-Affirming Yesterday's Foundations*, 4 WM. & MARY POL'Y REV. 251, 263–65 (2013).

17. See *infra* Part II.

18. See Georgetown Letter, *supra* note 4 ("[Rand's] call to selfishness and her antagonism toward religion are antithetical to the Gospel values of compassion and love.").

19. See *infra* Part II.A.1.b.

20. Scott Keyes, *After Previously Praising Her, Paul Ryan Now Disses Ayn Rand: 'I Reject Her Philosophy'*, THINKPROGRESS (Apr. 26, 2012, 11:40 AM), <http://thinkprogress.org/politics/2012/04/26/471730/paul-ryan-ayn-rand/> [https://perma.cc/FLD7-5D5S].

21. See, e.g., Paul Krugman, *Galt, Gold and God*, N.Y. TIMES (Aug. 23, 2012), <http://www.nytimes.com/2012/08/24/opinion/krugman-galt-gold-and-god.html?ref=collection%2Ftimestopic%2FRand%2C%20Ayn> [http://perma.cc/2A4N-HX2N]; Jane Mayer, *Ayn Rand Joins the Ticket*, NEW YORKER (Aug. 11, 2012), <http://www.newyorker.com/news/news-desk/ayn-rand-joins-the-ticket> [https://perma.cc/YE7N-PP2M].

role has wide, if sometimes similarly sub rosa, support among much of the political Right.<sup>22</sup> Rand has, even now, a literal namesake in the present presidential field; she once had an acolyte as Chairman of the Federal Reserve.<sup>23</sup>

And two deeper reasons, ironically related, point to Rand as champion of right-liberalism: focusing on her lets us be scrupulously fair to far-right liberalism, even as we make a point fundamental to our own analysis. To be fully fair to Representative Ryan, we can use Ayn Rand as a nice contrast to other right-liberal paragons who, unlike her, are neither egoist nor antireligious.<sup>24</sup> And, having made that fair distinction, we can then use it to make a fundamental point: much of right-liberalism rejects both of Rand's problematic positions, egoism and antireligiousness, but nonetheless insists on a radically smaller state role in economics, and thus philanthropy, than the role espoused in Catholic Social Teaching.<sup>25</sup>

For the champion of Catholic Social Teaching, of course, Ryan could not have chosen better than St. Thomas—although better, we need to see, for our purposes than for his. He was apparently hoping to find common ground not only with the authors of the Georgetown letter on issues of Catholic Social Teaching, but also with orthodox Catholicism more generally. As a standard bearer for Catholicism on both points, the particular and the general, St. Thomas is indeed ideal. Pope Leo XIII acknowledged the foundation of Catholic Social Teaching and also helped make Thomas the measure of Catholic orthodoxy across the board.<sup>26</sup> But, even as other commentators on Ryan's speech have made clear, St. Thomas was a most peculiar choice for Representative Ryan, because St. Thomas's teaching about the role of the state is deeply incompatible with both what Ryan practices and what he preaches.<sup>27</sup>

22. Adam Davidson, *Prime Time for Paul Ryan's Guru (the One Who's Not Ayn Rand)*, N.Y. TIMES MAG. (Aug. 21, 2012), <http://www.nytimes.com/2012/08/26/magazine/prime-time-for-paul-ryans-guru-the-one-thats-not-ayn-rand.html> [<http://perma.cc/G3G5-NBTW>].

23. See Harriet Rubin, *Ayn Rand's Literature of Capitalism*, N.Y. TIMES (Sept. 15, 2007), <http://www.nytimes.com/2007/09/15/business/15atlas.html?rref=collection%2Ftimes-topic%2FRand%2C%20Ayn> [<http://perma.cc/NX5D-GWQZ>].

24. For an earlier generation, the paradigm was, of course, William F. Buckley Jr., "a committed Catholic [who] resisted the libertarian impulse to undermine established authority and devolve into anarchy." Geoffrey Kabaservice, *William F. Buckley Jr.: Right Man, Right Time*, N.Y. TIMES (Dec. 9, 2011), <http://www.nytimes.com/2011/12/11/books/review/buckley-william-f-buckley-jr-and-the-rise-of-american-conservatism-by-carl-t-bogus-book-review.html> (reviewing CARL T. BOGUS, *BUCKLEY: WILLIAM F. BUCKLEY JR. AND THE RISE OF AMERICAN CONSERVATISM* (2011)) [<http://perma.cc/5N3L-R69A>].

25. See, e.g., WILLIAM F. BUCKLEY JR., *GOD AND MAN AT YALE: THE SUPERSTITIONS OF ACADEMIC FREEDOM* (1986); Burns, *supra* note 7 (noting that Buckley was a critic of Rand).

26. See Pope Leo XIII, *Aeterni Patris: Encyclical of Pope Leo XIII on the Restoration of Christian Philosophy* (Aug. 4, 1879), [http://w2.vatican.va/content/leo-xiii/en/encyclicals/documents/hf\\_l-xiii\\_enc\\_04081879\\_aeterni-patris.pdf](http://w2.vatican.va/content/leo-xiii/en/encyclicals/documents/hf_l-xiii_enc_04081879_aeterni-patris.pdf) ("Among the Scholastic Doctors, the chief and master of all towers Thomas Aquinas . . . in a certain way seems to have inherited the intellect of all.") [<https://perma.cc/HXS9-38R8>].

27. See Ross Douthat, *The End of a Catholic Moment*, N.Y. TIMES (Feb. 16, 2013), <http://www.nytimes.com/2013/02/17/opinion/sunday/douthat-the-end-of-a-catholic-moment.html> ("[T]oday's Republicans are more likely to channel Ayn Rand than Thomas Aquinas . . .") [<http://perma.cc/6QJB-CHVU>]; see also Georgetown Letter, *supra* note 4.

If St. Thomas is hardly helpful to Ryan and the Far Right, he is hugely helpful to the liberal Left. He called Aristotle “the Philosopher” with a capital “P,” as did both his Jewish and his Islamic counterparts, Ibn Rushd (Averroes) and Moses ben Maimon (Maimonides).<sup>28</sup> St. Thomas held, with Aristotle and against all moral egoists and political individualists, that humans are essentially and ideally social creatures.<sup>29</sup> St. Thomas, most critically, was willing, on the one hand, to agree with Aristotle that reason alone can guide us in our relations with each other, both ethical and political,<sup>30</sup> even as he insisted, on the other hand, that unaided human reason could not bring us to a saving knowledge of God.<sup>31</sup>

Both those latter points, we shall see, mesh nicely with the ethics and politics of modern liberalism; they are, in fact, the very foundation of the common ground that left-liberalism shares with Catholic Social Teaching. As St. Thomas is the paradigm of Orthodox Catholicism, John Stuart Mill is the paradigm of modern liberalism. We need to see that they undertook, and accomplished, profoundly significant and nicely complementary tasks. St. Thomas reconciled the philosophy of Athens with the Scriptures of Jerusalem; more particularly, he managed to underpin Christian theology with Aristotelean philosophy.<sup>32</sup> St. Thomas was thus able to accept the worldly wisdom of the Greek philosophers, even if he was obliged to deny them a proper knowledge of God.

Mill tried to effect an equally impressive accommodation, in rather the opposite direction: to reconcile the ethics of the classical philosophers with the ethics of the Christian scriptures, while leaving aside the theology of both.<sup>33</sup> In so doing, he made it possible for modern liberals to join forces with Orthodox Christians on the common ground of service to their fellow humans, despite any differences they might have on the proper relations between humans and God. What is more, Mill’s position allows for a significant theological concession: we secular liberals do not know your God, but you may very well be right about Him. Followers of Mill can thus humbly take the place that St. Thomas assigned the classical philosophers, even as followers of St. Thomas can take the same respectful attitude toward liberals that St. Thomas took toward their common classical

---

28. See, e.g., 1 SAINT THOMAS AQUINAS, SUMMA THEOLOGICA Q. 21 art. 1, in 1 BASIC WRITINGS OF SAINT THOMAS AQUINAS 5, 223 (Anton C. Pegis ed., Hackett Publ’g Co. 1965) [hereinafter BASIC WRITINGS]; MOSES MAIMONIDES, GUIDE FOR THE PERPLEXED ch. LXXI (M. Friedlander ed., 1881); AVERROËS, THE BOOK OF THE DECISIVE TREATISE & EPISTLE DEDICATORY 73 (Charles E. Butterworth trans., Brigham Young Univ. Press 2001).

29. AQUINAS, *supra* note 28, Q. 96 art. 4, at 922.

30. 2 *id.* Q. 91 art. 4, in 2 BASIC WRITINGS, *supra* note 28, at 752 (“Now if man were ordained to no other end than that which is proportionate to his natural ability, there would be no need for man to have any further direction, on the part of his reason, in addition to the natural law and humanly devised law which is derived from it.”).

31. 1 *id.* Q. 1 art. 1, in 1 BASIC WRITINGS, *supra* note 28, at 6 (“It was necessary for man’s salvation that there should be a doctrine revealed by God, besides the philosophical disciplines investigated by human reason.”).

32. See *id.*

33. See *id.*



masters. What is more, Thomists can recall, with humility of their own: there, but for the grace of God, go I.<sup>34</sup>

Before turning to the case for that common ground, we must address an important objection to my choice of champions: Mill is the (secular) patron saint of all liberals, Right as well as Left; more strongly, Mill himself is closer to modern right-liberals than to modern left-liberals. Mill is, true enough, the darling of the right-most of liberals, F.A. Hayek and Ludwig von Mises.<sup>35</sup> And they have an important point in their favor: Mill is, indeed, deeply concerned about excessive state power.<sup>36</sup> But this tends to make Mill not a bad choice for left-liberal champion but a good one, in the way that Nixon was just the right President to visit China. Although Mill's instinct is strongly in favor of individual freedom and initiative, wherever he sees that initiative falling short at the expense of what we will identify as philanthropy, he always comes 'round to state assistance.<sup>37</sup>

This takes us back, significantly, to Ayn Rand. The argument that Mill is too broad, even too far right, to represent left-liberalism nicely complements my concession that Rand is too narrow to represent right-liberalism. Some right-liberals are, in their personal lives, both profoundly philanthropic and deeply religious.<sup>38</sup> The only real common ground they share with Rand is reservation about big government. But that is also ground they share with Mill. Mill's thought nicely shows a deep tension in liberalism between fear of too strong a state and knowledge that only a strong state can accomplish the full range of philanthropic goals.<sup>39</sup> In showing that Mill, the paradigmatic liberal, like St. Thomas, the doctor of the Church, resolves that tension in favor of philanthropy, we are welcoming philanthropic Catholics like Paul Ryan back onto the common ground that the most legitimate liberalism and the most Orthodox Catholicism comfortably share. Thus the common ground we find for left-liberalism and Orthodox Catholicism is open to these right-liberals as well. Only Ayn Rand, with her insistent egoism and strident antireligion, need be the odd one out.<sup>40</sup>

---

34. 2 *id.* Q. 109 art. 5, in 2 BASIC WRITINGS, *supra* note 28, at 986–87.

35. See, e.g., F.A. HAYEK, HAYEK ON MILL: THE MILL-TAYLOR FRIENDSHIP AND RELATED WRITINGS (Sandra J. Peart ed., 2015); VON MISES, *supra* note 11, at 203, 496, 678.

36. JOHN STUART MILL, UTILITARIANISM 34 (George Sher ed., Hackett Publ'g 1979) (1861).

37. See *id.*

38. Think, for example, of Governor Mitt Romney and his expensive philanthropic work. Floyd Norris et al., *Inside the Romney Tax Returns*, N.Y. TIMES (Jan. 24, 2012, 8:42 AM), <http://thecaucus.blogs.nytimes.com/2012/01/24/inside-the-romney-tax-returns/> (“For the Romneys, [m]uch of [t]heir [p]hilanthropy [w]as in [c]ash.”) [<http://perma.cc/U2AM-UBKL>].

