

An Austro-Libertarian View, Vol. II

An
Austro-Libertarian
—— View ——

ESSAYS BY
DAVID GORDON

VOLUME II
POLITICAL THEORY

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Preface

RALPH RAICO, THE GREAT EUROPEAN HISTORIAN who passed away this year, once said: “Who needs the Library of Congress when you have David Gordon?”

As the founder of the Mises Institute, I’ve had the good fortune to meet quite a few extraordinary minds over the course of many years. Yet David Gordon is unique. In fact, I’d go so far as to say that one of the great pleasures of my life with the Institute these past 35 years has been the opportunity to give David a platform and an outlet for his considerable (and important) output.

It’s not simply that the depth and breadth of David’s knowledge are so astonishing, though indeed they are: David is profoundly learned in history, economics, philosophy, and related fields, and can effortlessly summarize the scholarly literature on even the most abstruse debates within obscure corners of numerous disciplines.

It’s also that his mind seems capable of feats that are denied to the rest of us. After speaking about Ludwig von Mises’s discussion of Rome in *Human Action* at our annual Mises University summer instructional event in July, David (who always lectures without notes) casually added, “If you have the scholar’s edition, it’s around page 762.”

That’s typical David.

You can imagine what his book reviews are like. His vast knowledge equips him to ferret out errors big and small. His agile mind detects weaknesses and fallacies that escape other reviewers. Even books David likes rarely escape without the exposure of a minor error or two. Of course, a good review from David is especially meaningful: if someone of David’s learning and intellect thinks you’ve made a valuable contribution, you surely have.

Who even knows how many book manuscripts David has received over the years, from authors hoping he might discover their errors before the book review stage? And David, as a kind and generous a scholar as anyone could ask for, has in so many cases gladly obliged.

So you can see why David's book reviews are worth collecting, studying, and cherishing, and therefore why we chose to highlight them in this form.

In fact, all the way back in 1979, Murray N. Rothbard was already marveling at David's extraordinary intellect, the likes of which he had never before encountered:

I have been in the scholarly world for a long time, and it is my considered opinion that you are a universal genius unequalled in my experience. . . . The only flaw in your makeup is that you don't seem to have the slightest idea of what a genius you are. The fact that your talents have so far gone unrecognized and untapped is a horrible waste and injustice, and Ron Hamowy and I are embarking on a personal crusade to do something about it.

With that endorsement, you have a taste of the treat that awaits you in the pages that follow.

LLEWELLYN H. ROCKWELL, JR.

AUBURN, ALABAMA

JULY 2017

Foreword

SHORTLY AFTER MURRAY ROTHBARD's lamented death in January, 1995, Lew Rockwell telephoned me. He asked me to write a book review journal for the Mises Institute, covering new books in philosophy, history, politics, and economics. Moreover, he wanted the first issue in one month. I managed to meet the deadline and continued to write the journal for a number of years. Articles from *The Mises Review* form the bulk of the material included in these volumes; but a few reviews from other sources are here as well.

My thinking tends to develop in reaction to what others have said; and this, I suppose, is why I have written so many reviews. If there is any original thought to be found in these books, it lies in the analysis of the arguments that various authors have put forward. To come up with a valid argument using sound premises is a difficult task, and I fear that many authors have underestimated its challenge.

For this reason, many of my reviews are critical, but I owe readers a word of explanation. As a humorous way to attract attention, I sometimes deliberately adopted a ferocious tone of voice. This has had its own "unintended consequences" and now there is no going back. To me, the greatest of all critical reviewers was the philosophical scholar A. E. Taylor, and it is his reviews, written in *Mind* and other journals, that I have adopted as models, though I am always conscious of how far I am below his standards.

Ever since I first read *Man, Economy, and State* in 1962, I have been a convinced Rothbardian, and it is from this standpoint that I have written my articles. The articles in these volumes appear as written, aside from minor corrections.

I am most grateful to Lew Rockwell, for support for my work extending over many years, and to my friends and colleagues at the Mises Institute,

including Pat Barnett, Jeff Deist, Peter Klein, Joe Salerno, Mark Thornton, Judy Thommesen, and Hunter Lewis. I am most of all grateful to my parents, to whom I owe so much.

DAVID GORDON

Senior Fellow,
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Political Theory

Simple Rules for a Complex World^{*}

RICHARD EPSTEIN

A Libertarian's Plea

October 1, 1995, *Mises Review*

RICHARD EPSTEIN'S EXCELLENT BOOK is packed full of arguments which continually engage the reader, even if they do not always compel assent. He constructs a powerful case for a free-market social order, with a strictly limited state.

At times, Epstein compromises with the state more than he should. Nevertheless, this book ranks among the firmest defenses of private property ever written by an American academic.

Epstein starts in an unusual place for a work of legal theory, the widespread public perception, shown for instance by lawyer jokes, that there "is too much law and too many lawyers" (p. ix).

Lawyers, most people believe, burden the economy with costly and often frivolous suits; but no remedy seems in sight, given the complexity and detail of legal regulations. Given that there is too much law, there are not too many lawyers: we cannot cut down on the number of lawyers without a drastic simplification of the law. It is this far from simple task that Epstein here undertakes.

In doing so, Epstein shows himself well aware of two objections that threaten to derail his project. First, it would be easy to devise very simple rules that would be utterly deplorable.

^{*} Harvard University Press, 1995.

If simplicity is the only goal of a legal system, I can think of just two rules for determining the outcome of a lawsuit that would satisfy a criterion of ultimate simplicity. The first of these rules says that the plaintiff always wins . . . if you don't like that rule, there's always its mirror image, which says that the defendant always wins. (p. 32)

Simplicity, then, does not alone suffice.

If so, is it not then open to a defender of complex rules to enter a demurrer? Though complexity may count against a rule, may this not be outweighed by other factors? How can one tell whether a legal system is *too* complex, absent an overall judgment on the goodness of the system?

Epstein has his reply ready to hand. He is not after absolute simplicity: rather, what he seeks is governmental rules that generate more incentives than they impose costs.

The central trade-off that must be examined at all times is this: does the creation of some administrative structure . . . also create some desirable incentives for individual behavior such that the gain from *this* particular administrative expenditure is justified in terms of the overall improvement in incentive structures? (pp. 33–34)

Epstein's real goal, then, is a set of efficient rules, and simplicity is no more than a means to this end. Nevertheless, it is a vital means, since complex rules are liable to be inefficient. Epstein constructs an excellent case for simplicity in the law; but I wish he had at least mentioned the once-famous essay of Rudolf von Jhering, *The Struggle for Law*. Jhering maintained that the assertion of rights was essential to the development of law; thus, legal battles were to be desired rather than shunned. Epstein would I think have found in this essay a valuable counterpoint to his own line of thought.

If, then, what Epstein principally seeks is efficiency, we must know what he means by that. Here there is little mystery: he understands it in a way analogous to neoclassical economists' characterization of the market in equilibrium. In particular, the market in equilibrium is Pareto optimal: no change can be made which will make at least one person better off while making no one else worse off. This notion of efficiency underlies the variant of utilitarianism which Epstein defends, leading to difficulties in his argument. But of these more later.

The first of Epstein's rules is for those familiar with the Lockean tradition a familiar landmark: "individual self-ownership" (p. 54). He defends this

principle against the competing view of John Rawls. According to Rawls, people do not deserve their natural abilities, which are from the moral point of view arbitrary. Epstein rightly rejects Rawls's opinion that abilities and talents are "collective assets."

Epstein proceeds to defend a "first possession" rule for the acquisition of property and follows with strong support for freedom of contract. He notes a fact familiar to all students of Austrian economics: the parties to an exchange are, from their own point of view, better off than they would otherwise have been. If not, no voluntary trade would take place. Thus, assuming no effects on third parties, a voluntary exchange always increases utility. Quite the contrary, of course, with a coerced exchange.

But Epstein goes too far when he says this: "Theft arises when one person takes something without the consent of the other . . . it is at best a constant-sum game, for what one party gains the other necessarily loses" (p. 76). Of course Epstein is right that the stolen item does not multiply. But what is at issue is utility, and it does not at all follow that no act of theft can increase utility. What if the thief derives more utility from the good than its rightful owner? This objection presupposes that interpersonal comparisons of utility can be made, which is eminently questionable but Epstein does allow them, at least if made in a non-rigorous fashion (p. 142).

Here I think Epstein would have profited from attention to Murray Rothbard's fundamental "Toward a Reconstruction of Utility and Welfare Economics." Rothbard disallows interpersonal comparisons: he makes the more limited, and more defensible, claim that in any coerced transfer, we cannot determine that overall utility has increased.

So far, though, our objections to Epstein have been mere matters of detail. Things change, unfortunately, with his fifth rule, particularly as applied to the government. Our author does not forbid all coerced exchanges. Sometimes necessity demands that one seize the goods of another. If such a case arises, compensation is owed the person whose property is taken, so that he is restored to a position as well off as he was before the taking.

Applied to governmental action, Epstein's rule works in this way:

Often the government needs to obtain material resources from individuals in order to supply services to the public at large. . . . [H]oldout and coordination problems preclude that consensual solution for certain key assets, such as specific parcels of land needed

for the construction of a fort or a public road. This problem is best met by government taking with payment of just compensation. Ideally, the individual citizen is left indifferent to the loss. (p. 128)

All of this seems to me radically unsatisfactory. Suppose that someone owns a parcel of land that the government needs in order to build a road. (Why, incidentally, must roads be provided by the government?) If the land had to be purchased, the owner could secure a large sum of money by threatening a holdout. If the land is taken, and its owner compensated, in what sense is he rendered indifferent to the loss? He has been deprived of his profit-making opportunity. The “take-and-pay” rule that Epstein favors does not fulfill the principle, basic to his position, that governmental actions be Pareto superior. Only on an etiolated notion of compensation is the owner left equally well off.

What Epstein here in effect says is that the state may take your property, so long as you are not left too much worse off. Is it not a sad commentary on our times that, to the likes of Senator Biden, this counts as a “right-wing extremist” position on the takings issue?

Obviously, this is neither the time nor place to offer a treatment of cases of necessity. I shall confine myself to two observations. In those cases of necessity that strike one intuitively as calling for remedial action (e.g., the person who demands from a victim of thirst in the desert a million dollar fee for a drink of water), something is going on of a morally dubious character other than so-called “strategic-bargaining.” Second, if one does hold that it is wrong for someone, by taking advantage of a threat position to seize virtually all the gains from trade, it does not follow that he may be deprived of any gain at all.

After he presents his rules, Epstein applies them to a number of legal issues, including employment discrimination, product liability, and environmental protection. In all of the areas he treats, Epstein displays a formidable mastery of case law. He exposes to devastating effect the fallacies of governmental programs that often make almost everyone, including their intended beneficiaries, worse off.

In one instance, though, Epstein’s discussion seems incomplete. In his excellent discussion of employment discrimination, he notes that sometimes what appears to be discrimination against certain groups is from the employer’s point of view economically rational. Sometimes, e.g., an employer may find it profitable to hire a racially homogeneous workforce.

Epstein's point is well taken, but his discussion fails to speak to a key issue in the debate on discrimination. What about those who contend that discrimination is morally wrong, even in cases where it is economically rational? To answer them, a more robust moral theory is required than the "Pareto-optima" brand of utilitarianism that Epstein professes.

As his last chapter, "The Challenges to Simple Rules," makes clear, Epstein disagrees; and it is here that I find myself most fundamentally at odds with him.

He contrasts the utilitarian system he favors with moral intuitions that lack a systematic basis. Since his theory usually arrives at the same conclusions as do the intuitions about justice, why not jettison separate resort to them?

Make way for Occam's Razor. If a smaller class of assumptions can be used to account for all the relevant results, why treat the intuitive sense of justice as the irreducible primitive of the system or even as an important side constraint? (pp. 319–320)

Here Epstein erects an unreal antithesis. Why are unsupported intuitions the sole alternative to his theory? What about other moral theories (including intuitionism) of a non-utilitarian sort? Here once more attention to Rothbard and Robert Nozick would have helped.

And Epstein's theory is vulnerable to pressure from another direction. What about utilitarian theories that do not operate under the Pareto constraint that Epstein favors? Why should a change that greatly benefits a large number of people be ruled out simply because a few are made somewhat worse off? (Suppose circumstances make compensation impossible.) Why, on utilitarian grounds, should measures of this kind always be disallowed? Epstein's view must thus confront both non-utilitarian theories and more robust utilitarian accounts. Faced with a war on two fronts, can it survive?

If *Simple Rules for a Complex World* frequently rouses me to dissent, it is nevertheless a distinguished work that merits the attention of anyone interested in ethics and legal philosophy.

*Classical Liberalism: The Unvanquished Ideal**

DAVID CONWAY

Liberalism Made Right

December 1, 1996, *Mises Review*

DAVID CONWAY stands in resolute opposition to most contemporary Anglo-American political philosophers. Conway defends vigorously and effectively the classical liberal ideal of a society of people free to lead their lives without the coercive tutelage of the state. In contrast to “modern” liberals, who have perverted the classical doctrine into its opposite, Conway holds that personal freedom most definitely includes the right to own property. A free society rests on a free market.

In taking this view, Conway confronts some of the giants of modern philosophy, not least among them John Rawls and Alasdair MacIntyre. He sets forward the major objections to classical liberalism advanced by these supposed master figures and proceeds to dispatch them.

Before he dissects the doctrines of particular thinkers, Conway discusses an argument against the free market which has won wide favor. Granted that people have a right to freedom, must not the liberty to acquire and use property be tempered with state provision of welfare? Otherwise, those without resources face starvation.

* St. Martin's Press, 1995.

By refusing to countenance welfare rights, classical liberalism is widely thought to fail to accommodate the needs and interests of those who, through no fault of their own, are destitute and unable to provide for themselves. (p. 20)

Conway handles this argument in a way that Mises would have approved. Like Mises, Conway asks: will interference with the market achieve the goals its advocates profess? The legal enactment of a “right” to welfare does not by itself put bread on the table of the destitute; why cannot a free-market order provide for the poor through private charity? If the market works better than its rivals in all other spheres, why not here?

But, it will be replied, this leaves the objection unmet. Even if the market provides adequately for the poor, it extends no right to relief: the poor are left to the mercies of charity. Is this not unjust?

Conway meets this objection head on. Unless you have caused someone else’s poverty, you are not responsible for his plight: he thus has no right to seize your property. Mere “need,” absent an account of how the need arose, generates no rights. To this, however, our author allows one exception:

a liberal polity is justified in compelling the natural parents of a child to provide for it, until such time as the child becomes capable of providing for itself, or else a third party voluntarily assumes responsibility for it instead of its parents. (p. 22)

Readers may be inclined to quarrel with one or two details of Conway’s analysis. (His statement that a newborn left to die is worse off than had it never been conceived strikes me as ungrounded.) But, on the main point, his case cannot be gainsaid: people, regardless of how badly off they are, have no right to the labor or property of others.

Those sympathetic to the free market may find the foregoing the merest commonplace; but it is precisely here that Conway finds himself opposed by the most influential writers in his field. Let us begin at the top: the single most dominant moral philosopher of our times, John Rawls, denies that people have an unrestricted right to what they have voluntarily produced and exchanged. What you obtain on the free market depends, to a great extent, on what you do not deserve. Those born to rich or well-connected parents, or with abilities that place them far above average, have a much better chance of success than those less favored. Since you do not deserve your

“natural assets,” Rawls holds that they may be taken from you in order to fulfill the terms of his notorious “difference principle.” Under it, inequalities are allowed only if they benefit the least well-off class.

Conway's response takes hold of a crucial point that most critics of Rawls have missed. In their fascination with details of Rawls's theory, such as the “original position” and the “veil of ignorance,” commentators have overlooked a simple point. Rawls maintains that his theory fits ordinary morality. To Rawls, it is unfair, in the common usage of that term, that some, through “accidental” causes, have vastly more than others. (This alleged unfairness is, if anything, even more prominent in the work of Rawls's student Thomas Nagel, whom Conway also insightfully discusses.)

Rawls's case, to reiterate, depends in large part not on an arcane theory, but on a simple moral intuition.

Rawls remarks “intuitively, the most obvious injustice of the system of natural liberty is that it permits distributive shares to be improperly influenced by . . . factors so arbitrary from a moral point of view.” (p. 29, quoting Rawls, *A Theory of Justice*)

Conway, following Robert Nozick, locates an elementary fallacy in Rawls's contention. Our author agrees that you do not deserve your parents or your abilities: You have not acquired these owing to your own virtue. But it does not follow from this that you deserve not to have them, or that the state may legitimately take them from you.

It is clear from what Rawls writes that there is only one sort of difference between individuals which morally justifies their enjoying different life-prospects. This is differences in degree of merit or desert. (p. 30)

Absent this assumption, Rawls's theory collapses.

Conway pursues with great ingenuity the variants of egalitarianism defended by other influential moral philosophers: the aforementioned Thomas Nagel, Ronald Dworkin, Kai Nielsen, and Ted Honderich. But once the essence of his criticism of Rawls has been grasped, the rest is but a mopping-up operation that need not be described in detail here. Rather, let us turn to another of our author's battles in defense of the market. For Alasdair MacIntyre, whose *After Virtue* (1981) has been vastly influential, Rawls's criticism of the market does not go deep enough.

Classical liberalism, as MacIntyre sees it, has undermined the basis of morality. Today, on issues such as abortion and economic justice, opinions clash in irreconcilable conflict. The dispute between Rawls and Conway, MacIntyre might say, illustrates his thesis. Each philosopher argues cogently from a given premise: Rawls from the value of equality, and Conway from that of liberty. If you accept the premise, the philosopher's conclusion follows; but no argument will be of use should you reject the starting point.

What has brought about this battle of opposed value judgments? For MacIntyre, the culprit is liberalism. Unlike the societies of classical Greece and Christendom in the Middle Ages, people under liberalism share no sense of a common good. Instead, each person devotes himself to his own selfish concerns. Lacking a sense of the common good, people cannot be virtuous. Those engaged in the pursuit of a goal in common will value certain habits that enable them to pursue their projects.

Laborers on a medieval cathedral, e.g., will come to value the exercise of careful workmanship. From such goods internal to a practice, as MacIntyre calls them, the virtues develop: without them, the virtues cannot exist. Through acquiring the virtues, in turn, people may weave their lives into a narrative unity. This unity can be achieved not in isolation, but only in common pursuit of a tradition.

In this brief account of MacIntyre, I have labored under a handicap. The main points of his system strike me as unintelligible; and I fear that I have been unable to convey the sense, let alone the appeal, of his views. All the more remarkable, then, is Conway's ability to give a clear account of this difficult writer. I can only urge those baffled by MacIntyre to study closely Conway's account (pp. 65–100).

But what of MacIntyre's assault on classical liberalism? Conway disposes of it in short order. Nothing in a free-market order precludes goods internal to a practice, or any other of MacIntyre's paraphernalia, from coming into existence. If indeed they are essential to the growth of virtue, the free market does not stand in their way. Neither does the market stand in the way of devotion to the common good: the rise of emotivism and subjectivism in ethics, whatever their failings, cannot be attributed to it. The classical liberal freedoms, to the contrary, offer a framework within which moral action can take place.

Put briefly, Conway contends that MacIntyre's account of morality, even if correct, leaves classical liberalism untouched. It by no means is the case, though, that Conway himself accepts MacIntyre's account. In particular, he

is concerned to challenge MacIntyre's claim that virtue can develop only in communities with internal goods.

To the contrary, Conway replies, someone has reason to develop habits of virtue, entirely aside from the communities that MacIntyre stresses. Virtues such as courage and temperance aid people to achieve a happy life; hence they have reason to acquire them. Conway's Aristotelian account of virtue closely resembles that of Philippa Foot. (See especially her collection, *Virtues and Vices*.)

At one point, I venture to suggest, the case against MacIntyre can be extended. Does MacIntyre himself avoid the subjectivism about which he waxes indignant? It seems to me that he does not. Let us return to MacIntyre's starting point, the breakdown that results when conflicting moral premises prevent consensus.

MacIntyre does not attempt to settle conflicts of this sort. Quite the contrary, his point is that they cannot be settled. What he seeks, rather, is a group of people all of whom share the same values. But then he has not escaped at all from subjectivism: he has instead replaced individual subjectivism with a collective variety of the same malady.

Conway has sent MacIntyre packing; but his defense of classical liberalism is not yet complete. The English political philosopher John Gray, once an ardent classical liberal, has in part recanted. Like MacIntyre, Gray stresses the existence of irresolvable conflicts of value. But for Gray, this is not a situation to be remedied. Following Isaiah Berlin, Gray holds that values are necessarily diverse and conflicting. If so, how can a classical liberal (or an advocate of any other political system) hold that everyone ought to adopt his favored set of values? Classical liberalism, with its stress on freedom, becomes but one of many valuable political orders.

Conway's strategy of response resembles his reaction to MacIntyre. Even if Gray's account of value is true, a classical liberal regime can accommodate it. Each of the various forms of attaining a flourishing life could exist within a liberal society, for all Gray and Berlin have shown to the contrary. Our author pursues Gray in relentless detail; but since I discuss Gray's views elsewhere in this issue, I shall for now leave it at that.

Suffice it to say that Conway's exceptionally well-organized defense of classical liberalism is well worth the attention of all students of political theory. The author's exceptional knowledge of the history of philosophy greatly enhances the book's value: how many authors, e.g., would think to quote Franz Brentano on the dangers of compulsory beneficence (pp. 47-48)?

Hayek and After: Hayekian Liberalism as a Research Programme^{*}

JEREMY SHEARMUR

The Hayekian Cul-de-sac

July 1, 1997, *Mises Review*

IN THIS OUTSTANDING book, Jeremy Shearmur approaches the thought of Friedrich Hayek from an original angle. Debates in political theory often bog down because of incompatible assumptions. If you do not find plausible the egalitarian premises of John Rawls's *A Theory of Justice*, you are liable to think the book a failure. Similarly, many reject libertarian arguments because they find unacceptable the initial axiom of self-ownership. Can this impasse be escaped?

Shearmur suggests a way out. For many years, our author served as a research assistant to the philosopher of science Karl Popper, and he has studied closely the “methodology of scientific research programs” developed by Popper’s onetime colleague (and later antagonist) Imre Lakatos.

From these thinkers, Shearmur has learned a historical method of evaluating a theorist’s work. One starts by depicting the problem that the theorist faced. How well did he solve the difficulties he set himself? Do his theories generate new problems that in turn are dealt with fruitfully? If so, the research program is progressive; if not, it must be judged a failure.

^{*} Routledge, 1996.

“Progress” and “regress” are hardly neutral terms, so the approach sketched does not altogether avoid the problem of conflict among value judgments. But, judged on its own terms, Shearmur’s program seems promising; and he applies it to Hayek with illuminating results.

What then, is the fundamental task Hayek set himself as a political theorist? According to Shearmur, Hayek began as a socialist, and throughout his life retained much sympathy for socialist values. His dedication of *The Road to Serfdom* to “the socialists of all parties” by no means was insincere. But he came to believe that the ends of socialism could not be realized by socialist means, and he deemed it his duty to convey this view to a wide public.

Why does socialism inevitably fail to achieve the ends of prosperity, justice, and happiness it professes? One answer will come as no surprise to readers of the *Mises Review*: calculation is not possible in a socialist economy. Ludwig von Mises’s argument to this effect overthrew Hayek’s own commitment to socialism; and Hayek developed the argument in his own work. After he became aware of Mises’s argument, Hayek saw “market prices, and decisions taken upon them” as “an essential rather than an accidental feature of societies such as those in which we live” (p. 34).

Hayek saw that an analogous argument could be extended to the political sphere. Just as the socialist planner has no means to measure economic projects on a common monetary scale to judge their efficiency, the planner cannot combine the conflicting preferences of individuals into a coherent set of goals.

Hayek argued that a planning authority will need to make decisions among various alternative ways in which resources could be utilized, and he claims that “there are within wide limits no grounds on which one person could convince another that one decision is more reasonable than the other.” (p. 61)

What then can the planner do? He can of course attempt to impose his own set of priorities on society; but is this not a very good brief characterization of tyranny? But what is his alternative? Should he shrink from dictatorship, he is left with a riot of clashing values. “Black spirits and white/Blue spirits and grey/Mingle, mingle/mingle.”

The bulk of *The Road to Serfdom* consists of an account of how Nazism arose from ideas common in the German socialist movement; in it Hayek shows in careful detail that the attempt to plan society negates freedom.

Hayek's analysis rests on a controversial premise. For his argument to work, it must not be the case that reason dictates a common set of values that most people readily grasp. If it does, then the planner may avoid the dilemma in which Hayek endeavors to place him. Since almost everyone will, if reasonable, agree on values, the planner need not impose his own preferences on an unwilling populace.

By the way, Hayek's argument, contrary to my mistaken belief for many years, does not depend on the assumption that there are no objective values. These can coexist on entirely good terms with his argument so long as people cannot readily grasp them. Failing this, preferences will still conflict without hope of resolution. (I forego discussion of the bizarre possibility that people universally come to agree on values that are *not* objectively true: this of course also suffices to avoid Hayek's dilemma.)

To discuss ethical objectivity would of course take us far afield: readers may now breathe a sigh of relief that I won't do so. Rather, I mention the premise for another reason. Shearmur himself argues that there are objectively true values on which people can rationally come to agree. Does not the position land him in difficulty? How can he at the same time accept this position and also endorse Hayek's argument, which appears to rest on its denial?

I do not suggest that Shearmur lacks the resources to respond. He might, for example, contend that just what can be established as objectively valuable is that people be free, in a wide variety of circumstances, to exercise their subjective preferences. Indeed, it is clear from his discussion that he would indeed say this. But he ought I think to have addressed explicitly the apparent contradiction in his position.

Let us now return from Shearmur to Hayek. If our author's account of Hayek's argument in *The Road to Serfdom* is correct, Hayek seems to have fulfilled the task he set himself. He aimed to show that socialism subverts the values at which it ostensibly aims, and he appears to have done so. Should we then declare the Hayekian research program a success?

Not so fast, our author says. Hayek has *not* shown that the unhampered free market is required by sound political theory. Socialism, we have seen, is out; but what about the welfare state? Is it not possible, for all Hayek's argument has shown, to proceed with Social Security, Medicare, antitrust, safety regulation, and the whole paraphernalia of interventionism? Do these measures demand the unified scale of values that Hayek maintains leads to serfdom? Why do they require more than the concurrence of a democratic majority to institute?

If Hayek's program is to be declared a success, then, he needs to finish the job. He must extend his argument so that it applies to welfarism, in addition to full-scale socialism. Or must he? As Shearmur recognizes, a problem confronts his analysis. He thinks that Hayek's argument is incomplete because it does not by itself lead to support for the free market. But this assumes that Hayek was trying to defend an unhampered market: otherwise, his argument does not fail on his own terms.

As Shearmur acknowledges, Hayek did not in fact support the free market to the extent that Mises did.

Hayek is not an advocate of *laissez-faire*; he is not averse to government playing a considerable role; for example, in the area of the provision of public goods, in assisting with the smooth running of the market order, and also in meeting welfare needs. . . . In the light of the active role that he gives to government in *The Road to Serfdom*, one might wonder about the extent to which he can be described as a classical liberal there. (p. 63)

Shearmur's query should occasion little shock for any reader of *The Constitution of Liberty*, where Hayek's program for interventionism is presented in detail. One little-noticed passage there merits particular attention. Although Hayek thinks that the Supreme Court probably averted economic disaster by ruling unconstitutional the National Industrial Recovery Act, he also maintains that the Court acted on "more questionable" grounds in overturning other New Deal measures (*The Constitution of Liberty*, Chicago: University of Chicago Press, 1960, p. 190). Hayek as moderate New Dealer?

Is, then, Shearmur's claim misplaced? Is he wrong to contend that Hayek's argument is incomplete, since Hayek does not claim to advocate the unhampered market? Shearmur refuses to concede defeat. In spite of his early sympathy for socialist values, Hayek became considerably more classical liberal later in his life; were a "rule of law" of the type he founded put into effect, much of the contemporary welfare state would have to be dismantled. And in any case, those of us, like Shearmur, more sympathetic to *laissez-faire* than Hayek may wonder whether Hayek's research program can be extended along the suggested lines.

Before turning to Shearmur's analysis of the attempt to extend Hayek's argument, we must confront a surprising omission. Shearmur seeks an argument against interventionism; but has not the mission already been accomplished? Mises famously contended that all interventionist measures fail of their purpose.

Confronted with failure, the government must either retreat to the free market or proceed apace with more intervention. If it chooses the latter path, the same options will confront it again. Eventually, should it continue to elect intervention, the result will be full-scale socialism. But socialism has already been rejected. Since intervention, consistently carried through, leads to this unacceptable result, it too stands refuted.

Shearmur makes no mention of Mises's argument, or of the brilliant extension of that argument in Murray Rothbard's *Power and Market*. From conversations with the author some years ago, I suspect that he rejects the Mises-Rothbard analysis and for this reason does not bring it up. But it would have been interesting to see his objections: absent this, I fear that we must declare Shearmur's own research program too incomplete fully to evaluate.

Once more back to Hayek. In his effort to defend a more-or-less classical liberal society, Hayek increasingly turned to evolutionary considerations. Spontaneous orders, not governed by a conscious plan, can support larger populations than alternative forms of social organization. They will thus tend to supplant their more interventionist rivals and they fully deserve to do so.

Shearmur has little patience for Hayek's variety of Social Darwinism. Shearmur, heavily influenced by Popper, places much greater weight on conscious planning than does Hayek. Though the social policies Shearmur supports differ greatly from Popper's "piecemeal social engineering," Shearmur and his mentor share a rationalist cast of mind.

In his analysis of Hayek's evolutionist thought, Shearmur makes some very useful points. Hayek rightly calls the free market a spontaneous order, in the sense that no central plan controls its operation. But it does not follow that the market has to be established by a process of evolution, or that it is somehow better if it is. "At a theoretical level, it is also clear that Hayek's conservative enthusiasm for things evolved cannot be sustained" (p. 108). The products of evolution may be either good or bad, a commonplace Hayek often overlooked.

Furthermore, Hayek's method of judging societies has little to recommend it. Why should the society that can support the most people be held the most valuable? Shearmur amusingly terms this criterion "Hayek's revision of Bentham (from the Greatest Happiness of the Greatest Number to The Greatest Number)" (p. 174). Shearmur in conclusion finds the main lines of Hayek's later work mistaken. Though he finds much of value in Hayek, his program cannot be developed along the lines Hayek himself set out.

Marx, Hayek, and Utopia^{*}

CHRIS SCIABARRA

All in the Family?

October 1, 1997, *Mises Review*

WITHIN *MARX, HAYEK, AND UTOPIA* lies a very good book struggling to escape. Chris Sciabarra has asked a penetrating question and brought to light important material in his pursuit of an answer to it. Unfortunately, he is enamored of an odd philosophical doctrine that he cannot refrain from discussing. This skews, but does not ruin, his presentation.

As everyone knows, Friedrich Hayek criticized socialism to devastating effect. For Hayek, the assault on socialism extended beyond economics. As he saw matters, socialists were in the grips of “constructivist rationalism.” They falsely thought that they could subject society to total control through planning. Their schemes ignored the fact that society is a “spontaneous order,” a phrase that readers of Hayek cannot fail to recognize. Only the market can handle the complex details of social organization. It does so by coordinating the “tacit knowledge” of producers and consumers.

Sciabarra asks a fundamental question: is Marxism a type of constructivism that falls before Hayek’s critique? Hayek of course took it as a prime example of rationalism gone mad. Does not the *Communist Manifesto* famously promise an end to “all hitherto existing society?” After the fun and games of the dictatorship of the proletariat, humanity would be poised to enter the “kingdom

^{*} SUNY Press, 1995.

of freedom.” In that happy consummation, scientific planning would be the order of the day. What could be more constructivist?

Sciabarra is not convinced. He sees Marx as an ally, not an opponent, of Hayek. But how can this be? Does it not pass all understanding to enroll the founder of scientific socialism under the banner of Hayek’s attack on the constructivists? Yet this is just what our author does: “Marx was fully cognizant of the limits of reason. He criticizes utopians for their belief that people can achieve collective competence instantaneously” (p. 60).

Here precisely lies Sciabarra’s solution to the paradox. Hayek has struck with complete accuracy at the utopians. They foolishly imagine that ideal societies can be deduced from self-evident premises, entirely apart from history.

Not so Marx. Hayek’s point, he holds, is entirely right human beings cannot leap out of their historical context to devise utopians. But history itself develops so that the proletariat can assume conscious direction of society. We should, Marx thinks along with Hayek, always view events within their historical context. But when the proletariat rises in revolt, it does not transgress this essential precept. Hayek’s principle of spontaneous order is, in Marx’s view, itself not historical enough. It held true only within a certain period, but its day has come and gone.

Whereas Hayek views the strictures on human knowledge as tacit and existentially limiting, Marx views them as historically specific to precommunist social formations. Marx and his critical successors suggest a resolution in which human agency triumphs over unintended social consequences through the full articulation and integration of tacit and dispersed knowledge. (p. 119)

Sciabarra does not endorse Marx’s response far from it. Indeed, though he does not tip his hand in the book, I suspect that he is on this issue a Hayekian. But, if Sciabarra does not agree with Marx’s relegation of the market to the dustbin of history, an issue requires his attention. How has Marx in any way responded to the issue Hayek has raised? Has Marx shown that a complex modern economy can operate without benefit of the market? Quite the contrary, he refused to speculate on the shape of the future socialist paradise. To do so, he thought, would preempt history.

Here then is the issue that Sciabarra needs to confront. Granted that he has raised a key question how might a Marxist respond to Hayek he must go further. He needs to assess the cogency of the Marxist answer. Unfortunately, he

largely neglects to do so. He does discuss several socialist responses to Hayek. Of this more later.

But he never tells us why we should give the slightest credence to the Marxist pipe dream of transcending spontaneous order. More generally, he takes seriously the wildest flights of Marxist fantasy. He notes that the

Marxian vision is dependent on an implicit, systemic transformation that would end the fragmentation and division of labor and knowledge. . . . As the market process is transcended, systemic fragmentation would be brought to an end, socialism would unite knowledge and labor, providing the basis for a revolutionary change in the character of the production process. (p. 91)

It is not enough that conscious planning replace the market; the division of labor must go as well. Once more, Sciabarra does not endorse this vision; he merely describes it. But this is just the problem. Suppose that someone presented, in elaborate detail, Charles Fourier's claim that in his utopia, the ocean would turn to lemonade. Without endorsing the view, our imagined author treated it as a serious proposal. Would we not think that something had gone wrong? If so, why not here? Cascades of words about alienation do not disguise the fact that Marx's view is arrant nonsense.

Exactly the same flaw infects one of the most valuable features of the book. Our author brings to light several socialist responses to Hayek. Perhaps the most significant of these has been offered by Hilary Wainwright, the wife of the world's most unintelligible philosopher, Roy Bhaskar.

Wainwright finds much merit in Hayek's emphasis on tacit knowledge. But she thinks Hayek is in thrall to an atomistic view of human knowledge. This our author vigorously combats: Hayek, in his view, needs no lessons from Marxists on the dangers of atomism. His conception of knowledge lacks for nothing in its sensitivity to the social.

Wainwright, like all influenced by Marx who address the calculation argument, thinks that Hayek underestimates the chances of collective control over the economy. Sciabarra responds with a degree of skepticism. "To posit an end to the market, or violent interference with its network of relative prices, is to posit an end to the very context which gives meaning to articulated and tacit epistemic elements" (p. 114).

Does Sciabarra intend this as a decisive denial of Wainwright? I am uncertain; he may be merely describing a Hayekian response. True, our author usefully

adumbrates problems that arise in her scheme, but I suspect that his heart lies elsewhere than in the analysis of economic detail.

Once more, his prime concern is to contrast Hayek's point of view with Marxism, to the disadvantage of neither side. Though Hayekians might criticize Wainwright and her allies for overly "therapeutic means for the articulation of tacit elements of mind," the debate is not concluded. "[T]hinkers such as Wainwright and Habermas compel Hayekians to recognize the efficacious possibilities of a radical psychology" (p. 115).

Again, Sciabarra has posed the contrast: Hayekian tacit knowledge and spontaneous order, versus Marxist conscious control. He declines to condemn the Marxist view: it, like Hayek's, counts as anti-utopian.

Why cannot our author call nonsense by its name? The answer, I venture to suggest, lies in Sciabarra's adoption of an unfashionable philosophical position. In part influenced by his dissertation advisor, the Marxist Bertell Ollman, our author professes the doctrine of internal relations.

Both Hayek and Marx, as he sees matters, adopt this principle. The attribution of the doctrine to Marx stems from Ollman: its ascription to Hayek is an innovation. The doctrine is for our author the key to all philosophical mysteries: its adoption allows a dynamic, dialectical concept of history. Rather than fall prey to "dualism," our author's *bête noire*, those with this key to the kingdom can see events in proper context.

Sciabarra goes so far as to speak of Hayekian dialectics, although he humorously notes that some "commentators have stated that to accuse Hayek of 'dialectical affectations' . . . would make him turn around in his grave" (p. 17).

I must now issue a warning. Explanation of Sciabarra's talisman, internal relations, quickly throws us into very murky waters. But the issue is important, so I shall say a little about it after all, this is my Review. According to internal relations, everything is essentially related to everything else. Put in a slightly stricter way, all of a thing's properties and relations are essential to it. (Can you see why it follows from this that everything is related to everything else? No, I'm not telling.)

Applied to human society, for example, proponents of this view maintain that you would not exist without your relations to other people and institutions. It is not just that you are strongly affected by what goes on around you: no one questions this. Rather, you would not exist at all, absent these relations.

Let's try again, in order to grasp just how radical the doctrine is. Consider this sentence: "If I had grown up in Japan, many of my beliefs would differ

from what are in fact my actual beliefs.” A proponent of internal relations will dismiss the antecedent of this statement as meaningless. I grew up in America, and my having done so is one of my essential properties. Thus there is no “I” who might have grown up elsewhere.

This view strikes me as radically at odds with common sense. Further, if one accepts it, science, which deals constantly with hypotheticals, goes by the board. Should we not be very careful before we saddle Hayek with so bizarre a view? (It is perfectly all right with me if Sciabarra wishes to enlist Marx as an internal relationalist.)

On what basis, then, does our author do so? His evidence consists in large part of passages where Hayek emphasizes “the importance of historical and systematic context. . . . Both Hayek and Popper argue against reductionism in the social sciences since society is more than the mere sum of its parts” (p. 17).

I urge readers to look at Sciabarra’s discussion (p. 15 ff.) for themselves, but for my part, I cannot see that anything he quotes demands that we must foist belief in internal relations on Hayek. No one, certainly not supporters of methodological individualism, denies that individuals are influenced by their social relations. But it does not follow that we can drop out the “influenced” and say: “individuals are (in part) their social relations.”

Sciabarra of course disagrees; but he must adopt heroic measures to hew to his path. As even Macaulay’s schoolboy knows, Hayek often defended methodological individualism. This doctrine clashes with the “organic” view that our author prefers. Individualists try to show how institutions arise from persons’ actions (as Hayek endlessly reiterates, not necessarily with the results intended). To do so, one must be able to speak of individuals apart from these institutions for Sciabarra, the supreme no-no.

What is Sciabarra to do? He is too good a scholar to ignore Hayek’s defense of methodological individualism. But, he contends, in his later work, Hayek came to modify, if not give up altogether, the individualist view. If so, the Hayek our author has in mind must be very late indeed. When I attended Hayek’s class on “Philosophy of Social Sciences” at UCLA in 1969, he seemed firmly in what for Sciabarra is the enemy camp. Perhaps, though, Hayek was then an immature thinker, and didn’t come into his own until his 70s and 80s.

Suppose though, that Sciabarra is right about Hayek. So what? Has he given us any reason to adopt this view? I am constrained to say that he has not. Instead, Sciabarra piles up lists of what he takes to be favorable adjectives for

his position: it is dynamic, organic, dialectical, etc. The opposed position is static, abstract, idealistic. One might call this, following the General Semantics of unhappy memory, philosophy by purr and snarl words. Where are his arguments for internal relations?

In spite of the author's hobbyhorse, his book is well worth reading. If only he would reconsider internal relations. . . . But he seems unlikely to do so. In another work of this prolific author, *Ayn Rand the Russian Radical*, he endeavors to show that Rand was an organic, dialectical thinker, as well. As such she, like Hayek and Marx, is to be celebrated. Did it ever occur to Sciabarra to ask why?

Living High and Letting Die: Our Illusion of Innocence^{*}

PETER UNGER

With Charity Toward Too Many

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EVEN WHEN COMPARED with other works of philosophy, this is an odd book. Readers who have been spared much acquaintance with contemporary moral philosophy will be inclined to toss the book away when they learn its central thesis.

But to do so would be a mistake. Unger is an influential analytic philosopher and his views echo or amplify the positions of other prominent philosophers, e.g. Peter Singer and James Rachels. We do not face a “lone nut” but rather a conspiracy. And the position advanced by Unger and his associates, if put into practice, threatens drastic political consequence.

Enough of preliminary abuse: what is Unger’s thesis? In his view, people in the developed world (that’s us) have an almost unlimited moral duty to aid the world’s poor. In an Ungerian world, you might find yourself devoting all your earnings above your own subsistence to flood relief in Bangladesh or aiding famine victims in the Sahel. Never mind the “difference principle” of John Rawls: what Unger mandates is a World Welfare State.

In fairness to our author the political implications of his views do not for him take center stage. Rather, he is concerned to urge readers to donate large

^{*} Oxford University Press, 1996.

sums privately to charity. If the government does not make the choice for you, it is up to you to select your favorite victimized nation and transmit the bulk of your income forthwith. But Unger can have no objection to governmental coercion; the fate of millions in Asia and Africa is at stake.

How does our author arrive at his striking views? He begins by asking us to consider this case:

The Shallow Pond. The path . . . to the humanities lecture hall passes a shallow ornamental pond. On your way to give a lecture, you notice that a small child has fallen in and is in danger of drowning. If you wade in and pull the child out, it will mean getting your clothes muddy. (p. 9)

Should someone pass by the little girl or boy lest he dirty his suit, we would think he had acted badly.

Contrast our reaction to the following case.

The Envelope. In your mail, there's something from UNICEF. After reading it through you correctly believe that, unless you soon send in a check for \$100, then, instead of each living many more years, over thirty more children will die soon. (p. 9)

People who sometimes ignore charitable appeals are not ill thought of: we do so all the time.

But, Unger inquires, wherein lies the difference? If it is wrong to allow the little girl to die, why is it all right to refuse to donate the money that will enable thirty children to live? (For conservatives to experience the force of Unger's query, one must of course substitute for UNICEF a charity not given to adulated socialistic nonsense.)

Unger's strategy should now be apparent. He suggests that no relevant difference exists between the two cases. And one must give him credit. He considers, with great ingenuity, a large number of reasons that might be alleged to set the two cases apart—e.g., in the pond case one can see the person in danger and in the charity case many people are likely to receive the appeal. With mixed success, he endeavors to show that none of the items on his list succeeds in distinguishing the cases.

What then follows? Unger, like Peter Singer before him, argues that we should recognize that we ought morally to answer the charitable appeal. If

we allow him his first step, but demur at measures that will seriously inconvenience us, Unger's response is resourceful but bizarre.

Why must our personal convenience limit morality? He suggests, first of all, that we are justified in seriously harming some to relieve a much greater amount of suffering in others. To secure the greater good, we must, if necessary, lie, cheat, maim, or kill. "A few moments ago, we supposed that stealing always involves taking that's wrongful. But, actually, that's not so. Indeed, sometimes stealing's very good" (p. 67). I suggest that you watch your wallet if Professor Unger is around.

Once given this step, the rest is child's play. If you are willing to impose sacrifices on others for the sake of the general good, does not moral integrity require you to burden yourself? If, as one of Unger's cases has it, you may sever someone's leg to save another's life, must you not be willing to enslave yourself to help victims of sleeping sickness in Africa? What could be more obvious?

In arriving at his striking views, Unger distinguishes two methods of conducting a moral inquiry. One, preservationism, says that we should accept people's judgments about puzzle cases as they stand. If people think you ought to save the little girl but stand under no obligation to give money to the thirty children, so be it. This view Unger rejects.

He supports liberationism, according to which our judgments about cases must withstand further tests in order to be accepted. If our judgments appear to generate inconsistent results, as in the Shallow Pond and Envelope examples, then we must ask: what factors distort our judgment in at least one of the cases? Our judgments need to be regimented according to underlying principles. If necessary, some of our initial judgments should be cast out. This is of course the position our author accepts.

Those of us unwilling to enslave ourselves to the greater glory of UNICEF must endeavor to escape Unger's argument. How may we do so?

The key to a successful response to Unger lies in one fact. In his analysis of his cases, he has introduced more than the demand for consistency and an endeavor to eliminate so-called "distortive factors." In addition, he has imported a form of utilitarianism—people have a moral duty to minimize the sum total of human suffering.

The merits of that theory have long been a source of contention, and I do not propose to enter that debate here. My point rather is more limited. Utilitarianism is a disputed moral theory, whose truth cannot be taken for granted in argument. And this is just what our author does. He throws out

our judgment that we can refuse to return a cash-stuffed envelope to UNICEF not for some logical failing. Rather, it is rejected because it comports ill with a theory that Unger has assumed out of thin air.

If one accepts Unger's liberationist belief in consistency, but combines with this a moral theory different from the one our author peddles, escape from having to surrender one's wealth is at hand. On a moral egoist theory, e.g., our duties to others are quite limited, if not done away with altogether. A divine command theory may restrict our obligations exclusively to fellow believers.

My point is not to defend one of these views, or some other option more in the mainstream. Rather, I wish merely to claim that giving up preservationism does not at once get you to the liberationism our author wants.

If you restrict yourself to consistency alone, you can decide to abandon our judgment on the Shallow Pond instead of the Envelope. Unger is aware of this possibility, which he finds repellent. "On a third view, our responses to both cases fail to reflect anything morally significant: Just as it's all right not to aid the Envelope, so, it's also perfectly all right in the Shallow Pond" (p. 13). Whatever its deficiencies, the position is as consistent as Unger's.

And what if we prefer not to abandon our initial judgments on either of the cases? Unger may then term us inconsistent, or accuse us of falling victim to distorting factors, but a firm preservationist need not despair. Precisely his point is that we must not abandon the "booming, buzzing confusion" of our judgments for theoretical imperatives. He may contend that Unger has begged the questions against him by his demand that our judgments be regimented.

However one chooses to escape Unger, of one thing one can be sure: If your theory arrives at nonsense it is time to reconsider. Somehow, I suspect that Unger will not do so.

Passions and Constraint^{*}

STEPHEN HOLMES

More Liberal than Thou

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CLASSICAL LIBERALS OF TODAY think that true liberalism was high-jacked sometime around the end of the nineteenth century. The liberals of the old school favored individual rights, a free market, and a strictly limited state. But, as Herbert Spencer presciently foretold in *The Man Versus the State* (1884), a new version of liberalism reversed the faith handed down from of old. Now statism was the order of the day; far from being a dangerous force to be kept under strict scrutiny, the state was held an essential means to promote welfare.

On this interpretation, which should be old hat to all readers of Mises and Rothbard, the welfare liberals of today's Democratic Party are at the opposite extreme from true liberalism. And libertarianism, to go further, is classical liberalism come into its own. Mises, not Franklin Roosevelt or John Dewey, is the true liberal.

From this verdict, Stephen Holmes vigorously dissents. Modern social democrats have not, in Carl Becker's phrase, exchanged "new liberties for old." On the contrary, today's welfare liberalism fulfills classical liberalism. But how can Holmes hope to make good his surprising thesis? From a strictly limited government, we have arrived at the Leviathan state of contemporary welfarism. How can anyone rationally deny that the two "liberalisms" differ radically?

* University of Chicago Press, 1995.

Holmes acknowledges that classical liberalism supported limited government: but, he asks, what is the reason liberals wanted to replace absolutism with a limited constitutional order? In answer, he turns to an unexpected source: Jean Bodin, whose *Six Books of the Commonwealth* (1576) is usually taken as a key work in the development of absolutism.

Now we have deepened the problem. Holmes claims continuity between old and new liberalism. In support, he appeals to a sixteenth-century work defending absolute monarchy. Has Holmes lost his marbles?

I do not think that he has, although his thesis is radically mistaken. His point is that Bodin recognized that government must be limited in order to be efficient. If the king tried to do too much, he would weaken his power. By observing fixed constitutional rules, the monarch would strengthen, not weaken, his authority.

However attractive *les grands coups d'autorité* may seem in the short run, they prove totally contrary to the king's long-term interest. It would be a fatal error to put to sleep the old representative assemblies. . . . The sovereign should retain these traditional bodies not because he is "just," and not because of the sanctity of tradition, but for purely calculating and self-interested motives, because they are the indispensable tools of royal government. (p. 119)

Well, you may inquire, so what? Even if Bodin favored constitutional restraint to promote royal power, how does this lend support to Holmes's continuity of liberalism thesis? Before addressing this issue let us digress to consider on its own merits Holmes's interpretation of Bodin.

Holmes underrates the extent to which Bodin thought that limits to sovereign power are mandated by logic, rather than suggested by strategy. Just as God cannot do what is logically impossible, so in Bodin's view the sovereign cannot violate the necessary conditions of his office. He cannot, for example, abolish the monarchy.

In the book's best passage, Holmes himself in part recognizes this point:

Bodin's political theology . . . is explicitly based on a loose analogy between God's self-binding and the self-binding of the political sovereign: constitutional restrictions are less *limits on*, than *expressions of*, sovereign freedom and power. Illicit when

it involves diminution of the crown's authority, monarchical self-binding is possible, permissible, and even obligatory when it maintains and increases royal power. (pp. 151–152)

Very good: but Holmes fails to see that to the extent Bodin has in mind *logical* constraints on royal power, this is an alternative theory to the one Holmes presents. It isn't that the king would be ill-advised to attempt certain things: if Bodin is right the king cannot—logically cannot—do them. Further, Holmes underestimates the extent to which Bodin valued tradition for its own sake. A full treatment would require comparison of the *Six Books* with the earlier *Methodus* (1566), and this Holmes does not undertake. And his analysis of Bodin on tolerance (pp. 123–125) leaves out of account altogether Bodin's book on witchcraft. Bodin was much more traditionalist, and rather less a supporter of efficient monarchy, than Holmes allows.

There is also a logical problem in Holmes's statement of his thesis. He says that Bodin wanted the king to limit his power in order to strengthen it. But he never asks, what is the common goal that a constitutional monarchy accomplishes more efficiently than an unlimited one? No doubt a limited state can do *some* things better than an unlimited one, but the lists of actions the two states attempt will differ in many particulars. In what sense, then, is the constitutional state more efficient? Efficient at what?

Incidentally, imprecision in the use of terms weakens Holmes's discussion of passion and self-interest, a theme of the book that space limits compel me to neglect. Holmes has interesting things to say about the emotions in Hobbes and Hume, but he fails adequately to characterize rational self-interest. I am at a loss to state exactly why Holmes thinks that his points about the emotions contradict the theory that people are exclusively governed by self-interest. But this is by the way.

I suspect that some readers—I hope only a few—will think that I have gone on about Bodin for too long. All right, I admit it: they are no doubt right. So let us return from Bodin to the far less interesting Holmes.

Suppose that Holmes is right (he may well be) that a group of writers, perhaps including Bodin and Spinoza, favored constitutional limits on power in order to strengthen the state. How does this show that the classical liberals favored constitutional limits for the same reason? Certainly a large number of writers supported a limited state not to strengthen the state, but because they feared its power.

Let us consider, for example, Frédéric Bastiat's classic *The Law*. Bastiat contends that the state cannot do anything that individuals themselves lack the right to do. Individuals cannot cede to the state powers they do not have. Holmes never mentions Bastiat, or such other great classical liberals as de Molinari, Auberon Herbert, and Herbert Spencer. Surely they are entitled to some discussion in an account of classical liberalism. Perhaps they merit almost as much attention as Bodin and Hobbes, not liberals at all. [I am grateful to Ralph Raico for very helpful discussion on this point—ED.]

We have so far examined one part of Holmes's alchemy: the limited state of classical liberalism is not at odds with the all-powerful state of today, since a purpose of constitutional limits is to make the state more efficient. But even if we were to accept this wild and woolly "reasoning," Holmes would not have achieved his purpose. A strong efficient state need not be a welfare state. Holmes must show that the classical liberals supported welfarist measures, if his continuity thesis is to be maintained. But how can he do this? Were the classical liberals not strong supporters of the free market? If some of them allowed governmental provision of welfare on a limited basis, was this not under terms that contemporary leftists would find onerous? What about the English Poor Laws?

Once again, our author has a response. True, classical liberals supported property rights. But they did so because in their judgment these rights promote individual security. If this is the purpose of individual rights, we can ask: What best promotes individual security today?

The answer—surprise—is the welfare state. Holmes cites with apparent approval the view of the legal theorist Frank Michelman that welfare benefits "foster the inclusion of all citizens into the system of private and public rights guaranteed by the Constitution" (p. 263). Although he acknowledges that "the idea that implicit educational and economic rights are necessary preconditions for the proper utilization of explicit (political and legal) rights is vulnerable to some serious criticisms," he nevertheless finds it in accord with eighteenth-century liberalism.

What has gone wrong? Holmes has fallen into exactly the same fallacy that ruined his account of constitutional government. When faced with a classical liberal measure, he asks: what is its purpose? This question he answers in a one-sided way. He then claims that the same purpose may today be accomplished by the tactics of modern welfarism. Hence old and new liberalism form parts of the same tradition.

Thus, just as Holmes thinks the purpose of limiting government is to strengthen the state, so he argues that the purpose of property rights is to promote social security. At least on this occasion Holmes can cite a few liberals, such as John Stuart Mill, who did emphasize security. But he ignores the many classical liberals who did not subordinate libertarian rights to other considerations. Had he read a wider sampling of classical liberals than the few he considers, Holmes would have found it more difficult to mutate the classical doctrine into its opposite.

Professor Holmes is, on the whole, impressively erudite. But his discussion of Bodin makes no reference to the *Universal Theory of Nature*; and he does not recognize that his quotation from Jefferson, “truth is great and will prevail” is a familiar passage from the Apocrypha (p. 170).

Self-Ownership, Freedom, and Equality^{*}

G. A. COHEN

A Reluctant Marxist

April 1, 1998, *Mises Review*

GA. COHEN IS MY FAVORITE MARXIST. He takes libertarian-political theory with extreme seriousness, and again and again he makes points devastating to socialism.

As every reader of Murray Rothbard will know, the principle of self-ownership stands at the basis of libertarian thought. Each person is the owner of his or her own body. Combined with a Lockean theory of property, we can at once generate the principles of a free-market order. But even on its own, the self-ownership principle rules out the welfare state. You cannot be compelled to labor for someone else, even if the other person “needs” your labor more than you do.

One might expect a Marxist at once to brush aside self-ownership, but Cohen does not do so. Quite the contrary, he finds self-ownership intuitively plausible:

In my experience, leftists who disparage [Robert] Nozick’s essentially unargued affirmation of each person’s right over himself lose confidence in their unqualified denial of the thesis of self-ownership when they are asked to consider who has

^{*} Cambridge University Press, 1995.

the right to decide what should happen, for example, to their own eyes. They do not immediately agree that, were eye transplants easy to achieve, it would then be acceptable for the state to conscript potential eye donors into a lottery whose losers must yield an eye to beneficiaries who would otherwise not be one-eyed but blind. (p. 70)

As Cohen rightly notes, your right to your own body outweighs commonly used socialist principles that mandate redistribution. You are entitled to keep your eyes even if the fact that you have two working eyes is a matter of genetic luck and even if a blind person “needs” an eye more than you do. (You could still see with one eye but he cannot see at all.)

I hasten to add that while I am happy to accuse socialists of nearly anything bad, I do not contend that they in fact support the eye-transplant scheme. The case is intended merely to illustrate the strength of self-ownership. Incidentally, one English moral philosopher, John Harris, does support a compulsory organ lottery, but I do not know whether he is a socialist. (I’ll bet he is, though.) There is no proposition so absurd that some philosopher has not advocated it.

Cohen must now confront a dilemma. He finds self-ownership *prima facie* plausible. But self-ownership leads to libertarianism; must he not then abandon his Marxism? Cohen is not prepared to take this heroic course. True, he recants much of socialism; but he is at most a neo-recantian. What then is he to do?

Two courses of action suggest themselves. He might admit self-ownership, but deny that it leads to free-market capitalism. Alternatively, he might claim that, in spite of its surface plausibility, self-ownership ought to be rejected. It is the latter tactic that he adopts: he readily acknowledges that self-ownership negates socialism.

One of the arguments he deploys against self-ownership is pitifully weak. He asks us to imagine that everyone is born with empty eye sockets. The state implants two eyes in everyone at birth, using an eye bank it owns. If someone lost both eyes, would we not oppose an eye lottery to remove forcibly one eye from a sighted person to help the blind person? But in the example the state owns all the eyes. Cohen concludes that our real objection to an eye lottery in the actual world is not that it violates self-ownership but that people have a right to bodily integrity.

The “suggestion arises that our resistance to a lottery for natural eyes shows not belief in self-ownership but hostility to severe interference in someone’s life. For the state need never vest ownership of the eyes in persons” (p. 244).

A defender of self-ownership can readily acknowledge that it would be wrong to remove someone’s eyes in Cohen’s science-fiction case. All he needs to preserve his principle is that the fact that you own your eyes adds to the moral badness of making you enter the eye lottery. And what is the matter with that?

Bodily integrity and self-ownership supplement each other: they do not compete for our allegiance, as Cohen seems to think.

But why then is Cohen so anxious to give up self-ownership, a principle he has acknowledged seems plausible? He has no more to offer than the usual Rawlsian pabulum. It is “unfair” that, owing to genetic “luck” and other circumstances that people do not “deserve,” some are in a position to do vastly better than others. Why should one assume without argument that people ought to have an equal chance at success? It is ironic that Robert Nozick is standardly criticized by leftist political philosophers for assuming libertarian rights without argument, yet they themselves never offer an argument for their egalitarian principles. (Libertarians who do argue for self-ownership, e.g., Murray Rothbard, are largely ignored by the mainstream.)

If self-ownership survives Cohen’s half-hearted assault, the free market is not yet out of the woods. Cohen has another argument against libertarians, this one directed at Lockean theories of property acquisition. (I omit discussion of Cohen’s objections that apply only to Nozick’s theory. Unfortunately, Cohen selects Nozick as his standard libertarian.) According to the Lockean theory, individual self-owners may, by mixing their labor with unowned property, come to acquire it.

Cohen maintains that this theory fails by itself to support property rights in land. It is, as it stands, incomplete. For the justification of property rights to be successful, an additional premise is needed. The premise in question is that land is initially unowned. If everyone starts off with rights to an equal share of the earth’s surface and resources, the Lockean theory has nothing on which to operate.

We may grant Cohen his point, but it avails him nothing. Why should we assume that people begin with property rights of the kind he wants? He gives no argument that they do; and the assumption that property is at the start unowned strikes me as eminently plausible.

Cohen, of course, dissents. But what happens if we grant him his assumption of an equal initial division of the earth's surface? The upshot, as our author recognizes full well, would not be socialism but a variety of libertarianism. Since the people with the initial endowments are by hypothesis self-owners, they would be free to carry on whatever "capitalist acts between consenting adults" they wished. Hillel Steiner, a British political philosopher much esteemed by Cohen, has devised a quasi-libertarian system of precisely this kind; and Cohen says nothing against it.

I have so far left unsupported a claim that Cohen advanced earlier. What are the devastating admissions about socialism that he makes? One example must here suffice. The leading leftist justification for "social democracy" is of course John Rawls's *A Theory of Justice*. And the socialist aspect of the theory is the famous "difference principle," by which inequalities are justified if and only if they are to the advantage of the least well-off group in society.

Even some who reject Rawls's theory think there is a good deal to be said in favor of the difference principle. After all, consider someone devastated by congenital illness. Do we not feel some impulse to help him, even if, as good classical liberals, we deny him a *right* to aid?

Cohen is one of the few writers on Rawls to appreciate a point that Rawls himself makes no effort to conceal. The difference principle does not apply to unfortunates of the sort just mentioned!

[T]hose who indeed are "unfortunate and unlucky," are simply not part of the Rawlsian game. . . . The principles of [Rawlsian] justice, being principles for dividing the benefits of cooperation, do not apply to them. (p. 224)

Cohen has with this simple observation destroyed the initial moral appeal of the difference principle. Can a writer of Cohen's perspicuity continue wearing his Marxist blinders indefinitely? Time will tell.

The Ethics of Liberty^{*}

MURRAY N. ROTHBARD

Private Property's Philosopher

April 1, 1999, *Mises Review*

PROFESSOR HANS HOPPE, in his outstanding new introduction to the reissue of *The Ethics of Liberty*, hits the nail on the head. He contrasts Murray Rothbard with Robert Nozick, a much more famous figure among academic philosophers and political theorists. Although both writers embrace libertarianism (Nozick much less ardently or consistently than Rothbard), their styles of thinking differ entirely. Nozick, according to Hoppe, is impressionistic and given to flights of fancy. Rothbard, by contrast, reasons by strict deduction from self-evident axioms.

Agree with him or not on Nozick, no one can dispute the accuracy of Professor Hoppe's characterization of Rothbard. Although I read *The Ethics of Liberty* for the first time several years before its initial publication, and mistakenly thought I knew the book well, rereading it has punctured my complacency. Rothbard is much more consistent and rigorous than even I had imagined.

One illustration must here suffice. As even Macaulay's schoolboy knows, Rothbard grounded his political ethics on the principle of self-ownership: each person rightfully owns his or her own body. Few libertarians would dissent; but few if any have seen the implications of this principle so clearly as Rothbard.

* New York University Press, 1998.

To many libertarians, freedom of contract is the be-all and end-all. As Rothbard notes, unlimited freedom of contract, far from being a consequence of self-ownership, in fact contradicts it. Given self-ownership, and acquisition of property through “mixing one’s labor” with unowned property, of course, one may enter freely into all sorts of agreements with others.

Unfortunately, many libertarians, devoted to the right to make contracts, hold the *contract* itself to be an absolute, and therefore maintain that any voluntary contract whatever must be legally enforceable in the free society. Their error is a failure to realize that the right to contract is strictly derivable from the right of private property, and therefore that the only *enforceable* contracts . . . should be those where the failure of one party to abide by the contract implies the theft of property from the other party. (p. 133)

You cannot then, sell yourself into slavery. You can voluntarily submit to the will of another; but, should you change your mind, no legal force can compel you to obey another’s bidding. Why not? Contract, to reiterate, does not stand as an absolute: only what fits together with self-ownership can be enforced. You can only give away your property, not yourself.

So far, I suspect, most libertarians would follow Rothbard. (Nozick, if I have understood him, would not.) Once you think about a contract to enslave yourself, unlimited freedom of contract loses its surface plausibility. But Rothbard goes further; and here the immense force of his systematic consistency emerges.

Rothbard uses the principle of self-ownership to solve a complicated problem of legal theory. What is the basis for enforcing a contract? According to some theorists, including such eminences as Oliver Wendell Holmes and Roscoe Pound, a contract is in essence a promise. Because you have, in return for a consideration, promised to perform some act, you may be compelled to keep your promise. A variant of this position holds that a contract leads the parties to expect behavior of a specified kind. They accordingly plan their own actions and suffer loss if their expectations are disappointed. To help ensure that expectations are met, contracts may be enforced.

Rothbard easily dispatches these theories. Both contract-as-promise and contract-as-fulfilled-expectation negate self-ownership. You may alienate only your property, not your will. Rothbard draws the drastic, though

strictly logical, consequence that no promise as such can be enforced. Every legally binding contract must involve a transfer of titles between the parties at the time the contract is made.

Our author's conclusion follows from his premise; but why accept the axiom of self-ownership? Here once again I found my rereading instructive. I had, I imagined, the essence of Rothbard's argument firmly in mind. He argues that all societies confront three alternatives: each person owns himself, some people own others, or each person owns a part of everyone else. (Are these alternatives mutually exhaustive? Variants and combinations of the second and third may readily be devised, but these require no change in the fundamentals of Rothbard's argument.)

So far, so good. But then I went wrong. I was inclined to think that Rothbard next resorted to moral intuitions. Isn't it obvious that each person should own himself and that slavery must be rejected?

Rothbard's actual argument is much more subtle and complex than the sketch embedded in my mind. He relies heavily in his defense of self-ownership on a point of fact. Everyone in reality is in control of his own will. If I obey another, I must always make the decision to do as he wishes; and the threat of violence on his part should I follow my own course leaves the situation unchanged. I must decide whether to accede to the threat.

"So what," you may say.

"Even if Rothbard is right that you cannot, in some sense, alienate your will, how does he get to the conclusion he wants? From the fact that you control your own will, how does the ethical judgment follow that you ought not to threaten violence against another self-owner? Isn't Rothbard guilty of that dread fallacy, the derivation of an ought from an is?"

To our imagined objector, Rothbard would demur. He does indeed derive an ought from an is, but he denies that he is guilty of fallacy. Instead, he maintains that ethical principles follow from the nature of man. Because man has free will, it does indeed follow that he ought not to be coerced by others. (Unless of course he initiates violence: then, Rothbard holds, one may respond with all necessary force. "Tolstoyan" is not, in our author's vocabulary, a word of praise.)

Is Rothbard right? If he is, he has overthrown the dominant way of doing moral philosophy today. In making his case, Rothbard displays his remarkable scholarly ability to extract just what he needs from a vast array of sources. The works of little-known Aristotelian philosophers, e.g., John Wild and

John Toohey, S. J., figure to great effect as Rothbard builds his argument. (In conversation, Murray often spoke of his admiration for Toohey's work.)

Rothbard bases his system on self-ownership and defends that principle through an ethics of natural law. But it is not only in the foundation and consistent elaboration of his system that he displays his dialectical skill. I was again and again amazed, as I went through the book, how often Rothbard anticipates the objections of critics.

If you may acquire unowned property through Lockean labor mixture, does this not unfairly bias matters in favor of the first possessor? Imagine a group of shipwrecked sailors swimming toward an uninhabited island. Does the first person to reach the island acquire it? Can he then refuse entry to his shipmates, unless they pay exorbitant rents to him? If he can, has not something gone wrong with the system, supposedly ironclad in its logic?

Not at all. Rothbard easily turns aside the objection.

Crusoe, landing upon a large island, may grandiosely trumpet to the winds his "ownership" of the entire island. But, in natural fact, he owns only the part that he settles and transforms into use. . . . Note that we are not saying that, in order for property in land to be valid, it must be *continually* in use. The only requirement is that the land be once put into use, and thus become the property of the one who has mixed his labor with, who imprinted the stamp of his personal energy upon, the land. (p. 64)

We may imagine another objector at this point. Suppose Rothbard can handle the objections of Georgists and others that first possessors can in his system hold to ransom all others. Is not his system, however logical, of no practical relevance? Most property titles today do not stem by a clear line of transmission from a Lockean first owner. On the contrary, would we not find that many land titles go back to acts of violent dispossession? Perhaps even as we speak we trespass on land originally owned by Indian tribes. Would not an attempt to put Rothbard's system into practice quickly lead to chaos? (I have heard this objection pressed with characteristic force by Gordon Tullock.)

As usual, Rothbard has thought of the objection himself. He answers that the burden of proof lies on someone who disputes a land title to make good his claim. If he cannot do so, the present possessor owns his land legitimately. Absent a clear proof by the objector that land has been forcibly wrested from

him or his ancestors, the current possessor's claim holds good. Either he or his ancestors acquired the land through labor mixture, for all anyone can show to the contrary.

But what if the objector can make good his claim? Then Rothbard is entirely prepared to follow out the implications of his system. Many landowners in Latin America and elsewhere would in a Rothbardian world find themselves in very much reduced circumstances.

[A] *truly* free market, a truly libertarian society devoted to justice and property rights, can only be established there [in the underdeveloped world] by ending unjust feudal claims to property. But utilitarian economists, grounded on no ethical theory of property rights, can only fall back on defending whatever status quo may happen to exist. (p. 70)

The brief reference to utilitarian economists suggests another aspect of Rothbard's thoughts, one that Professor Hoppe has insightfully stressed. Our author was keen to distinguish his thought from alternative defenses, in his view mistaken, of the free market. One of his criticisms particularly interested me, for personal reasons.

For many years, Murray in a good-natured way teased me for undue partiality to Robert Nozick. I foolishly resisted his counsel, though I eventually came to see the light. After renewed attention to his chapter on Nozick, I am at a loss to understand why it took me so long to change my mind.

As Rothbard notes, a key part of Nozick's argument for the state rests on a crucial equivocation. Rothbard contends that ideally, protective services should be provided by competing private protection agencies. A compulsory monopoly agency, i.e., a government, is neither necessary nor desirable.

Against Rothbard, Nozick deploys an argument that at first sight seems devastating. Grant Rothbard his private market anarchism, Nozick suggests. Then, in a way entirely consistent with Rothbard's system, a monopoly agency will spring up. Rothbard's system defeats itself.

Rising to the challenge, Rothbard locates a crucial weakness in Nozick's argument. Nozick concerns himself greatly with cases in which protection agencies clash over the appropriate procedures to use in trials of criminals. One outcome that Nozick canvasses is an agreement among the agencies on an appeals court.

So far Nozick is on the right lines, and Rothbard himself lays great stress on the need for agreements of exactly this kind. But, according to Nozick,

agencies that so come to agreement have coalesced into a single agency. Rothbard finds in this step neither rhyme nor reason: do disputants who agree to arbitration by that fact constitute a single firm? Nozick has “refuted” Rothbard through the use of an arbitrary definition.

I have been able to address only a few topics in this rich and thoughtful book. In doing so, I fear that I have tried my readers’ patience by too frequent reminiscence. But this book has meant a great deal to me.

Murray N. Rothbard *e L'anarco-Capitalismo Americano**

ROBERTA MODUGNO

Rothbard's Intellectual Power

December 1, 1999, *Mises Review*

ROBERTA MODUGNO has analyzed the work of Murray Rothbard from the standpoint of her professional specialty, the history of political thought. (She is a student of the distinguished Italian philosopher and classical liberal Dario Antiseri, by whose thought she has been greatly influenced.) By approaching Rothbard in this way, she casts new light on a vital question. What is the true nature of classical liberalism? What are the underlying principles of this key element in European thought?

As Modugno shows, Rothbard's doctrine of anarcho-capitalism responds to these questions in a way that finds considerable support within the liberal tradition. One may at first be inclined to dismiss Rothbard as an extremist—can he really think we can do away with government altogether?—but if we are at all in sympathy with the tenets of classical liberalism, escape from Rothbard's conclusions is difficult.

Modugno shows that Rothbard's anarchism emerges by combining two main claims of classical liberalism, one methodological and one ethical. First, classical liberals have maintained that social and political entities cannot act apart from the individuals who compose them. The state is not, as

* Rubbettino, 1998.

Hegel said, “the march of God in the world”: it is no more than individuals who interact socially in certain ways. As our author notes: “Society, the government, the nation, are only abstract auxiliary concepts and one must be careful not to confuse abstractions with reality” (p. 122, translation mine).

Not only is methodological individualism a precept of classical liberalism, it is quite obviously true. Few indeed would today assert, with Mises’s old nemesis Othmar Spann, that individuals are mere precipitates from antecedently existing social wholes. The “We” stems from a union of “I’s,” not, as Spann had it, the other way round.

But, granted the truth of the individualist premise, what political conclusions follow from it? Would not everyone, except for the most benighted collectivist, accept our methodological principle? No doubt; but, as Modugno abundantly shows, when this premise joins forces with another basic premise of classical liberalism, radical results ensue.

No one can deny that a basic tenet of at least one central variety of classical liberalism is self-ownership. Each person owns himself: he may accordingly acquire unowned property by mixing his labor with it. Further, if each person owns himself, it is wrong for anyone to initiate force against someone else. To do so violates the victim’s right of self-ownership.

This principle, as Modugno succinctly makes clear, is no invention of Rothbard’s but derives from John Locke, unquestionably a father of classical liberalism. Nevertheless, it is Rothbard’s merit to have seen, more clearly than any previous writer, what follows from accepting it. As our author says, “the Lockean concept of property in oneself can be considered the keystone of the Rothbardian intellectual edifice” (p. 61).

If each person owns himself, and no one may aggress against another, no scope for involuntary government remains. Once stated, the conclusion seems obvious; but prior to the individualist anarchists of whom Rothbard is the most thoroughgoing and consistent, this conclusion had escaped notice.

An objection at once arises. Would society not be utterly impossible without a state? Would not an individualist anarchist community quickly lapse into a Hobbesian predicament where life is “nasty, brutish, and short”? Rothbard of course did not think so; and our author carefully delineates how Rothbard thought an anarchist society might provide itself with such essentials as defense and police protection.

But Rothbard’s case for anarchism did not rest principally on the contention that an anarcho-capitalist society supplies these essentials better than

any alternative; this claim is merely supplementary. As Modugno emphasizes, Rothbard's claim rests much more on natural law than on utility. A system of Lockean property rights, and the anarchism that goes with it, commands our acceptance because it follows from the self-ownership principle. Modugno notes that Rothbard's criticism of "the utilitarian tradition of Bentham and Hume" lies principally in his insistence on "the question of the legitimate origin of private property" (p. 64). For Hume and Bentham utility demands that property rights be stable, but the justice of the initial distribution does not matter. For Rothbard, it is of vital concern.

Given the principle of self-ownership, why need Rothbard also insist on methodological individualism? Absent the latter, his system would stand vulnerable to this objection: even if individuals own themselves, what if there also exist non-individual bearers of rights? Perhaps their rights limit the liberties of individuals to acquire property. The individualist postulate ensures that we need not worry about such chimeras; thus a potential danger to Rothbard's system is averted.

Self-ownership leads, if carried to its logical conclusion, to anarchism. But is this not a drastic step, to be avoided at almost all costs? Must we not revisit either our initial premise or the validity of our deductions from it? Rothbard, to the contrary, welcomed the radical conclusion to which his argument led. Given the view of the state in the tradition Rothbard adopted, his attitude should occasion no surprise.

In the view in question, the state is, in Albert Jay Nock's phrase, "our enemy." Far from being an indispensable means to survival, the state acts as an impediment to social cooperation. Modugno cites in this connection not only Nock, Lysander Spooner, and Benjamin Tucker, but also Thomas Paine. The great American revolutionary maintained "that the spontaneous interaction of individuals in society suffices to bring about order and harmony" (p. 10). (Unlike Spooner, Tucker, and Rothbard, Paine shrank from full-fledged anarchism.)

Here is where we stand. An intuitive plausible ethical principle, self-ownership, supports individualist anarchism, since an individual cannot be bound involuntarily to a government without his consent. Our principle receives support from a commonsense principle of method, and our conclusion seems less paradoxical when placed within an anarchist tradition of viewing the state as a predator.

Nevertheless, paradoxical it remains; and some writers, sympathetic to Rothbard's starting point, have attempted to avoid his farreaching conclu-

sions. Foremost among these is Robert Nozick; and one of the highlights of the book is our author's brief but decisive examination of his claims.

As Nozick sees matters, individuals in a society that acknowledges self-ownership would find it both rational and moral to "back into" a minimal state. With the complicated details of Nozick's derivation, we are not here concerned. Suffice it to say that he thinks a dominant protection agency would suppress competing agencies that sought to impose risky decision procedures on its clients. As a result, the dominant agency would become, *de facto*, the sole effective agency exercising force—in other words, a state.

Modugno locates a crucial and eminently contestable aspect of Nozick's argument. The picture of protection agencies battling to eliminate each other hardly comports with the general respect for self-ownership that Nozick introduces as a premise. "Thus, the rationale for this prohibition [of risky decision procedures] is based on a Hobbesian conception of society" (p. 93). Would not protection agencies that truly respected Lockean principles have to seek agreement over a dispute about proper legal procedures, rather than resort to force? And in this case, would we ever arrive at a minimal state?

Our author discusses the principles of an anarcho-capitalist society in considerable detail. Owing to considerations of space, I shall confine myself to one example. Rothbard sharply distinguishes between morality and legality. Only action that involves force or fraud may be dealt with by coercion. To respond, say, to a threat of blackmail with force violates the blackmailer's right to freedom from aggression.

People must, then, on Rothbard's principles respond to non-invasive immoral actions without using force. But can immorality be adequately combated under this limitation? Our author manifests concern for certain groups who *prima facie* stand vulnerable to the depredations of others. Rothbard's requirement that immoral behavior, unless itself violent, be met only peacefully, she writes, "presents no small problem for those concerned with the care of the weak, especially children" (pp. 67–68).

Does the Rothbardian restriction unacceptably permit exploitation of the vulnerable? Our author does not herself offer an explicit response: she confines herself to a brief discussion by way of contrast with Rothbard, of the views of Karl Popper and Antiseri.

Rothbard would, I think, in answer to her query advert to his jaundiced view of the state. If our concern is to protect the vulnerable, can we rely

on the state to enforce morality? History, he would say, gives no reason to think the state can act effectively in this area—quite the contrary. Popper and Antiseri, one gathers, size up the risks and costs of state intervention otherwise. Roberta Modugno has written a remarkably thorough and incisive account of Murray Rothbard's thought. She has shown, better than anyone else, Rothbard's place in the classical liberal tradition. And that is no small achievement.

The Quest for Cosmic Justice^{*}

THOMAS SOWELL

Wrestling Reality from Rawls

April 1, 2000, *Mises Review*

THOMAS SOWELL IS AN EXCELLENT ECONOMIST, but unfortunately this is not enough for him. He imagines himself a philosopher and an expert on foreign policy as well. As he strays farther and farther from the area he knows, he loses his footing. By the time he reaches his account of the origins of World War II, his book becomes useless.

But he is a fine economist. In a few brief and brilliant pages, he demolishes Lenin's theory of imperialism. Marx claimed in *Das Kapital* that workers in the advanced industrial countries would rise in rebellion as the capitalist juggernaut, unable to cope with cycles of depression, reduced them to ever greater misery.

Marx's predictions were of course belied by the facts, but so trivial a matter did not disturb the faithful. Lenin, following the British radical J. A. Hobson, discovered an escape from destruction for the Marxist system. The harried capitalists could stave off disaster by investing their surpluses abroad. Overproduction, at least for a time, would no longer menace the economy, and capitalist and worker in the developed countries could happily join in exploitation of the backward nations.

Our author demolishes this farrago with a devastating point. The advanced capitalist countries directed the bulk of their foreign investment to other advanced countries.

^{*} *The Free Press*, 1999.

