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JOURNAL OF LIBERTARIAN STUDIES

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EDITORIAL

When Murray Rothbard founded *The Journal of Libertarian Studies* in 1977, he wrote an editorial for the first issue. In it, he said, “The *Journal of Libertarian Studies* has been founded not simply to provide an outlet for scholarship and research that may be unpopular in a particular discipline. It is the belief that there is a new and growing interdisciplinary discipline—libertarianism—enriched by contributions in each of the particular and seemingly isolated fields that study human action which provides the motive for this Journal. Philosophy, political science, economics, history, law, sociology, geography, anthropology, education, and biology will be carried in this Journal.”

In the years after Rothbard wrote this, the JLS published many notable articles, but here we have space to mention only a few. Robert Nozick’s *Anarchy, State, and Utopia*, published in 1974, brought libertarianism to the attention of the philosophical world, but several contributors to the first issue of the JLS, including Roy Childs, Randy Barnett, and Rothbard himself, were dissatisfied. They defended anarcho-capitalism and argued that Nozick had failed to justify the “minimal state.”

In history, JLS contributors including the great historian Ralph Raico and the distinguished economist Joseph Salerno brought to renewed scholarly attention to the French Classical Liberal School of the early nineteenth century. Disciples of J.B. Say like Charles Comte and Charles Dunoyer developed an account of the state as the source of exploitation.

The JLS featured contributions from world-famous scholars. F.A. Hayek wrote “Toward a Free Market Monetary System,” which appeared in Volume III, number 1. The heterodox psychiatrist Thomas Szasz wrote for us, as did such renowned philosophers as Gilbert Harman, Henry Veatch, and Antony Flew.



It would be easy to go through a long list of important articles in the JLS by such noted scholars as Ronald Hamowy, Walter Block, Hans-Hermann Hoppe, Paul Cantor, and Paul Gottfried, but one more must suffice here: Rothbard's "World War I as Fulfillment: Power and the Intellectuals," which appeared in the Winter 1989 issue. In this article, Rothbard showed that American Progressives used the increased power of the government during wartime to enact their agenda.

After Rothbard's death in 1995, Hans-Hermann Hoppe became editor; he was succeeded by Roderick Long. Until 2008, the JLS was a quarterly publication, but in 2008 one annual issue, in print and online, was edited by Thomas Woods. The JLS ceased publication in 2009. A new online journal, *Libertarian Papers*, under the able editorship of Stephan Kinsella and Matthew McCaffrey, in part acted as a substitute, but this journal was independent from the Mises Institute. When the Mises Institute decided to resume publication of the JLS, the editors of *Libertarian Papers* elected to cease publication, and future issues of the JLS will include articles that had been scheduled to appear there. (The JLS was published by the Center for Libertarian Studies from its inception in 1977. The Mises Institute took over publication in 2000.)

With the first issue of the revived JLS, we are off to good start, with articles that display the wide range of subjects, including economics, the history of political thought, legal theory, and philosophy, for which Murray Rothbard hoped. We should like to conclude with another remark from Rothbard's initial editorial, which remains our policy today: "By its existence as a regularly appearing publishing outlet, we hope to stimulate significant expansion in the research and production of scholarly libertarian material. We hope to intensify the development of the emerging discipline of libertarianism. Finally, we expect that the existence of the Journal will serve to multiply the number of libertarian scholars and to intensify communication among and cross-fertilization of them. Whether or not the scholar is personally a libertarian will not be a criterion for acceptance of a manuscript; rather, the criterion will be whether an article will advance the discipline of libertarianism, regardless of the personal beliefs of the author."

David Gordon

THE LIBERTARIAN LEGACY OF THE OLD RIGHT: DEMOCRACY AND REPRESENTATIVE GOVERNMENT

ROBERTA A. MODUGNO

ABSTRACT: Libertarianism tries to face the difficulties and inconsistencies of democracy. The paper aims to provide a better understanding of the relationship between libertarianism and democracy going back to the early seeds of libertarianism and highlighting the critical contributions by some of the major Old Right protagonists. Inquiring into the role of intellectuals like Albert J. Nock, Henry L. Mencken, Frank Chodorov, Rose Wilder Lane and Isabel Paterson, the article will unveil a well consolidated tradition of criticism of democracy within the libertarian political philosophy.

1. INTRODUCTION

During the second half of the twentieth century, it seemed to many people that the democratic revolution envisioned by Alexis de Tocqueville had been definitely achieved, and in the Western world there was no visible challenge to the superiority of the democratic model. Francis Fukuyama in his famous essay *The End of History?* (Fukuyama 1992) proclaimed that in the field of political institutions nothing new remained to be discovered and that liberal democracy was the final step of a long historical process of constitutional evolution.¹ As theorized by neo-conservatives,

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¹ Fukuyama first published, in the summer of 1989, before the fall of the Berlin Wall, an essay entitled “The End of History?” in *The National Interest*.

all of humanity should apply this victorious model and spread it to the peripheral non-democratic areas of the world, even by means of war. Although Fukuyama's theory—that is to say, that contemporary democratic regimes are the highest level reached by politics and that every other political system is old fashioned—has been criticized for being deterministic, it represents a widespread opinion among both political and cultural élites and the public.

But in the Western world, democracy is living a crisis of representation and confidence. In part, this crisis stems from a lack of conceptual clarity, and the relationship between classical liberalism and democracy, in particular, has proved complex and difficult to untangle. We are used to talking about liberal democracy when referring to the Western liberal democratic state, still taking for granted an overlapping between liberalism and democracy. But, is it true that, as the leading Italian political philosopher Norberto Bobbio states, “democracy is the natural development of the liberal state”? (Bobbio 1985, 46) Bobbio suggests that the best remedy against abuse of power is the democratic process and citizens' participation in law making. In this view, political rights are a natural complement of liberty rights and civil rights. Bobbio writes: “There are good reasons to think that today democracy is necessary to safeguard the fundamental rights of people at the basis of the liberal state.” (Bobbio 1986, 47) The main problematic areas of democracy are the relationships between public choices and individual liberty, and between liberty and equality. How much room do collective choices leave to individual freedom? How much and which kind of equality is compatible with individual freedom and property rights? Does living in a democracy and having the rights to vote mean being free? Libertarianism tries to face the difficulties and inconsistencies of democracy. In fact, there is a well consolidated tradition of criticism and analysis of democracy in libertarian political philosophy. In order to provide a better understanding of the relationship between libertarianism and democracy, this article intends to go back to the early seeds of libertarianism and highlights the critical contributions by some of the major Old Right protagonists, Albert J. Nock, Henry L. Mencken, Franck Chodorov, Rose Wilder Lane and Isabel Paterson. In doing so, I will assume the idea of Justin Raimondo that the protagonists of the Old Right (Nash 1976; Rothbard 2007; Raimondo 2014) were also consistent libertarians. The article aims to consider democracy as a long-debated topic and a shared crucial question inside libertarianism.

2. ALBERT JAY NOCK AND HENRY L. MENCKEN.

Albert Jay Nock (1870–1945) and Henry L. Mencken (1880–1956) were the two leading libertarian intellectuals of the Old Right, during the thirties of the Twentieth century. Both defended *laissez faire* but opposed the New Deal, any connections between big government and big business, the First World War and the American policy of imperialism. They were also very polemical against various movements for cultural and moral elevation of the people, such as Prohibition and the battle for public education.

With *Myth of a Guilty Nation*, published in 1922, Nock influenced an entire generation of classical liberals, opposing Wilsonian internationalism and arguing for anti-militarism. (Nock 1922)² From 1920 to 1924 he was editor of the weekly journal *The Freeman*. His writings are mostly elitist, based as they are on the fundamental role of the individual capable of elevating himself over the mass of the people. His thought is anchored in a strong individualism, explicitly critical of any forms of statism. Nock has a disenchanted approach to democracy, mainly based on the idea that the lowering of the level of culture and education is related to the democratic ideology. Enlarging the suffrage would not do any better and its only result would be the destruction of the highest ranks of culture. The policy, decided on by the government, of universal education is based on the theory that everyone is equally educable and that education has to be extended to the largest possible group. But, for Nock, this does not make sense, since we are not all equals in attitudes and capacities. The only true kind of equality is the equality of liberty and before the law. But the education system is based on a perversion of the idea of equality and on democracy. First of all, Nock clarifies, the Founding Fathers chose the republican system as the best way to secure the free expression of the individual in politics. A republic where everybody votes is considered *ipso facto* a democracy, but considering *republican* and *democratic* as synonymous is simply a confusion of terms. Actually, strictly speaking, democracy is simply a matter of counting the ballots, but it became an ideology. “Republicanism” — Nock writes — “does not [...] of itself even imply democracy. [...] Democracy is not a matter of an extension of the suffrage [...]. It is a matter of the diffusion of ownership; a true doctrine of democracy is a doctrine of public

² Among Nock’s major works are Nock (1926, 1928, 1932, 1935, 1943).

property.” And this because we are “aware that is not, never was and never will be, those who vote that rule, but those who own.” (Nock 1932, 35) So democracy, being an economic status, is animated by a strong resentment toward the élite, the socially, economically and intellectually superior persons. The democratic ideology rejects the simple reality that some achievements and experiences are open only to some people and not to all. Democracy postulates that everybody has to enjoy the same things.