39. See *infra* Part III (discussing the optimally philanthropic liberal state).

40. But what, one might well wonder, about those of us who consider ourselves “left” but not “liberal”? This is, again, a symposium of critical scholars, and liberalism is, perhaps, the favorite object of critical scholarly critique. Here I have both good news and bad. The good news is that I, with the bulk of critical scholarship, think liberal democracy is a huge muddle. See generally LAURA KALMAN, THE STRANGE CAREER OF LEGAL LIBERALISM (1996); ROBERTO MANGABEIRA UNGER, KNOWLEDGE AND POLITICS (1975); ROBERT PAUL WOLFE, THE POVERTY OF LIBERALISM (1968). The bad news, I'm afraid, is that the problem

Making the case for a philanthropic alliance between left-liberalism and Catholic Social Teaching will take three steps. Part I, on liberalism, examines the spectrum of liberal political thought, identifying four distinct “shades,” from bluest to reddest, in terms of four distinct economic functions of the modern liberal state: providing the infrastructure for capitalism, correcting failures in capitalist markets, redistributing wealth, and promoting “superior goods” like fine art and higher education. It shows how we must look beyond the intrinsic values of both our liberal economy and our liberal polity if we are to embrace and implement the fullest range of state functions, as both left-liberalism and Catholic Social Teaching indeed do.

Part II, on philanthropic ethics, locates the guidance we need in an ethics of philanthropy grounded in both the Western Classics and the Abrahamist Scriptures. This ethic passes both tests that Ayn Rand’s ethic fails; it is deeply and doubly humanitarian. It seeks to ensure that every child born on earth has not only all of life’s basic necessities, but also a reasonable chance to develop as fully as humanly possible—to go to a university as fine as Fordham, to prepare to become a Mill, maybe, or even an Aquinas. And this ethic can accommodate both religiously respectful agnostics like Mill and morally rational theists like St. Thomas. Part III, on philanthropic politics, maps that philanthropic ethic onto the range of liberal politics identified in Part I, showing why the shared philanthropy of left-liberals and Orthodox Catholics presses them, even as the Church has long taught, toward an actively philanthropic state.

#### I. “LIBERALISM”: IDENTIFYING ONE INDIGENOUS GENUS AND ITS FOUR DISTINCT SPECIES

“Liberalism” is, of course, a much-contested concept; we hardly need a critical tax conference to remind us of that. What’s worse, those of us who identify ourselves as liberal face criticism not only on our left flank, from critical scholars<sup>41</sup> like many of my conference colleagues, but also on our right flank, from various versions of conservatism, some of the most powerful of which are self-consciously Catholic, like our host institution.<sup>42</sup> Nor is even that the worst of it: we self-described liberals are not only under external critiques, left and right; we also disagree among ourselves about both the architecture of our school and who belongs within its walls.<sup>43</sup>

In proper critical fashion, this analysis of liberalism eschews any effort to find its “essence.” On the other hand, it tries to avoid the opposite extreme, the insistence that liberalism is an onion with no coherent core, no ultimate

---

lies not with the liberal half, as modern critics tend to think, but with the democratic half. Here again I find myself in the good company of both St. Thomas and Mill—not to mention Socrates, Plato, and Aristotle.

41. See KALMAN, *supra* note 40; UNGER, *supra* note 40.

42. MACINTYRE, *AFTER VIRTUE*, *supra* note 14; MACINTYRE, *WHOSE JUSTICE*, *supra* note 14.

43. Compare KALMAN, *supra* note 40, with UNGER, *supra* note 40.

“there” for us to peel down to. It focuses instead on identifying those aspects of liberalism that are relevant to our current task: understanding the place of philanthropy in our legal system, particularly our fiscal system. As Aristotle reminds us, we must not expect more precision about any subject matter than that subject allows.<sup>44</sup>

Without risking either logical extreme—seeking liberalism’s essence or denying its existence—we can do nicely enough for present purposes with two related moves. In Part I.A, we find a basic “family resemblance”<sup>45</sup> in the ways that three significant aspects of our current society—its economy, its polity, and its culture—are liberal. Then, in Part I.B, we identify four specific kinds of liberalism at the boundary of our economy and our polity, four ranges along the full spectrum of government-economic relations, from the small government night-watchman state on the liberal Right to the big government welfare state on the liberal Left. Finally, in Part I.C, we notice why neither our capitalist market economy nor our liberal democratic polity can give us the criteria we need to choose among these four kinds of liberalism and why the third sector, nonprofit and nongovernmental, can and does supply that deficiency.

#### *A. The Indigenous Genus: Liberalism in Our Three-Sector Society*

Students of our society’s philanthropy, borrowing from students of our society generally, identify three public sectors: our economic sector, our political sector, and our civic or cultural sector.<sup>46</sup> Figure 1 shows these three sectors as dimensions of a comprehensive social sphere. Each of these sectors is “liberal” in ways that implicate the root concept of liberalism, Mill’s “liberty,” particularly the modern, negative liberty: freedom from governmental compulsion and constraint.<sup>47</sup>

---

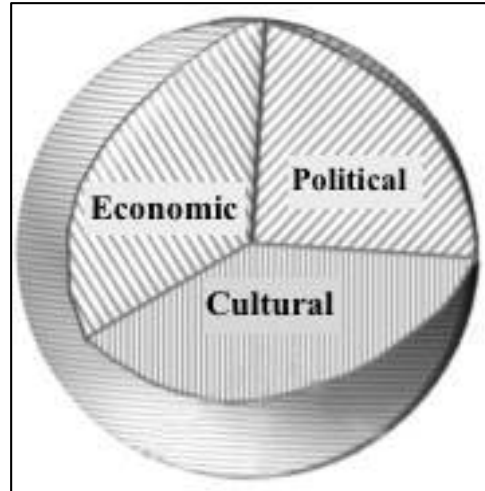
44. ARISTOTLE, *POLITICS* (H. Rackham trans., Harvard Univ. Press 1944) (c. 350 B.C.); ARISTOTLE, *NICOMACHEAN ETHICS* (W.D. Ross trans., Digireads.com 2005) (c. 350 B.C.).

45. See J.L. AUSTIN, *HOW TO DO THINGS WITH WORDS* 149 (1962).

46. Rob Atkinson, *Re-Focusing on Philanthropy: Revising and Re-Orienting the Standard Model*, 4 WM. & MARY POL’Y REV. 1, 63–65 (2012).

47. See generally, e.g., PHILIP PETTIT, *REPUBLICANISM: A THEORY OF FREEDOM AND GOVERNMENT* (1997); Isaiah Berlin, *Two Concepts of Liberty*, in *FOUR ESSAYS ON LIBERTY* 118 (1969).

Figure 1: *Our Three-Sector Society*



Our capitalist market economy is “free” in multiple respects. On the supply side, everyone is free to be a capitalist; capitalists generally are free to produce and sell whatever they care to and keep the net profits. On the demand side, consumers generally are free to buy whatever they are willing and able to pay for. So, too, is our liberal democratic polity free. As a democracy, all our citizens are free to vote, for pretty nearly any person or policy they care to support; our citizens are free from government action that is irrational, invidiously discriminatory, or overly intrusive into basic individual “freedoms.” And, in the admittedly more amorphous third sector, those individual freedoms include the right to participate in an almost limitless range of cultural activities, including individual and group acts and programs of philanthropy, as well as the right to adopt and implement a wide range of political theories, including variants of, and even alternatives to, economic and political liberalism.<sup>48</sup>

Beyond this civics-class outline of our liberal society, of course, our freedoms within and among these three social sectors—economic, political, and cultural—frequently overlap and sometimes conflict. As a first step in understanding the relationship between our culture’s philanthropy and our state’s liberalism, it is useful to begin with the range of possible relationships between our liberal state and our capitalist market economy.

---

48. See JOHN STUART MILL, *PRINCIPLES OF POLITICAL ECONOMY* 939–40 (W.J. Ashley ed., 1909) (1848).

*B. The Species: Four Political Liberalisms  
from Four State Economic Functions*

In mapping the boundary between our economy and our polity, it is important to note at the outset that, at least officially, it is our polity that draws the line. In our society, our liberal democratic polity is superior to our capitalist market economy, at least as a matter of constitutional law. “We the People” could amend the Constitution to abolish private ownership of the means of production and establish some form of state socialism. This is, of course, not going to happen.

Short of that extreme, our liberal democratic state actually deals with our capitalist market economy in two basic ways: on the one hand, it generally supports that economy; on the other hand, it sometimes supplants it. Within each of those two approaches of the state to the market, we can identify two particular functions—one more intrusive and one less—for a total of four functions that all modern liberal states play (properly or not)<sup>49</sup> with respect to market capitalism. Think of these functions as the “Four R’s”: the Ricardian, the Regulatory, the Redistributivist, and the Aretist.<sup>50</sup>

1. Two Market-Supporting Functions of the Liberal State

The liberal state performs two basic functions in support of a capitalist market economy: establishing its foundations and regulating its operation. These are, respectively, its Ricardian and Regulatory functions.

*a. The Ricardian Function:  
Establishing and Sustaining the Market*

President Obama provoked outrage (real or pretended) when he said, “[Y]ou didn’t build that.”<sup>51</sup> Whatever he meant by that, this much is clear, even to liberalism’s libertarian Right: if a society is to have a capitalist market economy, its state must provide an essential institutional infrastructure. Specifically, the state must provide capitalism with a legal system that recognizes and protects property rights, including, most basically, personal safety and bodily integrity. Beyond that, the state must provide for voluntary exchanges of entitlements and for protections against unwanted interferences.<sup>52</sup> Mill’s mentor, Jeremy Bentham, with typical piquancy, put it this way:

---

49. This part, then, is descriptive; Part III takes up the normative question about the four functions described here.

50. This section tightly summarizes Atkinson, *supra* note 46, at 14–28.

51. President Barack Obama, Remarks by the President at a Campaign Event in Roanoke, Virginia (July 13, 2012) (emphasis added), <https://www.whitehouse.gov/the-press-office/2012/07/13/remarks-president-campaign-event-roanoke-virginia> [http://perma.cc/5Y9M-XZY9].

52. See RICHARD A. EPSTEIN, TAKINGS: PRIVATE PROPERTY AND THE POWER OF EMINENT DOMAIN 3–4 (1985); Atkinson, *supra* note 46, at 7–8.

Property and law are born together, and die together. Before laws were made there was no property; take away laws, and property ceases.<sup>53</sup>

A quaint old English case, *Keeble v. Hickeringill*,<sup>54</sup> nicely illustrates the point (particularly nicely for us law professors, in our increasingly aggressive competition for a diminishing pool of applicants) with the example of a private proprietary school:

But suppose Mr. Hickeringill should lie in the way with his guns, and fright the boys from going to school, and their parents would not let them go thither; sure that schoolmaster might have an action for the loss of his scholars.<sup>55</sup>

A capitalist market economy, then, requires a legal system with three substantive areas familiar to all first-year law students: Property, Contracts, and Torts.

*b. The Regulatory Function:  
Correcting Market Failures*

Once up and running, thanks to the state's Ricardian function, a capitalist market economy faces a number of possible failures, measured by its own metric of economic efficiency and documented by economists themselves. Two of the more significant market failures, for our purposes, are information asymmetries and externalities. Here again, education—indeed, legal education—nicely illustrates the essentials. Law students want to buy an education that prepares them for the practice of law; unfortunately for them, they cannot adequately appreciate what that entails until they actually have what they want to buy. On the other hand, unscrupulous suppliers—we all know who they are—could exploit this situation by selling students an inferior product at an inappropriately high price. To correct this classic information asymmetry, the liberal state could, and all fifty of our states more or less do, impose quality-control measures on legal education.<sup>56</sup>

In the case of legal education, those quality-control measures may protect not only student consumers, but also the public at large. Inadequately trained lawyers may well be a burden on the court system, requiring judges to correct their mistakes, thus delaying the cases of other litigants or requiring the public to pay for more judges. These external costs—costs borne by parties outside the original sale of subpar legal education—

---

53. Jeremy Bentham, *Principles of the Civil Code*, in *THEORY OF LEGISLATION* 88, 113 (R. Hildreth trans., 4th ed. 1882). Mill, in his own work, mentions this function only to place its legitimacy above debate. MILL, *supra* note 48, at 799–801; *see also* Linda Sugin, *Don't Give Up on Taxes*, 145 *TAX NOTES* 1373, 1375 (2014) (“The basic infrastructure of society benefits the wealthy compared to the poor,” in part because “[t]hat infrastructure includes the operation of markets and the monetary system.”).