The idea that the non-industrial world offered a safety valve outlet for the “surplus” capital of the industrial world cannot stand up if the industrial nations are investing primarily in each other. This would be adding to their economic and social pressures rather than relieving them, if the Marxian theory of excess capital accumulation were correct. (p. 125)

I have devoted space to this topic in order to show Sowell at his best. It is always my policy to emphasize an author’s strong points. The bulk of this book addresses other themes, however; and our author does not always fare so well. Fortunately, Professor Sowell’s principal concern in the book stands sufficiently close to economics for his treatment to be valuable.

Professor Sowell has rightly identified a central preoccupation of current moral philosophy. People vary widely in wealth and access to the good things in life; and these inequalities, theorists such as John Rawls inform us, are undeserved. Bill Gates has vastly more money than I; but this does not stem from superior moral merit on his part.

Quite the contrary, he has been lucky and I unfortunate. He does not deserve to benefit from the advantages that nature and nurture have together given him. (Incidentally, would it not be very self-serving of me to adopt this convenient explanation for my failure to do as well as I would like?) The principal task of social policy, Rawls and his followers tell us, is to remedy the unfair results of the natural lottery.

Professor Sowell declines to challenge this position head-on. Quite the contrary, he finds in it considerable merit, albeit only as an ideal. He informs us that “[w]hile a few conservative writers here and there have tried to justify inequalities on ground of ‘merit,’ most have not” (p. 4). Virtually everyone admits that inequality, as such, is undesirable and needs justification. But, our author maintains, egalitarians like Rawls make a crucial error. In their zeal to eradicate the malign effects of inequality, they go too far. They strike against inequalities that result from “the way the world is” rather than from collective social decision.

[T]his collective action is not limited to correcting the consequences of social decision . . . [but] seeks to mitigate and make more just the undeserved misfortunes arising from the cosmos, as well as from society. It seeks to produce cosmic justice, going beyond strictly social justice, which becomes just one aspect of cosmic justice. (p. 5)

Given that undeserved inequality is bad, why should the extension of social to cosmic justice be resisted? Why not try to counteract inequality whatever its source? Here Sowell's skill as an economist shows to good advantage.

Economists are trained to consider choices among limited alternatives. Not all goods can be obtained simultaneously; and the "opportunity cost," the value of the best alternative not chosen, must always be kept in mind. Further, as F. A. Hayek famously stressed, social policies often have untoward consequences that policymakers do not intend.

Our author applies these considerations to the egalitarian prescriptions, often with fatal effect. Suppose, e.g., that a law forbids delivery companies from refusing to serve neighborhoods with high crime rates. Is it not "unfair," in the cosmic sense, that law-abiding residents of these areas do not get equal treatment?

Perhaps so; but those who wish to compel equal access neglect a vital fact.

We cannot simply "do something" whenever we are morally indignant, while disdaining to consider the costs entailed. . . . Once we begin to consider how many deliveries are worth how many dead truck drivers, we have abandoned the quest for cosmic justice and reduced our choices to the more human scale of weighing costs versus benefits. (p. 8)

Sowell is on the mark; likewise important is his stress on the importance of differences in pay to promote greater productivity. But his acquaintance with philosophy often proves inadequate to the job. He rightly takes John Rawls, that most influential of contemporary social philosophers, as his principal target; but his grasp of Rawls's view is problematic.

It is simply false that in Rawls's theory,

no matter how much any given policy might make vast millions of people better off, any small fraction of people at the bottom were in effect to have a veto over that policy. Even if those at the bottom were not made any worse off, no one else could be allowed to become better off without their participation. (p. 82)

Rawls says just the opposite of what our author attributes to him: "It is clearly conceivable," he writes, "that the least advantaged are not affected one way or the other by some changes in expectations of the best off although these changes benefit others" (John Rawls, *A Theory of Justice*, Harvard University

Press, 1971, p. 82). In this circumstance, Rawls modifies his difference principle to take account of just the inequalities he is alleged to ignore.

But why does it matter if Sowell has neglected an epicycle of Rawls's theory? Am I not, in my usual fashion, grasping any stick with which to flail an author consigned to my tender mercies?

Our author's misleading account of Rawls is symptomatic of a much larger failing. Professor Sowell seeks to avoid direct engagement with philosophy by adducing certain principles of economics which, he alleges, these theories neglect. But Rawls could reply to him:

I don't ignore the principles you correctly emphasize. Incentives are vital, just as you say. The difference principle in fact makes room for incentives. More generally, my theory properly balances concern with productivity with the demands of egalitarian principle.

In my view, the Rawlsian response to Sowell fails. But Sowell lacks the resources to show this. To do so, he would need to confront directly the egalitarian principles he detours around. Does justice ideally demand equality? Are differences in abilities among people in some sense unfair? Unless you are willing to face these questions directly, it is open to the egalitarian to respond in the way I have indicated. Why should we not temper economic efficiency with measures to correct "unfair" inequalities? Rothbard and Nozick have attempted such a confrontation: they deny that the inequalities Rawls complains about are unfair. Sowell ignores their work and thus leaves his case against cosmic justice incomplete.

If our author were to flesh out his case in the way suggested, he would in my judgment be vindicated: Rawls and his followers would indeed subject the economy to crippling restraints in pursuit of egalitarian dogmas. Professor Sowell's sin, then, is venial. He arrives at a correct conclusion without adequate basis.

Unfortunately, the same cannot be said of our author's remarks about foreign policy. In pursuit of his theme that cosmic visionaries promote social disaster, our author offers us an account of the origins of World War II. As he tells the tale, realists such as Winston Churchill recognized in the 1930s that British national security depended on a massive arms buildup. By contrast, pacifists and appeasers, foremost among them Neville Chamberlain, sought to remedy the injustices of Versailles. These cosmic questers

disdained armaments. Like the egalitarians previously considered, they ignored the costs of their principles of justice. In doing so, they almost lost the world to Hitler.

Professor Sowell has ignored the detailed study of his Chicago School colleague, Burton Klein. In his *Germany's Economic Preparations for War* (Harvard University Press, 1959). Klein showed that British armaments were in many categories superior to Germany's. Churchill, apparently accepted by Sowell as a supreme source of wisdom, grossly inflated German rearmament statistics. Further, Sowell's account of Chamberlain is at best one-dimensional. Was Chamberlain's guarantee to Poland in 1939 the act of a starry-eyed pacifist? Our author shows no acquaintance with works by John Charmley and Simon Newman which paint a very different picture of the British prime minister from the caricature he offers.

There is, further, a deeper failing in Sowell's account of the war's onset. He might respond to me that some historians support the interpretation he has given. Have I not begged the question against him by citing only scholars who oppose him?

But that is just the point. Sowell could have made a case for his view; in fact he did not. He shows no acquaintance with the historical literature on prewar diplomacy. Instead, he merely invents a narrative that backs the position he has already adopted. Our protestor against those whose visions lead them to ignore reality is not above a little confabulation of his own.

The Rise and Decline of the State^{*}

MARTIN VAN CREVELD

Deliverance

July 1, 2000, *Mises Review*

MARTIN VAN CREVELD'S OUTSTANDING BOOK traces the origin, growth, and decline of what Nietzsche termed "that coldest of all cold monsters, the state." By "state," our author means something more limited than do contemporary libertarians (and Max Weber). To the latter, the state is a person or group exercising a monopoly over coercion in a territory.

Van Creveld has something less broad in mind.

The state . . . is an *abstract* entity which can be neither seen, nor touched. The entity is not identical with either the rulers or the ruled . . . it is a corporation in the sense that it possesses a legal *persona* of its own, which means that it has rights and duties and may engage in various activities *as if* it were a real, flesh and blood, living individual. . . . Understood in this way, the state—like the corporation of which it is a subspecies—is a comparatively recent invention. (p. 1)

On the surface, this sounds like a topic of interest only to legal and political theorists: why should the rest of us care about it? As our author makes clear, the rise of the state in his sense has had disastrous consequences for

^{*} Cambridge University Press, 1999.

human life and liberty. Any effective movement for a free society must fully understand this enemy.

Before the seventeenth century, political rule was personal. The Greek city-states and the Roman Republic most closely approached the modern distinction between public and private affairs; but even here, e.g., “in Rome and possibly elsewhere, each time a levy [for troops] was held the men had to be sworn in afresh—not to the Republic, it should be noted, but to the person of the commanding consul” (p. 30).

One might at first sight think the various systems of personal rule disastrous for individual liberty and welcome their demise. If personal rule “neither was able, or indeed attempted, to guarantee the security of either the life or the property of individuals” (p. 54) should we not welcome the state?

Personal rule was far from ideal, since people found themselves totally at the mercy of the rulers. Two illustrations, taken from the end of the pre-state period, show how rulers viewed their subjects.

The frequent comparison [between subjects] . . . and a flock of sheep—owned as the latter are by their shepherd and raised for his benefit—speaks for itself. It was only after ascending the throne in 1660 that Louis XIV arrived at the point where he could distinguish between his own glory and the good of the *état* that he headed. (p. 127)

I should myself be inclined to a more nuanced view of Louis XIV—by the end of his reign Louis doubted whether he had the right to impose new taxes. But van Creveld’s main point cannot be challenged: in some sense, subjects belonged to the King. (Incidentally, Louis XIV ascended the throne in 1643, not 1660.)

As one might expect under a proprietary notion of rule, warfare also bore a strongly personal character.

Rulers such as Charles V, Francis I, and their contemporaries fought each other to determine who would rule this province or that. The personal nature of their quarrels is indicated by the fact that the Emperor repeatedly offered to fight his rival in a duel. (p. 159)

Surely, one might think, nothing could be so bad as personal rule of this sort. And yet in medieval and early modern Europe, more scope for individual freedom than in modern times existed. The power of a monarch to dominate

his subjects met checks from every side. Local lords, independent or semi-independent towns, the Emperor, and the Church could be played off against the king, and against one another, to give the subject refuge from oppression. Further, premodern rulers lacked the skill of their latter-day successors to extract resources from their subjects. Governmental inefficiency is all to the good, so far as the cause of liberty is concerned.

Our author contends that a twofold process disrupted the premodern conception of rule. First, the notion of the state as an abstract entity apart from the ruler developed. According to the leading theorist of the new notion, Thomas Hobbes, the state's law knew no bounds: it need recognize no competing source of authority, whether Church or Emperor.

"Hobbes deserves the credit," van Creveld remarks,

for inventing the "state" . . . as an abstract entity separate both from the sovereign (who is said to "carry" it) and the ruled, who, by means of a contract among themselves, transferred their rights to him. . . . Bound by no law except that which he himself laid down (and which, of course, he could change at any moment), Hobbes's sovereign was much more powerful than . . . any Western ruler since late antiquity. (p. 179)

Incidentally, our author sees Machiavelli as a premodern figure, not the herald of a new age. He still occupied himself with the personal.

As the new notion of state and sovereignty took hold, the importance of the ruler as a person declined. Sometimes, as with Louis XV, the King took little part in affairs of state. He spent "almost half of his time hunting and the rest with Madame de Pompadour" (p. 138). Even a monarch who took a very active role in government, Frederick II of Prussia, described himself in 1756 as "the first servant of the state" (p. 137).

Once more, though, the question arises, what is so bad about regarding the state as an abstract entity? To grasp van Creveld's answer, one must consider the second part of the twofold process he describes. In the early modern period "the relationship between . . . the state and its citizens was based not on sentiment but on reason and interest" (p. 190). Under this conception, a citizen would meet undue demands with reluctance or outright resistance.

If, however, emotion could be mobilized for the new abstract entity, what our author calls a “Great Transformation” was in the offing. Jean Jacques Rousseau acted as the prime theorist of the new order. In his view, everyone must be subordinated to the “general will” which embodied one’s *patrie* or community. “Patriotism—the active submission to, and participation in, the general will—becomes the highest of all virtues and the source of all the remaining ones” (p. 192).

With Rousseau, though, we have not yet reached the modern state in its culminating form. He took the *patrie* to be local: but when, after the French Revolution, various writers identified the general will with the nation, the process that led to disaster was complete.

How so? Let us see what we have amassed. We have an abstract entity, staffed by a professional bureaucracy, to which all citizens in a nation had to give themselves without limit. And what was the purpose of the new entity? War, fought with unprecedented manpower and armaments and without restraint.

To accomplish its purpose, the state gradually seized total control of the monetary system. (Van Creveld is, with Murray Rothbard, one of the few historians who sees the centrality of this control.) In the book’s central passage, our author notes that the

states having finally succeeded in their drive to conquer money, the effect of absolute economic dominance on the states themselves was to allow them to fight each other on a scale and with a ferocity never equalized before or since. . . . The concentration of all economic power in the hands of the state would not have been necessary, nor could it have been justified, if its overriding purpose had not been to impose order on the one hand and fight its neighbors on the other. (pp. 241–242)

A seemingly recondite concept, the state as an abstract entity took on bodily form and was revealed, in the world wars of the twentieth century, to be an all-devouring monster. Of course, the blessings of the new order had to be spread beyond Europe. Most of Asia, Africa, and Latin America proved no match in the eighteenth and nineteenth centuries for the newly armed Leviathans, and van Creveld tells the story of imperialism in a grisly chapter. In the book’s best-written passage, our author remarks that the imperial

system was cheap to run, the number of white administrators usually being only one per 70,000–100,000 natives; as Winston Churchill . . . might have said, never did so few keep down so many with the aid of so little. (p. 319)

Are we doomed to sacrifice our lives to these Moloch states until civilization is destroyed? Van Creveld thinks not: he maintains that the state has now entered a period of decline. The horrors of full-scale nuclear war have deterred states from total conflict; and, with the demise of massive wars, the state has lost its *raison d'être*. Further, financial exigencies have almost everywhere mandated cutbacks in the welfare states.

Our author, surprisingly, does not view the collapse of the state as altogether desirable. He writes that

on balance, the dangers and the opportunities are probably about equal. Neither is the retreat of the state to be regretted, nor will tomorrow's world be either much better or much worse than the one which is even now fading into the shadows. (p. 421)

Most readers, I suspect, will think our deliverance from the cancer of the state, if indeed van Creveld is right about this, grounds for rejoicing.

Mr. van Creveld's book displays great learning over many fields besides the author's specialty of military history. I note a few questionable points: It is certainly false that in Christianity, "God, after all, is believed to possess no fewer than three different bodies" (p. 178). The *pontifex maximus* was not always the chief authority over Roman religion (p. 27). In the United Provinces, there was no single position of *Stadhouder*. The office was provincial, but the House of Orange took them all over (p. 116).

*If You're an Egalitarian, How Come You're So Rich?**

G. A. COHEN

The Mythologies of Marxism

December 1, 2000, *Mises Review*

COHEN HAS A GREAT PHILOSOPHICAL VIRTUE. He constantly raises major difficulties for the bad ethical and political doctrines that he professes. He is a Marxist of sorts, although there is not much left of that system after Cohen has finished with it. Classical Marxism, Cohen makes clear, argued for egalitarianism and socialism on an entirely different basis from most contemporary advocates of those views. Today, egalitarians like Rawls and Dworkin claim that morality requires their position: a just society would, at the very least, allow much less inequality than now exists in the United States.

Marx's appeal was not to morality, but to self-interest. Capitalism would inevitably develop into a system in which almost everyone was a member of the proletariat. Since workers under capitalism surrender more and more of what they produce to capitalist exploiters, they do not look with favor on the existing economic order. Happily for them, salvation lies at hand. A socialist economic system, in which workers replaced capitalist entrepreneurs, would not only end exploitation. It would also lead to economic abundance. In a socialist economy, "the free development of each would be the condition for

* Harvard University Press, 2000.

the free development of all.” This paradisiacal state would ensue not because people had changed their nature and become totally altruistic. Quite the contrary, so much would be produced that no occasion for major conflicts would arise.

Cohen aptly points out a simple fact that topples this entire edifice.

The proletariat did, for a while, grow larger and stronger, but it never became . . . “the immense majority,” . . . and it was ultimately reduced and divided by the increasing technological sophistication of the capitalist production process, which had been expected to continue to expand the proletariat’s size and augment its power. (p. 104)

Not only was Marx in error about the size of the proletariat, but his mistake had disastrous consequences. Because Marx thought that the collapse of capitalism and its replacement by socialism was inevitable, he spent almost no time thinking about the nature of a socialist order. If socialism was inevitable, such speculation was futile and Utopian.

Cohen terms Marx’s line of thought the “obstetric motif.” Echoing Mises, Cohen notes that socialists were totally unprepared about what to do after the revolution.

If you think of politics obstetrically, you risk supposing that what Lenin called “the concrete analysis of a concrete situation” will disclose, transparently, what your political intervention must be, so that you do not expect and therefore do not face the uncertainties and hard choices with which a responsible politics must contend.” (p. 76)

I would be jumping out of character if I did not inject a note of criticism. Cohen does not ask himself how Marx and his many followers can ever have believed that socialism generates abundance. Mises’s calculation argument of course shows that socialism collapses into chaos. But altogether aside from this, the Marxist position is transparently silly.

In Marx’s view,

capitalist competition abolishes itself by creating enterprises of implicitly social character in which the capitalist becomes obsolete, so that little but his removal is needed to establish

socialism. It is not a great exaggeration to say that, in the view of Marx and Engels, socialism is what capitalism has made of itself, minus the capitalist class. (p. 48)

Here precisely is the silliness. Why should anyone think that replacing capitalists by workers, with the economic system otherwise substantially the same, will dramatically increase productivity? The claim seems entirely arbitrary and based on nothing.

Cohen, to repeat, abandons socialist inevitability. In its place he offers “normative political philosophy.” Here once more, his conclusions often can be turned to the advantage of the free-market position.

More specifically, Cohen does not here advance a defense of egalitarianism. Instead, he powerfully argues that egalitarianism demands more from its advocates than is commonly recognized. John Rawls, e.g., has a system that offers equality on the cheap, but Cohen is not buying.

Rawls takes equality of resources as his baseline, from which any deviations must be justified. But such justifications are ready-to-hand. Suppose inequality helps the least well-off class in society. Then Rawls’s famous “difference principle” might allow inequality to help the poor through incentives. The talented, able to attain higher-than-average incomes, might generate more resources for redistribution to the needy. (Further discussion may be found in the review in this volume of Rawls’s *The Law of Peoples*.)

In Cohen’s view, the difference principle, if correctly understood, “implies that justice requires (virtually) unqualified equality itself, as opposed to the ‘deep inequalities’ in initial life chances with which Rawls thinks justice to be consistent” (p. 124).

Cohen anticipates that Rawlsians will reject his argument. Rawls holds that justice is the “first virtue of social institutions,” not the sum and substance of morality. The scope of justice is confined to what Rawls terms the “basic structure” of society—its constitution and fundamental legal institutions. Within the confines of the basic structure, individuals who resolutely pursue self-interest do not act unjustly.

Cohen finds unconvincing this sharp dichotomy between basic structure and individual actions. Surely whether a society is just depends in part on how family life takes place within it. If families in a society are rigidly hierarchical, can the society maintain a regime of egalitarian justice?

Our author thinks it cannot.

Family structure is fateful for the benefits and burdens that redound to different people. . . . Yet Rawls must say, on pain of giving up the basic-structure objection, that (legally uncoerced) family structures have no implications for justice . . . since they are not a consequence of the formal coercive order. But that implication of the stated position is perfectly incredible. (p. 139)

The demands of equality press even more insistently than I have so far indicated. Suppose someone believes that justice demands equality of wealth, or at least more equality than now prevails in capitalist economies. Why should he not feel obligated to give away a large share of his own money to the poor? Cohen easily dispatches some excuses not to do so. If it is said that a single person could have only a negligible effect in ending poverty, Cohen draws a distinction. True enough, one person cannot end altogether poverty in a large society. But particular needy individuals can certainly be helped through large donations. Cohen does not unequivocally conclude that rich socialists must divest themselves of most of their wealth; but he shows that those who seek to keep both their money and their egalitarian political convictions have a problem on their hands.

Why should those of us not inclined to egalitarianism care about this? As it seems to me, Cohen has generated an argument that may readily be adapted to the defense of the free market. If professed egalitarians realize the all-embracing character of their principle, will not many of them draw back? Cohen has, by showing where equality leads, provided a *reductio ad absurdum* of the position he wishes to support.

Our author gives aid and comfort to his ideological enemies on yet another front. In a famous review of Robert Nozick's *Anarchy, State, and Utopia*, Thomas Nagel

claimed that there are good grounds for state redistribution of the holdings of those who want to contribute, because a person who is willing and, indeed, eager to contribute through taxation might reasonably be unwilling to give off her own bat. (p. 169)

In brief, you think you should contribute to help the poor but find it too hard to give up your money, when you are free to withhold it. Hence you

really want to be coerced. In response, Cohen makes a simple point that was apparently too much for Nagel to fathom:

Nagel appears to ignore the individual's ability to avoid such recurrent difficult voluntary decisions. I can bind my own will, once and for all, or once in a long while, by signing an appropriate banker's order. (p. 171)

With enemies like Cohen, our friends can increase their efficiency.

The Law of Peoples^{*}

JOHN RAWLS

Rawls Unravels Himself

December 1, 2000, *Mises Review*

FOR ONCE, John Rawls has managed to say something sensible. When Rawls published *A Theory of Justice* in 1971, he soon found himself the most famous political philosopher in the world. With a few notable exceptions, e.g., Antony Flew and Murray Rothbard, critics declared his book a masterpiece. But a nagging worry threatened to undermine Rawls's carefully-built edifice. Like most leftist-inclined academics, Rawls professes egalitarianism: but his sort of equality has a distinctive twist to it. So long as inequality benefits the least well-off class in society, Rawls's notorious "difference principle" interposes no barrier to it.

Nearly everyone, it appeared, had what he wanted. The liberal academic elite, its conscience eased by Rawls's commitment to the worst-off, could rest easy. Its members would have to surrender only a small part of their wealth. Faced with lessened incentives, strict equality would hurt the poor. Who except supporters of the free market could challenge Rawls's subtle balancing act?

All was not what it appeared. So long as we restrict ourselves to a prosperous society, e.g., the United States, Rawls's low-cost equality does not at once collapse. Since even the worst-off in American society are not too badly off, redistribution makes only limited claims. But what if we extend our reach worldwide?

* Harvard University Press, 1999.

Some found this prospect ennobling; readers of this journal will recall Peter Unger, who favors massive wealth transfers of this sort. Our author could not adopt so radical a course. Were he to do so, his renown might suffer a setback. How many people really want sharply-lowered standards of life?

Rawls, accordingly, has to find an escape. The difference principle applies only within particular societies. Separate rules apply to relations between societies, or “peoples” as Rawls prefers to call them. Although he thinks that well-off peoples have a duty to assist others, this duty has strict limits.

[I]ts aim is to help burdened societies to be able to manage their own affairs reasonably and rationally and eventually to become members of the Society of well-ordered Peoples. This defines the “target” of assistance. After it is achieved, further assistance is not required, even though the now well-ordered society may still be relatively poor. (p. 111)

Why does all this matter? Why should we care whether Rawls has modified his difference principle so that it avoids unpopular outcomes? In the course of doing so, he advances some excellent arguments. His points, if extended, strike at the foundations of his own system.

Our author imagines a case in which two countries start out from roughly equal levels of wealth. One invests in industry, while the other prefers

a more pastoral and leisurely society. . . . Some decades later the first country is twice as wealthy as the second. Assuming, as we do, that both societies are liberal or decent, and their peoples free and responsible, and able to make their own decisions, should the industrializing country be taxed to give funds to the second? According to the duty of assistance there would be no tax. (p. 117)

The industrial society has, through its own efforts, outstripped its lazier rival. Why, Rawls is asking, should it have to give away its gains to those who have worked less hard? Why does the same point not apply also within a given society? Why, in other words, should those who gain through investment be required to subsidize those who do not?

One can readily construct Rawls’s reply. A society that is “liberal” or “decent” has freely decided how much to invest. Individuals within a society lack such freedom. Their status in life is, to a large degree, fixed rather than autonomously chosen. Thus, the advantages of the well-off stand subject to expropriation.

This imagined reply in turn falls before a point that Rawls himself brings out in his discussion of the “law of peoples.” Let us grant the premises of the reply that people need a certain level of resources for autonomy. Why is any redistribution above this level allowable?

Our author puts the issue well: “Surely there is a point at which a people’s basic needs (estimated in primary goods) are fulfilled and a people can stand on its own” (p. 117). Why does not an analogous point drastically limit the scope of the difference principle within a society? Why are not individuals, given their “basic needs,” on their own? (I do not—heaven forbid—myself endorse Rawls’s “assistance principle.” Rather, I wish only to emphasize its force against Rawls’s own basic system.)

The radical redistributionist is not yet ready to leave the field. Rawls takes for granted, he will say, a world composed of separate states. Why not amalgamate all societies into a single, world-embracing state? Then, Rawls’s limits on his difference principle cease to apply.

In the book’s best passage, Rawls decisively rejects worldly government.

I follow Kant’s lead in *Perpetual Peace* (1795) in thinking that a world government—by which I mean a unified political regime with the legal powers normally exercised by central governments—would either be a global despotism or else would rule over a fragile empire torn by frequent civil strife. (p. 36)

Global redistributionists, unwilling to admit defeat, will probably adduce one last argument. Some countries are much better endowed in resources than others are. Is it fair, e.g., that Saudi Arabia is much wealthier than states less endowed with oil?

Rawls finds this line of thought unconvincing. Not natural resources, but the attitudes and ideas of a people, determine its achievement. Because

the crucial element in how a country fares is its political culture—its members’ political and civic virtues—and not the level of its resources, the arbitrariness of the distribution of natural resources causes no difficulty. (p. 117)

In support, Rawls cites the view of the economic historian David Landes “that the discovery of oil reserves has been a ‘monumental misfortune’ for the Arab world” (p. 117).

Rawls's effort to halt his difference principle at society's borders fails. In slaying one set of opponents, he exposes himself fatally to another line of attack. The very points that he raises against his globalist critics strike at his own position.

In like manner, Rawls's approach to foreign policy is embedded in confusion, but patient readers may detach a valuable insight from it. Our author follows fashion in holding that democracy is the key to peace. Democratic states, he holds, do not go to war with each other.

This popular view falls before two objections. First, it holds true only if the class of democracies is sharply restricted in its members. The Athens of Pericles does not qualify, nor does the United States before 1865, since both allowed slavery. But which states are left? Rawls does not tell us; but if few states qualify, the link between democracy and peace has little force.

Further, even if democracies do not war with each other, they manage to be quite belligerent enough. Rawls is constrained to admit that democracies often are less than entirely pacific:

given the great shortcomings of actual, allegedly constitutional democratic regimes, it is no surprise that they should often intervene in weaker countries . . . or even that they should engage in war for expansionist reasons. (p. 53)

This admission of course does not induce Rawls to abandon his thesis. That is not the way of a Great Harvard Philosopher. Instead, he claims that "though democratic peoples are not expansionist" (p. 53), governments mask expansionist aims by invoking national security.

We have more here than a desperate attempt by Rawls to avoid refutation. An insight is struggling to emerge. Rawls correctly sees that in a commercial republic, people lack a key incentive to aggressions. "These people . . . are not swayed by the passion for power and glory, by the intoxicating pride of ruling" (p. 47). Why not? Surely not because the government is democratic; rather, people in a commercial republic are peacefully engaged in trade. (Rawls himself comes close to saying this on one occasion, but then backs away.)

In a free-market order, the problem Rawls adduces for his notion of democratic peace fails to arise. Here, government lacks the power to "go abroad in search of monsters to destroy." Democracy, or the lack of it, has nothing to do with the case.

*Social Welfare and Individual Responsibility**

DAVID SCHMIDTZ & ROBERT E. GOODIN

Welfare State: Pro and Con

April 1, 2001, *Mises Review*

MOST READERS OF THIS JOURNAL WILL, I suspect, find the arguments of David Schmitz much more congenial than those of his coauthor in this discussion of welfare. (The book contains two separate essays. Each author has seen the other's contribution, but there is no series of replies, as in a debate.) With Robert Goodin as our guide, we enter a bizarre world. In his view, welfare recipients have a right to receive subventions from the state. We may hope that they will look for work, but we cannot require this. To do so threatens what is rightfully theirs. To cut someone off from aid entirely is to be guilty of mortal sin.

As Mr. Goodin puts it:

Is there *nothing* we can expect of welfare mothers, in return for the public assistance they receive? Not sexual abstinence? Not a sincere effort to find a job? Not even a word of thanks? . . . do we really think we should make our assistance *conditional* on any such performances? . . . most surely recognize that it is the nature of safety nets and last resorts that, in order to perform their residual safety net function at all, they simply must be unconditional in form. (pp. 113–114)

* Cambridge University Press, 1998.

Of course, this argument as it stands is worthless. Mr. Goodin has simply defined a last resort grant so that it must not be given with conditions. It cannot then be a *reason* for refusing to impose conditions that the grant is one of last resort. If the mean-spirited welfare office were to require that the grant not be spent on narcotics, it would not be making a last resort grant, in Goodin's sense. But why is this a reason against imposing restrictions?

Oddly enough, Mr. Goodin recognizes the fallacy perfectly well when he does not choose to perpetrate it. He claims elsewhere that advocates of personal responsibility have adopted "moralized" definitions of that term. With the details of his contention, we are not here concerned. Rather, the relevant point here is that Goodin identifies a fallacy in which

[m]oralizing the definitions of these key terms prevents them from doing the work that those deploying them want them to do in their arguments. . . . Of course, there is nothing wrong in simultaneously asserting both halves of a tautology . . . [but] it does not provide any independent reason for the proposition in question. Asserting a tautology is simply to repeat oneself, to stutter. (pp. 139–140)

Has not Goodin refuted Goodin?

Perhaps, though, I have interpreted our author uncharitably. He may mean that, once one thinks about it, it is obvious that people have unconditional rights of the sort he suggests. If this is his claim, I can say only that its self-evident character altogether eludes me. Let us try to put Mr. Goodin's case at its strongest.

Surely he is right that some people, through no fault of their own, cannot provide for themselves. But why does the sad condition of these people entitle the state to seize the assets of others for their benefit? If those in more fortunate circumstances have obtained their assets justly, is it not up to them how much they choose to give to charity?

Someone of Mr. Goodin's persuasion might claim that people have property rights only subject to claims by the destitute. Arguments of this sort that have come my way strike me as unpersuasive, but we need not delve into them now. Our author says nothing whatever about property rights. Only the fact that the poor need money concerns him; that others have a prior claim to the money seems not to have crossed his mind.

David Schmidtz, an excellent philosopher of libertarian bent, says much that is true and important: but he does not fully destroy his antagonist at the decisive point. He begins by adducing Garrett Hardin's famous "tragedy of the commons." Unless individuals can acquire personal property, they will have little incentive to use resources efficiently. Even those who do not own property benefit from the institution, since everyone suffers when the commons is wasted.

The argument is not merely that enough is produced in appropriation's aftermath to compensate latecomers who lost out in the race to appropriate. The argument is that the bare fact of being an original appropriator is not the prize. The prize is prosperity, and latecomers win big, courtesy of those who got here first. (pp. 30–31)

This is well said and convincing, but Schmidtz has left Goodin an escape. Schmidtz has argued that society should have the institution of private property, for the decisive reason that everyone gains by this. But his point, however true, does not suffice to show that individuals have a *moral right* to the property they have appropriated. To claim, as Schmidtz does, that it is efficient if everyone has the *legal* right to acquire property is not at all the same thing. Goodin can answer that even if Schmidtz is right, legal rights to property should be limited by the needs of the unfortunate. Under a welfare state of the proper sort, we can obtain the efficiency advantages of private ownership without sacrificing the interests of the poor. Had Schmidtz argued directly for moral rights, Goodin's move is blocked from the start. If you have a moral right to your property, you cannot be compelled to surrender it, even for poor relief. (We shall soon see, though, that Schmidtz has a cogent reply of his own to the argument I have imputed to Goodin.)

Before going further, I pause for a digression that allows me to make one of my much-beloved hairsplitting points. Mr. Schmidtz suggests that because common use wastes resources,

leaving resources *in the commons* does not leave enough and as good for others. The Lockean proviso, far from forbidding the appropriation of resources from the commons, actually requires appropriation under conditions of scarcity. (p. 35)

Not so. The proviso restricts removal of resources from the commons but says nothing about use when nothing is appropriated. So long as private

property does not exist, it is not individually efficient to leave as much and as good for others. Why then do people stand subject to an analogue of the proviso in the commons?

Though Goodin is left an escape by the strategy Schmidtz has adopted, the escape is in truth a narrow one. Goodin claims that the poor need welfare; in a system of unhampered free enterprise, what happens to those who cannot by themselves keep up? Schmidtz ably argues that this question rests upon a false assumption. At a particular time, some people will under a free market do badly. Perhaps they might obtain more from the government than from private charity. But the passage of time soon changes the situation.

A free enterprise economy will grow much more rapidly than its welfare state rival, owing to the draining effects of high taxes on incentives to produce. But rapid growth makes nearly everyone, including the poor, better off. Contrary to Goodin, capitalism does not leave the poor to a dire fate.

But, Goodin replies, why need we choose between growth and governmentally-imposed welfare? Surely the incentive effects of carefully chosen programs will not be great. Can we not then have the best of both worlds? Only fanatics will insist on growth to the exclusion of all else.

Schmidtz's response seems to me the best point in the book. Even a small effect on growth will rapidly assume great significance. In an earlier publication, Goodin argued that welfare programs lessen productivity only to a small extent. Schmidtz comments:

Really? Consider this: if the annual growth rate of America's gross domestic product (GDP) had been 1 percentage point lower between 1870 and 1990, America's *per capita* GDP would be less than one-third its present level, which would put it on a par with Mexico. (p. 61)

Schmidtz's point drives Goodin into a corner. He can, if he wishes, insist that any temporary inconvenience for those now on welfare outweighs the gains of everyone, including the poor, a short time later. But this strikes one as implausible: and Goodin's case does not improve when he brings up the bogey of "structural unemployment." The idea that machines drive people out of work has been with us at least since Aristotle. Given the manifest failures of such claims historically, surely Mr. Goodin owes us an argument to show that some laborers have no services that the market values. What is his reply to the standard contention of economic theory against him? About all

this he says not a word. Readers who do not share Goodin's distaste for theory should consult the illuminating remarks of Ludwig von Mises (*Human Action* [Auburn, Ala.: Mises Institute, 1998], pp. 136–137).

Neither argument from rights nor from economic growth, it is safe to predict, will induce Mr. Goodin to change his position in the slightest. I fear that he is a lost cause. He informs us, without the hint of a smile, that those who criticize welfare mothers for getting pregnant to increase their benefits are not “properly circumspect” over “notoriously vexed” questions of population policy. The desire to impose “punitive” measures on such women obviously finds its motive in racism. With such a true believer, nothing avails.

Equality in Liberty and Justice^{*}

ANTONY FLEW

One Flew over Equality

December 1, 2001, *Mises Review*

LIKE GILBERT RYLE, under whom he studied at Oxford, Antony Flew is ever alert to “systematically misleading expressions.” Flew’s careful attention to the nuances of ordinary language, on full display in the present book, shows to best advantage the virtues of ordinary language philosophy. Flew cites a key passage from J. L. Austin, one of the great exponents of this philosophical movement, which sums up its approach:

Certainly, then, ordinary language is not the last word: in principle it can everywhere be supplemented and improved upon and superseded. Only remember, it is the first word. (p. 36, emphasis omitted, quoting Austin)

Abuses of language, Flew amply shows, characterize many anti-free-market arguments. One of the most popular arguments against capitalism, for example, relies crucially on a confusion of two terms. The argument proceeds in this way: The free market may well be more efficient than socialism or interventionism. But some cannot manage in a free economy. They have no services or products that others want: how then can they survive in a regime of complete market freedom? Gross inequalities of this kind cannot be tolerated; to remedy them, the government must correct the market through redistribution of wealth and income.

^{*} Transaction Publishers, 2001.

The line of thought rests on a shift from one word to another. It first speaks of people who, it is alleged, cannot survive in a free-market society. But this sad situation has nothing to do with how the income of these unfortunates compares with that of others. Why then the complaint about inequality? Of course if the government takes from the better off to help the poor, inequality lessens; but helping the poor and leveling income differ entirely as goals.

Flew skillfully identifies the misuse of language:

On the one side—call it the left—we have public policies intended to make the condition of all those subject to these policies in some respect (more) equal. On the other side—which may now be the right—are public policies aiming to insure that none shall fall below some minimum level. . . . The objectives of this left are thus essentially and intentionally egalitarian, in a way in which those of this right are not. (p. 184)

An example helps to clarify Flew's point. Suppose that in a community of one hundred people, eighty have annual incomes of at least \$1,000,000. The other twenty unfortunates must make do with a mere \$100,000. A policy that aimed to limit inequality here would not reduce poverty at all; there is no poverty to eliminate.

Radical egalitarians often use sympathy for the poor to foist their schemes on us. A prime example of such slippery propaganda is the much-vaunted difference principle devised by John Rawls. In a Rawlsian society, all inequalities in wealth and income must be to the advantage of the least well-off class in the society. By speaking of the worst-off class, Rawls conjures up images of destitute people. But in fact Rawls's principle does not cover the truly needy at all. Rawls's principles of justice concern distribution of the gains from social cooperation; those unfortunates who have nothing useful to offer do not come within their scope. Those "worst off" in Rawls's sense are not very bad off at all, a fact that does not deter the eminent Harvard professor from use of this misleading language.

I have mentioned Rawls for ulterior reasons. For me, the highlight of the book is Flew's mordant demolition of Rawls's extravagantly overrated *A Theory of Justice*. For Flew, the assault on Rawls transcends ordinary scholarly controversy. Rawls's lapses from proper standards of philosophical argument, all in the service of egalitarian propaganda, arouse Flew to indignation wonderful to behold. Rawls, he notes in a characteristic passage,

must thus have become the first person ever to produce what purports to be a treatise on justice which can find no room even to quote, much less to discuss, any version of the traditional distinction. By this misguided omission Rawls exposes himself to the objection that what he commends as a conception of justice is not, whatever its other merits, a conception of justice at all. (p. 120)

Flew's objections strike at the heart of Rawls's theory; and I think it likely that his criticisms, along with parallel thrusts from Robert Nozick, have sent Rawls scurrying to buttress his shaky edifice with "public reason."

In his defense of the difference principle, Rawls makes a great to-do about principles of rational choice under uncertainty; but the key to his case lies elsewhere. He thinks that people do not deserve to profit from their superior abilities, because these are arbitrary from the moral point of view. If so, Rawls claims, equality is the default position and any departure from it requires justification.

I suspect that Rawls's principle will strike most of my readers as alien; but an example will show what Rawls has in mind. If one says to Rawls, "Michael Jordan makes enormous sums of money, but of course he deserves to do so: People willingly pay him because they value his skills," he will shake his head. "No doubt he is phenomenally skilled," he might reply, "but he acquired his ability through no moral merit of his own. He is simply lucky enough to possess physical skills that exceed those of other players. Why should he benefit so greatly from the mere fact that he has 'good' genes?"

Flew, once more displaying his careful attention to conceptual precision, expertly locates the fallacy in Rawls's contention. Rawls has moved from the contention that the category of desert does not apply to natural endowments to the much more controversial claim that these endowments are undeserved. The latter implies, as the former does not, that people should not benefit from them. As our author puts the point,

The reason why this argument appears to go through is that the word 'undeserved' does indeed usually carry overtones of outrage, calling for redress. What is needed now is to introduce a third category of the not-deserved to cover what is neither, meritoriously, deserved, nor scandalously, undeserved. (p. 150)

Michael Jordan's income is safe. He may be entitled to benefit from his extraordinary talent, even though he did not acquire this talent by doing

morally good deeds. And can we not go further? To some extent, he and other gifted people like him do deserve to profit from their abilities. In most cases, they must develop their potential through hard work: do they not then in part gain their benefits from meritorious activities? “Moral luck” does not suffice to account for what they have.

Rawls has to this point an incredible rejoinder. He acknowledges that people develop their talents through hard work. But this trait too must be attributed to moral luck: if you have an extraordinary capacity for work, this also is “arbitrary from the moral point of view.”

Here Rawls has unintentionally reduced his position to absurdity. No properties of individuals that Rawls considers morally arbitrary entitle persons to wealth or income. But so extensive is his list of these properties that, when they are removed, nothing remains of genuine individuals. Flew notes the problem in his inimitable way: what we have left in Rawls’s system are “blinkerered and de-individualized zombies” (p. 148). Rawls’s theory has no relevance to flesh-and-blood human beings.

As if this were not enough, Flew finds another problem with Rawls’s theory. Let us put to one side for a moment all the difficulties Flew has raised for Rawls’s notion of desert. Should he, *per impossibile*, be able to overcome them, Rawls would still confront a crucial obstacle. Even if individuals do not own, and deserve to benefit from, their special talents, it hardly follows that society does.

Yet this is what Rawls without argument assumes:

It simply will not do . . . to collect up, in thought, all the wealth already produced and in the future to be produced by all the individuals and firms in society; to describe this as the total social product, conceived as the product of an hypostatized super-person, Society; and then take it for granted that this total social product is in fact now available, free of all prior claims, for redistribution among the members of that same hypostatized entity, Society, at its absolute collective discretion. (p. 160) (I have quoted this at some length to convey the flavor of Flew’s wonderful rolling sentences.)

But is this not unjust to Rawls? What about his whole elaborate apparatus: the original position, choice behind the veil of ignorance, primary goods, etc.? Have we not dismissed without trial the essential elements of Rawls’s enterprise?

Not in the slightest. Flew has located a passage from *A Theory of Justice* that is devastating in its revelation of the nature of Rawls's project: "We want to define the original position so that we get the desired solution" (p. 134, quoting Rawls). The difference principle does not stem from an impartial "decision procedure for ethics," as Rawls titled an early paper; quite the contrary, he has ensured egalitarian conclusions by his starting point. Flew ironically observes that given the "endearing frankness" of Rawls's confession, "it should come as no surprise that the curiously deprived creatures" in the original position arrive at egalitarian conclusions (p. 134). Rawls has concealed from them any information that might have induced them to favor conflicting principles.

Though the massive campaign against Rawls occupies our author a good deal in the book, he by no means confines himself exclusively to it. Flew discusses in illuminating fashion many other topics, including the justification for natural rights and the fallacies of Rousseau's political theory. I shall here confine myself to one more topic, in which Flew displays yet again his skill as an ordinary language philosopher.

Do we have free will? Flew responds to this traditional problem with a simple observation. We learn the concept of free action by becoming acquainted with typical situations in which people are said to act freely. Someone chooses freely, for example, if he considers with care various alternatives and, without coercion, picks the one he most prefers. In a fashion that would delight Mises, Flew contends that it makes no sense to ask if someone in this situation "really" enjoys freedom. How can he not be free, if we have learned the concept from cases of this kind and its like?

Once more the temptation to quote Flew should not be resisted:

For if the very ideas both of physical necessity, and of the ability to do other than we do, both are, and can only be, acquired by references to our abundant experiences of the two contrasting kinds of reality to which these ideas refer; then who but the most bigoted of behaviouristic psychologists could continue to insist that, really, even paradigm instances of the latter are covert cases of the former? (p. 11)

This may not be the last word on free will, but it is the first word.

Justice As Fairness: A Restatement^{*}

JOHN RAWLS

Rawls's Ballet

December 1, 2001, *Mises Review*

TIME HAS NOT BEEN ALTOGETHER KIND to John Rawls. True enough, his *A Theory of Justice* has been the most widely acclaimed book in political philosophy since its publication thirty years ago. But Antony Flew, Robert Nozick, and other critics have devastated Rawls's *Das Kapital* of the welfare state, in particular his famous difference principle. Rawls has met these objections, for the most part, by constant reiteration of his original contentions.

In one respect, though, he has changed course. Beginning with *Political Liberalism* (1993), Rawls began to claim that his theory was devised to fit a special set of circumstances, and he continues this emphasis in the book we have now to consider. By limiting his theory's application, Rawls hopes to strengthen support for it; and his new starting point, one must admit, is plausible.

Is it not the case that, in a constitutional democracy like the United States, large numbers of people find themselves at odds on key issues? Some people, for example, support laissez-faire capitalism; others foolishly support socialist nostrums. (Of course, Rawls would not put it quite like that.) Should society allow abortion? What role, if any, should government play in education?

^{*} Harvard University Press, 2001.

These political disputes, and others like them, do not arise from nothing. As Rawls rightly notes, people hold various “comprehensive moral doctrines” from which their opinion on particular issues follow:

The elements of such a conception [of the good] are normally set within, and interpreted by, certain comprehensive religious, philosophical, or moral doctrines in the light of which the various ends and aims are ordered and understood. (p. 19)

Rawls’s starting point cannot be gainsaid; people in societies like the United States do indeed differ fundamentally on basic issues. Unless everyone by some miracle converts to the same doctrine—of course the true doctrine that we now hold—must we not learn to live with inevitable conflict? Rawls does not think so.

Instead, everyone must, for the purposes of public discussion, abandon his own comprehensive doctrine. In its place, “public reason” becomes the order of the day. Since you know that others do not share your most fundamental beliefs, is it not obvious that you cannot rely essentially on them in debates on the basic structure of society? Others must accept a parallel restriction on using their own comprehensive doctrines. By doing so, those with irreconcilable doctrines can live together peacefully.

But what is left? If none of us can appeal to our own convictions, is not discourse emptied of all content? Must not public discussion under Rawls’s restriction be reduced to what F. H. Bradley called “an unearthly ballet of bloodless categories”? Rawls finds a way out.

A substitute set of reasons enables us all to proceed. Each person adopts for public discussion reasons that depend on no comprehensive doctrine. Instead, these reasons assume only that each person is a free and equal member of society. Contrary to what one might at first think, to put aside one’s most deeply held views does not condemn discussion to sterility.

A new difficulty seems immediately to arise. Will not a problem analogous to the one Rawls has endeavored to solve now confront us? Will not people who restrict themselves only to public reason find themselves mired in new disagreements? Why will those who recognize each other as free and equal find their debates free of discord?

Our author responds with a simple solution. Everyone adopts the same set of reasons. Well, you may say, Rawls has secured the unity he so much wants: but has he not paid too high a price? Why will people give up their

comprehensive doctrines—the positions that are to them most basic—just to secure agreement with others?

Here exactly our author is at his most ingenious. Rawls, it develops, is not so unrealistic as to expect people to abandon their most basic beliefs. Quite the contrary, everyone in the Rawlsian world retains his beliefs, even though these cannot be used in public discussion on society's basic structure. But if the beliefs cannot be used in so essential a context, in what sense do they remain?

Rawls's answer takes us to the heart of his new approach. Each person will ask, from within his own comprehensive doctrine, what he is to do when others in society radically disagree. Those who do so will find resources in their own fundamental beliefs to support public reason. Each system, that is to say, will perform an act of self-abnegation: it will deduce from its own tenets that its distinctive doctrines must be placed to one side, when diverse positions show themselves present. In brief, an "overlapping consensus" of various comprehensive doctrines supports public reason.

One point more, and we will grasp the essence of what Rawls has in mind. Public reason, as he conceives it, does not consist of innocuous generalities, so bland that all comprehensive views can accept them. In his opinion, resort to public reason generates universal agreement on the proper basic structure of society. By an odd coincidence, this structure is identical with the scheme that Rawls propounds in *A Theory of Justice*. In particular, public reason endorses the radically egalitarian "difference principle."

Rawls's new construction strikes me as wrong in all its major contentions, except for his starting point. Certainly he is right that people in modern societies do not unite in accepting a comprehensive doctrine. But he at once takes a false step. He assumes that, unless its situation is somewhat palliated, a society whose members have clashing beliefs faces disaster. But why assume this? Why cannot people with differing beliefs live together, even if each person refuses in public debate to dilute his own beliefs? Why, for example, should a natural-rights libertarian put aside his views just because he knows that egalitarians in his society do not share his beliefs? Why should he not attempt to defend his beliefs as best he can?

Our author responds that to do so is to render society unstable. Stability demands more than a mere *modus vivendi*; unless people adopt public reason, society stands at risk of dissolution. People who operate exclusively within their comprehensive doctrine will be tempted to impose their views on others, should the occasion arise. Only when people through the use of

public reason become attached to the proper basic structure can a society resist disintegration.

How does Rawls know all this? He has engaged, without evidence, in sociological conjecture. Why cannot a society exist for a long period without the sort of stability that Rawls wants? He does not tell us. Perhaps, though, I have misread him, and his enterprise is one of definition. He is not prepared to call a society “stable” unless it acknowledges public reason. If he has this in mind, why should anyone else be concerned with stability in his sense?

What seems to underlie Rawls’s concern about stability is this. During the wars of religion in early modern Europe, nations sought to impose a single religion on their recalcitrant subjects. The attempt to do so led to disastrous conflicts: does this not show the dangers of attempts to impose a comprehensive moral doctrine? How can so unfortunate an outcome be prevented except by universal adoption of public reason?

Rawls might thus reply to my charge that he speculates without evidence with a direct denial. His invocation of public reason rests on the lessons of history. But in fact this response depends on appeal to a biased sample. Of course an attempt to impose religion is liable to meet resistance from those who profess another faith. Not all comprehensive views, though, teach that their doctrine should be imposed by force. If a comprehensive doctrine does not call for dissenters to be suppressed, why need its use in public debate lead to irreparable social conflict? Must a society that contains people who differ on the need for a welfare state collapse unless people confine their public arguments to a set of common reasons?

Even if Rawls’s argument from stability fails, he can still rescue his theory. According to his account, all comprehensive doctrines—at least those among them fit for polite society—imply that public reason governs society in case people differ in doctrine. Rawls holds then that all acceptable theories lead to his theory. He does not need the appeal to stability: the comprehensive doctrines themselves directly imply his view.

Unfortunately for him, his daring contention fails. No doubt it would be convenient for him if all the most important comprehensive views favored public reason in case of conflict. But he never shows that even one such position has this consequence. Will, for example, a utilitarian be apt to resort to Rawls should he find that others fail to share his views? Will he not rather endeavor to apply his utilitarian convictions to the circumstances? And will not a supporter of natural law attempt to apply his position? Rawls’s claim is utterly arbitrary.

But let us put all this aside and grant Rawls his premise. Suppose that everyone agrees to confine public argument to the restricted premise of public reason. Will the result be, as Rawls claims, that his own theory of justice will be instituted? He secures this result only through unjust tactics. He considers at some length various principles a society might adopt to distribute the gains from social cooperation. In particular, he contends that his difference principle defeats the competing rule of maximizing average expected utility.

He secures victory for his system only by dismissing out of hand all major competing views. As natural-rights libertarians see matters, property rights render otiose Rawls's question. The gains from social cooperation do not belong to society, and there is nothing to "distribute." The rights to liberty and property that people possess independent of social decision settle all questions of ownership. Our author is of course quick to wave aside this alternative; it subordinates equality to arbitrary moral luck.

But this reply convinces only if one begins from Rawls's strongly egalitarian starting point. If one declines to do so, Rawls makes no case that public reason requires his difference principle. It would not matter much if it did, since he has concocted public reason out of nothing. Further, the difference principle still would fall before the objections of Flew and Nozick. The alleged fact that public reason supports a principle avails nothing, if that principle is unsound.

*Democracy: The God That Failed**

HANS-HERMANN HOPPE

No Safety in Numbers

April 1, 2002, *Mises Review*

CLASSICAL LIBERALS view the state with suspicion; indeed some, of whom Murray Rothbard and Hans Hoppe are examples, wish to do away with it altogether. However convincing the arguments for private-property anarchism, we now live in a world of states. Given this fact, what kind of state is best? If, as Albert Jay Nock famously said, the state is our enemy, which regime threatens us least? Many have looked to democracy, but Professor Hoppe dissents.

In his view, democracy has led to the increase in state power that classical liberals deplore:

I will explain the rapid growth of state power in the twentieth century lamented by Mises and Rothbard as the systematic outcome of democracy and the democratic mindset, i.e., the (erroneous) belief in the efficiency and/or justice of public property and popular (majority) rule.

Though Mises and Rothbard “were aware of the economic and ethical deficiencies of democracy,” they

* Transaction Publishers, 2001.

had a soft spot for democracy and tended to view the transition from monarchy to democracy as progress.” (p. xxiii, order of sentences changed)

Monarchy preserves liberty far better than does democracy; and when our author says “monarchy,” he means it. He does not have in mind constitutional kingdoms, in the style of contemporary Britain, where the monarch reigns but does not rule. Rather, he refers to the full-fledged kings of the Old Regime, with the Habsburgs as particular favorites.

But how can Hoppe say this? A king rules to benefit himself, and he need answer to no one. In a democracy, by contrast, a government that displeases the people can be replaced. Does not the knowledge that it can be turned out at the next election act to restrain the government now in power?

Our author turns on their heads these commonly held beliefs. True enough, a king regards the government as his personal possession; but exactly this will induce him to act with good judgment. Rather than squander his nation’s resources, he will manage them prudently, all the more so if he expects to pass on the realm to his heirs.

Assuming no more than self-interest, the ruler tries to maximize his total wealth, i.e., the present value of his estate *and* his current income. He would *not* want to increase current income at the expense of a more than proportional drop in the present value of his assets. (p. 18)

One might at first think the argument proves too little. The ruler may well conserve his own estate; but what about the rest of the country? What stops him from plundering the property of his subjects? To this, Hoppe has an ingenious response. A prosperous and secure society will raise the value of the king’s estate; hence, the ruler will have a strong incentive to limit his depredations on the public.

[T]o preserve or even enhance the value of his personal property, he [the king] would systematically restrain himself in his taxing policies, for the lower the degree of taxation, the more productive the subject population will be, and the more productive the population, the higher the value of the ruler’s parasitic monopoly of expropriation will be. (p. 19)

This strikes me as an insight of major importance; incidentally, it greatly impressed the distinguished Austrian classical liberal and monarchist, Erik von Kuehnelt-Leddihn. One might, I suppose, adduce a countertendency for the monarch to transfer as much as possible to his private estate. Would not the prosperity of his subjects have to be set against what the king thought he could gain through direct seizure? At least, though, Hoppe has shown that a powerful incentive limits the growth of government in a monarchy. Even Jean Bodin, the great French theorist of absolutism, maintained that the king should, if possible, support himself entirely from his own estates.

In a democracy, by contrast, the government will grab as much as it can, without regard to the future. Precisely because the holders of power do not own the government, they lack the incentive to look to the long run.

A democratic ruler can use the government apparatus to his personal advantage, but he does not own it . . . [h]e owns the *current use* of government resources, but not their capital value. In distinct contrast to a king, a president will want to maximize not total government wealth (capital values and current income), but current income (regardless and at the expense of capital values). (p. 24)

Again Professor Hoppe anticipates and dispatches an objection. If a democratic government acts as he indicates, will the people not remove it at the next election? The whole point of democracy, after all, is that seekers of power compete for the favor of the majority. Fear of removal will thus check the government's predation.

Unfortunately, as Hoppe notes, a democratic government can render the supposed check nugatory. The rulers buy votes by promising to the poor extravagant welfare benefits. The rich pay the price for these, but their dissatisfaction cannot overturn the government. They number but few compared with the poor whom the government enlists in its support. Thus predation proceeds unhindered, to the government's own advantage.

One aspect of this strategy of *panem et circenses* deserves special mention, because of its importance in the contemporary United States. If democratic predation depends on support for the government from a large number of poor people, the rulers will naturally wish to add to their numbers. Mass immigration becomes the order of the day. If the new residents have no useful skills,

no matter: after a few years, their votes will help to swamp the protests of productive citizens reluctant to give to the state what rightfully belongs to them.

Once again, a monarchy will tend toward an altogether different policy.

[A]s far as *immigration* policy is concerned, a king would want to keep the mob, as well as all people of inferior productive capabilities, out. . . . A king would only permit the immigration of superior or at least above-average people, i.e., those, whose residence in his kingdom would increase his own property value. (p. 143)

In sum, monarchs look to the long run, democratic rulers to the short term.

It is hardly a surprise that our author considers the former policy by far the better; and he accordingly recommends that contemporary governments should endeavor to follow as closely as they can the indicated path of the monarch. Several well-known libertarians have thrown up their hands in horror: does not Hoppe here betray the supposed principle of “open borders”? How can he in conscience support action by the government?

Here once more Hoppe has arrived at a fundamental insight. In the ideal libertarian state of affairs, all property is private. Each owner is free to decide who may enter his property. If so, Hoppe asks, is not the cry of “open borders” the very antithesis of proper policy? In a free society, you cannot go wherever you please; to say that is to legitimize trespass.

Proponents of unrestricted immigration will not be swayed. Granted, they will say, that you cannot rightfully “immigrate” to someone’s property without his permission, why does it follow that the government may close the borders of public property? To object to Hoppe in this way, as it seems to me, is precisely to miss the point of his argument. He has endeavored to show that “open borders” is not a libertarian principle, not to deduce his own prescription. If he is right, libertarian theory leaves undetermined what course should be followed if public property exists. Nothing in morality then bars the government from being guided by the prudential considerations Hoppe has cited.

Professor Hoppe has made a strong case; but in one respect, I am not entirely clear what sort of claim he is making. In the book’s introduction, he launches a vigorous defense of the *a priori*:

If one is to make a rational choice among . . . rival and incompatible interpretations, this is only possible if one has a theory at one’s disposal, or at least a theoretical proposition, whose validity

does not depend on historical experience but can be established a priori, i.e., by means of the intellectual apprehension or comprehension of the nature of things. (p. xv, emphasis omitted)

From this statement, we know that Hoppe thinks that his claims about monarchy and democracy cannot be established by purely empirical means, since these claims are historical interpretations. But does he think that his evaluations of monarchy and democracy are themselves a priori propositions, or is he content to accord them some less certain status? He may mean that a priori truths, e.g., that high taxation cannot cause prosperity, help to render likely his assessments of monarchy and democracy. On this construal, the assessments need not themselves count as a priori. I incline to think that his case is stronger if one adopts the latter view.

I hope that in future work Professor Hoppe will address these questions: If monarchy is the best form of government, what sort of monarchy is desirable? What about systems that combine monarchical and democratic features? Do these surpass monarchy, or do they suffer from debilitating flaws?

Though he prefers monarchy to democracy, our author does not enlist in royalist ranks. Quite the contrary, he opposes the state altogether.

Indeed, a monopolist of ultimate decision making equipped with the power to tax does not just produce less and lower quality justice, but he will produce more and more “bads,” i.e., injustice and aggression. Thus, the choice between monarchy and democracy concerns a choice between two defective social orders.” (p. xx)

Our author goes so far as to ascribe the failure of classical liberalism to ignorance of this fundamental fact. Nineteenth-century classical liberals, and their latter-day successors, for the most part pursued the chimera of limited government; this was their “central and momentous error” (p. 224). Government by nature tends to expand.

Hoppe goes further. He holds that if one accepts the rights of self-ownership and private property, understood in a Rothbardian way, one cannot acknowledge the legitimacy of a protection agency with monopoly power to enforce rights.

[S]uch a monopoly-contract would imply that every private property owner had surrendered his right to ultimate decision making and the protection of his person and property permanently to

someone else. In effect, in transferring this right onto someone else, a person would submit himself into permanent slavery. (p. 227)

Certainly a contract of the type Hoppe imagines is not licit, but I am not sure that this point altogether suffices to put limited government out of court. Someone with Rothbardian natural rights can legitimately hire a protection agency to defend himself; in doing so, he need not surrender his right to self-defense. Why does this change if there is only one protection agency? But this is a quibble of minor importance. On the main practical point, Hoppe is surely right. People who consent to a monopoly state have put themselves at grave risk of losing their freedom. In helping us to see this, Hans Hoppe has rendered us a great service, one of many in this work of outstanding merit.

“Jaffa on Equality, Democracy, Morality”*

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I

HARRY JAFFA is one of the most distinguished of the students of Leo Strauss. His *Thomism and Aristotelianism* was termed “an unduly neglected minor modern classic” by Alasdair MacIntyre;¹ and *Crisis of the House Divided*, his interpretation of the Lincoln-Douglas debates, occupies a prominent place in the literature on Lincoln. However, as a man not content with academic success, Jaffa has devoted enormous energy to the defense of a unique brand of conservatism.

Jaffa’s political views attracted widespread notice during the 1964 Republican Party Convention. Senator Barry Goldwater, the champion of the resurgent conservative movement, received his party’s nomination for President in the face of opposition from the “Eastern Establishment,” led by Nelson Rockefeller. In a defiant line in his acceptance speech, Goldwater declared: “Extremism in the defense of liberty is no vice, and moderation in the pursuit of justice is not a virtue.” It was soon disclosed that Jaffa had written the memorable sentence.

* I wrote “Jaffa on Equality, Morality, Democracy” in 1992 and, aside from minor editing, it appears unchanged. Professor Jaffa’s writings since then, so far as they have come to my attention, seem to me to call for no modification of the analysis of his philosophy offered here. I discuss some of Professor Jaffa’s views of Lincoln in my review of his *A New Birth of Freedom* found in Volume 3, “American History.”

Jaffa's comment expresses correctly an Aristotelian doctrine: unlike such virtues as courage and temperance, justice is not a mean between two vices. But it may be doubted whether a campaign is the best place to expound nuances of ancient thought; and Goldwater's enemies pounced on the line as evidence of his fanaticism. But if Jaffa had, in the opinion of many, damaged the cause of Goldwater, of one matter there could be no doubt: he himself had arrived.

Jaffa used his influence, polemical talent, and inexhaustible energy to advance his own agenda for the American Right. During the 1950s and 1960s, most conservatives opposed the Civil Rights Movement. "Equality" was a veritable curse word to them. For Jaffa, matters were quite otherwise: equality was the key to sound politics. Conservatives should embrace it, not spurn its mere mention. "The stone that the builders rejected has become the chief cornerstone of the temple." Jaffa expounded his position in the course of debates with others on the Right about the significance of Abraham Lincoln. His opponents in these exchanges have included Frank S. Meyer; Clyde Wilson; Thomas Fleming; and, over many years, M. E. Bradford. Whether one agreed with him or not, no conservative could ignore him. Among Jaffa's admirers is William F. Buckley, Jr., the founder of *National Review*; and Buckley's support has contributed greatly to Jaffa's prominence in right wing circles. The financier Henry Salvatori, a major donor to conservative groups, has lavished patronage on Jaffa's Claremont Institute.

His scholarly work meshes closely with his political activities. On the basis of the former, he expounds and defends a philosophy of freedom that, as he sees matters, underlies the Declaration of Independence and the thought of its foremost interpreter, Abraham Lincoln. Even more ambitiously, Jaffa sets his defense of freedom in a larger setting—an exposition of natural law morality. Although he has not written a full-scale treatise defending his conception of ethics, he has in his provocative "In Defense of the 'Natural Law Thesis'" and elsewhere discussed the foundations of morality. In view of the importance of Jaffa's position, and the immense labor he has devoted to its construction and defense, close examination of his central arguments seems warranted.

Jaffa briefly presents his key to sound political philosophy in a recent popular article: "Of Men, Hogs, and Law":

The equality of men, pronounced in the Declaration of Independence, affirms that there is no difference between man and man, such as there is between man and beast (on the one hand),

or between man and God (on the other) that justifies one man ruling another without the other's consent.²

It is not altogether clear what Jaffa means by one man ruling another. Someone who enslaves another clearly rules him, but Jaffa wishes his argument to extend further than this. He elsewhere speaks of "ruling despotically" as a target of his argument, and one can govern someone despotically, i.e., arbitrarily and without his consent, without enslaving him. Even more widely, ruling can cover anyone's exercising any of the functions of government over another. It appears to me most plausible to take Jaffa in the latter, most extended way.

Jaffa states his argument for equality perhaps most fully here:

"That all men are created equal" arises from our experience of a class of beings called "men." We abstract from the experience of a number of individual human beings the common noun "man." . . . Having performed the act of inductive reasoning by which the common nouns ["man" and "dog"] are understood, we can articulate attributes which reflection shows were implied in the act of grasping that noun. . . . We distinguish, moreover, the nonhuman that is subhuman from the nonhuman that is superhuman. We conclude . . . that there is no such difference between man and man, as there is between men and dogs, that makes men by nature the rulers of dogs, and dogs by nature the servants of men.³

Having thus disposed of animals, Jaffa rises higher. "By the power of reason we form the concept of a perfectly reasonable Being, in whom there are no passions to act as impediments to reason." Whether one can move from the essence of this Being to its existence, Jaffa leaves open; but the idea suffices to show that "man is the in-between being, the being that is neither beast nor God. We understand therefore that the rule of man over man must differ, not only from the rule of man over beast, but from the rule of God over man."⁴

I propose to accept for the purpose of argument Jaffa's starting point, putting to one side a few problems. Jaffa does not explain or justify the claim that abstraction from empirical perception enables us to arrive at knowledge of essence. I do not say he is wrong to think so—in my opinion,

quite the contrary. But the step is controversial; if it is right, Hume's skeptical doubts about induction fall to the ground, since a being with a certain essence necessarily will act in a given way, if it acts at all. Can Hume be dealt with so summarily?

Perhaps he can; but Jaffa's controversial assumptions have just begun. Suppose that one distinguishes levels of being according to rationality, in the way that Jaffa has suggested. Does it follow without further argument that the more rational being is entitled by nature to rule the less? I cannot see that it does, especially if both are free agents.

Is the basis of the contention this: a species of greater rationality outranks one of less in the "scale of being": from its superior rank stems its right to rule? The "progress" we have made in advancing this argument is questionable: we now have two unsupported premises. What exactly is meant by the "rank" of a being? Does any desirable property possessed essentially by a species give it superior rank over a species without it, other things being equal? If so, does any such superior rank carry with it the right to rule? Would a species of similar rationality to man, but essentially more beautiful, be entitled to rule human beings? If not, why not? In the guise of an appeal to self-evidence, Jaffa presupposes an entire metaphysics.

All of this is preliminary: although I do not think he has adequately supported the "scale of being," I have no arguments that justify its rejection. Let us then accept the scale of being and turn at once to an analysis of the political conclusions Jaffa draws from his notion.

I should have thought that the scale leaves entirely open how beings of the same rank ought to deal with one another. Granted that a superior being may rule an inferior, and that an inferior must serve his superior in ontological rank, why does anything at all follow about beings of the same rank? Why is superior rank required for rule?

Is the argument this? It is a principle of rationality that one should deal with entities according to their genuine properties. Thus, someone who seriously thought that his pet dog could converse with him clearly suffers from a defect in rationality. But to treat a man as a beast is to fail to exhibit reason, in an analogous way. Hence no man may rule another without his consent.

This argument fails, since it assumes that to rule over someone is to treat him as a beast, just the contention that the argument purports to establish. Unless we already know that to rule someone implies regarding him as of lesser rank, the question at issue has been begged.

As Jaffa notes in another context, Thomas Aquinas did not think that slavery violated the law of nature.⁵ But he strongly supported the scale of being to which Jaffa appeals. Was St. Thomas guilty of failure to draw the "obvious" inference from "same essence" to "no right to rule without consent"? Further, there is considerable room for doubt that Jaffa fully accepts the principle himself; if so, how then can he claim it to be self-evident that no one may rule another without his consent?

To say that Jaffa himself questions this principle appears surprising, but nevertheless the matter is not much open to question. In reply to a claim by Shadia Drury that Leo Strauss taught the absolute right of the wise to rule without restraint, Jaffa replies:

The absolute rule of the wise is then a theoretical premise, necessary for our understanding of the problem of wise or just rule, but in no sense a practical conclusion . . . anyone who advances the claims of wisdom as ground for ruling must be an unwise adventurer, discredited in advance by the fact he has advanced such claims.⁶ (The context makes clear that Jaffa agrees with Strauss's view.)

Jaffa here makes a fatal admission. If the wise have the theoretical right to rule, then it cannot be the case that no one may rule another without his consent. That practical circumstances make it almost always inadvisable to exercise this right is beside the point. Jaffa cannot consistently both agree with Strauss that the wise have such a right and at the same time deny any right to rule without consent.

In reply to a critic, a good polemicist such as Jaffa will often be tempted to minimize any concession he must make to an opponent. Jaffa expounded the same point with a different emphasis on one occasion when he did not confront this temptation. In an account of Aristotle's *Politics*, he states:

Still, the intrinsic validity of the claim in the case of *someone*—a someone very unlikely to put the claim forward himself—is not hereby destroyed. Aristotle's final conclusion appears to be that the argument stands as valid, but as the man who could justly make the claim will not do so, the only argument that can and will be validly advanced will be that in favor of the best laws. Still, in the infinite contingencies of political life, a moment might

come when, contrary to every normal expectation, the rule of the best man might have to be advanced in practice as well.⁷

In his reply to Professor Drury, Jaffa advances a similar claim:

Thus we contemplate extreme actions in defense of the rule of law by wise men whose unfettered wisdom may sometimes be the necessary condition for the establishment or survival of a decent constitutional order.⁸

In the earlier passage, no such limitation is imposed on rule by the wise.

To avert misunderstanding, I do not contend that it is correct to support the right of the wise to rule. Rather, the issue is that Jaffa cannot consistently teach this and at the same time assert that rule without consent is illegitimate.

Or can he? He does have one escape; but it is to my mind an implausible one. In his discussion of the scale of being, Jaffa averred that God does not require human consent in order to rule: it is absurd to think that “God would need to secure the consent of man in order to exercise His providential government.”⁹ This seems reasonable: few even of those who disbelieve in God would deny that if he exists, he may rule without consent. (J. S. Mill is perhaps an exception.) In this passage, then, a divine being is contrasted with the “evident limitations” on the perfection of reason that “every man discovers in his own soul.”¹⁰

Elsewhere, Jaffa indicates how the notion of divinity may be extended in a way most people today will find unfamiliar. In his *Thomism and Aristotelianism*, a scholarly work not written for popular consumption, he argues that according to Aristotle, the philosopher lives the contemplative life, not in so far as he is a man, but in so far as there is “something divine in him.”¹¹ If the “absolutely wise” have the right to rule, perhaps they possess this right because Jaffa considers them divine. In this way, he can escape contradiction in his argument. But I venture to suggest that many will find this a most repugnant position, at least in the absence of a full defense of the moral psychology that underlies it.¹²

So far, then, Jaffa’s claim that no one may rule another without his consent stands unsupported; but on another construal, his statement becomes entirely understandable.

Imagine a situation in which a group of people lack any organized society or government. Each person (or family) is concerned with his own preservation,

and no one has any moral obligations toward anyone else. In this state of nature, anyone is liable to be killed: unlike the comic-book Superman, no one is immune from assault. Here there is no question of philosophers having a right to rule, in the sense of a duty others must observe, since their activity depends on the prior existence of an organized community. Universal agreement appears a reasonable way for people to extricate themselves from circumstances that are "nasty, brutish, and short."

Is Jaffa's argument then to be accepted? I do not think so: why should we think that what people agree to in this state of nature has any moral significance? Merely to say that in such-and-such circumstances, people would do thus-and-so, shows nothing about morality. If I had monopoly control of all food and could fend off all assaults, people might find it advantageous to enslave themselves to me. This hardly suffices to show that I now have a right to enslave anyone. Why then does anything important about rule follow from what people would agree to in the state of nature? The question is all the more pressing in that in the state of nature, people are free to act in grossly immoral ways, judged by ordinary morality.

Jaffa shows himself well aware of the weaknesses of this argument. He contrasts Lincoln's position, about which he writes with evident sympathy, with the position just described.¹³ In Locke's state of nature, men

have no real duties. The embryonic duties which exist in Locke's state of nature are not genuine duties but only rules which tell us to avoid doing those things which might impel others to injure us.¹⁴

This argument can generate only hypothetical imperatives: if you want to get out of the state of nature, do a, b, c. . . . By contrast,

Lincoln's was not only hypothetical; it was categorical as well. Because all men by nature have an equal right to justice, all men have an equal duty to do justice, wholly irrespective of calculations as to self-interest. Or, to put it a little differently, our own happiness, our own welfare, cannot be conceived apart from our well-doing, or just action, and this well-doing is not merely the adding to our own security but the benefiting of others.¹⁵

Matters now take a surprising turn. One might expect Jaffa to reject the state-of-nature interpretation of the principle that no one has a right to rule. But in fact he does not do so. In a book published several years after *Crisis of the House*

Divided, Jaffa included an article that presents exactly the view just discussed. In reply to Felix Oppenheim, a defender of “value non-cognitivism,” Jaffa offered an interpretation of the Declaration of Independence that would show its framers need not have been either deceptive in their language nor false in the inferences that they intended to be drawn from it. The interpretation assumes

that by the right to life and liberty the framers meant the right of self-preservation and all the means necessary thereto. Let us assume that they regarded self-preservation as a right because they regarded it as the strongest human passion. . . .¹⁶

This seems exactly the starting point of the argument that Lincoln criticized. In the same article, Jaffa claims that the “imperatives of natural right have the character of the ‘then’ clause in an ‘if . . . then’ proposition.” Although in fact everyone does desire happiness, “the command as such is hypothetical, not categorical.”¹⁷

No one will question the importance of self-preservation. But the point raised earlier remains: why is what men would agree to, in conditions in which they may act without restraint, of any relevance at all for morality?

Before proceeding, a question confronts us: has Jaffa contradicted himself? Has he altered his interpretation of the argument for equality? His emphasis may have changed, but I believe he can be acquitted of contradiction. Jaffa does not reject the hypothetical consent argument in the Lincoln passage.¹⁸ The “categorical imperative” there referred to is one that Lincoln felt bound to obey, given the nature of his personality. Jaffa does not claim that a moral rule unconditionally binds everyone, regardless of his ends. Further, the state-of-nature argument is not superseded. Rather, Lincoln’s aim is to supplement it when a government already exists.

In like fashion, Jaffa’s thrusts against Straussians who think that a Declaration of Independence rests on Hobbesian premises leave untouched the state-of-nature argument. He criticizes Walter Berns for “the unproved assumption that Hobbes is the philosophic progenitor of the American founding.”¹⁹ The morality of natural rights

starts from rights not because rights are prior to duties—or that “rights” is just a polite name for passions. . . . The priority of rights reflects the authority of that Creator whose endowment they respect and who demands respect for them.²⁰

But this is quite consistent with acceptance of the argument based on passion. Once a society based on natural rights has been properly organized, those capable of higher goals than bare self-preservation have a chance to pursue them. Jaffa thus denies that the views of the Declaration's authors "were merely a compound of Hobbes's materialism, atheism, and hedonism."²¹ At the same time, he can consistently assert: "In the American founding, comfortable self-preservation may be said to become the end of limited government."²² "Since self-preservation does not replace prayer or thought as ends or principles of human life,"²³ the self-preservation argument does not stand or fall with Hobbesian assumptions.

To conclude this part of the discussion, Jaffa advances two defenses of the principle that no person may rule another without his consent: the scale-of-being and the state-of-nature arguments. Neither succeeds.

But Jaffa, ever resourceful, has yet another argument that requires analysis. This argument straddles the border between theology and philosophy. It can best be approached by considering an objection to the scale-of-being argument. Suppose someone said:

Jaffa grants that God has the right to rule without the consent of human beings. If so, can he not delegate part of his power to others? And this delegation is just what I have received, delivered to me by direct revelation from God.

How would Jaffa respond to our imagined objector?

He would resolutely reject the objector's claim. Following Strauss, Jaffa maintains that not all claims to revelation are equal: the Biblical tradition ranks highest. Philosophy cannot show the falsity of religion, which rests on an act of faith. Tested against the Biblical tradition, the objector's claim fails. The golden rule, a fundamental principle of Christianity, implies the egalitarian principle that Jaffa supports. Far from being at odds with reason, Biblical religion lends at least in this instance additional support to the claim that no one may rule another without his consent.

Each step of this argument is questionable. According to Jaffa, Strauss did not place Biblical revelation on the same level as the "theologies or theogonies of Greek poetry. . . . When Strauss speaks of revelation, he is speaking of faith founded in the Bible."²⁴ I assume that Jaffa endorses Strauss's opinion: in another article he criticizes Allan Bloom for believing "without argument that there is any learning 'comparable' to the Torah and Talmud."²⁵ The key

problem for Strauss (and presumably Jaffa) is that his philosophy gives him no basis to rank religions.

According to Strauss, “[p]hilosophy demands that revelation should establish its claim before the tribunal of human reason, but revelation as such refuses to acknowledge that tribunal.”²⁶ This refusal cannot be shown irrational, pending the production of a perfect philosophical system, the existence of which is “at least as improbable as the truth of the Bible.”²⁷ (In my view, the claim that philosophical argument shows ordinary religion to be improbable is entirely mistaken. But this is by the way.)

But if acceptance of revelation depends on an act of faith which philosophy cannot disprove, how does philosophy gain the power to rank revelations? How do Strauss and Jaffa know that religions based on the Bible rank higher than any other religion that believes in an omnipotent God?²⁸ Unless this claim is made good, Jaffa’s argument for equality is fatally flawed. Against assertions that God has ordained particular people to rule, he claims that the Bible teaches equality. But without an argument that Biblical revelation outranks any other, claims to rule based on non-Biblical revelation remain in the field. I assume that the claim of superior rank for the Bible is not intended exclusively as itself the outcome of an act of faith. Otherwise, Jaffa’s argument for equality would rely crucially on an act of faith; and he clearly does not want this.

But our social science, if it is to be of any use, must be addressed to Moslems and Jews as well as to Christians, to Buddhists and Hindus as well as to believers in the Bible. It must, finally, be addressed “not only to those who enjoy the blessing and consolation of revealed religion, but also to those who face the exigencies of human destiny alone.”²⁹

But let us grant the assumption that the Bible is superior to all other revelations: can the remainder of Jaffa’s argument be accepted? He finds support from Christianity for equality:

But if we ask what Jesus’s moral teaching was, we will find nothing more fundamental than the golden rule, the injunction found in Matthew 7:12 that “Whatever you wish that men would do to you, do so to them.” Let us ask, however, who is the “you” to whom this admonition is addressed? Is it not all human beings everywhere? Does not Jesus presuppose that with respect to their possession of rights, and their corresponding obligation to respect the rights of others, “all men are created equal”? In

short, the doctrine of the Declaration is already implied in the Judaeo-Christian ethic. In a sense, it is the ground of that ethic.³⁰

The "implication" that Jaffa finds in the precept seems to have been deduced by other means than logic. The golden rule says nothing at all about whether people have political rights, much less equal rights. If people do have political rights, and everyone wishes others to respect his rights, the golden rule perhaps allows one to conclude that everyone ought to respect the rights of others. But how does one get from here to the claim that everyone has equal rights? I said that the precept "perhaps" allows us to deduce respect for rights because according to many Christians the rule applies only to personal relations, not to politics.³¹

More fundamentally, the interpretation of the golden rule, and its place within Christian teaching, cannot be determined in isolation. Various denominations have different views about the teaching of the Bible, and each prescribes to its members how the golden rule and other precepts are to be interpreted. Jaffa's religious opinions are his own business, but he possesses no authority to tell others the meaning of a religion he does not share.³²

Even if one thinks that the golden rule does teach the political equality of all men, it does require that no one rule another without his consent. Someone who thought that the Bible prescribed authoritarian government could consistently hold that everyone has an equal right to have such government instituted. By hypothesis, he believes that the regime he favors has been prescribed by God. He can thus now maintain that even if he were to have had some other belief about politics, he would want the true belief to be imposed on him. Thus, the golden rule allows him to impose his views on others.