The whole institutional life organized under the popular idea of democracy, then, must reflect this resentment. It must aim at no ideals above those of the average man, that is to say, it must regulate itself by the lowest common denominator of intelligence, taste and character in the society which it represents. (Nock 1932, 39)

In a democratic system, therefore, education would be “common property” and so what is not manageable by everybody must be disregarded. This leads to a low and poor level of education and to the destruction of the higher ranks of culture, art, taste and life itself. Moreover, Nock’s theory of the state, as an enemy institution, founded on exploitation and robbery, sheds further light on his ideas about democracy. The doctrine of popular sovereignty was a structural alteration to the state, necessary to make people believe that the state was literally the expression of the popular will. Democratic representation has been an expedient in order to submit the subjects to a state they believed was legitimate. The most important expedient

was that of bringing in the so called representative or parliamentary system, which Puritanism introduced into the modern world, and which has received a great deal of praise as an advance towards democracy. This praise, however, is exaggerated. The change was one of form only, and its bearing on democracy has been inconsiderable. (Nock 1994, 36)

Henry Louis Mencken (Goldberg 1925; Evans 2008; Hart 2016) was a leading protagonist of the American Old Right. In the weekly journal *American Mercury*, he and his colleagues bitterly criticized moral crusaders and the entire Wilsonian politics that considered the United States as the guardian of the world. (Gottfried 1990, 117–26) Although he was a literary figure and did not elaborate a systematic system of political thought, he can rightly be considered a libertarian. Both Murray N. Rothbard and Raimondo are convinced that there are many good reasons to place Mencken in the libertarian tradition. Rothbard defined him as “the

joyous libertarian” for his witty and satirical prose. (Rothbard 1962, 15–27) Mencken was, in Rothbard’s words, “a serene and confident individualist, dedicated to competence and excellence and deeply devoted to liberty, but convinced that the bulk of his fellows were beyond repair.” (Rothbard 1962, 16) Mencken had a great influence on the Old Right during the twenties, rejecting the idea of a world war for peace and democracy; and defending *laissez faire* in economics and in private life. His liberating force and his writings were not for the masses, but for the intelligent few who could understand and appreciate his message. Mencken believed that

government, in its essence, is a conspiracy against the superior man; its one permanent object is to oppress him and cripple him. [...] One of its primary functions is to regiment men by force, to make them as much alike as possible, to search out and combat originality among them. The most dangerous man, to any government, is the man who is able to think things out for himself, without regards to the prevailing superstitions and taboos. (Mencken 1949)

The government “is a separate, independent and often hostile power.” Mencken perceived “the deep sense of antagonism between the government and the people it governs. It is [...] a separate and autonomous corporation mainly devoted to exploiting the population for the benefits of their own members [...], oppressing the taxpayers to their own gain.” The best kind of government, he writes, “is one which lets the individual alone, one which barely escapes being no government at all.” (Mencken 1949)

Mencken’s individualist perspective gives great consistency to his views on many topics, among the most important of which is democracy. *Notes on Democracy*, published in 1926, contains one of the most scathing critiques of the idea that the great masses of the people have an inalienable right to govern themselves and that they are competent to do it. A government is considered a good one if it can satisfy quickly the desires and ideas of the masses, that is to say of the inferior men. A good and democratic government is based on the idea of the omnipotence and omniscience of the masses. But, Mencken states, “that there is actually no more evidence for the wisdom of the inferior man, nor for his virtue, than there is for the notion that Friday is an unlucky day.” (Mencken 1926, 15) Mencken begins his analysis of democracy examining the psychology of the democratic man and clarifying that “in an aristocratic society

government is a function of those who have got relatively far up the poles [...]. In a democratic society it is the function of all, and hence mainly of those who have got only a few spans from the ground." (Mencken 1926, 22–23) The democratic man contemplates with bitterness and admiration those who are above him. Bitterness and admiration form a complex of prejudices that, in a democracy, is called public opinion, which, under democracy, is regarded as something sacred. But, asks Mencken:

What does the mob think? It thinks, obviously, what its individual members think. And what is that? It is, in brief, what somewhat sharp-nosed and unpleasant children think. The mob, being composed, in the overwhelming main, of men and women who have not got beyond the ideas and emotions of childhood, hovers, in mental age, around the time of puberty, and chiefly below it. If we would get at its thoughts and feelings we must look for light to the thoughts and feelings of adolescents. (Mencken 1926, 23–24)

The main sentiment of humanity is fear and the main sentiment of the democratic man is envy. The "democratic man hates the fellow who is having a better time in this world" (Mencken 1926, 45), this is why, according to Mencken, envy is the origin of democracy. Politicians are well aware of the psychology of the masses and those who know how to use the fears of the mob are the most successful. "Politics under democracy consists almost wholly of the discovery, chase and scotching of bugaboos. The statesman becomes, in the last analysis, a mere witch-hunter," in fact "the plain people, under democracy, never vote *for* anything, but always *against* something." (Mencken 1926, 29–30) Actually politics are not determined by the will of the people, but by small groups with special interests able to use the fears and to excite the envy of the masses. "Public policies are determined and laws are made by small minorities playing upon the fears and imbecilities of the mob." (Mencken 1926, 63) Those who succeed in the realm of politics are not the best and most intelligent men, but are the ablest and cunning demagogues. Anticipating Hans-Hermann Hoppe, Mencken states that except for a miracle it would be very difficult for a man of value to be elected to office in a democratic state. The problem is that people believe that "the cure for the evils of democracy is more democracy" (Mencken 1926, 10), or something closer to direct democracy. The great masses of men, though free in theory, submit to oppression and exploitation. In fact, according to Mencken, the popular will remains purely theoretical in every

form of democracy. Moreover, there is no reason for believing that its realization would change the main outlines of the democratic process, considering the low level of intelligence and knowledge of the mob.

Mencken examines the relationship between democracy and liberty and notes that the democratic man does not fight to gain more liberty but for more security and protection. "The fact," he writes, is that liberty, in any true sense, is a concept that lies quite beyond the reach of the inferior man's mind. [...] Liberty means self-reliance, it means resolution, it means enterprise, it means the capacity for doing without." (Mencken 1926, 52) But these are not the characteristics of the democratic masses. Actually, the masses' longing for material goods can only be satisfied at the expense of liberty and property rights. It cannot be denied that freedom is an indispensable condition for the development of the personality of the individual, but if we look at the propensities of the masses we discover that frequently they prefer to sacrifice freedom in order to enjoy material or psychological advantages. The average man wants to feel protected even from himself. Writes Mencken:

The truth is that the common's man love of liberty [...] is almost wholly imaginary. [...] He is not actually happy when free; he is uncomfortable, a bit alarmed. [...] He longs for the warm, reassuring smell of the herd, and is willing to take the herdsman with it. Liberty is not a thing for such as he. [...] The average man doesn't want to be free. He simply wants to be safe. [...] What the common man longs for [...] is the simplest and most ignominious sort of peace—the peace of a trusty in a well-managed penitentiary. He is willing to sacrifice everything else to it. He puts it above his dignity and he puts it above his pride. Above all, he puts it above his liberty. (Mencken 1926, 157–58)

The average man tends to consider liberty as a weapon used against him in the hands of superior men but, recalling Edmund Burke, Mencken writes that

the heritage of freedom belongs to a small minority of men. [...] It is my contention that such a heritage is necessary in order that the concept of liberty [...] may be so much as grasped—that such ideas cannot be implanted in the mind of man at will, but must be bred in as all other ideas are bred in. [...] It takes quite as long to breed a libertarian as it takes to breed a racehorse. (Mencken 1926, 56–60)

If one of the main purposes of civilized governments is to preserve and augment liberty of the individual, then surely democracy

accomplishes it less efficiently than any other form of government, since “the aim of democracy is to break all free spirits.” Mencken describes the tyrannical consequences of the cultural levelling tendencies of democracy. Like Alexis de Tocqueville he realizes that the pressure of a mass society of men all alike and equal leads to ostracism of those superior individuals “merely thinking unpopular thoughts.” “Once” a man “is accused of such heresy, the subsequent proceedings take on the character of a lynching.” (Mencken 1926, 178) The democratic, egalitarian society is pledged to common cultural values resulting in a rigorous homogeneity of way of thinking and of life. So “a man who stands in contempt of the prevailing ideology has no rights under the law.” (Mencken 1926, 180)

By the mid-thirties the influence of Nock and Mencken had begun to decline. The Old Right, after playing an important role opposing the New Deal and in the crucible of the First World War, almost disappeared. During the years of World War II, government banned any opposition to war, Roosevelt and the New Deal. “The Old Right went underground for the duration” of the war and when America emerged from the war a new generation of old style libertarians appeared. They believed in *laissez faire* and non-intervention in foreign policy. (Raimondo 2014, 134)

3. THE OLD RIGHT REBORN: FRANK CHODOROV

The Old Right was reborn in the shadow of the emergent welfare-warfare state, remaining faithful to the ideas of its founders. Among the second generation of activists was the writer and teacher Frank Chodorov (1887–1966).

Chodorov (Rothbard 2007; Raimondo 2014)³ was the son of Russian immigrants. After graduating at Columbia University in 1907 he taught in high school and then ran a clothing factory, but during the Great Depression his career as an entrepreneur was ruined. In 1937 he became director of the Henry George School of Social Science in New York. Here he edited the School’s magazine, *The Freeman*, expressing his libertarian ideas, pro-capitalism, anti-taxation and anti-communism. Beside this, Chodorov was staunchly anti-war. He too was not writing for the masses but

³ Among Chodorov’s major works are Chodorov (1946, 1952).

for those Nock called “the Remnant,”⁴ that is to say the few who were eager to carry on the prewar culture, the culture of the Old Right. After the entry of the United States into the Second World War, Chodorov’s antiwar ideas were no longer tolerated and he was fired from the School. In 1944 Chodorov began to publish the monthly magazine *Analysis*, which lasted for six years. In this time the magazine kept Old Right libertarianism alive. Despite the small circulation of the publication, it had a great influence on the Remnant. Chodorov covered topics such as the income tax, public schools, protectionism and the various statist icons. On taxation he writes:

[It] is highwaymanry made respectable by custom, thievery made moral by law; there isn’t a decent thing to be said for it, as to origin, principle, or its effects on the social order. Man’s adjustment to this iniquity has permitted its force to gain momentum like an unopposed crime wave; and the resulting social devastation is what the socialists have long predicted and prayed for. (Chodorov 1980, 267–68)

The opposition to business subsidies and to the Cold War became central in the intellectual discussion, acquiring a huge relevance in the emerging libertarian movement. When Chodorov founded the student organization Intercollegiate Society of Individualists he exerted a great influence on conservative and libertarians, among whom Murray N. Rothbard stood foremost. As the Cold War and the related propaganda heated up, Chodorov’s critical attitude became more and more unpopular among the American right.

