

# Social Philosophy & Policy

## Liberalism and Capitalism

### CONTENTS

ALAN CHARLES KORS	The Paradox of John Stuart Mill	1
SAMUEL FREEMAN	Capitalism in the Classical and High Liberal Traditions	19
RONALD J. PESTRITTO	Founding Liberalism, Progressive Liberalism, and the Rights of Property	56
GERALD GAUS	The Property Equilibrium in a Liberal Social Order (or How to Correct Our Moral Vision)	74
MICHAEL P. ZUCKERT	Judicial Liberalism and Capitalism: Justice Field Reconsidered	102
LOREN E. LOMASKY	Liberty After Lehman Brothers	135
DANIEL M. HAUSMAN	A Lockean Argument for Universal Access to Health Care	166
MICHAEL C. MUNGER	Euvoluntary or Not, Exchange Is Just	192
TYLER COWEN	Rule Consequentialism Makes Sense After All	212
RICHARD J. ARNESON	Liberalism, Capitalism, and "Socialist" Principles	232
N. SCOTT ARNOLD	Are Modern American Liberals Socialists or Social Democrats?	262

# Social Philosophy & Policy

ISSN 0265-0525

**Editor:** Ellen Frankel Paul

**Associate Editors:** Fred D. Miller, Jr., and Jeffrey Paul

**Managing Editors:** Harry Dolan and Pamela Phillips

**Administrative Editor:** Tamara Sharp

*Social Philosophy and Policy Center*

## Editorial Board

David Braybrooke

*University of Texas, Austin*

Baruch Brody

*Rice University*

Allen Buchanan

*Duke University*

James M. Buchanan

*Center for Study of Public Choice,  
George Mason University*

Jules Coleman

*Yale Law School*

Jack Douglas

*University of California, San Diego*

Richard A. Epstein

*University of Chicago Law School*

James Fishkin

*Stanford University*

Martin Golding

*Duke University*

John Gray

*London School of Economics and  
Political Science*

Gilbert Harman

*Princeton University*

Eric Mack

*Tulane University*

Harvey Mansfield, Jr.

*Harvard University*

Wallace I. Matson

*University of California, Berkeley*

Jan Narveson

*University of Waterloo*

Nicholas Rescher

*University of Pittsburgh*

David Sidorsky

*Columbia University*

Hillel Steiner

*University of Manchester*

James Q. Wilson

*Pepperdine University,  
Malibu*

Leland B. Yeager

*Auburn University*

*Social Philosophy & Policy* is an interdisciplinary journal with an emphasis on the philosophical underpinnings of enduring social policy debates. Each issue is dedicated to a particular theme chosen by the editors, with the advice of the editorial board, designed to appeal to both academic specialists and a broader scholarly audience. While not primarily a journal of policy prescriptions, several contributions to each issue will typically connect theory with practice. The editors encourage and actively pursue diversity of viewpoints of contributors. Diversity is also encouraged by selecting authors from among different disciplines, especially philosophy, economics, political science, and the law. Readers' suggestions for future themes are always welcome, as are inquiries about the topics of issues already planned.

**Editorial Office:** Social Philosophy and Policy Center, Bowling Green State University, Bowling Green, OH 43403-0188, USA.

**Publishing, Subscription, and Advertising Information:** See inside back cover.

Copyright © 2011 Social Philosophy and Policy Foundation

All rights reserved. No part of this publication may be reproduced, in any form or by any means, electronic, photocopying or otherwise, without permission in writing from *Social Philosophy & Policy*. *Photocopying information for users in the USA:* The Item-Fee Code for this publication (0265-0525/11 \$15.00) indicates that copying for internal or personal use beyond that permitted by Sec. 107 or 108 of the U.S. Copyright Law is authorized for users duly registered with the Copyright Clearance Center (CCC) Transaction Reporting Service, provided that the appropriate remittance is paid directly to: CCC, 222 Rosewood Drive, Danvers, MA 01923. Specific written permission must be obtained from *Social Philosophy & Policy* for all other copying.

Printed in the United States of America

## CONTRIBUTORS

**Alan Charles Kors** is Henry Charles Lea Professor of European History at the University of Pennsylvania. He received his Ph.D. in European History from Harvard University. He has published several books and many articles on early-modern French intellectual history, and was editor-in-chief of the four-volume *Encyclopedia of the Enlightenment* (2002). A member of the National Council for the Humanities, he has received fellowships from the American Council for Learned Societies, the Smith-Richardson Foundation, and the Davis Center for Historical Studies at Princeton University. In 2003–2004, he was a Phi Beta Kappa Visiting Scholar, lecturing nationally on intellectual history and on academic freedom. In 2005, he received the National Humanities Medal.

**Samuel Freeman** is Avalon Professor of the Humanities and Professor of Philosophy and Law at the University of Pennsylvania. He is the author of two books, *Justice and the Social Contract* (2006) and *Rawls* (2007). He edited John Rawls's *Collected Papers* (1999) and his *Lectures on the History of Political Philosophy* (2007). In addition, he edited *The Cambridge Companion to Rawls* (2003) and (with R. J. Wallace and Rahul Kumar) *Reasons and Recognition: Essays on the Philosophy of T. M. Scanlon* (2011).