Jaffa himself recognizes almost the identical point:

A community of Christians (or of a particular denomination of Christians) may ask themselves whether, in compelling non-Christians (or Christians of another denomination) to join their church, they are violating the golden rule not to do unto others what they would not have others do to them. But it is not likely that they will think in Kantian or categorical terms of what it would mean if everyone were at liberty to compel everyone else in matters of religious faith. It is much more likely that, thinking only of their own faith as an unqualified blessing, they would see

nothing wrong in itself, or contrary to the golden rule, in using the compulsion for the sake of an end of whose goodness they have no doubt.³³

Jaffa provides no refutation of this view of the golden rule. He cannot simply point to the contradiction with his principle of equality, since this would beg the question whether the golden rule implies his principle.

Even if Jaffa's interpretation of the golden rule were correct, his argument would be incomplete. In order to show that the Biblical religions prescribe equality, Jaffa needs to show that Judaism also teaches this doctrine. But, so far as I am aware, he has not addressed the teaching of Judaism on political rights. He notes that according to the Old Testament, everyone is capable of recognizing "the wisdom and understanding of Israel," which he takes to support the capacity of human nature, apart from revelation, to recognize wisdom.³⁴ But this leaves the point just raised untouched.

Jaffa however advances an argument of his own against the imposition of religion. He tells us that

[r]eligious liberty is grounded in the metaphysical freedom of the mind. Because of this freedom, coercion in matters of faith is destructive of all merit in professions of faith. Therefore, a man's civil rights can have no more dependence upon his religious opinions than upon his opinions in physics or geometry.³⁵

What Jaffa means by "metaphysical" freedom is unclear. Elsewhere he speaks of the freedom to choose between good and evil as a condition of responsibility.³⁶ Is this common-sense view the same as "metaphysical" freedom? Does Jaffa mean to endorse what is sometimes called "strong free will," i.e., the view that one could have chosen otherwise than one actually did, even given precisely similar causal conditions? I do not know. I shall, subject to correction, assume that by metaphysical freedom Jaffa simply means freedom in the ordinary-language sense.

If Jaffa means this by freedom, his argument fails. If people are required under threat of legal penalty to profess belief, their freedom of the mind remains. They will presumably know whether they sincerely accept the established church or merely mouth the prescribed phrases to escape punishment. If they in fact believe what they are required to profess, why do their professions "lose all merit"? Similarly, laws against murder do not

destroy the moral merit of respect for the lives of others, so long as one would not have killed even without a law against it.

Further, what if a religion teaches that even coerced belief has merit? Once more, Jaffa attempts without authority to prescribe religious doctrine. And even if he is entirely right that coerced faith has no merit, his argument does not rule out an established church. Suppose the church made no attempt to compel belief, but required people to pay taxes to it? Or suppose the church insisted on a certain form of government which had nothing to do with inducing people to accept the church's teachings? Suppose, e.g., that a church taught that absolute monarchy with complete religious toleration was the best type of regime. In point of fact, the Parable of the Talents in the New Testament has sometimes been used to support the right of kings to rule. Jaffa's argument provides no reason for believers to refrain from establishing a monarchy.

Jaffa's invocation of the Judaeo-Christian tradition by no means indicates that his argument for equality rests on religious assumptions, as previously noted. How then can he claim that our "respect for the rights of others constitutes an essential element of our duty to God, our primary duty, and the duty antecedent to our rights"?³⁷ The answer lies in the idiosyncratic meaning Jaffa gives the word "God." In an odd passage, he contends: "Although the existence of God is certainly implied by the proposition that all men are created equal, it is not necessarily implied. What is necessarily implied is not the Creator, but Creation."³⁸ Implication between propositions is necessary: whatever can Jaffa mean by "implies" but not "necessarily implies"? Is he appealing to systems of modal logic in which "it is necessary that p" does not entail "it is necessary that it is necessary that p"? More plausibly, does he mean that a Creator is conventionally implied by the proposition, but not logically implied?

I suggest that the latter is a close, but not a perfect representation of Jaffa's meaning. Jaffa does, it seems to me, wish to suggest that belief that men are created equal does not logically require a God distinct from creation. But the belief still does imply that God exists, since God need not be seen as distinct from creation. In fine, belief in God simply becomes equated with the acceptance of an objective order of nature.³⁹

This suggestion receives support from another strange passage. Discussing the view that the Declaration of Independence takes of governmental power, Jaffa remarks:

The same God may, under his different aspects . . . without any conflict of interest arising from a diversity within himself. . . . The three-personed God . . . may be distinguished however from the originating Deity denominated as Creator.”⁴⁰

God acquires attributes with the creation; once more God seems to be equated with the order of nature and the Creator apart from nature relegated to the unknowable: he is assigned no diverse aspects.

But if Jaffa does not mean by “God” the God professed by ordinary Jews and Christians, why does he use theological terms so extensively? The answer, it seems to me, is that Jaffa wishes to promote a “civil religion” that will secure popular support for his political doctrine. Jaffa maintains that in the ancient world, people believed that their laws ultimately stemmed from a god peculiar to their city. “Every city either had a god as its lawgiver, or received them [laws] from a legislator who had in turn received them from a god.”⁴¹ In these conditions, popular consent is not needed. People will obey the laws that they believe their city’s god has instituted. But Christianity substitutes a universal God, with whom people can become related apart from their political arrangements. Consent based on equality must replace the rules of the ancient city.⁴²

Jaffa thus intends his interpretation of Biblical religion to accomplish for the modern world what belief in the city’s gods did for the ancient: obedience by the people to the proper system of law. Jaffa quite rightly notes that Christianity allows persons a relation to God independent of their political community; but as he also well knows, many Christian churches have gained religious control of the state. Hence his constant insistence not only on religious toleration, but on the “fact” that Christianity teaches this. He must at all costs defuse any religious teaching that threatens the political views he holds to be correct.

Jaffa praises Abraham Lincoln for his use of religious rhetoric to advance popular belief in his political principles. Lincoln “incorporated the truths of the Declaration of Independence into a social and ritual canon, making them objects of faith as well as cognition.”⁴³ Lincoln taught a “political religion which creates ‘reverence for the laws.’”⁴⁴ To Lincoln, the law does not command assent to religion; rather, “it is the function of religious doctrine to command assent to the rule of law.”⁴⁵ Political considerations can settle questions of religious dogma: thus Lincoln rejected emphasis on human sinfulness. This threatened the views about human nature he took to be essential to the success of political reform.⁴⁶

In Jaffa's interpretation, Lincoln carried the political use of religion to what can only be called extraordinary lengths:

Lincoln acted the role of high priest in the Civil War, a conflict which he interpreted, in his two famous utterances, as a divine affliction, designed to transform a merely political union into a sacramental one.⁴⁷

If one sees Jaffa as attempting to carry on the path blazed by Lincoln, many of the difficulties we have raised dissolve. Instead of asking: what evidence does Jaffa have for seeing Jesus as a proto-Lincoln, we should instead ask: how does Jaffa wish to use the Bible to advance his own views? The blatant weakness of his arguments, taken as factual claims, emerge in a different light if they form part of a myth elaborated for other ends.

But a new difficulty confronts Jaffa. He strongly supports religious tolerance: but may one openly dissent from the political religion he favors? If he disallows dissent, then his "religion" does not practice the tolerance it preaches; if he allows it, he puts at risk the tutelary ends of his ersatz religion. In a discussion of civil and political rights for political parties which aim to deprive others of equal rights, Jaffa maintains that these groups have no guaranteed liberties. The question of what to do about such groups "must be a prudential one." Although it may be counterproductive to deny rights to the intolerant, "a free society cannot be neutral towards the morality of citizenship, without being neutral towards itself. And this is absurd."⁴⁸ I cannot think that open dissent from the principle of equality has a bright future in a society run on Jaffa's rules.

I do not suggest that in his political view of religion Jaffa is hypocritical; but to explain why not, I fear, requires further resort to speculation. Some writers, such as Shadia Drury, have discovered in Strauss and his school a carefully concealed atheism;⁴⁹ but I do not think this correct. The political view of religion Jaffa supports is entirely consistent with the theology he and Strauss find most plausible. Jaffa normally writes with pellucid clarity; but one passage in a recent essay is a conspicuous exception:

If it is true, as some say, that God created *ex nihilo*, then God Himself belonged to the Nothing that was prior to Creation. That is to say, the highest reality is predicated if that Being—God—whose nothingness (uncreatedness) is of the essence

of his perfection. . . . God, as potentiality rather than actuality, is non-being rather than being, at least as non-being and being are understood by merely human intelligence. Moreover, to say that “nothing prevents anything from changing or being changed into anything else . . .” is to say nothing different than saying that nothing (viz. Nothing) limits the power of God.⁵⁰

When I first read this, I was inclined to dismiss it as murky Heideggerian metaphysics; but in fact the remarks are of crucial significance to understanding both Strauss and Jaffa. They express a standard doctrine of several Kabbalists. The foremost historian of Kabbalah (and incidentally Strauss’s friend), Gershom Scholem, clarifies Jaffa’s dark saying:

More daring is the concept of the first step in the manifestation of *Ein-Sof* [the Infinite] as *ayin* or *afisah* (“nothing,” “nothingness”). Essentially, this nothingness is the barrier confronting the human intellectual faculty when it reaches the limits of its capacity. In other words, it is a subjective statement affirming that there is a realm which no created being can intellectually comprehend, and which, therefore, can only be defined as “nothingness.” This idea is associated also with its opposite concept, namely, that since in reality there is no differentiation in God’s first step toward manifestation, this step . . . can thus only be described as “nothingness.” . . . Its particular importance is seen in the radical transformation of the doctrine of *creatio ex nihilo* into a mystical theory stating the precise opposite of what appears to be the literal meaning of the phrase. The monotheistic meaning of *creatio ex nihilo* loses its meaning and is completely reversed by the esoteric content of the formula. . . . This view, however, remained a secret belief and was concealed behind the use of the orthodox formula. . . .⁵¹

In brief, the term Jaffa applies to God suggests that he rejects the usual understanding of creation out of nothing. More generally, Strauss, whom Jaffa follows here as always, interpreted several medieval Jewish and Arab thinkers as teaching a philosophical religion rather than religion as popularly understood. In Strauss’s interpretation, philosophers play a key role: when he refers to “prophets” he means them.

As Scholem suggests in a letter to Walter Benjamin, the beginning of Strauss's early book *Philosophy and Law* offers a key to his views on religion. According to Strauss, the foremost Jewish philosopher of the Middle Ages, Moses Maimonides, held that the "prophet as philosopher-statesman-seer (miracle-worker) in one is the founder of the ideal state . . . understood according to Plato's guidance: the prophet is the founder of the Platonic state."⁵²

In this conception, a prophet does not receive a communication from a personal God. Instead, "[p]hilosophical understanding of Revelation and philosophical grounding of the Law thus means the explanation of prophecy out of the nature of man."⁵³ But does not a prophet foretell the future? Here too Strauss takes Maimonides to be making a point about philosophy:

That the prophet . . . has command over the things of the intellect and over the knowledge of the future thus signifies that the prophet has command over both (perfect) theoretical and practical knowledge.⁵⁴

The significance of Strauss's project needs to be underlined. I do not think that he is suggesting that Maimonides advocates irreligion in the guise of religion.⁵⁵ Rather, if his interpretation is correct, then philosophical teaching *is* true religion. Maimonides is not "just anybody" but a foremost expounder of medieval Rabbinic Judaism. Thus, if one accepts the perspective of Maimonides, religion is not abandoned: it is correctly understood. As Jaffa has rightly noted, the epigraph to Strauss's study of Plato's *Laws* offers a clue to Strauss's thought. And this epigraph, taken from the medieval Arab philosopher Avicenna, exactly confirms our view of what Strauss means by prophecy: "The treatment of prophecy and the Divine Law is contained in . . . the *Laws* [of Plato]."⁵⁶

An obvious objection arises. Why should one think that Strauss's interpretation of another thinker gives his own opinion? An answer may be found in a second key to understanding Strauss: the unabridged version of his "Farabi's Plato." Strauss ascribes to al-Farabi, a tenth-century Islamic philosopher of major importance, this principle:

Farabi avails himself then of the specific immunity of the commentator, or of the historian, in order to speak his mind concerning grave matters in his "historical works" rather than in the works setting forth what he presents as his own doctrine.⁵⁷

Of course it does not follow that Strauss used the same principle in his own work. But fully conceding that I am speculating, I think that he did so. And this very essay, if interpreted in the way I suggest, confirms the view that Strauss's praise of "religion" depends on the peculiar sense he gives that term. If religion is understood as "essentially the property of a particular community," then religious speculation is "inferior to grammar and poetry." Popular religion is not a live option: Farabi "has infinitely more in common with a philosophic materialist than with any non-philosophic believer, however well-intentioned."⁵⁸

As one might expect, Farabi did not use "divine" in its customary acceptance.

Farabi's "divine" does not necessarily refer to the superhuman origin of a passion, e.g., but may simply designate its excellence. . . . What he called "divine" in the first statement, is finally called by him "human."⁵⁹

But what is the point of all this? Why present philosophy in the guise of an interpretation of religion rather than on its own? In part, the answer lies in fear of persecution; but the more basic reason is far from defensive. By their reinterpretation, philosophers can realize a "secret kingship"; without direct attack on popular belief, they nevertheless achieve an "undermining of accepted opinions."⁶⁰ Thus, both al-Farabi and Maimonides, according to Strauss, do not intend their use of religious terms to be read in a popular sense. This does not imply that they adopt a "non-literal" understanding; they, and Strauss also, take their usage to be the correct sense. As Strauss sums up:

[A]s philosophers they [Maimonides and the Arabic philosophers] must indeed try to *understand* the given Law. This understanding is made possible for them by Plato and only by Plato.⁶¹

And as the last link in the chain, Strauss notes that Maimonides considered al-Farabi the greatest authority in philosophy after Aristotle.⁶²

It is hardly surprising that Gershom Scholem, thoroughly familiar with his friend's position, considered Strauss an atheist. He complained that Strauss's open expression of his atheism in *Philosophy and Belief* prevented Scholem from obtaining for Strauss a position at the Hebrew University of Jerusalem. He comments in a letter of March 26, 1936, to the great critic Walter Benjamin: "The book [*Philosophy and Law*] begins with an unfeigned and copiously argued if completely ludicrous affirmation of atheism as the most important Jewish watchword."⁶³

Along similar lines, the contemporary philosopher Emmanuel Levinas contends that Strauss sees a "cryptogram in the whole of philosophy . . . in which Reason secretly fights against religion."⁶⁴ The views of Scholem and Levinas are right, if by religion one means belief in a personal God; but if one takes "religion" the way Strauss himself does, he is most decidedly not an unbeliever. When, in a perceptive essay, Frederick Wilhelmsen asks why "the school of Leo Strauss" never seriously examines Christian philosophy,⁶⁵ the answer can be found in the interpretation we have suggested. True religion consists of philosophers in "the quest [for truth] which alone makes life worth living." To identify a particular human being, and a non-philosopher at that, as God incarnate would for Strauss be the quintessence of superstition. This is not the revelation he is prepared to take seriously.

But if this is what Strauss means by revelation, why does he speak of an opposition between reason and revelation? On the view I have imputed to him, would not they be virtually identical? The solution requires reference once more to Strauss's characterization of miracle. A "miracle" must I think be taken as a successful effort by philosophers to establish a regime on appropriate principles. Charles McCoy has it exactly right: "'God' is 'camouflage' for 'wise rule.'"⁶⁶ But philosophy, taken as a rigorous science, cannot show that philosophers will succeed in this endeavor: on the contrary, success is unlikely but not impossible. This constitutes the opposition between reason and faith.

This assessment of what Strauss means by revelation receives support from this significant passage:

[R]evelation is either a brute fact, to which nothing in purely human experience corresponds—in that case it is an oddity of no human importance—or it is a meaningful fact, a fact required by human experience to solve the fundamental problems of man—in that case it may very well be the product of reason, of the human attempt to solve the problem of human life.⁶⁷

In the paragraph of "Progress or Return?" which follows, Strauss appears to respond to this suggestion from the standpoint of standard religious revelation, but in fact he does not do so. He notes that revelation is "not meant to be accessible to unassisted reason" and refuses to acknowledge the tribunal of human reason. "But God has said or decided that he wants to dwell

in mist.” This leaves entirely untouched Strauss’s assertion in the previous paragraph. He never says that revelation stems from a supernatural personal being. Strauss asserts that “philosophy recognizes only such experience as can be had by all men at all times in broad daylight.”⁶⁸ Nevertheless, the practice of philosophy is confined to an elite. His “defense” of revelation, then, merely claims that judged by the capacities of which all humans are capable, the wisdom of philosophers appears mysterious.

That Jaffa accepts the position just described I cannot demonstrate; but it is, I suggest, the view of religion he finds most plausible. If so, the “political religion” he finds in the Declaration reflects the religious position he thinks most likely to be correct, if any religion is in fact true. God is immanent in creation and unknowable apart from it. One can now understand how he ranks religions, when at first it appears that philosophy has no credentials to do so. Since true religion *is* philosophy, Jaffa’s ranking is from his own perspective legitimate.

Strauss’s emphasis on esoteric writing has aroused endless fascination, and many have tried to plumb the “secret of Strauss.” I fear that I have been no exception; but even if the line of thought just suggested misses the mark, our less speculative results remain. Jaffa has still not arrived at a sound argument for the principle that no one may rule another without his consent.

But even if one does accept the principle, the conclusions Jaffa draws from it do not follow. Jaffa maintains that each person’s right to rule does not become valuable to him until everyone transfers his right to a government.⁶⁹ But the government cannot operate by unanimous consent: a majority must therefore act as the representative of the whole. It in turn can delegate its power to another type of government, although it is generally desirable that the government be democratic.⁷⁰

No doubt people can, if they wish, unanimously form a government; but why is the right of self-government valuable only if an agreement of this kind is made? Suppose that in the state of nature, a minimal state arises in the way discussed by Robert Nozick. Or suppose people establish protection agencies to secure their natural rights, and these agencies in turn settle disputes among themselves by negotiation, as Murray Rothbard and other libertarians have suggested.⁷¹ Would the right of self-government be without value in these circumstances? Why?

Further, if people do unanimously agree to form a government, why must power be delegated to a majority? Of course Jaffa is correct that a

large group cannot decide all issues unanimously; but many different trade-offs between the benefits of unanimous consent and the costs of securing agreement are possible.⁷²

Jaffa might respond that rules other than a simple majority do not "make every individual equally the source of legitimate authority."⁷³ But this is first of all false: a rule requiring, say, two-thirds majority for legislation does not pick out particular citizens and lower the value of their votes. Rather, it requires whoever wants to pass a law of a certain kind to secure the required proportion of votes. Approval and disapproval of laws are treated unequally, not citizens. Further, it does not follow from the principle that no one can be governed without his consent that rule must be democratic.⁷⁴ Why cannot people consent to undemocratic rule? Why, e.g., cannot the citizens transfer their right to rule to a Hobbesian sovereign? If they do so, they are not subject to rule without their consent.

I suspect that Jaffa would object to both libertarianism and Hobbesianism on similar grounds. Against the former, he might contend that: "[b]ecause human kings are not gods, no man is permitted to be a judge in his own cause."⁷⁵ Rothbard's system, in particular, allows people directly to punish those who violate their rights: they need not delegate their power of enforcement to others, however prudent it may be to do so.

This objection fails on several counts. Most obviously, it leaves untouched variants of libertarianism which do not allow self-enforcement. Nozick's minimal state, e.g., considerably restricts self-enforcement through the prohibition of risky decision-procedures. Further, Jaffa himself seems sometimes to recognize the legitimacy of a direct response to a violation of one's rights:

Everyone knows that he may, if necessary and at any time, take "the law into his own hands," either to defend himself, or to defend other innocent persons from unlawful violence. No positive law can repeal this natural law.⁷⁶

How can Jaffa hold this and maintain at the same time that one cannot be a judge in his own cause? If he means something else than a direct response by "judge not in his own cause," what is it?

More fundamentally, how does man's not being God imply his inability to judge his own cause? Perhaps the argument is that someone who judges in his own cause will be unable to restrain his passions: not controlled by reason, he will judge unfairly. Certainly this poses a problem; but why does the needed

control of one's passions require superhuman virtue? What if someone *is* able to overcome bias in his own favor? May he be a judge in his own cause?⁷⁷

Jaffa might raise a parallel contention against unanimous surrender to a Hobbesian sovereign:

The three powers of government are then symbolically present in the Declaration of Independence as aspects of that God in the Declaration who results from Creation, and who is the pattern and support for government in agreement with the rights of man. . . . The same God may, under his different aspects or functions, legislate, judge, and execute, without any conflict of interest arising from a diversity within himself. But the people, although by law one, remain a composition of relatively discrete individuals, whose passions . . . are seldom in harmony with each other. Hence the individual persons who compose the legislative, judicial and the executive powers of human government must (unlike God) be really different.⁷⁸

This argument rests on a dubious assumption. Since the people unified in a commonwealth retain their separate identities, their form of government must mirror this separation. Otherwise, the person holding all the powers of government will copy powers belonging to God. But why is it wrong to do this? If the answer lies in the inability of a single officeholder to avoid the abuse of power, this may well count strongly against an all-powerful sovereign. But the question is empirical: it has not been shown that every Hobbesian sovereign abuses power.⁷⁹ Even if one forbids a single person to hold complete power, a system might feature several sovereigns, like the Spartan kings. Jaffa has failed to show that alternatives to his majority rule scheme must be rejected.

Not content with an argument for the form of government, Jaffa deduces details of its construction from the scale of being. "Because mere humans are called upon to judge other humans, . . . punishments should be neither 'cruel' nor 'unusual.'"⁸⁰ One may readily acknowledge that punishment ought to be humane; but, once again, how does this moral principle follow from the fact that man is not God? Is it that if we were infallible in judging criminals, we *would* be able to impose cruel punishment? This seems wrong: cruelty is immoral even if the criminal's guilt is certain.

In sum, Jaffa's use of natural theology to support a principle of consent and to derive a form of government appropriate to that principle fails completely.

II

A radical opinion threatens to undermine all of Jaffa's political philosophy. According to many contemporaries, values reduce to arbitrary preferences. It makes no sense to speak of rational ends: rationality exclusively concerns means. "True" and "false" apply only to statements about the world, but judgments of value are independent of the course of events. As Ernest van den Haag puts it: "For unbelievers and for a secular state, nature merely lets us know possibilities and the consequences of our choices, without telling us what to choose."⁸¹

To Jaffa, this view leads to nihilism: its wide popularity has weakened resistance to tyranny and immorality. Further, if morality consists purely of preferences, Jaffa cannot carry on his argument for equal consent. According to subjectivism, Jaffa's principle reflects his preferences. Others have different preferences, and no reasonable way exists to determine who is right.

Jaffa accordingly regards it as a prime task to vindicate the objectivity of morals. He has especially addressed the issue in his "In Defense of the 'Natural Law Thesis,'" and I propose to examine his arguments at some length.⁸² Before doing so, however, I emphasize that my purpose is not to show that morality is subjective. Quite the contrary, I agree with Jaffa that morality is objective. Further, none of my arguments in this or the previous section relies on the assumption that values cannot be derived from facts.

Jaffa begins his defense of natural-law ethics on a dubious note. Felix E. Oppenheim, a "value non-cognitivist," claims that "[v]alue words do not designate objects, and it is misleading to use nouns such as 'Justice' and 'Goodness'" (p. 191). Jaffa responds by noting the drastic consequences Oppenheim's suggestion if adopted would have for ordinary language. Jaffa maintains that "grammatical forms are an important index to human consciousness of reality, and the grammar Oppenheim rejects is, so far as I am aware, universal" (p. 191).

Jaffa has wrongly accepted Oppenheim's dubious argument. Oppenheim and Jaffa agree that if "justice" does not designate an object, the term strictly has no place in language. But to hold that the meaning of a term is always an object to which it refers is a questionable view. Gilbert Ryle memorably satirized

the traditional belief that to ask what does the expression "E" mean is to ask To what "E" stands in the relation in which "Fido" stands to Fido? . . . the question whether a designator does apply

to anything cannot arise until after we know what, if anything, it means. The things it applies to, if any, cannot therefore . . . be ingredients in what it means.⁸³

Jaffa might disagree and still wish to maintain that meaning is reference. If so, he owes us some argument: he should not assume the truth of a very controversial position. But why must Jaffa defend himself? Even if he is mistaken about language, what has this to do with ethics? It will become apparent below that Jaffa's assumptions about meaning infect his arguments about values.

Unfortunately, Jaffa has not yet finished with meaning. He informs us that "[s]peech presupposes common experiences. If we speak of our feelings, it is because we believe that others feel what we feel" (p. 193). Although this belief is essential to communication, we cannot prove it:

We have no way of proving, of being certain beyond doubt, that when we say "sweet" the word conveys the same thing to anyone else in the world . . . [but] most people act as if it does, and we think it most improbable that they would so act if they did not experience "sweet" as we do. (p. 193)

Jaffa makes the "Fido"-Fido theory even worse. Now, terms designate private objects, not meant to be accessible to others. Jaffa's claim that others probably mean the same thing by "sweet" as I do will not work. In his account, "sweet" designates, and hence means, a private experience. The expression "the same experience as I have when I experience sweet" does not designate anything: each experience of "sweet" is private to the person who has it. No criteria for the use of the expression have been proposed. Since this expression does not point to anything, by Jaffa's theory it is meaningless.⁸⁴

The difficulty for Jaffa's account of language could not be greater. He not only thinks that words like "sweet" designate private objects: he maintains that our perception of physical objects takes place by the application of concepts to sense-data (p. 196). Why does Jaffa assume without argument that we do not directly perceive physical objects? I do not say that he errs in doing so, but the issue requires argument.⁸⁵ However important this issue, a different problem confronts Jaffa. On his view, we cannot communicate about physical objects at all, since the sense data to which they refer (= mean) are private. Perhaps Jaffa rejects the well-known argument against private language just rehearsed: if so, he owes us an accounting.⁸⁶

At times, Jaffa appears to recognize that communication requires something other than private objects. "Sensation, or a judgment of the mind utilizing only the data of the senses, is not sufficient to make possible a judgment of fact" (p. 196). How then do we make such judgments?

Empirical knowledge . . . is a synthesis of sense data with definitions, universals, in terms of which the sense data are ordered. . . . What is indisputable, I think, is that every noun, such as "chair," is entirely subjective in that it is *a priori* with respect to the sense-data it orders and pre-exists in the mind of the man making the judgment of fact before he makes it. Yet it is objective insofar as it forms a predicate that is inter-subjectively communicable and presupposes an order of things common to the speaker and his actual or potential addressees. (p. 196)

Jaffa rightly sees that language cannot be based exclusively on sense data. He thus wishes a term to mean a combination of a concept and a group of sense-data. But this makes no sense: the concept of something *is* its meaning. Something's meaning cannot consist of its meaning plus something else. Perhaps Jaffa means that a perceived object consists of sense-data organized according to a pattern: "table" refers to sense-data grouped in a table-like way. But then, the meaning of "table" once more consists entirely of incommunicable private sensations. (Remember, for Jaffa meaning = designation.) Nor will it help to bring in a world of common objects. If we perceive nothing but sense-data, how do we gain access to the common world? What constitutes referring to a common object? And if one somehow does succeed in referring to "the order of common things," does each term have two meanings—the common object and the collection of sense-data? Also, what about terms such as "sweet" to which no common object corresponds? Not content with two theories of meaning, Jaffa ventures a third:

The common experience presupposed by speech presupposes in its turn a world of objects common to the speakers. Accordingly, the inter-subjectivity of language presupposes the *objectivity* and *identity* of the communicating subjects. . . . They must be identical, in the sense that the cause of our access to the world of objects must be the same, for the objects to be conceived as being the same. (p. 193)

Here total confusion reigns. Jaffa first claims, as one would expect from his belief that meaning is designation, that common experience presupposes common objects. From this he infers that communicating subjects must have identical ways of grasping the world: thus, a blind man cannot understand what the colors of a sunset designate. But on Jaffa's account, each person uses his concepts to organize private sense-data: the fact that people have identical mechanisms of perception does not suffice to secure common meaning. Each person still designates (= means, in Jaffa's idiolect) private objects. Even if one sets this problem aside, the same mechanisms of perception do not assure that communication is possible. Suppose we directly see external objects, but people radically differ in the objects they see. On Jaffa's view of meaning, how could one grasp the meaning of an external object that only others had seen? Further, why are identical mechanisms necessary for communication? It seems plausible that sharp differences in how people perceive things may impede their ability to communicate: but why is identity needed?

One might well ask why Jaffa has begun an account of ethics with a discussion of language. He attempts by his discussion to lay the basis for a fatal blow against ethical subjectivism. "What is purely subjective, as the value non-cognitivist tells us every intrinsic value judgment is, is incapable of communication" (p. 193).

This argument fares no better than usual for Jaffa. On his theory of language, every term designates, at least in part, a private object incapable of communication to others. Value-terms, as the subjectivist views them, are no worse off than all terms, by Jaffa's account of meaning. Jaffa himself seems aware of a similar point: "Let me now show why 'intrinsic value judgments' and 'empirical knowledge' are equally subjective and, for this reason, equally objective" (p. 196). (Jaffa's point is not identical with mine because he means value judgments as he conceives of them, not as the subjectivist does.) Oddly enough, Jaffa takes the point as telling in favor of value-objectivity. But it does not follow from intrinsic value judgments having *as much* objectivity as empirical judgments that either is objective.

Jaffa's contention that subjective value judgments cannot be communicated rests on an even more fundamental error. The "value non-cognitivist" denies that ethical judgments are true or false, independent of preferences. This is what he wishes to convey by calling value judgments subjective: he need not contend that such preferences rest upon ineffable feelings. Likes and dislikes obviously can be communicated: if whenever liver is served I

make a face and refuse to eat it, have I not expressed my dislike for it? Jaffa has confused two senses of "subjective": "without truth-value apart from preference" and "incommunicable."

Jaffa also uses his analysis of language to show how we may arrive at objective judgments of value.

If I make the judgment "this is a good chair," I do not thereby premise any reality different from that assumed to exist in my merely factual statement. I merely affirm that the object before me fulfills adequately or completely the requirements specified in my concept of a chair. . . . The unqualified term applies only to the perfect object. (pp. 196–197)

Jaffa's argument rests crucially on his confusion of meaning and referring. He says, in effect:

When I point to a good chair, I am just pointing to a chair: the goodness *of* the chair adds nothing to it. Since everyone acknowledges that the judgment "this is a chair" is cognitive, so is "this is a good chair." It adds nothing to the first judgment.

Even if Jaffa were right about the reference of "good chair," his argument that judgments of value are cognitive would fail. A subjectivist could respond:

"Good chair" has exactly the *reference* Jaffa thinks it does. Still, to call a chair good *means* something beyond identifying it as a chair: it expresses our approval of the fact that the chair is not deficient. But is Jaffa correct about the *reference* of "good chair"?

I am inclined to think that the reference of "chair" and "good chair" need not be identical. If I say "I am going to have my chair reupholstered; the stuffing is coming out of the seat," it seems to me that I am referring to a genuine chair, not an analogical one: "it is *that* chair, that very one over there in the corner, that needs to be fixed." But this is merely my linguistic intuition against Jaffa's: readers must judge for themselves.

According to Jaffa, the controversy can be resolved through argument. He notes that one can imagine a chair becoming increasingly defective

until we can only say "it was a chair." Finally, it becomes a mere heap of broken lumber, unrecognizable as bearing any more

relation to a chair than to any other possible wooden object. When did it cease to be a chair? Only when it lost all traces of its original form? If it did not cease to be a chair when the first damage was done, it did not cease to be a chair when the last damage was done. What has ceased in even the smallest measure to be a chair is, to that extent, not a chair. (p. 197)

The last sentence of this argument should at once be dismissed from consideration. No doubt something that is not a chair is not a chair: but just the point in dispute is whether a deficient chair is a chair. As to the main argument, *why* is it the case that if a sufficiently damaged “chair” can no longer be regarded as a chair, then even a slightly imperfect chair is not a chair in the strict sense? Is Jaffa’s argument that there is no non-arbitrary point apart from this to draw the line? But why must there be a *point* at which a chair ceases to exist? Why should we not rather say that the boundaries of “chair” cannot be exactly determined?

Jaffa’s argument is a variation of the sorites, or paradox of the heap; and although this argument raises complicated logical problems, one can readily see it will wreak havoc if deployed in a simpleminded way. Suppose one removed a single atom from a “perfect” chair. Would it not retain its existence as a chair undiminished? But if the removal of a single atom cannot change a chair into something else, neither will the removal of a single atom from the altered chair. By continuing the argument, one can show that a single atom is a chair. Unless Jaffa wants to involve himself in some very intricate arguments, he had better leave the heap alone.⁸⁷

Jaffa applies his claim about the meaning of “good object” to morality in this passage:

Judgments of the excellence of objects may become moral judgments when the object under consideration is a man, since moral judgments are judgments of human excellence. . . . We judge a man good in virtue of the presence of humanity in the living organism before us. (pp. 197–198)

Although Jaffa does not here spell out the argument, presumably the contention is that a non-deficient man must be morally virtuous. An immoral man is not fully a man.

This conclusion will by itself not disturb the subjectivist. He can readily admit that someone who lacks a full complement of the Aristotelian virtues is

not in the strict sense human. But he may deny that "one ought to approach as closely as possible to strict humanity" is objectively true. Why need it matter to someone if he is in Jaffa's term deficient? The subjectivist I have conjured up challenges, not Jaffa's definition of human excellence, but his assertion that "moral judgments are judgments of human excellence." A moral judgment tells us what we ought to do. And just as it does not follow that whenever we build a chair, we ought to build a perfect chair, it is not a requirement of reason that one morally ought to attempt to become a perfect man. If this appears counterintuitive, perhaps this example will help: If a deficient man is a man only by analogy, then he is strictly something else. We introduce an arbitrary term for this "something else," viz., "*man." A *man is a deficient man, but a man is likewise a deficient *man. Why is one deficiency of greater moral relevance than the other?⁸⁸

Although Jaffa's article does not develop his ethics in detail, he offers an argument designed to show that the policy of an "unreconstructed Nazi" who aims at world conquest is irrational. If the argument is right, then the subjectivist is wrong to claim that all moral judgments are mere preferences on the same level. The proof of Nazi irrationality is this:

The Nazi . . . if he were asked to say why subjecting others to his will was good, would answer that in this he found his greatest satisfaction. Yet in contemplating this satisfaction he would realize (if he thought it through) that this satisfaction would be denied him if he were master of the world surrounded exclusively by slaves. It requires the testimony, not of slaves, but of other masters, to be convinced of one's mastery. (p. 203)

The argument continues for some length, but let us pause to evaluate this part of it. First, Jaffa relies on an implicit philosophical psychology the conclusions of which he imputes without argument to his imagined Nazi. Jaffa thinks that everyone aims at his own happiness and that recognition by others occupies a key role in securing happiness.⁸⁹ But what if the Nazi aimed at world conquest because he took this as a moral imperative? Why need something other than the goal itself motivate him? Further, what if he wishes to achieve the goal of conquest and does not care whether others recognize that he has done so? (The latter suggestion allows him to be motivated by his own satisfaction.) If Jaffa replies that both of these possibilities are excluded

by a correct account of motivation, he needs to argue for his account, not just state that Aristotle held it (p. 205).

Even if the Nazi does wish recognition, it is not clear why the slaves do not provide it. How can one have better recognition of mastership than having everyone outside one's own group recognize one as master? Does Jaffa think that the slaves will refuse to acknowledge the Nazi as their master? Or is it that they do not know they are slaves? Neither seems remotely tenable.

Perhaps Jaffa means that since the Nazi holds the slaves in contempt, he will not value their recognition. But there is no reason to think a master must hold his slaves in contempt: perhaps he likes enslaving opponents whose power he respects. (It would not be a good reply here to claim that actual Nazis did hold various groups in contempt: the whole example is one contrived by Jaffa, not dependent on historical accuracy.) And even if he does hold the slaves in contempt, why does this block his winning the recognition of mastery we have assumed him to desire? If what he wants is recognition by those he respects, yet another goal has been postulated by Jaffa. But we have not yet considered the most plausible reason for Jaffa's view of recognition. This emerges in the argument's continuation.

The Nazi

depends, at the least, upon the praise and fellowship of fellow master-race members. But, by equal reason, the master race itself cannot know itself to be a master race in a world in which there are only slaves and no enemies. Its sense of its own mastery is dependent upon the possibility of war. If, then, through victory in war, a master race extinguished all actual and potential equals, all enemies, it would have to turn itself . . . upon itself. . . . But, in making enemies of his friends, which his commitment to war logically entails, our Nazi would be destroying the basis for the satisfaction he now takes in contemplating victory in war. (pp. 203–204)

This passage might be taken to mean that each Nazi depends on the recognition of potentially equal enemies for recognition: perhaps this is why he cannot be satisfied with recognition by slaves. But Jaffa's statement itself answers this claim. Each Nazi can receive recognition from "his fellow master-race members." And, aside from this, we have still not been given a reason why the individual Nazi cannot find the recognition Jaffa postulates that he wishes from slaves.

But what of the new argument about the master-race as a group? This, if anything, has more problems than the first part. Why should one assume that the group as a whole seeks recognition? According to Jaffa, each Nazi wants recognition: but it is a blatant fallacy of composition to conclude from this that the group taken as a collective also seeks recognition. Even if it did, why does the destruction of all actual or potential enemies impede the master-race's knowledge of its mastership? I should have thought that knowing that one has destroyed all actual or possible enemies is very good evidence indeed of mastery.

Jaffa has confused two types of mastery. In the first, the master defeats, or is capable *of* defeating, all rivals. In the second, several roughly equal opponents confront one another, one of whom wins or can win. In the latter case, too much of an initial advantage will prevent mastery from being attained: close rivals are needed. If Jaffa has this latter situation in mind, what he says about mastery becomes plausible. But he has not given the slightest reason to think that his Nazi must want this kind *of* mastery.

But suppose he is right; and, in order to achieve recognition, groups within the master-race must become rivals. How does this undermine the value of friendship? Why could not the members of each new group remain friends? Is the argument that if one group wins, it in turn will have to split, and so on? But why must the process continue until few or none within the group are friends? Would not new rivals be likely to arise? Further, why should one assume that Jaffa's Nazis value friendship? He notes that the actual Nazis did; but he has forgotten that his case is a philosophical argument rather than a report of historical fact. Why must the members of the master-race who give the Nazi recognition be his friends?

But suppose Jaffa is entirely right in his argument. All he has shown is that in certain conditions a policy of world conquest cannot be maintained over a long period. He has said nothing to rule out groups that aim to dominate smaller areas. What if the Nazis wished to achieve European dominance rather than literal world conquest? Why is pursuit of this goal irrational? And what if the Nazis were to recognize that they cannot permanently gain satisfaction from world conquest? Why could they not aim at conquest for as long as possible? It is not apparent that rationality requires that one have an ultimate goal the pursuit of which can be indefinitely continued.

Jaffa concludes from his argument that the Nazi ought to prefer liberal democracy to Nazism, if he values his own satisfaction. "If you would be

happy, then you must be virtuous.” This argument fails also, even if one disregards the obvious point that Jaffa has done nothing to show liberal democracy is required for happiness. Suppose that only a virtuous person can be happy, and that virtue entails commitment to liberal democracy. This does not suffice to show that Jaffa’s Nazi can be happy by attempting to become virtuous. Jaffa began his example with the assumption that the Nazi derives his greatest satisfaction from subduing others to his will. If so, and if only a virtuous person can attain happiness, the proper conclusion appears to be that the Nazi cannot obtain happiness, given his desires. The Nazi, instructed by Jaffa, may think that he would be better off if he were to have different preferences; but perhaps he cannot alter his desires. If so, Jaffa’s argument gives him no reason to prefer liberal democracy, even if the Nazi concedes that his goal is unattainable. He will not get full satisfaction from either Nazism or liberal democracy, but he might be better off under the former system.

Ever fertile with arguments, Jaffa advances yet another thrust against moral subjectivism. The moral non-cognitivist aims to bring about what he considers the best state of affairs, but

the comparative estimate of consequences . . . is, apart from an objective idea of happiness, impossible, for it leads theoretically to an infinite regress. Consider: I might estimate that course of action A is desirable because it leads to state of affairs A' which I now consider most desirable. However, the achievement of A' will cause me to value, not A', but B', and my present degree of dissatisfaction will be reduplicated. Unfortunately, I cannot resolve this dilemma by choosing B, since not B but A leads to the preference for B'—and so forth. (p. 207)⁹⁰

I find it unclear what Jaffa regards as the difficulty for non-cognitivism. The non-cognitivist will each time choose what he then thinks most desirable. Whatever his choice, he will afterwards think he should have chosen otherwise. But how does his regret pose a problem for the theory? It does not follow from his wish that he had chosen otherwise that he is worse off, or thinks himself worse off, than he was when he made the original choice. He does think that he is not as well off as he might have been had he chosen otherwise, but what is the problem for the theory in this?

To strengthen Jaffa’s example, assume that the person always regards himself as worse off after he chooses than he was before choosing. Once more,

why is this a difficulty for the non-cognitivist? The chooser can still aim at each decision to choose what then seems to him best, as the theory requires. No doubt the person has an unfortunate set of preferences, but it is not part of non-cognitivism that anyone who acts in accord with the theory will succeed in raising his level of satisfaction. If the person becomes aware of his self-defeating preferences, he may be at a loss what to do: but this is a problem for him, not for the defender of subjectivism.

Jaffa of course disagrees: he thinks his regress raises a fundamental difficulty for the non-cognitivist.

It is no answer to this to say that such examples are by no means necessary. Neither are any other examples. But the possibilities are demonstrably unlimited, and this fact proves that predictability is a delusion. If there is no basis for predicting the degree of human satisfaction that will result from perfect rationality on non-cognitivist premises, there is no reason whatever for obeying the injunction: "Be rational." (pp. 207–208, n. 3)

Jaffa seems to me right that a theory that aims to maximize satisfaction needs a method of estimating satisfaction. But his argument does not show that possibilities are infinite nor offer any other reason against estimates of future satisfaction. Jaffa has at best constructed an example in which satisfaction cannot be increased. How is his case supposed to be relevant to the general problem of estimating satisfaction?

Jaffa may be thinking along the following lines (though this is little better than a guess): In the infinite regress example, there are infinite possibilities. But one cannot rule out that, for any given person, the infinite regress obtains. If so, the possibilities facing an individual may, for all we can tell, be infinite, and predictability is not possible.

But Jaffa's case involves no infinite regress. At each choice, the person afterwards wishes he had chosen otherwise: this is not a regress at all, much less an infinite one. The number of choices confronting the individual with self-defeating preferences does not increase at all. Even if someone in this situation did face an infinite (indefinite?) number of choices, the possibility of this situation does not suffice to destroy predictability. Why could one not estimate that this situation for a given person was very unlikely to arise? To predict future satisfaction does not require that states of affairs not allowing prediction be ruled out as impossible. Further, even in a situation

presuming an infinite number of choices, it need not be the case that prediction of future satisfaction is impossible. Perhaps one holds on good grounds a theory reducing the possibilities that need to be evaluated to a manageable number. And if one settles for an outcome that is “good enough” (what Herbert Simon terms “satisficing rationality”), not all alternatives need to be compared.⁹¹

Jaffa has also misidentified the target of his argument; it is not, as he thinks it is, moral non-cognitivism. That position holds that morality depends on preference. But the problem Jaffa advances in his argument is whether satisfaction, if not objectively characterized, is predictable. A non-cognitivist need not maintain this: he can agree with Jaffa that the standards for satisfaction are objective but hold that whether one ought to maximize satisfaction requires personal decision. Also, someone might hold that morality is not dependent on preference but that satisfaction is. And a non-cognitivist need not take satisfaction as a goal. He might think that morality consists of Kantian imperatives, the choice of which rests on preference. Jaffa’s opponent in his article, Felix Oppenheim, adopted a subjective view of both morality and satisfaction; but unless Jaffa intends his comments exclusively as an *ad hominem* argument, he ought to have considered the cases just discussed.

In the preceding, I have spoken loosely of “preference” and “decision” in the subjectivist position. The first term seems to me the more accurate, since the use of “decision” makes it easy to fall into a misconception, one which Jaffa has not avoided. It does not follow from the subjectivist view that people have to choose their moral principles consciously. All that the view requires is that moral judgments are not true or false independent of preference. Thus, the position need not hold that “we decide what morality” is, as both Jaffa and Ernest van den Haag assume. Someone can be a subjectivist and hold that a person’s preferences are “built into him.” One might think, e.g., that people have certain instinctive likings and aversions which determine their moral choices. As long as one holds that there are no non-subjective criteria by which the preferences can be evaluated, the position still counts as subjectivist.

Whatever one thinks of Jaffa’s arguments, there is no denying that he has taken great care to build a case for the views he holds with such firm conviction. It is thus surprising that he advances one contention that if right would at once invalidate his entire approach. After noting that the “theory of value non-cognitivism is . . . extremely paradoxical and would drastically revise our conceptions

of reality," he continues: "This of course is no objection to it, for to be a scientist means to submit one's conceptions to the test of reason" (p. 191).

Jaffa's argument for moral objectivity, as we have seen, depends on a thesis about the meaning of "good." But this account purports to be about the meaning of "good" in ordinary language. If Jaffa's just-quoted remark were correct, a value non-cognitivist is free to dismiss Jaffa's argument as irrelevant. He need not take his theory to be an account of our ordinary conception of morality; and according to Jaffa, its conflict with our ordinary view is no objection to it. Fortunately for Jaffa, he advances only an invalid argument for his contention. If one submits one's contentions to the test of reason, it does not follow that one cannot consider a theory's paradoxical content as an objection to it.

Indeed, Jaffa's best argument in the article depends upon a denial of this contention. He points out that people continue to believe that the external world exists in spite of unrefuted skeptical arguments that this cannot be proved (pp. 194–195). If it is rational to do so, why is it not also rational to retain our convictions that at least some moral judgments are objectively true, despite philosophical problems about "ontological queerness," verification, etc.?

I hereby confess to a deception. Although I began the argument with a statement Jaffa makes, I continued it in a way that seems to me at least arguably defensible rather than give what Jaffa actually says. I did so because his continuation ruins a promising start.

On his account, recall, value judgments are cognitive judgments. Thus, Jaffa contends, "'intrinsic value judgments' and 'empirical knowledge' are equally subjective, and for this reason, equally objective" (pp. 195–196). But all that Jaffa can obtain from this is that just as we *take* the world to exist, so we may *take* moral judgments to be objective. And this is perfectly compatible with a subjectivist view that does not purport to be an analysis of people's opinions about moral judgments. J. L. Mackie's error theory, e.g., holds that moral judgments are subjective but that people mistakenly think them objective.⁹²

Have I nothing at all good to say about Jaffa's arguments? Lest I be charged (of course falsely) with bias against him, I should like to call attention to a point Jaffa makes which seems to me insightful. In a debate with Thomas Rochon, Jaffa noted that some terms, such as "rude," incorporate both factual and value elements in a way that cannot be disentangled. Whether someone is rude is a factual matter, not one for arbitrary decision; but once we have made the judgment, we seem committed to a *prima facie*

moral judgment. It seems to me that examples of this kind pose a genuine difficulty for a moral subjectivist. The argument, which Jaffa may have learned from Leo Strauss, has aroused a great deal of discussion in recent moral philosophy.⁹³

Jaffa presumably intends the moral theory he has sketched to support the doctrine of political rights discussed in Part I of this essay; and he suggests in the present article an interpretation of the Declaration of Independence (pp. 205–206, n. 2). But his moral theory seems at a crucial point inconsistent with the political theory he defends. His key political principle is that no man has the right to rule another without his consent. But he has just argued that only the perfect or non-deficient man is strictly speaking a human being. “When we speak of a poor or defective chair, we are really speaking metaphorically, for the defective chair is not, in the strict sense, a chair” (p. 197). By parallel argument, a defective man is not a man. Why, then, do non-defective men have rights? At best, they have analogies to rights, and the foundation of Jaffa’s politics is destroyed. Similarly, he asks: “How do we decide whether it is better to enslave our fellow men or respect their dignity as human beings, enjoying the same rank in order of nature (or of creation) as ourselves?”⁹⁴ But on Jaffa’s argument, not all human beings (in the ordinary-language sense) share the same nature: two entities that are analogous rather than members of the identical species do not have a common essence.

What is going on here? I should like to suggest an answer that fits in with the speculative discussion at the end of Part I. If successful, this account will explain why Jaffa refuses to reject the paradoxical view, even though his own argument rests on ordinary language. I suggest that, as before, Jaffa’s official and real doctrine must be distinguished.

He claims that only a non-deficient being is, in the strict sense, human. The question then arises: what is a non-deficient man? Jaffa’s mentor Leo Strauss answers in a surprising way. Referring to “the Platonic-Hegelian assumption that ‘the best’ are somehow *ruled* by the purely rational, the philosophers . . . ” he states:

only if the striving for recognition is a veiled form of the striving for full self-consciousness or full rationality, in other words only if a human being, insofar as he is not a philosopher is not really a human being . . . [is] someone who leads a life of action essentially subordinate to the philosopher.⁹⁵

If this is what Strauss and Jaffa teach, one can readily understand Jaffa's refusal to reject paradox. Jaffa, one should note, is extremely sensitive to criticism in regard to Straussian teaching about defective human beings. Replying to a citation by Shadia Drury in which Strauss calls non-philosophers "mutilated human beings," Jaffa comments:

With the exception of Kant, there has never, so far as I know, been anyone who has maintained that morality can stand entirely or simply on its own foundation. . . . Is it not clear that from the point of view of the man who "loves his God with all his heart, and with all his mind, and with all his might," the merely moral man must appear a defective human being? The pious man thinks that in obeying the moral law he is obeying and honoring God. To him, a man who is obeying the moral law merely dignifies himself and must appear as less than fully human. Whether from the perspective of Reason or of Revelation, it is the capacity of the human soul to transcend time and participate in eternity that is the ultimate cause of the soul's dignity.⁹⁶

Jaffa acts as if he were defending a perfectly ordinary position. But his comments are astonishingly radical in implication. The suggestion that an eternal realm transcends morality, whether one agrees or not, seems perfectly defensible; and so does the view that if there is such a realm, someone not in contact with it is lacking in comparison with someone who is. But surely it is the reverse of commonplace to suggest that non-philosophers are human beings only by analogy. If this does not constitute a radical depreciation of morality, what does?

Jaffa disagrees. Again in response to Drury, he claims that he has always denied that the fact that the intellectual virtues apart from prudence may exist apart from morality implies a radical depreciation of morality. His colleague Harry Neumann maintains that Aristotle teaches this: Jaffa thinks otherwise.⁹⁷ Professor Jaffa is of course the final authority on what he believes; but if one consults the page in Jaffa's *Thomism and Aristotelianism* about which Drury and Jaffa dispute, one will find the following:

Thus we see, by Thomas' own assertion, that according to the philosophic teaching the highest natural perfection of man is possible without moral virtue. This clearly implies a grave depreciation of

morality... [although Aquinas' theological teaching holds otherwise] it remains true, as Thomas explicitly says, that as far as natural morality is concerned, the highest perfection is possible without moral virtue. . . . But if it is true that the highest human good is possible without moral virtue, then there is no moral obligation to be morally virtuous binding on those who can attain the highest good without moral virtue. Moral virtue would then seem to be obligatory only to those who are capable of nothing more than mere virtue. This, however, would in any case imply a double standard, one for philosophers and one for nonphilosophers.⁹⁸

It is a little ironic that in the same article in which Jaffa denies that he has ever taught that the Aristotelian view of the intellectual virtues implies a radical depreciation of morality, he reacts with horror to Kant's contention that absolute honesty is in all circumstances a moral duty. But the founder of the Winston Churchill Association no doubt knows the use of "terminological inexactitude."

From Jaffa's teaching, it of course does not follow that philosophers will generally kill and rob those they deem their inferiors. Quite the contrary, Jaffa is anxious to stress that the main situations in which moral rules may be violated involve the safety of society, presumably judged either by philosophers themselves or statesmen acting under philosophic advice.

One may freely concede Jaffa's point: I do not think either he or Strauss teaches a Nietzschean view in which inferiors are treated at best with pity, at worst with contempt and cruelty.⁹⁹ But however limited in practice the exceptions to morality are, Jaffa ascribes to Aristotle and gives every indication of holding himself that philosophers are not bound by moral obligation at all.

Even if one confines attention to the exceptions Jaffa has in mind, his views seem radically at variance with ordinary morality. Citing as an example "[s]ome of Lincoln's actions during the Civil War," Jaffa asserts:

Thus we contemplate extreme actions in defense of the rule of law by wise men whose unfettered wisdom may sometimes be the necessary condition for the establishment or survival of a decent constitutional order. But these are not justifications of tyranny, or of any immorality . . . [because] that there are no moral rules to which exceptions might not be found, where

"the safety and happiness of society" are at stake, has been recognized by sound moralists at all times.¹⁰⁰

Jaffa conflates two different views. The first is whether moral rules have exceptions built into them. Thus, I think most people would disagree with Kant and hold that one ought not to be truthful to a murderer inquiring about the location of the person he intends to kill. (Jaffa may be surprised to learn that there are eminent contemporary philosophers who do agree with Kant—Elizabeth Anscombe and Michael Dummett come to mind.) But this modification of the rule against lying gives us a new moral rule.

A different state of affairs is involved in the circumstances Jaffa delineates. Here morality is suspended altogether: the moral rules do not permit an exception; nevertheless the statesman violates them in order to secure the state. An example, not used by Jaffa, may help to clarify the distinction. Suppose a drowning person comes across another person clinging to a plank of wood. The plank's size does not allow both to hold on to it. Some people think that in this situation, one may throw the other person off the plank to save one's own life. But those who think this usually do not claim that this action is morally justified: rather, they think that the emerging situation temporarily suspends morality. (I give this example just for illustration and do not impute its conclusion to Jaffa.)

It seems to me very likely that Jaffa envisions acts that suspend morality rather than allow exceptions to moral rules which remain within morality. He mentions

the question as to whether . . . a man might justifiably commit murder or adultery as a way of preventing the betrayal of his country or, rather, whether he would be obliged to do so, following the dictates of reason and choosing the lesser evil.¹⁰¹

Someone who believes that one might justifiably do these things (and my impression from the context of the quote is that Jaffa is among them) would not, I think, usually be claiming that it is *morally* required to commit these crimes. Jaffa himself, as his reference to "being obliged" shows, does not recognize the distinction I have attempted to draw.

Jaffa is indeed correct that whether normal moral rules always bind the statesman is an issue that has been much discussed. But his view that "all sound moralists" endorse his position strikes me as peculiar. Is he adopting

a stipulative definition of “sound moralist,” according to which anyone who thinks otherwise cannot be sound? Or does he mean that no one who is generally considered a major moral theorist (except Kant) rejects his view?

If he means the latter, his contention is incorrect. His example of murder and adultery allude to a famous discussion by an Aristotelian commentator of unknown name called the Old Scholiast. He held that adultery and murder were permissible to save the state; but Thomas Aquinas expressly rejected his position and held that the moral laws prohibiting these acts may never be violated.¹⁰² Does Jaffa consider Aquinas a sound moralist?

As to the question itself, extended discussion would be out of place here. But as Jaffa finds the answer so obvious, I should like to inquire whether to save the state someone may commit rape or incest or may have small children tortured to death. Jaffa claims, further, that the laws of war in the Old Testament support his view. But it is surprising that so careful a student of Scripture does not discuss the most famous place in the Bible where the issue arises. These words are attributed to the High Priest Caiaphas: “that it is expedient for us that one man should die for the people, and that the whole nation perish not” (John 11:50-51 KJV). This argument for the killing of Jesus Christ is not usually considered a paradigm of sound morality.

In course of his argument, Jaffa appeals to support from James Madison. Whether Madison held the view Jaffa attributes to him, I do not know: only someone thoroughly acquainted with this period of American history would have the right to challenge Jaffa’s authority. But the quote that Jaffa offers does not support his enlistment of Madison. The passage he cites from the *Federalist* says that all such [political] institutions must be sacrificed “to the safety and happiness of society.”¹⁰³ It does not say that all moral rules are likewise subordinate to this end.

Entirely apart from these emergency situations, Jaffa’s account of morality differs in other ways from commonly accepted views. He maintains that morality consists entirely of hypothetical imperatives telling us how to be happy (pp. 204–205). Although he recognizes that some goods, such as friendship, can be pursued both for one’s own welfare and as ends-in-themselves, he does not allow that the harm an action causes to others can by itself provide sufficient reason to refrain from doing it. But are we inclined to think that Stalin’s badness consists of the fact that he chose an irrational method to realize his well-being? I should have thought the evil he did lies in his responsibility for millions of deaths. To require an egoistic argument

against his actions as a condition for holding them morally wrong displays a corrupt mind.

I suspect that just the position I attribute to ordinary morality is included in Jaffa's condemnation of morality as an end in itself. Further, his claim that he knows of no one besides Kant who holds this view seems odd. He elsewhere attributes the same view to Aquinas. "Thomas . . . treats morality as having actually an independent existence and as being intrinsically rational. . . ." ¹⁰⁴

To conclude this section, I should like to address Jaffa's claim to be a defender of natural law. It would be unfair to Jaffa to give this term a restrictive definition and proceed on that basis to challenge his right to be regarded as an advocate of this position. Instead, let us characterize a natural-law position as one that holds that morality is objective. Moral principles may all have exceptions; and all principles may be subordinated to prudence, so long as one holds that at least some moral principles do not depend for their validity on human preference.

Does Jaffa qualify as a defender of natural law by this very relaxed standard? On first glance, he obviously does. He notes that America's founding fathers held that all human beings ought to have certain rights, in a context that suggests his approval of the claim (p. 206, no. 2). Yet we have seen in Part I how little in practice one's right not to be ruled without consent entails.

If one takes account of Jaffa's wish to base his argument on the *Nicomachean Ethics*, matters assume an entirely different cast. Jaffa sharply contrasts Aristotle's teaching with that of Aquinas. According to Jaffa, Aquinas held, but Aristotle did not, that "the content of natural right is everywhere the same and so . . . the naturally just framework of every just legal code would have to be the same." ¹⁰⁵ Aquinas allowed variations in moral precepts to meet local conditions, but for Jaffa, "this is a very rigid conception." ¹⁰⁶

The doctrine he imputes to Aristotle differs entirely from the Thomistic view.

Thomas' rigid scheme is inconsistent with Aristotle's principle that what is just is roughly equated with what is legally just, if what is legally just depends upon the nature of the regime and *not* upon a code of natural right. ¹⁰⁷

Aristotle accepts this statement's conditional clause: he attributes the "variety of *legally* just things . . . to the variety of constitutions or regimes and not simply to the application of general rules to particular cases." ¹⁰⁸

But does not this position still make room for natural law? As long as some regimes are objectively better than others, natural law has not been abandoned. True enough; but this does not take us very far. Jaffa attributes to Aristotle the view that in a very poor regime, the good man must obey the government except in extreme cases. From this, he draws an important conclusion about natural right:

The good man, therefore, defers to the law of imperfect communities, and hence to its moral code; and what the good man does *is* morally right. In other words, not to obey the law and customs of one's community is usually unjust, and hence contrary to *natural right*. As natural right enjoins obedience to any legal justice which may reasonably be said to aim at the common good, it would seem to follow that for the most part, the mutability of natural right follows, *pari passu*, the mutability of constitutions.¹⁰⁹

The odd aspect of this passage for a supposed defender of natural law does not consist of its recommendation to avoid revolt in most circumstances. Rather, it is Jaffa's virtual identification of natural right with the laws of the community. He does not totally equate them: the identification holds "for the most part." In that qualification lies the sum and substance of Jaffa's "defense of the natural law thesis."

III

Jaffa's work as a historian and commentator on contemporary politics applies and extends his political philosophy. I do not propose to discuss this area of his work in detail, challenging particular historical views he holds. Rather, I shall discuss a few examples of his method of reaching conclusions.

In his interpretation of Southern goals at the outset of the Civil War, Jaffa places great emphasis on a speech delivered by Alexander Stephens in March 1861. In this speech, Stephens maintained that science supported the doctrine that Negroes were an inferior race. As mentioned above, I do not wish to dispute Jaffa's assessment of the speech, much less his views on the Civil War. But in the course of his discussion, he advances a bold claim: "Clearly, he [Stephens] had already been influenced by Darwin's *Origin of Species*, published in 1859."¹¹⁰

Darwin did not discuss human evolution in the *Origin of Species*. At the book's close, he suggests that "light will be shed" on human origins; but his views of this subject became generally known only with the publication of *The Descent of Man* in 1871. The *Origin* mentions Negroes only a handful of times in passing, always innocuously.¹¹¹

I suppose it is *possible* that Stephens read and digested the *Origin* within slightly more than one year of its publication; immediately grasped the application of Darwin's theory to human beings; at once anticipated the use later nineteenth-century writers made of the theory to support doctrines of racial conflict—perhaps he deduced this from the book's subtitle, "the preservation of favored races in the struggle for life"—and, in one culminating insight, saw that all of this could be used to advance the Confederate cause. But I do wish Professor Jaffa would explain his use of "clearly."

Jaffa's discussion of Lincoln offers another valuable example of a Strauss-ian philosopher in action. During his debate with Stephen A. Douglas, Lincoln made several remarks that have led some historians to think that he shared the anti-Negro prejudices common in his time. Jaffa dissents from this view; he thinks that the statements were carefully qualified and, if analyzed, do not commit Lincoln to belief in Negro inferiority. Once more, I do not propose to argue with his interpretation; those interested may consult his detailed discussion in *Crisis of the House Divided*.¹¹² What I wish to examine is an argument he offers in support of this interpretation:

In the Lincoln-Douglas debates Lincoln would state many times that he was not and never had been in favor of making voters or jurors of Negroes, or of permitting them to marry with white people. As I pointed out in *Crisis* he never said that he never would be in favor of such things.¹¹³

Now this is quite remarkable! Lincoln advances a certain proposition. But his adherence to it is not complete: rather it is carefully qualified. How do we know this? Because Lincoln did not say that he would continue to believe the proposition in the future. So far as I am aware, Jaffa has never said that he will always maintain in the future the admiration for Lincoln he has often expressed. Obviously, then, he may not genuinely admire Lincoln: his praise for him in a major book and numerous articles has always been carefully qualified. In like manner, Jaffa has not really suggested that Lincoln did not defend racist views: he did nothing but suggest he *now* holds this interpretation of Lincoln.

Perhaps Jaffa does not wish his hermeneutic principle extended to all statements, but only to those of the form: "I do not now believe, and have never believed." Before reading Jaffa, I imagined that this phrase indicated emphatic belief; but suitably instructed by superior authority, I have learned the error of my ways. And, as evidence I have reformed, I offer the strongest possible commitment to his view: I do not now and have never adopted it.

Old habits die hard, and error is difficult to avoid. An appendix to one of Jaffa's own articles is entitled "Are These Truths Now, Or Have They Ever Been, Self-Evident"; and I fear the context makes apparent that he uses the expression in the outmoded manner.¹¹⁴

But enough of the future tense: let us return to the present. In a criticism of Willmore Kendall, Jaffa sharply disagreed with Kendall's contention that Lincoln's principle of equality has led to twentieth-century leftist egalitarianism. Quite the contrary, Jaffa claims that Lincoln was a strong defender of private property and the free market.

But during Lincoln's administration, were there not continual acts of interference with the market by government? Inflated currency, increased taxes, the introduction of an income tax, and a vast expansion of the government come to mind. Jaffa argues that many of these measures were for use only in the war emergency. Moreover, Lincoln himself had little interest in governmentally-directed "national improvements." His prime concern was the Civil War, and he left the economy largely to Congress. Lincoln "did little, if anything, to expand the power of the federal government *per se*."¹¹⁵

I am inclined to think this appraisal incorrect, but again I claim no authority to dispute the historical issues with Jaffa. Let us then assume he is right: what follows? He would be justified in claiming that one cannot unconditionally claim that Lincoln opposed the free market. Rather, he was willing to accept interference with it in pursuit of an aim he considered more exigent.

But how does Jaffa get from this thesis to the contention that Lincoln was a great defender of the free market? A supporter of the market usually connotes someone whose policies support it, rather than one who has some excuse for anti-market programs. But, as we have had more than one occasion to see, Jaffa has a language all his own.

Jaffa lavishes compliments on the free market, although I do not know whether he rates himself so stalwart a supporter of it as Lincoln. He offers an excellent defense of private enterprise in medicine and elsewhere champions freedom on contract in employment.¹¹⁶ But because his language at

times deviates from standard usage, I think it worthwhile to ask how free a market he actually favors.

That he has in mind a quite limited version of market freedom emerges from his reply to a claim advanced by M. E. Bradford. Jaffa finds "extraordinary" Bradford's assertion that the policy of equality of opportunity which Jaffa endorses cannot be distinguished from the equality of results he attacks. In reply, Jaffa contrasts a handicap race, aimed ideally to secure an equal finish for all contestants, with an open race.

The purpose of the [open] race is to find out who *is* the fastest, and this can be done only if the start of the race is fair. . . . Only an open race is a true race—that is, only a race in which every runner has a chance to compete, can reveal who it is who can run the fastest. And a true race is one in which everyone starts from the same line at the same time, and runs the same distance. . . . It is precisely when everyone starts together in a fair race that they do *not* end together.¹¹⁷

Jaffa clearly opposes equal distribution of income, but one wonders how he wishes to ensure a "fair start." Some people begin their careers with many more advantages than others: large inheritances, easy access to the best schools, etc. In a free market, people do not start with equal opportunity: would Jaffa support changes in this situation to ensure a more equal start? If he does, how far would he go? Does he favor, e.g., the abolition or drastic curtailment of inheritance? Even more important, if he now opposes such measures, does he do so because it would be difficult to gain general consent for them, or does he oppose them in principle?

It is possible that Jaffa intends only the removal of state-imposed discrimination by "equality of opportunity." If so, his use of the slogan would be entirely consistent with support for the market. But I am strongly inclined to doubt that he wishes to adopt this limited construal. "Fair start" insinuates much more.

So far as I am aware, he has never spelled out in detail the economic policies he supports. But in his introduction to the reissue of *Crisis* in 1982, he refers to the "great Civil Rights Acts of 1964 and 1965."¹¹⁸ The 1964 Act is not restricted to governmentally-imposed segregation but forbids discrimination in private employment and housing as well.¹¹⁹ On the basis of Jaffa's statement, I suggested in an earlier draft of this essay that it was odd for

Jaffa to favor the act yet still declare himself a strong champion of freedom of contract. But in fairness to Professor Jaffa, he has recently changed his view. He now believes that “the abuses of the anti-discrimination laws are so intimately connected with misconceptions in the laws themselves that any benefits from them will always be far outweighed by the harm they do.”¹²⁰ Even in his new position, though, he does not support freedom of contract as a moral right. Quite the contrary, his argument is purely prudential; the “real interests” of businessmen will end discrimination more effectively than bureaucratic schemes that mandate group rights.

And what does he mean when he says that the choice between the sales tax and income tax is “ultimately a choice between democracy and oligarchy”?¹²¹ Usually, those who advance similar views maintain that sales taxes are “regressive”: does Jaffa support progressive income taxation? One hopes that somewhere in his future articles or letters to editors he will inform his readers exactly which restrictions on the operation of the free market he endorses. In asking whether Jaffa may rightfully be called a defender of the free market, I do not mean to restrict this term to those who support an unhampered market in the style of Ludwig von Mises; though this is my own view, I have no right to compel others to accept the usage I prefer. But I do not think the term generally applies to those who advocate substantial governmental intervention, as I think Jaffa does. The political theory that Jaffa proposes allows such interference as “prudence” dictates.

At the close of this long review of Jaffa, I confess to a feeling of bafflement. If one reads his interpretation of Aristotle’s *Ethics*, his discussion of Lincoln’s Lyceum and temperance speeches, and his essay on *King Lear*, it quickly becomes evident that Jaffa possesses a high degree of ingenuity.¹²² Yet when he interrupts the explanation of the hidden meaning of his texts to present a philosophical argument, he seems utterly lost.¹²³ John Wild had it exactly right when he suggested that “so much time is spent in devious textual interpretation that there is little left for systematic argument.”¹²⁴

The world of Harry Jaffa is indeed a topsy-turvy one. All men are created equal, except of course for philosophers, who hold divine rank. No one may be ruled without his consent; but everyone must obey all except the most vicious government under whose rule he lives. Morality is an objective science, but none of its precepts is universally valid. The establishment of democracy is our duty to God, who apart from creation is an unknowable Nothing. Oh, what a tangled web we weave!

The Ideal of Equality^{*}

EDITED BY MATTHEW CLAYTON
& ANDREW WILLIAMS

Don't Dream the Impossible

July 1, 2002, *Mises Review*

THIS USEFUL ANTHOLOGY contains the single most deplorable comment on a philosophical topic that I have ever encountered. But before I get to it, I must first set the stage.

The anthology collects a number of influential articles about equality, by such eminent philosophers as John Rawls, T. M. Scanlon, Derek Parfit, and G. A. Cohen. All favor egalitarian measures, but the book offers excellent material to those inclined in a libertarian direction. In their attempts to demonstrate the merits of equality, these distinguished thinkers succeed only in showing how weak this alleged ideal is.

Derek Parfit, in particular, devastates egalitarianism with his Levelling Down Objection. If you say that equality of wealth or income is an imperative of morality, are you not committed to the following strange consequence? A state of affairs in which everyone lives in poverty ranks morally superior to one in which a group of people in the society have risen to wealth. In the latter situation, the remainder of society stays poor and inequality has thus increased. Even though none is worse off in the changed circumstances and some have gained, our egalitarian dogma requires us to remain content with universal poverty. The benefits of the altered situation are bought at too high a price.

* St. Martin's Press, 2000.

Parfit states the essence of his argument in this way:

Suppose that those who are better off suffer some misfortune, so that they become as badly off as everyone else. Since these events would remove the inequality, they must be in one way welcome . . . even though they would be worse off for some people, and better for no one. This implication seems to many to be quite absurd. I call this the Levelling Down Objection. (p. 98)

Egalitarians might at first be tempted to counter Parfit by appeal to the supposed malign effects of inequality. What if the poor found that the prosperity of the newly fortunate lowered their self-esteem? Might not the increase in wealth enable the fortunate few to seize control of the government? By stress on such contingencies, egalitarians might seek to escape the force of Parfit's objection.

But replies of this kind miss Parfit's point: the Levelling Down Objection has a narrower focus. Egalitarians think that equality has intrinsic value: they advocate it for its own sake, not just to forestall bad consequences. Thus, they have to say that the situation Parfit depicts has been in part a change for the worse, even if these supposed bad consequences of inequality do not come to pass. Parfit's question retains its full force: why is the situation bad, when some in it have been made better off, and none worse off?

Larry Temkin, a philosopher of strongly egalitarian bent who once studied with Parfit, attempts to counter the objection. In so doing, he startles us with the following comment:

Isn't it unfair for some to be worse off than others through no fault of their own? Isn't it unfair for some to be blind, while others are not? And isn't unfairness bad? . . . But, the anti-egalitarian will incredulously ask, do I really think that there is some respect in which a world where only some are blind is worse than one where all are? Yes. (p. 155)

Readers will readily grasp why Professor Temkin wins my award for most unfortunate philosophical comment. (I ought to have said that the works of Peter Singer are excluded from the competition.)

Temkin hastens to assure us that he does not favor blinding everyone to make things fair: "Does this mean I think it would be better if we blinded everyone? No. Equality is not all that matters. But it matters some" (p. 155).

It is heartening that Professor Temkin shrinks from this final absurdity, but his position remains bizarre. We may imagine someone who witnesses an airplane crash in which several hundred people die. As he looks on the scene of disaster in shock, Professor Temkin consoles him: "At least there were no survivors." Temkin never confronts Parfit's question: what is good about equality?

He does, however, raise an important issue. He asks why we find the Levelling Down Objection effective. The strength of the objection, he thinks, lies in the fact that the unequal state of affairs makes no one worse off. What then can be wrong with it? But do not supporters of the objection here rely on an unexamined assumption?

"At the heart of the Levelling Down Objection," Temkin says, "is a position I refer to as the Slogan: One situation cannot be worse (or better) than another if there is no one for whom it is worse (or better)" (p. 132, emphasis omitted). Temkin contends that the Slogan is by no means so plausible as it first appears. It is not absurd—it may even be true—that it is intrinsically good that criminals receive retributive punishment. Yet who is made better off by their punishment? Certainly not the criminals: who then? Yet retributive punishment cannot be dismissed out of hand. Thus, Temkin concludes, the Slogan should be rejected and with it, the Levelling Down Objection.

Temkin's conclusion relies on an unsupported premise. He rightly thinks that the Slogan can be challenged; but he fails to show that the force of the Levelling Down Objection depends on it. If the Slogan is rejected, a state of affairs can sometimes be worse than another without being worse for someone: but this does not tell us why equality is intrinsically good. Why is a state of affairs where all are blind better in any respect than one in which only some are blind? To reject the Slogan does not answer this question.

Parfit's Levelling Down Objection seems to me fatal to egalitarianism, but several of the other contributors also raise points that classical liberals will find valuable.* I am glad in particular to note some excellent remarks in Thomas Nagel's "Equality." In another review in this volume, I have been less than welcoming to his *The Myth of Ownership*; but he is a philosopher of genuine distinction. In "Equality," he is in characteristic good form.

* Parfit himself does not think his example proves this much. He states of the Levelling Down Objection: "This objection seems to me to have great force, but is not, I think, decisive" (p. 115). He does not explain why it is not.

He lends strong support to the libertarian view that there cannot be welfare rights.

Rights . . . give every person a limited veto on how others may treat him. This kind of unanimity condition is possible only for rights that limit what one person may do to another. There cannot in this sense be rights to have certain things—a right to medical care, or to a decent standard of living, or even a right to life. (p. 67)

Professor Nagel has not embraced the free market—far from it. But he recognizes that the egalitarian policies he favors demand another sort of moral theory than a rights-based one: “The language of rights is sometimes used . . . to indicate the priority of more urgent over less urgent human needs, and this is essentially an egalitarian principle”* (p. 67; the context makes clear that Nagel rejects this usage).

But are we not here insisting on the importance of a mere matter of definition? Why should we care whether claims to equality or welfare are termed “rights”? The value of Nagel’s point, as it seems to me, is that many philosophers find a morality of rights attractive, but wish to fit welfare claims within this framework. Nagel shows that this cannot be done, and he thus gives us a useful argument against Alan Gewirth and other philosophers who defend this position.

My favorite Marxist, G. A. Cohen, strikes at the heart of the most influential contemporary egalitarian view, John Rawls’s *A Theory of Justice*, in his selection, “The Pareto Argument for Inequality.” Rawls’s notorious “difference principle” is egalitarian; but, at least in part, Rawls has parried the force of the Levelling Down Objection. By the terms of the difference principle, inequalities that help the worst off are morally permissible. Why insist on complete equality, when the poor will be better off without it?

The difference principle does not altogether escape Parfit’s challenge. Suppose that some group in society other than the worst off can benefit from inequality, without harming anyone else. Should this sort of inequality be allowed? The difference principle does not justify it, but why should it be forbidden?[†]

* Parfit shows in convincing fashion that, contrary to Nagel, priority for the worst off differs from egalitarianism; but we cannot pursue the matter here.

† It is controversial whether Rawls’s theory in fact forbids these inequalities.

Even if Rawls does not altogether escape the objection, his theory seems much more plausible than strict egalitarianism. But, Cohen inquires, can it be called an egalitarian theory at all? According to Rawls, inequalities can benefit the worst off through their incentive effects. If people can increase their wealth or income beyond the norm, they will produce more; and part of the increase can be taxed away to help the poor.

Cohen claims that true egalitarians should not respond to incentives. If people genuinely believe in equality, they will work just as hard for the good of society as they will for their own advantage.

[D]eparture from equality is necessary only if and because talented people do not adjust their behaviour to the demands of the conception of justice required by the grounds given for starting with equality. (p. 176)

In essence, egalitarians cannot have it both ways: if equality is morally mandated, it cannot be confined, as Rawls attempts, to the fundamental institutions of society. It must be applied at the personal level as well.

Rawls will no doubt answer that Cohen has ignored the realities of human nature. Would not the “strains of commitment” be excessive under the system Cohen imagines? If people worked as hard without incentives as with them, well and good; but do we not know that this is impossible? This response seems to me perfectly adequate as far as it goes, but it does not meet Cohen’s argument.

Cohen thinks that egalitarians stand committed to a standard of personal behavior, as well as to a structure of social institutions. If they cannot live according to this standard, this hardly shows, as Rawls imagines, that we can construct a less demanding egalitarian position. Instead, it shows that equality is an unworkable principle.

In sum, *The Ideal of Equality* offers convincing reasons against the very “ideal” the contributors to the book wish to support. I suspect that this result is not altogether to their liking: so much the better.

The Myth of Ownership: Taxes and Justice^{*}

LIAM MURPHY & THOMAS NAGEL

Property: Convention or Right?

July 1, 2002, *Mises Review*

THE MYTH OF OWNERSHIP stands out from most works of analytic philosophy. Usually, works by eminent philosophers cannot easily be dismissed. You may, for example, disagree with Rawls's *A Theory of Justice*, and believe that it contains poor arguments; but after you have said this, something remains of the book. It reflects a fundamental moral vision that, however mistaken, is more than a logical fallacy.

The present book is an unhappy exception to my generalization. Thomas Nagel ranks as one of the foremost contemporary philosophers, and Liam Murphy is a young legal philosopher of fast rising reputation. Nevertheless, the central argument of their book rests on a simple confusion.

Oddly, Messrs. Murphy and Nagel fall into error precisely as a result of their attempt to clear up what they deem a wrong way of thinking. Many people, they claim, foolishly resent taxes. By what right does the government take away part of what we own? Is this not legalized theft? The government may claim that it needs the funds to provide essential social services: are the poor to be left to starve? But these assertions do not justify its policy of forcible seizure. Is it not up to each owner of property to decide what, if anything, he wishes to donate to charity and other good causes?