Chodorov’s views on democracy are directly related to its consequences for education and for the lowering and leveling of culture. He argues that in a democracy, where everyone is a voter, everyone has to be educated. Democracy did away with the concept of the educable élite. Education became a governmental enterprise, regardless of different individual capacities. In the past education was intended to bring the best to the top, but this is inconsistent with democratic egalitarianism. So the educators altered the role of education and this became a process designed to bring about intellectual uniformity. “The notion of the infinite

⁴ Nock, in his classic essay “Isaiah’s Job,” defines as *the Remnant* the chosen few to whom the prophet Isaiah spoke. The prophet was sent by God to show a decadent city how to change its destiny and build a new society. His words were not for the masses of the people but for *the Remnant*. The essay first appeared in *The Atlantic Monthly* in 1936.

perfectibility of man through education kept gnawing at the heart of democracy,” Chodorov writes,

and this, fermented by the idea that all men are of equal capacities, gave rise to a demand for wider educational opportunities. If everybody were equally educated, so ran the litany, everybody would be able to reach the heights, economically, socially and, perhaps, culturally. [...] If the purpose of education is social adjustment, then individual excellence must be minimized or discouraged, and the ideal of democracy—the egalitarian society—will be achieved. (Chodorov 1962, 32–33)

The consequence is that the contents of education will be lowered to the intellectual level of the masses. “That is because the mob cannot tolerate excellence and, having political power in their hands, [and] will use it to reduce the educable to their own level.” With the democratic ideology in ascendancy, the state will provide education for all, even at the college level and this means that the state will “dictate what to be taught and how” (Chodorov 1962, 34), with state intervention raising more and more. Chodorov unmasked the phrase *we are the government*, in its use as an explanation of how collectivism penetrated the popular mind. Democracy means being ruled by the social attitude of the majority of the people. But what is a social attitude? “It turns out to be in practice,” Chodorov explains,

[to be] good old majoritarianism; what 51 per cent of the people deem right is right, and the minority is perforce wrong. It is the General Will fiction under a new name. There is no place in this concept for the doctrine of inherent rights; the only right left to the minority, particularly the minority of one, is conformity with the dominant social attitude. (Chodorov 1959, XXII)

Democracy gives to the voter a minuscule piece of sovereignty that does not give him any power. Democracy does not give power to the individual, but it gives power to the groups. That explains the emergence of pressure groups whose interests are served by the democratic government that needs to buy the support of the most powerful groups, granting them privileges. Chodorov writes:

It is the business of the candidate to weigh the relative voting strength of the various groups and, finding it impossible to please all, to try to buy the strongest with promises. It is a deal. Any moral evaluation of the deal is silly, unless we condemn politics as a whole, for there is no way for the politician to attain power unless he engages in such deals. In a democracy sovereignty lies in the hands of the voters, and it is they who propose the trading. The vast majority of the voters are outside these pressure

groups; there are too many of them, too diversified in their interests to permit of organization. I am one of them. (Chodorov 1959, 39)

This trade of privileges for power is a characteristic of the democratic state. "Every subsidy to the 'poor' (in a democracy) was thought up by a bureaucrat or a candidate for office, the candidate to achieve political preferment, the bureaucrat to improve his prerogatives and his perquisites." (Chodorov 1959, 212) The result will be a disproportionate augmentation of the power of the state and its bureaucracy. Strictly speaking, for Chodorov, "the more democracy the more governmental intervention." (Chodorov 1959, 34) Also, the American missionary zeal of *making the world safe for democracy*, actually hides the international interests of various groups. "The duty of imposing our brand of democracy on other peoples and an aggressive, expansionist foreign policy are the result of particular interests succeeding in being considered American interests." (Chodorov 1959, 114)

4. THE FOUNDING MOTHERS OF LIBERTARIANISM: ROSE WILDER LANE AND ISABEL PATERSON

After World War II, Senator Robert Taft served as a political reference point for the Old Right. Taft, who opposed the New Deal and the intervention of the United States in the Second World War, was an important figure in the Senate, challenging the doctrine of the Cold War and faith in the welfare state. In 1951 the Republican Senator John W. Bricker proposed the Bricker amendment, an attempt to preserve the political discretion of the American Congress to decide upon the incorporation of international law into the national law of the United States. After a long and difficult battle the Eisenhower administration defeated the amendment. After the death of Taft and Robert R. McCormick,⁵ and the defeat of the Bricker amendment, the Old Right seemed finished. But a new cultural environment was developing. The publication of *Human Action, Bureaucracy and Omnipotent Government* by Ludwig von Mises, and of *The Road to Serfdom* by Friedrich von Hayek created an intellectual context more favorable to free market and individualism that paved the way to the resurgence of the Old Right.

⁵ Robert Rutherford McCormick (1880–1955) was the owner and publisher of the *Chicago Tribune* that, under his direction, embodied the values and tradition of the Old Right.

Rose Wilder Lane (1886–1968) and Isabel Paterson (1886–1961) contributed to the preservation of the heritage of classical liberalism and, along with Ayn Rand, can be considered the founding mothers of libertarianism.

A writer and journalist, Lane⁶ became well known just before the Second World War for her staunch defense of liberty. Her book *Discovery of Freedom*, traces the origins of freedom back to the Western Jewish-Christian tradition and is a classic of libertarian literature. Her personal story is very interesting. She was sympathetic to leftist ideas and to the Communist Party organized in the United States by John Reed shortly after the First World War. Lane visited the Soviet Union four years after the Bolshevik Revolution, and this experience completely changed her views. She remembers that she was hosted by a family of peasants in a rural Russian village and this simple experience planted the seeds of doubt in her mind. Her host complained about the new government. “His complaint was government interference with village affairs. He protested against the growing bureaucracy that was taking more and more men from productive work. He predicted chaos and suffering from the centralizing of economic power in Moscow.” (Lane 1945, 11) When she came back to the United States, she stated that at that point of her life she totally believed in liberty, capitalism and individualism. She did not simply reject Marxism, she got down to first principles to challenge the central premises of statism. So, along with her refutation of Marxism, she was also against Roosevelt’s New Deal. Her criticism of democracy is closely related to the rejection of statism and central planning. Instead of blaming Lenin “because he did not establish a republic,” in *Give Me Liberty*, she states that “representative government cannot express the will of the mass of the people; the People is a fiction like the State. You cannot get a will of the Mass [...]. The only human mass with a common will is a mob, and that will is a temporary insanity.” (Lane 1945, 13) *Give Me Liberty*, originally published as *Credo* in 1936, was a radical statement of libertarian principles. As Raimondo writes, “In the intellectual atmosphere of the Red Decade, this [...] helped

⁶ Rose Wilder Lane was the daughter of Laura Ingalls Wilder, the author of the novel for children *Little House in the Prairie*. Lane achieved world fame as a writer and she contributed regularly to the major American magazines *American Mercury*, *Good Housekeeping*, *Saturday Evening Post* and *Harper*. Her novels, including, *Let the Hurricane Roar* (1933) and *Old Home Town* (1935) were a success.

galvanize the group that eventually came to form around Leonard Read and his Foundation for Economic Education.” (Raimondo 2014, 187) Raimondo characterizes Lane as a “central figure in the Old Right and the early libertarian movement.” (Raimondo 2014, 198) In *Discovery of Freedom*, Lane asks herself what democracy really means. She states that, at the time she wrote, the word democracy could indicate a lot of different situations. The Soviet Union could be considered a democracy when fighting Hitler; economic security and compulsory insurance could be considered democratic; as could votes for everybody, the American sense of human equality, freedom and human rights and so on. But she stresses that democracy means rule by the people and that *demos*, the people, was a fantasy imagined by the Greeks. According to Lane, the Greeks attributed to this fantasy the meaning of being God. Unfortunately, Lane notes, “there are still people who believe that the voice of the people is the voice of God.” (Lane 2012, 178) She approaches democracy and majority rule from a perspective of methodological individualism. “The people,” Lane writes,

do not exist. Individual persons compose any group of persons. So in practice any attempt to establish democracy is an attempt to make a majority of persons in a group act as the ruler of that group. [...] There is no reason to suppose that majority rule would be desirable [...]. There is no morality or efficiency in mere numbers.” (Lane 2012, 178)

Lane quotes James Madison, when, in *The Federalist Papers*, he wrote “A pure democracy can admit no cure for the mischief of faction. A common passion or interest will be felt by a majority, and there is nothing to check the inducements to sacrifice the weaker party. Hence it is, that democracies have ever been found incompatible with personal security or the rights of property; and have, in general, been as short in their lives as they have been violent in their deaths.” (Lane, 2012, 178) When the revolutionaries signed the *Declaration of Independence*, they desired to establish a new form of government, but they had two dangers to avoid: monarchy and democracy. Actually they were diffident toward democracy. “Democracy,” writes Lane,

does not work. It can not work because every man is free. He can not transfer his inalienable life and liberty to anyone or anything outside himself. When he tries to do this, he tries to obey an Authority that does not exist. [...] There is no Authority of any kind, that controls individuals. They control themselves. (Lane 2012, 179–80)

She explains why a real democracy cannot exist. “When a large number of individuals falsely believe that the majority is an Authority that has right to control individuals, they must let a majority choose one man (or few men) to act as Government. [...] And because a majority supports the ruler whom a majority chooses, nothing checks his use of force against the minority. So the ruler of a democracy quickly becomes a tyrant.” (Lane 2012, 180) Lane’s perspective on democracy is very radical and, in some ways, anticipates Hans Hermann Hoppe’s critique, in postulating an incompatibility between democracy and liberty. In fact, in a democracy, there is no protection for liberty: “democracies always destroy personal security and the rights of property.” The American revolutionaries were the first to see that no man can use his natural freedom if he has no right to own private property. But in democracy no one really owns property, because in a democracy property is at the mercy of the majority’s whim. “Majority rule has always been an enemy of human rights.” (Lane 2012, 180–85)

During the Second World War, Lane could not overtly protest against war and government intervention, so she intensely corresponded with her fellow Old Rightists, seeing herself as a frontline fighter in a larger movement. During the fifties she followed current events and remained actively involved in the Old Right, opposing the Cold War. But Lane was not alone.