54. 11 East 574, 103 Eng. Rep. 1127 (Queen's Bench 1701).

55. *Id.* at 1128 (citing 11 Henry IV 47 (1490)).

56. *See, e.g.*, ABA, 2015–2016 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS (2016), [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2015\\_2016\\_aba\\_standards\\_for\\_approval\\_of\\_law\\_schools\\_final.athcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2015_2016_aba_standards_for_approval_of_law_schools_final.athcheckdam.pdf) [https://perma.cc/7SLK-32PB].

illustrate the second classic market failure that the liberal state may, and does, try to correct.

## 2. Market Supplanting

The liberal state's Ricardian and Regulatory functions work to make the market accomplish its own basic function: providing consumers with the goods and services they are both willing and able to pay for. The liberal state's market-supplanting functions, by contrast, address perceived problems with those two basic conditions of all market exchanges: ability to pay and willingness to pay.

### *a. The Redistributive Function*

All of my students, and surely many of Fordham's, receive tuition subsidies. This reflects an implicit societal decision—perhaps now under severe if not serious reconsideration—that we need more lawyers than we would have if the market, even after the correction of classic market failures, were left entirely on its own. The GI Bill reflected a similar, and much wider, consensus about subsidizing higher education more generally.<sup>57</sup> And, of course, the government engages in an even wider range of wealth redistribution, from poverty relief to, one might argue, Wall Street bailouts.<sup>58</sup>

If the state were only interested in wealth redistribution, we need to note, it would make these transfers in cash. As our education and poverty relief programs remind us, these transfers are often made either in kind—Jeb Bush's "free stuff"<sup>59</sup>—or with significant "strings" attached. For example, the bulk of student loans must go for education-related expenses; what once were called "Food Stamps" can be redeemed for food, but not for beer or cigarettes. To understand these restrictions, we must look at the state's fourth function, the Aretist.

### *b. The Aretist Function*

The Redistributive function gives consumers what they otherwise *couldn't* buy; the Aretist function gives them what they otherwise *wouldn't* buy. If the state wanted only to increase consumer-buying power, it could simply reduce taxes; because it wants also to promote more enjoyment (and presumably more appreciation) of classic and experimental drama, painting,

---

57. See Serviceman's Readjustment Act of 1944, Pub. L. No. 78-348, § 400, 58 Stat. 284, 287; see also Eliza Berman, *How the G.I. Bill Changed the Face of Higher Education in America*, TIME (June 22, 2015), <http://time.com/3915231/student-veterans> [<http://perma.cc/9S7Z-STGS>].

58. Bryce Covert, *We All Get 'Free Stuff' from the Government*, N.Y. TIMES (Oct 8, 2015), [http://www.nytimes.com/2015/10/08/opinion/we-all-get-free-stuff-from-the-government.html?\\_r=0](http://www.nytimes.com/2015/10/08/opinion/we-all-get-free-stuff-from-the-government.html?_r=0) [<http://perma.cc/CJD9-KP55>].

59. See Charles M. Blow, *Jeb Bush, 'Free Stuff' and Black Folks*, N.Y. TIMES (Sept. 28, 2015), <http://www.nytimes.com/2015/09/28/opinion/charles-m-blow-jeb-bush-free-stuff-and-black-folks.html> [<http://perma.cc/T42D-NTUH>].

sculpture, natural history, archeology, and ethnography, it subsidizes the National Theater, the National Gallery, and the Smithsonian Institutions. So, too, one might say, of liberal arts education, even legal education. At prices set by the market, too few undergraduates might major in classics or philosophy; so, too, too few law students might take courses in jurisprudence or, ironically enough, law and economics.

### 3. Four Political Liberalisms

From our four functions of the liberal state, we can derive four corresponding kinds of liberalism. Each form of liberalism accepts as appropriate one of the four functions of the state; this entails accepting all the less intrusive functions and rejecting all the more intrusive ones. The four liberalisms thus range from least to most state intrusion into the economy, and thus, roughly speaking, from political “Right” to “Left.” Ricardian liberalism accepts only the state’s role in creating and sustaining markets;<sup>60</sup> Regulatory liberalism accepts not only this fundamental role, but also the state’s market-correcting role;<sup>61</sup> Redistributive liberalism accepts, in addition to the Ricardian and Regulatory roles, the state’s redistribution of wealth;<sup>62</sup> Aretist liberalism, finally, accepts all four of the liberal state’s economic roles, including the most intrusive, choosing and supporting the production and consumption of “superior goods” like fine art and higher education.<sup>63</sup> Figure 2 relates these four kinds of liberalism to the four economic functions of the liberal state.

Figure 2: Four Kinds of Liberalism

		State Economic Functions			
		Market Supporting		Market Supplanting	
Kinds of Liberalism		Ricardian	Regulatory	Redistributive	Aretist
	Ricardian				
	Regulatory				
	Redistributive				
	Aretist				

### 4. The Third Sector’s Ideological Role

Identifying these four forms of liberalism as a descriptive matter poses an obvious normative question: Why accept one level of government involvement in the market economy and not another? This question, in

60. See Atkinson, *supra* note 46, at 16–18.

61. See *id.* at 18–22.

62. See *id.* at 22–24.

63. See *id.* at 24–25.



turn, raises another, at a deeper level of analysis: Where would we go to look for the answer to such a question?

Assuming, *arguendo*, that our three-sector social model is, indeed, comprehensive, we have three principal places to look for such answers: the private for-profit sector, our capitalist market economy; the governmental sector, our liberal democratic polity; and the third sector, our voluntary, pluralist culture. For reasons that I have elaborated elsewhere, trying to derive the proper boundary of the economic and political sectors from the basic principles of either of those two sectors itself is a fruitless, if perennially tempting, avenue of inquiry.<sup>64</sup> What Linda Sugin says about the proper level of progressivity in the tax system is true of the entire range of the state's market-supplanting functions: "There's no principle that dictates the right level[;] it is a moral choice."<sup>65</sup>

Nor are the ordinary operations of our economic or political systems likely to produce the guidance we need in making that choice. Individual capitalist firms have little incentive to produce ideologies, because ideologies have all the hallmarks of public goods. And liberal democratic politics are not likely to help us here, for parallel reasons. Any ideology approved by democratic processes would run up against liberal limits on the state's proper role in promoting just such global visions of the good. Even if the majority adopted an ideology that the liberal state legitimately could promote, we would run into a deeper problem. Unless we are willing to take majority decisions as the final word in these matters, we would need to test any democratically chosen ideology by a kind of meta-ideology, putting us right back where we started. What we need, at bottom, is a standard for questioning mere aggregations of private preference, whether those be the preferences of consumers on the demand side of the economy or voters in the elections of our polity.

That leaves, by easy elimination, the third sector: our voluntary and pluralistic culture. Susan Rose-Ackermann has nicely suggested why that sector is indeed singularly suited to meet that need: it produces global normative systems, or ideologies.<sup>66</sup> Rather than rehearse that argument here, it is enough to notice that our culture not only *can* produce such systems, but, of course, actually *has*.<sup>67</sup> Here we find what Holmes found with respect to law and MacIntyre with respect to virtue: an ounce of history is worth a pound of logic.<sup>68</sup> This suggests, quite rightly, that, if our three-dimensional social model is to be helpful, we must add, in effect, a fourth dimension—history.

---

64. *Id.* at 32–40, 41–51; *see also* Sugin, *supra* note 53, at 1374.

65. Sugin, *supra* note 53, at 1374.

66. *See* Susan Rose-Ackerman, *Altruism, Nonprofits, and Economic Theory*, 34 J. ECO. LIT. 701, 710–15 (1996).

67. *See* Atkinson, *supra* note 46, at 54.

68. *See* N.Y. Tr. Co. v. Eisner, 256 U.S. 345, 349 (1921) (“[A] page of history is worth a volume of logic.”); MACINTYRE, *AFTER VIRTUE*, *supra* note 14, at 1–5, 51–52.

II. PHILANTHROPIC ETHICS:  
TOWARD A PROPER REGARD FOR ALL “OTHERS”

Part I identified four liberalisms by looking at four possible relationships of our liberal democratic polity with our capitalist market economy. We saw that, with respect to its market-supplanting functions, redistribution and meritism, liberalism is pressed to look outside the norms implicit in our economy and our polity, consumer satisfaction, and majority preference. An obvious source is our society’s third sector, the cultural sector. That sector, we also saw, can supplement the other two sectors in two complementary ways. It can provide comprehensive normative systems, and it can provide its own distinctive organizations, relatively independent of both the market and the state. In addition to their distinctive product—comprehensive normative systems—third-sector organizations offer an alternative means for supplying a wide range of goods and services also available from either or both of the other two sectors: healthcare and education, for example.

This part shows how these two aspects of the third sector offer us a way of answering the implicit challenge posed by the Georgetown letter: how to find a form of left-liberalism that is consistent with Catholic Social Teaching. Part II.A narrows our focus down from the full range of ideologies our cultural sector might offer to a single very vigorous and viable candidate, philanthropy, which is both the alternative to egoism implied in the Georgetown letter and the common ground of liberalism and Catholicism. Philanthropy, like all “global” normative systems, has two identifiable aspects, classically called ethics and politics. Part II.B outlines the ethics of philanthropy, identifying the fullest possible form: promoting the fullest possible range of excellence in human beings. The fullest form of philanthropy, we will see, is the ethic of making people all that they can be: fully realized human beings.<sup>69</sup> On this, we will find plenty of common ground for Mill’s school of secular philanthropy and St. Thomas’s school of rational religious philanthropy.

A. *From Many Ideologies to the One We Need:  
The School of Philanthropy That Mill and St. Thomas Share*

The third Sector, we have seen, both can produce and has produced the very kind of comprehensive normative system that we need to evaluate our four kinds of liberalism, a guide in finding a liberalism compatible with Catholic Social Doctrine. That ideology will need to give us both an ethical system for operating within our market economy and democratic polity and a political framework for choosing how that polity should interact with that economy. The next step in finding that ideology is a radical narrowing of options. From all the possible ideologies our cultural sector offers to a particular one that can be a common ground for liberalism and Catholicism, a house comfortable for both Mill and St. Thomas. Here again, the

---

69. See *infra* Part II.B.

Georgetown letter is our guide. In choosing the right ideology to help us, in turn, choose the right liberalism, we can usefully begin with what the Georgetown letter rightly took to be a wrong liberalism, Ayn Rand's.<sup>70</sup> The Georgetown letter nicely noted two problems with Rand's "thinking" from a Catholic perspective: it is egoist, and it is antireligious.<sup>71</sup> We need to look first at the problem of her egoism, then at the problem of her antireligiousness.

We are looking for an ideology that negates egoism; with the kind of logic that I think St. Thomas would appreciate, we can start by thinking in terms of egoism's opposite. Rather than an ideology that would have us focus only on ourselves, we need an ideology that considers every possible "other." That logic would still leave a very wide range; we can fairly narrow that range to the western tradition of philanthropy, for several related reasons. First, philanthropy is this Article's assigned topic in the symposium. Second, philanthropy is the way we would have our society go, the basic direction of the praxis I believe you and I can share. Third, and not unrelatedly, philanthropy is the only real option for political praxis within our current social situation. Our political system is, of course, democratic as well as liberal; to move our state in the direction we would like, we must have the assent, or at least the acquiescence, of a majority of voters. In that respect, the much-remarked "halo" of charity casts a glow we need to claim. Finally, philanthropy is ground that Athens and Jerusalem share; it is the ideology of my two epigraphs, one from Jesus and the other from Plato.<sup>72</sup>

#### *B. Philanthropic Ethics: The Proper Regard for Others*

In outlining our philanthropic ethics here, as in outlining the range of our liberal politics in Part I, we eschew two extremes: seeking any absolute "essence" and denying any possible existence. Our task is neither to join those students of philanthropy who seek to define our subject in the abstract,<sup>73</sup> nor to answer reductionist critics who insist that all human action is self-interested.<sup>74</sup> It is, rather, to outline philanthropy as it has come to be incorporated into our own contemporary culture, with a particular eye to identifying it as a viable set of norms for our ethics and politics. In sketching that outline, it is useful to follow the Philosopher, at least metaphorically, by looking at two related aspects of philanthropic ethics—its form and its substance.