^{*} Ford University Press, 2002

You might guess that the authors will respond, along conventional leftist lines, with a denial that property rights are absolute: you do not have the right to keep all that you own, if the government's exactions are devoted to a good purpose. Quite the contrary, they adopt a much more radical stance. You are not giving away anything at all to the government when you pay taxes, since you own only what the laws say you do.

Our authors are nothing if not direct on this point:

If there is a dominant theme that runs through our discussion, it is this: Private property is a legal convention, defined in part by the tax system; therefore, the tax system cannot be evaluated by looking at its impact on private property, conceived as something that has independent existence and validity. Taxes must be evaluated as part of the overall system of property rights that they help to create. . . . The conventional nature of property rights is both perfectly obvious and remarkably easy to forget. . . . We cannot start by taking as given . . . some initial allocation of possessions—what people own, what is theirs, prior to government interference. (p. 8)

An example quickly discloses the authors' fallacy. Suppose that the government banned advocacy of libertarian property rights. Against those who claimed that this interfered with free speech, advocates of the new measure replied in this way:

Don't you see the obvious conceptual error that underlies your protest? "Free speech" is a legal category. People have no independent liberty of speech, apart from what a particular legal system grants them. Your opposition is absurd: away with you!

I doubt that Murphy and Nagel would display much patience for this sophistry. Legal rights indeed depend on the specifications of a particular legal system; but it is perfectly in order to say that people have moral rights, not created by the legal system, that the law ought to respect.*

In like fashion, opponents of taxation are guiltless of the conceptual error our authors impute to them. They maintain that people possess property

* According to some versions of natural law, ostensible regulations that violate justice do not count as laws at all. I ignore here complications that stem from this contention.

rights that the government ought to recognize. Why is the falsity of this view “perfectly obvious”? It is rather Murphy and Nagel who have lapsed into grievous error: they confuse legal with moral rights.

The authors at one place acknowledge the point at issue:

[D]eontological theories hold that property rights are in part determined by our individual sovereignty over ourselves. . . . On a deontological approach, there is likely to be a presumption of some form of natural entitlement that determines what is yours or mine and what isn't, and this *prima facie* presumption has to be overridden by other considerations if appropriation by taxes is to be justified. On a consequentialist approach, by contrast, the tax system is simply part of the design of any sophisticated modern system of property rights. (pp. 44–45)

Our authors of course reject the entitlement view, but they have here made a crucial admission. Given that this theory exists, is it not evident that their earlier account is false? The alleged error that opponents of taxation commit is present only if the conventionalist theory is true. Supporters of Lockean entitlements to property may be incorrect, but they at least have a theory: they stand acquitted of simply failing to grasp a conceptual point, the charge that Murphy and Nagel bring against them. Do they think the Lockean account obviously incoherent? They say nothing against it but instead go on interminably to accuse opponents of their view of confusion.

The conventionalist theory they support leads quickly to disaster. Is it not “perfectly obvious” that it makes us all slaves of the government? Once more, Murphy and Nagel acknowledge the objection. Their view “is likely to arouse strong resistance” because it “sounds too much like the claim that the entire social product really belongs to the government, and that all after-tax income should be seen as a kind of dole that each of us receives from the government, if it chooses to look on us with favor” (p. 176).

In response, they say,

It is true we don't own each other, but the correct place for this observation is in the context of an argument over the form of a system of property rights that gives due weight to individual freedom and responsibility. (p. 176)

Elsewhere, they express sympathy for the “Hegelian” view that individuals need private property in order to express their personalities, but they do not think this limits the tax structure.

They fail to see that their admission gives away the game. If, as they admit, individual rights require some degree of private property, then the government cannot morally tax away this property. If so, there are moral limits to the taxing power, and it is not “a matter of logic” that there cannot be a pre-tax income over which persons retain full control (p. 176).

Murphy and Nagel are pure conventionalists about property when this enables them to attack libertarians, but they shrink from the full implications of the position. How is this tension in their presentation to be resolved? I suspect that in practice they would not deviate very far from the total subordination of property rights to the state. They consider endowment taxation, in which people are taxed, not just on their income, but rather on their potential to generate revenue. Someone who abandoned a multi-million-dollar business career in order to become a Trappist monk might on the endowment account be taxed as if he continued to receive his former high income. Our authors eventually reject this monstrous proposal, though not on the grounds that it compels people to work.

To reject the proposal because it compelled people to work would put them suspiciously close to a famous argument, advanced very effectively by Robert Nozick, that income taxes are akin to forced labor. Of course our authors cannot accept so libertarian a view; “we may assume that this argument is not dispositive against taxation of earnings” (p. 122). Since taxation is acceptable—this we know *a priori*—no argument that holds it illegitimate is right. But then we cannot reject endowment taxation if we reason in a way that would also condemn the income tax. “[T]here is no intrinsic moral objection to taxing people who don’t earn wages” (p. 124). We can, then, maintain that endowment taxation is “too radical” an interference with autonomy; but we cannot in principle reject it.

As everyone knows, I am always fair to my authors; so I hasten to present another way of understanding their claim that pretax property rights are incoherent. (They might also intend this as a separate, though related, argument.) Here, the principal claim is that, if there were absolute rights to property, a market economy would need to exist independent of government. Otherwise, these property rights could not be defended. But no such economy can exist: thus the notion of absolute property rights must be cast aside.

I think it obvious that Murphy and Nagel have not benefited so much as they might from the works of Murray Rothbard and Hans Hoppe, if indeed they have seen them at all. These authors, as it seems to me, have made an excellent case that a free-market society can operate without a government. But I shall here set this point aside, lest our authors dismiss me as a hopeless extremist.

Suppose, as I do not for a moment believe, that they are right: the free market cannot exist without a government. Why should this induce us to throw out property rights to pretax incomes? From the alleged fact that property rights could not be defended without a state, it hardly follows that these rights exist only as the government defines them.

Perhaps, though, our authors intend a simpler point. If we must have a government, the services it offers must be paid for; how then can property rights be absolute? First, even if one grants the need for a government, taxation need not come in its wake. Why cannot a limited government be financed through voluntary contributions? Even if this possibility is rejected, the authors' case cannot stand. The fact, if it is one, that compulsory contributions are needed to finance the activities of a minimal government leaves property rights otherwise untouched. A limited government with taxation leaves intact the possibility of almost absolute property rights.

The Myth of Ownership is not altogether worthless. The authors very effectively argue that the standard criteria of justice in taxation, such as the benefit and ability-to-pay principles, fall victim to a fatal defect. Justice in taxation cannot be assessed apart from a general theory of property rights.

Tax justice must be part of an overall theory of social justice and of the legitimate aims of government. Since that is so there can be no blanket rule that people with the same pretax income or level of wealth must pay the same tax. (p. 38)*

Unfortunately, our authors, as I have endeavored to show, hold wholly incorrect opinions about the nature of such an overall theory.

* Murray Rothbard, whom our authors do not cite, long ago showed in *Man, Economy, and State* that the conventional criteria of justice in taxation are invalid.

Launching Liberalism: On Lockean Political Philosophy^{*}

MICHAEL P. ZUCKERT

The Secret Locke

April 1, 2003, *Mises Review*

PROFESSOR ZUCKERT has taken on a task that not even his outstanding scholarly and philosophical abilities enable him to accomplish. He endeavors to defend Leo Strauss's contention that Locke, though a professed Christian, insinuated into his work a skeptical message for the few careful readers he hoped to find. And this is not merely a question of interest to biographers of Locke. Locke's secret atheism radically affects our understanding of his political theory.

In spite of his frequent citations of "the judicious Hooker," Locke was not in Strauss's interpretation a Christian natural law thinker. In fact, he was a Hobbesian; human rights do not reflect God's dictates but arise from the struggle for self-preservation.

Zuckert is not an altogether faithful follower of his mentor Strauss. He thinks that Strauss pushes his Hobbesian thesis too far: "I [Zuckert] agree with Strauss on Locke's manner of writing, but not on his identification of Locke as, in fundamental ways, a Hobbesian" (p. 3). Locke's principle of self-ownership allowed him a much more robust concept of rights than Hobbes possessed. Zuckert suggests that Locke's account holds up

^{*} University Press of Kansas, 2002.

well against the theories of contemporary philosophers, including Rawls, Gewirth, and MacIntyre.

Leo Strauss famously contended that ancient and early modern political philosophers practiced “secret writing.” To avow openly doctrines at variance with accepted religion would expose anyone foolhardy enough to do this to great personal danger. But “all the gods of the nations are idols” (Psalm 96:5): Strauss thought that true philosophers by the very nature of their activity brought conventional religion under criticism.

What then was a philosopher, aware of the danger of the times for those with unconventional beliefs, to do? Strauss suggested that he would provide hints of his true views. In particular, a philosopher would make apparently contradictory and mistaken claims. If read carefully, these “mistakes” showed that the philosopher really rejected the conventional beliefs he seemed to profess.

Zuckert rightly argues that the truth of this intriguing thesis cannot be decided on an *a priori* basis. We must proceed case-by-case, examining the alleged mistakes and contradictions that indicate a hidden meaning at odds with the apparent main thesis of the text. Zuckert gives us a number of examples designed to support an esoteric reading of Locke, but these for the most part strike me as unpersuasive.

According to Zuckert, Locke hinted at his esotericism in a place where one would least expect it. In the *Essay Concerning Human Understanding*, Locke appears to denounce philosophers who write deceptively and unclearly:

[T]here were philosophers found, who had learning enough to prove, that snow was black; i.e., to prove, that white was black. Whereby they had the advantage to destroy the instruments and means of discourse, conversation, instruction, and society. (p. 122, quoting Locke)

Although Locke here seems to denounce deceptive language by philosophers, his real meaning is to show that he himself is a master of disguise.

Those philosophers who proved that snow was black and thus may have harmed society thereby, at least still argue, as did the “unlearned men,” that snow had a color; they did not go so far as did John Locke, who proved not that snow is black but that it had no color at all. Locke’s philosophical position is the far more radical break with the commonsense understanding. (p. 123)

Zuckert's argument, then, is this: Locke condemns philosophers for writing in a devious fashion. But he himself holds a position even more contrary to common sense than the one he imputes to them. Locke then actually supports devious language; otherwise, he condemns himself.

But Zuckert misrepresents what Locke is saying. Locke holds that phenomenal colors are ideas in the mind: what is present in objects is the power to produce these ideas in us. This account of color in no way requires us to deny the evidence of our senses. Objects, on Locke's view, look just the same as they always have done. Locke's view of color in no way threatens the ordinary meaning of discourse, unlike the claim that our senses deceive us. Contrary to anything Zuckert has shown, the passage from Locke does not refer to himself. Why not then take his condemnation of deceptive philosophers as sincere?

Zuckert is no more successful when he considers specific theological doctrines that Locke professes. Locke cannot genuinely believe in God as the source of natural law, our author contends:

Locke made central to his proof [of God's existence] the following step: the human race cannot be self-created and thus must be created by a God. That conclusion follows, Locke said, from a consideration of the human condition: "If man were creator of himself . . . he would also have granted himself an eternal duration for his existence. . . . For it is impossible to imagine anything so hostile and inimical to itself, which, though it could grant itself existence, would not at the same time preserve it." But what of another being who had the power to grant humanity existence—is it not the same act of hostility to grant humanity existence and "not at the same time preserve it"? . . . If there is a creating God, he is hostile to humanity. But if he is hostile to humanity, then his will is neither obligatory to nor the source for the content of the good for humanity. (p. 190)

Once more Zuckert has failed to grasp Locke's point. Locke here relies on a metaphysical principle, famously defended by Spinoza: every being endeavors to preserve itself in existence. A being with creative powers that denied itself immortality would then display hostility toward itself. Not so a being who created some other entity. No metaphysical principle requires one to preserve in being whatever one creates. If God made us mortal, he does not thereby manifest hostility toward us.

Does not Zuckert's argument fail on another ground? Human beings die; but does not Locke believe that God has given humans immortal souls? In what way, then, can God be deemed hostile to humanity? We here arrive at the central point of Strauss's and Zuckert's claim that Locke was an atheist. As they see matters, Locke did not genuinely believe that humans have immortal souls.

[I]f there is a true natural law, Locke holds, the natural reason must be capable of proving the existence of the afterlife, but, Locke also explicitly says, the natural reason cannot do that. Therefore, by Locke's own criterion, there cannot be a law of nature such as he describes and seems to accept. (p. 34)

Locke says that morality does not make sense without rewards and punishments after death. But he offers no proof of life after death. Thus, says Zuckert, Locke writes deceptively: he does not really believe that morality depends on what happens to us after we die.

Zuckert takes no notice of a simple alternative to his analysis. Locke's argument for immortal souls just is the fact, as he thinks it, that morality would make no sense without this postulate. Why must Locke come up with some proof independent of morality that we possess immortal souls? Rather his argument has this form: (1) Unless X, morality makes no sense. (2) Morality makes sense. (3) Therefore X. "X" here of course is, "Human beings have immortal souls." Locke here anticipates Kant in the *Critique of Practical Reason*; much to my surprise this has escaped Zuckert.

Further to the same issue, Strauss and Zuckert incorrectly interpret this passage from Locke as a denial that reason can prove the soul's immortality. "That the dead shall rise and live again: these and the like, being beyond the discovery of *reason*, are purely matters of *faith*, with which *reason*, has, directly, nothing to do" (p. 32, quoting Locke). This passage refers to the resurrection of the body, which in standard Christian theology is indeed viewed as a teaching of faith. It need not be read as a denial of reason's power to prove the soul immortal.

Zuckert also endeavors to show that Locke's profession of belief in Christianity did not reflect his real views. In the *Reasonableness of Christianity*, Locke places great stress on Christ's miracles, as reported in the New Testament.

The miracles, he holds, were so numerous and so public that "they never were, or could be, denied by any of the enemies or

opposers of Christianity.” . . . Locke focuses the issue by citing the example of the Emperor Julian; even he “never dared to deny” the miracles. (p. 161)

Locke, according to Zuckert, conceals an anti-Christian message behind this seemingly straightforward apologetic point.

Locke continues, however, in a most curious way that entirely undermines the argument for miracles; he [Julian] dared not deny so plain a matter of fact, which, being granted, the truth of our savior’s mission *unavoidably* follows . . . the instance of Julian himself [who rejected Christianity] contradicts Locke’s point in a way he must have meant to convey. (p. 161)

Zuckert here takes the word “unavoidably” in a wooden way. Why not take Locke to be saying that the conclusion that Christ is the savior is rationally compelling, given the truth of the miracles? In like fashion, someone who contends that the premises of a syllogism make the conclusion unavoidable means that the premises imply the conclusion. He does not suggest that no one will in fact fail to reason correctly.

I must be fair to our author: one of his arguments seems to have some weight. He notes that Locke reduces Christianity to one essential dogma: the acceptance of Jesus as the Messiah. But this is exactly the claim that Hobbes, generally taken to be an atheist, made when he professed belief in Christianity.

How decisive is this point? Does the fact that Locke agreed with Hobbes show that he too was a secret atheist and Hobbesian? Perhaps he thought that Hobbes was right about the essence of Christianity. No doubt this hypothesis is too simple for the convoluted mind of a Straussian, but it should not on that account be scorned.*

Suppose, though, that Zuckert is right: Locke was not a Christian natural law thinker. What follows for his political theory? Zuckert maintains that, detached from its Christian trappings, Locke offers an account of self-ownership that remains plausible today. Locke, our author contends, thought that “[t]he self in its very nature is posited as self-owning, a fact

* The argument of course assumes that Hobbes was an atheist, a contention that has been thrown into question by, among others, A. P. Martinich, *The Two Gods of Leviathan*; Howard Warrender, *The Political Philosophy of Hobbes*; and F. C. Hood, *The Divine Politics of Thomas Hobbes*.

witnessed in our most elementary locutions—I, me, mine, to quote an old Beatles' song" (p. 195).

But the self, for Locke, is no ethereal entity. It is inevitably bound up with the body. "The self appropriates the body and makes it its own, that is to say, makes it the instrument of its intentional actions in relation to its broader purposes in life" (p. 195). But this claim is exclusive: the self, by appropriating its body, repels the claims of any one else to that body.

And does this not establish a basis for rights?

In the first instance this ownership has nothing moral about it; it is merely a fact of the structure of self-consciousness. Yet it has moral implications, for the 'I' necessarily is concerned with its own happiness and misery. . . . The self posits itself as a possessor of rights to life, liberty, and the pursuit of happiness. Its very claim for itself as a self contains a claim of exclusivity vis-à-vis others. (p. 196)

I cannot think that this argument succeeds. No doubt the self, as Zuckert presents it, wishes to engage unimpeded in its own activities. But why should this fact generate a moral demand on others to refrain from interfering with these activities? Zuckert's Locke has not succeeded, as our author asserts, in deriving "the 'ought' of moral inviolability" from "an 'is' (the fact of self-ownership)" (p. 194). The "rights" that Zuckert professes to establish generate no moral claims; they are mere assertions of individual power.

I have expressed skepticism about Straussian secret reading, as applied to Locke; but I should now like to hazard the claim that Zuckert's own book has an esoteric thesis. (I hasten to add that my claim is intended only as speculation.) I suspect that Zuckert is aware that his "Lockean" rights are not moral rights at all. They are mere Hobbesian claims; and, contrary to his professed difference from Strauss, Zuckert also regards Locke as a Hobbesian. He thinks that Locke's views, as he presents them, form a good basis for political action today. But he correctly sees that open advocacy of Hobbesian statism would avail him nothing. Instead, he offers us Hobbesian doctrine under a thin veil of alleged Lockean rights.*

* Readers interested in Strauss should consult the review article, "Sphinx Without a Secret" by M. F. Burnyeat in *the New York Review of Books*, May 30, 1985 and the subsequent correspondence in the October 1985, issues of the same journal.

The Nomos of the Earth in the International Law of the Jus Publicum Europaeum^{*}

CARL SCHMITT

TRANSLATED BY G. L. ULMEN

Can Liberty Limit War?

April 1, 2003, *Mises Review*

CARL SCHMITT offers a fundamental criticism of a way of thinking about politics and power. If he is right, some libertarians, among many others, have fallen victim to a radically misconceived view of political action, especially as regards war. I do not think that Schmitt is right, but his profound work requires serious attention. *The Nomos of the Earth*, a translation of a book first published in 1950, is the most comprehensive account of Schmitt's thought, as applied to international relations. (Professor Ulmen has included several supplementary articles by Schmitt in this translation, as well as very helpful notes.)

Schmitt identified and criticized a pattern of thought about war. It is often asserted that because war is a terrible thing, involving mass killing, it must either be done away with altogether or restricted by rigid rules of justice. Libertarians fall into this pattern. We would say that according to the nonaggression principle, the use of force is justified only in response to force, or a threat

^{*} Telos Press, 2003.

of force, directed against one's rights, as characterized by libertarian theory. The theory does not change when nations enter the scene. A state can justifiably engage in war only if another country has violated libertarian rights.

What is the matter with that? If Schmitt opposes limits to war, is he not simply expressing his own admiration for violent struggle? Notoriously, Schmitt supported the Nazis, principally during the years 1933–1936, although he had earlier opposed them. Is the profound criticism of which I have spoken simply an erudite version of fascist apologetics?

I do not think so. We can see what Schmitt has in mind by imagining how he would reply to the libertarian view sketched above. What happens if a country does not follow the dictates that libertarian theory prescribes? May other nations then take up arms against it, in an effort to “enforce the law of nature,” in Locke's phrase? An example will bring home the relevance of Schmitt's question. The regime of Saddam Hussein has undoubtedly violated the libertarian rights of some of the residents of Iraq. May the United States then justifiably wage war against it?

Undue emphasis on rights and law, Schmitt feared, would lead to perpetual war to enforce the legal order that supposed aggressors had violated. But what then is the alternative? Must one abandon all pretense of justification for war, and fight as one pleases? Do we face a choice between abstract principles that lead to war or the outright embrace of militarism?

Schmitt thought that there was an escape from this dilemma. A group of nations could “bracket” war. The group in question would not set up a system of rules that branded as criminal those who violated them: to do so generates the problem just described. Instead, the group, recognizing that nations often engage in armed struggle, would follow concrete practices that limited the wars that did arise.

And this is no mere hypothetical. Schmitt holds that twice during the history of Europe, an order of this sort has been established. During the Middle Ages,

[t]he encompassing unity of the international law of . . . Europe was called *respublica Christiana* [Christian republic] and *populus Christianus* [Christian people]. It had definite orders and orientations. . . . The essential point is that, within the Christian sphere, wars among Christian princes were bracketed wars. They were distinguished from wars against

non-Christian princes and peoples. These internal, bracketed wars did not negate the unity of the *respublica Christiana*. . . . This means that they did not abolish or negate this total order. (pp. 58–59)

As always for Schmitt, abstract rules are the enemy. In the medieval order just described,

Peace . . . was not a free-floating, normative, general concept, but, rather, one oriented concretely to the peace of the empire, the territorial ruler, of the church, of the city, of the castle, of the marketplace, of the local juridical assembly. (p. 59)

We now can grasp Schmitt's key thought. Since the nations that constitute the order follow concrete practices that regulate when wars take place and how they are to be conducted, they avoid the danger of constant resort to war, in pursuit of abstract principle.

Schmitt devotes most of his attention in the book to the order of European nations that prevailed from the sixteenth to the twentieth centuries. Here once more the key to all mysteries is to avoid abstract rules that mandate perpetual war to enforce them.

The formal reference point for determining just war no longer was the church's authority in international law, but rather the equal sovereignty of states. . . . Any war between states, between equal sovereigns, was legitimate. Given this juridical formalization, a rationalization and humanization—a bracketing—of war was achieved for 200 years. (p. 121)

Even a reader sympathetic to Schmitt will likely consider his claim extreme. Is it not paradoxical to think that war can be limited by throwing out altogether the notion of just war? Schmitt is not deterred by the paradox and relentlessly presses his cases against "theological" attempts to establish rules for just war. "A true jurist of this transitional period [to the order of modern Europe], Gentili, formulated the battle cry. . . . *Silete theologi in munere alieno!* . . . [figuratively: Theologians should mind their own business!]" (p. 121).

But has Schmitt correctly portrayed the historical era he discusses? Did not Francisco de Vitoria establish explicit rules not only for the conduct of war (*jus in bello*) but also for the legitimacy of engaging in war (*jus ad bellum*)?

Schmitt stands ready with his counter. Vitoria did not formulate abstract rules intended to govern all nations. Rather, he wrote for a concrete political order, governed by Christianity. Vitoria did not accept the modern assumption that at most one side in a war can be acting with justice. The opponent on this view counts as a criminal rather than an equal sovereign. “For this reason alone, the modern distinction between just and unjust war lacks any relation to medieval scholastic doctrine and to Vitoria” (p. 122).

The Nomos of the Earth follows many byways, as Schmitt again and again manifests his extraordinary learning; and one of these is relevant here. Schmitt ascribes the common view that Vitoria was an advocate of modern just-war theory to a campaign of historical propaganda, led by jurists who wanted to make aggressive war a criminal offense.

James Brown Scott, the world-renowned American jurist . . . Secretary of the Carnegie Endowment for International Peace . . . dedicated himself to becoming the official exponent of Vitoria’s fame. Andrew Carnegie, in his December 14, 1910, letter establishing the Endowment, characterized war as essentially criminal . . . of course, without citing any theologians. Scott, however, found Spanish theologians to be a great resource. (pp. 118–119)

One must acknowledge the strength of Schmitt’s case. The pursuit of abstract rules can indeed result in “perpetual war for perpetual peace.” But I venture to suggest that Schmitt goes too far. If all attempts to assess the justice of wars by sovereign states are dismissed as theological and abstract, have we not abandoned altogether the cause of peaceful relations among states? Schmitt asserts that the

First World War began in August 1914 as a European state war in the old style. The warring powers mutually considered themselves to be equally legitimate and sovereign states. . . . Aggression was not yet a concept of traditional European international law. (p. 259)

If he is right, does not the traditional European state-system have a good deal to answer for? The old order, it appears, was capable of producing a war of appalling death and destruction.

World War I threatens Schmitt’s edifice, but it does not destroy it. He is in his element with a brilliant analysis of the treaties and diplomacy of

post-World War I Europe. The League of Nations, in particular, arouses Schmitt's fury. It exemplified the sort of pernicious abstraction that threatened to unleash continual violence.

In Geneva, however, there was much talk about the proscription and abolition of war, but none about a spatial bracketing of war. On the contrary, the destruction of neutrality led to the spatial chaos of a global world war and to the dissolution of "peace" into ideological demands for intervention lacking any spatial concreteness or structure . . . the vigorous attempt to make aggression a crime in international law . . . came to naught. (p. 246)

Schmitt points out that the victorious powers after World War I sought to charge Germany with the crime of aggression. No longer was war an accepted measure that a sovereign state might undertake; now, if waged aggressively, it was a crime. If so, nations could not with propriety remain neutral. An attempt to do so would be the equivalent of someone within a state declaring his neutrality between a criminal and the police. The effort to criminalize war would thus lead to its extension.

How should libertarians respond to Schmitt's criticism of abstractions? Has he located a fatal flaw in the libertarian view? If we think that force is justified only in response to a violation of libertarian rights, we seem trapped by Schmitt's argument. Will not libertarians be tempted to view aggressor nations as criminals? If so, is libertarianism another version of perpetual war for perpetual peace?

I think that libertarians have an escape. If one thinks that force is justifiable only as a response to a violation of libertarian rights, it does not at all follow that one is committed to intervening whenever such a violation takes place. A libertarian is under no necessity to enforce the law of nature, even if he has a Lockean right to do so. The libertarian can reject the punishment of nations that "aggress," for precisely the reasons that Schmitt has so ably set forward. Here, for once, an abstract principle need not lead to the consequences that Schmitt feared.

Murray Rothbard adopted exactly the position I have just mentioned. In spite of his firm commitment to the nonaggression principle, his criticisms of collective security and interventionism parallel those of Schmitt. In *For a New Liberty*, e.g., he writes:

But “aggression” only makes sense on the individual Smith-Jones level, as does the very term “police action.” These terms make no sense whatever on an inter-State level.

If libertarianism of this kind escapes Schmitt’s strictures, a further question arises: is it preferable to the system of European order that Schmitt has described? An advantage of the libertarian view is that it avoids the drastic step of viewing all wars undertaken by sovereign states as just wars. Instead, it strictly limits the occasions on which a state may undertake military action. The reason that the abstract principles that Schmitt condemns led to war lies in the content of these principles, not in their abstract character. If we do not want war, let us adopt principles that curtail it. Schmitt mocks Charles Journet, who contended that “if the definition of just war provided by Saint Thomas Aquinas . . . is taken seriously, one probably can count the number of actual and completely just wars on one’s fingers,” (p. 58, n. 4) but libertarians who follow Rothbard will applaud him.*

* The book by Cardinal Journet that Schmitt cites is available in English translation (Charles Journet, *The Church of the Word Incarnate*, Vol. 1 [Kansas City: Sheed and Ward, 1955]). The relevant discussion, which I highly recommend, is on pp. 304–330.

Justice, Luck, and Knowledge^{*}

S. L. HURLEY

The Politics of Good Fortune

July 1, 2003, *Mises Review*

SUSAN HURLEY HAS WRITTEN A BOOK of fundamental importance. Although she is by no means a libertarian, and uses no distinctively libertarian assumptions, she eviscerates the egalitarian theories most influential in contemporary political philosophy. Not content with her critical triumph, she advances a new approach to justice; but this fails to break sufficiently with the egalitarian theories whose customary rationale she has challenged.[†]

A line of thought present in John Rawls's *A Theory of Justice* (1971) has shaped much of the subsequent discussion of distributive justice. Rawls claimed that people do not deserve to benefit from their natural assets. Michael Jordan possesses enormously more skill at playing basketball than I do; but why should this unfortunate state of affairs enable him to earn an income somewhat higher than mine?

But why should we not profit from our talents? Why do we not deserve them? And even if, in some plausible sense, we do not deserve them, why are we not entitled to benefit from them? One way of understanding Rawls's

^{*} Harvard University Press, 2003.

[†] Robert Nozick thought very highly of Hurley's earlier book, *Natural Reasons* (1989); but, in commenting on her later work in philosophy of mind, he also noted that she tends to express herself with unnecessary complexity. This problem, I regret to say, is present in *Justice, Luck, and Knowledge*.

answer is this: our natural abilities, whether good or bad, are the product of luck. We are not responsible for them and hence should neither benefit nor suffer from them.*

As Hurley notes, a problem arises if one reads Rawls in this way. This interpretation makes responsibility central to justice, but Rawls sometimes denies that concepts of responsibility play a central role in the theory of justice:

If you judge that no one is responsible for his natural assets, you make a negative judgment, true. But it is still a judgment about responsibility. . . . If significant consequences for distributive justice flow from such negative applications, then this concept does indeed play a fundamental role in the theory of justice. (p. 135)

Later authors who have been influenced by Rawls, including G. A. Cohen, Ronald Dworkin, and John Roemer, manifest no such ambivalence. Here the aim to cancel luck assumes central importance. Hurley raises against these theories a devastating question. These authors are egalitarians: like Rawls, they reject the free market in large part because it permits large disparities of wealth to arise. But why should we assume that attempting to counter luck has anything to do with promoting equality?

At first sight, Hurley's challenge seems absurd. Let us return to the sad case of Michael Jordan and me. Suppose one grants that Jordan is not responsible for his superior athletic ability. If one's aim is to "correct for luck," is it not obvious that Jordan should have to give me a large part of his money, so long as no other people are taken into account?

Not at all, Hurley argues. We start with the premise that the existing distribution of wealth between Jordan and me arises from luck. This premise does not imply that some other distribution would manifest the influence of luck to a lesser extent. Suppose that someone divides between us the sum of Jordan's and my assets on an exactly equal basis. Why would this egalitarian distribution count as one that reduced the influence of luck?

Hurley states her point with characteristic precision:

Equalities can be just as much a matter of luck as inequalities. The fact that people are *not* responsible for a *difference* does not entail that they *are* responsible for *nondifference*. There is no

* Rawls's contention may have come from Frank Knight.

more a priori reason to assume that equalities are not a matter of luck than there is to assume that differences are not a matter of luck; people may not be responsible for either.” (pp. 151–152)

But, one is inclined to object, is not Hurley ignoring an obvious fact about the way we speak of people as being lucky and unlucky? Surely it is Jordan, and not I, who is lucky, given the immense sums of money his talent enables him to command. Why does Hurley raise so much fuss about what is involved in correcting for luck? A redistribution from him to me takes from a lucky person and gives to an unlucky one; what is the problem?

Our author readily acknowledges that this is a legitimate way to speak of luck. But on this conception, being lucky means having more, or much more, than others. It assumes that one starts from a position of equality and judges departures from that position to be due to luck. But then one does not have an argument that inequality results from luck: one has simply made this true by definition. Hurley concludes that the “aim to neutralize interpersonal bad luck begs the question of justification and just helps itself to the goal of equality” (p. 157).

Hurley distinguishes another sense of responsibility, which she terms the counterfactual. “In the *counterfactual* reading, I compare my actual situation with other possible situations I might have been in. I have bad luck when what I have is a matter of luck and I am worse off than I might have been” (p. 156). It is this sense that underlies Hurley’s claim that correcting for luck leads by itself to no egalitarian outcome.

I can here give but a sample of her subtle discussion:

It is hard enough to say whether people are responsible for what they actually have. But to neutralize luck understood counterfactually, we need to know more than this. We would have to be able to say, when people are not responsible for what they actually have, what they *would* be responsible for instead, if factors for which they are not responsible were eliminated . . . it is highly doubtful that we have any general, nonarbitrary basis for answering this further question. In many cases the answer is simply indeterminate. (p. 162)

Hurley has an approach of her own that she proposes to substitute for the version of egalitarianism she has so effectively dispatched. To my mind, she

gets off to a good start. She favors a cognitive view, in which the aim is to discover the true principles of justice. She rejects conventionalism, in which the sole question about justice is the rules on which people can be expected to agree. "Cognitivism in political philosophy is not a doctrine or thesis, but a category. Cognitivist accounts are cast primarily in terms of truth and knowledge rather than choice or preference" (p. 256).

We wish, then, to attain truth about justice; how are we to proceed? As Hurley sees matters, we should try to eliminate factors that might bias our decisions. If Michael Jordan, to return to him yet again, were to deliberate on principles of justice while knowing of his superior abilities, might he not be tempted to select a view that would benefit people like him?

To eliminate bias, Hurley suggests, we must imagine ourselves in something like Rawls's original position. We assume, like Rawls, that we lack any information about our abilities or preferences. Will not the principles we choose under such conditions be as immune as we can make it from the influence of bias?

Hurley's specification of her original position follows Rawls closely at a crucial juncture. John Harsanyi and other philosophers of a utilitarian bent agree with Rawls about the imperative need to avoid bias. But, they say, why assume that people are completely ignorant about which social position they will occupy, once the veil of ignorance is lifted? Why not, instead, assume that each person has an equal chance of winding up in any position in society? On this assumption, utilitarians argue, people will choose to maximize average utility rather than conform to Rawls's ideas.

Hurley will have none of this. The utilitarian approach just sketched once more injects bias into our deliberations.

[T]he aim to neutralize also argues *against* the idea of deciding about justice on the basis of calculations of your chances of gain. But this point holds even if these calculations derive from an assumption that everyone has equal chances, Biases can distort beliefs even if they apply equally to everyone." (p. 264, emphasis removed)

The suspicion of bias, then, must at all costs be avoided; and to help secure this aim, deliberators are to be kept ignorant of key facts. Given this state of affairs, the way in which Hurley arrives at her principles of justice strikes me as more than a little surprising. It transpires that people do not

want to be ignorant: they are at least moderately “averse to uncertainty.” They want to know, though this preference is not absolute, what everyone will wind up getting.

People want to know what everyone will get; but, owing to the need to curtail bias, they cannot know particular facts about themselves. How are these imperatives, seemingly in conflict, to be reconciled? In essence, Hurley maintains that people will favor equal distribution of the “basic goods” needed to flourish. Under equal distribution, people will not be left in the dark as to what they will get. By contrast, in a system where “you get what you earn,” people will not know how they will fare, since by hypothesis they do not know their places in society. Hence people will prefer equality to a meritocratic rule of distribution. Since their aversion to uncertainty is not absolute, though, they will allow inequalities that increase the total stock of goods, “so long as the level of the worst off is kept as high as possible” (p. 272). We arrive at something like Rawls’s difference principle. This outstanding critic of egalitarian theories has, at least to her own satisfaction, vindicated a strongly egalitarian view.

I cannot think that Hurley’s ingenious labors have resulted in an acceptable account of justice. She seems to me correct that many people are moderately averse to uncertainty. But this is, for all she has shown, a mere preference; she has not argued that people ought, in an objective sense, to shun uncertainty.

What then has happened to her cognitive program? Hurley has given us no reason to think that her theory of justice is true. Rather, she introduces certain conditions designed to make the search for truth as unbiased as possible and proceeds to abandon the quest altogether. Why should one think that what people will prefer under conditions of uncertainty will give us truth?

Hurley’s entire approach strikes me as misguided. If we wish to find out the truth about justice, why not proceed as we do with any other philosophical problem, i.e., adduce relevant arguments? When, in a part of her book I have had here to neglect, Hurley discusses issues of responsibility, she follows just this course. She considers various arguments that philosophers have raised about the topic, and arrives at her own conclusions. She does not endeavor to set up special conditions under which analysis of responsibility can take place in an unbiased fashion. Why not then in like fashion reason directly about justice?

Hurley deserves great credit for her outstanding critical account of egalitarian theories that aim to counteract luck. Murray Rothbard grasped her key insight many years ago. In *Power and Market*, published in 1970, he writes:

[T]here is no justification for saying that the rich are luckier than the poor. It might very well be that many or most of the rich have been *unlucky* and are getting less than their true DMVP [discounted marginal value product], while most of the poor have been *lucky* and are getting more. No one can say what the distribution of luck is; hence there is no justification here for a “redistribution” policy. (pp. 234–235)

*On Nozick**

EDWARD FESER

Freedom or Slavery

July 1, 2003, *Mises Review*

ALMOST ALL ACADEMICS, unless libertarians themselves, associate libertarianism with one person: the philosopher Robert Nozick. What better way, then, to arouse interest among students of ethics and political thought in this way of thinking, than to provide a forceful defense of Nozick's brand of libertarianism? Edward Feser uses his considerable abilities of exposition and argument to accomplish exactly this task.

Feser emphasizes a vital fact, which plays a key role in the thought not only of Nozick but also of Murray Rothbard. Once one considers the matter, it seems obvious that each person owns his or her own body: to deny self-ownership is to justify slavery.

It is almost universally acknowledged nowadays that slavery is a very great evil. But *why* is it, exactly? It cannot be for the reason that slaves are often treated badly. For slaves are sometimes treated very well by their masters . . . yet surely, it is *still* seriously wrong for even a "kindhearted" master to keep a slave. The only way to explain why this is so is that in making someone a slave, a slave owner simply violates the slave's property rights in himself. No one *else* can properly own you, because *you* already own yourself. (p. 33)

* Thomson-Wadsworth, 2003.

Feser has conveyed the force of self-ownership very well; and as we shall soon see, the principle leads to radical results. But at one point I think that our author has not correctly stated Nozick's view. As he rightly says, some libertarian philosophers have not been satisfied with an appeal to the intuitive force of self-ownership. They seek to imbed this basic libertarian principle within a larger philosophical framework, often of an Aristotelian sort.

For Feser, these attempts are fully Nozickian in spirit, although he readily acknowledges that Nozick did not himself pursue this path. "Though Nozick himself does not give a specifically Aristotelian defense of his position, there are aspects of his work that suggest that such a defense harmonizes well with it" (p. 50). Feser points in support to the fact that Nozick thinks that an individual cannot lead a flourishing life unless others respect his rights.

True enough, but it does not follow from the fact that others must respect your rights, if you are to flourish, that you have an obligation to respect their rights. You may well have such an obligation, but more than an appeal to the conditions of your own flourishing is needed to show this. So, at any rate, Nozick maintained; and in his article "On the Randian Argument" he rejected the Aristotelian defense, not just "the specifically Randian approach to defending natural rights" (p. 50). (The discussion of "ethical pull" and "ethical push" in *Philosophical Explanations* is of great relevance here). I venture to suggest that Feser has been misled by his own sympathy for the Aristotelian position. His sympathy is well placed, but the view is not Nozick's.

But philosophical niceties must not distract us. Once given self-ownership, robust rights of property soon follow. If you own yourself, do you not acquire the right to acquire unowned property by mixing your labor with it?

Until someone does something with a resource . . . it seems obvious that there can be no question of anyone, either collectively or privately, owning it. There lies the intuitive plausibility of the Lockean theory that property results from someone "mixing his labor" with an unowned resource. Ownership of any sort can only get going when someone makes it happen, by doing something with a resource, with what is otherwise just an inert bit of stuff. (p. 82, emphasis removed)

The argument just presented did not gain Nozick's full approval. He thought that initial acquisition of property needed to meet a stricter requirement, the

so-called Lockean proviso. Under its terms, acquiring property must make no one worse off. As Feser notes, this requirement is readily met:

But given the practical benefits of the institution of private property . . . people's situation is in general *vastly better* as a result of some people's initially acquiring natural resources. (pp. 83–84)

Because the proviso imposes so weak a demand, it in effect drops out of the picture, and Nozick's theory reduces to a straightforward Rothbardian one. Feser seems entirely right in his contention that the proviso imposes no serious limits to acquisition, but at one point he goes too far. He agrees with the contention of David Schmidtz that the "Lockean Proviso thus not only allows for the acquisition of unowned resources; in many cases it actually *requires* it!" (p. 84).

Schmidtz and Feser note, with entire correctness, that people are often worse off if a resource in common use remains unowned. In such a circumstance, no one has an incentive to use the resource efficiently. But the proviso does not, owing to the "tragedy of the commons," require that people remove land from the commons for their own more efficient use. It limits property acquisition: it is not a general principle of benevolence.

Feser suggests that the proviso be dropped altogether. If someone has acquired unowned land, what rights of others does he violate? By hypothesis, the land is unowned; how then can anyone claim that the appropriator has acted unjustly toward him? If it is said in reply that the appropriator has by his act interfered with a prior practice of common use of the land he now secures for himself, Feser stands ready with a rejoinder.

For if B, C, D, and E were already using the . . . [resource] in common, it seems to me that we should say that they had together already appropriated it themselves, in which case A would not be initially appropriating it, but stealing it. Many cases of resources existing "in the commons" are, I [Feser] would argue, mischaracterized; they are in fact cases where appropriation has taken place, just not by a single individual. (p. 87, emphasis removed)

Here our author seems to me entirely on the right, that is to say Rothbardian, lines. But I wonder whether his account of the principle of initial acquisition is entirely satisfactory. "It is, in short," he tells us, "the tendency of labor mixing *significantly* to alter a resource or bring it under one's control

that turns it into property” (p. 83). Shall we say, then, that someone who ruins unowned land by that act acquires it? Can one say, e.g., to someone who seeks to homestead land, “You can’t build here. I started a forest fire in this neighborhood last year.”?

Feser, with characteristic insight, has adopted another Rothbardian doctrine: all rights are property rights. Like Rothbard, he asks: to what does the right of free speech amount, beyond the right to use certain physical resources? But from the fact that this analysis of rights is a good idea, and the further fact that Nozick had many good ideas, it does not follow that Nozick adopted it. I am at a loss to understand why Feser says, “on Nozick’s conception, all rights turn out to be nothing other than *property rights*” (p. 36). Nozick countenances, although he never fully commits himself to, procedural rights—rights not to be subject to risky decision procedures. It is not at once evident how these can be accommodated within the analysis that our author favors.*

If at times, as it seems to me, Feser elides the differences between Nozick and Rothbard, this by no means indicates his own full adherence to the Rothbardian camp. Quite the contrary, he accepts Nozick’s view that a system of competing protection agencies, of the sort that Rothbard favored, would develop by steps that violated no one’s rights into a minimal state.

Suppose that Nozick is right. It by no means follows that a minimal state is preferable to a system of Rothbardian anarchy. One can readily imagine cases in which people end up in very bad conditions, as a result of steps that violate no rights. Imagine that all readers of the *Mises Review* transferred all their assets to me. Though I think this an idea of outstanding merit, honesty compels me to admit it would make my readers far worse off than they are now. Yet no one’s rights are violated by this scheme. In like fashion, Nozick’s derivation requires extra steps besides those Feser has specified. It must be shown that each stage of the derivation of the minimal state benefits those who undertake it. Of this necessity, Nozick was fully aware.†

But is Nozick right? Will anarchy lead to the minimal state, in a way that fully respects rights? The derivation has been much controverted, and Feser

* Feser argues effectively that procedural rights are negative rights to respect persons’ rights to self-ownership (p. 60). But this does not make them property rights. Nozick in conversation rejected the “all rights are property rights” view; he also did not think that all rights stem from self-ownership.

† Once more, I am indebted to conversations with Nozick.

gives a succinct and accurate account of the principal issues. One step in Nozick's account strikes me as especially questionable, although it has not occupied the center of discussion.

As everyone knows, Nozick thinks that a dominant protection agency may prohibit independents from imposing risky decision procedures on its clients. If it does so, it must compensate them, by providing these independents with its own protective services. "It may charge an independent for providing these services to him, but only an amount the independent would have had to spend anyway in protecting himself . . ." (p. 59).

Is this not a peculiar sort of compensation? The dominant agency first cripples the ability of independents to protect themselves. It then "makes it up to them" by graciously allowing them to become its paying clients. You do not want my protection; but when I sell it to you, under conditions you will find hard to refuse, you have been "compensated." This is more than a little Orwellian.

Further, what limits the dominant agency when it prohibits "risky" decision procedures? May it ban whatever displeases it? Nozick's discussion gives us no firm limits. It is this that lies at the heart of Rothbard's criticism of his views on risk. I think that Feser has read Rothbard uncharitably, though he quotes him accurately, in attributing to him a general denial "that any behavior risky to others can ever legitimately be prohibited" (p. 62). The "risk" that concerns Rothbard in the passage Feser cites is, I think, restricted to cases where Nozickian dominant agencies act without limits. But readers must judge for themselves.

This book perfectly illustrates the old maxim, "*multum in parvo*," and to my mind the best of the many fine things in it is Feser's brilliant defense of the view that taxation amounts to forced labor. The programs of the welfare state entail that

the state and its beneficiaries have an entitlement or enforceable claim to, and thus a partial property right in, your labor, and thus of you. They are, in short, part-owners of you. The egalitarian welfare state thus amounts to a system of slavery—less onerous than full slavery, to be sure, but partial slavery is still slavery. (p. 79)

The Case Against the Democratic State: An Essay in Cultural Criticism^{*}

GORDON GRAHAM

The Trouble with Democracy

July 1, 2003, *Mises Review*

GORDON GRAHAM challenges practically the whole of reigning orthodoxy in political philosophy in his remarkable book. To the *bien pensants* of political theory, “political participation” and “democratic decision-making” are all the rage, and theorists such as Amy Guttmann, Benjamin Barber, and Ronald Dahl constantly urge us on to more and more democracy. Like Hans-Hermann Hoppe in his excellent *Democracy: The God that Failed*, though with rather different arguments, Graham sets himself in firm opposition to this dominant trend.[†] Graham is principally a philosopher of religion, and he brings to political theory the fresh perspective of an outsider.

Like Hoppe, our author goes further than to put democracy into question. He manifests a bold and welcome skepticism toward the state itself. Graham here labors under a handicap, as he in effect fights with one hand

^{*} Imprint Academic, 2002.

[†] See my review of Professor Hoppe’s book, found in *An Austro-Libertarian View, Volume 2*, “Political Theory.”

tied behind his back. He appears unaware of private property anarchism. When he asks, why do we need the state, he does not bring to bear how private protection agencies might fulfill the functions that today the state monopolizes. In spite of laboring under this limitation, he strikes crippling blows at the usual rationale for the state.

Those ensnared by the conventional wisdom will likely throw up their hands in despair. "Of course we need the state," they will say. "Without it, will not society at once collapse into chaos? Crime will be uncontrollable, and we will find ourselves in a Hobbesian war of all against all."

Will we? Graham raises two points that, taken together, throw into question this familiar view. For one thing, most people refrain from crime because they think it wrong. Unless most people avoided aggression on their own volition, not even the most powerful state could restrain them.

It simply is not plausible (because not feasible) to suppose that police, even in considerable numbers, could enforce the sort of order that is required for a large and busy supermarket to function effectively, never mind the thousands upon thousands of these that many modern societies support. We know very well that when rioting does break out, it can be difficult for well armed and trained police in sizeable numbers to control a mob in even one small locality. (p. 11)

If the state is not necessary for social order, neither is it sufficient. Graham reminds us of an obvious fact, often overlooked when we take for granted the need for the state. Crime exists: the state does not fully give us the social order it promises. "Theft of property, fraudulent transactions, kidnapping, violence against the person and so on, all occur in societies with a strong and efficient State" (p. 12).

The choice between the state and anarchy, then, is not a decision between order and chaos. Order does not depend on the state, and it does not prevent all disorder. But Graham does not conclude from these considerations that the state should be abolished. The argument from "public goods" impresses him; when individual and collective rationality diverge, must not the state step in to bring them into alignment? (Unfortunately, Graham is evidently unaware of work by Bruce Benson and others on the private provision of public goods.) And he thinks that stateless societies could not mount effective resistance to attacks from foreign states.

The state, then, can be useful, our author thinks. But it is dangerous, as the totalitarian nightmares of the twentieth century have taught us. How can we obtain the advantages of the state while avoiding its dangers? Some have sought an answer in democracy. If the people rule, we have little to fear, and much to gain, from a well run state. It is this thesis that Graham sets as his principal task to refute.

Our author begins by recalling the arguments of the greatest of all opponents of democracy, Plato. In the *Republic*, Plato famously argues that,

[j]ust as it would be madness to settle on medical treatment for the body of a person by taking an opinion poll of the neighbors, so it is irrational to prescribe for the body politic by polling the opinions of the people at large. (p. 23)

To this the reply is obvious. Given a certain goal, such as health, we can appropriately turn to experts. But in politics, just what are “up for grabs” are the ends that society should pursue. Here there are no experts; and there is nothing at all incongruous about appeal to the majority in this context. Indeed, is not the alternative to majority rule outright dictatorship?

But Plato is not so easily turned aside. Democratic elections often settle questions that have to do with means. When voters endorse minimum wage laws, inflation, and environmental controls on business, are they not dealing with issues that fall within the competence of the economist? They think these measures will promote prosperity: they presumably do not support them as valuable for their own sake. Why then is it up to them, rather than qualified experts, to decide on these issues?

Further, why should we accept the contention that there are no experts about ends? To say this is to beg the question against Plato. He maintained, and many of successors agreed with him, that ethics is an objective inquiry. If he is right, why should we be governed by the untutored whims of the populace?

In any democracy, there will always be people who cannot leave aside purely personal preference and interest when they enter the realm of public debate. Are they to be ranked along side those who genuinely try to think about what would be best for the community as a whole? (p. 28)

Graham supplements his resort to Plato with the claim that support for democracy leads to a paradox. Suppose you endorse democracy: you think,

e.g., that the majority of voters should decide whether we have minimum wage laws. At the same time, you yourself think that such laws are objectively bad. What happens if minimum wage laws win majority support? You are caught in a trap. You must think we ought to have such laws, since you think that the majority should rule and the majority has voted for them. At the same time, you must think that we ought not to have them, since you believe that they are objectively bad.

I cannot think that this alleged paradox generates a real difficulty. Here, we have reasons to accept two conflicting conclusions. One reason tells us that we ought to have minimum wage laws, another that we should not. Must we not then decide, in the given case, which consideration is the stronger? A clash between various *prima facie* oughts, to use the term of Sir David Ross, is nothing to be feared.

Let us return to the Platonist arguments. Faced with these, a democrat might I think reply in this way:

A democracy might very well institute policies that, objectively speaking, are bad. If I deem the policies of my society bad, at least I have the possibility of trying to change them; my vote counts. The alternative is dictatorship; is this what the critic of democracy wants?

Graham meets this argument head on. In a modern democracy, your vote does not count. Because of the large number of voters in an election, an individual has not the remotest chance of turning the results in the direction he favors.

Imagine an election in a parliamentary constituency of 10,000 voters where 60% go to the polls and the outright winner (X) gets 52% of the vote. Suppose I voted for X. It is evident that my vote makes no difference. Had I not done so, she would have won anyway; 32,000 minus one still wins. Had I voted against her, this would make no difference either. . . . But if this is true of my vote, it is true of everyone else's also. So it does not matter how anyone would have voted, the outcome would have been the same. (p. 58, emphasis omitted)

A supporter of democracy is unlikely at this point to retire from the battle defeated. "No individual vote counts for much," he will acknowledge, "but in a democracy people are free to persuade others to adopt their policies. It

is the process of free discussion, not voting by itself, that lies at the essence of democracy.”

Our author is well prepared for this counter. What has free discussion to do with majority rule? A majority-rule system can suppress free speech, and an elite regime not dependent on majority support can permit it.

Why should the subjects of a good despot or liberal oligarchy not arrange public debates on political issues, publish newspapers, make television programmes, and even organize conferences and rallies designed to bring influence to bear on the decision makers? (p. 53)

“Possibly an oligarchy might act in this fashion,” a democrat will reply, “but discussion will not be widespread. In a democracy, people endeavor to influence the voters, the ultimate decision makers. In an oligarchy, discussion and debate lack a practical purpose. Why would people waste much energy on public discussion when their efforts may count for naught?”

Graham once more has a response. Why should one believe that persuasion can work only in a democracy? Why are “the good despot and the liberal oligarchs” (p. 55) immune to persuasion? “The democrat . . . would be very unwise to play down the significance of voicing opinions, since this is the only way, between elections, that democracy is to be distinguished from elective dictatorship” (p. 55).

In sum, although Graham does not reject the state, he thinks the usual arguments for it of little merit. The alleged advantages of the state must be weighed against its manifest disadvantages, most notably its tendency to assume undue power. Democracy provides no safeguard against this danger, and in a democratic system individual voters are powerless. Further, democracy subordinates the pursuit of truth to government by the whim of the incompetent and untrained. Free discussion is no doubt a good, but such discussion has no necessary connection with democratic rule. Graham’s courage and insight in challenging prevailing dogma deserve great praise.

*Libertarianism without Inequality**

MICHAEL OTSUKA

Is Inequality Indefensible?

October 1, 2003, *Mises Review*

MICHAEL OTSUKA endeavors to combine two fundamental principles of political philosophy, usually considered polar opposites. In my view, his ingenious attempt does not succeed; but his failure has much to teach us.

Otsuka has been struck by the force of the self-ownership axiom. Is it not obvious, once one thinks about it, that each person owns himself, in the sense that he has the right of disposition over his body and labor? The fact that you need a kidney in order to survive should not give you a legally enforceable right to take one of mine, even though I can get by with only one.

The example just given hardly seems controversial, but does it not have radical implications for the contemporary welfare state? If you have to pay taxes to support the poor and disabled, then your right of self-ownership has been violated. As Robert Nozick, following Herbert Spencer, pointed out, taxation to help the unfortunate is a species of forced labor. Slavery remains slavery even if the slave owners are physically disabled. If, then, you acknowledge self-ownership, do you not also have to reject the welfare state and embrace libertarianism?

* Oxford University Press, 2003.

Otsuka has a surprising response. He thinks that he can be a libertarian without rejecting transfers of wealth to the poor and disabled. His “left libertarianism,” as he terms it, combines robust rights of self-ownership with what amounts in effect to compulsory welfare transfers.

Before we examine Otsuka’s attempt to “square the circle,” a preliminary question confronts us. Why does Otsuka wish to promote this seemingly odd amalgam? Though he finds the case for self-ownership compelling, he is also attracted to another line of thought. People have vastly different abilities, temperaments, and assets; as a result, in a free-market society some are able to achieve much higher levels of welfare than others.

But is not this grossly unfair? You do not morally deserve your abilities. It is a mere matter of luck, e.g., that someone is born blind and is as a result probably greatly restricted in the level of happiness he can attain, relative to sighted people. People ought to enjoy equal opportunities for welfare, regardless of their natural starting points: society has a duty to “correct for luck.”*

I must underscore the radicalism of Otsuka’s position. He holds not only that the poor should be helped in some fashion, but that no one is entitled to a greater opportunity for welfare than, say, a blind quadriplegic with a morose disposition. Sufficient property must be transferred to this unfortunate so that he is, so far as we can make it, equally happy with those more fortunately endowed.

But how can this idea possibly be combined with self-ownership, so long as a single person who is not disabled refuses to labor on behalf of the unfortunate? Otsuka finds the key to the mystery by developing a line of thought advanced by G. A. Cohen, by whom he has been greatly influenced. Like our author, Cohen felt the force of the self-ownership principle; but he denied that self-ownership entails standard libertarianism.

Libertarians assume that people, because they are self-owners, can acquire unowned property by “mixing their labor” with it; but does not this claim involve additional assumptions? Who says that property is initially unowned? Even if it is, can people acquire unlimited amounts of property without restriction?

* The arguments that Otsuka here relies on have been subjected to withering assault in S. L. Hurley, *Justice, Luck, and Knowledge* (Harvard University Press, 2003). See my review found in Volume 2, “Political Theory.”

Though Cohen located a gap between self-ownership and libertarian property rights, he did not defend a combination of self-ownership with egalitarianism. Quite the contrary, he maintained that egalitarianism, consistently applied, would stultify self-ownership. It is here that Otsuka takes issue with his mentor.

Otsuka wisely accepts the evident fact that property starts out unowned; his egalitarian move arrives with his answer to the second question. Robert Nozick famously held that initial acquisition of property is subject to a proviso:

You may acquire previously unowned land (and its fruits) if and only if you make nobody else worse off than she would have been in a state of nature in which no land is privately held. (p. 23)

This proviso, Otsuka rightly holds, is very easy to fulfill, since almost everyone is better off under a system of private property than under a regime of common ownership. But what if one makes the proviso more exigent in its requirements? He proposes that property can be justly acquired only if everyone in society, most definitely including the disabled, winds up with an equal opportunity for welfare.

If Otsuka is right, he has achieved what appeared impossible: he has shown that full self-ownership is compatible with radical egalitarianism. If someone protests that it is entirely up to him, as a self-owner, whether he wishes to donate the fruits of his labor to the disabled, and that he chooses not to do so, Otsuka stands ready with his left libertarian reply.

“Your labor is your own,” he will acknowledge.

But so much property must be transferred to the poor and disabled that if you want to acquire anything more than bare subsistence for yourself, you will have to labor for these unfortunates. Since they initially hold most of the property, beyond what is required for bare subsistence, you must work for them if you want property of your own. What could be more voluntary?

It transpires that even if you pay the appropriate ransom to the disabled in order to obtain property, you still cannot bequeath your property to your heirs. To do so would be impermissibly to violate the equal chance at welfare of members of future generations. And you cannot even pass on the improvements your own labor adds to the property you acquire:

Since individuals possess only a lifetime leasehold on worldly resources, they have nothing more than a lifetime leasehold on whatever worldly resources they improve. (p. 38)

But those who do not share Otsuka's commitment to absolute equality will think that his system leaves room for only an etiolated version of self-ownership. Imagine a social system in which everyone owns himself, but I hold a legal monopoly of all property beyond what people require to eke out a living. Would not I be in a position approaching absolute command? We would hardly have here a free society; and I do not think the matter much altered if it turned out that I was the only disabled person in the society.

Otsuka's reconciliation almost totally eviscerates the worth of self-ownership for those not so fortunate as to be poor in natural assets or disabled. We may grant his project a Pickwickian "success"; but why should we adopt it, rather than standard libertarianism?

Oddly enough, Otsuka deploys against standard libertarianism an example similar to the one that I have advanced against his own approach. Does not Nozick's proviso allow a single person to control all the property in a society? He may do so provided everyone else is slightly better off than he would have been in a society without any private property.

Nozick's version of the Lockean proviso is too weak, since it allows a single individual in a state of nature to engage in an enriching acquisition of all the land there is if she compensates all others by hiring them and paying them a wage that ensures they end up no worse off than they would have been if they had continued to live the meager hand-to-mouth existence of hunters and gatherers on non-private land. (p. 23; Otsuka credits this counterexample to Cohen)

This objection rests on a complete misunderstanding of how libertarians believe that property is initially acquired. Like Cohen before him, Otsuka reduces the libertarian principle of initial acquisition to the proviso. In point of fact, the proviso is only a modification (in the Rothbardian view an unnecessary one) to the principle. You cannot acquire vast amounts of property just by your say-so, if you follow the principle; you must combine your labor in the appropriate way with unowned land in order to acquire it.

If this is taken into account, it seems next-to-impossible that the nightmare Otsuka has conjured up could in practice arise.

Otsuka eliminates the limits on property acquisition contained in the libertarian principle; and, having done so, triumphantly proclaims that libertarians recognize practically no limits to property acquisition. Otsuka's mistake is readily apparent if one returns to his version of the so-called Nozickian proviso, quoted above. He makes it a sufficient condition for acquiring unowned property that you leave no one worse off, but he offers no evidence that Nozick or any other prominent libertarian holds this bizarre position. Otsuka has his own version of a Lockean principle, in which the "mere staking of a claim" suffices for acquisition, subject to the proviso he deems correct; but he has no right to attribute a similar view to his libertarian opponents.

Thus, even if Otsuka is right that Nozick's proviso does not eliminate the bad outcome Cohen has imagined, the point has little significance. Since the proviso is only part of the principle of property acquisition, why does it matter if it taken by itself leads to bad results?

But let us put this to one side. Suppose that Otsuka and Cohen were correct that Nozick's proviso forms the sum and substance of his principle of property acquisition. It leads to the bad result the critics have called to our attention: under it, someone could obtain all the property in society and maintain everyone else in perpetual penury.

What follows? Presumably, the proviso should be modified so that it no longer leads to this dire consequence. It hardly follows that it should be replaced by Otsuka's egalitarian acquisition principle.

An analogy will clarify what is at issue. A famous philosophical example, first I think devised by Hastings Rashdall, asks us to consider someone dying of thirst in the desert. Someone who owns the only available water in the vicinity offers him a cupful, if he agrees to surrender all his assets in return. It seems apparent that the bargain is unfair; the owner of the water is wrongfully taking advantage of the situation in which his customer finds himself. (I do not of course say that this transaction should be legally prohibited.) It does not follow, because of the unfairness of this bargain, that no one making an exchange should be able to get substantially more than the market price for what he offers. To think so is to commit exactly the same error as Otsuka. In both cases, there is a jump from one example to an overly broad conclusion.

I am always grateful to an author who illustrates exactly the fallacy I am trying to pin on him. Otsuka argues, in parallel fashion to what has already been presented, that a Lockean principle of acquisition permits one generation politically to enslave its successors. If so, the principle must be modified; but once again, Otsuka makes his characteristic jump.

I have argued that this inegalitarianism in Locke [i.e., the situation in which a generation enslaves its successors] is indefensible. It is inconsistent with a proper understanding of the conditions under which individuals may justifiably come to own previously unowned worldly resources. Contrary to Locke's own understanding of these conditions, they call for an egalitarian pattern of ownership of land . . . among the members of each generation. (p. 98)

Basing himself on a misunderstanding of standard libertarian views, Otsuka frightens us with a vision of a single person or small group who dominates society by owning all the land that it contains. Against this menace, he proposes to subject everyone to a dictatorship of the poor and disabled, by giving them control of virtually all property. Such is left libertarianism.

*Social Security: False Consciousness and Crisis**

JOHN ATTARIAN

Insurance Fraud

December 1, 2003, *Mises Review*

NEARLY EVERYONE KNOWS that the Social Security system faces eventual collapse, but John Attarian remarkably claims that semantics lies at the root of the crisis. He follows the great literary scholar Richard Weaver in emphasis on calling things by their proper names: “Definitions, Weaver insisted, must be scrupulously accurate; he attributed much of humanity’s confusion of thought to ‘failure to insist on no compromise in definition’” (p. 226, quoting Weaver).

Even if Weaver is right, how can Attarian’s radical claim be justified? Surely the crisis stems from matters of finance, and even definitions that satisfy the most careful grammarian will not suffice to replenish the depleted trust funds of Social Security.

Attarian does not deny the obvious. He is no linguistic idealist, who makes reality the creature of vocabulary. Quite the contrary, he analyzes the financial crisis in careful detail. But, he maintains, a widely held illusion makes virtually impossible any attempt to confront the crisis effectively. To meet impending disaster, benefits to current beneficiaries of Social Security must be drastically cut. Unfortunately, owing to an unrelenting

* Transaction Publishers, 2002.

propaganda campaign by the government, most people believe that their Social Security benefits are insurance payments to which they have a legal right. They accordingly reject all proposals for severe cuts. Attarian's principal aim is to trace the origins and progress of this illusion.

In his presentation of the financial issues, Attarian relies on the work of A. Haeworth Robertson, a former chief actuary of Social Security. (Robertson, by the way, has weighed in with a strong endorsement of Attarian's book.) Even the Board of Trustees of Social Security acknowledges that when the post-World War II "baby boomers" retire, the system will be strained to the utmost. Benefits, contrary to popular belief, must be paid for out of current taxes. Because the baby boomer cohort is exceptionally large, the burden on taxpayers will be greater than ever before.

Given this circumstance, disaster threatens.

The generation born after 1965, whose taxes will pay the baby boomers' benefits, will . . . grow far more slowly than the beneficiary population. . . . This means that the burden of supporting each beneficiary will be spread over ever-fewer taxpayers. (p. 7)

Have we not overlooked something? Is it not the case that Social Security taxes are deposited in a trust fund, which is kept separate from the regular budget? Why cannot this fund be used to assist the baby boomers?

This objection, Attarian is quick to point out, rests on a misunderstanding. The trust fund consists, not of money, but of treasury bonds that earn interest. If current taxes do not suffice to meet benefit payments, the bonds must be cashed. Doing so will impose even further strains on the economy.

Well before the actual exhaustion [of the trust fund's] date, then, OASDI's [Old Age Survivors and Disability Insurance] "trust fund" will start making claims on general revenues and then running actual deficits. . . . To cover these deficits, OASDI will present bonds in these amounts from its "trust funds" for redemption. . . . Another way of grasping the magnitude of the Treasury's burden is to note that the peak amount of Treasury debt in the "trust fund," before liquidation starts, will be about \$6.0 trillion under intermediate assumptions, or about \$3.27 under high cost assumptions. "Trust fund" exhaustion means that all these debts will be cashed in. (pp. 34–35).

Attarian suggests that the efforts to meet this burden will lead to “budget deficits of \$500 billion or more by 2025, and larger ones after that” (p. 35). If he is right, the crisis of Social Security will bring ruin to the entire US economy.

Readers of the *Mises Review* will not be surprised to learn that the Old Right stalwart John T. Flynn identified the basic problem of the trust fund so long ago as 1939. In an article for *Harper's* which appeared in that year, Flynn noted that any

investment beyond strict cash hoarding is a claim against the entity whose investment instrument one purchases. The Treasury bonds in the reserve, then, are just the government's claims against itself, hence have no real value. . . . Moreover, the interest on the reserve in the out years would have to be paid from taxes levied in those years. Besides the payroll tax, then, there would be a growing tax burden just to pay the interest on the reserve. (pp. 124–125)

Given this dire situation, a key question arises: how much time is available to attempt preventive action? It is here that Attarian's mentor A. Haeworth Robertson enters the scene. Robertson argues, with our author's entire concurrence, that we should adopt estimates at least as pessimistic as the Social Security Board of Trustees' “high cost” assumptions.

Because the stakes in Social Security are so high, we should not lean on luck and pin our hopes on optimistic budget surplus and productivity growth projections. And compelling grounds exist for pessimism, or at least skepticism, about future productivity growth. Given all this, it would be appropriate to use the high cost assumption. . . . Robertson's position is the one of prudent, responsible, statesmanship. (p. 17)

If, taking Robertson's advice, we adopt the high cost projections, danger lies near at hand. “In 2010 [under these assumptions] . . . the payroll tax will stop generating a surplus over outlays. The cash flow surplus turns negative that year, and by 2015 is a substantial deficit” (p. 12).

One way to meet the impending deficit is to raise payroll taxes, but these already impose a heavy burden. To increase them further might crush productivity altogether. Must not benefits be cut? But, as mentioned before, a widespread belief that these benefits are insurance claims blocks attempts to reduce costs in this obvious way.

Attarian contends that this belief is incorrect, and the government knows it. He goes to great pains to show that Social Security lacks the essential features of a real insurance program. For one thing, benefits may be changed at the will of Congress. By contrast, in genuine insurance, the beneficiary has a contractual right to what he receives. And the point is much more than a theoretical one. Congress has in fact changed the benefits, sometimes to the disadvantage of beneficiaries, several times since the Social Security Act was first passed in 1935.

In making this point, Attarian calls to his aid the government itself. In *Helvering v. Davis* (1937), the Supreme Court considered whether Social Security was an insurance plan. If it was, its constitutionality stood in doubt; what in the Constitution authorizes the federal government to establish compulsory insurance?

In response, the government pointed out the alleged insurance premiums were nothing but taxes. The government had no obligation to pay out anything in benefits. The Supreme Court in its decision entirely accepted the government's position.

Attarian goes further. In a brilliant observation, he notes a surprising feature of the Court's decision. Social Security raised serious constitutional issues, but the Court's analysis was perfunctory. Indeed, so careful a legal scholar as Justice Cardozo merely repeated paragraphs from the government's brief in his decision. Attarian plausibly suggests that, owing to pressure on the Court from Roosevelt's court-packing proposal, the Court ducked the constitutional question.

One point in Attarian's discussion surprises me and leads to my only criticism of his outstanding book. Again and again, Attarian insists that Social Security is not insurance: attempts by the government to argue the contrary are efforts to promote a "false consciousness" among the public.

In his discussion of *Helvering*, though, he expresses great sympathy for the arguments of the attorney who maintained that the program was insurance.

Some of the awkward fabrications of the administration's position were exposed by Edward McClennen. . . . The administration clung tenaciously to the literal language of the Act and to arguments which were logically conceivable but utterly preposterous, e.g., that some future Congress might not vote appropriations for benefits; McClennen pointed doggedly and repeatedly to what the Act was doing and was clearly meant to do. (pp. 107, 109)

Attarian, I suggest, cannot have it both ways. Is Social Security really insurance, and government arguments to the contrary efforts to deceive? Or is Social Security not insurance, and government arguments to the contrary of that part of a false campaign? There can be little doubt that Attarian favors the second alternative; aside from the passage I have just mentioned, he always denies that Social Security is genuine insurance. In his discussion, for instance, of the later case of *Flemming v. Nestor*, in which the Supreme Court ruled that Social Security benefits do not confer legally binding rights, he never suggests that the insurance view has merit.

If Social Security is not insurance, why do so many people think that it is? Since the inception of the program, Attarian shows, the federal government has engaged in a massive propaganda effort to induce the public to view the program as insurance. Government publications constantly tell people that their payroll taxes are “insurance premiums” that are saved for their future benefits. Social Security, we are assured, is not a welfare program: it is a far better insurance policy than people can obtain through private efforts.

The government’s efforts to create a “false consciousness” have gone further. Critics of the program have not been slow to claim that the program operates through “terminological inexactitude,” in Churchill’s familiar phrase. Attarian discusses in detail the contentions of several of these critics, including Dillard Stokes, Ray Peterson, and Carl Curtis. The last of these, a congressman and later an influential Republican senator, held hearings aimed at showing the problems of the insurance view of Social Security.

Faced with exposure, the government responded with defiance. Its spokesmen denounced the critics as enemies of the people, who aimed to destroy confidence in a social insurance scheme that ranked with the wonders of the world. Foremost among these champions of the program were two men: Arthur Altmeyer, a principal intellectual inspiration of Social Security and its longtime Commissioner; and Wilbur J. Cohen, Altmeyer’s assistant and later Secretary of Health, Education, and Welfare. Cohen, often called “Mr. Social Security,” was untiring in his efforts to derail “enemies” of his pet project. When Joseph Califano, HEW Secretary under Lyndon Johnson, proposed benefit cuts, Cohen threatened to organize demonstrations of retired people to picket him. Cohen exploded at him: “What you have said proves you don’t believe in the Social Security program. It is a separate program. People have rights” (p. 261, quoting Califano). Evidently, Cohen was the most dangerous sort of advocate—one who believes his own propaganda.

Attarian's thorough account of the critics leaves him open to an objection, but I think he can successfully turn it aside. The vital core of his case is that a government campaign has created a "false consciousness" among the public. People falsely believe, owing to government propaganda, that Social Security is insurance; and as a result they will not countenance reductions in their benefits. But if, as our author has shown so well, a constant stream of critics has exposed the true nature of the system, why does this not suffice to dissipate, or at least weaken, the false consciousness?

In response, our author could appeal to the immense resources at the disposal of the government. Constantly repeated statements from "authoritative" spokesmen that Social Security was indeed insurance drowned out the protests of critics. For every person who read Flynn or Curtis, thousands read government pamphlets touting the official line.

Some supporters of the free market might here interpose another objection. "Is not Attarian too pessimistic?" they will ask. "Has he not forgotten the virtues of private saving? If workers invest in private accounts, will not the miracle of compound interest enable them to do far better than they could have done through government aid? If so, what becomes of the supposed crisis of Social Security?"

One of the principal virtues of Attarian's book is to provide a convincing refutation of this all too common thought. It is certainly true that an individual can do better for himself on the free market, but the objection overlooks a vital point. What about those who have been promised benefits under the existing system? If persons withdraw from Social Security, the tax base to pay for these benefits will be reduced. The crisis of Social Security, far from being ended by privatization, will be worsened. "The transition cost problem is in large measure the revenge of the false consciousness" (p. 322).

*Adam Smith's Marketplace of Life**

JAMES R. OTTESON

The Morals of Nations

October 1, 2004, *Mises Review*

IN HIS *An Austrian Perspective on the History of Economic Thought*, Murray Rothbard toppled Adam Smith from his place as the founder of modern economics. Far from being a bold innovator, Smith in Rothbard's view taught false doctrine. His labor-cost theory of value was far inferior to the subjectivist insights of the Spanish Scholastics. If James Otteson is correct, Smith can in part redeem himself. Not in economics: though I doubt that he agrees with Rothbard's view, Otteson does not concentrate on economic theory. Rather, Smith according to our author was an outstanding moral theorist. In making the claim that Smith was "a surprisingly sophisticated philosopher," Otteson has challenged conventional opinion. "With only a few notable exceptions . . . philosophers have tended to pay little attention to Smith" (p. 1).[†]

According to Otteson, Smith used a market model, in which people were principally motivated by sympathy of a specific sort, to account for the rise and development of morality. Otteson's principal task in this outstanding

* Cambridge University Press, 2002.

† According to J. N. Findlay, Sir David Ross lectured on Smith's moral philosophy at Oxford. Findlay's own *Values and Intentions* (George Allen & Unwin, 1961), a neglected book of outstanding merit, explicitly draws on Smith's account of sympathy.

book is to explain Smith's account of morality, as well as the market model of which it is an example.

Otteson's account of Smith on morals displays enormous patience and subtlety, and I can convey only a rough and truncated account of it here. But the basic idea is quite simple. People have a natural tendency to want others to have the same sentiments as themselves. When we observe someone else's conduct, then, we will put ourselves in his place and ask: How would we have acted, given his situation? If we would have acted in a similar way, we tend to approve the conduct we observe: if not, we disapprove.

Suppose . . . that I see a Boy Scout help an old lady across the street. I imagine what I would have wanted to do had I been in the Boy Scout's position, which is to have helped the old lady. . . . The correspondence between my imagined motive to act and the Boy Scout's apparently similar actual motive to act constitutes a sympathy in me that brings me to approve of the Boy Scout's act. (p. 24)

Everyone endeavors to adjust his sentiments to those of everyone else, and the attempts to do so are greatly aided by a related process. As the process of mutual adjustment of sentiments continues, a person will no longer take his imagined judgments of what he himself would do as his sole standard of judgment. Instead, he will also ask, "how would an impartial spectator, someone without any bias in favor or against anyone, judge the situation I am now observing?"

By now, readers familiar with Smith's economics will be able to see what is coming. Even though no one has deliberately constructed a system of morality, sympathy and the impartial spectator will produce one. Just as the self-interested behavior of actors in the market produces "by an invisible hand" a complex social order, so does sympathy generate a moral code. Otteson maintains that invisible-hand explanations are the linchpin of Smith's thought.

[T]he marketplace of human institutions is not limited to economic institutions . . . or to isolated aspects of morality . . . but rather it is generalized to form the foundational understanding of the overall development and evolution of human social institutions generally. (p. 321)

Otteson wishes not only to give a description of Smith's view of morality but also to recommend this view to contemporary philosophers. I think that the theory falls victim to a fatal objection; but, I regret to say, another critic has done me the disservice of anticipating my point. But our story has a happy ending: my predecessor's objection is not precisely the same as mine, and we have the advantage of being able to assess Otteson's reply to him.

My objection is a simple one. Smith's theory presupposes what it claims to explain. As Otteson describes Smith's view, the role of the impartial spectator is crucial. People tend increasingly to assess others by how they think an unbiased judge would have acted. People begin by judging others in terms of what they themselves would have done, but this does not suffice to generate a moral system. To attain this happy consummation, they must invoke the impartial spectator.

This generates my problem. If people judge others by imagining the verdict of an impartial spectator, must they not already have the concept of moral action? Without this, they would be confined to emotions of sympathy or aversion based on their own imagined behavior. Initially, Otteson says, we ask whether we would have acted in a similar way to the person whose action we are judging:

If the answer is yes, then we judge the agent's action to be proper and the agent himself to have acted with propriety: if the answer is no, then we judge the action improper and the agent to have acted with impropriety. (p. 24)

Without the impartial spectator, people might, by a process of mutual adjustment, arrive at common sentiments of sympathy and aversion. But without impartiality, they would not have a moral system, and one cannot invoke impartiality *ex nihilo* in an effort to explain morality. If people have the concept of impartiality, they already have the concept of morality.

Perhaps, though, I have moved too quickly; has Smith presupposed at an even earlier point what he tries to explain? When someone imaginatively changes places with another, he judges whether the other person has acted with "propriety." Where does the person in question obtain this concept? Natural sympathy or aversion might well account for his like or dislike of the conduct, and, as earlier mentioned, a convergence of sentiments might result from mutual adjustment among people in a given community. But where does "propriety," *prima facie* a moral notion, enter the scene? And if

one claims that Smith uses “propriety” in a nonmoral sense, then we revert to the earlier form of the objection: if people can make use of the impartial spectator, they are already conversant with a moral concept. Smith presupposes the moral ought; he does not explain it.

My predecessor in objection, Eugene Heath, also thinks that Smith’s account presupposes the system of morality it tries to explain. But, fortunately for me, his concerns are not the same as mine. He thinks that without shared moral standards, feelings of sympathy would not suffice to generate a consensus. Without the restrictions of a previously existing moral system, differences of opinion would insure that convergence of sentiments failed. I, by contrast, concede that a consensus might arise, but deny that it would be a moral system.

Though my objection differs from Heath’s, Otteson’s reply is relevant to my point as well. As it seems to me, he concedes the main point at issue:

The question of how a community as a whole could have gone from a morally devoid state to a morally rich state would thus be for him [Smith] otiose . . . this may indicate a genuine limitation in Smith’s theory of moral sentiments.” (pp. 131–132)

Otteson proceeds to suggest that Smith’s primary concern was how morality develops. With this I have no quarrel.

In his account of Smith’s theory, Otteson raises a point that may well revolutionize the conventional picture of Smith. Otteson asks, does Smith intend his account of how morality develops to be purely descriptive? He suggests that Smith also thought that people ought to obey the moral system that arose in the way he described. So far, nothing revolutionary; but now comes Otteson’s innovation.

He argues that the normative force of Smith’s system depends on holding that it is God’s will that people follow the course of conduct that the impartial spectator recommends.

The impartial spectator represents the fruition of the system of morality that God wanted us to develop; the impartial spectator is thus the manifestation of God’s will in us, the partial manifestation, even, of God himself in us. I [Otteson] think this . . . allows him [Smith] to argue that the natural moral system is intrinsically good and right, not just useful. (p. 256)

Here Otteson turns on its head much of contemporary Smith scholarship, in which Smith's references to God are viewed as sops to conventional opinion, designed to conceal his real atheism or indifference to religion. Straussians such as Joseph Cropsey, it is safe to say, will be discommoded; and this is all to the good. (Stress on God is also present, incidentally, in Rothbard's account of Smith. He argues that the notion of an "invisible hand" refers to God's providential action.) It does not follow from Otteson's argument that Smith was not a deist. Smith's view, as Otteson explains it, does not require that God be in continual interaction with the world. It insists only that one ought to conform to a moral system that God has established. And this is consistent with deism, though of course it does not require it.