In 1943 Isabel Paterson⁷ published *The God of the Machine*, a book celebrating the glories of individualism and capitalism. In her book Paterson depicts the United States as the result of the free energy of self-regulating individuals. The state can have only negative effects on the spontaneous development of this energy, interrupting its flow. Paterson was a fierce individualist: “there is no collective good,” she writes; “strictly speaking there is not even any common good. There are in the natural order conditions and materials through which the individual [...] is capable of experiencing good. [...] Persons do not enjoy the benefit by community, but singly.” (Paterson 1996, 89–90) Paterson attacked the allegiance between big business and big government, and the repressive wartime atmosphere. She saw in the militarization of society,

⁷ Isabel Paterson wrote for the *New York Herald Tribune*, was the author of many novels and was well known in the Old Right circles.

conscription and sedition trials the final consequences of state intervention in the economy. Also Paterson has a critical attitude toward democracy. The only kind of equality Paterson admits is an equality of liberty, but democracy is “inadmissible because it must deny that right and lapse into despotism. [...] It does so abstractly, by its own logical contradiction; and in practice. [...] *It is not liberty and equality that are incompatible, but liberty and democracy.*” (Paterson 1996, 120) Paterson describes the logical contradiction of democracy as follows:

Democracy is a collective term; it describes the aggregate as a whole and it assumes that the right and authority reside in the whole. [...] But if the authority resides in the collective whole, it is evident that with the disagreement of even one person, the whole is no longer existent or operative. [...] The prime presumption has vanished. In practice than democracy must abandon its own pretended entity of the collective whole, and rely upon majority. But majority is only a part. [...] Such is the inherent contradiction of democracy. [...] Slavery of a minority, or of foreigners, is quite consistent with majority rule. (Paterson 1996, 120–21)

In fact, it is falsely assumed that the contrary of the rule by the few or by one is rule by the many and that this is fair. “But, in reason, if one man has no right to command all other men—the expedient of despotism—neither has he any right to command even one other man; not yet have ten men, or a million, the right to command even one other man.” (Paterson 1996, 122)

Liberty is a natural right because life is possible for human beings only by virtue of their capacity to act independently. “Hence,” Paterson states, “the natural and rational terms of human association are those of voluntary agreement, not command. Therefore the proper organization of society must be that of free individuals.” (Paterson 1996, 121) The alleged choice between despotism and liberal democracy is a false binary. The true alternative to tyranny is not democracy; it is instead the decisions of individuals in a free market, engaging in exchange for their mutual benefit and settling disputes through peaceful methods of resolution.

5. CONCLUDING REMARKS

Democracy is often considered the only alternative to authoritarian regimes and the main criterion of a government’s legitimacy. But the Old Right libertarian challenged this cliché, in the name

of an expansion and not of a compression of individual liberty. The oppressive potential of majority rule was unveiled by them, showing the ethical fragility of democracy. Their incisive account of the evils of democracy retains its validity for us today. We have much to learn from these great figures of the Old Right.

REFERENCES

- Bobbio, Norberto. 1985. "Liberalismo e democrazia." Pp. 21–88 in *Il pensiero politico contemporaneo*, ed. Gian Mario Bravo and Silvia Rota Ghibaudi. Torino: Franco Angeli.
- Chodorov, Frank. 1946. *The Economics of Society, Government and State*.
- . 1952. *One is a Crowd: Reflections of and Individualist*.
- . 1959. *The Rise and Fall of Society: An Essay on the Economic Forces that Underlie Social Institutions*. New York: Devin Adair Company.
- . 1962. *Out of Step*. New York: Devin Adair Company.
- . 1980. "Socialism Via Taxation." Pp. 267–86 in *Fugitive Essays: Selected Writings of Frank Chodorov*, ed. Charles H. Hamilton. Indianapolis: Liberty Press.
- Evans, Rod L. 2008. "Mencken H. L." In *The Encyclopedia of Libertarianism*, ed. Ronald Hamowy. Thousand Oaks: Cato Institute.
- Fukuyama, Francis. 1989. "The End of History?" *The National Interest* 16: 3–18.
- . 1992. *The End of History and the Last Man*. New York: Avon Books.
- Goldberg, Isaac. 1925. *The Man Mencken: a Biographical and Critical Survey*. New York: Simon and Schuster.
- Gottfried, Paul. 1990. "Wilsonianism: the Legacy that Won't Die." *Journal of Libertarian Studies* 9, no. 1: 117–26.
- Hart, Darryl G. 2016. *Damning Words: The Life and Religious Times of H. L. Mencken*. Grand Rapids: Eerdmans Publishing Co.
- Lane, Rose Wilder. 1945. *Give Me Liberty*. Los Angeles: Pamphleteers.
- . 2012. *Discovery of Freedom. Man's Struggle Against Authority*. Baltimore: Laissez Faire Books.
- Mencken, Henry Louis. 1926. *Notes on Democracy*. London: Jonathan Cape.
- . 1949. *A Mencken Chrestomathy*. New York: Knopf.
- Nasch, George H. 1976. *The Conservative Intellectual Movement in America Since 1945*. New York: Basic Books.
- Nock, Albert Jay. 1922. *Myth of a Guilty Nation*. New York: B. H. Huebsch.
- . 1926. *Jefferson*. New York: Harcourt Brace and Company.

- . 1928. *On Doing the Right Thing, and Other Essays*. New York: Harper and Brothers.
- . 1932. *The Theory of Education in the United States*. New York: Harcourt, Brace and Company.
- . 1943. *Memoirs of a Superfluous Man*. New York: Harper and Brothers.
- . 1994. *Our Enemy, the State*. Fox and Wilkes: San Francisco.
- Paterson, Isabel. 1996. *The God of the Machine*. New Brunswick and London: Transaction.
- Raimondo, Justin. 2014. *Reclaiming the American Right. The Lost Legacy of the Conservative Movement*. Wilmington: ISI Books.
- Rothbard, Murray N. 2007. *The Betrayal of the American Right*. Auburn, Ala.: Ludwig von Mises Institute.
- . 1962. "H. L. Mencken: the Joyous Libertarian." *New Individualist Review* 2, no. 2: 15–27.

KEYNES'S GENERAL THEORY: A SOLUTION IN SEARCH OF A PROBLEM

CARLTON M. SMITH

ABSTRACT: This article is an evaluation of the *General Theory* largely on its own terms. Extensive quotations from *The General Theory of Employment, Interest, and Money* are used in order to allow Keynes himself to expound the theory. The goal of this article is to show that even on its own terms the *General Theory* must be considered a failure, for the problem it purports to solve, involuntary unemployment, does not exist. Many of the individual points made here have been made before, but no references are provided. Benjamin Anderson (1980), for example, remarks on the counter-intuitive (indeed, worthless) nature of Keynes's "volume of employment," and Henry Hazlitt ([1959] 2007) points out that one parts with liquidity whenever one buys anything. I think at least two points here have not been made before: 1) that deficit-spending plays an insignificant or non-existent role in the *General Theory*, and 2) that involuntary unemployment (used in the manner in which Keynes uses the phrase) is incapable of being known to exist—which removes any justification for the assertion that full employment does not exist.

THE PROBLEM

Keynes's *General Theory* purports to provide a solution to a problem. That problem is not generic unemployment but rather a species of it that Keynes calls involuntary unemployment. What is involuntary unemployment?

Men are involuntarily unemployed if, in the event of a small rise in the price of wage-goods relatively to the money-wage, both the aggregate supply of labour willing to work for the current money-wage and the

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aggregate demand for it at that wage would be greater than the existing volume of employment. (Keynes 1965, 15)

What is the criterion by means of which we detect the presence of involuntary unemployment? The effect that something has had on the volume of employment. What does Keynes mean by the phrase “volume of employment”? The

quantity of employment can be sufficiently defined for our purpose by taking an hour's employment of ordinary labour as our unit and weighting an hour's employment of special labour in proportion to its remuneration; *i.e.* an hour of special labour remunerated at double ordinary rates will count as two units. (Keynes 1965, 41)

Calling Keynes's measure of employment dubious (at the very least, curious) seems warranted. Consider a community with four adults, Tom, Dick, Richard, and Harry. On Tuesday Tom was unemployed; Dick and Richard both worked for eight hours and were paid \$20 per hour; and Harry worked for eight hours and was paid \$600 per hour. On Wednesday Tom was still unemployed; so, alas, was Dick, who was fired; Richard worked for eight hours and was paid \$20 per hour; and Harry worked for eight hours and was paid \$650 per hour (he received a raise). Tom and Dick, fortunately, were not disgruntled, for the quantity of employment had increased.

But wait—there is more. Not only did the quantity of employment increase, so, too, did the quantity of output. For the measure of output as a whole—a vague concept as Keynes himself admits (1965, 43) —is nothing other than the quantity of employment:

It follows that we shall measure changes in current output by reference to the number of hours of labour paid for (whether to satisfy consumers or to produce fresh capital equipment) on the existing capital equipment, hours of skilled labour being weighted in proportion to their remuneration. (Keynes 1965, 44)

This is fun. Not only did Harry's raise produce an increase in employment, it also produced an increase in output. Want to increase employment and output? Raise the wages of the well-paid!

Now let us return to the test that we use to detect the existence of involuntary unemployment. The mere fact that people are unemployed does not mean that involuntary unemployment exists, for Keynes expressly allows for the existence of voluntary

unemployment and excludes from involuntary unemployment “the withdrawal of their labour by a body of workers because they do not choose to work for less than a certain real reward.” (Keynes 1965, 15) It should be obvious that Keynes’s volume of employment tells us nothing about the level of unemployment (the volume of employment can increase when the number of workers employed and the number of hours worked both decrease). Can it tell us something about the level of involuntary unemployment?

It certainly cannot tell us what the level of involuntary unemployment *is*—or even if there is *any* involuntary unemployment—for the test for the existence of involuntary unemployment is what the effect on the volume of employment *would be* if the price of wage-goods rose relatively to the money-wage. Can we use the volume of employment to detect the *previous* existence of involuntary unemployment? Let us construct a case favorable to Keynes’s position.