**Ronald J. Pestritto** is Charles and Lucia Shipley Chair in the American Constitution and Associate Professor of Politics at Hillsdale College, where he teaches political philosophy, American political thought, and American politics. He is Senior Fellow of the College's Kirby Center for Constitutional Studies and Citizenship and Senior Fellow of the Claremont Institute for the Study of Statesmanship and Political Philosophy. He has published seven books, including *Woodrow Wilson and the Roots of Modern Liberalism* (2005) and *American Progressivism* (2008). Among his other books are an edited collection of Wilson's speeches and writings entitled *Woodrow Wilson: The Essential Political Writings* (2005), a three-book series on American political thought, and *Founding the Criminal Law: Punishment and Political Thought in the Origins of America* (2000).

**Gerald Gaus** is James E. Rogers Professor of Philosophy at the University of Arizona, where he directs the program in Philosophy, Politics, Economics, and Law. Among his books are *On Philosophy, Politics, and Economics* (2008), *Justificatory Liberalism* (1996), and *Value and Justification* (1990). His most recent book is *The Order of Public Reason: A Theory of Freedom and Morality in a Diverse and Bounded World* (2010). Currently he and Julian Lamont are writing a book entitled *Economic Justice*, and with Fred

## CONTRIBUTORS

D'Agostino he is editing the *Routledge Companion to Social and Political Philosophy*.

**Michael P. Zuckert** is Nancy R. Dreux Professor of Political Science at the University of Notre Dame. He has written extensively on the liberal tradition in political philosophy and American constitutionalism. He is the author of several books, including *The Natural Rights Republic* (1996), *Launching Liberalism: John Locke and the Liberal Tradition* (2002), and, most recently, *Natural Rights and American Constitutionalism* (2011).

**Loren E. Lomasky** is Cory Professor of Political Philosophy, Policy, and Law at the University of Virginia, where he directs the Philosophy, Politics, and Law program. He previously taught at Bowling Green State University and the University of Minnesota, Duluth, and has held visiting positions at Virginia Polytechnic Institute, Australian National University, the Australian Defence Force Academy, and the National University of Singapore. He is the author of *Persons, Rights, and the Moral Community* (1987), for which he was awarded the 1990 Matchette Prize. With Geoffrey Brennan he coauthored *Democracy and Decision: The Pure Theory of Electoral Preference* (1993) and coedited *Politics and Process: New Essays in Democratic Theory* (1989).

**Daniel M. Hausman** is Herbert A. Simon Professor of Philosophy at the University of Wisconsin–Madison and a member of the American Academy of Arts and Sciences. He is the author of *Capital Profits and Prices* (1981), *The Inexact and Separate Science of Economics* (1992), *Causal Asymmetries* (1998), and, with Michael McPherson, *Economic Analysis, Moral Philosophy, and Public Policy* (second edition, 2006). He has published more than 150 essays and reviews and is a cofounder, with Michael McPherson, of the journal *Economics and Philosophy*. His most recent research focuses on philosophical questions concerning generic health measurement, and he is currently completing a book on preferences, as they are understood in economics, philosophy, psychology, and everyday life.

**Michael C. Munger** is Professor of Political Science, Public Policy, and Economics at Duke University, where he served as chair of the Political Science Department for ten years. He directs Duke's Philosophy, Politics, and Economics program, working with Geoffrey Sayre-McCord at the University of North Carolina to run the joint program. He received his Ph.D. in Economics from Washington University in St. Louis in 1984.

**Tyler Cowen** is Holbert C. Harris Professor of Economics at George Mason University and is General Director of both the Mercatus Center and the James M. Buchanan Center for Political Economy. He is the author of numerous books, including, most recently, *The Age of the Infovore: Succeed-*

## CONTRIBUTORS

*ing in the Information Economy* (2010). In addition to his work in economics, he has also published in philosophy journals, including *Ethics* and *Philosophy and Public Affairs*. He cowrites with Alex Tabarrok the blog *Marginal Revolution* at [www.marginalrevolution.com](http://www.marginalrevolution.com).

**Richard J. Arneson** is Distinguished Professor of Philosophy at the University of California, San Diego. He has published more than a hundred essays on moral and political philosophy. Most of his work is on topics in the theory of justice. He has recently published essays on Lockean libertarianism, on the justification of democracy, and on the interpretation and defense of luck-egalitarian approaches to distributive justice.

**N. Scott Arnold** is Professor of Philosophy at the University of Alabama at Birmingham, where he has taught since 1982. During 1991–1992, he was a Title VIII Fellow at the Hoover Institution on War, Revolution, and Peace, and he returned there as a Visiting Scholar in the summer of 1999. He is the author of *Marx's Radical Critique of Capitalist Society* (1990) and *The Philosophy and Economics of Market Socialism* (1994), and is the coeditor (with Theodore M. Benditt and George Graham) of *Philosophy Then and Now* (1998).

## ACKNOWLEDGMENT

The editors gratefully acknowledge Liberty Fund, Inc., for holding the conference at which the original versions of many of these papers were presented and discussed.