Otteson also offers a brilliant solution to that perennial conundrum, the Adam Smith Problem. Smith's account of morality, principally found in *The Theory of Moral Sentiments*, stresses sympathy; self-interest is to be balanced by benevolence. But Smith paints an altogether different picture in *The Wealth of Nations*. Here, "Smith's argument seems to presuppose that people are motivated only by self-interest, and his argument there makes no mention of or room for benevolence" (p. 170).

To most modern scholars, the problem is no longer a pressing issue. In *The Wealth of Nations*, Smith confined himself to studying the effects of a particular motive, self-interest. This is in no way inconsistent with the more comprehensive analysis Smith presents in his other chief work.

Otteson finds this solution too facile: "If the Smith of TMS [*Theory of Moral Sentiments*] is right one does not—or should not—check one's morality at the marketplace door. Thus the matter of how morality mixes with markets must still be addressed" (p. 170).

Otteson reinstates the Adam Smith problem only to solve it. He maintains that the impartial spectator would endorse conduct toward others in the market that is motivated by self-interest. Benevolence, Smith thinks, depends on how closely people are connected: "the more familiar a person is to one, the greater the tendency to feel benevolent to him; the less familiar, the less benevolent" (p. 171). It follows from what Otteson calls the principle of familiarity that since most of our dealings in the market are with people we do not know, Smith's moral theory does not require that we act from benevolence. The self-interest of Smith's economics is then entirely consistent with Smith's moral theory.

There is much more of great interest in Otteson's book: his account of Smith's market model of language and his contention that Smith's labor theory of value is, in contrast to Marx's, subjective rather than objective deserve close attention. But I think I have said enough to show that Otteson has written a major work, indispensable to anyone interested in Adam Smith.*

* At one point I think Otteson has been unjust to Hume. He suggests that Hume's claim that rational consideration of future utility "is the basis of moral approbation or disapprobation" (p. 80) is inconsistent with Hume's view that our expectations of the future, based as they are on our knowledge of cause and effect, are confined to inferences from past regularities. If so, Otteson thinks, we cannot by reason discern the effects on utility of our future actions. Otteson's assumption that Hume here means a priori reasoning of the sort he elsewhere repudiates seems gratuitous.

*Faith in Freedom: Libertarian Principles and Psychiatric Practices**

THOMAS S. SZASZ

Szasz on the Liberal Tradition

October 1, 2004, *Mises Review*

THOMAS SZASZ has long been the foremost critic of involuntary psychiatric commitment, and his many books on psychiatric tyranny have won for him a well-deserved reputation as a champion of liberty. He supports his condemnation of involuntary commitment by means of a radical thesis: mental illness is a myth. Illness, as an objective term, should be confined to physical ailments; so-called mental illnesses are in reality types of behavior that other people do not like. Schizophrenics and others diagnosed as beyond the pale by conventional psychiatrists, should, so long as they are not incapacitated, be treated as normal adults.

To say that Szasz's view is controversial is a mild understatement, but I do not here propose to concentrate on its merits and defects. His opinions on these matters have amply been set forward numerous times before; but what we have here is something new. In *Faith in Freedom*, Szasz subjects to withering scrutiny famous classical liberals, including John Stuart Mill and Bertrand Russell. He judges each person by his attitude toward psychiatric commitment, to him the supreme libertarian issue.

* Transaction Publishers, 2004.

I have, of course wrongly, sometimes been suspected of undue harshness toward various authors. However bilious I have been, my attempts at the acerb are as nothing compared to Szasz's. He is a true master of invective, from whom we all can learn. And there is even better on offer. He subjects to mordant scrutiny many of the great names of contemporary libertarianism, including Ayn Rand and Robert Nozick.

Before I get to the fun, though, the essence of our author's case against mental illness needs to be set out, so that readers can understand the background he assumes in his critical essays. His contention that mental illness does not exist rests on a surprising premise: the mind does not exist as a separate substance.

Later, influenced by [George Herbert] Mead, I [Szasz] came to adopt the view that there is no mind; that, like mental illness, the term "mind" is itself a metaphor; hence that the mind cannot be healthy or sick; and that instead of thinking and speaking about minds as entities, we ought to think and speak of selves, persons, and moral agents engaging in actions. (p. 167)

An example will clarify Szasz's position. Suppose someone claims to be Napoleon. Since there is no "mind" that can be ill, Szasz will not treat him as the helpless victim of a mental illness, much less someone suffering from an impairment of the brain or nervous system. (The theory that mental problems are caused by neurological defects is one of our author's pet aversions.) As Szasz sees matters, what we have here is interpersonal behavior of a certain sort, and social interaction cannot suffer from disease. Thus, Szasz will say that the person is playing a game: he finds it convenient for his purposes to lie. (Szasz takes for granted that the person knows he is not "really" the French Emperor; I think this needs more support than Szasz provides.)

Here I venture to suggest that Szasz has missed an opportunity. Can the view that mind is not a substance really be sustained? Indeed, can one properly speak of responsibility at all, on Szasz's view of mind? Murray Rothbard raised precisely these issues, in a review written in 1962 of Szasz's *The Myth of Mental Illness*.

Clearly rankled by Rothbard's criticism, Szasz replies that his entire position affirms responsibility.

Rothbard's criticism—epitomized by the charge that my argument "eliminates the whole possibility of moral responsibility

for actions”—was not merely erroneous, it stood the thesis of the book on its head. (p. 173).

He naturally prefers to stress Rothbard's later praise for his work, most notably in a speech that Rothbard delivered in his honor in 1980.

But of course Rothbard did not deny that Szasz affirms moral responsibility: his question was whether this affirmation is consistent with the denial of mind as substance. Szasz ought to have presented a defense of his contention; instead, he gives us irrelevant anecdotes about Rothbard and medical doctors.

Even those unable fully to accept Szasz's view of the mind cannot deny his prowess as a critic. One might have guessed that Szasz would view John Stuart Mill with unstinting admiration. Not only did Mill defend individual autonomy; he specifically denounced in *On Liberty* the practice of stigmatizing eccentrics as madmen.

Szasz does not quote the relevant part of *On Liberty*; he cites instead a letter of 1858 in which Mill denounces the “frightful facility” with which someone can be committed without trial for lunacy. Instead, Mill thought that no one should be committed without inquiry by jury, though he recognized that juries “are only too willing to treat any conduct as madness which is ever so little out of the common way” (p. 84, quoting Mill).

For Szasz, this is not nearly good enough. Mill has not rejected in principle “psychiatric imprisonment”; instead, he insists on procedural safeguards in commitment hearings.

Here begins the slippery slope. Once we grant power to the medical agents of the state to coerce innocent persons . . . there is no practical way, to prevent them, and their social superiors, from “abusing” the law. (pp. 84–85)

Szasz carries his criticism of Mill deeper. He fastens on a passage in *On Liberty* in which Mill says that the doctrines of that work do not apply to a society “in its nonage,” i.e., one that has not sufficiently developed historically to benefit from a regime of liberty.

Szasz, with his key topic always in mind, pounces. If a society in its nonage can be governed in a non-libertarian way, why not treat certain individuals in a historically developed society as also in their nonage? Mill denies full liberty to children, a view with which Szasz does not quarrel; but once Mill

allows the term “nonage” to be used in a non-literal way, the door lies open for psychiatrists to claim that the mentally ill should be treated as children.

Perhaps Mill has an escape. He might claim that whether a society is fit for liberty depends on the presence or absence of certain institutions and traditions, not the mental state of particular individuals within a society. If so, he could consistently hold that once a society met his criteria, every adult in it must be treated in a way that respects his rights. But Szasz is entirely correct that Mill in the “nonage” passage dangerously compromised his liberalism.

Mill emerges not altogether a hero, but he fares far better than Bertrand Russell. Szasz offers a devastating portrait of Russell, presenting him as an enemy of liberty. Our author notes that Russell, with great acuity, recognized a problem with the usual concept of mental illness. No objective way exists to separate mentally deranged views from similar opinions not generally taken to be insane:

Men who allow their love of power to give them a distorted view of the world are to be found in every asylum: one man will think he is Governor of the Bank of England, another will think he is the King, yet another will think he is God. Highly similar delusions, if expressed by educated men in obscure language, lead to professorships of philosophy; and if expressed by emotional men in eloquent language, lead to dictatorship. (p. 99, emphasis removed, quoting Russell)

Despite articulating this Szaszian view, Russell endorsed exactly the psychiatric theory of crime and punishment it is Szasz’s principal aim to condemn. Criminals should be “cured” rather than punished. As this were not enough, Russell also supported sterilization of the “unfit.” “By “unfit,” Russell meant persons suffering from mental deficiency and mental illness or “insanity” (p. 98). Russell held on to his views in deadly earnest, going so far as to make repeated efforts to have his own son committed as mentally ill.

Szasz’s final verdict on Russell is unsparing:

In the trajectory of Russell’s life, we can trace the transformation of a young man full of zeal for reason and liberty, yet with a soul corrupted by an excess of vanity and self-love, into an old man full of hatred for mankind. (p. 110)

Mises and Hayek emerge relatively intact, though Szasz offers criticisms of both. Szasz finds very much to his liking Mises's contention that all action is, from the point of view of the actor, rational: praxeology has nothing to say about the rationality of ends, and a person always chooses means he thinks best fitted to attain whatever ends he has.

If all human action is rational, then no action is irrational or, as psychiatrists and their admirers like to put it, "senseless." It is only a short step from Mises's assertion that human action is always rational, to my [Szasz's] assertion that mental illness is a myth. (p. 152)

Unfortunately, Mises sometimes fell from grace by speaking of mental illness as though it were real; but he was a great man nonetheless.

In like fashion, Hayek's insistence on the rule of law has implications that Szasz finds congenial. The rule of law, as Hayek conceives it, requires that legislation group people in objective categories. Absent this, they stand vulnerable to the arbitrary acts of government agents. If one accepts Szasz's view that there are no objective criteria of mental illness, it at once follows that the law can take no account of it. Hayek declined to draw this conclusion, and Szasz has no patience with his acceptance of the "doctrinal claim" that those diagnosed as mentally ill bear no responsibility for their actions (p. 160).

Szasz has neglected one instance in which Hayek recognizes the dangers of psychiatric abuse. Szasz quotes a notorious remark from Brock Chisholm, a pretentious psychiatric bigwig who called for "the reinterpretation and eventual eradication of the concepts of right and wrong" (p. 7). As one might anticipate, Szasz does not view this remark with full enthusiasm. But Hayek also condemned exactly the same passage, in his essay "The Errors of Constructivism," reprinted in *New Studies in Philosophy, Politics, and the History of Ideas* (University of Chicago Press, 1978).

Szasz admires Mises and Hayek, but he has no use for Robert Nozick, who stands condemned for his failure to denounce involuntary psychiatric commitment. "Nozick asserts that we ought to accord rights to animals. He does not say that we ought to accord rights to persons psychiatrists diagnose as mentally ill" (p. 179).

I think that Szasz here goes altogether too far. He is perfectly within his rights to criticize those who adopt views of mental illness he thinks mistaken. But should a writer be excoriated just because he fails to mention Szasz's central topic? Szasz, pushing his single-mindedness to near absurdity, assails Nozick

for citing favorably the psychiatrist Viktor Frankl. He engaged, Szasz tells us “in psychiatry’s most loathsome practices, including lobotomy” (p. 181). But Nozick’s reference to Frankl has nothing to do with coercive psychiatry.

Not only has Nozick ignored the key libertarian issue of our time; his philosophy, Szasz claims, is pretentious nonsense. This is a harsh verdict, and to my mind Szasz has not been able to support it.

Quite the contrary, he often misunderstands Nozick, or dismisses what he says without consideration. He claims that Nozick wrongly ignores the bearings of free will on responsibility: “The concept of free will implies responsibility and the options of punishing or forgiving persons for actions we deem to be bad or criminal” (p. 180). But all that Nozick says in the relevant passage from *Philosophical Explanations* is that his own concern with free will does not stem from the problem of responsibility. Far from rejecting responsibility, though, he offers in the chapter from which Szasz quotes an elaborate account of retributive punishment.

Again, when Szasz claims that Nozick is “profoundly ignorant about the vast psychoanalytic literature on the symbolic meaning of seemingly irrational behaviors” (p. 187), he has once more misread him. Nozick was well aware that psychoanalysts equate the symbolic with what it stands for; the “equation” he mentions in the passage that Szasz discusses deals with a specific hypothesis of Nozick’s own.*

I shall leave it to readers of the book to discover for themselves the details of Szasz’s discussion of Ayn Rand. Suffice it to say that he praises her skeptical attitude toward psychoanalysis but finds flaws in her character. These are as nothing compared to what he has to say about Rand’s one time disciple and later bitter foe, Nathaniel Branden. I commend his chapter on Branden to all admirers of negative criticism.

One cannot finish this spirited book without admiration both for Szasz’s devotion to liberty and his acuity in its defense. I close with two minor points: When David Kahneman and Richard Thaler speak of “irrational” choices, they do not use the term in a way relevant to Szasz’s concerns. They mean by it, roughly, “choices not in accord with decision theory” (p. 49). And I do not see why he calls David Shapiro’s *Neurotic Styles* “a technical text” (p. 182).

* Although Nozick did not discuss Szasz’s views in print, he was in conversation dismissive of them.

In Defence of the Realm: The Place of Nations in Classical Liberalism^{*}

DAVID CONWAY

Liberty and (Rightly Understood) Nationalism

December 1, 2004, *Mises Review*

ARTHUR MOELLER VAN DEN BRUCK, a theorist much admired by Hitler, claimed in his book *The Third Reich* (1923) that liberalism and nationalism are necessarily at odds. According to him, “Liberalism has undermined civilization, has destroyed religions. . . . Liberalism is the death of nations” (p. 79). David Conway, a distinguished philosopher and defender of classical liberalism, rejects this claim. He maintains that classical liberalism and British and American nationalism support each other. Nationalism rests on tradition; and, so long as the tradition is one of freedom, liberalism and nationalism are compatible. More than this, attempts to undermine nationalism, in particular plans to merge Britain in a European Union, pose grave threats to liberty and must be rejected.

I am about to do Conway a serious injustice. His arguments about nationalism merit close consideration, and I shall not ignore them. But I confess

^{*} Ashgate, 2004.

what interests me most about the book is his defense of classical liberalism against various rival conceptions. He here offers a brilliant survey of contemporary political philosophy.

Classical liberals maintain that people have negative rights, chief among them the rights to life, liberty, and property. These rights forbid aggression, but they do not require people to provide goods or services to others. To many, classical liberal rights are not enough, and Conway subjects to devastating criticism the main theories that so argue.

According to John Rawls, the right to acquire private property is not fundamental. It is limited by the famous difference principle, which allows inequalities only to the extent that they benefit the least well off class in society.

Conway notes an inconsistency in Rawls's system. When he deals with justice between nations, he has a much less expansive concept of equality.

When deciding on fair terms of cooperation, different peoples have no reason to "pool" their respective territories, or to "pool" the values of the natural assets contained within them, as Rawls insists must be the case when individual members of the same society decide on fair terms of cooperation. (p. 25)

Why should the difference principle be limited to the citizens of one nation? If he cannot adequately respond, Rawls must face pressure either to extend the difference principle or to limit its application within single societies as well as between them.

Conway of course wishes Rawls to move in the latter direction; is not the classical-liberal view, he asks, supported by convincing natural law arguments? To this, Rawls adduces his notion of political justice: in defending proposals for public action, one cannot appeal to particular metaphysical doctrines that are not universally held within a society. Conway asks, why not? Suppose that natural law is rationally demonstrable: how then can we ignore what it dictates? Conway thinks that Rawls has wrongly assumed that natural law rests on faith rather than reason.

I do not think that Conway has addressed the precise point of Rawls's political justice, though his criticism can readily be reformulated. Rawls thinks that to appeal to a controversial moral theory in political argument is to manifest a lack of respect for those who do not hold the theory. His complaint against reliance on natural law is not that it is based on faith, but that many people do not accept it.

But here Conway's point is decisive. If natural law can be established by reason, why does it show lack of respect to appeal to it? One might as well say that appealing to Austrian economics shows lack of respect, since many people hold other views about economics. But this is nonsense: to appeal to reason is a prime way to show respect for others.

Though his treatment of Rawls is penetrating, it is not his main target. He will have nothing to do with the liberal culturalism defended by Will Kymlicka. In this increasingly influential view, minority cultures in a nation merit special protection by the state. Members of these cultures will suffer severe deprivation if they cannot preserve intact their cultural heritage. The state must then take special measures, such as affirmative action programs, to enable these cultures to survive.

Conway maintains that this view rests on a false philosophical anthropology. Individuals, so long as they are free to adopt the majority culture, do not suffer deprivation if their native minority culture cannot flourish unaided.

The argument from cultural autonomy . . . exaggerate[s] how dependent human fulfillment is on people being able to remain identified with and to continue to engage in whatever practices and traditions were those in which they were initially acculturated. It may correspondingly be said to underestimate the capacity of people to undergo and benefit from radical changes of cultural identity. . . . In sum, there is no reason to suppose that present-day liberal democracies owe their cultural minorities anything more than that same degree of tolerance and respect that they owe their cultural majorities. (pp. 51–52)

Conway has vindicated classical liberalism in triumphant fashion against its statist rivals; but his analysis at one point is open to question. Conway rejects the libertarianism of Murray Rothbard; he thinks that a state, confined to its proper functions, is perfectly compatible with liberty and essential to its preservation.

Rothbard argues that the state rests on coercive interference with individuals' rights; but Conway thinks that this need not be so.

Suppose the vast majority of members of a society wish to affiliate politically with one another and have their rights protected and good advanced by the same agency. Then, it would

seem that part of the terms of membership of that society include a willingness on the part of its members to accept the political obligations attendant upon being a member of that society. Among those political obligations were law-abidingness and payment of tax demands. (p. 65)

Those who renounce allegiance to the state but do not leave its territory, Conway holds, invade the rights of the majority.

I cannot think that this is a good argument against Rothbard. Why cannot people who have joined an agency change their minds and establish a competing agency? Why must they be bound forever, on pain of exile, to the agency that commands the adherence of the majority? This does not seem to me more plausible than to claim that in a society in which nearly everyone, including you, always eats at McDonald's, you cannot switch to another restaurant.

Conway's demolition of liberal culturalism may have conveyed the impression that for him culture is unimportant. This would be the very reverse of the truth. To Conway, there are good cultures and bad ones: the good ones are essential for the preservation and development of a classical-liberal order. In particular, Britain and America are nations with cultural traditions it is vital to preserve.

Conway draws attention to a neglected but important thinker, the psychologist William McDougall. He argued that a nation consists of much more than a group of people who live in the same territory. "In his groundbreaking classic work on social psychology, *The Group Mind*, William McDougall has provided a useful account of how much affinity a people needs to be a nation" (p. 82). To form a nation, individuals must satisfy seven conditions, among which are that they "must share a similar outlook and sensibility" and have "some form of *national self-consciousness*—that is, some awareness of themselves as forming a distinct people" (pp. 82–83, emphasis in original). They must, in addition, view certain events in their past as manifestations of a common purpose to which they remain devoted. (McDougall's account resembles the "consciousness of kind" favored by his contemporary, the Columbia sociologist Franklin Giddings. This concept strongly influenced Eric Voegelin.)

At last we are in a position to state the essence of Conway's argument. Nationalism, as thus characterized, is a powerful force. If the traditions that enable a people to live harmoniously and thus form a nation in McDougall's sense are ones of devotion to liberty, then the potent power of nationalism

has been enlisted in support of classical liberalism. This, further, is more than a bare possibility: Britain and America are prime cases of the partnership of liberty with nationalism.

In support of his view, Conway places great stress on the fact that the British people have over a long period rejected absolute monarchy. Parliamentary opponents of the Stuarts appealed to the tradition of the Ancient Constitution, according to which even hereditary monarchs ruled with popular sanction and needed to observe strict limits to their power.

Most modern historians dismiss as mythical the actual existence of the Ancient Constitution in Anglo-Saxon times, though Conway is careful to note that a few, such as Alan Macfarlane, do not. But to him the crucial point is that Locke and his successors accepted the notion.

Locke was fully conversant with the idea of England's Ancient Constitution, as he was of the use to which appeal to it had been made in support of parliamentary opposition to the Stuarts. Locke himself was in no doubt as to how vital it was to the political health of the nation that its more politically active members be made fully conversant with it. (p. 120)

Conway uses the idea of the Ancient Constitution to support a remarkable thesis. Richard Price and Edmund Burke are usually pictured as sharp political antagonists: it was, after all, a sermon by Price in support of the French Revolution that aroused Burke to write his anti-revolutionary *Reflections*. Conway argues that Price remained fully within the British tradition of ordered liberty. In fact, by his stress on the power of the people to remove the king for misconduct, Price more accurately than Burke applied the idea of the Ancient Constitution. Contrary to Burke's fears, Price did not advocate the overthrow of the contemporary British monarchy and its replacement by a revolutionary regime in the style of France. "Price's *Discourse* displayed no trace of any such subversive intent, despite having borne the brunt of Burke's ire" (p. 143).

Burke and Price, in Conway's view, both supported a popularly controlled monarchy. He finds the point important to emphasize since it lends support to his thesis that a consistent British national tradition supports classical liberal principles. He makes a strong case, although one wonders whether this tradition provided adequate safeguards against the despotism of Parliament, as well as that of the monarch.

Conway has written his book with a measure of alarm. He fears that British liberal nationalism may be undone by surrender of sovereignty to the European Union. This he holds would be a grave mistake. The European Union rests not on a tradition of liberty but on bureaucratic plans that had their origin in the Third Reich:

The measures that [Nazi Minister of Economics Walter] Funk mentions . . . [in a 1940 speech] bear an uncanny resemblance to many of the measures that have come to be adopted by the European Union. . . . Now, it does not follow simply from the fact that the Nazis envisaged and favoured the creation after the war of a European Economic Community that the present European Economic Community is simply a continuation of the Nazi project. . . . However, it is difficult not to be reminded of the rhetoric the Nazis resorted to in selling their idea of economic and monetary union to the nations whom they conquered. . . . Even if it is no more than coincidence how closely postwar Europe has come to resemble what the Nazis wanted for it, it remains unmistakably true that . . . the principal architects of European Union have been uniformly animated by collectivist objectives that are deeply anti-liberal in spirit and form. (pp. 103–105)

Readers of Mises's *Omnipotent Government* and Hayek's *Road to Serfdom* will recognize Conway's keen insight. Collectivist planning can quickly lead to totalitarianism. Conway has done well in this outstanding book to advise us not to abandon patriotic traditions that support liberty for the dubious concoctions of planners ignorant of history and hostile to liberty. Even those less sympathetic to nationalism than Conway will benefit greatly from his penetrating analysis of political philosophy.

Politics and Passion: Toward a More Egalitarian Liberalism^{*}

MICHAEL WALZER

Liberty But Not Yet

April 1, 2005, *Mises Review*

WHEN I FIRST SAW *POLITICS AND PASSION*, I was inclined to toss it aside. “Just what we need,” I sneered: “a more egalitarian liberalism.” (By “liberalism,” the author emphatically does not mean classical liberalism.) But Michael Walzer is a shrewd political theorist, and his book is better than its subtitle. He addresses a vital problem; unfortunately, his commitments to egalitarianism and democracy prevent him from solving it.

Walzer begins with a point that should be uncontroversial. Persons in society depend crucially on associations of various kinds. By no means all of these are groups that people have chosen to join: you are born into a particular family and ethnic group; and, often, it will prove very difficult to abandon the religion in which you have been raised.

Should it be our goal to change all this?

[I]sn't it the purpose of liberal autonomy to challenge this givenness? Aren't we supposed to criticize the associations that we find ourselves in as a result of birth and socialization by asking whether we would have chosen them had we been able to choose freely?

^{*} Yale University Press, 2004.

Don't we have to ask ourselves what rational and autonomous agents would have done? (p. 9)

Walzer disagrees. However much ideologues of autonomy may disapprove, people often refuse to question the associations and ways of thought to which they are accustomed. Though people should not be forced to remain in groups that they wish to leave, do they not also have the right to continue in their accustomed way of life?

So far, so good; but Walzer is no libertarian. It soon transpires that the freedom of association he recognizes is sharply limited by other imperatives. If individuals are left free either to remain in the associations of their birth or to abandon them for new ones, a dire outcome will ensue. Some people and groups will end up with much fewer resources than others. Can a leftist in good standing accept this inequality without flinching?

Walzer cannot. He states fairly the classical liberal view:

It holds that "we" shouldn't do anything; individual men and women must take responsibility for their own lives—not only individually but also in (voluntary) association, pooling resources, bringing their numbers to bear, acting on their own behalf. The associational life of civil society is, on this view, self-correcting. . . . we should simply step back and not interfere with the self-interested activity of men and women freely forming and reforming the organizations that they need. (pp. 80–81)

Oddly, Walzer ascribes this position to "neoconservative intellectuals," though it "reflects a near-classical liberalism"; but the philosopher he cites as giving the best defense of it, Loren Lomasky, is a libertarian, not a neoconservative (pp. 80, 173).

In response, Walzer advances his own egalitarian position. The state must aid less advantaged groups, lest they have to struggle under unfair conditions with the more powerful. To those acquainted with elementary economics, one of his examples will hardly carry conviction:

By requiring collective bargaining whenever there was majority support . . . for the union, and then by allowing union shops, the Wagner Act sponsored the creation of strong unions capable, at least to some degree, of determining the shape of industrial relations. (p. 157)

One wonders why Walzer is so eager to praise legislation that led to unemployment for workers not among the favored few. Why should those not enrolled in a union lose the opportunity to work?

Once the disadvantaged groups receive the appropriate “help,” will the state then allow people to lead their lives in peace? Of course not; to a committed democrat such as Walzer, the unhindered life is not worth defending. Democracy is not a form of life that develops spontaneously; people must be educated to believe in its virtues.

Here a problem arises. Many communities are benighted enough not to believe in democracy; indeed, some are hierarchical and antidemocratic. How can democracy flourish in such unfertile soil? The state must step in and require these groups to teach civic virtue to children in their charge.

Coercion itself cannot be avoided; civic education does have to be legally mandated and compulsory. And since it challenges the totalizing claims of the religious or ethnic community, it is sure to encounter opposition. Its aim is to allow or encourage the community’s children, as many of them as possible, to accept another identity, that is, to think of themselves as responsible and respected participants in democratic decisionmaking. (p. 60)

Walzer anxiously assures us that this interference is not “totalizing”; but if democratic education eventually leads to the dissolution of hierarchical institutions, so much the better. Society must be made safe for democracy.*

* For an excellent libertarian account of some of the same problems that Walzer addresses, see Chandran Kukathas, *The Liberal Archipelago* (Oxford University Press, 2003).

The Virtue of War: Reclaiming the Classical Christian Traditions East and West^{*}

ALEXANDER F. C. WEBSTER & DARRELL COLE

Christianity and War and Other Essays against the Warfare State[†]

LAURENCE M. VANCE

Thou Shalt Kill, or Not?

April 1, 2005, *Mises Review*

FATHER WEBSTER AND PROFESSOR COLE have spoiled what could have been an excellent book; Laurence Vance, besides much else in his remarkable collection of essays, helps us see what is wrong with it. Both books take up the same topic: What has Christianity to say about the morality of war? Both agree that under some circumstances, war can be just. Yet in their applications of just war principles to current American foreign policy, the books could not be more different. Webster and Cole support President Bush's invasion of Iraq, while Vance opposes it.

Father Webster, in his part of *The Virtue of War*, proposes to evaluate the morality of war from the standpoint of Eastern Orthodoxy. By an examination of Holy Scripture, the practice of the early church, church canons, the writings

^{*} Regina Orthodox Press, 2004.

[†] Vance Publications, 2005.

of various Church Fathers, and remarks by later Orthodox saints and writers, he endeavors to show that the Orthodox Church holds that war is sometimes justifiable. Further, despite the fact that soldiers were often required to undergo penance before being allowed to receive the “holy mysteries” of the Church, the Orthodox tradition recognizes that soldiers can display virtue. Father Webster edifies his readers with tales of Saint Alexander Nevsky; the last Byzantine Emperor, Constantine XI; and other Christian warriors.

I shall leave to my readers the details of Webster’s erudite account, but I note a curious omission. In his discussion of Christian attitudes toward the army under the Roman Empire, he fails to cite the most famous of all scholarly works on this subject, Adolf von Harnack’s *Militia Christi* (1905; the book was translated into English in 1981). Harnack maintained that the earliest Church strongly opposed Christian participation in the military: Christians were rather soldiers in the army of Christ. He saw the less radical position of the later church as a compromise with pagan views.

Even if we confine ourselves to Webster’s own discussion, the support that the Orthodox tradition offers for war appears very limited. He acknowledges that

Eastern Orthodox teaching on the morality of some wars forms one of only two “trajectories” through the entire multi-millennial history of the Church, beginning with the experience of ancient Israel as recorded in the Old Testament. The other trajectory is absolute pacifism . . . the Orthodox justifiable war tradition reflects the lower “civilizing ethic” rather than the higher “transfigurative morality” exemplified by the absolute pacifist trajectory. (Webster and Cole, p. 31)

With commendable scholarly honesty, Webster notes that in

the New Testament, we find the justifiable war trajectory much more difficult to detect amidst a plethora of texts that clearly reflect an absolute pacifist perspective. (Webster and Cole, p. 60; Webster, following Paul Ramsey, prefers to speak of “justifiable” rather than “just” war)

On Webster’s own account, the justifiable war trajectory that he has taken such pains to elucidate lends no support to the Iraq War. He notes that “defense of the People of God is the Orthodox equivalent of ‘just cause’ in the

western just war tradition” (Webster and Cole, p. 33, emphasis removed). The People of God, in this usage, does not extend beyond the boundaries of the Orthodox Church. Although Webster thinks that “traditional Catholics and Protestants . . . behave in ways consonant with what it means to be Christian,” nevertheless they are not included within the Church. The “traditional Orthodox understanding of the Church does not include the Protestant denominations or even the Roman Catholic Church since the Great Schism in 1054” (Webster and Cole, p. 221).

Since the regime of Saddam Hussein, whatever its faults, posed no threat to the Orthodox Church, Webster himself should oppose the Iraq War. Unfortunately, he fails to grasp the logic of his own position. He instead warns of a global assault by militant Islam and calls for a crusade against it. Readers of his perfervid rhetoric would do better to heed the wise words of Laurence Vance:

Unlike Saudi Arabia, Iran, and most other Muslim states, Iraq was not controlled by a fundamentalist Muslim government, something that is now a possibility. . . . The Baath government tolerated both Jews and Christians. (Vance, p. 70)

Darrell Cole continues the pattern set by his coauthor: his personal support for the Iraq War contradicts the conclusions of his own analysis.* Cole offers us a survey, on the whole able and erudite, of Roman Catholic and Protestant thought about just war. It is more than a little surprising, though, that he calls Hugo Grotius a “Dutch Calvinist” (p. 164). Grotius was of course an Arminian and as such an opponent of the Calvinists.

The dominant theme in Cole’s account is that the tradition does not unreservedly condemn war. When the conditions for a just war are met, engaging in war is not a “lesser evil” but a positive good. The point may be granted; but the requisite conditions seem almost impossible to fulfill.

One point, stressed by Cole himself, rules out totally America’s contemporary exercise in aggression.

War needs to be justified because going to war will lead inevitably, but not intentionally if the war is just, to collateral damage, which causes all kinds of unintended suffering . . . those

* In my discussion of Cole, I have taken into account his slightly earlier book, *When God Says War Is Right* (WaterBrook Press, 2002), written before the Iraq War.

who decide upon war must have their own intentions sifted as much as possible for evil desires that may lie behind the decision for war. (Webster and Cole, pp. 139–140)

Is not the upshot of this that if those who decide for war have any intentions, such as the wish to aggrandize power, that are illegitimate, then resort to war is forbidden? What modern war does not stem in part from illicit motives?

A further problem remains to be considered. As Cole rightly notes, the just war tradition requires that a war be declared by a government holding proper authority. But a government that does not explicitly cooperate with the Christian church might in his opinion not qualify:

When the state does little more than provide basic protection, and when it insists it has a positive duty to be sure it isn't influenced by Christianity, Christians might find it difficult to support such a government, particularly in wartime. (Cole, *When God Says War Is Right*, p. 88)

Cole, following Alasdair MacIntyre, responds to this problem by suggesting that the “only justification for war is either self-defense (to preserve our liberty) or to preserve a people's liberty that we have pledged to uphold” (Cole, *When God Says War Is Right*, p. 88). Clearly, the Iraq War does not qualify: small wonder, then, that in his contribution to the later book, he omits mention of the problematic nature of duties owed to a secular state. To mention the difficulty might throw into question his support for the Iraq War, and this would never do.

When one takes full account of how difficult it is to meet the conditions for a just war, one can only agree with Cardinal Charles Journet:

After reading this specification [of the conditions for a just war] we might well ask how many wars have been wholly just. Probably they could be counted on the fingers of one hand.*

Vance, by contrast with Cole, offers a straightforward and cogent discussion. He agrees with Murray Rothbard that

America has had only two just wars (1776 and 1861 [on the Confederate side]). “A just war exists when a people tries to

* Charles Journet, *The Church of the Word Incarnate* (Sheed and Ward, 1955), p. 307.

ward off the threat of coercive domination by another people, or to overthrow an already-existing domination.” (Vance, p. 3, quoting Rothbard)

Since Iraq was hardly in a position to threaten the United States with coercive domination, Vance deems it obvious that the war should be condemned.

However critical I have been of Cole, he merits high praise for his vigorous condemnation of Reinhold Niebuhr’s Christian realism. Niebuhr, probably the most influential twentieth-century American theologian, maintained that the love ethic of Jesus was an “impossible possibility.” It should guide us as an ideal but cannot be put into practice. Instead, while never losing sight of the ideal, Christians who hold political power should act to secure the best consequences that they can in practice achieve. Doing so may sometimes demand that they violate moral absolutes. Evidently, Niebuhr did not agree with St. Paul, who considered it slanderous that opponents charged him with saying, “And why not do evil that good may come?” (Romans 3:8).

Cole will have none of this. He points out that Niebuhr has no way to condemn anything as absolutely forbidden. On a consequentialist view, even killing innocent civilians may be accepted as a lesser evil. Niebuhr

has admitted that all warfare is unjust to some degree; we already, to use present popular terminology, possess “dirty hands” when we engage in any war. Even “just-for-the-most-part” wars are won with dirty hands. So how “dirty” can the hands get in a good cause? . . . Niebuhr seems to have no way of telling us. (Webster and Cole, p. 175)

In this connection, Cole notes that Niebuhr during World War II refused to condemn Allied saturation bombing of civilian targets.

In his assiduous defense of noncombatant immunity, Cole does not hesitate to do battle with the most famous Protestant theologian of the twentieth century, Karl Barth:

“Today everyone is a military person,” Karl Barth wrote, either directly or indirectly. That is to say, everyone participates in the suffering and action which war demands. This statement is worse than nonsense—it’s the sort of nonsense that leads to great moral evil. For if every person is a “military person,” then

every person is a legitimate target, and the just war criterion of discrimination—noncombatant immunity—is completely emptied of application. (*When God Says War Is Right*, p. 112)

Given these commendable views, it is disappointing to encounter this naïve statement: “As far as just conduct goes, we have every reason to believe that the sterling record set in Afghanistan [by American troops] was actually improved upon in Iraq” (Webster and Cole, p. 212). Large numbers of Iraqi civilians have been killed in the American invasion, under circumstances that have not been disclosed. If Webster and Cole prefer to “wonder with a foolish face of praise” at the vaunted precision of “smart” weapons, they are free to do so. Readers who prefer facts to an exercise in propaganda would benefit from careful perusal of Vance’s book, especially the chapter “The Horrors of War.”

Right, Nature and Reason: Unpublished Writings against Hayek, Mises, Strauss and Polanyi^{†}*

MURRAY N. ROTHBARD

Translated and Edited by

ROBERTA A. MODUGNO

Rothbard vs. Everyone

July 1, 2005, *Mises Review*

ROBERTA MODUGNO has placed all those interested in the thought of Murray Rothbard doubly in her debt. From the late 1940s to the 1960s, Rothbard wrote a large number of reviews and reports for the Foundation for Economic Education, the William Volker Fund, and the National Book Foundation. As Modugno notes, “Rothbard had the opportunity to read, with incredible rapidity, innumerable books by a wide variety of authors” (p. 5, translation mine). His reports on these books were “sometimes written in an informal style” and showed the “biting irony . . . typical of Rothbardian prose” (p. 6).

These reports are much more than displays of Rothbard’s virtuosity: they frequently offer fuller discussions of vital points in his thought than are available in his books and articles. Unfortunately, they have hitherto

* Originally published in Italian as *Diritto, Natura e Ragione: Scritti Inediti Versus Hayek, Mises, Strauss e Polanyi*.

† Rubbettino, 2005.

remained unpublished. Modugno, in a veritable triumph of Rothbardian scholarship, has made available to the public for the first time a selection of the most important of these reports. She has accompanied her translations of them with a learned and illuminating analysis of Rothbard's thought.

Rothbard firmly believed in an objective ethics; and in this stance he found himself in the unfamiliar position of agreement with Leo Strauss. Commenting on Strauss's paper "Relativism," Rothbard writes: "Strauss has one good point, and one alone: that there exists an absolute ethics for man, discoverable by reason, in accordance with [the] natural law of human nature" (p. 137; my quotations are from the English originals of Rothbard's reports).

Why should we believe in an objective ethics of this kind? As Modugno notes, both Rothbard and Strauss found persuasive an appeal to ordinary language. The signature tune of David Hume and his many successors, the "fact-value dichotomy," is an artificial construction. Suppose, e.g., that someone pushes you aside while you are waiting in line for a movie. Has he not acted rudely? The judgment that he is rude is not a matter for subjective decision but is governed by objective criteria. But surely "rude" is a value-term: what then has happened to the alleged dichotomy between fact and value? In the view favored by Rothbard and Strauss, value judgments are factual. If so, is it not also true—though this is much more controversial—that if human beings need certain things in order to flourish, this is at once a factual statement and a value judgment? So Rothbard maintained; Modugno points out that the influential English philosopher Philippa Foot has also defended this position (p. 19).

Though Rothbard and Strauss were here allied, they soon diverged. Strauss contrasted natural and medieval natural law with "modern" natural law, culminating in the thought of John Locke, to the distinct disadvantage of the latter. As Strauss saw matters, Machiavelli and Hobbes abandoned the classical pursuit of virtue. Instead, they founded political philosophy on passion and self-interest. Locke, despite his professed adherence to natural law, was a secret Hobbesian; he perverted true natural law. Strauss's antipathy to individualism, by the way, should not surprise us. As was often the case, Strauss followed the thought of his much-admired friend, the English socialist historian R. H. Tawney.*

* See Simon J. D. Green, "The Tawney-Strauss Connection: On Historicism and Values in the History of Political Ideas," *Journal of Modern History* 67 (June 1995), pp. 255–277.

Rothbard left no doubt about his view of this interpretation:

Strauss, while favoring what he considers to be the classical and Christian concepts of natural law, is bitterly opposed to the 17th and 18th century conceptions of Locke and the rationalists, particularly to their “abstract,” “deductive,” championing of the natural rights of the individual: liberty, property, etc. In this reading, Hobbes and Locke are the great villains in the alleged perversion of natural law. To my mind, this “perversion” was a healthy sharpening and developing of the concept.” (p. 114)

Modugno shows that Rothbard has the better of the argument. She calls attention to the major study of Brian Tierney, *The Idea of Natural Rights* (William B. Eerdmans, 2001).

Tierney has decisively brought into question the idea of Strauss and [Michel] Villey of an antithesis between an ancient Aristotelian doctrine of natural law and a modern theory of subjective natural rights. (p. 15)

Tierney, one of the world’s foremost authorities on medieval canon law, finds numerous uses of the language of individual rights in the writings of twelfth-century Decretists such as Rufinus and the “greatest of them all, Huguccio”* (Tierney, p. 64).

Many canonists included in their lists of meanings a subjective one that explained *ius naturale* as a faculty or power inherent in human nature . . . from the beginning, the subjective idea of natural right was not derived from Christian revelation or from some all-embracing natural-law theory of cosmic harmony but from an understanding of human nature itself as rational, self-aware, and morally responsible. (Tierney, p. 76)

Contrary to Strauss, Locke did not pervert natural law: he developed further a common medieval understanding, exactly as Rothbard maintained. True enough, Thomas Aquinas, the foremost thinker of the Middle

* The Decretists were commentators on the major compilation of canon law, the *Decretum Gratiani*.

Ages, made no use of subjective rights. But the great sixteenth-century Salamanca scholastic Francisco de Vitoria found it an easy task to devise a natural rights theory on a Thomistic basis. Once more, Strauss is confuted.

As all readers of Rothbard know, the key principle of his ethics is the axiom of self-ownership; and this too has medieval antecedents. Tierney finds that “one of the most illustrious masters of the University of Paris in the latter part of the thirteenth century,” Henry of Ghent, had a firm grasp of this principle (Tierney, p. 83). Henry asked whether a criminal condemned to death had the right to flee and argued that he did: “Only the criminal himself has a property right in his own body or, as Henry put it, ‘only the soul under God has property in the substance of the body’” (Tierney, p. 86).

Though Rothbard’s view of natural law firmly rested on an Aristotelian and Thomist framework, by no means do all contemporary defenders of natural law adopt a libertarian view. In particular, Rothbard’s friend Henry Veatch, a major twentieth-century American Aristotelian, did not. Modugno incisively shows that the difference between the two thinkers lies in their contrasting conceptions of the common good. Veatch, unlike Rothbard, defends a common good that exists apart from the plans of individuals in society. The state plays an essential role in promoting this common good, in complete contrast to Rothbard’s individualism. Veatch in turn rejected libertarianism as a form of ethical egoism, making it, as he saw matters, not a moral theory at all. Rothbard cites Veatch several times in *The Ethics of Liberty*; but given this “profound difference” (p. 23), Veatch cannot be considered a major influence on Rothbard’s thought.

In defending his view of libertarian natural law, Rothbard confronted a challenge posed by Friedrich Hayek. Is not the attempt to deduce from self-evident principles the precepts of law an example of the “constructivist rationalism” that, according to Hayek, has been a principal enemy of liberty? Rothbard vigorously disagreed: Hayek in his view was an irrationalist. In a review, written in 1958, of the manuscript of Hayek’s *The Constitution of Liberty*, Rothbard expressed alarm. It is “surprisingly and distressingly, an extremely bad, and I would even say evil, book” (p. 77). For Rothbard, intellectual opponents often inhabited a dark landscape. He could apply to himself the words of Dante: “*Per me si va ne la città dolente*.” (“Through me is the way to the sorrowful city.” *Inferno*, 3, 1.)

Hayek’s account of natural law and reason lay at the heart of Rothbard’s critique:

Tied up with his dismissal of natural law is Hayek's continuous, and all-pervasive, attack on reason. Reason is his *bête noire*, and time and time again, from numerous and even contradictory standpoints, he opposes it. The true rationalist theory was, and is, that reason can discover the natural law of man, and from this can discover the natural rights of liberty. Since Hayek dismisses this even from historical consideration, he is left with only two choices for the formation of a political ethic: *either* blind adherence to custom and the traditions of the "social organism," *or* the coercive force of government edict. (p. 80, emphasis in original)

To Rothbard, Hayek's rejection of reason led to muddleheaded and unlibertarian views. Besides the very long list of such measures that Rothbard cites in a later review (pp. 108–112), Modugno also notes that Hayek was prepared to support conscription, if needed to defend against an external enemy (p. 44).

Modugno, sympathetic to the fallibilist view of reason of Karl Popper, is not prepared fully to endorse Rothbard's charges against Hayek. She views Hayek not as an enemy of reason but rather of "the abuse of reason" (p. 32). But from her own position of critical sympathy with Hayek, she makes a point that Rothbardians will find congenial.

Hayek, in his historical account of the rule of law, placed great stress on the development of the common law in England. The common law judges did not follow a conscious plan, but the unintended results of their decisions led to the ordered growth of liberty. Modugno argues that even if Hayek is right, this does not at all justify his neglect of natural law in his historical account of liberty. Rothbard was perfectly correct to condemn Hayek's "brusque and cavalier dismissal of the whole theory of natural law" (p. 79).

Her key point is this: whether or not natural law is a correct metaphysical theory, the great common law judges whom Hayek cites, such as Edward Coke and Matthew Hale, accepted natural law. Thus an accurate historical analysis of the growth of liberty must take account of natural law: one cannot, as Hayek wishes, cast aside the theory as "intellectually indefensible." With great insight, Modugno sees here a point of rapprochement between Rothbard and Hayek. Following the Italian historian of political thought Nicola Matteucci, she suggests that it is "possible to conceive a Hayekian position that is not in strong opposition to natural law" (p. 29). If natural

law is viewed as the product of historical reason, why cannot a Hayekian in good standing accept it for its value in promoting liberty? He can acknowledge its good results, even while rejecting its theoretical basis.

Modugno here resumes and carries further a line of thought suggested in her earlier book *Murray N. Rothbard e L'anarco-Capitalismo Americano* (1998). There, faced with Rothbard's arguments for anarcho-capitalism, she asked: why not take Rothbard's system as a regulative idea, in Kant's sense? Let us see experimentally how far it is possible to do without the state. Popperians and Hayekians can thus, if she is right, adopt in considerable measure Rothbard's views: doing so commits them to no philosophical doctrines that they reject. I hope her most valuable proposal attracts the attention it deserves.

Public Philosophy: Essays on Morality in Politics^{*}

MICHAEL J. SANDEL

The Trouble with Sandelism

October 1, 2005, *Mises Review*

MICHAEL SANDEL attained fame, and perhaps fortune as well, early in his academic career. *Liberalism and the Limits of Justice* (Cambridge University Press, 1982), his criticism of John Rawls's *A Theory of Justice*, established him as a major “communitarian” political thinker. As a result, he was promoted from assistant professor to tenured full professor in the Harvard Department of Government, an almost unprecedented feat.

What was he to do next? For Sandel, the question was readily answered. If commenting on Rawls was the path to academic success, why not continue with more of the same? It is hardly surprising that our author thinks very highly of his meal ticket. In a tribute that appeared after Rawls's death, he recounts a touching story:

When I came to Harvard as a young assistant professor in the government department, I had never met the figure whose great work on liberalism I had studied. Shortly after I arrived, my phone rang. A hesitant voice on the other end said, “This is John Rawls, R-A-W-L-S.” It was if God himself had called

^{*} Harvard University Press, 2005.

to invite me to lunch and spelled his name just in case I didn't know who he was. (p. 251)*

Public Philosophy contains several papers on Rawls, but Sandel has now taken wing. He wishes to use his criticism of the Master to establish a distinctive political philosophy of his own. This he intends as no mere academic exercise. Quite the contrary, he wishes to attract a wide public audience, and the present book includes both scholarly pieces and popular articles about current issues.

Both Sandel's criticisms of Rawls and his own political philosophy are largely worthless, although the former is slightly better. After a number of bad arguments against Rawls, he manages to arrive at a conclusion that has something to be said for it. By contrast, his political philosophy consists largely of diatribes against the free market. For Sandel, the market is the enemy of good citizenship.

As Sandel correctly points out, Rawls thinks that in political philosophy the right is prior to the good.

For Rawls, as for Kant, the right is prior to the good in two respects, and it is important to distinguish them. First, the right is prior to the good in the sense that certain individual rights "trump," or outweigh, consideration of the common good. Second, the right is prior to the good in that the principles of justice that specify our rights do not depend for their justification on any particular conception of the good life. (p. 212)

So far, so good; but Sandel soon goes wrong. In Rawls's famous "original position," no one knows his conception of the good. Conceptions of the good as a result play no role in establishing the principles of justice. Here Sandel detects a weakness and pounces. Why does Rawls leave conceptions of the good out of his account? Sandel maintains that Rawls does so because he believes in the "unencumbered self." People, Rawls, thinks, are autonomous: they can detach themselves from whatever view of the good

* At the time of the incident that Sandel relates, there was another, and in my view much better, political philosopher besides Rawls on the Harvard faculty. Concerning Robert Nozick our author has had little to say; perhaps Sandel did not view writing about Nozick as a good growth stock. Readers may be interested to know that Nozick had a poor opinion of Sandel.

they hold. Sandel denies this: often our attachment to other people and various institutions and practices that we esteem help to constitute our identities. We cannot detach ourselves from our conceptions of the good because these conceptions are part of what we are. Hence Rawls is wrong to exclude beliefs about the good from arguments about the principles of a just society.

The phrase “unencumbered self” is Sandel’s signature tune. He explains what he means here:

Now the unencumbered self describes first of all the way we stand toward the things we have, or want, or seek. It means there is always a distinction between the values I *have* and the person I *am*. To identify any characteristics as *my* aims, ambitions, or desires, and so on, is always to imply some subject “me” standing behind them, and the shape of this “me” must be given prior to any of the aims or attributes I bear. (p. 162)

Is not this view of the self radically false? The unencumbered self

rules out the possibility of what we might call *constitutive* ends. No role or commitment could define me so completely that I could not understand myself without it. No project could be so essential that turning away from it would call into question the person I am. (p. 162).

Does it not make perfect sense to say that I could not, e.g., live my life without my family, country, or religion?*

Sandel seems clearly right to challenge the unencumbered self. But he is entirely wrong to think that the original position rests on this desiccated conception. Quite the contrary, Rawls makes no assumption about how closely people are tied to their ends. Rather, he asks, what should we do if people have different conceptions of the good? How, in this circumstance, should the benefits of social cooperation be distributed? Rawls thinks that a fair procedure would be to imagine what principles we would choose if we did not know our conception of the good. He may be right or wrong about

* Enoch Powell, an ardent British nationalist, was once asked what nationality he would have wanted to be had he not been born British. His instant reply was, “British.” I owe this story to Jan Lester.

this; in my view he is mistaken. But the contention has nothing to do with how hard or easy it is for people in their actual lives to detach themselves from their projects.

Despite spending much of his professional life studying Rawls, Sandel has fundamentally misunderstood him. He does at one point gesture toward the objection just made, only to fall into further mistakes.

The objection to the conception of the person presented in *A Theory of Justice* does not depend on failing to see the original position as a device of representation. It can be stated wholly in terms of the conception of the person presented in Part III of *A Theory of Justice*, which Rawls now recasts as a political conception. (p. 274)

Sandel has once again got things wrong. He cites from Part III a passage in which Rawls asserts that “the self is prior to the ends which are affirmed by it” (p. 218). He disregards completely the context of the passage he cites. Rawls denies that people have a single dominant end, such as happiness, which they can use to measure all their other ends. He contends that one’s goals are heterogeneous. Once again, he does not address the question of how closely people are attached to their actual ends.

But am I not being unfair to Sandel? Is there not a crucial part of Rawls’s account of justice that does indeed depend on separating the self from its attributes? Notoriously, Rawls argues that people do not deserve to profit by virtue of their superior abilities. Tiger Woods’s great skill as a golfer is “arbitrary from the moral point of view,” and so is the further fact that many people value his skill highly. Why should he profit from mere matters of luck?

If it is objected that Woods still had to choose to develop his talents, Rawls responds that having the ability to commit oneself to a long-term plan of development is itself a matter that depends on luck.

Here for once Sandel’s point is telling. Does not Rawls, in taking more and more attributes of a person as morally “arbitrary,” assume that there is some ghostly self entirely distinct from its characteristics? As Nozick remarks,

This [Rawlsian] line of argument can succeed in blocking the introduction of a person’s autonomous choices and actions (and their results) only by attributing *everything* noteworthy about

the person completely to certain sorts of “external” factors. (*Anarchy, State, and Utopia*, Basic Books, 1974, p. 214)*

Unfortunately, Sandel not only neglects his own argument: he thinks that Rawls is right.

Rawls offers a rich array of compelling arguments on behalf of the difference principle and against libertarian conceptions: the distribution of talents and assets that enables some to earn more and others less in the market economy is arbitrary from a moral point of view; so is the fact that the market economy happens to prize and reward, at any given moment, the talents you or I may have in abundance. (p. 235)

Rawls, then, according to Sandel, wrongly separates people from their attributes and ends—except, of course, when doing so justifies anti-market social policies. In that case, people are entirely distinct from their “arbitrary” attributes. In Sandel’s theory, animus against the market trumps opposition to the unencumbered self.

I am afraid that Sandel has yet another bad argument to deploy against Rawls. Here he throws into question Rawls’s notion of “public reason” developed especially in *Political Liberalism*. Rawls’s theory is an exceptionally bad one, quite easy to attack; but Sandel manages to make his usual botch of things.

Rawls argues that, when people decide on the basic principles of justice, they should put aside their own moral and religious doctrines. Instead, they should restrict themselves to “public reason,” a set of considerations that everyone who holds a “reasonable” moral or religious view can agree to accept. If everyone uses the same set of reasons in deliberating about justice, then we will promote social solidarity.

Sandel thinks that he has caught Rawls in a contradiction. Rawls himself argues against other views of public reason than his own. He holds, e.g., that people should accept his egalitarian difference principle rather than Nozick’s libertarianism. Is he not then claiming that Nozick’s position is unreasonable? But if there can be unreasonable views of public reason, why

* See also Susan Hurley, *Justice, Luck, and Knowledge* (Harvard University Press, 2003) and my review found in *An Austro-Libertarian View*: Volume 2, “Political Theory.”

not unreasonable moral and religious doctrines as well? If so, why can we not argue about them when we reason politically?

[I]f moral argument or reflection of the kind Rawls deploys enables us to conclude, despite the persistence of conflicting views, that some principles are more reasonable than others, what guarantees that reflection of a similar kind is not possible in the case of moral and religious controversy? (p. 236)

Sandel has entirely misapprehended Rawls's contention. Rawls does not claim that rational argument about morals and religion is impossible. He thinks, rather, that in deciding major political issues, you should not appeal to controversial moral or religious views. To do so, he thinks, manifests lack of respect for those of differing views. They could not accept what you say as a reason for action. Suppose, e.g., that you think that homosexual conduct should be prohibited because the Bible condemns it. Someone who does not accept the Bible as authoritative would not take into consideration what it teaches. If you insist on appealing to the Bible, you can at best attain a *modus vivendi* with him.

So far as the dispute with libertarianism is concerned, Rawls can inquire whether this position rests on a controversial moral or religious view. If it does, it is excluded from consideration by public reason. If it does not, Rawls is free to argue against it without displaying a lack of respect for its proponents.

Even though all of Sandel's arguments against Rawls misfire, I think his conclusion is defensible. Rawls has not given us good grounds to exclude arguments about the good from public discussion. Why should not discussions about justice take into account all of our moral beliefs?

Unfortunately, Sandel's efforts to develop a public philosophy based on thinking about the good fail completely. He seeks a republican conception of freedom. (I hasten to add that he does not mean the Republican Party; he is a Democrat who admires Robert Kennedy and, to a lesser degree, Bill Clinton.)

Central to republican theory is the idea that sharing in liberty depends on sharing in self-government. . . . But to deliberate well about the common good requires more than the capacity to choose one's ends and to respect others' rights to do the same. It requires a knowledge of public affairs and also a sense

of belonging, a concern for the whole, a moral bond for the community whose fate is at stake. To share in self-rule therefore requires that citizens possess, or come to acquire, certain civic virtues. But this means that republican politics cannot be neutral toward the values and ends its citizens espouse. (p. 10)

We must, if Sandel is right, develop certain civic virtues. How do we do so? Sandel's recipe is simple: we revile and restrict the free market as much as possible. He notes the

big but unworthy idea [that] is at the heart of Bob Dole's proposed [1996] tax cut; people should keep more of what they earn. It is not clear why they should . . . the government needs the money . . . by offering no higher purpose than lower taxes, Dole contradicts the admirable declaration in his acceptance speech that presidents should place moral considerations above material ones. (p. 50)

Here the heart of Sandel's public philosophy lies exposed. The market deals with "material" affairs and is thus base. It must be subordinated to "higher" things. Let us sacrifice for the common good instead of selfishly seeking our own happiness: "Unlike customers, citizens sometimes sacrifice their wants for the sake of the common good. This is the difference between politics and commerce, between patriotism and brand loyalty" (p. 79).

What exactly does Sandel think is bad about commerce, and what is good about the "higher" values to which we are to devote ourselves? He never tells us; instead, he repeats his position again and again. He carries his view to absurd extremes. In a discussion of pollution, he advocates imposing fixed levels of emissions for each country rather than allowing trades in pollution rights among countries. (Needless to say, the libertarian approach through individual rights, classically defended by Murray Rothbard in "Law, Property Rights, and Air Pollution," in *The Logic of Action Two* (pp. 121–170), never enters his mind).

Is not trading a more efficient way of reducing pollution than the imposition of fixed levels? Never mind: emission trading among countries "may undermine the sense of shared responsibility that global cooperation requires" (p. 95). Under a trading system, might not developing countries complain that "trading in emissions allows wealthy nations to buy their way out of

global obligations”? (p. 96). How terrible that the spirit of sacrifice might be undermined, just so the ostensible goal of the sacrifice can be better realized. It is apparent that this eminent Harvard scholar practices a form of sacrifice he does not discuss: the *sacrificium intellectus*.*

* Lest I be accused of undue negativism, I highly recommend the excellent essay about Rabbi David Hartman (pp. 196–210).

The Ominous Parallels: The End of Freedom in America^{*}

LEONARD PEIKOFF

Objectivism, Hitler, and Kant[†]

November 5, 2005, *Mises Daily*

LEONARD PEIKOFF'S ENTRY into the "why-Hitler?" sweepstakes comes to us with the imprimatur of the late Ayn Rand, who in her introduction hails the book as "brilliantly reasoned." Her followers regarded Miss Rand as a major philosopher, but I do not think even her most ardent devotees would claim her to have been an authority on the history of ideas. Had she been, it is difficult to see how she could have lavished praise on this misguided work. I cannot recall any other book that matches this one in its distortion of the history of philosophy.

Peikoff's principal thesis is a simple one. The prevalent explanations of the rise of Hitler to power in 1933 do not penetrate to the essence of the matter. Some historians have pointed to the failure of the Weimar Republic's successive governments to deal with the Great Depression as a principal factor inducing the desperate masses to succumb to the promises of radical change made by the National Socialists. Others have emphasized the fact that key sectors of German society—the army, the higher echelons of

^{*} Stein & Day, 1982.

[†] This review of *The Ominous Parallels: The End of Freedom in America*, by Leonard Peikoff, was first published in the September 1982 issue of *Inquiry* under the title "The Butcher of Königsberg?"

the civil service, and many of the intellectuals—did not accept the republic. Still other historians claim to explain Hitler by an innate depravity on the part of the Germans. (Peikoff rightly gives this last “explanation” short shrift, rejecting it as racist.) While recognizing that many of these accounts contain some truth, Peikoff finds the root of the matter elsewhere. (Oddly enough, in his canvass of the “superficial” factors explaining Hitler’s rise, Peikoff does not find it necessary to mention German resentment of the Treaty of Versailles, though it was in fact the most persistent theme in German foreign policy throughout the interwar years. The treaty appears only once, in the course of his summary of the Twenty-Five Points of the Nazi party program.)

What then is the key to the mystery? According to Peikoff, if one seeks a *fundamental* explanation for the rise of Hitler, one must consult the science of fundamentals, that is, philosophy. Ludwig Feuerbach once said, “Man is what he eats.” Peikoff has a different view—to him, man is what he believes about metaphysics, the theory of knowledge, and ethics. And it is because most Germans had distorted ideas on these fundamental subjects that they were unable to see the obvious flaws in the nostrums peddled by Hitler. The main reason, in turn, for their mistaken ideas was the malignant influence of Germany’s foremost philosopher—Immanuel Kant.

Peikoff does not put all the blame for Nazism on Kant; other philosophers, like Plato and Hegel, must take their share of responsibility. But, however implausible it may at first sight have seemed, I was not exaggerating in stating that Peikoff regards the mild-mannered sage of Königsberg as a proto-Nazi. Peikoff goes so far as to say of life in the Nazi concentration camps:

It was the universe that had been hinted at, elaborated, cherished, fought for, and made respectable by a long line of champions. It was the theory and the dream created by all the anti-Aristotelians of Western history.

The reader who has gotten as far as this point in the book will have no doubt as to the identity of the chief anti-Aristotelian.

What is so bad about Kant? According to Peikoff, Kant downgraded the physical world to which we gain access through our senses as a mere “phenomenal” realm. It was nothing but an appearance as compared with the “noumenal” world, which only faith, not logic, could grasp. In ethics, Kant

spurned individual happiness as a matter of no moral worth; instead, persons were to subordinate themselves entirely to a duty that bore no relation to their interests as human beings.

These doctrines, Peikoff holds, paved the way for Hitler. The Nazis rejected reason—Kant taught that reason can teach us nothing of the world beyond mere appearance. Hitler’s movement demanded that individuals sacrifice themselves for the common good—again, a theme straight out of Kant’s ethics. So pervasive was Kant’s influence. Peikoff argues, that no important group in the Weimar Republic dissented from the baleful doctrines of irrationalism, altruism, and collectivism. The decadent expressionist artists of the left shared the same Kantian irrationalist assumptions as their right-wing detractors. No one in Weimar Germany had the intellectual resources to mount an effective resistance to Hitler, hence his triumph in 1933.

In order to resist Hitler, what would have been required (but was nowhere to be found) was a correct understanding of philosophical basics. Specifically, a clear-sighted defender of reason needs to acknowledge the existence of the external world (not a very demanding requirement, one would have thought) and accept an egoist ethics that rejects the duty of individual sacrifice. Someone who accepts these truths has implicitly rejected Kant in favor of the foremost pre-twentieth-century philosopher, Aristotle. In our own day, however, reason has made further advances: Ayn Rand has presented Aristotelian philosophy in a more consistent way than has ever been done before, purging it of the remnants of Platonism entangled in it.

Although, in the absence of Rand’s novels, no one before our own time was in a position to see the truth full and entire, the founders of the American Republic came close. In their stress on individual rights and their basically secular outlook, the Founding Fathers were good Aristotelians. But the story of the United States is not altogether a happy one. In the nineteenth century, German philosophy was imported into our hitherto Enlightenment-oriented culture. Its influence has now become so dominant that the rationalism and individualism upon which the United States was founded have been displaced by the altruism and denigration of reason characteristic of—you guessed it—Kant’s philosophy.

Should this trend continue, an American version of Nazism may well ensue. It is the growth of Kantian irrationalism in the United States that Peikoff has chiefly in mind when in his title he speaks of the “ominous parallels” between pre-Hitler Germany and America.

Whatever one thinks of Peikoff's thesis, it has at least one virtue: Peikoff, in concert with most other Randians, presents his ideas in a clear and forthright manner, so that, in Bacon's phrase, "he who runs may read." He is, I think, entitled to equal directness in response. Let us say at once, then, that Peikoff distorts Kant at every point. Kant was *not* a skeptic dismissing the sensory world as mere appearance. On the contrary, he thought of his *Critique of Pure Reason* as answering David Hume's skepticism. In particular, he attempted to explain causality in order to justify philosophically the achievements of Newton's physics. Kant was, in brief, a defender, not an opponent, of the real world. Peikoff himself is forced to acknowledge that "Kant does not repudiate the term 'objective,' and claims to oppose subjectivism," though this admission is hidden away in an endnote. When Peikoff defends himself by saying that Kant's objectivism is just a variety of subjectivism, he is precisely wrong. Kant's categories are *not* subjective creations of individuals or groups, but (he holds) necessary requirements of reason.

Even if Peikoff had been entirely right about Kant's metaphysics, however, his genealogy of Nazism would still appear more than a little silly. Does Peikoff really believe that anyone (outside of an asylum) doubts, in his daily life, the existence of the external world, or considers it the result of subjective fantasy? As David Hume (surely a skeptic if ever there was one) long ago pointed out, when one leaves the philosopher's study, one *cannot* in practice behave as a skeptic. The picture of people falling for Hitler because, owing to Kant's influence, they doubted the reality of the sensory world is too ridiculous for words.

Peikoff's view of Kant's ethics is equally mistaken, although it at least makes more sense to think that someone's moral principles can have practical effect than it does to assume that the key to politics is to be found in recon-dite theories of epistemology. Peikoff has a good deal to say about Kant's stress upon duty and "categorical imperatives"; but, oddly enough, he never tells us what the categorical imperative *is*. It is, unfortunately, easy to understand the reason for this slight omission on Peikoff's part. Had he quoted the second formulation of the categorical imperative, he would have at once given the lie to his charge that Kant laid the foundation for the Nazi doctrine of blind submission to the omnipotent state. That formulation reads:

Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end.

In point of fact, Kant's own political views were, broadly speaking, those of a classical liberal. He strongly supported private property, for example, and devised a scheme he hoped would lead to the abolition of war. Peikoff is at least partly aware of these facts. He says, "Kant is not a full-fledged Statist. . . . [He] accepts certain elements of individualism," but has the gall to dismiss these as trivial compared to the implications he perversely derives from Kant's metaphysical and epistemological views. Peikoff wisely does not attempt to explain why such preeminent defenders of freedom as Ludwig von Mises and F. A. Hayek have regarded themselves as Kantians.

There is, I think, a deeper flaw in Peikoff's approach to intellectual history than his errors, however grave, about a particular thinker. One has no sense, when reading Peikoff, that Kant (or any of the other thinkers he condemns) was responding to serious intellectual problems. If, for example, Kant differed with Aristotle, the thought never seems to have occurred to Peikoff that he may have had some legitimate reasons for doing so. Peikoff gives us a history of philosophy with the arguments left out. Someone unfortunate enough to derive all his knowledge of Kant from Peikoff's pages would have no conception at all of why Kant's successors regarded him as a profound thinker rather than the proponent of "a perverted theory that no one could mean."

In refusing to consider philosophical arguments for the views of which he disapproves, Peikoff is guilty of the dogmatism and pragmatism he is so quick to condemn in others. He says, in effect, look at the terrible consequences of adopting certain doctrines: Kant leads to Hitler; therefore, Kantianism is to be rejected. What is this but a particularly blatant form of pragmatism, a doctrine he holds to be the American variety of Kantianism?

It should come as no surprise that, besides being radically flawed in its thesis, the book is unreliable on matters of detail. Edgar Jung, here called a Nazi, was in fact a conservative adviser to Franz von Papen and was killed by the Nazis in 1934. Ludwig Klages, although at one time a member of the *George Kreis*, was not a philosophical spokesman for Stefan George, with whom he quarreled. Carl Schmitt was never a communist. Kurt Gödel did not make the idiotic claim that all mathematical systems are inconsistent. Herbert Spencer did not ignore the fact that man lives by production and is able to create increasing amounts of wealth; this fact happens to lie at the basis of his social philosophy. Henry George was not a statist. Finally, what is known as the Renaissance was not, at least according to most historians, primarily an Aristotelian movement; many of its leading figures, such as

Marsilio Ficino and Pico della Mirandola, were in fact supporters of one of Peikoff's *bêtes noires*, Plato. Peikoff might take a look at a book by Ernst Cassirer, a philosopher whom he sneers at in passing, *Individual and Cosmos in Renaissance Philosophy*. Those in search of an explanation for Hitler would be well advised to look elsewhere. Peikoff's book is nothing but strident and uninformed advocacy, unredeemed by humor, art, or insight. Reading it is an unrewarding task.

Elements of Justice^{*}

DAVID SCHMIDTZ

The Myth of Redistributive Justice

April 1, 2006, *Mises Review*

DAVID SCHMIDTZ means the title of his outstanding book literally. He does not present a tightly integrated theory of justice; rather his contextual functionalism . . . is pluralist insofar as none of its four primary elements is an overarching standard to which the others reduce. The theory is contextual insofar as respective elements rule only over limited ranges. (p. 17, emphasis removed)

Rather than summarize each of the four elements—desert, reciprocity, equality, and need—I shall concentrate on a few of Schmitz’s illuminating remarks.

Everyone is familiar with a common argument for progressive taxation. Owing to diminishing marginal utility, a dollar is worth much less to Bill Gates than to someone who is desperately poor. A few dollars may enable the poor man to avoid starvation: Gates would barely notice the loss of a million dollars. Would not utility increase if Gates were taxed to the benefit of the poor man? And even if maximizing utility is not all of justice, is it not at least an important part of it?

But is not the response to this argument almost as well known? We can say that a person values one good more than another: I would, e.g., prefer an ice cream cone to a second copy of Mrs. Nussbaum’s book. But one cannot

* Cambridge University Press, 2006.

measure how much more utility I get from my preferred choice: utility is an ordinal, not a cardinal magnitude. If so, it is senseless to ask whether a dollar is worth more to Gates or a poor man. Utility cannot be measured at all, much less interpersonally. Nor is this view confined to Austrians: it is the accepted view in mainstream economics.

Do we need to address the argument further? Many people dismiss the economists' view: granted that there is a technical sense of "utility" in which the economists are correct, do we not know, in a common sense way, that a dollar is worth more to the poor man than to Gates? And we need not here abandon economic theory. We have only to assume that people's utility functions are roughly the same, and both Paul Samuelson and Kenneth Arrow will tell us that the argument from diminishing marginal utility is correct.

It is here that Schmidtz enters the scene. He asks, what follows from the fact that a very rich person may have little to gain from an increase in consumption? Will he not be likely to invest his money in production? A poor person, by contrast, will spend nearly all of his income on consumption. If, then, a growing economy benefits most people, it may turn out that redistributive taxation will hurt rather benefit the poor.

A society that takes Joe Rich's second unit [of corn] is taking that unit away from someone who . . . has nothing better to do than plant it and giving it to someone who . . . does have something better to do with it. That sounds good, but in the process, the society takes seed corn out of production and diverts it to production, thereby cannibalizing itself. (pp. 145–146)

But is not Schmidtz here changing the subject? Does not the argument assume constant production? Schmidtz answers that unfortunately,

many people, and possibly Arrow and Samuelson, reason as follows. If the DMU [diminishing marginal utility] argument's strongly egalitarian conclusions do not quite follow in a world of production, what presumably does follow is a suitably weakened version of these same egalitarian conclusions. Not so. In a world of production, DMU can weigh *against* egalitarian redistribution rather than for it, depending on the exact nature of initial endowments and production functions. (pp. 146–147)

It is all very well, a critic might respond, to allege benefits to the poor from higher production; but do we not know that, in recent years, the poor's share of income has decreased and that of the rich grown ever higher? Schmidtz answers with a simple but fundamental question of his own: why should we care about income shares? Is not what matters to a poor person how well he is doing, rather than whether his gains equal someone else's?

Critics of capitalism once scoffed at the cliché suburban goal of “keeping up with the Joneses.” Critics now treat evidence that some group is failing to get ahead of the Joneses as a basis for deeming capitalism a failure. That is what pundits . . . are saying when they lament that some income group's *share* has not increased. (Income *shares* add up to 100 percent; no share can increase unless another share decreases. . . .) Elevating that goal [of keeping up with the Joneses] to the status of a principle of justice is mindless. (p. 118)

Further, Schmidtz, an economist as well as a philosopher, maintains that, so far as recent conditions in the United States are concerned, “if we look only at changes in household income, we see only part of the picture . . . gaps in household income are to some degree accounted for by differences in household size” (p. 129).

In like fashion, Schmidtz maintains that a system that allows initial acquisition easily overcomes a common egalitarian objection. What happens, “left libertarians” and Georgists inquire, if people appropriate all unowned property? Will not latecomers be disadvantaged, if not altogether squeezed out? Schmidtz vigorously dissents:

latecomers would see first comers as a threat if it were really true that, in a first possession regime, it is better to arrive early rather than late. But it is not true. One central fact about any developed economy: Latecomers are better off than the first generation of appropriators. . . . First possessors pay the price of converting resources to productive use. Latecomers reap the benefits. (p. 156)

Schmidtz has made an insightful point, but he presses it too far. He suggests that “the Lockean Proviso—that as much and as good be left for others” (p. 156), far from prohibiting original acquisition, in some cases requires it. Without private property, the tragedy of the commons threatens. If so, then “when resources are scarce, the Proviso *requires* appropriation” (p. 156).

This is not the case. The Proviso is a limit on appropriation: it says that appropriation cannot take place unless a certain condition is fulfilled. It does not require anyone to appropriate property. The fact that a tragedy of the commons threatens does not change this. Schmidtz can, if he likes, introduce a moral principle requiring persons faced by a tragedy of the commons to appropriate; but this is not the Proviso but another principle.

But this is not a major matter. Schmidtz is entirely right to identify a failing among many philosophers who defend equality. If equality matters, it does so as a means of improving the condition of those who are suffering. As Elizabeth Anderson, a noted egalitarian philosopher, puts the point:

recent egalitarian writing has come to be dominated by the view that the fundamental aim of equality is to compensate people for undeserved bad luck. . . . The proper negative aim of egalitarian justice is not to eliminate the impact of brute luck in human affairs, but to end oppression. (p. 115)

This is not, of course, to admit that promoting equality is in fact needed. Rather, the issue is what, if anything, could be a reason to support such a policy. Incredibly, some philosophers deny Schmidtz's point. Larry Temkin, e.g., criticizes "humanitarianism" because it ignores the badness of inequality *per se*. Equality, he thinks is required even if it does not make people better off.*

Even if private appropriation of property and inequality benefit people, can a critic of capitalism at least say that the rich do not deserve their wealth? If their wealth helps the rest of us, well and good; but this does not make them morally deserving of their wealth. Robert Nozick does not challenge egalitarians about moral desert; instead, he maintains that one can be entitled to something without deserving it. Schmidtz adopts a bolder course.

Why do egalitarians claim that the wealthy do not deserve their superior position? They may start with greater talent or opportunities than others, but have they not made good use of their initial endowments? To this, the egalitarian responds that they do not deserve the talents or superior resources that they have successfully used to their advantage.

* I am glad that Schmidtz attacks Temkin, since I also have criticized him over the same issue. See my review of Matthew Clayton and Andrew Williams, eds, *The Ideal of Equality* (St. Martin's Press, 2000) found in *An Austr-Libertarian View*, Volume 2, "Political Theory."

Schmidtz attacks with great force this notion of desert. According to the view he condemns, any element of luck in someone's achievement renders what he has done undeserving. But why accept so demanding a view? On it, no one could ever qualify as deserving anything, since some degree of luck enters every chain of causes. We should adopt instead a "nonvacuous conception of desert, [where] there will be inputs that a person can supply, and therefore fail to supply" (p. 36).

Schmidtz suggests it might be more useful to view desert as forward looking. If one is given an opportunity, why not ask, what can I now do that will make it the case that I have made good use of what I have on hand? If I do make good use of my opportunity, then in a defensible sense I deserve it. Another acceptable use of the concept is to ask, "What did I *do* to deserve this? . . . the question will have a real answer" (p. 38). If, however, the question is, "What did I do, at the moment of the Big Bang, to deserve this, the answer is, 'Nothing. So what?'" (p. 38). It is a consequence of Schmidtz's view, which I imagine that he would accept, that not all possessors of great wealth are deserving. A person who inherits an enormous sum of money and squanders some but not all of it would not count as deserving on either of Schmidtz's two acceptable uses of desert. But contrary to egalitarian dogma, many wealthy people will deserve what they have.

My only substantial disagreement with Schmidtz concerns the nature of moral theory. He maintains that any moral theory is necessarily tentative and incomplete:

Let us explore the idea that one way to see what a theory is, and what a theory can do, is to see a theory as a map. We begin with a terrain (a subject matter), and with questions about that terrain. Our questions spur us to build theories—maps of the terrain—that articulate and systematize our answers. . . . A map of Detroit is an artifact, an invention. So is a map of justice. In neither case does the terrain being mapped *really look like that*. . . . A map is not itself the reality. It is at best a serviceable representation. Moral theories likewise are more or less serviceable representations of a terrain. They cannot be more than that. (p. 21–22)

But why, in order to be perfectly accurate, must a claim about justice reproduce every detail of the "terrain" of justice? Schmidtz wrongly assumes

that every abstraction must to a degree distort reality. To say, e.g., “murder of the innocent is wrong” is a perfectly true statement, even though it gives us no details about the circumstances of particular murders.*

If I am right that Schmidtz’s view of moral theory is mistaken, then there is a happy consequence for his view about justice. It may turn out to be perfectly true.

* I have here greatly benefited from lectures by Roderick Long on precise and nonprecise abstraction. See, *inter alia*, his paper at the 2004 Austrian Scholars Conference, “Realism and Abstraction in Economics: Aristotle and Mises versus Friedman,” www.mises.org/asc/2004/long.pdf.

Frontiers of Justice: Disability, Nationality, Species Membership^{*}

MARTHA C. NUSSBAUM

The Welfare Mind Gone Mad

April 1, 2006, *Mises Review*

MARTHA NUSSBAUM'S *FRONTIERS OF JUSTICE* is one of the oddest books I have ever reviewed. Nussbaum is a well-known philosopher, and she raises some issues that are well worth our consideration; but in sections of the book, she has evidently taken leave of her senses. Her bizarre and mawkish view of justice toward animals brings to mind Charles Fourier's speculation that the world's oceans would turn to lemonade.

Nussbaum was a student of John Rawls, to whom the book is dedicated and whose philosophy she greatly esteems. She views his work as the highest development of the social contract tradition. But it suffers from fundamental mistakes.

In Rawls's system, people in the Original Position bargain behind a "veil of ignorance." They "do not know their own race, or class, or birth, or sex, or conception of the good. The informational restrictions are intended to model the moral impartiality that real people can attain if they work at it" (p. 57). What terms of social cooperation would people under these limitations agree

^{*} Harvard University Press, 2006.

on, if each person were motivated by self-interest? Rawls's answer includes the famous "difference principle": people would agree to only those inequalities that benefited the least well-off class in society.

Nussbaum subjects Rawls's standpoint to penetrating criticism. As she points out, his model of a social contract rests on several unexamined assumptions. Contrary to widespread belief, by the "worst-off class" Rawls does not mean the severely disabled. Quite the contrary, Rawls assumes that everyone in the Original Position will be productive. The entire point of the bargaining that takes place there is to arrive at a fair division of the gains from social cooperation. Mentally ill and disabled people cost more to care for than they add to society through what they produce. They are thus not parties to the original contract at all: aid to the handicapped is not, for Rawls, part of the basic structure of society. As David Gauthier, whose theory of justice emphasizes self-interested bargaining to an even greater extent than Rawls's does, puts the point:

The primary problem is care for the handicapped. Speaking euphemistically of enabling them to lead productive lives, when the services [of care] exceed any possible products, conceals an issue which, understandably, no one wants to face. (p. 96)

Nussbaum asks, why should we assume from the outset that justice is confined to what most benefits people trying to maximize what is in their self-interest? Should we rule out from the outset obligations to the unfortunate, adding in their welfare as an afterthought, when the principles of justice have been set without reference to them? Does not so momentous an assumption require some justification?