On Tuesday Tom is unemployed; Dick, Richard, and Harry each work for eight hours and are paid \$20 per hour. On Wednesday the price of wage-goods has risen relatively to the money-wage, which we will assume has remained the same. Tom, Dick, Richard, and Harry all have jobs: each works for eight hours and is paid \$20 per hour. The volume of employment has increased. We may not know if there is still any involuntary unemployment on Wednesday, but surely we know that there was involuntary unemployment on Tuesday? Unfortunately, we do not. Tom’s unemployment on Tuesday may have been the result of his decision not to “work for less than a certain real reward.” His employment on Wednesday may stem from his decision to accept a lower real reward on Wednesday than he was willing to accept on Tuesday. Nothing in the facts of the case—the increase in the volume of employment that has occurred after a rise in the price of wage-goods relative to the money-wage—permits us to infer that there was any involuntary unemployment on Tuesday.

The unavoidable conclusion is that Keynes’s test for the existence of involuntary unemployment cannot be used to detect the existence of involuntary unemployment. Keynes himself seems to have realized that the existence of involuntary unemployment is problematic, for he informs us that “if the classical theory is only applicable to the case of full employment, it is fallacious to apply it to the problems of involuntary unemployment—if there

be such a thing (and who will deny it?).” (Keynes 1965, 16) I do not profess to be able to decipher the meaning of his remark with complete assurance, but I do not see how it can be taken not to include an admission that there may be no such thing as involuntary unemployment.

Full employment is “the absence of ‘involuntary’ unemployment.” (Keynes 1965, 15) The problem associated with the concept of full employment is therefore the problem associated with the concept of involuntary unemployment. Because we can never know that involuntary unemployment exists, we can never know that full employment does not exist. At the risk of pointing out what should be obvious, a remedy for a problem which is not known to exist—indeed, which *cannot* be known to exist—might not be much of a remedy.

KEYNES'S SYSTEM

Keynes's system contains given factors, independent variables, and dependent variables. (Keynes 1965, 245) We may ignore the given factors because they are the “factors in which the changes seem to be so slow or so little relevant as to have only a small and comparatively negligible short-term influence on our *quaesitum*....” (Keynes 1965, 247)

The “independent variables are, in the first instance, the propensity to consume, the schedule of the marginal efficiency of capital and the rate of interest....” (Keynes 1965, 245) We soon learn that “the rate of interest depends partly on the state of liquidity-preference (*i.e.* on the liquidity function) and partly on the quantity of money measured in terms of wage-units.” (Keynes 1965, 246) For that reason we need to include liquidity-preference and the quantity of money among the independent variables. (Keynes 1965, 246–47) The remaining independent variable that Keynes identifies is the wage-unit, (Keynes 1965, 246–47) which he defines as “the money-wage of a labour-unit.” (Keynes 1965, 41) The dependent variables are “the volume of employment and the national income (or national dividend) measured in wage-units.” (Keynes 1965, 245)

What is the propensity to consume? Keynes defines the propensity to consume as “the functional relationship... between Y_w , a given level of income in terms of wage-units, and C_w the expenditure on consumption out of that level of income.” (Keynes 1965, 90)

Keynes's definition suffers from at least one defect: it suggests that the decision to consume depends only on current income and not on other factors such as assets that one owns. Keynes seems to recognize the defect, for he tells us later that the people who take an active interest in their Stock Exchange investments "are, perhaps, even more influenced in their readiness to spend by rises and falls in the value of their investments than by the state of their income." (Keynes 1965, 319)

What is the marginal efficiency of capital? Although Keynes defines the marginal efficiency of capital in a manner that connects it exclusively with the continued ownership of a capital-asset, (Keynes 1965, 135) I think the concept needs to be expanded. Keynes seems to think so too, for in other places it is the gap between the price at which a good sells and the cost of producing it which has causal significance.¹ I think we are justified in using the phrase "marginal efficiency of capital" to refer to the expected return (excess of price received over costs incurred) from production.

The rate of interest is determined by liquidity-preference and the quantity of money. What is liquidity-preference? I see no reason not to call it the desire to acquire or retain the ownership of money,² a desire often called the demand for money.³ What effect does it have on the rate of interest? Keynes tells us that

the mere definition of the rate of interest tells us in so many words that the rate of interest is the reward for parting with liquidity for a specified

¹ "We can then define the *income* of the entrepreneur as being the excess of the value of his finished output sold during the period over his prime cost. The entrepreneur's income, that is to say, is taken as being equal to the quantity, depending on his scale of production, which he endeavours to maximise, *i.e.* to his gross profit in the ordinary sense of this term...." (Keynes 1965, 53–54)

"As I now think, the volume of employment (and consequently of output and real income) is fixed by the entrepreneur under the motive of seeking to maximise his present and prospective profits...." (p. 77)

² "In other words, what is the degree of his *liquidity-preference*—where an individual's liquidity-preference is given by a schedule of the amounts of his resources, valued in terms of money or of wage-units, which he will wish to retain in the form of money in different sets of circumstances?" (Keynes 1965, 166)

³ "We must now develop in more detail the analysis of the motives to liquidity-preference which were introduced in a preliminary way in Chapter 13. The subject is substantially the same as that which has been sometimes discussed under the heading of the Demand for Money." (Keynes 1965, 194)

period.... Thus the rate of interest... is a measure of the unwillingness of those who possess money to part with their liquid control over it. (Keynes 1965, 167)

In Keynes's terminology, when one lends money to someone else, one has parted with liquidity. The smaller the supply of liquidity (money) offered for sale, the higher its price will be.

The link that Keynes draws between the demand for money and the rate of interest is unwarranted. To start with, it is too narrow. The demand for money clearly has an effect on all transactions, not merely on transactions in the loan-market. If the demand for money rises, the prices of other goods will fall. After all, one parts with liquidity whenever one buys anything. In addition, Keynes tells us that the demand for money has an effect on the rate of interest within the context of the psychological time-preferences of an individual. (Keynes 1965, 166) If those preferences are sufficient to account for the rate of interest, nothing is gained by the introduction of the demand for money. I will not pursue the subject, however, because I am principally concerned with an evaluation of the *General Theory* on its own terms.

What effect does the quantity of money have on the rate of interest? According to Keynes, "As a rule, we can suppose that the schedule of liquidity-preference relating the quantity of money to the rate of interest is given by a smooth curve which shows the rate of interest falling as the quantity of money is increased." (Keynes 1965, 171) Expanding on the point when discussing open-market operations, Keynes explains that "in normal circumstances the banking system is in fact always able to purchase (or sell) bonds in exchange for cash by bidding the price of bonds up (or down) in the market by a modest amount; and the larger the quantity of cash which they seek to create (or cancel) by purchasing (or selling) bonds and debts, the greater must be the fall (or rise) in the rate of interest." (Keynes 1965, 197)

When the central bank⁴ buys a bond, the price of bonds rises, and the rate of interest thereby falls. On that point Keynes is, of course, correct, but he is correct about there being a connection between the quantity of money and the rate of interest only if the increase in the quantity of money is "pointed" at the price of bonds. Suppose that no central bank existed. Suppose that money consisted exclusively

⁴ Keynes tells us that it is the central bank that determines the quantity of money. (Keynes 1965, 247)

of gold coins. If all newly-minted coins were spent on the purchase of bonds, the rate of interest would fall. But what reason is there to think that all the newly-minted coins would be spent (i.e., offered for sale in the loan-market) on the purchase of bonds? There is not. Keynes is able to establish a connection between the quantity of money and the rate of interest only because his system permits—indeed, requires—a central bank that not only controls the quantity of money but also creates new money in a manner which has to lower the rate of interest. *Q.E.D.*

Keynes has one remaining independent variable, the wage-unit, which is the money-wage of a labor-unit. The wage-unit allows us to convert special labor into ordinary labor by dividing the wage paid to special labor by the wage-unit—and so arrive in due course at the volume of employment.

The dependent variables are income and employment. How is income connected to the independent variables? “The decisions to consume and the decisions to invest between them determine incomes.” (Keynes 1965, 64) Decisions to consume may be called the propensity to consume made flesh. And decisions to invest? “The amount of current investment will depend, in turn, on what we shall call the inducement to invest; and the inducement to invest will be found to depend on the relation between the schedule of the marginal efficiency of capital and the complex of rates of interest on loans of various maturities and risks.” (Keynes 1965, 27–28) Indeed, “the actual rate of current investment will be pushed to the point where there is no longer any class of capital-asset of which the marginal efficiency exceeds the current rate of interest.” (Keynes 1965, 136) Income therefore depends on the propensity to consume, the marginal efficiency of capital, and the rate of interest, which itself is shorthand for liquidity-preference and the quantity of money.

And employment? “The amount of labour N which the entrepreneurs decide to employ depends on the sum (D) of *two* quantities, namely D_1 , the amount which the community is expected to spend on consumption, and D_2 , the amount which it is expected to devote to new investment.” (Keynes 1965, 29) Income depends on consumption and investment; employment depends on expected consumption and expected investment.

The elements of Keynes’s system are now in place. What makes the actual operation of the system so complicated?

[W]hilst an increase in the quantity of money may be expected, *cet. par.*, to reduce the rate of interest, this will not happen if the liquidity-preferences of the public are increasing more than the quantity of money; and whilst a decline in the rate of interest may be expected, *cet. par.*, to increase the volume of investment, this will not happen if the schedule of the marginal efficiency of capital is falling more rapidly than the rate of interest; and whilst an increase in the volume of investment may be expected, *cet. par.*, to increase employment, this may not happen if the propensity to consume is falling off. (Keynes 1965, 173)

In other words, there are times when *ceteris* is not *paribus*. Suppose that consumers stop consuming. Suppose that the marginal efficiency of capital heads south. Suppose that the rate of interest rises. The system might need a lube-job: better get some grease.

THE SOLUTION

Increase in consumption and investment = good. Investment depends on the marginal efficiency of capital and the rate of interest. Increase in marginal efficiency of capital = good. Increase in rate of interest = bad. The rate of interest depends on liquidity-preference and the quantity of money. Increase in liquidity-preference = bad. Increase in quantity of money = good. Where do we go from here? "Our final task might be to select those variables which can be deliberately controlled or managed by central authority in the kind of system in which we actually live." (Keynes 1965, 247) Let us start with the marginal efficiency of capital.