---

70. See Georgetown Letter, *supra* note 4.

71. *Id.*; see also *supra* note 18.

72. See *supra* notes 1–2 and accompanying text.

73. I am myself, I must confess, among the chief of these sinners, or supererogators. See, e.g., Rob Atkinson, *Altruism in Nonprofit Organizations*, 31 B.C. L. REV. 501 (1990).

74. See *id.* at 527; see also Amartya K. Sen, *Rational Fools: A Critique of the Behavioral Foundations of Economic Theory*, 6 PHIL. & PUB. AFF. 317, 326 (1970).

### 1. Philanthropy's "Form": Other-Regarding

As opposed to Rand's egoism, both Socrates and Jesus orient their ethic toward others. Beyond that, as the epigraphs above remind us, both cover the traditional range of "others" in the Western philosophical and Abrahamist religious traditions: other human beings and God. The philanthropies of both Socrates and Jesus, to use a familiar metaphor, have not only a horizontal dimension, our duty to our fellow-folk, but also a vertical dimension, our duty to God. These two dimensions, we should notice, nicely cover the Georgetown letter's dual criticism of Rand's ideology: First, it is egoist—it has essentially no regard for other human beings. Second, it is "antireligious"—it actively opposes any consideration for the divine.<sup>75</sup> How, in contrast, do the philanthropies of Jesus and Socrates map out these two dimensions of human ethical duty?

### 2. Philanthropy's "Substance": Promoting Human Excellence

As to the content of philanthropy, Jesus, like his Jewish predecessors and Islamic followers, is clear on both points: love your fellow human beings as you love yourself; love God as completely as possible.<sup>76</sup> As the epigraph from *Euthyphro* suggests, the Socratic position on both sets of duties seems, at least at first glance, less straightforward.<sup>77</sup> To show their compatibility, we need to see, first, that classical philosophy and Abrahamist religion share a broad consensus on how to serve our fellow humans. We then take up what is often seen as a problem: their respective treatments of humanity's duty to God. We begin with the horizontal aspect of philanthropic ethics, where the common ground is clearer.

#### *a. Philanthropy's Horizontal Orientation: Our Duties to Each Other*

The Anglo-American law of philanthropy always has had two basic foci: relieving human need and advancing human excellence.<sup>78</sup> Our society's near universal acknowledgement of these twin aims, if only by lip service, is nicely captured in two contemporary slogans: *Leave no child behind; A mind is a terrible thing to waste*. What's more, in a strong, if not predominant, stream of both its Socratic and Abrahamist adherents, philanthropy's minimum of meeting human need and its optimum of advancing human excellence inevitably flow together: if you want your neighbors to reach their highest potential, you'd better not let them starve. Philanthropy's minimum task, relieving our fellow folk's distress, is not an end in itself, but a necessary precondition of philanthropy's optimum,

---

75. See *supra* note 18.

76. See *Mark* 12:30–31.

77. See *supra* note 2 and accompanying text.

78. I argue the point of this paragraph at much greater length in Atkinson, *supra* note 16, at 256–60. If you find the argument here engaging but either over-dense or under-persuasive, you might look there.

human excellence. And, even as that minimum sustains the optimum, so, in turn, the optimum ensures the minimum. The philanthropic optimum is to produce fully flourishing human beings; the highest aspiration of a fully flourishing human being is advancing a philanthropic society in which full human flourishing is a real possibility for everyone, everywhere.

That is what, in a significant strand of Abrahamist faith and Socratic philosophy, our fundamental duty toward our fellow folk came to mean. It is not, clearly enough, the view of either all secular leftists or all Abrahamist believers. It places, quite obviously, a high premium on the intellect; it is, I suspect, neither the Christianity of Mother Theresa nor the liberalism of today's Democratic Party. But it is, undeniably, both the Christianity of St. Thomas and the liberalism of Mill. St. Thomas was eloquent in elaborating the point; Mill, of course, could be quite blunt: "It is better to be a human being dissatisfied than a pig satisfied; better to be Socrates dissatisfied than a fool satisfied."<sup>79</sup>

Mill makes clear enough, elsewhere, that the intellects he means to cultivate need not be so great as Socrates's; more importantly, for our purposes, he also argues that the horizontal dimension of his ethics is thoroughly compatible with Christianity:

In the golden rule of Jesus of Nazareth, we read the complete spirit of the ethics of utility. To do as you would be done by, and to love your neighbour as yourself, constitute the ideal perfection of utilitarian morality.<sup>80</sup>

We must not claim too much for Mill here. He has earlier assumed that his utilitarianism is Socrates's ethic;<sup>81</sup> here he seems to assume that Jesus's Golden Rule is the highest expression of Abrahamist ethics.<sup>82</sup> We need not assume that Mill is right in either assumption. All we need to see is that Mill himself believed that the ethics of Socrates and the ethics of Jesus were perfectly compatible. And we need to see why, on this broader and deeper point, he could have been right.

That compatibility rests on two basic points. First, the Abrahamist God is distinctly "humanistic"; He reveals Himself in the scriptures of Jews, Christians, and Muslims as having the good of human beings very much at heart.<sup>83</sup> Second, at least some understandings of the Abrahamist God hold that what He sees as good for human beings is necessarily the same as what human reason sees as good for human beings, at least in "horizontal" matters. But what, then, about philanthropy's orientation to its other "other," God?

---

79. MILL, *supra* note 36, at 10.

80. *Id.* at 17; *see also* RICHARD REEVES, JOHN STUART MILL: VICTORIAN FIREBRAND 476 (2007).

81. MILL, *supra* note 36, at 1.

82. *See, e.g.,* Luke 6:31; Mark 12:31.

83. Atkinson, *supra* note 16, at 261–65.

*b. Philanthropy's Vertical Orientation:  
Our Duties to God*

The last section showed how the Georgetown letter, in identifying the problem of Rand's egoism, pointed us toward common philanthropic ground shared by many in both the Socratic and the Abrahamist traditions, including our liberal and Catholic standard bearers, Mill and Thomas. This section seeks parallel guidance from the Georgetown letter toward an analogous common ground for both Abrahamists and Socratics with respect to the vertical aspect of philanthropic ethics: humans' duty to God. As the Georgetown letter found the horizontal aspect of Rand's ethics, egoism, antithetical to Catholicism, so it found its vertical aspect—"antireligion."

"Antireligion," for our purposes, was a wonderfully well-chosen word. Just as we looked, in the last section, for an ethics that was not egoist, so we need to look in this section for an ethics that is not "antireligious." Everything at this point in our analysis turns on what we infer from the double negative "not antireligious." The first thing to notice is that "not antireligious" does not imply "religious." The antireligion of Rand, like that of Nietzsche and Marx, does not merely deny the existence of God; it takes the further step of actively opposing any vertical orientation of humanity at all.<sup>84</sup>

The negation of antireligion, understood as active opposition to any vertical element of human ethics, leaves open a wide range of nonreligious ethical positions. Without being antireligious, one simply could be indifferent to religion, for any of a number of reasons. One might be a principled atheist, intellectually convinced that there is no God, that His nonexistence can somehow be proved. Or one could be an agnostic, the term Thomas Henry Huxley coined to distinguish atheists, understood to mean those who deny the existence of God, from those of his own position, which was, more modestly, simply to disclaim any knowledge of God for oneself.<sup>85</sup>

Nor does disclaiming rational access to God necessarily deny all access. Kant famously proposed to destroy metaphysical theology in order to make way for faith.<sup>86</sup> Rational arguments about God's existence, he argued, produce an antinomy: opposite results, here both theism and atheism, by valid arguments from valid premises.<sup>87</sup> And, significantly, one might also

---

84. See AYN RAND, *THE VOICE OF REASON: ESSAYS IN OBJECTIVIST THOUGHT* 3–4 (Leonard Peikoff ed., 1990); see also FRIEDRICH NIETZSCHE, *THE ANTI-CHRIST* (Oscar Levy trans., Wilder Publ'ns 2008) (1888); Karl Marx, *Introduction to a Contribution to the Critique of Hegel's Philosophy of Right*, in *DEUTSCH-FRANZÖSISCHE JAHRBÜCHER* (Andy Blunden & Matthew Carmody eds., 2009) (1844), <https://www.marxists.org/archive/marx/works/1843/critique-hpr/intro.htm> ("Religion is the sigh of the oppressed creature, the heart of a heartless world, and the soul of soulless conditions. It is the *opium* of the people.") [<http://perma.cc/V4SP-FFVC>].

85. Thomas H. Huxley, *Agnosticism*, in *CHRISTIANITY AND AGNOSTICISM: A CONTROVERSY* 9–11 (Humboldt Publ'g Co. 1889).

86. IMMANUEL KANT, *CRITIQUE OF PURE REASON* 117–19 (Paul Guyer & Allen W. Wood eds., Cambridge Univ. Press 1998) (1781).

87. *Id.*

follow Kant, and others, in believing that, although God's existence cannot be proved rationally, it can be known in other ways. Thus, for example, William James maintained the incontrovertibility of the kind of direct encounter with God reported by mystics, both conventionally religious and otherwise.<sup>88</sup> And, of course, the skeptical, if not cynical, Bertrand Russell famously observed, "*We may have all come into existence five minutes ago, provided with ready-made memories.*"<sup>89</sup>

This last point, with its unmistakable odor of sarcasm, takes us back to the central, if implicit, insight of the Georgetown letter: the problem with Rand's philosophy is not that it is unreligious, or even that it is atheistic, but precisely that it is antireligious.<sup>90</sup> Socrates famously was accused of both destroying old gods and inventing new ones, both of which charges he denied.<sup>91</sup> In the long and wide stream of secular ethical thinking that followed him, a very strong current (quite possibly the main channel) has not been at pains to deny the existence of God—has not, that is to say, been antireligious. Here we can find the "not antireligious" position, and it is Mill's and many another philanthropists'.<sup>92</sup> To underscore its distinction from the antireligiousness of Rand's egoism and many forms of philanthropy, we reduce the double negative of "not antireligious philanthropy" into the positive "religiously respectful secular philanthropy." Though almost certainly an agnostic himself,<sup>93</sup> Mill, to the considerable embarrassment of some of his admirers, could be quite respectful indeed:

[I]t remains a possibility that Christ actually was what he supposed himself to be . . . a man charged with a special, express and unique commission from God to lead mankind to truth and virtue.<sup>94</sup>

### *c. Reconciling Socratic and Abrahamist Ethics*

We have seen that Mill and St. Thomas agree, at least in broad outline, on the twin goals of traditional philanthropy: relieving distress and advancing excellence.<sup>95</sup> We also have seen that Mill's agnosticism does not necessarily put him at odds with St. Thomas's theism. We have not, admittedly, shown how the two are reducible to a single absolute truth; St. Thomas, we should note, believed that he had.

St. Thomas offered a grand theory for unifying all aspects of his philanthropy, not only the two aspects of the horizontal, meeting basic

---

88. WILLIAM JAMES, *THE VARIETIES OF RELIGIOUS EXPERIENCE* 420–21 (Project Gutenberg 2014) (1917).

89. BERTRAND RUSSELL, *RELIGION AND SCIENCE* 70 (1997) (emphasis added).

90. *See supra* note 18.

91. *See generally* PLATO, *APOLOGY* (Benjamin Jowett trans., Harvard Classics 1914).

92. Given the distinct discount at which atheism has long traded in the West, it is hardly a surprise that few make, much less belabor, this point.

93. Reeves, *supra* note 80, at 471.

94. *Id.* at 476, 488 (quoting JOHN STUART MILL, *THREE ESSAYS ON RELIGION: NATURE, UTILITY OF RELIGION, THEISM* 255 (Prometheus Books 1998) (1874)).