Rawls might counter that he does not rest his theory entirely on self-interest. Quite the contrary, the veil of ignorance is imposed to assure equality and impartiality. Is not Rawls here responding to the Kantian prescription that every person should be treated as an end in himself? He is no partisan of narrow self-interest.

Why then does he derive his principles of justice from asking what self-interested bargainers would agree on behind the veil? He might respond that he is trying to derive as much of the principles of justice as he can from assumptions that presuppose as few controversial moral beliefs as possible. If Rawls can derive justice from self-interest, is this not a great theoretical simplification?

In one of the best passages in the book, Nussbaum argues that the appeal to simplification fails:

[I]ncluding only self goal-directed motives and sentiments in the bargaining position may be simply a device to extract other-regarding results from a parsimonious starting point. Rawls omits benevolent motives for a related reason. But we should raise questions here. It is uncertain that this parsimonious starting point will even lead in the same direction as a more sympathetic and other-committed starting point. The pursuit of mutual advantage and the success of one's own projects is not less [an assumption] than a compassionate commitment to the welfare of all human beings; it is just different. (p. 35)

Rawls makes another controversial assumption in setting forward his theory of justice. He starts with a closed society, essentially equivalent to the modern nation-state. The difference principle covers inequalities only within one society. People in the United States, e.g., will be concerned with how the worst off class in this country may be made better off, not with how to maximize the prospects of the worst off in Bangladesh or Rwanda. Rawls has devoted attention to obligations between the people of different nations, but these are much less exacting than those that apply within a society.*

Nussbaum, as we might expect, asks for the justification of this restriction. Why is the application of the principles of justice confined to the citizens of one nation? (She also raises a question about restricting the principles of justice to human beings, but I shall for now postpone this issue.)

I must here reassure my readers. When I say that Nussbaum has raised good questions against Rawls, I do not intend to announce my conversion to the soppy socialism that she professes. I do not agree with her that justice obligates us to aid the disabled and the poor of our own society, let alone the poor of other nations. Rather, her valid point strikes at theories, like that of Rawls, that begin by assuming that all goods start off owned by "society." (Dan Usher has called this the primitive communism assumption.) Beginning from that

* See his *The Law of Peoples* (Harvard University Press, 1999) and my review found in Volume 2, "Political Theory." For an attempt to justify Rawls's non-global approach, appealing to his doctrine of "public reason," see Thomas Nagel, "The Problem of Global Justice" *Philosophy & Public Affairs* (April 2005).

assumption, the principles of justice assign these goods to individuals. Nussbaum appropriately asks, why should the members of “society” be limited to the non-disabled or the residents of one nation? Why should we not count everyone as a member of society?

Though her questions strike at the heart of social contract theories like that of Rawls, libertarian views of rights survive them intact. Libertarianism takes each person to have rights as an individual: it does not accept the primitive communism assumption. There is thus no question for libertarians of which people are to be admitted into “society,” for the purpose of distributing goods.

Nussbaum recognizes that John Locke, the key philosophical precursor of libertarian rights theories, did not derive all rights from the social contract. People in Locke’s state of nature already have rights:

Locke’s central concern is to establish that in the state of nature, that is to say, a hypothetical situation without political society, human beings are naturally “free, equal, and independent.” Free, in the sense that none is the natural ruler of any, and each is naturally entitled to rule himself; equal, in the sense that none is entitled to rule over the others . . . and independent in the sense that all are, as free, entitled to pursue their projects without being in a hierarchical relation with anyone else . . . moral reciprocity and the sentiments that undergird it do not need the social contract for their establishment. (pp. 41–43)

Contemporary libertarians have extended Locke’s view: in Murray Rothbard’s theory, e.g., there is no social contract at all, and land and natural resources, initially unowned, are available for acquisition by individuals acting separately. There is no point of entry for the questions Nussbaum addresses to Rawls. Rights are not limited to the citizens of a particular society, and disabled people have the same rights as everyone else.

Nussbaum does not use her objections to Rawls to move in a libertarian direction—far from it. She advocates a “capabilities” approach that she and the economist Amartya Sen have developed. She asks, what capabilities does a person need to have a good life? She proposes ten requirements, although she does not offer her list as final. A few of them are:

Being able to live to the end of a human life of normal length. . . .
Being able to have good health. . . . Being able to use the senses,

to imagine, think, and reason—and to do these things in a “truly human” way, a way informed and cultivated by an adequate education . . . [and] Being able to have attachments to things and people outside ourselves. (p. 76)

Every person, in her view, is entitled as a matter of right to all of these capabilities. “The capabilities approach is fully universal: the capabilities in question are held to be important for each and every citizen, in each and every nation, and each person is to be treated as an end” (p. 78).

Is this not a far-reaching and radical thesis? She means, e.g., that a severely retarded person who can benefit from education has the right to be provided with it. For those not able to attain all the capabilities, society should strive to give them “as many of the capabilities as possible directly; and where direct empowerment is not possible, society ought to . . . [give] the capabilities through a suitable arrangement of guardianship” (p. 193).

No doubt it is morally admirable to help the disabled; but why is this a matter of rights? Nussbaum’s view in effect makes the disabled, or their representatives, slave masters able forcibly to commandeer the labor and property of others. She sometimes recognizes that people, as ends in themselves, have a right to lead their own lives without being subject to unlimited demands from others; but she nowhere specifies the limits to the demands that the needs of the disabled impose on us.

Given the severely demanding nature of her claims, does she not face a formidable task? How exactly does she endeavor to show that we are obligated to provide her list of rights? Incredibly, she offers nothing at all, not even a bad argument, to justify her claim. Nowhere in her long book is there any attempt to show how “people need capabilities” entails “people have a right to be provided with these capabilities.” Evidently she takes the step to be intuitively obvious. She again and again says, e.g., that aid to the disabled is a matter of justice rather than charity; but she never tells us why this is so. Those who do not share her moral intuitions have been offered no reason whatever to revise their opinions.

Even on her own terms, her theory of justice is unacceptable. How can all of these capabilities be realized for every person in the world at the same time? What happens if suitable guardians are not available for all of the disabled? What is then to be done? She does say that one cannot trade one capability for another: if a single capability is unrealized, then society is to

that extent unjust. Given that it is extremely unlikely that every capability can be satisfied, we conclude that every society is unjust. This gives us no guidance at all in cases of conflict.

To those who care about liberty, the little that she does say about the practical application of her ideas is not encouraging. She terms the family a “political institution”; apparently it is to be coercively remodeled to meet her various agendas, feminist not least among them.

[T]he capabilities approach rejects the familiar liberal distinction between the private and the public spheres, regarding the family as a social and political institution that forms part of the basic structure of society. The distribution of resources and opportunities within the family thus becomes an object of intense concern. (p. 212)

Thankfully, she recognizes that “adult freedom of association” imposes some limits to state action: “it would not be acceptable for the state simply to mandate that husbands and wives divide care labor equally” (p. 212).

However unlibertarian her position, Nussbaum deserves praise on one important issue. Following Rawls, she rejects a world state:

Unlike domestic basic structures, a world state would be very unlikely to have a decent level of accountability to its citizens. It is just too vast an undertaking. . . . A world state would also be dangerous. If a nation becomes unjust, pressure from other nations may prevent it from committing heinous crimes. . . . If the world state should become unjust, there would be no corresponding recourse; the only hope would be rebellion from within. . . . * Moreover, even if these problems could be overcome, there is a deep moral problem with the idea of a world state, uniform in its institutions and requirements. National sovereignty . . . has moral importance, as a way people have of asserting their autonomy, their right to give themselves laws of their own making. (pp. 313–314)

I have so far been guilty of a grave injustice toward our author. I suggested that in parts of the book, she has taken leave of her senses; but I have said

* Does not an analogous argument give us reason to prefer competition in protection agencies to a single dominant agency?

nothing that supports so severe an indictment. At most, her theory is unlibertarian and confused; but this is hardly reason to classify her views as bizarre. She goes off the deep end when she reaches her last frontier of justice, species membership. Animals too have capabilities, albeit not identical with those of human beings. As one would by now expect, these capabilities imply rights: Nussbaum is nothing if not consistent in her resort to unsupported inference. We thus have not fully specified but vast duties toward animals.

Our question recurs: Nussbaum's views here may not commend themselves to libertarians, but why are they absurd? We at last reach the end of our quest when we consider her warning against "the danger of romanticizing nature" (p. 367). Following John Stuart Mill, she means by this the danger of viewing animals as naturally peaceful: "nature, far from being morally normative, is actually violent, heedless of moral norms, prodigal, full of conflict" (p. 367).

Incredibly, she proposes to reform nature:

What about intraspecies harms? . . . There are some harms that we can straightforwardly oppose and prevent, such as assaults on infants by parents, and harsh policies toward sick, disabled, or elderly species members. Whether among domestic animals or "in the wild" [!], human beings are obliged to prevent these abuses" (p. 399).

Animal competition and hierarchy pose more difficult issues: here "only the most egregious harms to weaker species members must be prevented, and other forms of hierarchy tolerated, though they will not be protected as central animal capacities (p. 399).

Nussbaum is not finished. Animals are also entitled to peaceful relations with

species not their own. . . . This capability . . . calls for the gradual formation of an interdependent world in which all species will enjoy cooperative and mutually supportive relations. Nature is not that way and never has been. So it calls, in a very general way, for the gradual supplanting of the natural by the just. (pp. 399–400)

Ironically, she here embraces an argument that Tibor Machan, in his excellent *Putting Humans First* (Rowman & Littlefield, 2004) used as a *reductio ad absurdum* against animal rights. He asked, if animals have rights, do we not have a duty to prevent animals from killing or assaulting each other? For Nussbaum, this is no absurdity at all.

Nussbaum uses her extensive knowledge of the history of philosophy to advantage; her remarks, e.g., on Grotius's view of property rights are illuminating. But about one historical point she goes amiss. She criticizes Rawls for thinking that his conception of political liberalism "is justifiable only within democracies that were seriously marked by the experience of the Reformation and the Wars of Religion: thus, perhaps not the Nordic countries" (p. 302). She appears to have forgotten, one hopes temporarily, that the Protestant Reformation spread to Scandinavia.

The book is written in a clear but plodding way, and Nussbaum repeats her main points again and again. She has not convinced me that we are morally required to exert ourselves to bring mentally retarded apes in Borneo up to their full capacity.

*The Economics and Ethics of Private Property: Studies in Political Economy and Philosophy (Second Edition)**

HANS-HERMANN HOPPE

The Hoppeian Way

July 1, 2006, *Mises Review*

HANS HOPPE is a thinker of striking originality, and this excellent collection of his essays is filled with arguments: it is, as my great teacher Walter Starkie used to say, “packed with matter.” I shall confine myself to a few of his points, but it would be an easy task to write several other reviews, each emphasizing completely different arguments.

Among libertarians, Hoppe is best known for his “argumentation ethics,” his endeavor to show that acceptance of the principle of self-ownership is a demand of reason. Some people have objected not only to the details of Hoppe’s argument but also to his entire project. The purpose of ethics, the objectors allege, is to guide action. If so, then a system of ethics must show why you have an interest in following its dictates. To motivate someone to do something, you must show that doing it is a means to his goals.

If this is right, then Hoppe’s ethics fails. He claims that if you deny that you own yourself, then you are enmeshed in a “performative contradiction”

* Ludwig von Mises Institute, 2006.

(p. 405; see also p. xii): your very assertion presupposes that you *do* own yourself. Suppose that he is correct. Cannot someone who wants to violate rights, e.g., a slave owner, respond by saying,

Why should it matter to me that I have fallen into a performative contradiction or, for that matter, an outright logical contradiction? You have not shown that doing so will interfere with my efforts to achieve my goals. Larry Arnhart is right: “Whenever a moral philosopher tells us that we ought to do something, we can always ask, Why? And ultimately the only final answer to this question is, Because it’s desirable for you as something that will fulfill you or make you happy.”*

To Hoppe, this objection misses the essential point. If it is rational to believe something, no room is left for a further question about why we ought to accept it. Hoppe, replying to Douglas Rasmussen, puts the issue in this way:

[Rasmussen] then asks me [Hoppe] in turn “So what? Why should an a priori proof of the libertarian property theory make any difference? Why not engage in aggression anyway?” Why indeed?! But then, why should the proof that $1 + 1 = 2$ make any difference? One can certainly act on the belief that $1 + 1 = 3$. The obvious answer is “because a prepositional justification exists for doing one thing, but not doing another.” But why should we be reasonable, is the next comeback. Again, the answer is obvious. For one, because it would be impossible to argue against it; and further, because the proponent raising the question would already affirm the use of reason in his act of questioning. (p. 407)

Hoppe rejects the view that ethics is goal oriented. Like Kant, he thinks that the demands of reason are categorical and not only hypothetical. He can thus sidestep altogether the vexed “is-ought problem.” No factual statement, it is claimed, implies a judgment of value. Does this not render ethics a mere matter of subjective preference? Hoppe responds in a radical way; “What I [Hoppe] offer is an entirely value-free system of ethics. I remain exclusively in the realm of is-statements and nowhere try to derive an ‘ought’ from an ‘is’” (p. 401).

* See his *Darwinian Conservatism* (Imprint-Academic, 2005).

If Hoppe is correct, we know the form of a system of ethics: it will consist of demands of reason, not hypothetical judgment that tell us how to get what we want. But what is the content of these demands? In Hoppe's view, ethics, more specifically political philosophy, resolves an essential question—it tells us how to settle conflicts over scarce goods:

The recognition of scarcity is not only the starting point for political economy; it is the starting point for political philosophy as well. Obviously, if there were a superabundance of goods, no economic problem whatsoever would exist . . . just as the answer to the problem of political economy must be formulated in terms of rules constraining the possible uses of resources qua scarce resources, political philosophy too must answer in terms of property rights. In order to avoid inescapable conflicts, it must formulate a set of rules assigning rights of exclusive control over scarce goods. (p. 333)

Ethics thus deals with objective matters of fact: how can conflicts over actual physical objects be rationally resolved? Your rights give you titles to items that are “out there” in the world. Definitions of freedom that confine the concept to the purely subjective must then be rejected. Hoppe uses this point against F. A. Hayek:

Hayek defines freedom as “a state in which each can use his own *knowledge* and for his own *purposes*,” and “coercion means such control of the environment or circumstances of a person by another that, in order to avoid greater evil, he is forced to act not according to a coherent plan of his own but to serve the *ends* of another. . . .” Clearly, Hayek's definition contains no reference to scarce goods and real tangible property, and provides no *physical* criterion or indicator whatsoever for the existence or nonexistence of either state of affairs. Rather coercion and freedom refer to specific configurations of subjective wills, plans, thoughts, or expectations. As *mental* predicates, Hayek's definitions of freedom are compatible with every *real*, physical state of affairs. (pp. 260–261, Emphasis in the quotation is Hoppe's.)

Hoppe's valuable criticism applies I think as well to Israel Kirzner's “coordination of plans,” if taken as a criterion of welfare. Such coordination refers

essentially to persons' subjective preferences and cannot be "cashed-out" in physical terms.*

Austrian economics and libertarianism are of course antithetical to Marxism; but with remarkable ingenuity, Hoppe takes over and puts to his own use crucial Marxist insights. According to Marx, there is under capitalism an inevitable tendency for monopoly to develop. The ruthless pressure of competition destroys small businesses until in each major industry, only a few firms remain. As this process goes on, capitalist employers subject workers to ever more severe exploitation.

But not even all this suffices to save the capitalist system from financial crises. To cope with these, the advanced capitalist economies resort to imperialist expansion. New markets permit further exploitation and provide expanded markets for capitalists to sell their goods.

Hoppe of course rejects all this, as applied to the free market. But Marx correctly saw that the state exploits people, though he missed the reason for this:

the basic proposition of the Marxist theory of the state in particular is false. The state is not exploitative because it protects the capitalists' property rights, but because it itself is exempt from the restriction of having to acquire property productively and contractually. (p. 130)

Once an exploitative state exists, variants of some of the main Marxist contentions become true. There is no inevitable tendency toward monopoly on the free market; but some businesses find it in their interests to join with the extractive state in seizing property from others:

Marxists are also correct in noticing the close association between the state and business, especially the banking elite—even though their explanation for it is faulty. . . . The more successful a business, the larger the potential danger of governmental exploitation, but the larger also the potential gains that can be achieved if it can come under government's special protection and is exempt from the full weight of capitalist competition. This is why the business establishment is interested in the state and its infiltration.

* See Israel Kirzner, *Discovery, Capitalism, and Distributive Justice* (Basil Blackwell, 1989) and my review in *Review of Austrian Economics*, Volume 5, Number 1.

The ruling elite in turn is interested in close cooperation with the business establishment because of its financial powers. (p. 132)

One aspect of this cooperation especially interests Hoppe, and from it he derives an ingenious theory of imperialism. (In doing so, he extends the views of Mises and Rothbard.) Money, as Menger and Mises proved, must arise as a commodity. But unfortunately, once banks arise, trouble develops. Bankers issue certificates for the commodity money deposited with them; these certificates, so long as people believe they can readily be redeemed for the deposited goods, function as money.

Here precisely is the source of trouble. Bankers realize that depositors will rarely all converge on a bank and demand their money. If a bank issues more certificates than it has commodity money on hand, it will rarely be “caught out.” Doing this generates profits for the bank, since it can lend the extra certificates at interest. Hoppe contends that banks that do this are guilty of counterfeiting: multiple certificates of title are issued for the same goods.

Bankers are anxious to extend the process in order to increase their profits. In addition, if they can coordinate all banks into a single system, they reduce the chances of being subject to a run on their reserves.

To do this, they must form an alliance with the coercive state. The state and the bankers unite to exploit the public. And the process does not stop at national borders. It is here that Hoppe finds the key to modern imperialism:

And a similarly straightforward yet once again entirely non-Marxist explanation exists for the observation always pointed out by Marxists that the banking and business establishment is usually among the most ardent supporters of military strength and imperial expansionism . . . from a position of military strength, it becomes possible to establish a system of . . . *monetary imperialism*. The dominating state will use its superior power to enforce a policy of internationally coordinated inflation. Its own central bank sets the pace in the process of counterfeiting, and the central banks of the dominated states are ordered to use its currency as their own reserves and inflate on top of them. (p. 135)

Naturally, each state would like to assume the dominant position. Which one will win the struggle for power? Hoppe offers a characteristically original answer. The free market far outstrips its interventionist and socialist

competitors; indeed, a socialist economy that could not rely on capitalist market prices would be unable to function at all. If so, then states that restrict the market less than their rivals will triumph in the battle for imperial hegemony.

Paradoxical as it might first seem, the more liberal a state is internally, the more likely it will engage in outward aggression. Internal liberalism makes a society richer; a richer society to extract from makes the state richer, and a richer state makes for more and more successful expansionist wars. (p. 102)

Do we not have here a succinct explanation for the triumph of the United States over Soviet Russia in the Cold War?

Hoppe's adaptation of Marxist insights should not lead us to suspect him of sympathy for that false doctrine. Quite the contrary, he expertly exposes its mistakes. His demolition of the Marxist theory of exploitation is especially valuable.

What, then, is his [Marx's] proof of the exploitative character of a clean capitalism? It consists in the observation that the factor prices, in particular the wages paid to laborers by the capitalist, are lower than the output prices. . . . What is wrong with this analysis? The answer becomes obvious, once it is asked why the laborer would possibly agree to such a deal! He agrees because his wage payment represents present goods—while his own labor services represent only future goods—and he values present goods more highly . . . what is wrong, then, with Marx's theory of exploitation is that he does not understand the phenomenon of time preference as a universal category of human action. (pp. 120–122)

Hoppe finds something of value in Marxism, but he shows no mercy to Keynes. Paul Samuelson and other disciples portray Keynes as a reformer, anxious to save capitalism from the vagaries of the business cycle. To Hoppe, he is a crackpot, in thrall to foolish dreams of unlimited abundance. Keynes believed that if

the supply of money is sufficiently increased, the interest rate supposedly can be brought down to zero. Keynes recognizes

that this would imply a superabundance of capital goods, and one would think that this realization should have given him cause to reconsider. (p. 163)

Far from reconsidering, Keynes held that there are “no intrinsic reasons for the scarcity of capital” (p. 163, quoting Keynes). But to bring about this paradisiacal condition, the state must take over control of investment from the market. Hoppe comments, “It is too obvious that these are the outpourings of someone who deserves to be called anything, except an economist” (p. 166). The essays in this book succeed in carving out a highly distinctive point of view, and anyone interested in a free society will find this book of great value.

*Leo Strauss and Emmanuel
Levinas: Philosophy and
the Politics of Revelation**

LEORA BATNITZKY

*Leo Strauss and the
Theologico-Political Problem*†

HEINRICH MEIER

What did Leo Strauss Believe About Politics?

October 1, 2006, *Mises Review*

CRITICS OF THE IRAQ WAR have sometimes claimed that neoconservatives who pressed for the war, and welcomed its onset, were in part inspired by the teaching of the political philosopher Leo Strauss. His students and defenders ridicule the claim. Strauss, they aver, though no doubt interested in contemporary events, had no political agenda. He was a scholar, studying the great questions *sine ira et studio*. Rather than

* Cambridge University Press, 2006.

† Cambridge University Press, 2006.

seeking to explain current events through silly Straussian conspiracies, we should learn what we can from his profound inquiries.*

Both Batnitzky and Meier regard Strauss as a major thinker, but reading their two books together shows how difficult it is to gain a clear grasp of his views. Both claim that Strauss saw the relation between philosophy and religion as a key problem, but each one has a completely different idea of what he had to say about it. Unfortunately, both books suffer from a common error, a near complete absence of philosophical argument. Strauss is treated as an oracle, and exegesis of texts becomes a substitute for reasoning.

Strauss is best known as defender of classical political philosophy, but our authors concur that another issue for him exceeded in importance the quarrel between the ancients and moderns. In the preface, written in 1965 to the German edition of his *The Political Philosophy of Hobbes*, Strauss said: “The theologico-political problem has since [the 1920s] remained *the* theme of my studies” (M, p. 4).

What is this problem? Strauss thought that “to be a [religious] Jew and a philosopher” is impossible: religion and philosophy both demand ultimate allegiance. Philosophy recognizes nothing higher than reason, but religion depends on a revelation by God to which reason must bow. If one must choose between them, is it not clear that Strauss chose philosophy? Batnitzky quotes a passage from an early review that strongly suggests he rejected religion:

In the age of atheism, the Jewish people can no longer base its existence on god [sic] but only itself alone, on its labor, its land, and its state . . . Political Zionism, wishing to radically ground itself, must ground itself in unbelief. (B, p. 142)

As if this were not enough evidence, his friend Gershom Scholem, the great historian of Jewish mysticism, who had tried to obtain for Strauss a job at the Hebrew University of Jerusalem, threw up his hands in exasperation:

Writing to Walter Benjamin in 1935, Scholem . . . wrote that he did not think the faculty of The Hebrew University would

* I do not claim to find a link between Strauss and American foreign policy; but some of Strauss's leading followers, such as Harry Jaffa, Harvey Mansfield, and Carnes Lord, advocate a strong central government, headed by a president of disturbingly great power. See my review of Lord, *The Modern Prince*, found in Volume 3, “Foreign Policy,” and of Jaffa, *A New Birth of Freedom*, found in Volume 3, “American History.”

“vote for an appointment of an atheist to a teaching position that serves to endorse the philosophy of religion.” (B, p. 182)

Batnitzky maintains that all this at best bears on Strauss’s personal choice between philosophy and religion. Much more important is his claim that philosophy cannot refute the possibility of religion. In making this claim, Strauss struck against the dangerous claims of ideology. “[T]he question about Strauss’s ‘own’ view of revelation skews the *philosophical* question that Strauss poses in regard to revelation. . . .” Recall, for instance, Strauss’s argument in *Natural Right and History* that:

Philosophy has to grant that revelation is possible. But to grant that revelation is possible is to grant that philosophy is perhaps not the one thing needful . . . or that philosophy suffers from a fatal weakness. (B, pp. 6–7, order of quotations reversed)

If philosophy cannot rule out by reason this rival claim to authority, then the pretensions of ideologists to total knowledge are demolished. The disciples of Marx, e.g., cannot claim that because they grasp the movement of History “with the inexorability of a law of nature,” they are fit to lead a worldwide revolution.

Batnitzky goes further. She claims that Strauss teaches that philosophy cannot by itself establish morality. It can reason about moral issues, but it must begin from law and tradition. And so far as universal morality is concerned, this can come only from revelation: “philosophy, for Strauss, can articulate a local morality, but not a universal one. Cain needs God to tell him that he is his brother’s keeper” (p. 26).

Accordingly, those who claim to find a natural-law morality in Strauss are grievously mistaken. Foremost among these is Harry Jaffa, and Batnitzky attacks him with great force. Jaffa, claiming to articulate Straussian insights, purports to locate a “principled ground for law” in the Declaration of Independence. Our author responds:

From Strauss’s point of view, the question is whether Americans still have *faith* in the principles of the Declaration, but this is because the Declaration does not present, to use Jaffa’s phrase, “a principled ground for law.” Strauss’s use of quotation marks for “truths to be self-evident” emphasizes, moreover, his notion that these “self-evident truths” are a matter of faith and not rational

fact. From the point of view of Strauss's thought, universal law for all peoples cannot be *grounded* rationally. Only revelation can provide this ground, but this ground remains a matter of faith, and not reasoned fact. (B, p. 138)

I hope that readers will forgive me a smile at this well-placed blow to a frequent target in these pages.

But Strauss did not view all theology with favor. If, to his mind, reason and revelation are irreconcilable claims to total truth, then he cannot countenance an influential view. The Scholastics, culminating in Thomas Aquinas, claimed that by argument they could show the rationality of religion. True enough, some doctrines, such as the Trinity, are knowable only through revelation; but at least the existence and principal attributes of God can be established by argument from premises not in doubt.

For all this, Strauss had no use: he viewed Scholasticism as not only false but dangerous. Much more to his liking was Averroism, which taught that philosophy and religion were competing truths.*

In contrast to the Islamic-Jewish world, Strauss claims, the melding of revelation and philosophy in medieval Christendom destroyed the meanings of both revelation and philosophy.[†] In a very important sense, Strauss seems to locate the invention of the possibility of an atheistic, secular society with Thomas Aquinas. . . . Strauss's contention is that because Christian scholasticism made philosophy the handmaiden of theology in its understanding of natural law, the Enlightenment, following Machiavelli's instrumentalization of philosophy, was eventually able to make theology the handmaiden of philosophy. Strauss maintains that in contrast to the medieval Christian scholastics, the profundity of the Jewish and Islamic medieval philosophers lies in their recognition that revelation and philosophy can neither be synthesized . . . nor can they refute

* Whether Strauss's view of Averroism is correct is highly controversial. Eric Voegelin took the same view, but some recent writers disagree. For a useful discussion, see Peter von Sivers, Editor's Note in Eric Voegelin, *History of Political Ideas, Volume II: The Middle Ages to Aquinas* (University of Missouri Press, 1997), pp. 195–197.

† Batnitzky makes an error of usage that is one of my pet peeves. To “meld” means “to display cards in a certain sequence,” not “to blend or mix things.”

one another. Revelation and philosophy are therefore incommensurable. (B, p. 122)

Batnitzky looks at Strauss from the perspective of her own field, Jewish philosophy; and she can often see influences that scholars outside of her specialty have neglected. She contends, e.g., that Strauss responded to, and extended, the thought of Franz Rosenzweig, one of the most influential twentieth-century Jewish thinkers.* Rosenzweig, like Strauss, stressed the radical challenge that the “wholly other” God poses to philosophy. Strauss, she thinks, not only accepted Rosenzweig’s thesis but thought he had not gone far enough: Rosenzweig had not fully broken from the assumptions of historicism about how to read ancient texts. But both thinkers were at one in their challenge to Hermann Cohen’s monumental attempt to rationalize the Jewish religion. (She misses, though, the parallel between Strauss’s attack on the scholastics and Karl Barth’s excoriation of the scholastic “analogy of being” as Satanic. Meier notes Barth’s influence on Strauss but does not discuss it in any detail [M, p. 4]).

Batnitzky does not write only as a historian of ideas. She thinks that Jewish philosophy ought to adopt Strauss’s emphasis on the polarity between reason and revelation. She contrasts Strauss with Emmanuel Levinas, a much more influential thinker in the circle for which she writes. (Those interested can readily find, e.g., learned essays about the extent to which Derrida was a Levinasian, among other vital topics.) He frequently wrote on Jewish themes, and he is normally taken to be a much more religious thinker than the atheist Strauss. But she maintains that Levinas reduces religion to philosophy, while Strauss maintains a productive tension between them.

Here exactly lies the problem. One might be tempted to proceed by asking, are Strauss and Batnitzky right that if philosophers keep in mind that they cannot refute religion, they will avoid ideological distortion? But this would be a mistake. She has not given us any reason to think that reason either can or cannot refute the possibility of revelation. She merely tells us that Strauss thought so. What were his arguments? As Ayn Rand was wont to say, “Blankout.” (Meier has reprinted a lecture of Strauss on the topic [M, pp. 141–180]. In like fashion, she tells us what Strauss says about Aquinas but gives us no reason to think that what he says is true.

* Batnitzky is the author of a well-received book on Rosenzweig, *Ideology and Representation* (Princeton University Press, 2000).

Oddly, she herself remarks, “None of this [her account of the reason-revelation polarity] is to argue, however, that Strauss’s positions are the correct ones, or even adequate to the criteria he posits” (p. 205). Her “response” is that although Strauss begs essential questions, leaving the relation between present and past thought unresolved is Strauss’s “strength as a thinker” (B, p. 208). She appears completely unaware of what it means to argue for a philosophical proposition.

Is she right, though, that Strauss believed that reason cannot refute revelation? Certainly, he said just that; but Meier plausibly suggests that this was not Strauss’s final position. Strauss makes some odd remarks about the prophets: he appears to reduce religious prophecies to politics.

Avicenna’s statement that the treatment of prophecy and divine law is contained in Plato’s *Laws* disclosed to Strauss a new access not only to the medieval philosophers Alfarabi, Averroes, and Maimonides but also to Plato. . . . The Arabic philosophers and Maimonides followed Plato when they grasped the divine law, providence, and the prophet as objects of politics; they relied on the *Laws* when they treated the teaching of revelation, the doctrine of particular providence, and prophetology as parts of political science (and not at all of metaphysics). . . . Strauss can speak of our grasping in Plato the “unbelieving, philosophical grounding of faith in revelation in its origin.” (M, p. 12)

Strauss elaborated his views with a detailed genealogy of the origin of faith in revelation. I shall spare readers the details, but the gist of it is that revelation is the “radical extension” of belief in the ancestral laws [M, pp. 32–33]. The key issue, then, in determining Strauss’s position is what he has in mind by revelation. He responds to the Bible through one of his legendary esoteric readings: for him its message does not come from a supernatural God. It is instead a political discourse.* But what of his claim that reason cannot refute revelation? So long as revelation is evacuated of its non-political content, this claim reduces for him to a bare skeptical possibility. It is no more a “live option” than Bertrand Russell’s claim that we cannot prove that the universe, with all our present memories, was not created a few minutes ago.

* I offer a similar analysis of Strauss on religion in my article “Jaffa on Equality, Morality, Democracy” in this volume.

Meier takes Strauss's genealogy very seriously; he does not appreciate that as it stands it is a mere unsupported hypothesis. His book has some valuable discussions, e.g., his account of Strauss's claim that Heidegger worshipped death and his comparison of Strauss's political philosophy with the political theology of Carl Schmitt. Schmitt's thought reverses Strauss. Strauss reduced theology to philosophy, but for Schmitt the concepts of political philosophy are secularized theological concepts. But no more than Batnitzky does Meier have any idea of the nature of philosophical argument. He writes portentously and devotes great pains to teasing out the nuances of Strauss's language. But for him too, the mere statement of a striking hypothesis suffices.

I do not mean to suggest that Strauss himself has no arguments on offer. Quite the contrary, he sometimes presents very good ones, e.g., his argument in *Natural Right and History* from ordinary language against the fact-value distinction. (His discussion anticipates a famous article by Philippa Foot. Mises, anticipating in his turn R. M. Hare's response to Foot, criticizes Strauss in *Theory and History*.) But if we are to get anywhere in evaluating his thought, his followers must set out in detail his claims and offer defenses of them. And what of the political implications of Strauss's thought? These I hope to address on another occasion.

*Norms of Liberty: A Perfectionist Basis for Non-Perfectionist Politics**

DOUGLAS B. RASMUSSEN & DOUGLAS J. DEN UYL

The Case for a Robust Ethics of Freedom

October 1, 2006, *Mises Review*

THIS REMARKABLE BOOK is a sustained attempt to solve what its authors term “liberalism’s problem.” In a liberal society, people are free to live as they wish, so long as they do not violate the rights of others. There is no “official truth,” whether religious or secular, that prescribes for people the content of a good life. (The authors are classical liberals rather than adherents of the modern leftist distortion of liberalism; but the problem that concerns them is not confined to classical liberalism.)

But without a fixed conception of the good, what basis is there for a legal system at all? Will not people favor different political arrangements, depending on their views of a good life? The residents of an Amish community, if asked to devise an ideal political system, will probably not reach the identical solution to that of MIT’s Department of Political Science. Are there some political principles that people ought to accept, regardless of their views of the good? What moral force do these principles have? Will not any political

* Pennsylvania State University Press, 2005.

solution inevitably favor some conceptions of the good over others? If so, the idea of a liberal society cannot be realized.

An influential response to this set of problems reasons in this way: Each person in a society has various desires and interests that he seeks to realize. Almost all these desires and interests require social cooperation to achieve. It is precisely the task of ethics to determine the rules under which social cooperation take place. In contrast to desires and interests, which differ among individuals, the rules bind everyone. With this view of things, we appear well on the way to solving the problem of liberalism: we need only come up with a minimal set of rules that everyone will have reason to accept. (Jan Narveson and James Buchanan are influential supporters of this approach.)

Rasmussen and Den Uyl are not satisfied. The view just canvassed confines ethics to rules that apply to everyone. Questions about the good life have no objective answers: here mere preferences reign supreme. In brief, the right is prior to the good:

The general tendency has been to consider the good as essentially privatized and the right as universalized. The good . . . has come to be regarded as the object of one's own interest, the object of one's desires, or those things one regards as beneficial. It is said to stand in contrast to what one may do with any right. What one may do by right is what is allowed to, or demanded of, or required by, all agents equally and universally . . . there is an inevitable tendency in the distinction between the good and the right to deprecate the moral nature of the good to the enhancement of the right. In other words, what is impartial and universal tends to take precedence over goods, which are, almost by definition now, partial and particular. (pp. 22, 26)

They defend instead an Aristotelian view. The good for a person does not consist of his whims and desires, whatever they may be—far from it. Rather, each person has a natural end or function: his leading a flourishing life. This view, which they term perfectionism, “holds that *eudaimonia* [happiness or flourishing] is the ultimate good or value and that virtue ought to characterize how human beings conduct their lives” (p. 111).

Does not a problem at once threaten them? They deny that the good life reduces without remainder to preferences: the good is objective. Yet they also favor a political system in which people are free to act as they please,

so long as they do not initiate or threaten force or fraud. But are there not many actions that fall within these bounds that an objective ethics would condemn? Suppose that I spend most of my days drinking myself into a stupor. I threaten no one with force, but surely I am not living in accord with my Aristotelian natural end. I am doing what is objectively wrong; how then can I have a right to do it?

Many supporters of natural law view matters exactly as these questions suggest. There can be no right to violate the demands of morality. Thus, Heinrich Rommen, a distinguished historian of natural law, remarked that rights are: “the sphere of right that is ‘given’ with the nature of a person” (p. 64). Your rights are defined by your duties, and there cannot be a “right” to do what is wrong.

The authors answer with their key thesis: The mandates of personal ethics do not directly determine the nature of political arrangements. Liberalism is not

a “normative political philosophy” in the usual sense. It is rather a political philosophy of metanorms. It seeks not to guide individual conduct in moral activity, but rather to regulate conduct so that conditions might be obtained where moral action can take place. To contrast liberalism directly with alternative ethical systems or values is, therefore, something of a category mistake. (p. 34)

The combination of an objective personal ethics with a political system of freedom is, then, logically consistent. But why should we adopt it? Why not, rather, enact a political system whose metanorms require that people conform to their objective end?

The authors’ version of ethics excludes this suggestion. They embrace “individualistic perfectionism.” There is no fixed pattern to which every individual, in his pursuit of *eudaimonia*, must conform. Rather,

the generic goods and virtues that constitute human flourishing only become actual, determinate, and valuable realities when they are given particular form by the choices of flesh-and-blood persons. The importance or value of these goods and virtues is rooted in factors that are unique to each person, for it is not the universal as such that is valuable. . . . Human flourishing is not simply achieved and enjoyed by individuals, but it is individualized. (pp. 132–133)

But does this point require a liberal political order? What if someone claims to know the individualized good of someone better than he does himself? Can he be forced to pursue what is best for him? As usual, the authors have thought of this objection. They hold that only freely chosen activities count as part of the good life:

From this Aristotelian perspective, human flourishing must be attained through an individual's own efforts and cannot be the result of factors that are beyond his or her control. . . . The good must, in a central way, be *made* one's own. (p. 86)

Rasmussen and Den Uyl, then, have given us a revolutionary proposal. They wish to mix ancient personal ethics with modern liberalism. They thus fly in the face of Alasdair MacIntyre, who indicts liberalism as a form of subjectivism and relativism. But if their proposal is unusual, they can appeal to a great predecessor. Spinoza embraced exactly the same mixture:

Spinoza understood not only that the scope of morality was wider and deeper than the scope of politics, but also that politics was not suited to the production of virtue. He understood these principles from a framework that includes a very robust ethics, that is, an ethics that does not reduce moral excellence to some form of social cooperation, as most liberal theorists do. (pp. 44–45; see also the chart on p. 14)

I do not think it is altogether a coincidence that Den Uyl is one of the world's leading authorities on Spinoza's political philosophy.

Have our authors solved the problem of liberalism? They anticipate and respond to a series of objections; but with my usual stubbornness and ill will, I am not convinced. The key to their proposal is that the metanorms are not part of personal morality. They are not part of flourishing; they form the framework within which people try to flourish. Yet they cannot be divorced from ethics altogether:

Human flourishing reveals the need for an ethical principle that will provide the basis for the overall structure of society compatible with the individualized, social, and self-directed character of human flourishing. This is another type or category of ethical principle, since it is not concerned with the issue of flourishing directly. (p. 287)

Very good; but all we have been told so far is that the metanorms' type of obligation is not part of a certain category. We have not been given any reason to think that the metanorms obligate at all. It might be answered that it is my interest to live in a society that follows the metanorms, but how do we get from interest to obligation? Further, no doubt it is in my interest that the rules of society permit me to flourish; but why is it in my interest to support a society in which everyone can flourish? Why should I not instead support a society in which only people who adopt my values are free to flourish?

I can clarify these objections with the aid of a very helpful analogy the authors use to explain their position. To distinguish between the normative and metanormative, they invoke baseball: "to say that one obeys the rule of a baseball game while playing is quite different from saying one is a good player or even that one understands what it takes to play well" (p. 288). But while it makes no sense to say that someone, apart from playing baseball, is a good pitcher or hitter, it does make sense to say that someone can flourish outside of a particular metanormative framework. The authors have shown neither that we are obligated to play the metanormative game nor that, even if we must accept some metanormative framework, it must be theirs.

Perhaps the obligatory force of the metanorms does not rest on anything else: we are just supposed to grasp immediately that these metanorms bind us. I have no objection to moral intuitions, quite the contrary; but I do not see how they fit in with the rest of the authors' moral theory. And if one allows such intuitions, then one of their main objections to views that take respecting everyone's right of self-ownership as a basic principle applies to their own position. Our authors object to such views that

our intuitions give us *two* equally compelling moral bedrocks: an intuition about there being duty-like (deontic) behavior, on the one hand, and intuitions that reflect on the moral propriety of the pursuit of ends, on the other. Neither one of these is compelling a priori, or at least so in all cases. (p. 219)

If intuitions about the imperative force of metanorms are allowed, Rasmussen and Den Uyl are no better off.*

* I am not sure whether the authors intend this objection to apply to the views of Murray Rothbard. In fact, it does not, since he does not suggest that we can pursue ends that violate the self-ownership rights of others. Where then is the "conflict" in his system?

But enough of criticism. I shall end by calling attention to an excellent point the authors make about property rights. They think that “Locke was mistaken in his contention that God or nature has given mankind a stock of objects (in common or otherwise) from which we must devise a set of rules for just distribution” (p. 98). Instead, they say, property is the material expression of action. The right to property then follows from the right to freedom of action. This is but one of many insights in this outstanding work. Also, it is a beautifully organized book: the structured presentation of the argument is carried through in the best Scholastic tradition. It is a work of classic stature that everyone interested in political philosophy needs to study.

The Ethics of War: Shared Problems in Different Traditions^{*}

Edited by
RICHARD SORABJI & DAVID RODIN

“Preventive War and the Killing of the Innocent”[†]

JEFF MCMAHAN

There is No Justice in Preventive War

October 1, 2006, *Mises Review*

JEFF MCMAHAN'S SUBTLE ARTICLE is an outstanding account of the morality of preventive war, and not incidentally a sharp condemnation of the Iraq War. McMahan cites a revealing statement from Vice President Cheney in October 2003:

some claim that we should not have acted because the threat from Saddam Hussein was not imminent. Since when have terrorists and tyrants announced their intentions, politely putting us on notice before they strike? (p. 171)

^{*} Ashgate, 2006.

[†] pp. 169–190.

McMahan points out that Cheney here concedes that Iraq posed no imminent threat, but takes this to be irrelevant. If the threat was not imminent, then the American invasion was a preventive war. And this is illegal under international law.

But should it always be illegal? Does morality sometimes permit preventive wars? In the Iraq case, there was no reason to believe that Saddam had WMD, much less that he proposed to use them against us. But suppose that there had been very good evidence for these things. Is it then so obvious that a preventive war would have been morally wrong?

In response, McMahan points out that

justifications for preventive war as they are actually asserted tend to be overly permissive in their implications . . . when the Bush administration sought to justify the second Iraq War . . . it appealed primarily to three claims: that Iraq possessed weapons of mass destruction, that it had a recent history of aggressive war, and that it had indulged in bellicose rhetoric directed against the USA. But . . . all of these claims were also true, *mutatis mutandis*, of the USA itself, with the Bush administration particularly noisy in issuing threats against Iraq, Iran, and North Korea. But no one in the administration would have conceded that any of these countries had a right to attack the USA in preventive self-defence. (p. 174)

Even if there are permissible cases of preventive war, then, it is difficult to come up with clear criteria that do not “justify” too much. And there is a further problem. Each nation considers its own actions morally justified: the American government, e.g., never thinks that it makes unjust threats to others, although much of the rest of the world would disagree. Is it not likely, then, that even if clear and consistent criteria for permissible just wars were formulated, they would in practice be misapplied?

Acknowledgement of the permissibility of preventive war would, in practice, as Michael Walzer has argued, be likely to encourage the initiation of wars wrongly believed or claimed to be necessary for national self-defence. (p. 175)

The problems with preventive war go deeper. “According to the traditional theory of the just war, what makes a person non-innocent, or morally

liable to attack in war, is *actively posing a threat to others*" (p. 178). So long as soldiers of an "enemy" nation do not attack us or prepare to attack, they count as innocent. The just war criteria do not allow "speculative" attacks on people, because of surmises that they will in future pose a danger.

Stated in more general terms, the central objection to preventive war is that it is necessarily *indiscriminate*—that is, it is war waged in the absence of legitimate targets . . . if it is right that preventive war, of its nature, targets those who have as yet done nothing to make themselves liable to attack, it follows . . . that prevention of future aggression cannot be a just cause for war. (p. 178)

McMahan does not stop here. He is a consequentialist and rejects the traditional theory. His own approach is more permissive: it allows preventive war under certain conditions. I think that he has adopted a mistaken moral theory; but for our purposes his mistake is fortunate. Even on his more permissive view, it turns out that in practice preventive wars are almost invariably ruled out.

I shall not attempt to summarize his characteristically ingenious thought experiments. In sum and substance, he concludes from them that if you know that someone intends to attack you, you may act against him even before he has done anything to implement his plan.

I [McMahan] believe . . . that the mere formation and retention of a certain intention—both of which are *mental* acts—can be a sufficient basis for moral liability to preventive action. (p. 184)

McMahan here opens a door he immediately proceeds to close. We can in practice rarely if ever have sufficient certainty about someone's intention to justify preventive action:

because intentions are private and not directly accessible to others, the evidence for the presence of a wrongful intention is *almost always* insufficiently conclusive to provide an adequate basis for preventive action. If we possessed an *intentionometer* that would infallibly detect other people's intentions and gauge their strength, the moral and legal status of preventive defence would be profoundly different. (p. 185)

But not even this would be enough to justify preventive war. Suppose that we infallibly knew that the leader of an enemy nation secretly intended to attack us six months from now. He has so far, though, given no orders for aggressive action. We could not justifiably attack his forces, since they have neither done nor intended any harm to us. It would not be a good answer to this that the soldiers will be likely to obey orders from him to attack us.

Virtually all soldiers at all times have been strongly disposed to obey orders to go to war irrespective of whether the war has been just or unjust. Indeed, as Stanley Milgram's experiments in the 1960s showed, most *people* are strongly disposed to obey an order to inflict unjust harm on others, provided the order is issued by someone they perceive to be a legitimate authority. We should not conclude that most people are therefore liable to preventive defence. (p. 187)

The Rise and Fall of Society^{*}

FRANK CHODOROV

The State is a Predator

June 4, 2007, *Mises Daily*

FRANK CHODOROV'S WORK comes with a high recommendation. Murray Rothbard considered Chodorov a thinker of exceptional merit and credited him as a key influence in his own embrace of full libertarianism. He said:

I will never forget the profound thrill—a thrill of intellectual liberation—that ran through me when I first encountered the name of Frank Chodorov. . . . As a young graduate student in economics, I had always believed in the free market, and had become increasingly libertarian over the years, but this sentiment was as nothing to the headline that burst forth in the title of a pamphlet that I chanced upon in the university bookstore: *Taxation Is Robbery* by Frank Chodorov. There it was; simple perhaps, yet how many of us, let alone how many professors of the economics of taxation, had ever given utterance to this shattering and demolishing truth? Frank was always like that.

Readers of *The Rise and Fall of Society* will have little difficulty in grasping the reasons for Rothbard's esteem. The book is a penetrating analysis of the structure of world history. Chodorov uses a basic principle of economics to provide what a philosopher of a very different stripe, John Macmurray, called "the clue to history."

* Devin-Adair, 1959.

In order to survive, human beings must labor, but labor is onerous: to the extent that we can do so, we prefer to avoid labor. Chodorov of course recognizes that some people engage in activities that they enjoy for their own sake, but this is not the usual case. “In the sweat of thy face shalt thou eat bread” (*Genesis* 3:19). Mises recognized the same principle, calling it the “disutility of labor.”

How can people get what they want, given their unwillingness to labor? Chodorov once more calls attention to the obvious. People find it much easier to achieve their desires by exchanges with others than by a futile effort to produce everything they want by themselves. In this fact Chodorov finds the glue that holds society together. It is not necessary to postulate a social instinct to explain why society exists. The principle that we wish to attain our desires with the least effort possible suffices.

The advantages of trade have achieved nearly universal recognition. Chodorov, citing the German sociologist Franz Oppenheimer, notes that

in ancient times, on days designated as holy, the marketplace and its approaches were held inviolable even by professional robbers; in fact, stepping out of character, these robbers acted as policemen for the trade routes, seeing that merchants and caravans were not molested. Why? Because they had accumulated a superfluity of loot of one kind, more than they could consume, and the easiest way of transmuting it into other satisfactions was through trade. (*Rise and Fall*, p. 49)

With remarkable insight, Chodorov refutes in advance a now popular attack on the free market. Some economists, in particular Robert H. Frank and Sir Richard Layard, claim that contemporary capitalism, with its stress on ever greater consumption, does not make people “really” happy. People quickly adjust to whatever new level of consumption they attain, and growth in productivity leads to no permanent gain in happiness. Chodorov makes a penetrating observation that casts doubt on this whole line of analysis. If people wish to satisfy their wants with the least labor possible, will they not find gratifying the knowledge that a rise in production has enabled them to achieve more goods in fewer hours?

The value the individual puts on himself is measured in terms of the labor he must put out to satisfy his desires. His ego expands

or contracts in proportion to the labor cost of his living. . . . That being so, an economy so managed as to provide a general abundance, an economy of plenty, must improve the self-esteem or morale of those who enjoy it, while an economy of scarcity has the opposite effect. (pp. 27–28)

Happiness and the free market have more to do with each other than our sophisticated skeptics imagine.

Because it is the institutional setting in which people engage in trade, society is thus essential for human welfare; but here we must avoid a fatal mistake. Construed in Chodorov's fashion, society consists solely of individuals who engage in exchanges to their common benefit. It is not an independent entity, with a will and purpose of its own. Chodorov phrases this fact in a picturesque way: "society are people."

Once stated, Chodorov's point appears obvious. How can anyone seriously deny it, affirming by contrast a group mind with thoughts and intentions of its own? However apparent the mistake, promulgating it has been in certain persons' interests; and the myth of society as a thing apart has persisted. People, it is alleged, must sacrifice themselves for the good of society.

But who determines this good? If, in fact, there is no group mind, then it is particular persons who allege to others that they must do as "society" dictates. These people follow Chodorov's principle of least effort. They too wish to attain their desires with as little effort as possible, but they do so in a way that, unlike peaceful trade, is harmful. Rather than engage in mutually beneficial exchange, these predators endeavor to get others to give them something for nothing. And behind their mystification of "society" lies brute force.

The myth of a society that exists apart from the individuals who compose it is an ideological tool of the State, which Chodorov, like his mentor and friend Albert Jay Nock, viewed as an instrument of predation. Society does not need the State. Quite the contrary, the State is parasitic on social cooperation. Predators seize the chance to grab for themselves what others have peacefully produced. At first, predatory raids are sporadic; but intelligent predators soon realize that they can entrench their theft on a permanent basis and the State is born.

Chodorov appeals to the Bible to illustrate his thesis. The Israelites after the Exodus from Egypt had no king; they relied on judges and prophets to settle disputes and guide them but had no settled coercive institution that stood

over them. “The significant feature of the rule of the Judges is that it lacked the power of coercion” (p. 90). The people later asked for a king, so they could be like other nations. In response, the prophet Samuel clearly indicated that he thought their request foolish, though he eventually granted it.

Chodorov finds another illustration of his view of the State in the Bible. If the State is organized predation, taxes are its essential activity.

But, as to taxation, we learn nothing until we come to 2 Chronicles (Chapter 10), which deals with the installation of his [Solomon’s] son Rehoboam. There it is told that “all Israel” pleaded with him thus: “Thy father made our yoke grievous.” . . . The designation of taxation as a yoke is a nice piece of biblical directness. A yoke is worn by an ox, a beast of burden, which is by nature incapable of claiming a property right in the product of its labors. (pp. 96–98)

Taxation is far from the only evil that the predatory State imposes on its victims. War is among the most frequent activities of the State. If the State exists for predation, will it not be natural for it to extend its dominion in order to increase what it can extract? Other States will of course not readily surrender their favored position and armed conflict almost always ensues.

During a war, the demands of the State on its citizens grow beyond what is customary in peacetime. Taxes rise, as civilians are exhorted to sacrifice everything to preserve the State; and civil liberties usually are suspended for the duration of the war. Chodorov, here anticipating the classic analysis of Robert Higgs in his *Crisis and Leviathan*, points out that when a war ends, freedom is almost never restored to its pre-war level. The power of the State continually tends to grow.

To Chodorov’s argument, the conventional wisdom will respond with an objection. Is Chodorov right that the State is exclusively predatory? Does not any large society need a system of laws that defines people’s rights and duties and, further, an agency to enforce these laws and judge disputes about them? Our author acknowledges this; but he terms the agency that enforces laws government rather than the State. Here he makes much more than a semantic distinction. His point is that the members of society can handle the necessary functions of administration informally, without a permanent, independent, and oppressive institution, the State.

It is easy to make this distinction, but can it be sustained in practice? Will not governmental arrangements, however informal, tend inevitably to grow

into an oppressive State? People who specialize in the functions of government will quickly come to acquire an interest in maintaining and enhancing their own power.

Chodorov, no easy optimist, does not deny this trend, but he ventures to hope that an alert and informed citizenry can successfully combat it. To do so, the principal tool of the State, taxation, must be drastically curtailed. Chodorov suggests that taxes should never be granted permanently but rather be levied on a case-by-case basis as the members of society, not the government, determine. And of course an income tax is out altogether. (Another of Chodorov's books was *The Income Tax: Root of All Evil*. This book, by the way, was one of the first libertarian works that I read.) Further, the government must be small and decentralized; this will make it easier for people to prevent it from overstepping its limits. Chodorov's foremost disciple, Murray Rothbard, at one point deepened his mentor's analysis. Why need there be taxation at all? Competing protection agencies can raise the money to operate through the sale of their services, just like any other business.

Chodorov refused to exempt democracies from his indictment. To the contrary, the claim that the State represents the will of the people is an ideological instrument to enhance the State's power, not to limit it. Those enamored of power falsely argue that since they are instruments of the people, there is no need to restrict them with constitutional restraints. Whatever they may allege, they are in fact seekers of power for themselves.

Chodorov here once again displays his ability to anticipate future scholarship. He offers a "public choice" account of democracy that anticipates the main conclusions of the Virginia School.

A more impelling reason for the attenuation of social power is the splintering of its homogeneity as population grows; group interests replace the common interest and the politician finds himself under a variety of pressures. . . . Group pressures, rather than social sanctions, chart his course, and his problem is the selection of allies. . . . His release from the social sanctions of the small community make of him an entrepreneur in power. (pp. 138–139)

Chodorov's brilliant assessment of the State is a vital contribution both to historical understanding and to the defense of liberty.

Morality and Political Violence^{*}

C. A. J. COADY

When Is Violence Justified?

April 15, 2008, *Mises Daily*

PROFESSOR COADY IS BEST KNOWN for a book on the epistemology of testimony, *Testimony: A Philosophical Study* (Oxford University Press, 1992); but he has also established a well-deserved reputation as an authority on the just-war tradition. In *Morality and Political Violence*, he has produced a major work, characterized by an abundance of good sense and acute argument.

Critics of the Iraq War often claim that President Bush lacked a just cause for initiating war. Even if one accepted as true the mendacious claims that Saddam Hussein had WMD in his possession, by no means did his regime constitute an imminent threat to the United States. A poor country, subjected to years of bombing and sanctions, was hardly in a position to imperil the only superpower.

Against this, defenders of the war, such as George Weigel, James Turner Johnson, and Edward Feser,[†] have claimed that the criticism just presented misrepresents the just-war tradition. True enough, they say, a dominant modern day position limits just wars to wars of self-defense. By no means, though, did St. Augustine and his medieval successors, St. Thomas foremost

^{*} Cambridge University Press, 2007.

[†] See my review of George Weigel, Faith, Reason, and the War Against Jihadism: *A Call to Action* found in Volume 3, "Foreign Policy."

among them, confine legitimate war in this fashion. Quite the contrary, wars to redress injustice were fully legitimate. If so, was there not a case to be made for liberating the Iraqi people from Saddam's tyranny?*

Coady subjects this position to sharp criticism. He acknowledges that the medieval writers countenanced some nondefensive wars as just.

The medieval theory is restrictive—the prince cannot wage war as he pleases nor conduct it as he likes—but the medievals envisaged legitimate causes for military intervention other than self-defence, which is what the modern idea of outlawing 'aggression' amounts to. (p. 58)

But it does not follow from this that modern "humanitarian" intervention would be allowed by the older doctrine. Jonathan Barnes, a well-known historian of philosophy,

replies that the letter of the theory appears to countenance this [type of intervention] but that the spirit is against it; and he quotes Suárez approvingly as saying, "what some assert that sovereign kings have power to punish over the whole world is altogether false, and confounds all order and distinction of jurisdictions." (p. 59)

Coady is not satisfied: perhaps Suárez made the medieval requirements more stringent.

It is possible to argue, however, that by the time of the Spanish theologians Suárez and Vitoria, the spirit of the theory had begun to change quite a bit, in part under their influence. . . . Indeed, it is a plausible hypothesis that . . . [with some exceptions] the evolution of just war theory has been towards a more and more prohibitive attitude toward war. The current ban on "aggressive war" can be seen, I think, for all its obscurity, to be the outcome of such a development. (pp. 59–60)

The question then arises, is this evolution to a restrictive view desirable, or ought we, as Weigel, Johnson, and Feser wish, to return to the laxer

* I do not mean to suggest that these writers think that the Iraq War can be justified only on humanitarian grounds. The Saddam Hussein regime meets their criteria for a threat to the United States as well.

view held in the early Middle Ages? Coady has little doubt on how we should respond. The entire just-war tradition presupposes that given the death, suffering, and injury necessarily involved in war, not to mention the near certainty that grave moral sins will be committed during the fighting, the occasions for war must be drastically limited. To allow “humanitarian” interventions, except perhaps in the clearest and most severe cases, would open the door to continual wars. The danger would be all the more serious, given the propensity of governments to mask aggressive wars in moralistic rhetoric. If, by contrast, one allows only wars in self-defense to be legitimate (again, with perhaps a few exceptions), then there is a much better chance to limit war.

Remember the starting point of just war theory: there is a presumption against the moral validity of resort to war given what we know of the history of warfare, of the vast devastation it causes (nowadays even more so) and the dubious motives that have so often fuelled it . . . the evils of war are so great that restricting it to cases where the justification for lethal violence is obvious and overwhelming is likely to have much better consequences than allowing a wider range of justifications that can easily be open to misinterpretation and abuse. (pp. 73–74)

Coady deals effectively with an objection to his position. He here supports a rule in part because adopting it, he judges, will have better consequences than adopting any alternative rule. Is this not to adopt a rule-utilitarian perspective? But what if one is not a utilitarian? Further, is not the just-war tradition usually classed as nonutilitarian? Coady, in the guise of strengthening the just-war position, appears to have introduced an alien system, rule utilitarianism, within it.

Not at all, he replies. An opponent of consequentialism is not one who denies that consequences ever matter; to do this would be very foolish. Rather, a nonconsequentialist claims that sometimes things other than consequences matter. Coady’s argument for limiting wars to defense, then, does not signal his adoption of rule utilitarianism.

A defender of the Iraq War might be tempted to try to turn one of Coady’s points against him. Just because of the vast devastation that modern weapons cause, are we not justified in endeavoring to prevent our

enemies from gaining access to them? If Saddam Hussein had gained possession of WMD, then, did not even the slight chance he might have given them to terrorists, or otherwise used them against us, gives us reason to oust him from power?

In response, Coady is appropriately severe:

Once we get beyond immediate threat of attack by an enemy, we are pretty much in the realm of untrammelled speculation. Another nation's development of weapons, including weapons of mass destruction, may create various worries and uncertainties, but there is so much that can come between that development and its hostile use that we should not risk the hazards of war on behalf of the alarming prediction. (p. 102)

Even many supporters of the Cold War consensus have repudiated Bush's war of aggression against Iraq, but Coady intends a far more radical criticism of American policy. A standard part of just-war reasoning requires that one cannot directly intend the death of noncombatants; and, if noncombatants die as the result of foreseen but unintended consequence of licit military operations, their deaths must be proportional to the value of the objective. It is wrong, e.g., to blow up an entire neighborhood because one has good reason to think a suicide bomber is hiding there.

Given the enormous potential for destruction of atomic weapons, no use of them can meet the proportionality requirement.

I have argued that a primary reason for concern about WMD is their propensity to kill the wrong people rather than their tendency to kill large numbers. But it remains true that weapons whose purpose, or most likely use, is to kill large numbers of people immediately raise an issue of proportionality, even if the people killed are otherwise legitimate targets. (p. 252)

Even in a defensive war, it would never be right to use these weapons. But to threaten to do something that is wrong is also wrong. The basis of United States defense policy, which lies in the use of these weapons as a deterrent, is undermined.

Two of the foremost philosophers of the twentieth century, David Lewis and Bernard Williams, disputed this argument. Lewis denied that possession of nuclear weapons need involve any wrong intention. The mere fact

that our enemies know that we have these weapons will be sufficient to deter them: they cannot know that we will not use the weapons against them. If so, we need have no evil intention to use the weapons: the mere uncertainty in the minds of our opponents suffices to accomplish our goal of deterring them from attacks on us.

Coady answers that

even if nuclear or WMD deterrence did not embody the explicit intention to do evil, it would involve states of mind that are equally to be condemned, such as the readiness to form such an intention in certain eventualities, or an attitude of compliance with or supervision of a situation in which nuclear or biological devastation is one of the options available. (p. 254)

But need this be true? Suppose that we have the firm intention never to use the weapons. What evil intention do we then entertain? Further, suppose we do have an intention to use the weapons, if deterrence fails, but we are certain that our threat to use them will ensure that deterrence does not fail. Our conditional intention, then, involves a circumstance that will not occur. As Bernard Williams puts the point,

If it were *certain* that threatening some dreadful thing would prevent some crime or suffering, would that really leave the threat morally no better than the dreadful deed I wouldn't need to perform? (p. 255, quoting Williams)

Coady uncovers a difficulty with this argument:

[T]here is a conceptual mystery about how someone could have an intention to do X if and only if Y where she is certain that Y will never occur. . . . There is no barrier to an announcement, but announcing an intention is not having it. (p. 256)

Coady's point may be granted, but the argument can be reformulated to avoid it. If Coady is right, one cannot have such a conditional intention. Then it follows that if one announces such an intention, one is bluffing. Why could this be not enough to deter? In any case, Lewis's point has not really been met. It isn't, as Coady thinks, that one must entertain an intention to at least consider using the weapons; in theory, one need not have any intention at all to use them.

In theory—there is the sticking point. If Coady has not succeeded in finding a contradiction in the arguments of Lewis and Williams, it is nevertheless clear that in practice he is right. No government in possession of such weapons could be trusted never to intend to use them. Quite the contrary, as repeated statements by American policymakers have made clear, these weapons are intended for use; and as Coady does not fail to remind us, they have been used by America on two occasions.

Coady has argued effectively that only in very special circumstances is war justified; but what happens if a war does break out? Our author calls attention to a neglected topic: even in case of a justified war, one must avoid demands for unconditional surrender.

Because so many modern wars have been passionately ideological . . . the very idea of negotiating with enemies prior to crushing them can seem preposterous or even immoral. Something like this seems to have been behind the appeal to “unconditional surrender” in World War II. (p. 272)

Coady thinks that had reasonable terms of surrender been offered, this might have made it easier for the German opposition to overthrow Hitler. Of course one cannot be sure that this happy outcome would have occurred, but it was at least worth making an effort to attain it. Insistence on unconditional surrender led to “the devastation wrought by the Soviet army in its push through eastern Germany to Berlin . . . rape, pillage, and casual murder by Soviet troops were commonplace” (p. 271).

Coady does not mention one argument used at the time in favor of unconditional surrender. The Germans complained that the Treaty of Versailles betrayed the terms on which they had surrendered. Unconditional surrender, it was contended, would avoid similar complaints. Here the response is obvious: the Allies ought to have kept to the surrender terms, i.e., Wilson’s Fourteen Points, on which the Germans surrendered in November 1918.

Coady discusses with insight a large number of topics, of which I have been able to cover only a small sample. His suggestions to limit war seem to me entirely along the right lines, and on only one of his recommendations do I find myself in disagreement. He calls for the strengthening of international institutions such as the United Nations and looks with favor on the International Criminal Court. Against this, there seems little reason to place more confidence in international bureaucrats than their national

counterparts; and steps to centralized power have historically been inimical to liberty.* Despite this difference in opinion, though, I have no hesitation in recommending *Morality and Political Violence*. It deserves to replace the hitherto standard work, Michael Walzer's *Just and Unjust Wars*, as the first book to consult about the morality of warfare.

* Jeremy Rabkin has argued strongly against the dangers of international institutions in *Law Without Nations* (Princeton University Press, 2005), though I regret to say that his laudable arguments are in part motivated by his wish to remove an obstacle to a bellicose American foreign policy. By the way, his remarks about Jean Bodin's influence on Jefferson are well worth attention.

*Sovereignty: God, State, and Self**

JEAN BETHKE ELSHTAIN

Medieval Theology and the Modern State

October 1, 2008, *Mises Review*

SEVERAL YEARS AGO, I wrote a diatribe against Jean Elshtain's *Just War Against Terror*. She was not altogether pleased by this and sent in a letter of protest, which evoked yet more venom from me. Readers anxious for a continuation of this battle must look elsewhere. Elshtain has written an excellent and illuminating book.

Carl Schmitt famously argued that the basic ideas of modern politics are secularized theological concepts, and Elshtain to a large extent agrees. In particular, she thinks, a change during the later Middle Ages in the notion of God's omnipotence had immense significance for the state.

For Augustine and Thomas Aquinas, God acted in the world in strict accord with law. Human beings, by reason, could discern this law:

Thomas retained the inner connection between God's reason, justice, and love, and the manner in which God wills. God's omnipotence remains but he is bound in ways accessible to human reason and through the workings of grace. God's will is just, insisted Aquinas. It follows that God can do nothing contrary to his nature and to what he has ordained. (p. 22)

In like fashion, political sovereigns could not do whatever they wished but were bound by natural law. "St. Thomas Aquinas is the direct heir of the

* Basic Books, 2008.

Romano-Gelasian system in and through which law binds earthly authorities and powers, and authority is stripped from kings turned tyrants” (p. 15; “Gelasian” refers to the two-swords doctrine of Pope Gelasius I).

Several medieval thinkers challenged this view of omnipotence. Duns Scotus and William of Ockham did not deny that a created order exists. But they held that God was not strictly bound by the order he had instituted. It expressed what they termed God’s *potentia ordinata*, which was subordinate to his absolute power, his *potentia absoluta*.

Ockham introduces a note of contingency into the picture; thus, for example, God can save a person lacking in charity and by his power two bodies can exist in the same place at the same time. Created nature does not constrain the power of God fully, any more than an established system of laws constrain a truly sovereign ruler. . . . Absolute power remains in the realm of possibility—haunting temptation if the analogy is drawn to earthly power. The dialectic of *potentia absoluta* and *potentia ordinata* grows ever more important. *Potentia absoluta* is the domain of God’s unlimited freedom abstracted, finally, from his commitment *de potentia ordinata*. (pp. 26, 38–39)*

The scope of this absolute power occasioned much dispute, but some thinkers went so far as to claim that God need not obey the law of contradiction. Elshtain says that St. Peter Damiani maintained that God could bring it about that a past event never happened. “For God ‘can undo the past—that is, so act that an actual historical event should not have occurred’” (p. 22, the quotation is from Francis Oakley). It should be noted, though, that some scholars think that this is a misinterpretation of Damiani’s view.[†]

Elshtain excellently highlights the distinction between the two kinds of power, in her characteristic vivid style; but in one respect she seems to me to go astray. She calls the view that stresses the unlimited character of God’s absolute power nominalism as well as voluntarism. This usage is not peculiar

* As Elshtain notes (p. 263), Marilyn Adams has questioned the extreme voluntarist interpretation of Ockham in her two-volume *William Ockham*, University of Notre Dame Press.

† See the article by Toivo J. Holopainen, “Damien, Peter,” Section 5, in the *Stanford Encyclopedia of Philosophy*.

to her, but it wrongly connects positions on two different issues. Nominalism is a view about properties. If we say, e.g., that a rose, a stoplight, and fireman's uniform are all red, what is the nature of the redness that they share? Is it a property that exists independently of our concept "red"? If so, does this property exist apart from red objects? If not, is the concept "red" anything apart from the word "red"? Nominalism comes in a number of varieties, but it answers that properties are verbal or at most conceptual.

Nominalism leaves open the question of whether there are unalterable laws of nature or ethics, though perhaps nominalists who believe in such laws would have to state them differently from realists. Elshtain says that nominalism "breaks things down into particulars" (p. 37), but it does not follow that all relations between particulars are contingent. Further, one can reject nominalism and embrace voluntarism. Duns Scotus took just this view, and it is a mistake to call Scotus a nominalist.

Enough of this arid objection. Elshtain highlights the parallel between stress on God's absolute power and the view that the sovereign can if need be abrogate all laws. (Her book displays her considerable learning, but she surprisingly does not cite the great work of Amos Funkenstein, *Theology and the Scientific Imagination* [Princeton University Press, 1986], crucially relevant to her main theme.) As she rightly notes, Carl Schmitt emphasized the power of the sovereign to make exceptions to the laws, but he did not originate it.

Medieval legists mined Justinian's famous sixth-century Code to put forward a case that the emperor's power is *not* altogether bound, no more than God's. . . . This is the famous doctrine of what came to be called "the exception" or "prerogative" and is sometimes taken, mistakenly, as the innovation and contribution of the twentieth-century political theorist (and Nazi sympathizer) [Carl] Schmitt. But the notion is venerable, trailing in its wake the dust of centuries. (p. 32)

Elshtain discusses claims of power advanced by popes and emperors. One example must here suffice. She points out that Gregory VII claimed that he could release subjects from their allegiance to the emperor. Gregory

excommunicated [Emperor] Henry [IV] and stripped him of his royal prerogative—deposed him, in other words, claiming

as he did so, that this was well within the prerogatives of the papacy, the “binding and loosing” authority. (p. 46)*

She points out that supporters of royal power were quick to adapt papal claims to their own very different purposes. “The articulation of a plenitude advanced by medieval canonists was appropriated by legists in the service of ambitious earthly monarchs and turned against the papacy” (p. 44).

Elshtain finds in the sixteenth-century French writer Jean Bodin a key source for the doctrine of absolute sovereignty:

There was nothing shy about Bodin’s articulation. The king is a supreme force, the way in which God appears on earth. Without him there can be no commonwealth. . . . The prince’s power is double, with *majestas*, his absolute and unbound power, tethered to a legal, or bound authority. Law is the command of the sovereign. Somewhere in the state . . . there must be a supreme authority. (p. 54)

Although Elshtain has grasped a strain in Bodin’s thought, I think that she exaggerates Bodin’s absolutism. As Eric Voegelin, Bodin’s most profound interpreter, notes,

The prince is the sovereign lawgiver, but he is restricted as to the content of his statutory power by natural and divine law. . . . The marvelous juristic mind of Bodin reveals itself again on this occasion as in the technical remark that strictly speaking the prince cannot act against the law of God, his *seigneur*, because through the very act of violation of divine law he loses “the title and honor” of a prince.[†]

Elshtain has insightful things to say about Hobbes, and she rightly sees Carl Schmitt as a Hobbesian:

The rights of this sovereign [for Hobbes] are not conditional, as in versions of the *potentia ordinata*, but unchained. The sovereign

* In *Just War Against Terror*, she adopted a much more restricted interpretation of Gregory’s claim, but she has rightly altered her position.

† Eric Voegelin, *History of Political Ideas*, Volume V (University of Missouri Press, 1998), p. 246. I have pleasant memories of a conversation about Bodin with Voegelin in 1973.

alone judges “all doctrines and opinions,” has the right to make rules, judge, go to war, and reward whom he will. Subjects submit—that is their job description—for in the act of submission lies one’s liberty. . . . The twentieth-century thinker who revived Hobbes in full-blown unapologetic form is the controversial Carl Schmitt. . . . (pp. 108, 115)

One of her comments on Hobbes, though, makes something out of very little. She says that Hobbes

deploys this knowledge [of Scripture] to his purposes through sleight of hand as he redescribes basic scriptural norms and injunctions. For example, the positively cast “Do unto others as you would have them do unto you,” Hobbes recasts negatively, “Do not that to another, which thou wouldest not have done to thy selfe,” as if this is no major alteration at all in the verse. There is, of course, a difference. Hobbes references passive inaction—do not do—rather than positive action—do. (p. 112, emphasis omitted)

In a note, she says, “very few pick up on Hobbes’s playing fast and loose in this way” (p. 290, note 59).

Hobbes did not make up the negative golden rule. It is found in the Book of Tobit 4:16: “see thou never do to another what thou wouldest hate to have done to thee by another.” Further, Hobbes quotes with favor the positive injunction, “Thou shalt love thy neighbor as thyself” (see, e.g., *De Cive*, Chapter IV, Section XII).

One of the best parts of the book is the interpretation of Rousseau. In contrast with many recent writers, Elshtain is fully alive to the totalitarian implications of the general will.

Rousseau pays considerable attention to bodies, human and collective. He fuses the many into the one: The body’s many members must be as one and become such via the general will. . . . With this infusion of transcendence, Rousseau winds up with a unitary, monistic version of sovereignty that levels everything that stands in its way—particular wills, particular faiths, anything that might prove an irritant in the image of the indissolubility and indivisibility of sovereignty. Taken in the round, Rousseau’s work adds up to an entire creedal system. (p. 131)

Elshtain passes from the state to the self: “A streamlined version of my thesis would go like this: as sovereign state is to sovereign God, so sovereign selves are to sovereign states” (p. 159). She does not discuss modern libertarianism, but it would not surprise me if she views it as an expression of the sovereign self. In my opinion, this would be a mistake. Libertarianism, as Rothbard often emphasized, is firmly committed to natural law and is not an antinomian theory. Elshtain is right to stress the dangers of the sovereign self, which holds itself not bound by moral limits. She finds this baleful view in proposals for eugenics and human engineering:

Once you put wills in motion . . . you are headed for a clash, a fight even under death. Someone *must* triumph. This scenario works best if one’s “opponent” can be dehumanized or demeaned, as those who push eugenics and euthanasia have done historically and presently, characterizing their opponents negatively and with considerable success. (pp. 209–210)

Elshtain’s book is an expansion of Gifford Lectures that she delivered at the University of Edinburgh, and it is a distinguished addition to that famous series.

Rescuing Justice and Equality^{*}

G. A. COHEN

Contra Rawls—From the Left

December 1, 2008, *Mises Review*

THE TITLE OF G. A. COHEN'S REMARKABLE BOOK suggests an obvious question. Cohen wishes to rescue justice and equality; but from whom or what are these in danger? Cohen's target will strike many readers as surprising: it is the false views of John Rawls that he wishes to combat. Rawls's famous difference principle (more exactly, the first part of it), as Rawls thinks it will apply, allows inequalities that justice properly excludes. Further, Rawls holds wrong positions in metaethics as well: he wrongly makes moral principles depend on matters of fact and he confuses the nature of justice, a question about the essence of a concept, with "rules of regulation," properly a matter for decision.

It does not follow from this massive dissent from Rawls that Cohen thinks badly of *A Theory of Justice*. Quite the contrary, he regards the book as one of the greatest works of political philosophy ever written:

I [Cohen] believe that at most two books in the history of Western political philosophy have a claim to be regarded as greater than *A Theory of Justice*: Plato's *Republic* and Hobbes's *Leviathan*. (p. 11)[†]

^{*} Harvard University Press, 2008.

[†] Cohen concentrates entirely on *A Theory of Justice* and does not discuss defenses of the difference principle that rely on the "public reason" of *Political Liberalism*. It is clear, though, that he is thoroughly familiar with that book.

Cohen's attitude toward Rawls to a large extent parallels my own reaction to *Rescuing Justice and Equality*. It is a major work, the product of a philosophical intelligence of great depth and power. Few if any contemporary thinkers can match Cohen in his ability to grasp what is at stake in an argument and to raise devastating objections. (Those who wish a quick demonstration of Cohen's skill should read his painstakingly minute dissection of Andrew Williams on the "publicity argument," pp. 344 ff.) He possesses, in addition, the ability to extract every drop of meaning from a long and complex text. Even more important, the questions he discusses are of the highest significance and his answers to them often profound. Cohen does philosophy the way it should be done.

That said, I often cannot accept Cohen's arguments. One might think, "Of course: how can a libertarian who rejects Rawls as overly egalitarian fail to disagree with someone who criticizes him from the left?" But I do not propose in what follows to evaluate Cohen from a libertarian standpoint. Rather, setting aside to the extent I am able my own beliefs, I shall endeavor to consider the book's arguments on their own terms.

In order to understand Cohen's criticism of the difference principle, it is essential to bear in mind his own conception of justice. He is a "luck egalitarian": people with greater-than-average talents and abilities should not in justice receive more wealth and income than others, even if their work is more productive and valuable than their less-fortunately-endowed coworkers. People do not deserve the abilities by which they surpass others, and

my own animating conviction . . . [is] that an unequal distribution whose inequality cannot be vindicated by some choice or fault or desert on the part of (some of) the relevant affected agents is unfair, and therefore, *pro tanto*, unjust, and that nothing can remove that particular injustice (p. 7).

(Cohen speaks here of "distribution" in general, but I think the chief issue between him and Rawls concerns the distribution of wealth and income in particular. At any rate, my discussion will be confined to this.)*

* For an important criticism of luck egalitarianism by a nonlibertarian, see S. L. Hurley, *Justice, Luck, and Knowledge* (Harvard, 2003) and my review found in Volume 2, "Political Theory." Cohen does not accept Hurley's criticisms: see his "Luck and Equality: A Reply to Hurley," *Philosophy and Phenomenological Research* (2006), pp. 439–446.

Cohen thinks that this view of equality is intuitively plausible, and he suggests that one difference between the Oxford-style philosophy that he practices and Rawls's Harvard approach is that the latter relies more on theory:

Oxford people of my vintage do not think that philosophy can move as far away as Harvard people think it can from pertinent prephilosophical judgment. (p. 3)

I wonder whether the contrast to which Cohen calls attention is quite as sharp as he thinks: does not Rawls's "reflective equilibrium" rely to a great extent on our moral intuitions? (Cohen does mention reflective equilibrium a few times but says little about it.) But Cohen's stress on moral intuitions does help explain the clash between libertarians and their opponents. Those of libertarian inclinations tend not to hold it unfair for those with superior talents to benefit from them. Given this difference, the intractable disputes between egalitarians and libertarians are readily understandable.*

If, roughly speaking, justice is equality, then Rawls's difference principle must be rejected. Rawls allows inequalities to the extent that they benefit the least-well-off class in a society.[†] In what way can such inequalities benefit the worst off? Primarily, Rawls has in mind incentives: people who receive more money will respond by working more. Also, incentives may direct people into jobs that increase benefits to the poor.[‡] The results of these incentives may increase the gains to the worst off over their share in a regime of strict equality.