Keynes informs us that "[t]he Trade Cycle is best regarded, I think, as being occasioned by a cyclical change in the marginal efficiency of capital..." (Keynes 1965, 313) During the slump the principal obstacle to recovery is that "it is not so easy to revive the marginal efficiency of capital, determined, as it is, by the uncontrollable and disobedient psychology of the business world." (Keynes 1965, 317) The suggestion that the business world is a naughty six-year old is almost amusing—only "almost" because the question of who gets to play mommy or daddy is far from benign—but the important word is "uncontrollable." The marginal efficiency of capital cannot be deliberately controlled or managed by central authority. Let us turn to the rate of interest.

The rate of interest depends on the quantity of money and liquidity-preference. We already know that the quantity of money is controlled by the central bank. We also know that an increase in the quantity of money will, *ceteris paribus*, produce a decline in the

rate of interest. One obvious question is, will prices rise if you print more money? Keynes provides an answer:

When full employment is reached, any attempt to increase investment still further will set up a tendency in money-prices to rise without limit, irrespective of the marginal propensity to consume; *i.e.* we shall have reached a state of true inflation. Up to this point, however, rising prices will be associated with an increasing aggregate real income. (Keynes 1965, 118–19)

Thus, prices will rise, but—short of full employment—that will not be a problem.

What about liquidity-preference? Subject to control or management by central authority? One would not think so, yet in a passage that has to have embarrassed his fans (assuming that they were capable of being embarrassed by anything), Keynes toys with the idea of issuing money that comes with an expiration date. What Keynes does is to endorse—with reservations—Gesell's proposal that currency-notes should expire at the end of a month unless they are stamped with stamps purchased at a post-office. (Keynes 1965, 357) Keynes seems to have only two objections. In the first place, Gesell's proposal does not go far enough: "it would clearly need to apply as well to some forms at least of bank-money...." (Keynes 1965, 357) In the second place, Gesell was "unaware that money was not unique in having a liquidity-premium attached to it...." (Keynes 1965, 357) We do not need to pursue the subject of liquidity-premiums attached to items other than money; suffice it to say, Keynes does not think that liquidity-preference is subject to control or management by central authority—at least not yet.⁵

If investment depends on the marginal efficiency of capital, liquidity-preference, and the quantity of money, and if the quantity of money is the only variable which is subject to control or management by central authority, the system might even need a new transmission:

the schedule of the marginal efficiency of capital may fall so low that it can scarcely be corrected, so as to secure a satisfactory rate of new investment, by any practicable reduction in the rate of interest. Thus with markets organised and influenced as they are at present, the market estimation of the marginal efficiency of capital may suffer such enormously wide

⁵ "The idea behind stamped money is sound. It is, indeed, possible that means might be found to apply it in practice on a modest scale." (Keynes 1965, 357)

fluctuations that it cannot be sufficiently offset by corresponding fluctuations in the rate of interest. Moreover, the corresponding movements in the stock-market may, as we have seen above, depress the propensity to consume just when it is most needed. In conditions of *laissez-faire* the avoidance of wide fluctuations in employment may, therefore, prove impossible without a far-reaching change in the psychology of investment markets such as there is no reason to expect. I conclude that the duty of ordering the current volume of investment cannot safely be left in private hands. (Keynes 1965, 319–20)

How will the state order (and can the state order investment without ordering investors to stop being naughty and to eat their vegetables?) the current volume of investment? Keynes informs us that

[i]t is not the ownership of the instruments of production which it is important for the State to assume. If the State is able to determine the aggregate amount of resources devoted to augmenting the instruments and the basic rate of reward to those who own them, it will have accomplished all that is necessary. (Keynes 1965, 378)

One assumes that ownership of the means of production will remain—nominally—in private hands but that decisions about the volume of production will not. What will this mean in practice? One cannot subject a proposal that is never made to scrutiny. The only safe conclusion is that the state may have to order production—in more ways than one.

What about the propensity to consume? Any prospect of control or management by central authority? One might not think so, but

[t]he only radical cure for the crises of confidence which afflict the economic life of the modern world would be to allow the individual no choice between consuming his income and ordering the production of the specific capital asset which, even though it be on precarious evidence, impresses him as the most promising investment available to him. (Keynes 1965, 161)

Unless you spend all your income on something, you will be arrested? Shot? And how do you establish that you have spent all your income on something? When you buy a soft drink from a vending machine, do you need to ask it for a receipt? Assume that you get lucky and that the State passes a Paperwork Reduction Act. You no longer need receipts, but your mattress will be examined monthly to ensure that there is no currency hiding in the horse-hair?

Let us take a different tack. Is it possible to use taxation as an instrument that will give the propensity to consume a jump-start? Keynes asserts that “it is ... obvious that a higher absolute level of income will tend, as a rule, to widen the gap between income and consumption.... These reasons will lead, as a rule, to a greater *proportion* of income being saved as real income increases.” (Keynes 1965, 97) Perhaps taxes should be levied on those with high incomes and the proceeds given to those with low incomes or no income?

There is a problem. “Provided it is agreed that income is equal to the value of current output, that current investment is equal to the value of that part of current output which is not consumed, and that saving is equal to the excess of income over consumption—all of which is conformable both to common sense and to the traditional usage of the great majority of economists—the equality of saving and investment necessarily follows.” (Keynes 1965, 63) That portion of income which is not spent on consumption is saved, and that which is saved is invested. Aggregate demand is derived from consumption and investment.⁶ Using taxation to transfer income from those who save to those who consume may increase consumption, but it can do nothing to increase aggregate demand because of the effect that it will have on investment.

Does the conclusion change if saving can exceed investment? Keynes tells us elsewhere that “a relatively weak propensity to consume helps to cause unemployment by requiring and *not* receiving the accompaniment of a compensating volume of new investment....” (Keynes 1965, 370) In fact, “there has been a chronic tendency throughout human history for the propensity to save to be stronger than the inducement to invest.” (Keynes 1965, 347) If aggregate demand is derived from consumption and investment, is money that is not spent either on consumption or on investment hoarded? If so, levying a tax on hoarders and distributing the proceeds to spenders should increase aggregate demand.

The problem with that suggestion is that it is by no means clear that hoarding—in any meaningful sense—exists, for Keynes admits that

⁶ “Opportunities for employment are necessarily limited by the extent of aggregate demand. Aggregate demand can be derived only from present consumption or from present provision for future consumption.” (Keynes 1965, 104)

it is impossible for the actual amount of hoarding to change as a result of decisions on the part of the public, so long as we mean by 'hoarding' the actual holding of cash. For the amount of hoarding must be equal to the quantity of money (or—on some definitions—to the quantity of money *minus* what is required to satisfy the transactions-motive); and the quantity of money is not determined by the public. (Keynes 1965, 174)

If all money, in the nature of the case, is hoarded, we will never be in a position where we can "unhoard" it: if you take money that Peter is hoarding and give it to Paul, the only thing you have changed is the name of the hoarder.

Perhaps "hoarding" is really a synonym for "liquidity-preference"⁷ and interest "is the reward of not-hoarding." (Keynes 1965, 174) If so, hoarding is really a refusal to lend money in the loan-market. Nowhere in the *General Theory*, however, does Keynes argue that the propensity to hoard will increase as income increases, and it is difficult to understand why it should be so: one would expect one's willingness to make loans to increase with the size of one's bank account (or stash in the mattress), not to decrease. Where does all this leave us? Keynes never provides a plausible argument that "appropriate" taxation will increase aggregate demand.⁸

Perhaps deficit-spending will come to the rescue? One curious feature of Keynes's *General Theory* is that it contains so little material dealing with deficit-spending, the very feature most often associated with the work. Keynes's only extended discussion of deficit-spending occurs in a footnote:

It is often convenient to use the term "loan expenditure" to include the public investment financed by borrowing from individuals and also any other current public expenditure which is so financed. Strictly speaking, the latter should be reckoned as negative saving, but official action of this kind is not influenced by the same sort of psychological motives as those which govern private saving. Thus, "loan expenditure" is a convenient expression for the net borrowings of public authorities on all accounts,

⁷ "The concept of *Hoarding* may be regarded as a first approximation to the concept of *Liquidity-preference*. Indeed, if we were to substitute 'propensity to hoard' for 'hoarding,' it would come to substantially the same thing." (Keynes 1965, 174)

⁸ Keynes (1965) argues in at least two places that fiscal policy can be used to increase the propensity to consume. The reasoning, however, is fallacious, and the appropriate criterion should be the effect of fiscal policy on aggregate demand, not merely its effect on the propensity to consume. See pp. 94–95 and pp. 372–73.

whether on capital account or to meet a budgetary deficit. The one form of loan expenditure operates by increasing investment and the other by increasing the propensity to consume. (Keynes 1965, 128–29)

Two significant points in the preceding passage that ought to be noted are that borrowing by public authorities on “capital account” does not qualify as deficit-spending and that the money for the “loan expenditures” is borrowed from individuals, not printed by the central bank.

One obvious question is, will borrowing by the government have an adverse effect on the rate of interest? Keynes provides an answer when discussing the effect of borrowing for public works (i.e., on “capital account”), but his conclusion clearly applies to all borrowing by the government: “[t]he method of financing the policy ... may have the effect of increasing the rate of interest and so retarding investment in other directions, unless the monetary authority takes steps to the contrary....” (Keynes 1965, 119)

If the demand to borrow money increases, so will its price. The only possible escape from that conclusion is an increase in the supply of money offered for sale. Because the central bank is precluded from buying the government’s bonds by Keynes’s statement that the money for “loan expenditures” is borrowed from individuals, the central bank must purchase other debt in open-market operations. Only in that manner can it counter the adverse effect that borrowing by the government would otherwise have on the rate of interest.

Does that mean that deficit-spending can increase aggregate demand? Even if aggregate demand does increase, the motor is the printing-press, not the “loan expenditure,” and there is no reason to think that the “loan expenditure” played an indispensable role: if the government balances its budget and the central bank buys debt in open market operations, the rate of interest will fall, and the inducement to invest will rise. The protagonist of the *General Theory* is the printing-press; deficit-spending is just a walk-on.