95. *See supra* Part II.A.

needs and promoting the highest excellence, but also linking that with the goal of philanthropy's vertical dimension: knowing God.<sup>96</sup> As if that were not achievement enough, he also linked all of his philanthropic ethic up with a philanthropic politics, all neatly expressed in a single, profoundly pregnant, paragraph:

All other human operations seem to be ordered to this ["contemplation of truth"] as to their end. For perfect contemplation requires that the body should be disencumbered, and to this effect are directed all the products of art that are necessary for life. Moreover, it requires freedom from the disturbance caused by the passions, which is achieved by means of the moral virtues and of prudence; and freedom from external disturbance, to which the whole governance of the civil life is directed. So that, if we consider the matter rightly, we shall see that all human occupations appear to serve those who contemplate the truth.<sup>97</sup>

Had there been in his time Nobel Prizes or Olympic Laurels for normative philosophy, St. Thomas surely would have won them both with this single paragraph and perhaps ended the event.

In our time, alas, our aim, and thus our achievement, must be more modest. It may not be possible, in principle, to reduce the two dimensions of philanthropy, horizontal and vertical, to one, at least for the two philanthropies relevant here, rationally moral theistic philanthropists and religiously respectfully secular philanthropists. The former will have experienced God in ways not rationally refutable; the latter will not have encountered God in any meaningful way, rational or otherwise. But, at a practical level, this problem tends to disappear. If we focus on what we might call the intersection of our horizontal and vertical duties, we find a neat convergence in the teachings of both Socrates and Jesus.

For Socrates, as our epigraph reminds us, justice has two parts: one involves duties to human beings; the other, duties to God.<sup>98</sup> The *Euthyphro* strongly implies these two theoretically distinct duties come down, in practice, to the same thing: helping our fellow folk find the highest human good is the very sort of service that reasonable gods would want from us.<sup>99</sup> That approach neither requires nor precludes knowing a more direct form of contact with God.<sup>100</sup>

In the Judea-Christian statement of the two halves of the law, we can detect a closely parallel convergence. The second, human-oriented law, we are told, is like unto the first, God-oriented law. Indeed, when Paul summarizes the whole law, he finds it necessary to mention only the human

---

96. 3 SAINT THOMAS AQUINAS, *SUMMA CONTRA GENTILES* ch. 37, in 2 BASIC WRITINGS, *supra* note 28, at 3, 59–60.

97. *Id.* at 60.

98. See *supra* note 2 and accompanying text.

99. See PLATO, *supra* note 2, at 1–20.

100. *Id.*



side.<sup>101</sup> Even more compelling is the lesson of a parable of Jesus himself: “Inasmuch as you have done it unto the least of these my brethren, you have done it unto me.”<sup>102</sup> This rather strongly suggests that, from Jesus’s perspective, the philanthropically committed are his allies, if not quite his disciples, even if they know neither him nor his heavenly father.

For Christians, theism alone is not sufficient for full human flourishing, nor is it necessary for meaningful contribution to the work of God among our fellow human beings. Theism is not sufficient because, as the Scriptures themselves tell us, the very devils believe in God, and tremble.<sup>103</sup> Nor is belief in God necessary to serve God’s cause on earth; as Jesus himself teaches, those who minister to the least of his brethren are by that very fact serving him, even though they do not know it.<sup>104</sup>

We have not proved that the two aspects of piety, serving God and serving our fellow folk, are one; we have not quite found a unified field theorem. But we have shown that the two are compatible in the realm that we are interested in, that of helping our fellow folk here on earth. And here St. Thomas makes the point we must build on: if our fellow folk are to achieve the highest attainments humanly possible, all their basic needs will have to have been met.<sup>105</sup>

#### *d. Summary*

We set out in this part to extrapolate from the two basic faults the Georgetown letter found in Ayn Rand’s ethics a positive position that could accommodate both Mill and St. Thomas. We did that by unpacking two negative pregnant: “not egoist” gave us “fully philanthropic”; “not antireligious” gave us “religiously respectful secular philanthropy.” We have identified an alternative to Ayn Rand, philanthropy, and we have outlined a very full philanthropy, consistent with both Abrahamist faith, specifically Thomism, and with Western secular philosophy, exemplified by Mill. In the next part, we can now make this Article’s central move: mapping an ethic of full philanthropy onto the possible forms of liberalism we identified in Part I. We will see why both the school of Mill and the school of St. Thomas have good reason to unite in favor of a liberal state that is very strongly Redistributivist and Aretist.

---

101. *Galatians* 5:14 (King James ed.) (“For the whole law is fulfilled in one word, even in this; Thou shalt love thy neighbor as thyself.”); see also *Romans* 13:9 (“The commandments . . . are summed up in this word, ‘Love your neighbor as yourself.’”).

102. *Matthew* 25:45.

103. *James* 2:19; see GARRY WILLS, *THE FUTURE OF THE CATHOLIC CHURCH WITH POPE FRANCIS* 133 (2015) (“Satan is smarter than men or women. That does him little good without love.”).

104. See *Matthew* 5:5 (“Blessed are the meek, for they shall inherit the earth.”).

105. 2 AQUINAS, *supra* note 28, Q. 95 art. 1, in 2 BASIC WRITINGS, *supra* note 28, at 783.

III. PHILANTHROPIC POLITICS:  
TOWARD THE OPTIMALLY PHILANTHROPIC LIBERAL STATE

Part II identified a fully philanthropic ethics as the common ground of Socratic philosophy and Abrahamist faith, or at least one subset of each suitable to our task, the liberalism of Mill and the Catholicism of St. Thomas. This part examines how far that philanthropic ethics is compatible with the range of liberal politics we identified in Part I. As Part I identified both one genus and four species of liberalism, so this part will need to “map” our fully philanthropic ethics onto liberalism in two distinct phases. First, we will compare the purposes of fully philanthropic ethics with the permitted purposes of generic liberalism, basically what our constitutional discourse calls “legitimate state interests.”<sup>106</sup>

That will bring us to the second phase of our political analysis: given that the liberal state can accommodate the full range of “horizontal” philanthropic goals, which of those goals should philanthropists seek to have our state advance? This, we will see, often comes down to a critical institutional choice regarding whether our philanthropy is to be the work of private nonprofit organizations—such as the Church and its many affiliated charities—or the work of the liberal state and its agencies. Once we see this, we can refocus on the basic question of how philanthropic we should, as philanthropists, want our liberal state to be.

A. *Mapping the Overlap of the Full Range of Philanthropy  
and the Permitted Purposes of the Liberal State*

Comparing philanthropic purposes with the permitted purposes of the liberal state reveals two critical points. First, the “vertical,” religious, aspect of philanthropy falls almost completely outside the proper functions of the liberal state. Second, the “horizontal,” humanitarian, aspects of philanthropy all fall quite easily within the domain of the liberal state. This section first considers the challenges posed by vertical philanthropy, then identifies the compatibility with respect to horizontal philanthropy.

1. “Vertical” Philanthropy and Liberal State Purposes

In its politics, as in its ethics, the “vertical” dimension of philanthropy—our duties to God—poses an obvious problem: the religious neutrality of both liberal theory and our constitutional law. But, even as we identified an accommodation between respectfully nonreligious secular philanthropy and rationally humanistic religious philanthropy, so here we can identify a parallel accommodation between rationally humanitarian religious philanthropy and the liberal state. The twin foundations of both accommodations are essentially the same here as there. First, the liberal

---

106. See, e.g., *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 446 (1985) (noting that “to withstand equal protection review, legislation that distinguishes between the mentally retarded and others must be rationally related to a legitimate governmental purpose”).

state, like secular philanthropists of Mill's school, can be *nonreligious* without being *antireligious*. Second, the humanitarian projects of religious philanthropists can be grounded, like those of St. Thomas, in reasons accessible to the nonreligious.

*a. The Respectfully Nonreligious Liberal State*

Our First Amendment nicely defines the dilemma any liberal state faces in dealing with religion. On the one hand, as reflected in the Establishment Clause, the state must not favor religion too much.<sup>107</sup> On the other hand, as reflected in the Free Exercise Clause, the state must not interfere with religion too much.<sup>108</sup> The legal limits at either extreme are notoriously complex thickets of constitutional law.<sup>109</sup> For our purposes, we need at this point to note an important path out of that thicket, between those extremes.

Some forms of political liberalism, like some forms of philanthropic ethics, are decidedly antireligious. The Jacobin phase of the French Revolution was virulently anticlerical (read mostly anti-Catholic);<sup>110</sup> some aspects of modern French *laicite* may have the effect, even the purpose, of placing religion at a disadvantage. But some forms of liberalism, including that embodied in our First Amendment, seem genuinely to try to keep the state neutral both among religions and between religion and nonreligion. Thus it should be possible for the liberal state and its various instrumentalities—including, most critically, its schools<sup>111</sup>—to point out the prospect of a “vertical” dimension to human excellence, without either offering its own vision of that dimension or recommending the vision that any of the organizations of the third sector themselves offer. Again, the liberal state can be neutral toward religion without being hostile; that, indeed, seems to be the path that our Constitution requires. It is also, quite significantly, a path that Catholic Social Teaching has come explicitly, even enthusiastically, to endorse.<sup>112</sup>

---

107. U.S. CONST. amend. I, cl. 1.

108. *Id.* amend. I, cl. 2.

109. *See, e.g.,* *Sherbert v. Verner*, 374 U.S. 398 (1963); *Reynolds v. United States*, 98 U.S. 145 (1878).

110. *See* WILLS, *supra* note 103, at 128 (summarizing John Courtney Murray's view: “If Leo [XIII] condemned democracy, it was because the only form of it he knew was the anticlericalism of the French Revolution”).

111. *See* NEIL G. MCCLUSKEY, S.J., *CATHOLIC EDUCATION IN AMERICA: A DOCUMENTARY HISTORY*, at vii (1964) (noting that the main theme of much Catholic writing on education in America has been “seeking viable alternatives to an educational system perceived as blatantly Protestant in the nineteenth century and dangerously secular in the twentieth”).

112. Pope Leo XIII, *Rerum Novarum*: Encyclical of Pope Leo XIII on Capital and Labor (May 15, 1891) [hereinafter Pope Leo XIII, *Rerum Novarum*], [http://w2.vatican.va/content/leo-xiii/en/encyclicals/documents/hf\\_l-xiii\\_enc\\_15051891\\_rerum-novarum.pdf](http://w2.vatican.va/content/leo-xiii/en/encyclicals/documents/hf_l-xiii_enc_15051891_rerum-novarum.pdf) [<https://perma.cc/HM77-WXF9>]; Pope Leo XIII, *Longinqua*: Encyclical of Pope Leo XIII on Catholics in the United States (Jan. 6, 1895) [hereinafter Pope Leo XIII, *Longinqua*], [http://w2.vatican.va/content/leo-xiii/en/encyclicals/documents/hf\\_l-xiii\\_enc\\_06011895\\_longinqua.pdf](http://w2.vatican.va/content/leo-xiii/en/encyclicals/documents/hf_l-xiii_enc_06011895_longinqua.pdf) [<https://perma.cc/U6XJ-45AH>].

*b. The Rationally Humanitarian Abrahamist Faith*

Even as the liberal state can accommodate both secular and religious philanthropy at the constitutional level with a policy of principle neutrality, so it also can accommodate them at the level of ordinary politics with a principle of secular ends-means rationality. Ordinary politics is the arena in which we are most interested, the arena in which we as philanthropists, secular and religious, advance or oppose particular philanthropic undertakings of the liberal state. We will turn, shortly, to the guidance that Socratism and Abrahamism have to offer in that arena. Here we need to note something fundamental about that arena itself.

Our Constitution's ban on the establishment of religion implies a positive requirement that our ordinary laws have a secular purpose.<sup>113</sup> More generally, our Constitution's implicitly republican foundation implies that, at a minimum, our ordinary laws serve a legitimate state interest by rationally related means.<sup>114</sup> Even with this barest outline, we can already see the necessary common ground between the kind of liberal state that ours is and the kind of theism that Thomism is.