* For a view that accepts some, but not all, of the luck egalitarian intuition, see Thomas Sowell, *The Quest for Cosmic Justice* (Free Press, 1999) and my review found in Volume 2, "Political Theory."

† Actually, there is a distinction between a strict and lax interpretation of this principle. According to the former, "inequalities are forbidden unless they render the worst off better off" (p. 157); but the lax interpretation, also known as the canonical or lexical account, ranks a distribution that increases the gains of only the better off higher than one that does not, so long as distributing the increase to the worst off would not improve their overall position. This complication will surface at one point later.

‡ Cohen cites Philippe van Parijs on other ways inequalities can benefit the worst off, e.g., concentrating profits in the hands of good investors, but these are not his primary focus. (pp. 320–321). Another benefit of inequality is that goods initially profitable only as luxuries that only the wealthy can purchase often later spread to the masses when cheaper production techniques are devised. See on this Friedrich Hayek, *The Constitution of Liberty* (Chicago, 1960), pp. 42ff and Bertrand de Jouvenel, *The Ethics of Redistribution* (Liberty Press, 1990).

Cohen is not content to counterpose his principle to Rawls's. He deploys a formidable battery of arguments designed to show that the difference principle undermines itself. In a case where, because of the effect of incentives, the worst off benefit from inequalities, can we not readily construct a situation in which they will benefit still more from equality? We have only to imagine that the talented do not require incentives in order to work harder or to shift to jobs that secure greater benefits to the poor. In that case, the poor could gain still more, since some or all of the incentive payments would go to them.

If the talented are committed to egalitarian justice, must they not try to act in exactly this way? It will not do to answer that they are unable to do so, that it is just a psychological fact about many people that they respond positively to incentives. They might be able to change, if they tried; and if they could not, is it not likely that different social institutions, prolonged over time, could alter people's attitudes?

But why should people try to act in this way? Here Cohen appeals to what he takes to be a fundamental principle: the personal is the political. We cannot insulate our fundamental commitments to justice in the institutions of the "basic structure" but must act justly in our personal lives.

The difference principle can be used to justify paying incentives that induce inequalities only when the attitude of talented people runs counter to the spirit of the difference principle itself; they would not need special incentives if they were unambivalently committed to the principle (p. 32).*

(Given this understanding, Cohen can say that he "accepts" the difference principle, since if talented people do not require monetary incentives, the principle as it pertains to these is vacuously true, and there may be nonmonetary incentives that would not trouble an egalitarian; but taken as Rawls thinks it will apply, in which talented people do respond to monetary incentives, he rejects it.)

I think that Cohen is right that the principles of justice apply to our daily lives as well as to the basic structure, but this point leaves a Rawlsian position

* Cohen mentions Marx and the feminists as sources for connecting personal behavior with institutions, but in an odd sense, Nozick also anticipates his discussion. Nozick maintains that because people do not follow the difference principle on the "micro" level, this gives us some reason to reject the principle as part of the basic structure. See *Anarchy, State, and Utopia* (Basic Books, 1974), pp. 204 ff. See also the criticism by Thomas Nagel in "Libertarianism Without Foundations" in Jeffrey Paul, ed., *Reading Nozick* (Rowman and Littlefield, 1981).

intact. Let us imagine ourselves to be egalitarians: how would we wish to distribute income and wealth? Equal shares for everyone obviously suggests itself. Suppose, then, that everyone earns the same hourly rate of pay, regardless of his productivity or type of employment. At this rate, each person decides how many hours to work and in what job. Then, relative to the preferences for work and jobs that each person has, we have an equal distribution of income. Suppose now that incentives are allowed, provided that the shares of the worst off are better than they are under equal distribution.

Does this not remain a coherent conception of equality? Each person, to reiterate, is guaranteed at least as much as he would get under absolute equality, given the preferences for work and jobs of people in that situation. Further, luck egalitarianism has some effect, though it is not controlling, since the talented gain greater shares only if they benefit the worst off. True enough, the worst off do not fare as well as they would under absolute equality, if talented people alter their self-interested preferences to benefit the worst off as much as possible. But all this shows is that there is another, and more demanding, conception of equality besides the one I sketched out. The “spirit” of the first conception does not lead to the second; rather, they are two different positions. My first conception is of course roughly Rawlsian. If I am right that it is coherent, Cohen has failed to overthrow it. He has merely contrasted it with his own position.

Cohen maintains that an acceptable principle of justice must preserve a sense of community among those subject to it. To do so, it must pass what he calls a “comprehensive justification,” in which not only a policy, but the behavior of those who act under the policy is justified.

Now, a policy argument provides a comprehensive justification only if it passes what I shall call the *interpersonal test*. . . . The test asks whether the argument could serve as a justification of a mooted policy when uttered by any member of society to any other member. (p. 42, emphasis in original)

The difference principle, taken to justify large inequalities, in his opinion fails this test: a talented rich person could not in good conscience present it to a poor person. But I fail to see why this is so. Suppose he says,

When I decide whether to work additional time or whether to shift jobs from what I most prefer to what would help you more,

I take account of your interests. I'm willing to have part of what I earn go to you. But I rate my own interests higher than yours: I will respond positively to monetary incentives that allow me to retain a greater share of what I produce.

Why is this unacceptable? Further, the talented person who says this is not refusing *tout court* to give additional funds to the poor beyond what the difference principle mandates: he is simply denying that he is, on grounds of justice, required to do so.

Cohen seems to have in mind the fact that the rich person's own decisions make what he says true: if he acted more altruistically, he would not respond to these incentives. But surely this feature by itself does not suffice to render an interpersonal justification improper, even in cases where my decisions lead to an outcome the person I address would prefer otherwise. Suppose that I say to someone about to steal my computer, "You can't take that! It's mine." The truth of "it's mine" depends on my behavior, since I could, if so inclined, donate the computer to the thief. But this hardly shows a moral defect in what I say.

The case that the difference principle passes the test becomes even stronger when one adds that Cohen himself sometimes countenances a limit to equality because of "personal prerogative." (The term comes from Samuel Scheffler.) Cohen does not say what may legitimately be included in the personal prerogative, and he is not committed to allowing a prerogative at all; but if it includes the freedom to choose one's occupation and one's choice between work and leisure, incentives may be the cost of inducing the talented to shift jobs or to work harder in ways that benefit the worst off. It is evident that Cohen does not think the prerogative extends this far; but I fail to see why the view that it does cannot pass the internal justification test; and if it does pass it, then even luck egalitarianism does not rule out incentives.

Cohen, in response to David Estlund, acknowledges that the prerogative argument has some force but suggests it will not much help Rawls.* Does not Rawls endorse inequality, regardless of the motives of the better off, so long as this helps the worst off? I do not understand how "motives" enter the picture, unless the talented aim to accumulate money just in order to have

* I don't mean to suggest that Estlund includes unlimited freedom of choice of occupation within the prerogative.

more than others. That attitude seems inconsistent with a commitment to egalitarianism. But it is not inconsistent with egalitarianism to value material goods highly or to demand a high price to work more or to shift jobs. All that is relevant is that, absent the monetary incentives, the talented would prefer working less hard or in other jobs. Perhaps Cohen is thinking of a case where someone receives more money that is needed to get him to work in a way that best helps the worst off, but Rawls's difference principle would not be satisfied in that situation: the excess could be redistributed to the poor without loss. (If the talented misstate their own preferences for strategic reasons, this is Cohen's "bluffing case" [pp. 57 ff].)

Cohen now responds to a related argument in defense of the difference principle. Suppose that one begins from equality. If inequalities are allowed, everyone will be better off: the distribution with the inequality is strongly Pareto superior to an equal distribution. As in the previous argument, incentives lead the talented to produce more. Do we not have good reason to endorse the inequality? Is it unjust to do so?

Cohen's answer is typically ingenious. If everyone gains, then can we not construct another Pareto-superior distribution by reallocating the unequal gains, in that way preserving equality? Would not an egalitarian have to say that this distribution is better than the Pareto-superior distribution that fails to preserve equality?

But what if, under these conditions, the talented do not want to work enough, or in the right occupations, to generate the increased income for everyone? Would not the new distribution then require a "Stalinist" policy in which the state ordered people to assume certain jobs? Further, if people's preferences for occupations were counted in determining whether they are better off, the new distribution would not be Pareto superior. (This "freedom" objection actually comes up later in the book, but I think it is best addressed here.) Cohen responds that the talented could freely decide to work in the way required for the gains, even if doing so meant that they would have to accept jobs they would otherwise reject.

He thinks that people committed to equality should be willing to accept such conditions. Talented people usually have jobs that are highly fulfilling; and this is likely to remain so even if they do not work in their highest-valued activity. A doctor who prefers to be a gardener should not abandon medicine, if work in that profession better promotes a higher equal standard of income for all, so long as work as a doctor is satisfying. Cohen does not

think that people are morally required to accept work they find onerous; but they may not insist on working in their most-preferred field, if they acknowledge the demands of egalitarian justice. He does not discuss extensively the preference for leisure, but I suspect he would adopt a similar line: people cannot insist on as much leisure as they like, so long as they have a reasonable amount compared to others.*

It is now clear why the appeal to personal prerogative does not much move Cohen. He has a demanding notion of what egalitarian justice requires. But once more, I do not think that he has succeeded in generating any internal pressure on the difference principle. Why cannot a Rawlsian simply deny that people are morally required to shift their preferences in the way that Cohen wants? If Cohen then says that if they do not, they depart from the demands of equality, that is true only if one accepts his own conception of equality—or one similarly demanding.

In his assault on the Pareto argument for inequality, Cohen claims that its proponents fall into a fallacy committed by Nozick's Wilt Chamberlain argument. Nozick, it is claimed, argued that if one begins from a patterned principle like equality, then one would have to move to accepting inequalities. People have the right to spend their equal shares as they wish; but what if their spending results in Wilt Chamberlain's having a great deal of money? Would not egalitarians have to acknowledge that this situation preserves justice? But, Cohen says, a common criticism is that Nozick

fails to see that the principles that enjoin D₁ [the initial situation of equality] also prohibit the move to D₂ [the unequal outcome]: Nozick takes D₁ as established, and he succeeds in destabilizing it only because he ignores what established it. (p. 170)[†]

In like fashion, says Cohen, you “cannot begin with equality because all inequalities are morally arbitrary in origin, and therefore unjust, and then treat an unequalizing Pareto-improvement as lacking all stain of injustice”

* What happens if someone shifts to a less-preferred job that leaves him fairly satisfied, but less satisfied than some of those who are not required to shift jobs? I wish that Cohen had discussed this case.

† I think that this objection is based on a misunderstanding of Nozick's argument. Nozick's point was that preserving a pattern often requires very strong restrictions on what people can do, not that supporters of a pattern are logically required to accept changes in it. I am indebted here to conversations with Nozick.

(p. 170). This does not correctly represent the Rawlsian starting point. The claim is not that all inequalities are unjust, but rather that since the possession of superior talents is arbitrary from the moral point of view, the extra productivity generated by these talents does not by itself generate a claim to greater shares. It does not follow from this claim that any deviation from equality is unjust. Equality for the supporter of Rawls is only a starting point, not an absolute requirement of justice. The Pareto argument is then not vulnerable to the objection alleged against Nozick.

Cohen next addresses the “basic-structure” objection to his criticism of the difference principle. This objection denies that people are required in their personal lives to act in accord with the demands of egalitarian justice. So long as basic institutions of society, e.g., the tax system, are in order, individuals are free to act from whatever motives they wish. (They must, of course, obey laws that require redistributive taxation.) Cohen, in this view, is wrong to claim that the personal is the political. I think that Cohen successfully rebuts this objection: he shows that there is no clear way to separate the basic structure from more local institutions, including the family, and personal behavior. But the main problem I have so far found with Cohen’s discussion is not a version of the basic-structure objection. I do not claim that accepting the difference principle has no consequences for individual conduct. Cohen and Ronald Dworkin may well be right, e.g., that people must cultivate an “egalitarian ethos.” My difficulty involves the nature of those consequences. Cohen has without adequate warrant seen these consequences in the light of his own luck egalitarianism.

Cohen makes clear the sort of response he would offer to my argument in chapter 4, “The Difference Principle.” I claim that Rawls is not a luck egalitarian; Cohen answers that to a large extent he is. He acknowledges that there is some evidence to the contrary. The “canonical” interpretation of the difference principle allows inequalities that do not benefit the worst off so long as they do not harm them. Nevertheless, Cohen thinks that at heart, Rawls is fundamentally sympathetic to luck egalitarianism. He quotes a passage from *A Theory of Justice* in which Rawls criticizes the “liberal interpretation of the two principles of justice” (i.e., equal opportunity without the first part of the difference principle). This “still *permits* the distribution of wealth and income to be determined by the natural distribution of abilities and talents” (p. 166, quoting *A Theory of Justice*, pp. 73–74, emphasis added by Cohen). Concerning this passage, Cohen says,

This implies that the income distribution should not be determined by the talent distribution, and not merely that the fact that an income distribution reflects the talent distribution does not justify it. (p. 166)

Is there not, though, an ambiguity in “determine”? For Cohen’s reading to hold, one must take this to mean “in any way affect” rather than “totally bring about.” Suppose, e.g., that someone claims that tenure decisions should not be determined by the number of publications in top-ranking journals. He would more plausibly be taken to be claiming that these publications should not be the sole consideration, not that they should have no influence at all. In like fashion, I suggest, Rawls is better read as saying the superior talents should not *by themselves* generate the income distribution, not that they cannot properly in any way affect it.

Admittedly, this is merely a different reading from Cohen’s, and the point is doubtful. Much more important is another passage of *A Theory of Justice*, in which Rawls seems directly to address luck egalitarianism, or something very much like it, when dealing with equality of opportunity:

First we may observe that the difference principle gives some weight to the consideration singled out by the principle of redress. This is the principle that undeserved inequalities call for redress; and since inequalities of birth and natural endowment are undeserved, these inequalities are somehow to be compensated for. . . . [The principle of redress] is plausible as most such principles are only as a *prima facie* principle, one that is to be weighed in balance with others. . . . Now the difference principle is not of course the principle of redress. (*A Theory of Justice*, pp. 100–101, see also the corresponding passage of the 1999 edition, p. 86).

Cohen might respond that matters change when the distribution of wealth and income, rather than equality of opportunity, is on the agenda. But it seems to me much more plausible to think that Rawls’s attitude does not change. Here too, the desire to counteract the results of undeserved inequalities has considerable force, but this consideration is not alone decisive.

I think that a principal use of the moral arbitrariness claim for Rawls is defensive: it is his reply to the supporters of the “system of natural liberty” who claim those who produce more deserve more income and wealth. Taken

this way, incidentally, Rawls has an answer to Nozick's famous objection: even if you do not deserve to benefit from your superior talents, it does not follow that you are not entitled to do so. Rawls can say, "On my theory, you aren't entitled to do so, unless this satisfies the difference principle."*

As we shall later see, Cohen has one more powerful argument to defend his alignment of Rawls with luck egalitarianism; but to understand it, we must first consider what he says about metaethics. He argues that

a [moral] principle can reflect or respond to a fact only because it is also a response to a principle that is not a fact. To put the same point differently, principles that reflect facts must, in order to reflect facts, reflect principles that don't reflect facts. (p. 232, emphasis removed)

Judged by this standard, Rawls is weighed in the balance and found wanting: for him, moral principles do depend on facts.

In defending this view, Cohen presents a brilliant discussion of whether one can derive an "ought" from an "is." I at first thought that his principle of factual insensitivity begged the question against the view that "ought" follows from "is": does not claiming this make the derived "ought" dependent on facts? Further, before reading Cohen, I thought that the anti-Humean position fell before an objection. If, e.g., one claimed that from "Human beings have X as their natural end" it follows that "Human beings ought to pursue X," is one not in fact assuming that "One ought to pursue one's natural end"? But then, I thought, there is no derivation of an "ought" from an "is"; rather, one is applying a premise about an "ought."

Cohen solves both problems at once. The proponent of the derivation thinks that, to take my example, "Human beings have X as their natural end" semantically entails "Human beings ought to pursue X." But if he holds this, he must also accept, "If human beings have X as their natural end, they ought to pursue X." This thesis does not depend on the existence of any facts, so the defender of the derivation does not violate the factual insensitivity thesis. Further, it does not at all contradict the claim that an "ought" follows from an "is" that one accepts an "if, then" general premise. Rather, precisely the point

* One libertarian response to Rawls is to claim that people do deserve, in certain circumstances, to benefit from their superior talents. See on this David Schmidtz, *Elements of Justice* (Cambridge, 2006) and my review found in Volume 2, "Political Theory."

of the anti-Humean thesis is that if one understands the meaning of the factual claim, one cannot rationally refuse to accept the general principle. (Cohen takes no position here on whether the anti-Humean thesis is true.)

I venture to suggest one slight modification of Cohen's thesis. He says,

Suppose that proposition *F* states a factual claim and that, in the light of, on the basis of, her belief that *F*, a person affirms principle *P*. We may then ask her *why* she treats *F* as a reason for affirming *P*. And if she is able to answer that question, then her answer, so I believe, will feature or imply an affirmation of a more ultimate principle (call it *P_I*) . . . a principle moreover, that holds whether or not *F* is true and that explains *why* *F* is a reason for affirming *P*. (pp. 233–234, emphasis in original)

Cohen wants to say that the truth of *P_I* does not depend on the truth of *F*, but I suggest that it is not right to express this by saying that *P_I* “holds whether or not *F* is true.” This overlooks the possibility that *F* is metaphysically necessary. In that case, *P_I* is not dependent on the truth of *F*, but it is not metaphysically possible that *F* be false.

Cohen might respond that if the truth of *F* is metaphysically necessary, then “If *F* were not true, *P_I* would still be true” is a true counterfactual with a necessarily false antecedent, but I doubt that Cohen wishes to go in this direction; and, in any case, the semantics of such counterfactuals are controversial. It would be better, I think, to state the factual insensitivity thesis in a way that avoids this problem. Cohen may think that my problem could not arise because there are no metaphysically necessary facts; but if he thinks this, he needs to say so.

Cohen makes another very useful metaethical distinction, and this distinction returns us to luck egalitarianism and the difference principle. He distinguishes between fundamental ethical principles, such as principles of justice, and rules of regulation. The former are matters for investigation, not decision. If luck egalitarianism is correct, e.g., this is not because people have decided to accept it: it either is correct or not. By contrast, we do decide which rules of regulation to adopt. These are general rules that determine how a society is organized. To arrive at them, we consider the principles of justice, along with other virtues, as well as facts about society. On the basis of all these things, we decide what to do.

Thus, contrary to what readers might so far have surmised, a society run as Cohen wishes might well allow for inegalitarian incentives. The difference from Rawls is that there would be no claim that such incentives were consistent with justice. Rather, they violate justice but, in the existing circumstances, allowing them is judged best to do when all the virtues are weighed against each other.

Rawls fails to grasp this distinction. He makes the principles of justice matters for decision. People in the original position decide what principles will best advance their interests; and in doing so, they take account of general facts such as the susceptibility of people to monetary incentives. To view justice in this way is to confuse principles of justice with rules of regulation.

It is because Rawls misses this that he does not grasp his real commitment to luck egalitarianism. He officially accords luck egalitarianism some weight but balances it against other considerations, such as incentives. If he had made the proper conceptual separation, the true strength of his commitment to luck egalitarianism would have been evident.

I do not think that Cohen's argument succeeds. Suppose, as seems reasonable, that one agrees that the principles of justice are not to be equated with the rules of regulation for a society; only the latter, not the former, are matters for decision. It does not follow from this that it is false that the way to discover the principles of justice is to ask what rules for society self-interested people in the original position would choose. (These rules are not, strictly speaking, rules of regulation for the original position, since they are based on self-interest, not a balancing of the various virtues.) Rawls, at least in *A Theory of Justice*, does not think that it is a matter for decision that the principles of justice are to be arrived at in this way: this is rather something he holds to be correct. Cohen may respond that unless Rawls did confuse principles of justice with rules of regulation, he would not think it is plausible that the principles of justice are to be discovered in this way. I do not know whether this is true; my claim is that Cohen has not shown that, because of the way Rawls thinks the principles of justice are derived, he is guilty of the confusion in question. I conclude that no more than before has Cohen shown that Rawls is "really" a luck egalitarian.

Although I disagree with many of its arguments, *Rescuing Justice and Equality* is a great book. Every reader will gain much by studying it. Libertarian readers will see how a first-rate mind views justice in a very different perspective from our own.

Deleting the State: An Argument about Government^{*}

AEON J. SKOBLE

Game Theory Versus the State

April 1, 2009, *Mises Review*

A EON SKOBLE'S EXCELLENT BOOK[†] poses a fundamental challenge to minimal-state libertarians. All libertarians take freedom to be the highest political value and oppose coercion. Why, then, do some libertarians reject anarchism? Under anarchism, people freely choose their own protection agency; but the minarchist variety of libertarianism forbids them to do so, so long as they remain on the territory controlled by the minimal state. How can libertarians justify coercing people in this way?

Skoble finds the answer in what he calls the “Hobbesian Fear.” Hobbes famously argued that people in a state of nature could not trust one another to keep agreements to refrain from force. In a state of perpetual war (including both actual fighting and readiness to fight) life would be “solitary, poor, nasty, brutish, and short.” To escape this fate, it would be rational for everyone to surrender his arms to a sovereign, who would then have the power to assure that people kept their agreements. In this circumstance, people could benefit from society. Hobbes did not welcome the loss of liberty as a good in itself, but he argued that only by the drastic surrender of liberty he specified could the peace be preserved.

^{*} Open Court, 2008.

[†] I ought to say that I was one of the two readers of the manuscript whom Skoble is kind enough to acknowledge (p. vii) and that I highly recommended it for publication.

Libertarians of course reject Hobbes's *Leviathan*. Nevertheless, Skoble thinks, minarchists in part embrace the Hobbesian Fear. They do not think that people, or the protection agencies that they designate to enforce their rights, would be able to come to peaceful agreement, in the absence of a monopoly state. Hence they think it necessary to allow more coercion than would be ideally desirable. No doubt it is bad that people cannot always be defended by the protection agency of their choice; but this sacrifice of freedom is necessary for the existence of society.

Has Skoble accurately diagnosed the motivations of minimal statists? He endeavors to support his contention through an analysis of three noted libertarian philosophers: Robert Nozick, Tibor Machan, and Jan Narveson. As Skoble points out, Narveson abandoned statism after the publication of *The Libertarian Idea*; and even there, he displayed considerable dissatisfaction with the state. Nevertheless, Skoble rightly thinks it important to examine the contractarian argument for the state presented in that book.

His account of Nozick seems to me not fully to have grasped the elusive argument of Part I of *Anarchy, State, and Utopia*. Skoble maintains that Nozick favors the minimal state on grounds of efficiency. Competing protection agencies would fear preemptive attacks by other agencies. To prevent this outcome, a dominant agency would be justified in forcing everyone in the territory it controls to make use of its services. Not only could the dominant agency legitimately forbid competition; it could compel even those who would prefer a different agency to pay for its protective services.

Taken this way, Nozick's account makes use of just the Hobbesian Fear that Skoble has postulated. But Nozick does not say that the dominant agency can compel those who prefer other agencies to join it. Neither can it compel people to pay for its protective services. Further, although Nozick does discuss preemptive attacks, he does not at all assume that agencies will fear such attacks by other agencies.

Skoble himself quotes a passage from Nozick that appears to undermine his thesis.

[But we] have rebutted the charge we imagined earlier that our argument fails because it "proves" too much in that it provides a rationale not only for the permissible rise of a dominant protective association, but also for the association's forcing someone not to take his patronage elsewhere or for some person's forcing

someone not to join any association. Our argument provides no rationale for the latter actions and cannot be used to defend them. (p. 68, emphasis removed, quoting Nozick, *Anarchy, State, and Utopia*, p. 129)

Faced with this passage, how can Skoble maintain his interpretation of Nozick? He responds in this way:

If the argument does not provide a justification for the dominant protective association forbidding individuals from opting out, then Nozick has no argument for the state beyond that one *could* arise without violating anyone's rights. However, he views the development as more than simply a logical possibility . . . he must believe that no competitive set of such agencies could be fair and feasible. (pp. 68–69)

Skoble has allowed his conception of what a minimal statist *must* believe to govern his interpretation of Nozick. In Nozick's system, the dominant agency can successfully forbid other agencies from imposing risky decision procedures on its clients. Because in doing so it disadvantages these independents, it must provide them with low cost or free protective services. These features, in Nozick's view, suffice to make the dominant agency a minimal state. If Skoble does not agree that this is enough for a state, he may well be right; but that is Nozick's contention. He does not say, as Skoble thinks, that preservation of society necessitates rights-violating coercion.

Even if I am right about Nozick, though, does not Skoble still have a good point? The reason Nozick thinks that the dominant agency can prohibit risky decision procedures is that knowledge that these procedures may be applied evokes fear. Do we not have here a type of Hobbesian Fear?

But this is just the crucial point. In Skoble's framework, Hobbesian Fear leads libertarians to accept coercion they would otherwise deem unjustified. Nozick does not think this: he thinks that the dominant agency acts perfectly within its rights in forbidding risky decision procedures to its clients. Skoble, if I have understood him, thinks that the dominant agency can *de facto* shut down all competing agencies by declaring their decision procedures unacceptably risky. But this is not correct: the dominant agency cannot forbid other agencies from applying such procedures to nonclients. Nozick does not contend that agencies would be unable,

without a minimal state, peacefully to resolve their differences about decision procedures: he thinks that they are under no obligation to do so. Skoble misses this when he says,

Do we have any reason to think that companies would seek this (co-operative) type of solution, rather than resorting to violent conflict? . . . Nozick can only rule out this possibility by appeal to a Hobbesian Fear. (p. 69)

Skoble's schema also does not fully fit Tibor Machan's argument. Machan does raise an objection to competing protection agencies that supports Skoble's analysis. Machan envisions a situation in which an agency convicts a client of another agency of a crime. What then happens? If Machan considers this a difficulty for anarchism, must he not think that the agencies would find it difficult, if not impossible, to reach agreement? If so, does he not favor a single protection agency in a given territory on grounds of efficiency, precisely as Skoble's model suggests?

Machan does indeed raise the problem of competing agencies, but he does not handle it in the way that Skoble's account would suggest. He does not argue that because competing agencies would find agreement difficult in this type of case, a monopoly state therefore may out of necessity restrict rights. Quite the contrary, his contention is that a protection agency of the type he supports violates no one's rights. It is not a matter of surrendering rights out of necessity, as Skoble would have it.

My objection to Skoble can be clarified if one considers how a supporter of Robert LeFevre might evoke the Hobbesian Fear against standard libertarian anarchism. He might claim that conventional anarchists allow the use or threat of force in defense of property. Such concessions to necessity, he would say, rest on a quasi-Hobbesian view that society could not function without such reliance on force. Only a system that renounces force altogether, as described e.g., in LeFevre's book *This Bread Is Mine*, qualifies as fully libertarian.

Would not the response of the standard anarchist be obvious? People who use force in the indicated circumstances have not violated any rights: the standard anarchist does not agree with LeFevre's contrary position. In like fashion, the minarchist does not, I suggest, normally view himself as compromising rights. He thinks that his system accords with rights. Skoble of course disagrees, and I think he is correct to do so; but, once more, it does

not follow that, from his own point of view, the minarchist accepts violations of rights.

That said, Skoble's discussion of the Hobbesian Fear is of great value. Many people do dismiss libertarian anarchism just because they think that it would lead to chaos. Skoble argues that the Hobbesian Fear lacks adequate grounds: people can resolve disputes without a monopoly state.

Like many libertarians, Skoble adduces historical examples of societies without a state, Iceland, Ireland, and the American West chief among them. But he does not stop with this. He confronts the Hobbesian Fear on its own ground of theory.

The Hobbesian argument may be put in this way. A group of people may recognize that if all of them refrained from initiating violence, they would all be better off. No longer would life be nasty, brutish, and short: people could now live peacefully. Unfortunately, this recognition will fail to generate the required agreement. Each person will also recognize that he would be still better off if he himself resorted to violence whenever he deemed it advantageous. If others keep their agreement, so much the better, and if they do not, one clearly is worse off by being the sole person to observe the agreement. Of course, everyone will reason in the same fashion and no one will keep the agreement. In brief, we have here a classic Prisoner's Dilemma.

Skoble brings to bear important work by Robert Axelrod and later writers that undercuts the analysis just presented. The argument that keeping the agreement, despite its recognized advantages to the group, is irrational applies only in a special case. If people do not expect to have further dealings with one another, then defection is the rational course. But people in a society do not find themselves in such a "one-shot Prisoner's Dilemma." Quite the contrary, they must deal with one another repeatedly. In such an "iterated Prisoner's Dilemma," cooperation, not defection is rational.*

[D]efecting is the dominant strategy, only if you play the game just once. It is not the dominant strategy, the research [of Axelrod and later writers such as Martin Nowak and Karl Sigmund] shows, if you play the game in series, that is, over and over again.

* Skoble should have noted that this is true only if the players do not know the number of times they will have to decide what to do. If they do know this, then since defection is rational on the last play, backward induction shows it is rational for each earlier play.

It turns out in that case that the most effective strategy is responsive cooperation. . . . (p. 63)

Objections can no doubt be raised to this argument; e.g., can one directly apply the argument for cooperation to a situation where actors do not repeatedly confront identical payoffs? But Skoble's argument is immensely suggestive. The assumption that people need a state to survive as a society must confront a powerful challenge.

The book contains much else, e.g., excellent discussions of how a libertarian anarchist society would handle disasters and whether disagreements between libertarians and advocates of other political views are "incommensurable." But I have thought it best to concentrate on Skoble's central argument. *Deleting the State* is an outstanding contribution to libertarian political theory.

*Killing in War**

JEFF MCMAHAN

The Liability of Soldiers in Combat

June 19, 2009, *Mises Daily*

JEFF MCMAHAN HAS WRITTEN a genuinely revolutionary book. He has uncovered a flaw in standard just-war theory. The standard view sharply separates the morality of going to war, *jus ad bellum*, from the morality of warfare, *jus in bello*. Whether or not a war is just does not affect the morality of how war is to be conducted. Soldiers are forbidden to violate the laws of war; but no greater restrictions are imposed on those who fight in an unjust cause than on those whose cause meets the requirements of *jus ad bellum*. This is exactly what McMahan rejects. Soldiers in an unjust cause have, for the most part, no right at all to engage in violent action against soldiers in a just cause. Not only do they lack moral standing to engage in aggressive warfare; they cannot legitimately even engage in defensive war, in most circumstances.

McMahan states his basic thesis in this way:

The contention of this book is that common sense beliefs about the morality of killing in war are deeply mistaken. The prevailing view is that in a state of war, the practice of killing is governed by different moral principles from those that govern acts of killing in other contexts. This presupposes that it can make a difference to the moral permissibility of killing another person

* Oxford University Press, 2009.

whether one's political leaders have declared a state of war with that person's country. According to the prevailing view, therefore, political leaders can sometimes cause other people's moral rights to disappear simply by commanding their armies to attack them. When stated in this way, the received view seems obviously absurd. (p. vii)

Once advanced, McMahan's thesis seems obvious, and it is his considerable philosophical merit to make us realize how obvious it is. Those who fight in an unjust war are, by hypothesis, directing force against people whom they have no right to attack. If, e.g., the United States had no right to invade Iraq in 2003, then American soldiers wrongly used force against Iraqi soldiers. If so, how can one contend that they are morally permitted to do so? Further, do not defenders against such aggression have the right to resist? If they do have this right, then the aggressors may not fight back, even in self-defense. If a policeman legitimately shoots at a suspect, the suspect cannot claim the right to shoot back in self-defense. McMahan holds that matters in this respect do not change in warfare.

McMahan contends further that his view is of more than merely theoretical importance. Because people accept the incorrect view that soldiers who fight in an unjust war do no wrong, so long as they obey the laws of war, they are more likely to participate in such wars. This makes wars more likely.

[Although] the idea that no one does wrong, or acts impermissibly, merely by fighting in a war that turns out to be unjust . . . is intended to have a restraining effect on the *conduct* of war, the widespread acceptance of this idea also makes it easier . . . to fight in war without qualms about whether the war is unjust. (p. 3)

As mentioned, it seems obvious, once stated, that those engaged in an unjust war have no right to attack others. But is it too severe a doctrine to claim that they have no right to defend themselves, if attacked by just combatants? Quite the contrary, McMahan notes that his view applies a standard position in interpersonal morality to the ethics of war:

For many centuries there has been general agreement that, as a matter of both morality and law, "where attack is justified there can be no lawful defence." These words were written by Pierino Belli in 1563 and were echoed a little over a century later by John

Locke, who claimed that “Force is to be opposed to nothing, but to unjust and unlawful force.” (p. 14)

McMahan is a very careful philosopher; as soon as he states a thesis, he thinks of qualifications, objections, and rebuttals. He notes an instance where unjust combatants can permissibly use force:

The exception to the claim that just combatants are illegitimate targets in war is when they pursue their just cause by impermissible means. If, for example, just combatants attempt to achieve their just cause by using terrorist tactics—that is, by intentionally killing and attacking innocent people, as the Allies did when they bombed German and Japanese cities in World War II—they make themselves morally liable to defensive attack and become legitimate targets even for unjust combatants. (p. 16)

If McMahan contends that unjust combatants are not morally permitted, in most cases, to use force, has he not placed unreasonable demands on them? They are in many cases conscripted into the armed forces and serve against their will: in fighting, they simply obey the orders of their government. If they refuse to serve, they may face severe criminal penalties. And once enemy troops fire on them, is it not unrealistic to demand that they not fire back?

But these considerations at best give unjust combatants an excuse for their conduct: they do not serve to show that what they do is morally right. Further, not all unjust combatants are conscripts; and, as to those who are, one sometimes has a moral duty to disobey unjust commands, even if doing so leads to harsh penalties.

“I was just following orders” is not always a convincing defense. And the situation for the soldiers who wish to act in accord with moral duty is not always so bleak. McMahan calls attention to the work of S. L. A. Marshall, who claimed that during World War II, “only about 15–20% of combatants had fired their weapons at all” (p. 133). Though not everyone accepts Marshall’s figures, it is not in dispute that many soldiers in battle did not fight. But of course the majority of combatants were not jailed for resistance. Soldiers, then, who wish to disobey unjust orders may be able to escape penalties.

McMahan considers an objection to his thesis advanced by David Estlund. Do not soldiers in a democratic country act reasonably in relying on

their government's claim that a war is just? After all, the government is likely to have much more relevant information than the soldiers and, Estlund contends, democratic decision-making has "epistemic value"; given the government's democratic *bona fides*, soldiers act reasonably in not attempting to assess for themselves the justice of a war.

Not so, McMahan responds.

Among democratic countries, the US stands out in two respects: it has carefully designed and robust democratic institutions and also goes to war more often than any other democratic country. What procedural guarantees are there that the wars it fights will be just? The answer is: none. The only constraint is a requirement of Congressional authorization—a requirement that can be fudged. . . . (p. 69)*

McMahan is an appropriately severe critic of American foreign policy:

The Pentagon Papers revealed an assortment of lies told to rally support for the war in Vietnam; Reagan lied about the nature of the Contras and the sources of their funding in order to make war against Nicaragua; and members of the George W. Bush administration lied repeatedly about weapons of mass destruction in Iraq in order to justify the invasion and occupation of that country to the UN, the Congress, and the American public. (p. 152)[†]

Although he considers American participation in World War II justifiable, he nevertheless remarks:

It is revealing about our attitudes in general that we sometimes do take combatants who have committed war crimes to be fully excused, or even justified. . . . Perhaps the most notorious case of this sort is that of General Paul Tibbets, who was the commander and pilot of the *Enola Gay*, the plane . . .

* I criticize Estlund's epistemic argument for democracy in "An Epistemic Argument for Democracy?" forthcoming.

† McMahan has written a detailed criticism of Reagan's Latin American policies: *Reagan and the World: Imperial Policy in the New Cold War* (Monthly Review Press, 1985).

from which the atomic bomb was dropped on the Japanese city of Hiroshima in August of 1945. . . . This single act by Tibbets, with contributions by the other members of his small crew, had as an immediate physical effect the killing of more people, the vast majority of whom were civilians, than any other single act ever done . . . all plausible moral theories, including even the most radical forms of consequentialism, prohibit the killing of *that many* innocent people in virtually all practically possible circumstances. Tibbets's act is therefore the most egregious war crime, and the most destructive single terrorist act, ever committed, even though it was committed in the course of a just war. Yet he was congratulated for it by President Truman. . . . (pp. 128–129)

McMahan's drastic revision of just-war theory, however cogent, appears to carry with it an unfortunate consequence. If unjust combatants use force illegitimately, are they not then subject to criminal penalties for their conduct? If we accept this consequence, the result will be large scale Nuremberg Trial proceedings: do we really want this? Further, as F. J. P. Veale long ago pointed out in *Advance to Barbarism*, the prospect of being tried for war crimes encourages leaders of governments to refuse to surrender.

Fortunately, McMahan's view does not have this consequence. What he is concerned to argue is that unjust combatants do not have the moral right to use force. It does not follow from this that they ought to be subject to criminal penalties for doing so. That is a prudential matter, and, as McMahan notes, strong considerations tell against resorting to criminal law. For one thing,

there is no impartial international court that could conduct trials of combatants who have fought in an unjust war. Because no government could try its own soldiers for fighting in a war in which it has commanded them to fight, the idea that unjust combatants are liable to punishment could lead to trials by victorious powers of individual soldiers of their defeated adversary . . . the victorious power that would prosecute allegedly unjust combatants would be more likely to be a vengeful aggressor prosecuting just combatants who had opposed it. (p. 190)

Further, McMahan grasps Veale's point:

Unjust combatants who feared punishment at the end of the war might be more reluctant to surrender, preferring to continue to fight with a low probability of victory than to surrender with a high probability of being punished. (pp. 190–191)

Readers unaccustomed to analytic moral philosophy may find McMahan's book hard going. He does not operate from a general theory but proceeds from case to case, weaving an intricate web of subtle distinctions.* The effort required to read the book, though, is well worth it: *Killing in War* is a distinguished contribution to moral theory.

* He is not as difficult as Frances Kamm, though I fear this is not much of a claim.

*Why Not Socialism?**

G. A. COHEN

A Camper's Guide to Equality

October 1, 2009, *Mises Review*

G. A. COHEN (1941–2009) grew up as a Marxist, but he abandoned a key belief of that doctrine. Marx taught that the coming of socialism was inevitable. The key to history was the development of the forces of production, which tended continually to grow. As they did so, new relations of production, and political and social arrangements appropriate to those relations, became necessary. History has thus proceeded through several stages, from primitive communism, to ancient slavery, onwards to feudalism, and then capitalism. In each case, the new social system was best fitted to develop the forces of production contemporary with it. Though capitalism permitted vastly greater productivity than any previous system, its day had passed. Socialism would enable previously unheard of prodigies of production.

On this view, it was not necessary to argue for the moral merits of socialism. To do so was superfluous; socialism would arrive, with the inexorability of a law of nature. G. A. Cohen, in *Karl Marx's Theory of History: A Defence*, provided the most analytically precise account ever written of the historical basis on which Marx expected socialism to arrive. But Cohen himself ceased to find convincing the theory he had so carefully

* Princeton University Press, 2009.

explained. By no means did he abandon socialism, but his arguments for it became purely ethical: we should institute socialism because this is a morally better system than capitalism.

In *Why Not Socialism?* Cohen explains in a clear and accessible way why he thinks that socialism is morally desirable. In doing so, though, he leaves himself open to a challenge, and of this he is fully aware. Even if he could demonstrate that socialism is a morally superior system to capitalism, it might turn out that socialism is impossible to establish. He endeavors to meet the difficulty but, as we shall see, he fails adequately to confront the principal reason that would derail a socialist economy.

First, though, why does he think that socialism is morally desirable? He asks us to consider a group of friends going on a camping trip. Would we not think it better that the people in the group shared their provisions than that each person on the trip selfishly tried to appropriate as much as he could for himself?

You and I and a whole bunch of other people go on a camping trip. . . . We have facilities to carry out our enterprise: we have, for example, pots and pans, oil, coffee, fishing rods, canoes, a soccer ball, decks of cards, and so forth. And, as is usual on camping trips, we avail ourselves of those facilities collectively: even if they are privately owned things, they are under collective control for the duration of the trip, and we have shared understandings about who is going to use them when, and under what circumstances, and why. . . . There are plenty of differences, but our mutual understandings, and the spirit of the enterprise, ensure that there are no inequalities to which anyone could make a principled objection. (pp. 3–4)

Cohen's parable illustrates, he thinks, virtues of equality and community that ought to be extended to society as a whole. The equality that he recommends, he is anxious to assure us, entails no drab uniformity. Quite the contrary, it allows for diversity based on individuals' tastes and preferences. But, as one would expect from Cohen's previous work, inequalities that result from the "luck" of having superior ability are ruled out.

Cohen does not go so far as John Rawls, who considers the fact that some people act more responsibly than others as also due to superior luck. As

Cohen rightly says, this view contradicts our ordinary attitudes, in which we do hold people responsible for the results of their free choices.

I [Cohen] said that believing no inequality could truly reflect real freedom of choice would contradict your reactions to people in day-to-day life, and that I lack that belief. I lack that belief because I am not convinced that it is true *both* that all choices are causally determined *and* that causal determination obliterates responsibility. If you are indeed so convinced, then do not *blame* me for thinking otherwise . . . do not, indeed, blame, or praise, anyone for choosing to do anything, and therefore live your life, henceforth, differently from the way that we both know that you have lived it up to now. (pp. 29–30)

This is Cohen at his best.

Although he thus allows differences of outcome that stem from free choices, he thinks that a problem arises when these inequalities are combined with another type of inequality that also seems fair. He has in mind option luck: as an example, suppose someone voluntarily gambles and wins a large sum of money. Surely someone who chose not to risk his money cannot complain at the good fortune of someone who did.

Though Cohen allows this form of inequality as well, he confines it, along with inequality generally, within strict limits. Too much inequality, even of a justifiable sort, can interfere with the good of community.

Although inequalities [of the sort just mentioned] are not condemned by justice, they are nevertheless repugnant to socialists when they obtain on a sufficiently large scale, because they contradict community: community is put under strain when large inequalities obtain . . . We cannot enjoy full community, you and I, if you make, and keep, ten times as much money as I do, because my life will then labor under challenges that you will never face, challenges that you could help me to cope with but do not, because you keep your money. (pp. 34–35)

The camping story was designed to bring out the good of community.

Cohen's argument for socialism must confront a difficulty that at first sight seems fatal. Even if his account of the camping trip is right, how did he get from an account of what is desirable in a very special setting to the

arrangements of a whole society? In a camping trip, people are “roughing it” and are usually not concerned with luxury. Cohen has chosen an example with special features and treated it as the general case. Should we view society as a giant camping trip, in which material goods rank far below the benefits of friendly and equal relations between everyone? That question remains open, whatever one thinks of the camping trip.

Another problem with using the camping-trip analogy does not escape Cohen’s attention. Camping trips normally involve family or friends. Why should what is appropriate in this situation apply to society, in which each person knows only a few other people? Cohen answers in this way:

I do not think that the cooperation and unselfishness that the trip displays are appropriate only among friends, or within a small community. In the mutual provisioning of a market society, I am essentially indifferent to the fate of the farmer whose food I eat: there is little or no community between us. . . . But it does seem to me that all people of goodwill would welcome the news that it had become possible to proceed otherwise, perhaps, for example, because some economists had invented clever ways of harnessing and organizing our capacity for generosity to others. (pp. 50–51)

Here, I suggest, Cohen has misconceived the nature of a market society. Nothing prevents people from being as generous as they wish to others. If you want to donate all your wealth to the poor beyond what you need to survive, you are at perfect liberty to do so. The issue between the socialist and the supporter of the free market then becomes whether you should be forced to regard everyone else as your “friend,” with a claim on your resources, even if you do not value so extended and demanding a community.

The same issue, by the way, arises in the camping trip. If people did not behave in the way Cohen urges on us, would they not be within their rights? Suppose that, on the trip, you bring with you some caviar, which you do not agree to share with your companions. Maybe they will consider you selfish; but, after all, it is your caviar.

As usual with Cohen, he has anticipated the objection.

The opponents [of the camping trip ethos] do not say that there *should* be more inequality and treating of people as a means on a

camping trip, but just that people have a *right* to make personal choices, even if the result is inequality. . . . (p. 47)

Cohen's answer takes us to the heart of the difference between a libertarian, natural-rights view and socialism. Cohen says that, although you cannot make "selfish" choices if you accept the ethos of camping, you retain a wide freedom of choice within those limits. Further, in a market society, the freedom to amass wealth restricts the choices available to others.

A particular person in a market society may face a choice of being a building laborer or a carer or starving, his set of choices being a consequence of everybody else's choices. (p. 48)

Cohen has fundamentally misconceived what is at stake. If you prevent me from stealing your car, you have restricted my freedom of choice; and if I am free to take your car, your freedom of choice over that object is restricted. We cannot assess what choices people should have available to them without knowing what rights people have. Any assignment of rights will restrict choice: Cohen's invocation of that tautology does not advance progress.

Both in his camping-trip story and in the general case, he averts his eyes from the most basic issue. How are property rights acquired? Cohen refers to the "voluntarily accepted constraint" of those on the camping trip; but surely he does not envision a purely voluntary socialism for society. (If he does, then the libertarian has no quarrel with him.) Cohen has elsewhere explained in detail his rejection of Lockean property rights, at least in the variant defended by Robert Nozick; but unless one agrees with him in this rejection, his case for socialism does not succeed.*

But let us put this to one side. Suppose that, however improbable for readers of this journal, one is attracted to his vision of socialism. Could it be put into practice? As mentioned before, Cohen is well aware that he needs to confront this question; but he fails to grasp the key issue.

As he sees matters, the fundamental problem for socialism is how to achieve the efficiency of the market without relying on the "base motives" on which the market depends. He does not know how to do this, but he hopes technology will be able to supply an answer:

* For the most detailed presentation of Cohen's arguments against libertarian property rights, see his *Self-Ownership, Freedom, and Equality* (Cambridge, 1995).

[W]e do not know how to honor personal choice, consistently with equality and community, on a large social scale. But I do not think that we will never know how to do these things: I am agnostic on that score. The technology for using base motives to productive economic effect is reasonably well understood. . . . But we should never forget that greed and fear are repugnant motives. (pp. 76–77)

Cohen's mistake is two-fold. First, as mentioned before, he wrongly thinks that the free market depends on base motives. His error is all the more surprising as he himself refers to the work of Joseph Caren.^{*} In an effort to cope with Mises's calculation argument, Caren proposed that a socialist society should reproduce exactly the firms and price structures of the free market. Once people received their market incomes, people would agree to redistribute them, following egalitarian requirements.

Here, then, producers aim, in an immediate sense, at cash results, but they do not keep (or otherwise benefit from) the money that accrues, and they seek it out of a desire to contribute to society: a market mechanism is used to solve the social technology problem, in the service of equality and community. (p. 64)

If Cohen here recognizes that the market need not be motivated by greed, why does he insist elsewhere that the market depends on bad motives and, on account of that, seek institutions to modify the market? He is even suspicious of market socialism as conceding too much to the hated market. The lesson of Mises and Hayek is clear: there is no substitute for the private ownership. Without it, economic calculation in a modern economy cannot take place. If Cohen were to accept this, his socialism would reduce to a plea to people to accept the egalitarian values he favors. If he does not, his socialism is doomed on economic grounds to fail. It is unfortunate that one of the foremost political philosophers of our time remained throughout his life in the grip of economic error.

^{*} Caren's book is *Equality, Moral Incentives, and the Market* (University of Chicago, 1981). For a critical analysis, see David Ramsay Steele, *From Marx to Mises* (Open Court, 1999).

Justice: What's the Right Thing to Do?^{*}

MICHAEL J. SANDEL

Unprincipled "Justice"

April 1, 2010, *Mises Review*

IT IS EASY TO SEE why Michael Sandel is a popular Harvard professor. He presents major ideas of ethics and political philosophy in a clear way, tied to important contemporary issues. *Justice: What's the Right Thing to Do?*, based on a famous course that Sandel teaches, offers a discussion of what Sandel regards as the three main competing views of justice.

The first of these takes welfare to be the criterion of justice. What counts as just is what leads to the best consequences. Thus, supporters of the free market such as Milton Friedman praise the market because it leads to prosperity, in contrast with other economic systems.

Why do we care [about prosperity]... The most obvious answer is that we think prosperity makes us better off than we would otherwise be—as individuals and as a society. Prosperity matters, in other words, because it contributes to our welfare. (p. 19)

Another approach, which many libertarians will find familiar, takes freedom and rights to be fundamental to justice. What is essential, according to this way of seeing things, is to give each person what is rightfully due to him, even if following this course does not lead to the best consequences.

^{*} Farrar, Straus and Giroux, 2009.

The approach to justice that begins with freedom is a capacious school. . . . Leading the laissez-faire camp are free-market libertarians who believe that justice consists in respecting and upholding the voluntary choices made by consenting adults. The fairness camp contains theorists of a more egalitarian bent. (p. 20)

The third view, the one to which Sandel is himself inclined, stresses virtue. What character traits should the government, as well as society as whole, endeavor to inculcate in the population?

The idea of legislating morality is anathema to many citizens of liberal societies, as it risks lapsing into intolerance and coercion. But the notion that a just society affirms certain virtues and conceptions of the good life has inspired political movements and arguments across the ideological spectrum. (p. 20)

This latter approach may be less familiar than the other two, but an example will show what Sandel has in mind. He considers sellers who increase prices in response to a disaster. Are not such people displaying greed, a character trait we do not wish people to have? Sandel knows full well the argument that raising prices in a disaster increases the supply of goods that people need. He quotes a characteristically incisive passage from Thomas Sowell on the point at issue.

Thomas Sowell, a free-market economist, called price gouging an “emotionally powerful but economically meaningless expression that most economists pay no attention to, because it seems too confused to bother with.” . . . Higher prices for ice, bottled water, roof repairs, generators, and motel rooms have the advantage, Sowell argued, of limiting the use of such things by consumers and increasing incentives for suppliers in far-off places to provide the goods and services most needed in the hurricane’s aftermath. (p. 4)

Nevertheless, he does not regard this consideration as decisive. Even if raising prices promotes welfare, still, “we” don’t want to promote greed, do “we”? Sandel is evidently willing to sacrifice a great deal of welfare to obtain the sort of virtue he wants. As we shall later see, his virtue-oriented position has little to recommend it. I have here merely introduced it briefly.

Sandel does a good job in showing the weakness of the welfare view, although here he goes over standard ground. If we aim to achieve the best consequences, will we not sometimes be required to do morally abhorrent things? Some actions, e.g., torture, are wrong, regardless of consequences.

To this objection there is a familiar rejoinder. What about the terrorist and the ticking atomic bomb? Are we really sure that torture is in all circumstances wrong? Sandel has an excellent response. In the imagined case, the terrorist is guilty of a horrendous moral wrong, planting the nuclear bomb. We can sharpen the case by asking whether it would be wrong to torture someone completely innocent, in order to extract the essential information.

Suppose the only way to induce the terrorist suspect to talk is to torture his young daughter (who has no knowledge of her father's nefarious activities). Would it be morally permissible to do so? (p. 40)

The consequentialist would have to answer, implausibly, that it would not be wrong.

Readers of this journal will naturally be interested in what Sandel has to say about one rights-based approach in particular, libertarianism. One might reasonably fear the worst: Sandel stands among the foremost communitarians and, as his previous work makes evident, he views the free market with disdain.*

Sandel here proves unpredictable. He thinks that most of the standard objections to libertarianism fail; even if there is something to these objections, libertarians have plausible responses.

Those who favor the redistribution of income through taxation offer various objections to the libertarian logic. Most of these objections can be answered. (p. 66)

If an opponent claims that the free market leaves too much to luck, libertarians can respond that people are self-owners and have the right to make exchanges as they wish. Further, libertarians are by no means obviously wrong when they compare taxation to forced labor. Nor will it do to respond to this that taxation has been democratically enacted. If taxation is slavery, majority support does not change things.

* See, e.g., his *Public Philosophy: Essays on Morality in Politics* (Harvard, 2005).

If democratic consent justifies the taking of property, does it also justify the taking of liberty? May the majority deprive me of freedom of speech and of religion, claiming that, as a democratic citizen, I have already given my consent to whatever it decides? (p. 68)

Surprise has its limits. As readers will have already surmised from Sandel's comments about the market and greed, he has not converted to libertarianism. But if he thinks that the usual objections do not overthrow libertarianism, why does he not join us? He answers by moving to his own preference among the three approaches he distinguishes. The problem with libertarianism involves virtue.

Libertarianism allows people to engage in degrading exchanges. A free market would permit people to sell their kidneys for frivolous reasons, e.g., to satisfy a healthy and wealthy eccentric who collects kidneys. Even worse, it would allow consensual cannibalism. Sandel describes a bizarre case in Germany in which this occurred.

[C]annibalism between consenting adults poses the ultimate test for the libertarian principle of self-ownership and the idea of justice that follows from it. It is an extreme form of assisted suicide. . . . If the libertarian claim is right, banning consensual cannibalism is unjust, a violation of the right to liberty. (p. 74)

Further, libertarianism leads to such horrors as an all-volunteer army. People with proper civic spirit will want to defend their country out of patriotism, rather than for pay. If they are not thus motivated, nevertheless they have a civic responsibility to serve and the draft enforces this obligation. Sandel appears to have forgotten his earlier remarks about taxation and slavery—or is slavery all right as long as civic responsibility mandates it?

Sandel's complaints about degrading exchanges cannot be so readily dismissed as his misguided praise for conscription: nevertheless, the appropriate counter to them is apparent. Libertarianism does not claim to encompass the whole of morality. Quite the contrary, it asks only, when is force or the threat of force permissible? The answer to this question delimits a sphere of rights, but not everything that is within one's rights counts as morally acceptable. People are free to do bad things, in the sense that they cannot be compelled to do what is morally required. Only if they violate rights can

force be used against them. The fact, if it is one, that the consensual cannibal does not violate rights leaves us free to recoil from him in disgust.

Sandel is well aware of this response, but he does not accept it. He subsumes it under a more general doctrine, neutrality. In this view, the state must remain neutral between competing moral views. (Of course, many libertarians think that the state should not exist, but we can readily substitute “the protection agencies” for “the state” in the argument.) Thus, even if most people find cannibalism morally abhorrent, the state cannot impose this opinion on those who dissent from it.

Sandel argues that neutrality cannot be sustained. Are there not certain issues that require the state to commit itself, one way or the other? The state cannot be neutral on abortion. Either fetal life merits protection, or it does not: the state cannot say that because people have conflicting moral views on the issue, it must stand aside.

For, if it's true that the developing fetus is morally equivalent to a child, then abortion is morally equivalent to infanticide. And few would maintain that government should let parents decide for themselves whether to kill their children. So the “pro-choice” position in the abortion debate is not really neutral on the underlying moral and theological question. . . . (p. 251)

Sandel makes this point in criticism of a familiar target, John Rawls. Here Sandel has in mind Rawls's famous doctrine of public reason, which limits the considerations that may be invoked in public debate.

Sandel's complaint against neutrality fails. Even if he were correct—in my view he isn't—that the state must take a stand on some issues, it hardly follows that it must do so wherever a moral controversy arises. Abortion inevitably raises issues of rights; Sandel's horror stories of degrading exchanges in a libertarian society do not. He thus leaves intact the libertarian contention that people should be free to act as they wish, so long as they do not violate rights.

Anyone with the slightest libertarian inclinations will shudder at Sandel's own approach to justice. As he sees matters, we must determine the meaning of social institutions such as marriage. “What counts as the purpose of marriage partly depends on what qualities we think marriage should celebrate and affirm” (pp. 259–260). Of course it will be the courts that decide this; such weighty matters cannot be left to individual decision. In this way, e.g.,

disputes over gay marriage can be settled. Having settled such controversies, we can then be enlisted in programs of civic improvement.

A politics of the common good would take as one of its primary goals the reconstruction of the infrastructure of civic life . . . it would tax the affluent to rebuild public institutions and services so that rich and poor alike would want to take advantage of them. (p. 267)

We can thus transcend the market economy and the greed that motivates it. Onward and upward!

*Neoconservatism: An Obituary for an Idea**

C. BRADLEY THOMPSON & YARON BROOK

The Philosophical Origins of Neoconservatism

April 1, 2010, *Mises Review*

TO MOST OF US, neoconservatism is inevitably associated with the Iraq War. A group of neoconservatives, including Robert Kagan and David Frum, played with consummate folly a major role in urging the Bush administration toward initiating that conflict. The movement, on that ground alone, has little to recommend it; but can one nevertheless make a case on its behalf?

After all, neoconservatism was not always associated with reckless foreign-policy initiatives. To the contrary, in its early days in the 1960s, Irving Kristol, Nathan Glazer, and Daniel Moynihan offered in the neoconservative journal *The Public Interest* cogent criticisms of many aspects of the welfare state. If Kristol could only muster *Two Cheers for Capitalism*, is this not better than most fashionable intellectuals can do? Perhaps the good elements in neoconservatism can be detached from the recent foreign-policy madness. C. Bradley Thompson emphatically disagrees. He argues that neoconservatism stands in fundamental opposition to individual rights and a free economy.

Although neoconservatives have indeed challenged certain aspects of the welfare state, they have no quarrel with it in principle.

* Paradigm Publishers, 2010.

In what may be Irving Kristol's most shocking statement in defense of collectivist redistribution and statism, he has suggested that "the idea of a welfare state is in itself perfectly consistent with a conservative political philosophy—as Bismarck knew, a hundred years ago." (p. 29)

If this accurately describes their position, why do the neoconservatives criticize the welfare state at all? Aside from the technical deficiencies of particular programs, what concerns them is the way that some welfare programs encourage unvirtuous behavior. Welfare that rewards giving birth out of wedlock, e.g., arouses their protests.

This sort of criticism reveals a key fact about the neoconservatives. They have a very definite sense of the proper conduct that the state, or as they are likely to term it, the regime, ought to promote. Not for them is the libertarian view that each person, so long as he does not initiate force against others, is free to lead his life as he wishes. To the contrary, the leaders of the state have as one of their prime duties the development of the citizens' characters. Accordingly, freedom of speech most decidedly does not extend to pornography. Further, the government must inculcate patriotic sentiment among the people.

More generally, neoconservatives do not believe in individual rights at all, in the robust sense with which readers of the *Mises Daily* will be familiar.

On a deeper level, the problem with the [American] Founders' liberalism, according to Kristol, is that it begins with the individual, and a philosophy that begins with the "self" must necessarily promote selfishness, choice, and the pursuit of personal happiness. . . . A free society grounded on the protection of individual rights leads inexorably to an amiable philistinism, an easygoing nihilism, and, ultimately, to "infinite emptiness." (pp. 28–29)

Thompson mordantly remarks, "Thus the great political lesson that the neocons have successfully taught other conservatives . . . is to stop worrying and love the State" (p. 29).

Thompson is not content with this devastating verdict. He maintains that existing studies of neoconservatism do not penetrate to the essence: they have not discovered the philosophical roots of the movement. He

locates this essence in the thought of Leo Strauss, and much of the book is devoted to a careful exposition and criticism of his views.* (Even if one dissents from Thompson's intellectual genealogy of neoconservatism, the discussion of Strauss is of great value for its own sake.)

Thompson appears to have set himself a difficult task. Neoconservatism according to many of its proponents is a tendency rather than a developed body of doctrine.

Those who are willing to call themselves neoconservatives (and not all are) typically describe neoconservatism as an "impulse," a "style of thought," or a "mode of thinking." Its proponents have described neoconservatism as a way of seeing the world, as a state of mind and not as a systematic political philosophy. (p. 4)

If this is right, how can Thompson proceed with his plan to unearth the philosophical foundations of neoconservatism? Will not a view that repudiates system prove impervious to analysis?

Thompson neatly turns this difficulty to his advantage. The rejection of system manifests in this instance a related view that provides the key to understanding neoconservatism. A system is composed of principles that inhere in an ordered structure; but neoconservatives oppose fixed principles of politics.

For all their supposed concern for ideas and philosophy, there is something profoundly antiphilosophical about the neoconservatives. They eschew moral first principles in favor of a technique or a mode of thinking, and they scorn absolute, certain moral principles for what "works." (p. 32)

But in this very rejection of systematic morality lies concealed a philosophical doctrine.

But what has all this to do with Leo Strauss? To make good his case that Strauss's thought lies behind neoconservatism, Thompson must first establish that the neocons knew and studied Strauss. He does so by showing

* Thompson is an Objectivist, and accordingly believes as a general thesis that ideas determine history. Readers will not fail to recall Leonard Peikoff's endeavor in *Ominous Parallels* to trace the roots of Nazism to Kant's philosophy. I do not think this effort was entirely successful.

that the acknowledged godfather of neoconservatism, Irving Kristol, took Strauss as his philosophical master. Thompson places particular emphasis on a review by Kristol in *Commentary* (October 1952) of Strauss's *Persecution and the Art of Writing*.

Remarkably, this document has never been brought to the attention of the general public until now. Kristol's confrontation with Strauss came as an epiphany. It was, as Kristol has intimated on several occasions, the most important intellectual event of his life. (p. 59)*

From *Persecution and the Art of Writing*, Kristol absorbed the message that philosophers needed to conceal their dangerous doctrines from the masses. Philosophy undermines religious belief and shows also that morality lacks a rational foundation. But without religion and an accepted morality, the social order would be overthrown. Further, if the masses were to become aware of what the philosophers really taught, would they not suppress these dangerous thinkers? Philosophers form an intellectual elite, and they rank far superior to those lacking their wisdom.

The ancient philosophers, mindful of the fate of Socrates, kept always in mind the need to maintain their distance from the masses. The Enlightenment abandoned this antique wisdom.

Whereas Socrates-Plato recognized a wide and unbridgeable chasm between philosophers and nonphilosophers, the engineers of the modern world—men such as Bacon, Newton, Locke, and Jefferson—thought it possible to make all men reasonable, to bring light to a dark world through reason and science. . . . The Enlightenment therefore represented for Strauss the democratization and thus the degradation of the Western mind. (pp. 66–67)

Strauss rejected capitalism and individualism, which as he saw them rested on a low view of man. Instead of philosophical wisdom, confined

* Thompson mentions that Kristol's wife, Gertrude Himmelfarb, also wrote about Strauss. One might also note that his brother-in-law, Milton Himmelfarb, had studied Strauss's works carefully and wrote about Strauss on several occasions. See, e.g., "On Leo Strauss," *Commentary* (August 1974).

to an elite, as the highest end of the regime, happiness and wealth for the masses became the order of the day.*

Strauss argued that the modern liberalism of Locke and Jefferson had distorted the fundamental structure of human existence, that without a *summum bonum* to guide his life, modern man lacked “completely a star and compass for his life” and was therefore wrenched away from the natural ordering of society. (p. 115)

The Enlightenment taught a further false doctrine: universal human rights. Instead, Strauss believed, there are no unalterably fixed moral standards. The statesman, taught by philosophers, must be guided by prudential judgment about the particular situation he faces. Here precisely is a key point at which Straussian teaching serves to explain neoconservatism. As earlier mentioned, the neocons resolutely reject fixed moral rules and rights.[†]

If Strauss rejected the Enlightenment, he by no means demanded the abolition of individualism and capitalism. To the contrary, the ancient arrangements of the *polis* could not in our day be restored; and the regime of the American Founding Fathers offered the best available bulwark against relativism and nihilism—if this regime was suitably controlled behind the scenes by philosophers instructed in Straussian wisdom.

What form would this philosophical guidance take? It is essential that the inferior masses develop virtuous habits, lest their unbridled appetites lead to undue disorder. To inculcate virtue and to weaken the base tendency of people to put their individual well-being ahead of the common good, what better means than a properly conducted war? War teaches self-sacrifice.

The moral component of this is straightforward. As we have seen, the neoconservatives’ ethical prescription for ordinary citizens consists in a life of selfless sacrifice to others, in which the individual puts the needs and well-being of others above his own. (p. 180)

* Strauss was influenced in his opposition to capitalism by his friend and academic patron R. H. Tawney, the eminent English socialist. Like Strauss, Tawney deplored what he called the “acquisitive society.” See Simon Green, “The Tawney-Strauss Connection: On Historicism and Values in the History of Political Ideas,” *Journal of Modern History*, June 1995.

† Ironically, in view of the Objectivist portrayal of Kant as the *fons et origo* of modern philosophical evil, Straussians such as Harry Jaffa denounce fixed moral rules as Kantian.

Thompson finds in this argument a principal motive for the neocons' support for the Iraq War. The neocons aimed not only to spread democracy as they conceived it to the benighted Iraqis: even more important, they saw the war as a means to discipline and educate the American people.

Thompson and Yaron Brook, the coauthor of the chapter on foreign policy, resolutely reject this approach to foreign policy. To them, wars are justifiable only as a means to avert a genuine threat, and "a real post-September 11 risk assessment of the threat posed by Iraq would not have resulted in finding that Iraq was at the top of the list of potential targets." (p. 179).

Thompson's interpretation of neoconservatism must confront two fundamental challenges. First, does he show that Strauss's views really stand at the base of neoconservatism? A critic might object that what holds true of Irving Kristol might not apply to others in the neoconservative movement. Further, has Thompson correctly interpreted Strauss? Was Strauss an advocate of a particular philosophy in his own right rather than a historian of political thought; and if he did wish to convey a philosophical message, is it the one Thompson attributes to him? I strongly suspect that Thompson can successfully meet these tests. *Neoconservatism: An Obituary for an Idea* is essential reading for anyone interested in either the neoconservatives or Leo Strauss.

*The Conscience of an Anarchist: Why It's Time to Say Good-Bye to the State and Build a Free Society**

GARY CHARTIER

Making Anarchy Believable

September 26, 2011, *Mises Daily*

GARY CHARTIER is a difficult author to review. In this excellent book, he displays a remarkable ability to discuss a profusion of arguments in a short number of pages. Given this abundance, I cannot hope to give a comprehensive account of the book. I propose instead to concentrate on a few arguments; but to get the full impact of the way Chartier amasses point after point in his relentless case against the state, one needs to read the entire work.

Chartier quickly dispatches philosophical arguments that claim to show a duty of obedience to the state. One such argument claims that “simply remaining within a state’s territory somehow constitutes consent to its authority” (p. 7). Against this, Chartier raises two points. First, if someone remains in a territory, this by no means shows that he has in fact consented to the state’s authority. He might have all sorts of other reasons for staying. “Perhaps I remain there because opportunities for work are plentiful, or because my friends are there, or because I like the style of architecture. And perhaps I don’t [leave] because gangs of thugs seem to be in charge everywhere else” (p. 7).

* Cobden Press, 2011.

The statist might respond to this that even if one has other reasons for staying in a territory that have nothing to do with the state's alleged authority, this does not matter. Staying in a territory *just is* consent to the rule of the state, regardless of whether the resident intends this. (I think, but am not sure, that this is what Chartier means by his distinction between signaling and constituting consent.)

This response by the statist fails. As Chartier notes, it is plausible to claim that residence constitutes consent only if there is antecedent reason to believe that we ought to acknowledge the state's authority. (Chartier does not say that this is a sufficient reason for taking residence to constitute consent, just a necessary one.) But precisely that question is what is in dispute:

The rulers of Bozarkia could reasonably claim that it [residence] constituted consent to their authority only if they already *had* legitimate authority. . . . A procedure for establishing the state's authority that assumes that the state already *has* authority doesn't really demonstrate much of anything. (p. 7)

If we cannot prove that we ought morally to obey the state, must we accept the state as a practical necessity? Without a commonly accepted and enforced law, would not a society dissolve into chaos? Chartier brings decisive arguments to bear against this superficially plausible contention. Why should a common law require a single agency to enforce it? Further, do states themselves have the single law that the statist contention presumes to exist?

But why should we assume . . . that we need the state—an organization with a monopoly over the use of force in a given territory—to protect us against violence? . . . Our experience with other monopolies certainly doesn't give us any reason to think that the state, a monopoly, will likely provide high-quality security, justice, and other services at low cost. . . . And it's clear that people can resolve disputes peacefully despite conflicts across legal systems. (pp. 12–14)

The state, Chartier maintains, is neither required by morality nor practically necessary. We can go much further. It is, he holds, an instrument of plunder, which acts against the interests of the broad masses to maintain and preserve an elite in privilege.

The state is actively involved in all aspects of economic life. And, whether the effect is deliberate or not, the practical result of its involvement . . . is that the scales are consistently tipped in favor of privileged elites. (p. 25, emphasis omitted)

Chartier makes a forceful case for this view. He points out, e.g., that regulations that purport to protect consumers in fact often make it difficult for small businesses to challenge established giants. “[L]arge established firms will likely find it easier to spend what’s needed to comply with new regulations—while smaller companies won’t” (p. 30).

So far, I have been in entire agreement with Chartier’s argument; few writers can match him in the ability to grasp at once the essence of an issue. But Chartier is not only a libertarian but a left-libertarian as well. This leads him to some questionable claims. He says,

In England, for instance, previously unenclosed common lands were enclosed and appropriated by large landowners. Many of the people filling the “dark Satanic mills” of the Industrial Revolution had been dispossessed from the land on which they worked. (p. 26)

Here, perhaps influenced by the work of Kevin Carson, whom he terms in his bibliography a “brilliant and creative synthesist and reinterpreter of the anarchist tradition” (p. 107), he ignores recent research that denies enclosures had the dire effects he mentions.* (Incidentally, whether Blake meant by “dark Satanic mills” the new factories of the Industrial Revolution is also a matter much in dispute.)

Chartier says that “unions, not legislators, won the first big battles in the struggle for the eight-hour day” (p. 35). He seems to take for granted that bargaining power determines wage rates, not workers’ marginal productivity, as Austrian economics maintains. Perhaps Chartier would respond that standard market theory does not apply when powerful firms have gained dominance through aid from the state; if they have done so, workers need strong unions to defend themselves. But even large firms that would not have existed in a free market stand subject to economic law and competition, and they too must pay workers what their marginal productivity requires. Left-libertarians, like

* For a summary of this recent research, see Deirdre McCloskey, *Bourgeois Dignity* (Chicago Press, 2010), pp. 172 ff.

neoclassical economists, often think (in my view wrongly) that competition requires an abundance of small firms; but Austrian economists reject this. And even if Chartier wishes to stress the weakness of labor in contrast to powerful and malign capitalists allied to the state, he ought to have mentioned, in his discussion of immigration restrictions, that some workers benefit from them. State intervention is not invariably a tool that helps the elite.

Again, Chartier rightly deplores government-licensing requirements on banks. But why does he think that a free market would “tend to drive down interest rates” (p. 32)? The view that monopolistic banks keep interest rates unduly high, though common among monetary cranks, is without basis. And his claim that “to some extent, at least” (p. 38), the corporate form would not exist without state action ignores the arguments of Robert Hessen, in his *In Defense of the Corporation*, to the contrary.

When Chartier turns to foreign policy, I am glad once more to endorse what he says entirely. As he incisively notes,

the US government’s declared and undeclared wars are too often pointless exercises in imperial expansion. Empire-building takes military, political, and economic forms . . . the US government’s wars are pointless because [they] don’t make Americans safer. Military interventions in Korea, Vietnam, Lebanon, Grenada, Iraq, the Balkans, Somalia, and Afghanistan haven’t served to protect Americans against foreign attacks. (p. 53)

One point Chartier makes in his comprehensive indictment of militarism is especially valuable and often neglected. Military veterans often secure positions on police forces, but the violence of war they have endured, in Iraq and elsewhere, ill suits them for dealing with civilian affairs. They all too frequently respond to difficulties with spasms of violence. “Military organizations and high-pressure combat-linked environments can encourage the dehumanization of perceived enemies. And people can bring their histories with them into civilian life” (p. 64).

Chartier’s book is vital reading for libertarians. It manifests the author’s wide-ranging knowledge of philosophy, ethics, history, and contemporary politics.

Free Market Fairness^{*}

JOHN TOMASI

A Libertarian Rawls?

April 1, 2012, *Mises Review*

TO WRITE ABOUT BLEEDING-HEART LIBERTARIANISM is no easy task. Self-professed bleeding-heart libertarians, who include well-known political philosophers, now run their own website, and the movement has aroused among libertarians considerable interest. But the bleeding hearts do not profess a unified philosophical point of view. If someone is a Rothbardian, e.g., or an Objectivist, you at once know what views you need to address; not so for a bleeding heart.

If the movement professes no fixed body of doctrine, though, many bleeding hearts seek to combine support for the free market, albeit often in an attenuated form, with a favorable view of social justice, and, in particular, of John Rawls's theory of justice.[†] Though Rawls was of course far from a supporter of the free market, a number of the bleeding hearts believe that his views can, suitably modified, provide a powerful defense of classical liberalism.

John Tomasi does not in *Free Market Fairness* call himself a bleeding-heart libertarian, but his excellent book offers the best and most comprehensive defense yet to appear of the position just described. Tomasi is a distinguished and imaginative political philosopher who teaches at Brown University, and every reader of his book will learn a great deal from it.

^{*} Princeton University Press, 2012.

[†] Roderick Long and Gary Chartier, both of whom contribute to the *Bleeding Heart Libertarians* blog, are among the exceptions. Neither works from a Rawlsian framework.

Tomasi describes in an engaging way what led him to what appears at first sight a mixture of incompatible commitments. On the one hand, he found classical liberalism appealing; on the other hand, he was attracted to a conception of justice usually taken to be inimical to that position.

Two classical-liberal ideas especially attracted him. The free market enables people to mold their own lives; no longer need they passively react to the wishes of others.

Growing prosperity seems to give an ever-wider range of people a sense of power and independence. It encourages a special form of self-esteem that comes when people recognize themselves as central causes of the particular lives they are living—rather than being in any way the ward of others, no matter how well meaning, other-regarding or wise those others might be. (p. 61)

Many have criticized the free market because, in Marx's phrase, it is an "anarchy of production": no central body coordinates the vast array of market prices. But this is of course not a failing but a virtue. Hayek has through his notion of "spontaneous order" done a great deal to illuminate why this is so, and Tomasi is impressed:

I am also drawn to the libertarian idea of "spontaneous order." ... Friedrich Hayek argues that a free society is best thought of as a spontaneous order in which people should be allowed to pursue their own goals on the basis of information available only to themselves. Along with the moral ideal of private economic liberty, I find the libertarian emphasis on spontaneous order deeply attractive. (p. xii)

Among his fellow political philosophers, support for the free market is decidedly a minority view. Classical liberalism has been overthrown by what Tomasi, following Samuel Freeman, calls "high liberalism":

The distinctive political commitment of high liberals is to a substantive conception of equality. Perhaps as a result, high liberals are skeptical of the moral importance of private economic liberty. Unlike the classical liberals and libertarians, the high liberal ideal of equality leads them to affirm a conception of social or distributive justice. (p. 54)

Clearly, you cannot at the same time consistently be both a classical liberal and a high liberal. But Tomasi makes a surprising claim. The most important theorist of high liberalism is John Rawls, but Tomasi argues that Rawls's conception of justice as fairness, which he accepts, can be adapted to the defense of "market democracy," Tomasi's version of classical liberalism.

Rawls's theory is not the only left-liberal account of social justice on offer, and Tomasi does not intend to "marry market democracy to the Rawlsian program" (p. 105). But

I [Tomasi] choose justice as fairness simply because, once it has been adjusted and corrected according to market democratic principles, it is the conception of liberal justice I find most compelling. (p. 175)

In order to understand Tomasi's claim and to judge its success, it is important to grasp what *market democracy* means. It is by no means the same as the libertarianism of Rothbard and Nozick.

Within the framework of market democracy, economic liberties can properly be regulated and limited to advance compelling interests of the liberal state. . . . Unlike strict libertarians, market democrats can join high liberals as well as classical liberal thinkers such as Milton Friedman, F. A. Hayek, and Richard Epstein, who say that the liberals' state should be given the power to provide a social minimum funded by a system of taxation. (pp. 91–92)

Tomasi also favors government support of education, e.g., through a voucher scheme. (A complication, which will not be pursued here, is that Tomasi distinguishes two versions of market democracy, democratic *laissez-faire* and democratic limited government; the second allows somewhat more direct government intervention than the first.)

But even if Tomasi is not a strict libertarian, does not his position differ entirely from that of Rawls, who expressly repudiates as inadequate the "system of natural liberty"? How then can Tomasi arrive at a Rawlsian defense of market democracy?

Tomasi's answer is not the obvious one that will first occur to most readers. Rawls's difference principle allows inequalities that make the worst-off class in society better off than they would otherwise be. Suppose that a great deal of inequality turns out to be to the advantage of the worst off because, e.g., economic incentives strongly motivate people. Would we not have a Rawlsian justification of inequality?

We very well might; but this is not the line that Tomasi takes. The point just considered depends on an empirical hypothesis about how people in the actual world are motivated. Tomasi prefers to operate at a higher level of abstraction. He is concerned, like Rawls himself, with “ideal theory.” This consists of two tasks of identification. The first of these

involves identifying a set of principles of justice that expresses our commitment to treat citizens as free and equal self-governing agents. The second identificatory task concerns institutions . . . we seek to identify institutional regime types that “realize” the principles of justice. (p. 206)

What Tomasi has in mind, then, is this. Rawls’s own social-democratic views are simply interpretations of his theory of justice. If we accept Rawls’s principles of justice, we are not bound by Rawls’s own views about how these principles are to be implemented, and the door to a market-democratic interpretation of Rawls lies open. To think otherwise, Tomasi holds, is to fall victim to what he calls an “*ipse dixit*” fallacy. “At the extreme, the exegetical approach treats justice as fairness as a plot in the archaeology of ideas rather than as a living, growing research paradigm” (p. 179).

For each of Rawls’s principles of justice, then, Tomasi offers an interpretation congenial to market democracy. Rawls’s first principle specifies a set of liberties that enjoys lexical priority to the distributive requirements of the second principle.* Rawls does not include rights to acquire and hold productive property among the set, but Tomasi does. The ability to engage in business often proves an excellent way to develop one’s moral powers. Why, then, exclude it from the list of protected liberties? Tomasi intends this point to apply to what Rawls terms the “special conception of justice,” where “social conditions are favorable to the attainment of social justice” (p. 181). He contends that with “prosperity, the existence of thick private economic liberty is for many citizens an essential condition of responsible self-authorship” (p. 183).