Once again, the obvious question is, what will happen to prices? Keynes’s answer is the General Theory in a nutshell:

We have shown that when effective demand is deficient there is under-employment of labour in the sense that there are men unemployed who would be willing to work at less than the existing real wage. Consequently, as effective demand increases, employment increases,

though at a real wage equal to or less than the existing one, until a point comes at which there is no surplus of labour available at the then existing real wage; *i.e.* no more men (or hours of labour) available unless money-wages rise (from this point onwards) *faster* than prices. (Keynes 1965, 289)

In sum, prices will rise, but money-wages (assuming the existence of involuntary unemployment) will not rise as quickly as the prices of wage-goods, and those who are willing to work for less than the previously existing real wage will accept the jobs that are thereby made available.

The obvious question then becomes, why tinker with the printing press (paper and ink may not be expensive, but no one ever said that they were free) if there are people who are willing to work for less than the existing real wage? Why do not those who are willing to work for less than the existing real wage simply accept jobs at less than the existing real wage (*i.e.*, for a lower money-wage) *before* any paper is printed? Keynes answers that question:

Let us assume, for the moment, that labour is not prepared to work for a lower money-wage.... although a reduction in the existing money-wage would lead to a withdrawal of labour, it does not follow that a fall in the value of the existing money-wage in terms of wage-goods would do so, if it were due to a rise in the price of the latter. In other words, it may be the case that within a certain range the demand of labour is for a minimum money-wage and not for a minimum real wage. (Keynes 1965, 8)

In other words, labor will not accept a reduction in its real wage effected by a lower money-wage. Why not? It does not want to. I am glad that problem has been cleared up.

In Keynes's system, the only arrow in the quiver is the printing press. Provided that involuntary unemployment exists, the ultimate result will be more employment at a lower real wage—so runs the argument. Bullseye?

CONCLUSION

Keynes's *General Theory* purports to be a theory of employment, interest, and money, yet it contains no useful (from Keynes's point of view) theory of employment. What it does contain is a definition of the term "volume of employment" which is fully consistent with an increase in the volume of employment even when the number of workers and the number of hours worked both decrease. Was that the *quaesitum* that Keynes was looking for? And that same

“volume of employment” is of no avail when searching for the involuntarily unemployed.

Keynes’s theory of interest is defective, for Keynes makes the rate of interest depend on the demand for money, or liquidity-preference, and the quantity of money. The demand for money has an effect on all transactions, not merely (if at all) on transactions in the loan-market, and a convincing link between the quantity of money and the rate of interest exists only in so far as new money is offered for sale in the loan-market.

We discussed some of what Keynes had to say on the subject of money in the preceding paragraph. One thing that needs to be made clear is that Keynes did not present a general theory of money in his *General Theory*. Instead, he presented a special theory of money, aptly called The Green Cheese Theory of Money,⁹ which only applies to money made of green cheese (well, to money newly manufactured by a central bank and used to purchase debt in the loan-market).

The significant independent variables in Keynes’s system are the propensity to consume, the marginal efficiency of capital, the rate of interest (which is itself determined by the demand for, and the quantity of, money), and the wage-unit, which is “determined by the bargains reached between employers and employed.” (Keynes 1965, 247) Keynes hopes to be able to identify those variables “which can be deliberately controlled or managed by central authority in the kind of system in which we actually live.” The overarching goal is the solution to a problem called involuntary unemployment and the achievement of its absence, full employment. How successful is the *General Theory* on its own terms?

If saving equals investment, no justification exists for talk about allowing the individual “no choice between consuming his income and ordering the production of a specific capital-asset” nor for talk about the need for the state to assume “the duty of ordering the current volume of investment.” Nor is it possible to justify

⁹ “Unemployment develops, that is to say, because people want the moon;—men cannot be employed when the object of desire (*i.e.* money) is something which cannot be produced and the demand for which cannot be readily choked off. There is no remedy but to persuade the public that green cheese is practically the same thing and to have a green cheese factory (*i.e.* a central bank) under public control.” (Keynes 1965, 235)

taxation that falls disproportionately on those with high incomes. Do matters change if saving can exceed investment? If saving can exceed investment, Keynes's General Theory is self-contradictory, and we no longer need to concern ourselves with any of its features.

"Central authority" has no control over the marginal efficiency of capital, liquidity preference (at least not yet), nor the wage-unit, and deficit-spending can have no effect on aggregate demand without a printing-press in the foreground. When all is said and done, Keynes's system contains only one treatment, more money, for the ill that ails us, for the quantity of money is the one thing that central authority does control—provided, of course, that there is a central bank.

And what is the ill that ails us? Involuntary unemployment. We saw earlier that we can never know that involuntary unemployment exists (not even that it *did* exist), but why should that deter our efforts to eradicate it? If printing a little bit of paper does not do the trick, print some more. That will teach them a lesson they will never forget. Who is the "them"? Labor—do you really think that all the naughty six-year olds are entrepreneurs and investors? If labor will not agree to a reduction in real money-wages, you print more paper and hope that some of them will change their minds. And if a child will not eat his vegetables, you double the size of his portion and hope that he will eat half. It almost makes sense.

It does not. Someone who "withdraws his labor" because he will not accept a lower real-wage is, by Keynes's own admission, voluntarily unemployed, yet it is precisely those who are voluntarily unemployed who form the body of what one might call Keynes's army of the involuntarily unemployed in training. For—and here is the kicker—if they change their minds after the printing press has done its magic (after, that is to say, the central bank has debased the currency) and agree to accept employment at a lower real wage, they receive a promotion: it turns out that those who were once voluntarily unemployed were actually involuntarily unemployed. It almost makes sense.

It does not. When someone is voluntarily unemployed on Tuesday because he "does not choose to work for less than a certain real reward," then changes his mind on Wednesday and agrees to work for a lower real wage than he was willing to accept on Tuesday, that does not change his status on Tuesday to someone who was involuntary unemployed. Rather, it changes his

status on Wednesday to someone who is voluntarily employed. Keynes's *General Theory* is a solution to a problem that does not exist, and Keynes himself clearly was a crank, which makes the praise which the *General Theory* has received in the corridors of power—though hardly unexpected—appalling, and the praise in academia, scandalous.

REFERENCES

- Benjamin Anderson, Benjamin. 1980. *Economics and the Public Welfare*, 2d ed. Carmel, Ind.: Liberty Fund.
- Hazlitt, Henry. [1959] 2007. *The Failure of the "New Economics"*. Auburn, Ala.: Mises Institute.
- Keynes, John M. 1965. *The General Theory of Employment, Interest, and Money*. New York: Harcourt, Brace and World.

BREAKING BOUNDARIES: AN INVESTIGATION OF LIBERTARIAN OPEN BORDERS

CONNOR K. KIANPOUR

ABSTRACT: I will first offer a general understanding of the flavor of libertarianism I will be using as the foundation for my argument for open borders. Then, I will summarize the argument put forth by Joseph Carens (1987) which consummates the importance of open border policy in maintaining the efficacy of property rights. After, I will supplement an additional argument to Carens's in order to strengthen it. In this section, I will interpret Robert Nozick's *Anarchy, State, and Utopia* (1974) such that it informs the importance of the enforcement of a right of free movement, and I will furthermore detail how border restrictions directly violate that right. In the final section of this paper, I will address criticisms made both by libertarian and liberal thinkers against the enforcement of a right of free movement. One of the liberal criticisms, in particular, will serve as a jumping-off point for a conversation highlighting the ways in which libertarian arguments for open borders differ from liberal arguments for open borders. These differences, I contend, illuminate how disparate these philosophical traditions are, especially in the manner that they conceive of rights.

INTRODUCTION

For human beings, life is rendered a futile venture when the ability to pursue our highest-order interests is not safeguarded

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by the governments that claim to protect us. Such was the case for the Jews whose lives were lost during the Holocaust and the Japanese-Americans who fell victim to internment. These afflicted peoples were effectively made means to the ends of flagrantly criminal governments. I would argue that such reprehensible practices existed long before those unfathomable historical moments and still persist to this day in the form of the enforcement of border restrictions. Those individuals who yearn to immigrate for better life prospects are essentially denied their humanity when they are turned away at borders in ways comparable to the plights of the Jews and the Japanese. I understand that this is a bold claim to make since many reasonable individuals maintain that border restrictions are not only useful but necessary to the advancement of those very rights which I claim they violate.

Some endorse border restrictions because they affirm the associational rights of nations (Wellman 2008, 110–11), while others do so by calling upon utilitarian principles (Miller 2005). Needless to say, individuals justify these beliefs because it is thought that border restrictions are in the best interest of those citizens whose country is potentially subject to permeation by immigrants. However, a strong case can be made for the importance of *open* borders in best serving the interests of both alien and citizen. Some use John Rawls's (1999) original position to exemplify the ways in which open borders advantage those least well-off members of global society (Carens 1987, 255–62), some use a principle of humanity to denounce the act of turning the disadvantaged away at the border (Kukathas 2005, 207–20), and some even invoke those same utilitarian principles used by advocates of border restrictions to justify the existence of open borders (Carens 1987, 263–64). This paper, however, will focus on a justification for open borders that is entirely reliant upon libertarian principles.

Libertarianism can best be defined as a philosophy that places fundamental rights ahead of any other mechanism used to determine the permissibility of human action. Thus, a libertarian justification for open borders explains how border restrictions violate the rights of individuals and how open borders protect the rights of individuals. To form a strong libertarian case for open borders is to likewise build an argument which is reliant upon principles alone; rather than arriving at a conclusion which circumstantially justifies open border immigration policy, one

would have access to an argument which justifies such a policy under any and every circumstance. It is important to note here that there are libertarian consequentialists who contend that adherence to libertarian values is important because of the favorable consequences it produces (Murray et al. 2005, 31–39). However, I will take for granted that even these libertarians will agree that there is some worth inherent to libertarian principles themselves that make them worthy of moral consideration in a way that is not inherent to *mere* consequentialism.