To the great sorting question of theistic ethics—does God love the good because it is good, or is the good good because God loves it?—Thomism, like Socratism, opts for the former position, ethical rationalism, not the latter, ethical voluntarism. For St. Thomas, as for Socrates, God is not only concerned for the welfare of human beings; His concern for human beings is rational as well.<sup>115</sup> Whatever else that means, it means for St. Thomas that the good of human beings is accessible to ordinary human reason. Thus Aristotle could rationally seek it, and actually find it, without need for any special revelation, or even any special grace. Because Thomism has, in this critical sense, a rationally religious ethic, all of its horizontal ethical positions are, at least in principle, capable of being adopted and promoted by the liberal state. *The Bible said it, I read it, that ends it*, is as alien to St. Thomas as it would have been to Socrates, and for the same reason: the horizontal ethics of both are ethics that rest on the giving of reasons intelligible in strictly human terms.<sup>116</sup> As Garry Wills nicely puts it, “The Aristotelian-Thomistic politics was a matter of right reason, since it held that human's highest gift is the intellect.”<sup>117</sup>

---

113. *See* *Emp't Div. v. Smith*, 494 U.S. 872, 910 (1990) (noting that “[t]he purpose of almost any law can be traced back to . . . public health and safety, public peace and order, defense, revenue”); *see also* U.S. CONST. amend. I, cl. 1.

114. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985) (“The general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest.”).

115. *See* AQUINAS, *supra* note 28, Q. 45, at 433.

116. *See* 2 *id.* Q. 93 art. 3, in 2 BASIC WRITINGS, *supra* note 28, at 766 (“[A]ll laws, in so far as they partake of right reason, are derived from the eternal law.”); *see also id.* Q. 95 art. 2, at 784 (addressing whether “every human law is derived from the natural law”).

117. WILLS, *supra* note 103, at 133 (noting the Thomistic-Aristotlean politics' reliance on reason, but faulting its slighting of love).

## 2. “Horizontal” Philanthropy and Liberal State Purposes

The compatibility of philanthropy’s horizontal aspect with the legitimate purposes of the liberal state is illustrated nicely in the purposes listed in our Constitution’s preamble:

to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity.<sup>118</sup>

The most obvious advancement of most horizontal philanthropic purposes would seem to lie in the liberal state’s Redistributivist and Aretist functions: relieving the worst degrees of human distress and advancing the highest kinds of human excellence. It is important to notice, however, that the overlap covers the Ricardian and Regulatory functions as well. The best evidence of this is the very ancient principle of English charity law that relieving the burdens of government is a legitimate charitable purpose.<sup>119</sup>

The only real limit lies, as we have seen, at the other end: the extent to which the liberal state can encourage a particular ideology, a comprehensive view of the human good. This is, as we have seen, integral to philanthropic ethics, in both its Socratic and Abrahamist branches. If liberalism must insist on strict neutrality here, it must leave off very much of the upper range of philanthropy; what’s more, the liberal state, particularly the schools of the liberal state, might have to become ethically neutral in a way that many philanthropists, both secular and religious, would find disquieting.<sup>120</sup>

Here, as elsewhere, the thought of Mill is instructive. On the one hand, as Mill quite rightly insists and our Free Speech Clause guarantees, the liberal state cannot suppress any ideology.<sup>121</sup> But, on the other hand, that does not imply, either for Mill himself or for a significant school of other liberals, that the state has no Aretist role. For Mill, indeed, that role can, and should, be quite expansive:

The uncultivated cannot be competent judges of cultivation. Those who most need to be made wiser and better, usually desire it least, and, if they desired it, would be incapable of finding the way to it by their own lights. It will continually happen, on the voluntary system, that, the end not being desired, the means will not be provided at all, or that, the persons requiring improvement having an imperfect or altogether erroneous conception of what they want, the supply called forth by the demand of the market will be anything but what is really required. Now any well-intentioned and tolerably civilized government may think,

---

118. U.S. CONST. pmb.

119. See JAMES J. FISHMAN & STEPHEN SCHWARZ, *NONPROFIT ORGANIZATIONS: CASES AND MATERIALS* 28–29 (1995).

120. See Atkinson, *supra* note 16, at 279.

121. MILL, *supra* note 36, at 131–49; JOHN STUART MILL, *ON LIBERTY* (Hackett Publ’g 1978) (1859).

without presumption, that it does or ought to possess a degree of cultivation above the average of the community which it rules, and that it should therefore be capable of offering better education and better instruction to the people, than the greater number of them would spontaneously demand. Education, therefore, is one of those things which it is admissible in principle that a government should provide for the people. The case is one to which the reasons of the non-interference principle do not necessarily or universally extend.<sup>122</sup>

We need not, in fact, go quite so far as Mill himself on this point. Mill seemed to be quite comfortable with the state's promoting his own particular utilitarian ethics,<sup>123</sup> which, as we have seen, he equated with the ethics of both Socrates and Jesus.<sup>124</sup> We need only note a possibility quite compatible with the eponymous value of liberalism: the liberal state might well take upon itself the task of ensuring that every citizen has a reasonable opportunity to learn about, and choose among, the fullest vision of human excellence yet articulated. The liberal state would not need to recommend the philanthropic way of Socrates and Jesus, Aristotle and St. Thomas; it would only need to give its citizens the freedom—both the absence of restraint and the presence of opportunity—to make that choice for themselves.

### 3. Summary

This basic compatibility of philanthropy and the liberal state can hardly come as a surprise, because it is anything but a historical accident. Liberal politics always has been, in both theory and practice, the quest for a state that can peacefully accommodate both the horizontal and the vertical dimensions of philanthropic ethics. In starkest outline, this includes a state that must be neutral toward religion and that may advance any rationally based human good.

#### *B. Assigning Philanthropic Tasks Among Our Society's Three Sectors*

As soon as we see the range of overlap between philanthropic purposes and legitimate liberal state interests, we face an obvious question: To which of our three social sectors should “we” assign the advancement of these purposes? Before we address that question, we need to see how nicely the Standard Theory of Philanthropy poses that question, then threatens to beg it.

---

122. MILL, *supra* note 48, at 953–54.

123. MILL, *supra* note 36; *see also* W. Va. State Bd. of Educ. v. Barnette, 319 U.S. 624, 640 (1943) (“National unity as an end which officials may foster by persuasion and example is not in question.”).

124. *See generally* MILL, *supra* note 94.

1. The Standard Theory of Philanthropy:  
Descriptive Power and Normative Circularity

The Standard Theory of Philanthropy offers a temptingly complete account of why each of our society's three sectors—the economic, the political, and the cultural—performs distinct, if overlapping, functions.<sup>125</sup> According to this triple-failure theory, each sector picks up functions at which the others fail, or do less well. We expect that private firms in our capitalist market economy will produce the goods and services we need, in the appropriate quantity and quality. But, as we saw in outlining our four state functions, the market cannot do everything itself.<sup>126</sup> Most basically, it cannot “bootstrap” itself into existence; the political sector, our liberal democratic polity, must provide the market's basic legal infrastructure. And, as we also have seen, the market sometimes fails, in its own terms, to provide with optimum efficiency what consumers are both willing and able to pay for.<sup>127</sup> Correcting these failures is the function of the regulatory state. Beyond that, we sometimes question whether the efficient operation of the market is all that we, as a society, want. Often we conclude it is not, and we invoke the state's Redistributive and Aretist functions. With the former, the state provides basics like healthcare and education to those who are unable to pay for them; with the latter, the state requires people pay for things we judge better than those they want, like a legal education that speaks of social justice, not just client satisfaction.

That triple-failure account, of course, brings us back to our basic question: How much of each function is the state to engage in, particularly the market-displacing functions that imply no intrinsic measures? Here, the Standard Model neatly divides those market-supplanting functions between the political sector and the cultural sector. The political sector provides just the kind and amount of market supplementation that the marginal voter demands, and the cultural sector provides what supra-majority voters are willing to provide on their own by privately patronizing or subsidizing third-sector organizations like parochial primary and secondary schools or Jesuit universities and their law schools.<sup>128</sup>

We need to notice two key things about this twin-failure account. First, as a descriptive account, it is a powerful account; second, as a normative matter, it is perfectly circular.<sup>129</sup> Let's consider, first, the Standard Model's undeniable descriptive power. The cultural sector can quite usefully be seen as meeting residual consumer and voter demand left unmet, for various reasons, by both the market and the state. And the cultural sector's constituents—nonprofit, nongovernmental organizations—have been neatly

---

125. Atkinson, *supra* note 46, at 1–3.

126. *See supra* Part I.B (discussing the four state functions).

127. *See, e.g.*, Henry B. Hansmann, *The Role of Nonprofit Enterprise*, 89 *YALE L.J.* 835, 846–51 (1980).

128. Atkinson, *supra* note 46, at 3, 61.

129. *Id.* at 61–63.

studied for their comparative advantages over and against the other two sectors; we will soon turn to those insights ourselves.

But the second aspect of the Standard Theory, its normative circularity, is, for our purposes, far the more important. To say that the cultural sector provides a level of Redistribution and Aretism beyond what the marginal voter demands is not to say that what the marginal voter demands is the appropriate level of either. The Standard Model, properly taken as a descriptive model, neatly poses that question—but, if mistaken for a normative guide, completely begs it. We must, accordingly, answer that question by other means.

## 2. Toward an Aristotelean—and Thomistic and Millean—Mean

To answer our basic question—how intrusive should philanthropists want our liberal state to be—we must look more closely at the reasons one might accept or reject the relevant state functions, from Ricardian to Aretist. As a first step, it is useful to identify two extremes, or poles, each of which lies just off the liberal political spectrum defined by our four functions of the liberal state. The reasons we must reject these extremes will help us to interpolate our position, as philanthropists, in the middle.

### *a. The Limiting Cases: Beyond Liberalism's Farthest Right and Left*

Just beyond the minimalist, Ricardian state is, instructively enough, Ayn Rand's antistatist politics. At the other extreme, just beyond the liberal limits of the maximal Aretist state, is classical politics, the politics of Plato's *Republic*<sup>130</sup> and Aristotle's *Politics*.<sup>131</sup> If we code our liberal spectrum in the colors of traditional European politics, with blue on the right and red on the left, Rand's position would be ultraviolet; Plato and Aristotle's, infrared. Each extreme, left and right, represents a logically complete union of ethics and politics, in identifiably opposite ways. In both cases, the political position can be perfectly matched with, if not logically inferred from, the ethical position—the one fully egoist, the other fully philanthropic. Once we appreciate those limiting cases, we will be able to appreciate the intermediate positions available to our paradigms, Mill and St. Thomas, and their contemporary followers.

#### i. Ayn Rand's Extreme: From the Ethics of Egoism to the Politics of Today's "Republican" Party

As a first step, Ayn Rand's egoism is, once again, instructive. Her egoist ethics implies an equally egoist politics: if caring for others has no place in your ethics, it's hard to see how it would have any place in your politics. Indeed, if willingly helping others is a bad idea, being forced by the state to

---

130. PLATO, *REPUBLIC* (Benjamin Jowett trans., Dover Publ'ns 2000) (c. 380 B.C.).

131. ARISTOTLE, *supra* note 44.



contribute to the helping of others would seem to be a doubly bad idea, a bad means to a bad end. Randian egoism, then, would seem to map nicely onto the most minimal of liberal states, the Ricardian.

But not quite. Quite significantly, her capitalism is not really our capitalism. Hers is capitalism for the capitalist;<sup>132</sup> ours, capitalism for the consumer. Our most right-wing economists have to be “trickle-down”; Rand’s position is, if you’ll forgive the pun, dam the trickle, keep all the gains, shall we say, at the capitalist “fountainhead.”<sup>133</sup>

ii. Socrates’s Extreme: From the Ethics of Philanthropy  
to the Politics of Classical Republicanism

In the Socratic tradition, ethics—the study of the good life for the individual—perfectly complements politics—the study of the good life for the community. Justice in the microcosm of the individual is structurally the same as justice in the macrocosm of the community. Just as individual justice entails the highest human faculty—reason—ruling wisely over the entire person, so too political justice entails the most rational of citizens ruling wisely over the entire community.