Tomasi offers his own understanding of other Rawlsian principles. For fair equality of opportunity, Tomasi stresses the need for each person to have a wide variety of choices, as opposed to efforts to counter the effects of status.

* A principle cannot be satisfied at the expense of a lexically prior principle; one cannot, e.g., sacrifice civil liberties to increase fair equality of opportunity.

For the difference principle, he emphasizes the need to increase through economic growth the wealth of the worst-off class. Not for him are efforts directly to reduce inequalities, e.g., through progressive taxation.

Those of libertarian inclination will find Tomasi's political program far more acceptable than Rawls's own program, but I do not think that Tomasi succeeds in making a Rawlsian case for market democracy. The problem as I see it is that he does not take adequate account of the originality of Rawls's approach to political philosophy.

The situation that drives Rawls to his theory is that of people in a large society like the United States who are divided by conflicting conceptions of the good. Some of these conceptions may be better than others, and one may in fact be the correct one: Rawls does not commit himself on this question. But none of these conceptions can be shown to be true in the strong sense that it would be unreasonable for anyone to reject it. This state of affairs Rawls terms "the fact of reasonable pluralism."

Given reasonable pluralism, it would be wrong for the holders of one conception to impose their views on others; respect for others requires that we defend our political views with reasons others could acknowledge. Our aim, Rawls holds, should not be a mere *modus vivendi* with those who profess other conceptions of the good. Rather, we should seek a stable society in which people decide disputed questions by democratic discussion.

He intends the principles of justice to give the conditions under which such democratic decisions can take place. Herein lies Rawls's originality. By inquiry into the conditions of a stable regime, given the fact of reasonable pluralism, one can avoid appeals to controversial moral intuitions or problematic moral theories like utilitarianism. His approach to justification is "political, not metaphysical."

Why did I embark on this elementary account of Rawls's theory? The reason is to bring out that to adopt a Rawlsian account of justice, one must accept democratic participation in a strong sense. For Rawls, the people in a society are bound to one another by special ties and decide political questions together. The echoes of Rousseau here are not accidental.*

* I have found very helpful for understanding Rawls's project: Joshua Cohen, *Philosophy, Politics, Democracy: Selected Papers* (Harvard University Press, 2009); Thomas Nagel, "The Problem of Global Justice" in *Secular Philosophy and the Religious Temperament: Essays 2002–2008* (Oxford University Press, 2009); and *Equality and Partiality* (Oxford, 1995).

Tomasi, it is clear, is not committed to this sort of democracy. People on his account need not value at all the process of deciding questions together with other citizens (though of course they are not precluded from doing this). He seems to me entirely right that productive business activity has great value; but this claim, right or not, derives from a particular conception of the good, not from asking for the presuppositions of democratic decision making under the condition of reasonable pluralism. In like fashion, the egalitarian implications Rawls finds in his principle of fair equality of opportunity and in the difference principle are not simply interpretations of his own that reflect distaste for wealth. Rather, once more they are plausibly taken as necessary conditions for the type of democratic participation Rawls favors.

Why does any of this matter? Suppose Tomasi responds that he rejects the democratic solidarity that Rawls wishes to promote. If he does this, though, then his defense of his interpretations of political liberty, fair equality of opportunity, and the difference principle depend on his own conception of the good. Like most political philosophers, he is reduced to his own moral intuitions or moral theory. He has abandoned the distinctive Rawlsian method of political justification.

I do not at all contend that he is wrong to do so: I am not a Rawlsian.* But Tomasi ought to be clear that, though he has adopted some Rawlsian themes, he has proceeded in an un-Rawlsian way. Many of the words of Rawls are present in Tomasi's book, but not the music.

Taken apart from the misleading Rawlsian framework, Tomasi's book contains many good arguments in defense of classical liberalism. But the intuitions that underlie these arguments must be weighed against other intuitions and arguments, in particular those that support the more stringent libertarianism from which Tomasi recoils.

Tomasi has little use for strict libertarians. They consider property rights "absolute"; by this he appears to mean that they would not allow the interventions by government such as the social-safety net and provision of vouchers that he thinks acceptable. He remarks that libertarians, like high liberals,

* Rawls's view of political justification, despite his appeal to overlapping consensus, seems to me a position one could reasonably reject. It itself rests on controversial assumptions about the value of deliberative democracy related in type to the disputable conceptions of the good it was designed to avoid.

single out the economic liberties for special treatment. But instead of *lowering* the status of the economic liberties, libertarians *elevate* them above all others. Economic liberties become the weightiest of all rights. Indeed, libertarians such as Jan Narveson assert that liberty *is* property. (p. 48, emphasis in original)

But if, as Narveson and Rothbard think, all rights can be analyzed as property rights, how does it follow that property rights are more important than other rights? To the contrary, the conclusion negates the premise. If there are no rights besides property rights, property rights *cannot* be more important than property rights. If Tomasi means that libertarians believe that property rights in the ordinary-language sense exceed in importance other rights such as civil liberties, this by no means follows from the libertarian view of property. In fact, it is directly contrary to Rothbard's own view that self-ownership is the primary right.

I do not want to close on a critical note. My favorite passage in the book is this:

From George Washington's warning to avoid the dangers of exclusive economic and military pacts with other countries . . . to James Madison's proposal of a constitutional amendment requiring political leaders wishing to go to war to raise funds from current taxes (rather than hiding the costs through borrowing), advocates of limited government have long been among the strongest critics of the politico-military establishments common with contemporary states . . . the very idea of a large publically funded military-industrial complex runs against the grain of market democracy. (p. 263)

That is well said indeed.

*What Money Can't Buy: The Moral Limits of Markets**

MICHAEL J. SANDEL

Another Case of the Anticapitalistic Mentality

May 16, 2012, *Mises Daily*

MICHAEL SANDEL, a popular government professor at Harvard, asks a good question, but his answer leaves a great deal to be desired. Are there things, he wants to know, that should not be bought and sold on the free market?

What role should markets play in public life and personal relations? How can we decide which goods should be bought and sold, and which should be governed by nonmarket values? (p. 11)

Clearly there are limits to the proper scope of the market: you cannot legitimately buy and sell people. Further, contracts to violate people's rights are also illicit. Beyond these commonsense restrictions, should not people be free to make whatever market arrangements they wish? This simple view is not to Sandel's liking.

He recognizes the position just suggested, but he rejects it.

The first [defense of markets over queues] is a libertarian argument. It maintains that people should be free to buy and sell

* Farrar, Straus and Giroux, 2012.

whatever they please, as long as they don't violate anyone's rights. Libertarians oppose laws against ticket scalping for the same reason they oppose laws against prostitution, or the sale of human organs: they believe such laws violate individual liberty, by interfering with the choices made by consenting adults. (p. 29)

Sandel suggests that the free choices here appealed to are sometimes less free than they appear. Suppose, he inquires, that a poor person has only one opportunity to better his position. Is the person really free to reject the opportunity? "Market choices are not free if some people are desperately poor or lack the ability to bargain on fair terms" (p. 112). As an example, he mentions an odd scheme by Barbara Harris that offered \$300 to women addicted to drugs who agreed to sterilization or long-term birth control. He says,

Although no one is holding a gun to her head, the financial inducements may be too tempting to resist . . . her choice . . . may really not be free. She may be coerced, in effect, by the necessity of her situation. (p. 45)

It hardly seems plausible to think that a tempting offer is coercive: if a college student who works part time at McDonalds receives an award of \$100,000 on condition that he bid his job goodbye, he is likely to find it very difficult to turn down his opportunity. That hardly suffices to make the offer coercive. A threat is very different from an offer, however tempting; and it is the former, not the latter, that is coercive.*

Indeed, it is not clear how strongly Sandel is committed to the claim that offers difficult to turn down metamorphose into threats; and in any case, he objects to many market exchanges where no coercion in his extended sense occurs.

His main argument against various market exchanges is a different one. It is that buying and selling changes the meaning of a great many of our social

* For the classic account of the complexities of coercion, and the distinction between threats and offers, see Robert Nozick, "Coercion," in his *Socratic Puzzles* (Harvard University Press, 1997), pp. 15–44; see in particular the discussion on p. 24 of the offer to the addict. The legal theorist Robert Hale held the strange view that all offers were at the same time threats. "If I offer to sell you a pound of bananas for 79 cents, e.g., I am threatening to withhold the fruit from you if you do not give me the money. In like fashion, you coerce me by threatening not to buy the bananas." See Mises's incredulous remarks on Hale's position.

practices. What he has in mind is best explained by an example. The example will also show, by the way, how remarkably easy he finds it to get upset. Nowadays, he tells us with outrage, people can avoid waiting in long lines. They can hire others to stand in line for them. One might at first be tempted to think this a good thing. If you hire someone as a substitute, you are in your own estimation better off, because you prefer hiring him to waiting. In like fashion, the person who waits thinks that it is worth it to do so. Both parties to the trade are better off. What could be easier to grasp?

Sandel does not agree. For example,

Think again about the Public Theater's free summer Shakespeare performance [in New York]. "We want people to have that experience for free," said the spokesperson, explaining the theater's opposition to hired line standers. . . . The Public Theater sees its free outdoor performances as a public festival, a kind of civic celebration. Charging for admission, or allowing scalpers to profit from what is meant to be a gift, is at odds with this end. It changes a public festival into a business, a tool for private gain. (p. 33)

Sandel's argument, then, is that buying and selling strikes against the meaning of various social practices. But why should we think, to take the example just mentioned, that performing a Shakespeare play in a park has as part of its meaning that admission to the play is free, with no paid line standers allowed? Would the play cease to be a play if those horrid paid line standers and scalpers plied their respective trades?

Sandel might answer that even if the play could be performed before a paying audience, it wouldn't be the *same* event as a performance before an audience that got in for free. But then he has simply built into the definition of the play's performance that the audience not pay admission. (Is it permissible, by the way, if the actors are paid? Are they required to donate their services?) Under this supposition, Sandel would be right that the meaning of performing the play would change; but this is just the consequence of the way he has elected to characterize what the performance of the play includes. Why should we be concerned with Sandel's preferred play, rather than a privately performed play? The latter is just a different social practice. Why is it worse than the free performance?

The answer to this uncovers the key assumption of Sandel's book. Though he does not wish to abolish the market—he thinks, for example, that it is all

right for stores to rent videos—he regards economic freedom with deep disquiet. He would not agree with the wag who suggested that the most beautiful word in the English language is “cash.” To the contrary, he views the market as corrupting. People who attend to economic gain put aside the nobler motive of sacrificing together for the common good.

Sandel’s denigration of filthy lucre frequently reaches absurdity. He opposes selling tickets for prime camping sites at Yosemite National Park on Craigslist at a higher price than the nominal cost set by the park service. He does so even though demand “is so intense, especially for the summer, that the campsites are fully booked within minutes of becoming available” (p. 36). To allow the dread hand of the market to besmirch Yosemite is to fail adequately to grasp the meaning of national parks. “They are places of natural wonder and beauty, worthy of appreciation, even awe. For scalpers to auction access to such places seems a kind of sacrilege” (p. 37). Holy space must not be profaned by money. Like Jesus, Sandel would drive the moneychangers out of the temple. What he has given us here is not a reasoned argument, but an expression of a pseudoreligious faith.

His faith these days is under constant assault.

The corrosive effect of advertising matters less in the grocery aisle than in the public square, where naming rights [i.e., the right to name buildings, streets, stadiums, etc., in return for a payment] and corporate sponsorships are becoming widespread. They call it “municipal marketing,” and it threatens to bring commercialism into the heart of civic life. (p. 189)

The market’s effect is “corrosive”: it “threatens” civic life. Why should we accept the implicit value judgments that lie behind Sandel’s emotive language? He does not tell us: instead, he again and again excoriates the evil market.

Even baseball is not immune from Sandel’s vaporings. His complaint should by now be familiar. No longer do people enjoy baseball as a public festival, with rich and poor sitting in seats that differ little in price. Now, big business has taken over: luxury “skyboxes” serve to separate wealthy persons and corporations from the rest of us, and advertising is ubiquitous.

Sandel acknowledges that people do not go to baseball games “primarily for the sake of a civic experience.” Nevertheless, the civic lesson needs to be present:

But the public character of the setting imparts a civic teaching—that we are all in this together, that for a few hours at least, we share a sense of place and civic pride. (p. 173)

Why cannot we just enjoy ourselves, without the Aesop's fable?

Sandel never stops complaining. He tells us that in

1965, when I [Sandel] was twelve years old, the best seats in the park [in Minneapolis] cost \$3; bleacher seats were \$1.50. . . . The business of baseball has changed a lot since then. . . . Not surprisingly, ticket prices have soared. A box seat at a Twins game is \$72, and the cheapest seat in the park costs \$11. (p. 164)

Before we join Sandel in his lamentation for the ordinary fan, who has been driven out of the ballpark by greedy businessmen, we might usefully ask an elementary question that apparently never occurred to our Harvard professor and common scold. What is the purchasing power today of \$1.50 in 1965? According to the CPI Inflation Calculator of the Bureau of Labor Statistics, the answer is \$10.92. True, eight cents is eight cents: but one doubts most people would take this increase to be an example of soaring prices. Also—what a thought!—perhaps charging high prices for box seats helped the owners to keep prices low for the less-well-off customers.

I cannot hope to do justice to the very wide range of market invasions that arouse Sandel to his jeremiad. One more of his complaints must here suffice. He appeals to the famous book *The Gift Relationship* (1970), by the British student of “social policy” and adviser to the Labour Party Richard Titmuss. He contrasted the British system of voluntary unpaid blood donations with the practice in the United States, which includes both voluntary and paid donations. The American system, he contended, “leads to chronic shortages, wasted blood, higher costs, and a greater risk of contaminated blood” (p. 123).

Why these dire consequences? If some people are paid to give blood, this drives out donations for altruistic reasons: “the market values that suffuse the system exert a corrosive effect on the norm of giving” (p. 124).

Kenneth Arrow objected to this that people who want to donate blood without compensation are not prevented by a commercial alternative from doing so. Sandel finds this response unconvincing.

The answer [to Arrow's objection] is that commercializing blood changes the meaning of donating it. For consider: in a world

where blood is routinely bought and sold, is donating a pint of blood at your local Red Cross still an act of generosity? Or is it an unfair labor practice that deprives needy persons of gainful employment selling their blood? (p. 126)

If you want to be generous, why not donate money so the hospital can attract more paid donors? Thus does a paying system crowd out unpaid donors.

This is more than a little lame. Do people who want to donate blood just because they think this an act of beneficence refrain from doing so for the bizarre reasons that Sandel adduces? Arrow seems perfectly correct: if you want to volunteer, the fact that others are paid should not and probably does not stop you. Further, that someone receives money for a donation hardly suggests that he does not think blood donation a good in itself, with motivating force. Persons can be motivated at the same time both by self-interest and concern for others.

Sandel responds to another objection to the arguments of Titmuss, again raised by Arrow. Earlier, Sir Dennis Robertson had suggested the point more generally. Arrow and Robertson noted that altruism is a scarce resource: it is unwise for society to rely on it unduly. The economist, realizing this, promotes “policies that rely, whenever possible, on self-interest rather than altruism or moral considerations . . . [thus saving] society from squandering its scarce supply of virtue” (p. 128).

Against this, Sandel appeals to the weighty authority of Aristotle. Does not moral virtue grow in the exercise of it? The economist’s way of thinking

ignores the possibility that our capacity for love and benevolence is not depleted with use but enlarged with practice. . . . Aristotle taught that virtue is something we cultivate with practice. (p. 126)

Aristotle’s point is characteristically wise; but Sandel has unaccountably failed to see that it is perfectly consistent with the claim that virtue is a scarce resource. The growth of virtue with practice does not imply that virtue can expand to an extent that makes it unnecessary to seek to conserve it.

There is yet one more problem with Sandel’s account of blood transfusions. He endeavors to respond to Arrow’s criticisms of Titmuss, but he fails to consider a matter of no slight significance. Titmuss’s claims for the superiority of the British system are highly controversial; other studies have found

that a market system works as well or better. Sandel evidently thinks the controversy unworthy of mention, if indeed he is aware of it at all.*

Sandel calls explicitly for no more than “public discourse” on the proper scope of the market. But no reader of the book can be in doubt about what he wants the outcome of that discourse to be: the coercive displacement of the free market in favor of the communitarian exhortations to self-sacrifice he finds so edifying. If one did not know that Sandel existed, one might suspect that this book was a Randian parody of an altruist intellectual.

* For an excellent summary and analysis of the literature, see Jeremy Shearmur, “Trust, Titmuss, and Blood,” *Economic Affairs*, Volume 21, March 2001, pp. 29–33.

Robert Nozick^{*}

RALF M. BADER

Guide to a Great Philosopher

July 1, 2012, *Mises Review*

RALF BADER has given us an excellent guidebook to *Anarchy, State, and Utopia*, but he has done much more than this.[†] He offers insightful arguments of his own, often in defense of Nozick against his non-libertarian critics. His book is a major advance in libertarian political theory.

As Bader rightly says, Nozick's book was "the unfolding of a philosophical position by one of the greatest philosophers of the twentieth century" (p. 111). According to its critics such as Thomas Nagel, though, the libertarian political theory advocated in the book lacked foundations. Nozick, the critics claimed, simply postulated controversial libertarian rights and failed to show why anyone not already inclined to libertarianism should accept these rights.

As Bader aptly notes, Nozick did not claim to offer such foundations, but he nevertheless had ideas of great value about the basis of rights. Unless people have rights which are treated as "side constraints," i.e., rules not to be violated in pursuit of the good or even in an attempt to minimize violations of these very rights themselves, their status as autonomous persons capable of giving meaning to their lives has not been respected.

The Kantian principle tells us to treat individuals as ends, rather than merely treating them as means. This requires us to treat them

^{*} Continuum, 2010.

[†] The book sometimes refers to Nozick's other books, but it is almost entirely devoted to *Anarchy, State, and Utopia*.

as beings that have dignity, beings that freely choose how to act and that can set ends for themselves. . . . Coercion involves making people do things they have not chosen to do. . . . Since individuals ought to be treated as ends and not mere means, it follows that they should not be coerced to do things against their will. (p. 22)

But why accept the Kantian principle? Nozick answers that

persons are beings who can shape their lives according to a conception or plan that they themselves have framed. They thereby possess the capacity to impart meaning to their lives and it is because of this that they are inviolable, that they should be treated as ends and not as mere means. (p. 24)

Samuel Scheffler has endeavored to use Nozick's appeal to the capacity for meaning to overturn his libertarian conclusions. If the point of rights is to enable people to seek meaning in their lives, do we not have here a justification for welfare rights as well as the liberties that libertarians find more congenial? Do we not need resources in order to pursue effectively almost any plausible conception of meaning; and if some people lack such resources, do we not have a case for redistribution to them from those better off?

Bader's response to Scheffler's objection is to my mind the best thing in the book. In Nozick's theory rights

are not means for ensuring that people can live meaningful lives, which is what Scheffler assumes in his favouring welfare rights over negative rights. It is not the case that living a meaningful life is the goal that is to be achieved and that rights are the means that permit us to attain this goal. Rather, it is in virtue of the fact that human beings are agents whose lives can have meaning that we need to respect their choices, that we have to let them decide how to live their lives. (pp. 79–80)

Scheffler's objection thus depends on a different conception of rights from Nozick's; he has not successfully undermined Nozick's view from within.

If Nozick makes a plausible case for rights as side constraints, this does not suffice to get us to libertarianism. For that, a theory justifying individual property rights is required; and here Nozick stands ready with his "entitlement theory of justice." Bader rightly notes that Nozick's theory rests on a

principle of initial acquisition but that Nozick neither claims to nor succeeds in putting forward such a principle.

Without a theory of acquisition, the entitlement theory would break down. . . . Nozick raises a number of forceful objections against Locke's theory of appropriation, which states that property can be acquired by mixing one's labour with something that is unowned. However, he does not put forward a positive theory to replace the one proposed by Locke. Instead, he simply gives a revised version of the Lockean proviso. (pp. 85–86)

In one respect Bader goes too far. Though Nozick did indeed raise objections, most notably his example of throwing a can of tomato juice into the sea, to Locke's view of initial acquisition, I do not think he intended these objections to be taken as reasons to reject Locke's approach altogether. Rather, he meant by their use to show that a Lockean principle of acquisition needed to be more exactly specified than has hitherto been done.*

Nozick defended his own theory of justice in part by a penetrating attack on competing theories. His famous Wilt Chamberlain example aimed to show that patterned theories of justice require severe interference with liberty in order to preserve the mandated pattern. Suppose, e.g., that we start with equal shares of wealth for everyone. Even the voluntary transfer of small sums of money by a large number of people to a single person may result in marked inequality. To preserve the pattern, people must be rigidly restricted in what they can do with the shares assigned to them by the theory.

Cheney Ryan has raised an ingenious objection to Nozick's contention. Even if it is true that patterns interfere with liberty, how can Nozick, given his own account of coercion, object to these interferences without assuming just what is at issue, that his specification of rights is true?

Even though pattern theorists have to impose restrictions on what people may do with their holdings, "whether or not this lack of freedom constitutes an infringement on personal liberty depends on the rights we have over the holdings in question. . . ." Given Nozick's rights-based definition of liberty, it follows that there is

* I rely for this point on conversations with Nozick.

no infringement of *liberty* in the absence of rights. (p. 96, quoting Ryan, emphasis in original)

In brief, the accusation is that Nozick's argument against patterned theories begs the question. These theories interfere with liberty only if one presupposes that people have the very rights over their distributive shares that these theories deny to them.

Bader insightfully suggests that despite this objection, a powerful case remains against patterned theories:

While the pattern theorist can consistently claim that maintaining a pattern does not restrict liberty, he must nonetheless impose significant restrictions on a range of intuitively unproblematic actions. While such a position is coherent, it is still counterintuitive since it imposes high costs on society by prohibiting a large number of mutually beneficial exchanges. (p. 98)

Bader's point is a good one, but I do not think that Nozick's original argument need be abandoned as question begging. It is certainly true that in his view people whose options are restricted by the actions of others have not been coerced, so long as those responsible for the restrictions have acted within their rights. But the kind of restrictions he has in mind here does not include restrictions imposed by force or the threat of force. He would not say, e.g., that if you deter me from trespassing on your land by pointing a gun at me, that you aren't using coercion because you are acting within your rights. Rather, he would I think say that you are coercing me, but justifiably so. Nozick can say that patterns upset liberty, consistently with his own account of coercion, without begging the question in favor of his own entitlement theory. Patterned theories are enforced by the government: Nozick doesn't have a rights-based view of liberty for this type of case.*

If Nozick is correct, people have rights, and these rights include property rights. How may these rights be secured and enforced? Nozick had the great merit of realizing that it is not obvious that the answer lies in the state. To the contrary, the existence of the state is problematic and requires justification. This he endeavored to supply in the first part of *Anarchy, State, and Utopia*, and Bader offers a careful account of Nozick's argument.

* I again rely here on conversations with Nozick.

In one place, though, I think that what he says is slightly mistaken. As he notes, Nozick imagines a state of nature in which a dominant protection association has emerged in competition with other agencies. As Bader tells the tale,

Nozick argues that independents can be prohibited from enforcing their rights since this kind of private enforcement is risky. . . . In this way we end up with a de facto monopoly. This is not a de jure monopoly since everyone has the same rights. It is not the case that the dominant agency has a special right that others lack. Instead, everyone has the same right of prohibiting others from using risky and unreliable methods. It simply happens to be the case that the dominant agency is in a position in which it is the only one who can make use of that right. (p. 34)

What I think isn't made clear in this passage is that the dominant agency can prohibit others from imposing risky procedures only against its clients: it has no right to ban such procedures altogether. Further, it is consistent with Nozick's account that a nondominant agency can prohibit still less powerful agencies from imposing on *its* clients procedures *it* views as risky. This possibility to my mind weakens Nozick's claim that he has genuinely arrived at a "state-like entity."

Rothbardians will be glad to see that Bader views with much sympathy anarchist objections to Nozick's derivation of the minimal state. In particular, competition among protection agencies will, contrary to Nozick's supposition, probably not result in a dominant agency's imposing by force its view of decision procedures on all others. To the contrary, the competing agencies will be likely to agree on peaceful ways to resolve disputes among them. Nozick naturally had thought of this, but he wrongly supposed that such agreements would result in "one unified federal judicial system of which they are all components" (p. 81, quoting Nozick). Bader points out that instead, "there can be different arbitration agencies and different protective agencies which compete with each other. There can still be large differences between the agencies" (p. 81).

Bader's book contains much else of great value, e.g., its emphasis on Nozick's account of the framework for utopia in the third part of *Anarchy, State, and Utopia*. Everyone interested in libertarian political theory should read Bader's book.

*Why Tolerate Religion?**

BRIAN LEITER

Freedom of Conscience: To What Extent?

December 12, 2012, *Mises Daily*

IN THIS VERY THOUGHTFUL BOOK, Brian Leiter calls our attention to a paradox. In most liberal democracies, including the United States, religious believers often are exempt from laws that violate the tenets of their religion. By contrast, parallel claims of exemption on non-religious grounds tend to receive less consideration.

Leiter offers an apt example. In a Canadian case, a Sikh student was allowed to wear a ceremonial dagger, mandated by his religion; but a secular student who claimed that wearing a dagger was an integral part of his lifestyle would almost certainly not receive the same consideration.

The conscientious obligation a devout Sikh has to wear a kirpan [ceremonial dagger] is thought to be too serious—too important for the integrity and identity of this religious believer—to require him to forgo it because of the general prohibition on what anyone else would see as a weapon and a danger to school safety. But now suppose that our fourteen-year old boy is not a Sikh but a boy from a rural family whose life “on the land” goes back many generations. . . . A boy’s identity as a man in his community turns on his always carrying the family knife. . . . There is no Western democracy, at present, in which

* Princeton University Press, 2012.

the boy in our second scenario has prevailed or would prevail in a challenge to a general prohibition on the carrying of weapons in the school. (pp. 2–3)

Why is this disparity in treatment a paradox? The problem arises for Leiter in large part because he views religion in a certain way. To him, religious beliefs fly in the face of reason and evidence: to accept conventional religion is irrational. He says, e.g.,

Ancient testimonial evidence in favor of events that are inconsistent with all other scientific knowledge about how the world works is nowhere thought to constitute evidence for belief in a particular proposition, and that is exactly the status of the putative evidence in support of the resurrection of Christ. (p. 41)

More generally, he says that

I am going to assume—uncontroversially among most philosophers but controversially among reformed epistemologists—that “reformed epistemology” is nothing more than an effort to insulate religious faith from ordinary standards of reason and evidence . . . and thus religious belief is a *culpable* form of unwarranted belief given these ordinary epistemic standards. (p. 81, emphasis in original)*

Here then is the paradox. If religious belief is irrational, why should it be given special privileges? Why should those who hold irrational beliefs be treated with indulgence not accorded to others?

Those familiar with Leiter’s frequent battles on his influential website with the “Texas Taliban” may anticipate an all-out assault on the special position of religion, but Leiter has a surprise in store. Following Nietzsche, his favorite philosopher, he holds that false beliefs can be necessary for life: the falsity of religious beliefs does not for Leiter settle the issue of the public status of religion.

* This is not the place to discuss the status of religious beliefs. But it does not follow from the undeniable fact that most Anglophone philosophers are not religious that they share Leiter’s view that those who do believe are irrationally insulating their faith from evidence. Leiter might respond that he does not contend that this does follow from these philosophers’ atheism, but that it is nonetheless true that they believe this. I am very much inclined to doubt it.

I have adopted throughout what seems to me the clearly correct Nietzschean posture—namely that the *falsity* of beliefs and/or *their lack of epistemic warrant* are not necessarily objections to those beliefs; indeed, false or unwarranted beliefs are almost certainly, as Nietzsche so often says, necessary conditions of life itself, and so of considerable value, and certainly enough value to warrant toleration.” (p. 91, emphasis in original)

Those who favor active measures to diminish the influence of religion in public life might appeal to the bad consequences of belief: what of all those massacred in the name of religion? Leiter in response says, “there is no reason to think that beliefs unhinged from reason and evidence and that issue in categorical demands on action are especially likely to issue in ‘harm’ to others” (p. 83).*

If Leiter does not favor the public crusade against religion one might have anticipated from him, he by no means supports granting religion a special place in the law. He argues, on both deontological and consequentialist grounds, that people’s beliefs and practices should be tolerated. People are normally entitled to freedom of conscience.

The strictly *moral* arguments for toleration claim either that there is a right to hold the beliefs and engage in the practices of which toleration is required; or that toleration of those beliefs and practices is essential to the realization of morally important goods. The moral arguments divide, predictably enough, into Kantian and utilitarian forms. (p. 15)

* In his definition of religion, Leiter places great stress on the categorical character of religious demands, but I am inclined to think he wrongly conflates two different concepts. He says, “To be sure, there are theoretical understandings of morality—Immanuel Kant’s most famously, though not only his—according to which the demands of morality are indeed categorical. What is interesting and important about religion is that it is one of the few systems of beliefs that give effect to this categoricity.” (p. 38). What Leiter has here in mind, if I have rightly understood him, is that religious believers take divine commands to be of overriding importance: they will endeavor to obey these commands, even when doing so requires great sacrifice. But that is a different matter from what Kant meant by a categorical imperative: this is an imperative that makes a direct demand on us, not dependent on whether fulfilling that demand furthers some interest. A categorical requirement in this sense need not be overriding, although Kant to be sure thought that *his* imperatives *were* overriding; and I doubt that Leiter would wish to exclude religious believers who obeyed divine commands in the hope of getting to heaven from those he has in mind when speaking of the “categoricity” of religious demands.

The right to act in accord with one's conscience is however not absolute: someone could not, e.g., justifiably use the teachings of his religion to demand that the practice of child sacrifice be allowed. Leiter calls these limits "side-constraints." *

Leiter thus subsumes religious exemptions within the more general category of freedom of conscience. In his view, religion should not be singled out for special treatment; and religion should be "tolerated" rather than accorded "the affirmative kind of appraisal respect," which goes beyond toleration. Though people's right to believe merits what he calls "recognition respect," the contents of religious beliefs, owing to their anti-rational character, do not deserve "appraisal respect."

Libertarians will applaud Leiter's excellent arguments for freedom of conscience, but he does not take them as far as we would wish. He thinks that all states must operate from a "Vision of the Good," "a vision, broadly speaking, of what is true or important" (p. 118): and that the state may act to promote its Vision, even though doing this puts it at odds with the beliefs of various groups within it. The Rawlsian notion of neutrality among these Visions is chimerical.

Rawlsian political liberals think a state can actually abstain from promoting a Vision of the Good that isn't generally accepted . . . though it seems to me that they typically just denominate as "unreasonable" anyone who has a Vision of the Good incompatible with the Rawlsian vision of a "political" conception of liberalism. (p. 122, note 38)

Given the necessity for such a Vision, the state can, e.g., exclude creationist teaching from public schools.

The state may endorse a Vision of the Good according to which religious explanations for the origin of human life are mythologies that have no place in the public schools, but what they [the state?] may not do is prevent the creationists and intelligent design proponents from articulating those views in private and in public (if not in the state schools). (p. 121)

* The phrase of course comes from Nozick but Leiter does not use it in quite the same way as he did. For Nozick a side constraint limits the pursuit of a goal; it is not a limit on the extent of rights.

Parents with creationist views would not be entitled to have their children taught in public schools in a way consonant with their beliefs. Of course, if there are no public schools, this problem does not arise.

More generally, Leiter is wary of attempts to extend claims of conscientious objections to laws.

Given the lack of any good moral reason for treating the nonreligious unequally with regard to claims of conscience, one obvious solution would be to extend the breadth of exemptions from generally applicable laws to all claims of conscience, religious or not . . . it seems unlikely that any legal system will embrace this capacious approach to liberty of conscience that would involve according all these claims of conscience equal legal standing. (p. 91)

Leiter seems to me right that states, particularly those that maintain a system of public education, must operate from a particular Vision of the Good; and if they do so, they will operate in a way that dissident groups within them deplore. But to libertarians, this is a reason not to establish a state of this sort in the first place. If a state will almost inevitably pass laws that violate the consciences of some of its citizens, is this not a significant argument against it? Leiter asks,

what legal system will say “this is the law, but, of course, you have the right to disregard it on grounds of conscience”? This would appear to amount to a legalization of anarchy! (p. 91)

Libertarians will answer, “Yes, precisely!”*

* The best discussion of how freedom of conscience, rightly understood, drastically restricts the state, or does away with it altogether is Chandran Kukathas, *The Liberal Archipelago* (Oxford, 2003).

*A Libertarian Critique of Intellectual Property**

BUTLER SHAFFER

Scarcity, Monopoly, and Intellectual Property

April 18, 2014, *Mises Daily*

FEW TOPICS IN RECENT YEARS have aroused as much interest among libertarians as intellectual property. What place, if any, would IP—patents, copyrights, trademarks and the like—have in a libertarian society? Ayn Rand and her Objectivist followers view IP as the most basic of all property rights. Diametrically opposed are those who say, “You cannot own an idea”: ideas are not in the economic sense scarce goods and thus property rights in them are at odds with the purpose of property rights, avoiding conflict over the use of such goods. Still others shift the argument from rights to the benefits and costs of IP. Does IP promote valuable inventions and creativity, or does it impede them?

Faced with a welter of arguments in conflict, what is the perplexed libertarian to do? Butler Shaffer’s superb monograph offers an easy way to unravel the IP puzzles. He starts from a fundamental principle basic to libertarianism and explains how the implications of this principle shed light on IP issues.

* Mises Institute, 2013.

What is this principle? It is that rights stem from “the informal processes by which men and women accord to each other a respect for the inviolability of their lives—along with claims to external resources (e.g., land, food, water, etc.) necessary to sustain their lives” (p. 18). The “informal processes” that Shaffer mentions proceed without coercion. In particular, law and rights do not depend on the dictates of the state, an organization that claims a monopoly over the legitimate use of force in a territory.

In adopting this stance, Shaffer puts himself at odds with much that passes in our day for wisdom among professors of law.

In a world grounded in institutional structuring, it is often difficult to find people willing to consider the possibility that property interests could derive from any source other than an acknowledged legal authority. There is an apparent acceptance of Jeremy Bentham’s dictum that “property is entirely the creature of law.” (pp. 18–19)

What follows for IP if one accepts Shaffer’s libertarian starting point? Then, we must ask the further question, would people who respect each other’s life and property recognize IP rights? To ask this question, though, raises a further issue. How are we to find out what people in this imagined situation would do? We live, after all, in “a world grounded in institutional structuring.” In our world, IP exists: how do we know what would exist in a stateless world?

Shaffer solves this difficulty by moving to a question that we can answer: How in fact has IP arisen? Was it recognized by the common law or has it been imposed by the state? Shaffer has no doubt about the answer:

The common law system got it right: because the essence of ownership is found in the capacity to control some resource in furtherance of one’s purposes, such a claim [of common law copyright] is lost once a product is released to the public. The situation is similar to that of a person owning oxygen that is contained in a tank, but loses a claim to any quantity that might be released—by a leaky valve—into the air. (pp. 25–26)

IP today goes far beyond the limited protection afforded by common law copyright. In the modern IP system, the state grants monopoly privileges, and this is inconsistent with libertarian principles:

If copyrights, patents, or trademark protections are not recognized among free people—unless specifically contracted for between two parties—by what reasoning can the state create and enforce such interests upon persons have not agreed to be so bound? . . . Among men and women of libertarian sentiments, one would expect to find a presumption of opposition to the idea that a monopolist of legal violence could create property interests that others would be bound in principle to respect. (p. 22)

One might raise an objection to Shaffer's argument. Even if people have not in fact voluntarily agreed to laws protecting IP, does this suffice to show that they could not do so? Shaffer allows contracts in which two people agree to limits on the right to reproduce an item that is purchased, but can one not imagine such contracts extended further? Could one not devise a complicated contract in which everyone agrees to IP protection? A contract of this sort would resemble agreements that some have proposed to supply public goods in an anarchist society.

I do not know how Shaffer would respond, but the imagined contract creates little trouble for the thesis he wishes to defend. He need not deny the bare possibility of a contract of this sort. He has only to insist once more that this contract would bind only those who had agreed to it, and it in that way does not resemble our present IP arrangements.

If Shaffer is right that a libertarian society would not recognize IP, we must now ask another question. Is this an unfortunate feature of a libertarian society as Shaffer conceives of it? Some have thought so, fearing that IP protection is needed to stimulate inventions and to promote creativity in the arts.

Shaffer finds no reason to accept this contention. After mentioning a large number of tools and inventions from prehistoric times, he says, "All of these early inventions and creations were accomplished, as far as is known, without a violence-backed monopoly to prevent others from copying them" (pp. 35–36).

In his discussion of innovation, Shaffer avoids a bad argument that, I regret to say, has beguiled several opponents of IP. It is correctly pointed out that ideas are not scarce, in one meaning of that term. Any number of people can make use of an idea at the same time. By contrast, economic goods are scarce: one's use of economic goods excludes others from using them. In brief, ideas are non-rivalrous. From this, it is wrongly concluded that the creation of new and valuable ideas poses no problem: If ideas are not scarce, then they are

abundant. Obviously, then, IP protection for them is absurd. It makes no more sense than property rights in air, a good which in normal circumstances anyone can have as much as he wants.

A parallel argument will serve to expose the fallacy. A common criticism of the free market is that it cannot supply public goods, such as national defense, in the economically optimal quantity. A public good is non-rivalrous: my consumption of defense, e.g., does not impede your consumption of it. It is alleged that this leads to undersupply of the good.

It would be a very poor answer to this complaint against the market to say,

This is not a problem! Just as the opponent of the free market has said, defense is a public, non-rivalrous good. If so, it is abundant—we need not then worry about its supply.

The error here is apparent: the fact that an indefinite number of people can consume a good at the same time does not show that there is as much of the good as people want. The application of this to the IP argument canvassed above is, I hope, sufficiently obvious.

Shaffer's book contains much else of great value. He points out that "the patenting process, as with government regulation generally, is an expensive and time-consuming undertaking that tends to increase industrial concentration" (p. 42). This, he holds, is a development much to be deplored. In his fear of the malign effects of undue organizational size, Shaffer has been influenced by Leopold Kohr, an original but neglected thinker.

Shaffer aptly concludes his monograph in this way:

Can one, consistent, with a libertarian philosophy, respect any "property" interest that is both created and enforced by the state, a system defined by its monopoly on the use of violence? I regard the proposition as indefensible as would be the question of a libertarian defense of war. (p. 54)

*The New Libertarianism: Anarcho-Capitalism**

J. MICHAEL OLIVER

Anarcho-Capitalists Against Ayn Rand

May 16, 2014, *Mises Daily*

J ■ MICHAEL OLIVER TELLS US that this remarkable book began as an academic thesis written in 1972 and submitted the next year for a graduate degree at the University of South Carolina. The book is much more than an academic thesis, though; it is a distinguished addition to libertarian thought.

Oliver's principal contribution arises from his reaction to two intellectual movements. Like many in the 1960s and 70s, he was attracted to the Objectivist philosophy of Ayn Rand. Together with several others in the Objectivist movement, though, Oliver disagreed with the political conclusions that Rand and her inner circle drew from her philosophy.

Some students of the philosophy concluded that Rand and the "orthodox" Objectivists had failed to develop a political theory that followed from the more basic principles of Objectivism. It was at that time that Rand's advocacy of limited government began to come under attack from a growing number of deviant "objectivists." The libertarian-objectivists . . . declared that government, limited or otherwise, is without justification,

* CreateSpace, 2013.

and that the only social system consistent with man's nature is a non-state, market society, or anarcho-capitalism.

To claim that Rand misconceived the implications of her own philosophy is a daring thesis, but Oliver makes a good case for it. After a succinct account of Objectivist metaphysics, epistemology, and theory of volition, Oliver turns to ethics. Here one feature stands to the fore. Objectivist ethics, as the name suggests, holds that the requirements for human flourishing are objective matters of fact:

Objectivists deny that there is any justification for the belief that ethics and values are beyond the realm of fact and reason. Man is, after all, a living being with a particular identity and particular requirements for his life. It is not the case that *any* actions will sustain his life; only those actions which are consonant with man's well-being will sustain him. Man cannot choose his values at random without reference to himself and still hope to live. This concept applies to an individual man as well as a human society (composed of individuals). Objective values follow from man's identity.

If there are objective requirements for your survival, that is going to be a matter of considerable interest to you; but is that the sum and substance of ethics? This is not the place to examine this question, but, at any rate, one of the arguments Rand used to support her egoist ethics does not succeed. Rand stated the argument in this way:

Try to imagine an immortal, indestructible robot, an entity which moves and acts, but cannot be affected by anything, which cannot be damaged, injured, or destroyed. Such an entity would not be able to have any values; it would have nothing to gain or lose; it could not regard anything as for it or against it, as serving or threatening its value, as fulfilling or frustrating its interests. It could have no interests and no goals.

Why is the indestructible robot unable to have values? The answer, according to Rand, is that because the robot cannot be destroyed or damaged, nothing can matter to it. But *why* does the robot's invulnerability imply that nothing matters to it? The answer is that because the purpose of values is to

promote one's own survival, indestructibility removes the point of values. If nothing can kill or injure it, it doesn't need to do anything to prevent being killed or injured.

But this isn't an argument at all for ethical egoism: Rand's conclusion follows only if one already accepts that the purpose of values is to secure one's own survival. Suppose the robot is altruistic: why would its own invulnerability prevent it from valuing the welfare of others? After all, even Rand doesn't claim that altruism is impossible: she just thinks it is mistaken.

But this is by the way. Much more important for our purposes are the political conclusions Oliver draws from Objectivist ethics. He begins with something Rand herself accepted.

Man is a being of choice. Those essential actions, both physical and cognitive, which he must undertake to maintain his being are subject to his volition. Since his life depends upon his capacity to choose, it follows that his life requires the freedom to choose. . . . Given that life is the standard of value, it is right that man be free to exercise his choice. The principle of rights as understood by the new libertarians is merely a statement of the fact that if man is to maintain life on the level which his nature permits, then men (in human society) must refrain from violating one another's freedom.

To protect these rights, Rand thought it necessary to have a limited government, and here is where Oliver diverges from his philosophical mentor. A regime of rights, along the lines Rand sets out, does not at all require an agency, however limited, holding a monopoly on the permissible use of force. Such an agency of necessity violates the very rights Rand advocated. "Government, being a coercive monopoly, must prohibit its citizens through the threat of force, from engaging the services of any alternative institution. . . ."

Government then necessarily violates rights; and furthermore, a limited government cannot for long remain limited.

The new libertarian concludes that the internal checks and balances on governmental power and the alleged mechanisms for the defense of minorities are . . . flimsy constructs. . . . Genuine competition, whether from another coercive agency or from a non-coercive business, can serve as the only real "limit" on State

power, and it does so precisely by depriving government of its status as a “government.” Logically, then, if government exists, it is unlimited and self-determining.

How, then, can rights be protected? Oliver finds the answer in anarcho-capitalism, and he makes extensive and effective use of the work of Murray Rothbard in his account of this system:

While anarcho-capitalists are in agreement that there can and should be market alternatives to government police, courts, prisons and armed forces, they are not in agreement as to the specifics of such private agencies and their methods . . . [but] the assumption herein is that the market will always tend toward rationality and satisfaction of the objective requirements for human life. . . . Protection from aggression, conflict arbitration, and rectification of wrongdoing are genuine needs of man in society. Satisfaction of these demands must be in keeping with man’s nature (i.e., the principle of rights) if the corrective measures are not to be unjust and economically destructive in themselves.

But must not Oliver overcome an objection? The standard response of Objectivists to anarchism is that there cannot be a market in law and defense. To the contrary, the free market presupposes the existence of a fixed legal order, not subject to competition; and this only a government can provide.

Oliver not only answers this difficulty but turns it against the objectivist defenders of the state. It is entirely true, Oliver says, that the free market presupposes objective law; but the requirements of objective law are fixed by human nature. Far from requiring a state, objective law correctly understood precludes its existence.

There is no need for a legislative process. Law is inherent in the nature of things—including man’s nature. Thus, discovery of law rather than the fabrication of law is called for. . . . Because capitalism/voluntarism is based upon a recognition of the necessity of freedom of thought and action, it makes no sense to create a monopolistic agency for the discovery of truth and law.

In an anarcho-capitalist society, the basic elements of law would not be “up for grabs,” contrary to the claims of the Randian critics of anarchism.*

It is state-created law, not anarcho-capitalism, that conflicts with legal objectivity.

One deleterious effect of governmental law is the suppression or obfuscation of concern for objective law. After generations of living under an omnipresent legal system, men could easily come to view government as the source of law, thus losing sight of natural, objective law.

There is much else of great interest in *The New Libertarianism*, including a detailed account of how anarchist law enforcement might operate; a trenchant criticism of the influential notion of “spontaneous field control” advanced by the Yale political scientists Robert Dahl, and Charles Lindbloom; and suggestions about how a free market might use innovative technology to solve transportation problems. *The New Libertarianism* is a major contribution to the defense of anarcho-capitalism.

* For a discussion of the objection, by both supporters and opponents of it, see Roderick Long and Tibor Machan, eds., *Anarchism/Minarchism* (Ashgate, 2008).

*Against the State: An Anarcho-Capitalist Manifesto**

LLEWELLYN H. ROCKWELL, JR.

Limited Government Is a Vain Hope

June 20, 2014, *Mises Daily*

LEW ROCKWELL HAS SET HIMSELF A DIFFICULT TASK. He has written *Against the State*, not for the already convinced libertarian, eager to discuss the latest theoretical refinements, but rather for the concerned citizen who senses that something is wrong with our political system and wonders what to do about it. Such readers are apt to recoil in horror at the mention of anarchism, but it is precisely Rockwell's aim to convert such skeptical readers to anarcho-capitalism, of the sort defended by Murray Rothbard.

With that audience as his target, Rockwell has followed a three-part strategy. First, he shows that the present situation is so bad that radical remedies must be considered. Second, he blocks the main remedy that will at once occur to many of his readers. They will agree with him that the American state has become tyrannical, but at first they will seek a less radical answer than Rockwell's. They will suggest that the key fault of our government is that it has overthrown the constitutional regime established by the Founding Fathers. We have only to return to the American tradition of limited government, and our present political ills will dissipate. It is a key task of the book to disarm this response. Only after the first two parts of the strategy have been laid out will readers be in a position to appreciate the case for anarchism.

* Rockwell Communications, 2014.

Rockwell begins with a fundamental criticism of the contemporary American state. As you would expect from a student of Murray Rothbard, he assails the war and imperialism that dominate American foreign policy.

The main aim of American foreign policy is to impose the will of our ruling elite on the rest of the world. In doing so, we have inflicted massive death and destruction, without moral justification. When she was Secretary of State, Madeleine Albright expressed the attitude of the American state elite with chilling clarity. On the *60 Minutes* program, May 12, 1996, Lesley Stahl asked Albright about the economic sanctions the US was imposing on the Saddam Hussein regime in Iraq. Stahl inquired, “We have heard that half a million children have died. I mean, that’s more children than died in Hiroshima. And, you know, is the price worth it?” and Albright replied “we think the price is worth it.”

Such a bloodthirsty policy is unfortunately not an aberration. Rockwell shows that war in pursuit of empire has dominated twentieth-century American foreign policy. Woodrow Wilson believed that

America . . . had a mission to bring democracy to the world. . . . Wilson, though extremely pro-British, began the process of replacing Britain with America as the dominant world power. Throughout the twentieth century, we see this constant pattern: America has used democratic rhetoric to impose American world domination.

The policy of world domination continued during the Cold War. Following Murray Rothbard, Rockwell holds that the “war” that the Communists waged against us was ideological. Though Communists might preach revolution, Soviet foreign policy posed no direct threat to America. In point of fact, America’s aggressive policy had as its principal aim to secure control by the government of the American economy by making it dependent on government spending. Rockwell shows that despite President Eisenhower’s much-touted farewell speech warning against unwarranted influence of the military-industrial complex, Eisenhower played a primary role in securing the continuing dominance of that very “complex” over the economy.

How should we respond to imperialism and war? One answer is to return to the traditional American policy of Washington and Jefferson. America before the twentieth century did indeed avoid entanglement in European affairs, but

to say, “we need to return to the foreign policy of the Founders” won’t solve our problem. Even if we did this, we would still be violating the just war principles that Rothbard has set out. And let’s not forget the War of 1812, in part motivated by the wish to conquer Canada, and the Mexican War, aptly called in a recent book *A Wicked War*.

The American state does not confine its belligerent activities to those unfortunate enough to dwell overseas. Increasingly, the state assaults its own citizens, as Rockwell makes abundantly clear. The “war on drugs” has filled our prisons with people who have presumed to ingest substances that the state forbids. The “war on terror” has been the excuse for a massive assault on our liberties. Local police have increasingly come to adopt militarized tactics, in the style of colonial administrators dealing with subject populations.

Following the classic analysis of John T. Flynn in *As We Go Marching* (1944), Rockwell describes the American state as fascist.

Fascism is the system of government that cartelizes the private sector, centrally plans the economy to subsidize producers, exalts the police State as the source of order, denies fundamental rights and liberties to individuals, and makes the executive State the unlimited master of society.

Reading about the horrendous behavior of the state may well be depressing; but as F. H. Bradley said, “where everything is bad, it must be good to know the worst.” Given the manifest evils and failures of the state, what should we do? Many in Rockwell’s audience will seek a solution in “limited government.” If only we return to the Constitution as intended by its Framers, all will be well.

Rockwell very effectively brings out that this is a vain hope. The notion of limited government is incapable of being realized in practice. If there is a monopoly government, any limitations on the government must be ones the government has imposed on itself. To expect this sort of limitation to be effective is futile.

As Rockwell puts the point:

This solution can't work. It suffers from a fatal flaw. The Constitution creates a government that is the judge of its own powers. The branches of the government, legislative, executive, and judicial, are in theory supposed to check and balance each other. The problem with this is that the Supreme Court, which as the Constitution has developed has become the highest arbiter of constitutional issues, is itself part of the federal government. In a dispute between the federal government and the people, it is unlikely to side against the government.

If limited government will not work, what is to be done? Rockwell finds the answer in the free market. If competition works well for all other goods and services, why not for protection and defense as well? What is supposed to be "special" about these latter services that requires us to abandon the proved lessons of experience?

But how exactly would anarchism operate? In a way greatly influenced by Rothbard, Rockwell describes the activities of libertarian defense agencies. These agencies follow a libertarian law code, based on natural law.

We could go on at greater length about the libertarian law code, but for our purposes, there is no need to do so. Once we have self-ownership and property rights, that's all we need. Individuals are then free to make whatever exchanges they wish. This is the basis on which the free market can get started.

Rockwell has wisely avoided a mistake. "Anarcho-capitalism means relying on the free market in everything; and we can't specify in advance exactly how the free market will work. Leonard Read pointed out in a classic account that when something has been socialized, people jump to the conclusion that the market can't provide it." *Against the State* is not, in the phrase of Marx and Engels in the *Communist Manifesto*, one of the "duodecimo editions of the New Jerusalem."

Against the State merits the careful attention of everyone who wishes to live in freedom.

Endnotes

1. Alasdair MacIntyre, *After Virtue* (Notre Dame: University of Notre Dame Press, 1981), p. 278.
2. Harry V. Jaffa, "Of Men, Hogs, and Law," *National Review*, February 3, 1992. Professor Jaffa briefly responded in a letter to comments on him in my "Democracy and the Missing Argument," *This World*, No. 27 (Winter, 1992), pp. 8–13. He enclosed with his letter copies of "Of Men, Hogs, and Law," his "Lincoln's Character Assassins," *National Review*, January 22, 1990, and an unpublished letter to the editor of *National Review*, dated January 24, 1992, replying to Ernest van den Haag's response to the former essay. Since he included these items with his reply to me, I have addressed points in each of them in the present essay.

Since his remarks on my article are contained in a letter not addressed to me, I shall refrain from direct quotation of it. In sum, he objected to my claim that his argument "that Lincoln correctly interpreted the Declaration of Independence to support a system of egalitarian democracy seems of purely historical interest." "Democracy and the Missing Argument," p. 9. He wrongly claims that I have not read his *Crisis of the House Divided*, apparently because my remark echoes Willmore Kendall's review of the book.

In what way does the comment repeat Kendall? Judging by Jaffa's essay on Kendall's review, I think he takes my remark on Lincoln to resemble Kendall's claim that Lincoln "derailed" the American tradition. According to Kendall, Lincoln's stress on the Declaration's equality clause paved the way for radical programs of social levelling. Harry V. Jaffa, *How to Think About the American Revolution* (Durham: Carolina Academic Press, 1978), pp. 18, 33.

Jaffa has misread my statement. Unlike Kendall, I made no attempt to assess Lincoln's place in the American tradition. I intended rather to

question the relevance to political philosophy of Lincoln's views and, for that matter, of the Declaration itself. Further, by "democracy" I meant democracy, not the programs of contemporary leftists. I do not doubt that Jaffa is a Reagan Republican and nothing in my article suggests otherwise.

Judging by his comments and enclosures, I think that Jaffa takes my article to be a contribution to the discussion about Lincoln in which he and various Southern partisans, most notably M. E. Bradford, have been engaged for many years. But I did not intend my remarks as an intervention in that controversy. Since Jaffa has raised the question, however, I do think that Bradford, Thomas Fleming, and Frank Meyer have the better case.

If I *had* repeated Kendall, how would this show that I had not read *Crisis*? Might I not have read the book and agreed with Kendall? Or arrived at the same position independently?

Jaffa has on other occasions claimed that his critics have not read him. See, e.g., "Crisis of the Strauss Divided," *Social Research*, Vol. 54, No.3 (Autumn, 1987), p. 579. Has the possibility occurred to Jaffa that a critic may accurately read him yet remain unconvinced?

If, improbably, anyone wishes to pursue the matter further, Kendall's review of *Crisis* is available in his *The Conservative Affirmation* (Chicago: Henry Regnery, 1963), pp. 249–252.

3. Harry V. Jaffa, "Equality, Liberty, Wisdom, Morality and Consent in the Idea of Political Freedom," *Interpretation*, Vol. 15, No.1 (Jan. 1987), p. 9.
4. *Ibid.*, p. 9.
5. Harry Jaffa, *Crisis of the House Divided* (Chicago: University of Chicago Press, 1982 [1959]), p. 75. Jaffa is correct: see R. M. Spiazzi, OP-ed., *In Libros Politicorum Aristotelis Expositio* (Turin and Rome, 1951), I, 74, 76, pp. 21, 2.
6. Harry Jaffa, "II. Dear Professor Drury," *Political Theory*, Vol. 15, No.3 (August, 1987), pp. 317–318.
7. Harry V. Jaffa, "Aristotle" in Leo Strauss and Joseph Cropsey, eds., *History of Political Philosophy* (Chicago: Rand McNally and Co., 1965), p. 116. The parallelism with Jaffa's account of Strauss's view in his reply to Drury makes apparent that he accepts the teaching he here describes. This essay is not included in the 1957 edition of Strauss-Cropsey.
8. Jaffa, "Dear Professor Drury," p. 318.
9. Jaffa, "Equality, Liberty, Wisdom," p. 9.

10. Ibid., p. 10.
11. Harry V. Jaffa, *Thomism and Aristotelianism* (Chicago: University of Chicago Press, 1952), p. 154.
12. It might be objected that Jaffa is simply interpreting Aristotle, rather than giving his own opinion. His interpretation rests on the assumption that it "is only the *possibility* that Aristotle may have known the truth about things that we find baffling that leads us to study him with all seriousness." Jaffa does not "imply that Aristotle's teachings are identical with right reason. . . . this study would not make sense if it were possible to assume that every deviation from Aristotle was a corruption of the truth . . ." Jaffa, *Thomism*, p. 197, n. 3. The passage thus suggests that Jaffa is willing to entertain as a serious possibility that philosophers are divine. It is for this reason that I say that: "perhaps Jaffa accepts this view." Very significant here is Jaffa's statement that the argument for a ground for law "requires for its foundation such an understanding of morality as one finds in the *Nicomachean Ethics*. . . . The moral rationality of the *Nicomachean Ethics* and of the *Politics*, like that of the Declaration of Independence, is grounded in the objectivity of the distinctions between man, beast, and God." Harry V. Jaffa, "Seven Answers for Professor Anastaplo," *University of Puget Sound Law Review*, Vol. 13, No. 2 (Winter, 1990), p. 400. But in Aristotle God has no direct relation with human beings: the relevant distinctions are, in Jaffa's interpretation, between men of ordinary virtue, magnanimous men, and philosophers.
13. When Jaffa wrote this passage, he evidently regarded Locke's account of the state of nature as similar to that of Hobbes. I do not myself accept this interpretation. For an excellent criticism of Strauss's interpretation of Locke, see Eric Mack, "Locke's Arguments for Natural Rights," *Southwestern Journal of Philosophy*, Vol. XI, No. 1 (Spring, 1980), pp. 57–60.
14. Jaffa, *Crisis*, p. 323.
15. Ibid., p. 327.
16. Harry V. Jaffa, "In Defense of the 'Natural Law Thesis,'" in *Equality and Liberty* (New York: Oxford University Press, 1965), p. 206, n.2. Emphasis in original.
17. This essay originally appeared in the *American Political Science Review* for March, 1957.
18. Ibid., p. 205.
19. "Crisis of the Strauss Divided," p. 595.
20. Ibid., pp. 595–596.

21. Ibid., p. 602. Although this view of Hobbes is standard among Straussians, it is controversial. For a different view, see S. A. Lloyd, *Ideals as Interests in Hobbes's Leviathan* (Cambridge: Cambridge University Press, 1992).
22. Ibid., p. 595.
23. Ibid., p. 595.
24. Ibid., p. 587.
25. Harry V. Jaffa, "Humanizing Certitudes and Impoverishing Doubts," *Interpretation*, Vol. 16, No. 1 (Fall, 1988), p. 117.
26. Leo Strauss, "Progress or Return?," in Hilail Gildin, ed., *An Introduction to Political Philosophy: Ten Essays by Leo Strauss* (Detroit: Wayne State University Press, 1989), p. 305.
27. "Crisis of the Strauss Divided," p. 588, citing Strauss, "On the Interpretation of Genesis," *L'Homme*, 1981, pp. 5–20. Note also the stronger claim in "Progress or Return?," p. 306: "Now the first alternative—a proof of the non-existence of an omnipotent God—would presuppose that we have perfect knowledge of the whole, so as it were we know all the corners, there is no place for an omnipotent God. In other words, the presupposition is a completed system. We have a solution to all riddles. And then I think we may dismiss this possibility as absurd."
28. We need to add this qualification in case Strauss argues that philosophy can disprove claims of religion which do not teach the existence of an omnipotent being or at least a being with the power to override natural law.
29. *Thomism*, p. 193, quoting a speech by Winston Churchill at the MIT Midcentury Convocation, *New York Times*, April 1, 1949. I assume that Jaffa considers his argument for equality part of social science.
30. "Some Answers for Professor Anastaplo," p. 426.
31. Cf. the comment of Carl Schmitt on the precept "Love your enemies": "No mention is made of the political enemy. Never in the thousand-year struggle between Christians and Moslems did it occur to a Christian to surrender rather than defend Europe out of love toward the Saracens or Turks." *The Concept of the Political*, trans. George Schwab (New Brunswick: Rutgers University Press, 1976), p. 29.
32. Jaffa states in his essay on *King Lear*: "But great passion, be it that of Lear, of Oedipus, or of Jesus, implies greatness in the soul of the sufferer. A great passion is always, in some sense, compensation for a great error. As Plato teaches in the *Republic*, great errors are the work of great souls, souls capable of either great good or great evil." "The Limits of

- Politics: King Lear, Act I, Scene I" in Allan Bloom with Henry V. Jaffa, *Shakespeare's Politics* (New York: Basic Books, 1964), p. 117. I rely on this passage for the assertion in the text about Jaffa's religious beliefs.
33. "Equality, Liberty, Wisdom," pp. 22–23.
 34. "Seven Answers for Professor Anastaplo," p. 426.
 35. *Ibid.*, p. 393.
 36. Harry V. Jaffa, "Letter to the Editor of *National Review*," January 24, 1992, unpublished, p. 1. Jaffa claims that "if [we] are to be responsible for our choice and actions" we must be free to choose between good and evil. But suppose someone was incapable of temptation to evil. Why could he not be responsible for choice among different good acts? Jaffa's contention makes it impossible for God to be responsible for his actions, since he cannot choose evil.
 37. "Strauss Divided," p. 596.
 38. Harry V. Jaffa, "What Were the Original Intentions of the Framers of the Constitution of the United States?," *University of Puget Sound Law Review*, Vol. 10, No. 3 (Spring, 1987), Appendix B, p. 417.
 39. I readily acknowledge that this suggestion is speculative. But note the comment of Jaffa's friend Harry Neumann: "It is not sufficient philosophically to declare 'I hold there is no sin but ignorance,' unless the man asserting it also has, like Lincoln and Jaffa, an unquestioning (and therefore 'ignorant') rootedness in his herd's confidence that 'god,' a true non-arbitrary standard of goodness and right, exists." *Liberalism* (Durham: Carolina Academic Press, 1991), p. 100. The volume contains a foreword by Jaffa and appears in a series he edits. Cf. also Spinoza's *Deus sive natura*.
 40. Harry V. Jaffa, *How to Think About the American Revolution* (Durham: Carolina Academic Press, 1978), pp. 131–132. See also, Lawrence Berns, "Aristotle and the Moderns," in Kenneth L. Deutsch and Walter Soffer, *The Crisis of Liberal Democracy: A Straussian Perspective* (Albany: SUNY Press, 1987), p. 156.
 41. "Equality, Liberty, Wisdom," pp. 24–25.
 42. *Ibid.*, pp. 26–27. Judaism believes in a universal God, but one who is also tied to a particular community.
 43. *Crisis*, p. 229.
 44. *Ibid.*, p. 230.
 45. *Ibid.*, p. 242.
 46. *Ibid.*, p. 263.

47. "The Limits of Politics: King Lear," p. 138, n. 1.
48. "Equality, Liberty, Wisdom," p. 23.
49. For Drury's views, see the article by Jaffa cited in n. 6 supra. For a good discussion of Strauss's views on religion, see Stanley Rosen, *Hermeneutics as Politics* (Oxford: Oxford University Press, 1987), pp. 110 ff.
50. Harry V. Jaffa, "Neumann on Nihilism: The Case for Politics," in Neumann, *Liberalism*, p. 68. The argument of Jaffa's last sentence is a poor one. "There is no one in the room" normally does not mean "The entity 'No one' is in the room."
51. Gershom Scholem, *Kabbalah* (New York: Dorset Press, 1987 [1974]), p. 94. For a brief introduction to neo-Platonic doctrines of emanationism, see Richard Sorabji, *Time, Creation and the Continuum* (Ithaca: Cornell, 1983), pp. 313 ff. On creation out of nothing, see also Leo Strauss, "How to Begin to Study *The Guide of the Perplexed*" in *Liberalism: Ancient and Modern* (New York: Basic Books, 1968), p. 182.
52. Leo Strauss, *Philosophy and Law*, trans. Fred Baumann (Philadelphia: Jewish Publication Society, 1987 [1935]), p. 105.
53. *Ibid.*, p. 83.
54. *Ibid.*, p. 95.
55. Strauss's interpretation of Maimonides is frequently characterized in this way. Incidentally, for a much-needed corrective to Strauss's "esoteric writing" thesis, see Errol Harris, *Is There an Esoteric Doctrine in the Tractatus Theologico-Politicus?* (Leiden: E. J. Brill, 1978).
56. Leo Strauss, *The Argument and the Action of Plato's Laws* (Chicago: University of Chicago Press, 1975), p. 1.
57. Leo Strauss, "Farabi's Plato" in *Louis Ginzberg Jubilee Volume. English Section* (New York: American Academy for Jewish Research, 1945), p. 375. I have omitted diacritical marks in "Farabi." Hillel Fradkin's claim that Strauss does not, in "Farabi's Plato," identify "the prophet, or the legislator, with the philosopher" cannot be accepted as it stands. "Philosophy and Law: Leo Strauss as a Student of Medieval Jewish Thought," *Review of Politics*, Vol. 53 (Winter, 1991), p. 50. On the page of "Farabi's Plato" that follows the one Fradkin has quoted, Strauss notes that "the real remedy employed in Plato is far more radical": philosophers can live in imperfect cities. ("Farabi's Plato," p. 381. Fradkin uses a reprint of Strauss's essay, so our citations do not correspond in pagination.) As discussed below, the more radical remedy implies rule by philosophers.
58. "Farabi's Plato," pp. 373–374, 392.

59. Ibid., p. 392.
60. Ibid., pp. 383–384.
61. *Philosophy and Law*, p. 110.
62. “Farabi’s Plato,” p. 357.
63. Gershom Scholem, ed., *The Correspondence of Walter Benjamin and Gershom Scholem, 1932–1940* (Cambridge, MA: Harvard University Press, 1992), p. 256. See also Scholem’s characterization of Strauss as “an atheist,” p. 157. Hannah Arendt, another acquaintance of Strauss in Weimar days, commented on him in a letter to Karl Jaspers: “Leo Strauss . . . is a convinced orthodox atheist. Very odd. A truly gifted intellect. I don’t like him.” Lotte Kohler and Hans Saner, eds., *Hannah Arendt-Karl Jaspers Correspondence, 1926–1969*. (New York: Harcourt Brace Jovanovich, 1992), p. 244, Letter of July 24, 1959. The German original edition of the correspondence was published in 1985.
64. Emmanuel Levinas, *Difficult Freedom*, trans. Sean Hand (London: The Athlone Press, 1990), p. 111.
65. “Jaffa, Strauss, and the Christian Tradition,” in Frederick D. Wilhelmson, *Christianity and Political Philosophy* (Athens, Georgia: The University of Georgia Press, 1978), p. 223.
66. “On the Revival of Classical Political Philosophy,” in James V. Schall and John J. Schrems, eds., *On the Intelligibility of Political Philosophy: Essays of Charles N. R. McCoy* (Washington, DC: CUA Press, 1989), p. 138, no. 34.
67. “Progress or Return?,” p. 304.
68. Ibid., pp. 304–305.
69. “Original Intentions,” Appendix B, p. 419.
70. “Equality, Liberty, Wisdom,” pp. 20–21.
71. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), Part I. Murray Rothbard, *Power and Market*. (Menlo Park: Institute for Humane Studies, 1970).
72. A classic discussion is James Buchanan and Gordon Tullock, *The Calculus of Consent* (Ann Arbor: University of Michigan Press, 1962). Jaffa ought to have analyzed this issue rather than show that he can repeat Locke’s *Second Treatise*.
73. Harry V. Jaffa, “Natural Right” in David L. Sills, ed., *International Encyclopedia of the Social Sciences*, 1968, Vol. 11, p. 86.
74. See my “Democracy and the Missing Argument,” pp. 11–12.

75. "Of Men, Hogs, and Law," p. 40.
76. "Equality, Liberty, Wisdom," p. 17.
77. There is an analogy between this reason to avoid self-enforcement and Nozick's idea of risky decision procedures. But Nozick does not ban such procedures on the basis of a quasi-theological argument.
78. *How to Think About the American Revolution*, pp. 135, 131–132, order transposed.
79. On my speculative view of Strauss's interpretation of religion, this doctrine might mean that non-philosophical rulers should not interfere with a philosopher's plans. They should not, e.g., upset a philosophically-devised constitution.
80. "Of Men, Hogs, and Law," p. 40.
81. Ernest van den Haag, Response to "Of Men, Hogs, and Law," p. 41.
82. All references in this section to "In Defense of the 'Natural Law Thesis'" will be by page number in parentheses.
83. Gilbert Ryle, "Discussion of Rudolf Carnap: 'Meaning and Necessity'" in Gilbert Ryle, *Collected Papers* (London: Hutchinson, 1971), pp. 226, 230.
84. This is of course a version of Wittgenstein's private language argument. See Ludwig Wittgenstein, *Philosophical Investigations*, trans. G. E. M. Anscombe (Oxford: Basil Blackwell, 1953). Of the vast literature generated by this argument, see in particular Saul Kripke, *Wittgenstein on Rules and Private Language* (Cambridge, MA: Harvard University Press, 1982).
85. David Kelley, *The Evidence of the Senses* (Baton Rouge: Louisiana State University Press, 1986) makes a strong case for direct perception of physical objects. See my review in *International Philosophical Quarterly*, Vol. 28 (September, 1988), pp. 337–339. I take it that by "sense-data" Jaffa means private experiences and does not intend the term as a placeholder for whatever it is we perceive.
86. D. M. Armstrong, "Meaning and Communication," *Philosophical Review* (October, 1971), pp. 427–447 defends a view of meaning based on Locke that is anti-Wittgensteinian.
87. For a good account of the Sorites, see Roy Sorensen, *Blindspots* (Oxford: Clarendon Press, 1988), pp. 217–252.
88. Even if Jaffa's argument were completely successful, he would not have succeeded in his goal of proving that value words *cannot* have normative meaning if they do not have cognitive meaning. All he has argued for is that they *do* not, since on his account normative meaning *is* cognitive

- meaning. But he has not shown that no other account of the normative is possible.
89. "As we learn in Book IX [of the *Nicomachean Ethics*] all friendship, and all virtue are ultimately based on self-love." *Thomism*, p. 125. "[T]he practical virtues find their supreme expression in the political sphere, whose good is the honorable good, with respect to which friends are valued either as instruments in the performance of the activities, or as conditions of our consciousness of the virtuousness of the activities." (*Ibid.*, p. 130)
 90. Derek Parfit has discussed self-defeating theories in *Reasons and Persons* (Oxford: Clarendon Press, 1984). See also Jon Elster, *Sour Grapes* (Cambridge: Cambridge University Press, 1983). Further, to eliminate Jaffa's problem, one need not resort to natural law. All one needs is the requirement that preferences be consistent.
 91. For an application of satisficing rationality to morality, see Michael Slote, *Beyond Optimizing* (Cambridge, MA: Harvard University Press, 1989). A classic discussion of the use of probability estimates in ethics is J. M. Keynes, *A Treatise on Probability* (Cambridge: Cambridge University Press, 1973), pp. 341 ff.
 92. J. L. Mackie, *Inventing Right and Wrong*. (New York: Penguin, 1977).
 93. Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1953): these "phenomena . . . are, as it were, constituted by value judgments." Ludwig von Mises criticizes Strauss's argument in *Theory and History* (New Haven: Yale University Press, 1957), pp. 299–300; but I think Strauss emerges unscathed. Strauss anticipated a similar argument by Philippa Foot. See her *Virtues and Vices* (Berkeley and Los Angeles: University of California Press, 1978). Jaffa's speeches in his debate with Rochon were issued as a pamphlet, on which I unfortunately cannot now lay my hands. I have had to rely on memory in attributing this contention to Professor Jaffa and apologize if I have misstated his view.
 94. Letter to the Editor of *National Review*, Jan. 24, 1992, p. 2.
 95. *On Tyranny*, p. 238.
 96. *Dear Professor Drury*, pp. 320–321.
 97. *Ibid.*, pp. 322–323.
 98. *Thomism*, pp. 31–32. On the next page Jaffa states: "from another point of view the revealed doctrine may be said to depreciate morality, and the philosophic doctrine to elevate it" (*Ibid.*, p. 33). But this point

- of view does not contradict the earlier point: it concerns whether the prospect of immortal reward is at stake in acting virtuously.
99. In this respect I differ with the main thesis of Shadia B. Drury, *The Political Ideas of Leo Strauss* (Basingstoke: Macmillan, 1988).
 100. *Dear Professor Drury*, pp. 81–82.
 101. *Thomism*, p. 208, n. 84.
 102. John Finnis, *Moral Absolutes* (Washington, DC: Catholic University of America Press, 1991), pp. 34–36, is an excellent recent discussion. Aquinas states: “The Commentator is not to be followed on this matter; for one may not commit adultery for any good. . . .” Thomas Aquinas, *De malo*, q. 15a. 1ad 5 [4] as cited in Finnis, p. 36.
 103. *Dear Professor Drury*, p. 318, citing the 43rd *Federalist*, 43.
 104. *Thomism*, p. 143.
 105. *Ibid.*, p. 179.
 106. *Ibid.*, p. 179.
 107. *Ibid.*, p. 181.
 108. *Ibid.*, p. 181.
 109. *Ibid.*, p. 182.
 110. “Lincoln’s Character Assassins,” p. 36. In “Original Intentions of the Framers,” Jaffa states: “It is no accident that this speech [by Stephens] was delivered two years after the publication of Darwin’s *Origin of Species*,” p. 393. “Two years” is not strictly correct, since the *Origin* was published in November, 1859. As I have indicated, I do not intend to dispute Jaffa’s interpretation of Stephens’s speech. But I think he ought to have discussed Stephens’s own comments on it in the recollections he wrote while imprisoned after the war: “The order of subordination was nature’s great law; philosophy taught that order as the normal condition of the African amongst European races. Upon this recognized principle of a proper subordination, let it be called slavery or what not, our State institutions were formed and rested. The new Confederation was entered into with this distinct understanding. The principle of the subordination of the inferior to the superior was the ‘cornerstone’ on which it was formed. I used this metaphor merely to illustrate the firm convictions of the framers of the new Constitution that this relation of the black to the white race, which existed in 1787, was not wrong in itself . . . that it was in conformity to nature and best for both races. I alluded not to the principles of the new Government on this subject, but to public sentiment in regard to these principles. The

status of the African race in the new Constitution was left just where it was in the old; I affirmed and meant to affirm nothing else in this Savannah speech." Myrta Lockett Avery, ed., *Recollections of Alexander H. Stephens* (New York: Doubleday, Page and Company, 1910), pp. 173–174. Jaffa is certainly entitled to disagree with Stephens, but not to ignore him. Also, I do not think it correct to say that in Stephens's *Constitutional View*, the "cornerstone" sinks from sight. *How to Think About the American Revolution*, p. 160. Stephens remarks about slavery in that book: "To maintain that slavery is in *itself* sinful, in the face of all that is said and written in the Bible upon the subject . . . does seem to me to be a little short of blasphemous." Alexander H. Stephens, *A Constitutional View of the War Between the States* (Philadelphia: National Publishing Co., 1868–1870), p. 83.

111. Paul H. Barrett, et al., eds., *A Concordance to Darwin's Origin of Species. First Edition* (Ithaca: Cornell University Press, 1981), p. 509, lists only four references to "Negro" or "Negroes."
112. *Crisis*, chapter XVII, "The Meaning of Equality: Abstract and Practical," pp. 363–386. Jaffa maintains here that "genuine verbal inconsistency may be a requirement of true political consistency," p. 369.
113. "Lincoln's Character Assassins," p. 37. See also *Crisis*, p. 383.
114. "Original Intentions," Appendix B, p. 415.
115. *How to Think About the American Revolution*, p. 26.
116. Even here, Jaffa supports medical licensure; apparently, the criticisms of this policy by Milton Friedman and others have left him unconvinced.
117. *How to Think About the American Revolution*, p. 149.
118. *Crisis*, 1973 Introduction, p. 12.
119. The relevant parts of the Act are reprinted in Richard Epstein, *Forbidden Grounds* (Cambridge: Harvard University Press, 1992), pp. 508–511. Epstein's book comprehensively analyzes civil rights legislation from a free-market point of view.
120. Oddly enough, Jaffa's conversion was announced in a review of Epstein's *Forbidden Grounds*, the work cited in the preceding note. See, the *Wall Street Journal*, September 8, 1992, p. A18. Jaffa's review fails to confront Epstein's argument that discrimination is sometimes economically efficient.
121. *Thomism*, p. 195, n. 2.
122. The eminent Eric Weil praised *Thomism and Aristotelianism* for showing how a philosophical text should be read. *Revue de Métaphysique*

et de Morale (October-December, 1952), pp. 463–465. In view of Strauss's opinion of Weil, one wonders how Jaffa regards Weil's praise. In a letter of August 22, 1948 to Alexandre Kojève, Strauss said about Weil: "I have seldom seen such an empty human being. You [Kojève] say: he lacks something. I say: he lacks substance, he is nothing but an idle chatterer." Leo Strauss, *On Tyranny*, eds., Victor Gourevitch and Michael S. Roth (New York: Free Press, 1991), p. 239. Jaffa's interpretation of Aristotle ran into considerable criticism from Thomists. Charles J. O'Neil, *Imprudence in St. Thomas Aquinas* (Milwaukee: Marquette University Press, 1955), pp. 41–42, criticizes Jaffa's claim that Aristotle, if liberated from Aquinas's commentary, allows abortion and contraception. O'Neil's interpretation of prudence in Aristotle and Aquinas should be compared with Jaffa's. Henry Veatch, in a review of *Thomism and Aristotelianism* in *Speculum* 28 (1953), pp. 176–178, criticized "the seeming perversity of Mr. Jaffa's method of interpretation" (p. 177) and found in the book "captious arguments and injudicious conclusions" (p. 178).

123. Two examples from *Thomism and Aristotelianism* must suffice.

1. Jaffa's claim that according to St. Thomas "the highest perfection of man is possible without moral virtue" (p. 311) does not follow from the views of St. Thomas which Jaffa cites. Even if intellectual virtue is better than moral virtue and can exist without it, Jaffa is wrong to conclude that the highest natural perfection can exist without morality. To do so, he needs to add the premise: Possession of the best virtue suffices for possession of the highest natural perfection. But why cannot the highest natural perfection require morality as well as intellectual virtue? Jaffa cannot escape by replying that by "highest natural perfection" he just *means* "possession of the best virtue," because the question would then arise, is there a better natural state of affairs than possession of the highest natural perfection?
2. Jaffa fails to note the fallacy of this argument, which he imputes to Aristotle: "Now the gods, in granting our requests, must act; and in acting, act for the sake of an end. The end aimed at cannot have been achieved before the action. . . . But every end is a good, and thus if the gods act there must have been a good achievable by action which was not achieved by the gods before each such action. Hence if the gods fulfill prayers they cannot be perfect beings." (pp. 119–128) This ignores the possibility that the good in question is that a prayer be answered after it is made.

124. John Wild, *Philosophical Review*, Vol. 62 (1953), p. 448. See also Wild's challenges to Jaffa's view of natural perfection in Aquinas (p. 448) and Aristotle on courage (p. 449). Strauss sharply attacked Wild's interpretation of Plato in "On a New Interpretation of Plato's Political Philosophy," *Social Research* 3 (September, 1946), pp. 326–364. See the discussion of this article in Nathan Tarcov, "On a Certain Critique of 'Straussianism,'" *Review of Politics*, Vol. 53, No. 1 (Winter, 1991), pp. 3–18.

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