Rand is off the liberal chart, as we have seen, on account of her economics; Plato and Aristotle, we now can see, are off on account of their politics. Their politics is, most obviously, not democratic at all. For at least some of its critics, that politics is not nearly liberal enough in the protection of individual rights.<sup>134</sup>

*b. A Mean Between the Extremes:  
Mill and St. Thomas’s Common Ground*

No serious politician today can recommend the republic of Plato’s *Republic*; if that republic ever comes, it most likely will not be brought in by referendum. But, of course, quite a few serious politicians flirt, if not entirely openly, with Rand’s literal antirepublic, a paradoxical political regime actively opposed to the very notion of the public good.<sup>135</sup> As a practical matter, then, our analysis leaves us with two open questions. On the one hand, why would philanthropists of either Mill or St. Thomas’s school ever recommend the minimalist state of an avowed egoist? On the other hand, why would philanthropists of either school not always favor the most intrusive of Aretist states possible within liberal limits? What, as a matter of principle, attracts some philanthropists of both schools to liberalism’s Far Right, and conversely, what repels them from liberalism’s Far Left?

In sorting out the reasons those who embrace a fully philanthropic ethic might find for limiting the philanthropic role of the liberal state, it is useful

---

132. See RAND, *supra* note 84, at 3–6.

133. See *id.*

134. See generally 2 KARL R. POPPER, *THE OPEN SOCIETY AND ITS ENEMIES* (1945).

135. See, e.g., ROBERT PAUL WOLFF, *THE POVERTY OF LIBERALISM* (1968).

to borrow an old, admittedly imperfect, dichotomy: a priori and a posteriori.<sup>136</sup> Under the former head, we will consider limitations derived from ideological first principles; under the latter, limitations grounded in empirically contestable institutional advantages. A priori limits on the philanthropic state rest on arguments that certain state functions, particularly the redistribution of wealth, would somehow *be* wrong, inherently. A posteriori limitations, by contrast, rest on arguments that the liberal state's efforts to perform those functions would somehow *go* wrong, inevitably.

#### i. A Priori Limits on the Philanthropic Liberal State

The Georgetown letter helpfully reminded us that Ayn Rand's antistatist ethics is incompatible with Catholic Social Teaching because it is egoistic, not philanthropic. We now need to see that a significant range of antistatist politics at the libertarian right of the liberal spectrum are equally incompatible with Catholic Social Teaching because they rest on premises about the very nature of human beings and the state that the Church has explicitly rejected. In its economics, the Church has consistently maintained that the profits of capitalist enterprise are not, a priori, immune from the state's Redistributivist and Aretist obligations.<sup>137</sup> This is because, in its politics, the Church, with St. Thomas, embraces the classical view that human beings are fundamentally "political animals,"<sup>138</sup> over against the Lockean view that the state is a contractual arrangement concerned primarily with the preservation of individual rights.<sup>139</sup> The Church thus implicitly places the third member of the original liberal trinity—fraternity—on at least equal footing with the libertarian favorites—liberty and equality.<sup>140</sup>

This theoretical difference has important practical consequences. Those philanthropists, whether secular or religious, who find that their philanthropic ethics conflict with their Lockean view of the limits of the liberal state's proper functions face a dilemma: either sacrifice their night-watchman state or sacrifice the achievement of their philanthropic goals. This, one suspects, is the real dilemma that the Georgetown letter posed to Representative Ryan. The important thing for us to notice is that this is not

136. KANT, *supra* note 86, at 2–3.

137. Pope Leo XIII, *Rerum Novarum*, *supra* note 112; Pope John XXIII, *Mater et Magistra*: Encyclical of Pope John XXIII on Christianity and Social Progress (May 15, 1961), [http://w2.vatican.va/content/john-xxiii/en/encyclicals/documents/hf\\_j-xxiii\\_enc\\_1505\\_1961\\_mater.pdf](http://w2.vatican.va/content/john-xxiii/en/encyclicals/documents/hf_j-xxiii_enc_1505_1961_mater.pdf) [<https://perma.cc/7WET-JRTF>].

138. See Pope John XXIII, *supra* note 137, ¶¶ 18–21.

139. See, e.g., JOHN LOCKE, *TWO TREATISES OF GOVERNMENT* 159 (Rod Hay ed., McMaster University Archive of the History of Economic Thought 2000) (1690) (stating that man "seeks . . . to join in society with others who . . . have a mind to unite for the mutual preservation of their lives, liberties and estates").

140. See Linda Sugin, *Theories of Distributive Justice and Limitations on Taxation: What Rawls Demands from Tax Systems*, 72 FORDHAM L. REV. 1991, 2001 (2004) ("[A] libertarian theory, such as that described by Robert Nozick in *Anarchy, State and Utopia*, would preclude most tax systems.").

a choice between the Church's position on politics—the proper role of the state—and the Church's position on horizontal ethics—the proper care of our fellow folk. It is, rather, a choice between a particular version of secular politics, explicitly rejected by the Church,<sup>141</sup> and the Church's own political teaching, which warmly embraces the full range of the liberal state's four identifiable functions.<sup>142</sup>

This latter dilemma, like all dilemmas, implicitly offers a way out: try to cut off one of its horns. That is the move that many Ricardian liberals—opponents of any state function beyond the strictly night watchman—more or less explicitly make. In essence, their argument runs like this: never mind, then, whether the liberal state *should*, in principle, operate beyond its Ricardian function in the name of philanthropy; notice, instead, that, whenever the liberal state actually *does* undertake those other functions—the Regulatory, the Redistributive, the Aretist—it always fails in terms of the very philanthropic goals it is supposed to be serving. In making this move, Ricardian liberals shift, more or less subtly, from a priori to a posteriori attacks on the more expansively philanthropic state.

#### ii. A Posteriori Limits on the Philanthropic Liberal State

Given that our exemplars, St. Thomas and Mill, are both rational philanthropists—and given that our liberal state concerns itself with the effectiveness of means as well as the legitimacy of ends—we must take these a posteriori critiques seriously. When we do, we see that they offer not a dispositive argument against state philanthropy, but a set of risks and benefits—more precisely, institutional strengths and weaknesses—that we must weigh in choosing between identifiable elements of state and private philanthropy.

#### *The Basic Choices*

Our society's capitalist market economy, as we have seen, cannot provide either wealth redistribution or aretism precisely because neither is likely to produce much profit, the necessary engine of capitalist production. Our society's other two sectors, our liberal democratic polity and our voluntary and pluralist culture, are likely candidates for performing just those philanthropic functions precisely because both of them are nonprofit. Even as their being nonprofit distinguishes them from our economic sector, so another factor distinguishes them from each other. Our cultural sector is voluntary; our polity is not. On this distinction—voluntary versus not voluntary—turn virtually all the asserted reasons for choosing between the state and the cultural sector as the proper vehicles for philanthropy.

To see why this is so, we need to notice just how the liberal state is nonvoluntary. First, like all states, the liberal state has a social monopoly on the legitimate use of force; in our society, as in all modern societies,

---

141. See Pope John XXIII, *supra* note 137, ¶ 23.

142. *Id.*

only the state can operate coercively, and, in that critical sense, by nonvoluntary means. Second, because ours is a liberal state, it must act under a basic constraint: it can exercise its coercive powers only to advance legitimate ends by rationally related means.<sup>143</sup> The liberal state is a government of laws, if merely human laws—not will, even divine will—alone.

Our state, like all states, may act coercively; our state, because it is liberal, may not act irrationally. These two aspects of the liberal state, in turn, bear critically on how the two basic philanthropic tasks should be allocated between the state and voluntary nonprofit organizations. The first of these philanthropic tasks is finance, providing the funds for philanthropic goods and services. The second is delivery, the actual producing and distributing of those goods and services. Figure 3 charts the four possible assignments of these two tasks, finance and delivery, between the two relevant sectors, the political and the cultural. In making assignments, philanthropists face two distinct questions: which sector should finance philanthropy and which should deliver it.

Figure 3: Four Options for Allocating Philanthropic Tasks

		Delivery	
		State Agency	Nongovernmental, Nonprofit Organizations
Finance	State, by Taxes	1. State agencies, state funded E.g., public schools	2. Nongovernmental, nonprofit organizations, state funded E.g., “charity” hospitals
	Private, by Gifts	3. State agencies, privately funded E.g., state universities on “U.Va. Plan,” state <i>founded</i> , privately <i>funded</i>	4. Nongovernmental, nonprofit organizations, privately funded E.g., Catholic schools

The traditional arguments for relying on private rather than state philanthropy tend to pose a false dilemma at each decision point, which

143. See *United States v. Carolene Prods. Co.*, 304 U.S. 144, 152 (1938) (“We may assume for present purposes that no pronouncement of a Legislature can forestall attack upon the constitutionality of the prohibition . . . which would show or tend to show that a statute depriving the suitor of life, liberty, or property had a rational basis.”).

presses toward a strong preference for both private finance and private delivery. We need first to outline this approach, then critique it.

*False Dilemmas*

Consider, first, the question of financing philanthropy. As a matter of principle, both secular and religious philanthropy tends to favor voluntary over coerced action, even if the coercion is rationally related to the common good. But, as a matter of fact, voluntary financing of goods and services for the benefit of others (public goods for the enjoyment of all, or private goods gratuitously transferred to the needy) tends to fall short, on account of the well-theorized, and well-documented, “free rider problem.”<sup>144</sup> People are likely to withhold paying their fair share, whatever that is, in the hope that someone else will step into the breach and pay it for them. That poses the financing dilemma: in principle, philanthropists find voluntary financing particularly praiseworthy; in practice, only coerced financing is adequate.

Once we decide the question of finance, we face the question of delivery: Should the work of philanthropy actually be done by the state or by nonprofit, nongovernmental organizations? In posing a dilemma over delivery, those who favor philanthropy first find a basic problem with the liberal state performing this function. The liberal state, by the very fact that it is a government of laws, must operate under a system of rules; rules, by their very nature, undermine two basic philanthropic values. The first is productive efficiency, getting the most “bang” for the “buck.” The second, for want of a better word, is “warmth.” State instrumentalities tend to get less bang for their buck, on this view, because they must operate under a regime of rules and attendant “red tape.” On account of those same rules, state agencies cannot act spontaneously. What’s more, lost in the red-tape along with administrative spontaneity is human warmth. Bureaucracies are run by the bureaucratic; charities, by, presumably, the charitable.

Why, then, not simply let the state finance private delivery? Here is the second horn of the delivery dilemma. At least to some extent, the liberal state’s financing of philanthropic activity must itself be limited by liberal standards, both substantive and procedural. The liberal state obviously could not avoid the constitutional prohibition on establishing a church by the simple expedient of using tax revenues to finance third-sector churches. Perhaps a bit less obviously, the liberal state cannot avoid basic due process requirements like nondiscrimination and ends-means rationality by financing organizations that perform legitimate state functions by illegitimately discriminatory or irrationally ineffective means. When private philanthropic organizations adopt state funds, accordingly, those

---

144. *See generally* WILLIAM BAUMOL, *WELFARE ECONOMICS AND THE THEORY OF THE STATE* (2d ed. 1965).

funds necessarily come with strings attached, strings that, upon closer inspection, may look a great deal like bureaucratic red tape.<sup>145</sup>

One way to avoid the delivery dilemma is to go to the financing dilemma. We can avoid the problems of red tape by opting for both private finance and private delivery. Our best choice, then, would seem to be private financing of privately delivered philanthropy, like the Red Cross; our worst, state finance of state delivery, like FEMA. State finance of private philanthropy is a distant second-best, because it involves both coercion and at least some measure of red tape in delivery; private financing of state philanthropy avoids the coercion of taxation, but at the expense of the full burden of bureaucracy in delivery.

To clinch the double case for private finance and delivery, fans of private philanthropy sometimes suggest a third dilemma, the supposed “second-order effects” of the first two. Over time, public financing of philanthropy may well drive out private charitable contributions; goods and services delivered by a government agency need not be delivered by a private philanthropy. The more accustomed people become to state finance and delivery, the more likely they are to feel they are normal and to find them acceptable. This is the delivery dilemma: even if the advantages of state finance or delivery seem to outweigh their disadvantages today, that choice will contribute to still more reliance on the state, coercive and inefficient as it is, in the long run. Thus, the displacement dilemma presses us back to resolving the finance and the delivery dilemmas in favor of private philanthropy.

#### *Fair Balances*

Each of these dilemmas—the finance dilemma, the delivery dilemma, and the displacement dilemma—is either false or very much overstated. To see why, we need to look more closely at each.

Let’s begin again with the finance dilemma: either lose the virtue of voluntary giving, or lose the levels of philanthropic funds that only the coercion of taxes can provide. Notice, first, that if the amount of tax one is asked to pay is equal to, or less than, the amount that one reasonably believes one should pay, then the nature of coercion is significantly altered, at least for the conscientious. They should feel that they are only made to do what, left to their own devices, they should do, and thus would do. It would be, with a bow to Kant, as if their will on the matter had in fact been made a universal law.<sup>146</sup>

Now notice, conversely, that any amount that conscientious citizens must pay above their fair share to make up for free riders is, *ex hypothesi*, unfair and thus amounts, in effect, to a surcharge on the virtue of willing donors. From that perspective, then, insisting on voluntary financing rather than

---

145. See generally Helmut K. Anheier & Lester M. Salamon, *The Nonprofit Sector in Comparative Perspective*, in *THE NONPROFIT SECTOR: A RESEARCH HANDBOOK* 89, 89–114 (Walter W. Powell & Richard Steinberg eds., 2d ed. 2006).

146. See KANT, *supra* note 86.

taxation seems to come doubly dear; on account of the free-rider problem, there will be less money for charity, and some of that money will come from generous donors having to pay more than their fair share. Seen in that light, choosing to rely on voluntary finance looks a lot less like a way of promoting the virtue of generosity and a lot more like the vice of underserving the needy in order to subsidize the shirker.<sup>147</sup> That, to say the least, is a very different dilemma: one with a single horn, subsidizing the shirker.

But haven't we escaped the dilemma of finance, only to face, once again, the dilemma of delivery? Tax dollars, as we saw before, can finance delivery of philanthropic goods and services by either the state itself or by private nonprofit organizations; either one will have to be more or less publicly accountable and thus more or less subject to the rules of the liberal state. And that means red tape and cold bureaucracy. Or does it? On closer inspection, the arguments about bureaucratic red tape and official indifference both have a very different aspect.

One person's red tape, I'm not the first to remark, is another's quality control.<sup>148</sup> Many philanthropic activities—education and healthcare are nice examples—benefit from economies of scope and scale. A large organization in any sector—private for-profit as well as private nonprofit or state—requires a certain level of administrative infrastructure—quite possibly the same level as its state counterpart. The effect of reducing red tape may not be more spontaneity in meeting philanthropic goals, but more theft or waste of philanthropic assets.

The bureaucratic critique of state philanthropy not only overlooks the bureaucracy in private philanthropy, it also misunderstands the nature of the law by which all bureaucracies properly operate. The law of any sophisticated system, state or private, optimally incorporates not only “law” in the narrow sense, but also broad equitable “principles”—in today's parlance, “standards” as well as “rules”—along with theories to guide which work better under difference circumstances. The spirit can breathe life—and the letter, spell death—to any administrative regime, state or private.

And spontaneity itself is not an unmixed blessing. Spontaneous effusions of philanthropic funds, even philanthropic enterprises, often result in waste and worse—not only failing to make the needy better off, but actually worse off. That kind of charity, to quote the title of a recent book on the subject, is toxic.<sup>149</sup> Charity needs a head every bit as much as a heart; wise

---

147. Sugin, *supra* note 53, at 1374 (“We cannot construct a theory of fair taxation without talking about what we each deserve—as our share of the social product and as our burden of society's costs.”).

148. See Nathaniel A. Rivers, *In Defense of Red Tape*, NATHANIEL A. RIVERS PH.D. (May 16, 2014), <http://www.nathanielrivers.org/pure-sophist-monster/2014/5/16/an-agent-of-red-tape> (“Red tape is less a thread that holds us down and more a ribbon around a gift.”) [<http://perma.cc/C8QX-DDQ5>].

149. ROBERT D. LUPTON, *TOXIC CHARITY: HOW CHURCHES AND CHARITIES HURT THOSE THEY HELP (AND HOW TO REVERSE IT)* (2011).

heads leading warm hearts is well within both the Socratic and the Abrahamic traditions.

Private philanthropy, finally, is not the only philanthropy with a heart. God, presumably, did not give Solomon the greatest wisdom to direct the House of David Philanthropic Foundation.<sup>150</sup> The standard stump speech one-liner is this supposed oxymoron: *I'm from the government, and I'm here to help.*<sup>151</sup> Was that, one has to wonder, the feeling Captain Phillips had when Special Forces rescued him from Somali pirates?<sup>152</sup> On a larger scale, is that the sentiment behind the tearful faces welcoming allied forces into liberated Paris? When President Kennedy asked his fellow Americans to ask what they could do for their country, surely he meant for them to serve it and its neighbors, as he himself already had as both a naval war hero and peacetime Senator—ideally with a willing spirit and a helping hand—certainly without stinting or snarling. His Peace Corps volunteers were not a more advanced level of the Boy and Girl Scouts; they were official goodwill ambassadors of the American Republic.<sup>153</sup>

If the finance dilemma and the delivery dilemma can thus be diffused, what remains of their aggregation, the displacement dilemma? Why is displacement, in either direction, bad in and of itself? Once we have struck the right balance in addressing the questions of finance and delivery, why wouldn't we want that balance to both remain in place and become acceptable until another needs to be struck? Thus nothing remains, so far as I can see, except, perhaps, a suspicion of "big government" itself. That, for good historical reasons, is a fear that both good liberals and good Catholics can share. But that common fear cannot be the end of the matter.

For one thing, the state, to defend the Republic today, must perforce the very large indeed; one suspects that individual liberty, including freedom of religion, has a good deal more to fear from a massive standing military than a merely sitting bureaucracy. What's more, the bureaucracy necessary for state philanthropy, unlike the military necessary for defense, can be diffused across the fifty states rather than concentrated at the federal level. That, indeed, has always been the American tradition in the core matters of philanthropy: both the minima of poverty relief and health care and the optima of higher education and the arts. Any necessary redistribution of resources across states and coordination among states could continue to be done federally, but both those functions would require far less personnel than actual service delivery. And state service delivery could not only calm

---

150. See 1 *Kings* 3:11–12.

151. President Ronald Reagan, The President's News Conference (Aug. 12, 1986), <http://www.presidency.ucsb.edu/ws/index.php?pid=37733> [<https://perma.cc/4HYC-DENG>].

152. See, e.g., Robert D. McFadden & Scott Shane, *In Rescue of Captain, Navy Kills 3 Pirates*, N.Y. TIMES (Apr. 12, 2009), <http://www.nytimes.com/2009/04/13/world/africa/13pirates.html> [<http://perma.cc/L2MS-7GEU>].

153. PEACE CORPS, <http://www.peacecorps.gov/> (last visited Apr. 29, 2016) [<https://perma.cc/77PA-2NFA>].



fears of centralized power, but also open opportunities for Brandeis's laboratories of experimentation.<sup>154</sup>

Beyond that, we must remember that the basic issue is not whether, in the abstract, to have bigger government, but whether, under realistic contemporary conditions, to have less government at the expense of more philanthropy. Once again, it seems to me, Mill has found a position that can comfortably accommodate both his fellow liberals and their Catholic counterparts:

It may be said generally, that anything which it is desirable should be done for the general interests of mankind or of future generations, or for the present interests of those members of the community who require external aid, but which is not of a nature to remunerate individuals or associations for undertaking it, is in itself a suitable thing to be undertaken by government: though, before making the work their own, governments ought always to consider if there be any rational probability of its being done on what is called the voluntary principle, and if so, whether it is likely to be done in a better or more effectual manner by government agency, than by the zeal and liberality of individuals.<sup>155</sup>

As one who leans further toward liberalism's Far Left—perhaps even over the line into republicanism—I don't particularly care for Mill's insistence that state philanthropy be a matter of default, only after the other two sectors have failed. But by far the most important point about Mill's position—and the point he shares with Catholic Social Teaching—is this: it is better for the work of philanthropy to be done by the state than for that work to left undone.<sup>156</sup> And "better" here has to mean not only more just, in the tradition of Abrahamist faith and classical philosophy, but also more protective of basic liberties, in the tradition of Jeffersonian democracy. It was Jefferson, after all, who noted that no people can long remain both ignorant and free.<sup>157</sup> We must mean it, truly and sincerely, when we say: *no child left behind*.<sup>158</sup>

All that said, we should finally note a very different and far deeper basis for anxiety about state power shared by both the Church and liberals like Mill: distrust of democracy. It was the popularly elected branches of our liberal state, we would do well to recall, that long made public education not only implicitly Protestant, but sometimes even explicitly anti-Catholic;<sup>159</sup> even as it has been the courts, the counter-majoritarian branch

---

154. See *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

155. MILL, *supra* note 48, at 977.

156. See generally *id.*

157. Letter from Thomas Jefferson to Col. Charles Yancey (Jan. 6, 1816), in 11 THE WORKS OF THOMAS JEFFERSON 493, 497 (Paul Leicester Ford ed., 1905) ("If a nation expects to be ignorant and free, in a state of civilization, it expects what never was and never will be.").

158. See No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425 (2002).

159. See Matthew J. Brouillette, *The 1830s and 40s: Horace Mann, the End of Free-Market Education, and the Rise of Government Schools*, MACKINAC CTR. (July 16, 1999), <https://www.mackinac.org/2035> [<https://perma.cc/N9WD-XA6P>].

of our liberal state, that has insisted that our public schools, like all agencies of our liberal state, be scrupulously neutral toward all religions.<sup>160</sup> I have to imagine that both Mill and St. Thomas would share what the Federalists believed was the primary aim of all proper constitutions: “to obtain for rulers men who possess most wisdom to discern, and most virtue to pursue, the common good of society.”<sup>161</sup> The people’s voice may be a useful means both to find officials who know the common weal and to keep it their focus. But no liberal and no Catholic can believe, any more than the Federalists, that the common weal is nothing more than the people’s will. Surely the deaths of both Socrates and Jesus have taught us, as it taught them, better than that.

CONCLUSION:

LABORING TOGETHER IN THE VINEYARD (WHICH IS THE  
LORD’S, SOME OF US BELIEVE AND NONE OF US NEED DENY)

With a good conscience our only sure reward, with history the final judge of our deeds, let us go forth to lead the land we love, asking His blessing and His help, but knowing that here on earth God’s work must truly be our own.

-John F. Kennedy<sup>162</sup>

These concluding words from the inaugural address of the United States’s first Catholic President remind us that the common ground we are seeking has already been found. Some of us, of course, expect a reward beyond good conscience from a final Judge far above human history. If the rest of us have no reason to expect either His blessing or His help, neither have we any reason not to welcome both. Either way, all of us who love the values our country has drawn from the classics and the Scriptures—justice and peace, no less than liberty—can surely work together without fear that our Republic could ever become either too strong or too strongly philanthropic.

The old, sad war between the Roman Catholic Church and liberalism need not, from the perspective of either, go on. What’s more, for the sake of society’s most promising as well as its neediest, the darlings of both the Church and the liberal Left, that war must end. And for their sake, that war must end, not in a truce, but in an alliance. That alliance, thankfully, need not be merely tactical. In forming a principled union between left-liberalism and Orthodox Catholicism we have both the method and the materials that St. Thomas used to harmonize the prophets of Jerusalem and the philosophers of Athens.

---

160. *See* *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1968) (“It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”).

161. THE FEDERALIST NO. 57, at 370 (James Madison) (Modern Library 1937).

162. President John F. Kennedy, Inaugural Address (Jan. 20, 1961), <http://www.jfklibrary.org/Research/Research-Aids/Ready-Reference/JFK-Quotations/Inaugural-Address.aspx> [https://perma.cc/L9PH-HR9A].

That, at least, is where my analysis has led me. That, I admit, may make me a little lonely among my fellow liberals who are leftist and my fellow scholars who are critical (not to mention my forebears who were Scottish Presbyterian and English Puritan). That makes me rejoice all the more in the very good company of Catholics in the best of standing. Unless I'm sadly mistaken, these include St. Thomas, Professor Aquinas, the very master of the mother Church's *magisterium*; Pope Leo XIII, original voice of modern Catholic Social Teaching; and his current successor, Francis, properly proud product of the Society of Jesus. I may, of course, be wrong; if you think I am, in their name—and in the name of both Socrates and Jesus—please help me see the error of my way.

If I could, I would pray, *Please, St. Thomas, intercede for us*; if you can, I pray you, please do.