Some may find the idea of a libertarian argument for the endorsement of open borders to be self-evident and altogether needless. It seems that an ideology stationed in non-aggression and the inviolability of human rights would necessarily have to extol such a border policy, but some libertarian thinkers have developed arguments that defend border restrictions. John Hospers, for example, argues for the observance of a distinction between absolute and *prima facie* rights within the libertarian tradition. Furthermore, he posits that border restrictions are consistent with libertarianism because the rights violations that would ensue in the enforcement of a restrictive border policy would only be considered such in the first place under ideal political conditions (Hospers 1998, 153–57). In other words, any rights that would be violated by the enforcement of border restrictions are not inviolable rights but rather rights that could be undermined given certain non-ideal political realities and proper justifications. Other libertarians, like Hans-Hermann Hoppe, have suggested that political societies with substantial amounts of public space have an interest in restricting immigration for the sake of preserving free trade (Hoppe 1998, 221–33). Moreover, he argues that publicly owned territory ought to be understood as expropriated private property belonging to citizens who have the right to exclude or avoid foreigners (Hoppe 1998, 231). Ultimately, it will be the goal of this paper to demonstrate that these ostensibly libertarian arguments fail to reconcile libertarian values with border restrictions.

I will first offer a general understanding of the flavor of libertarianism I will be using as the foundation for my argument for open borders. Then, I will summarize the argument put forth by Joseph Carens (1987) which consummates the importance of open border policy in maintaining the efficacy of property rights. After, I will supplement an additional argument to Carens's in order to

strengthen it. In this section, I will interpret Robert Nozick's *Anarchy, State, and Utopia* (1974) such that it informs the importance of the enforcement of a right of free movement and I will furthermore detail how border restrictions directly violate that right. In the final section of this paper, I will address criticisms made both by libertarian and liberal thinkers against the enforcement of a right of free movement. One of the liberal criticisms, in particular, will serve as a jumping-off point for a conversation highlighting the ways in which libertarian arguments for open borders differ from liberal arguments for open borders. These differences, I contend, illuminate how disparate these philosophical traditions are, especially in the manner that they conceive of rights.

I. THE ANATOMY OF LIBERTARIANISM

Before developing a libertarian argument for open borders, it is imperative that libertarianism is clearly defined. While those readers who are not persuaded by the libertarian ideology may be particularly interested in a defense of these values, it is not the object of this paper to rationalize the merits of libertarianism. Libertarianism, for the purposes of this paper, is merely a lens through which I will look for the sake of making a compelling case for open borders to a readership which likely endorses a core set of values. Though it is beyond the scope of this paper to offer a comprehensive defense of libertarianism, there have been many libertarian theorists who have propounded compelling arguments for the legitimacy of their adherent philosophy.¹ That being said, those qualities which tend to distinguish the libertarian tradition from other political philosophical traditions are a reverence for self-ownership, a commitment to non-aggression, and a belief in rights of life, liberty, and property.

Self-ownership entails the right to control one's own person. Furthermore, libertarians generally recognize that all rational agents are self-owned. This means that individuals may pursue ends that are of interest to them using those attributes over which they exhibit self-ownership, but that others may not interfere with them without their consent. This basic principle can be understood as a uniquely libertarian non-aggression axiom which I will later analyze in greater detail. The concept of self-ownership alone,

¹ See Rothbard (2006) and Nozick (1974), for example.

however, is crucial to understanding the interests which the libertarian philosophy aims to protect. In assuming that rational agents have ownership over themselves in the same way that they may own objects proprietarily, libertarians affirm the normative separateness and inviolability of persons (Vallentyne and van der Vossen 2014). It is important, however, to acknowledge that there are some libertarians who do not cede that individuals have transactional authority over their persons in the ways that a capacious understanding of self-ownership would require.² Suffice it to say, even these libertarians would accept that individuals have a considerable amount of discretion over what they can do with or to their bodies though they may not concede that they have the discretion to *sell* their bodies. This is because the body of an individual can strongly be understood as *theirs*. It is in this sense that all libertarians believe in self-ownership.

Self-ownership, and the subsequent affirmation of the separateness of human existences that springs forth from it, ultimately leads to the acceptance of a libertarian side constraint that prohibits aggression against other rational agents (Nozick 1974). This non-aggression axiom, as stated before, is derived from the assertion that individuals are self-owners. Persons who own themselves are necessarily owed non-aggression from other persons; likewise, self-owners are subject to a moral stricture which forbids their enactment of aggression against others. Aggression can best be understood as it is defined by Murray Rothbard: “the initiation of the use or threat of physical violence against the person or property of anyone else” (Rothbard 2006, 27). In this respect, libertarianism uses the concept of self-ownership and the higher interests which it preserves as a means by which to develop a set of enforceable duties that individuals have to one another as moral agents.

The enforceability of these derivative duties is made concrete through the libertarian recognition of property rights. In asserting that individuals own themselves and that this fact engenders a non-aggression axiom, libertarians maintain that they have an enforceable property right in their own person. Having this right can be construed as a right of life on a libertarian understanding of the term. And this property right likewise gives rise to the

² For a libertarian argument against possessing transactional authority over one’s own person, see Kinsella (2003).

necessary acceptance of a right of liberty understood in a purely negative sense. Individuals are free to do what they will with those bodies in which they have a property right so long as they do not infringe upon the rights of others in their pursuits. Libertarians, in other words, generally understand individuals to be free only insofar as they are owed non-aggression rather than free in the sense that they are self-masters (Berlin [1958] 1969).

While most libertarians are in agreement about enforceable rights of life and liberty, there is discord within the philosophical tradition regarding the application of a self-owner's right of property to external objects. Though some libertarians hold that natural resources belong to all individuals in some egalitarian manner, I will be presenting my case for libertarian open borders under the presumption that natural resources can be owned, given that they are acquired justly (Vallentyne and van der Vossen 2014).

To better understand libertarianism, it is helpful to examine it alongside a political tradition which endorses its own specific set of values: liberalism. Liberalism is a political philosophical tradition which is characterized by its commitment to liberty of conscience, equality of opportunity, the role of markets in economic relations, the role of government in providing public economic goods of certain kinds, and the impartial, general administration of the law (Freeman 2001). The liberal tradition is home to thinkers with vastly different conceptions of the good in politics, from classical liberals like John Locke ([1689] 1946) to liberal egalitarians like John Rawls (1999).

On its surface, liberalism seems similar to libertarianism in many ways: liberals and libertarians alike support an individual's right of free conscience, equality of opportunity—at least, of a certain kind—to participate in public institutions, the role of markets in economic relations, and the impartial, general administration of the law. Some libertarians even believe that the government ought to play a role in providing certain kinds of economic goods to the public, or they at least believe that the government has a legitimate function in preventing individuals from monopolizing the acquisition of certain resources (Nozick 1974). However, I believe that this paper will illuminate the characteristics of libertarianism which distinguish it so markedly from the liberal tradition it is at times conflated with. Through a property rights argument and a freedom of movement argument for open

borders, libertarianism's unique, unwavering commitment to individualism is made evident.

II. THE IMPORTANCE OF PROPERTY RIGHTS

The libertarian case which Joseph Carens makes for generally open borders is predicated on the power of strongly enforced individual property rights in determining the nature of movement across borders. Put succinctly, individuals have the fundamental right of voluntarily entering into contractual agreements even if that means contracting with individuals across state borders. If one were to accept this principle, it would necessarily follow that he or she would support the right of an immigrant who engaged in a voluntary transaction with a citizen to live on the property of said citizen given those were the terms of the contract. Therefore, the government has no legitimate interest in obstructing free migration because its doing so would be a direct violation of the associational rights of both alien and citizen (Carens 1987, 253).

The simplicity of this line of argumentation, however, fails to divert criticism of its contentious conclusion. It is for this reason that Carens anticipates two arguments against generally open borders. The first argument is what I shall refer to as "the nationalist argument," which states that nations do have and ought to have the right to admit and exclude whomever they desire. Carens rightly criticizes this proposition for making an appeal to the existence of collective rights. The majoritarianism inherent to the concept of a collective right, however, poses a direct threat to the individualistic property rights for which libertarians so fervently advocate (Carens 1987, 252).

It is through the assertion of collective rights that individual rights are ultimately undermined. A collective right to safety, for example, comes at the expense of potentially jeopardizing an individual's right of privacy if its circumvention is intended to promote public safety. Such tradeoffs between collective and individual rights are ultimately inconsistent with the higher aim of protecting the interests of those individuals who constitute the collective in the first place. Moreover, such strong claims about the rights of a nation could potentially legitimize the exercise of a right to expel citizens just as much as it would a right to admit or exclude aliens. If a nation is validated in implementing precautionary measures to enforce some ambiguous right, it is surely

then justified in expatriating individuals in an act of self-defense whom it deems are violating its rights. Certainly, such arbitrary authority would undermine not only the autonomy of aliens but of citizens as well. Though evidently faulty, the nationalist argument does complicate our understanding of individual rights when it is presented in a specific way. I will return to this concern in a later section of this paper.

The second argument against open borders which Carens addresses in his paper is what I shall refer to as “the entitlement argument.” The entitlement argument states that the restriction of open immigration may be justified when citizens are hindered in the marketplace because of competition from aliens. This line of reasoning rests on the assumption that citizens are in some way entitled to protection from alien competition in the marketplace (Carens 1987, 253). This could be interpreted as a different formulation of the nationalist argument wherein the collective right called into question is a right of citizens to be guarded against the economic competition of aliens.

Even if the case could be made that such actions protect one’s *individual* right to protection against competitive disadvantage, Carens makes clear that it would be unreasonable at best to accept that a person has such a right just by virtue of being a citizen. The enforcement of such a right ultimately requires the contravention of a right which is even more fundamental. Though the features and extents of this right are outlined in greater detail in the next section of this paper, it is important to note that what is being called into question here is a right of free movement. One ought not condone the exercise of arbitrary rights that encroach on rights stationed in higher human interests because the capacity to act with respect to these interests is integral to the human condition. Carens notes that even contemporaries like Nozick make a point of explicitly denying the existence of such a right, and ultimately uses his reading of Nozick to conclude that the state has no right to exclude aliens. This conclusion is reached appealing solely to the importance of property rights in libertarian philosophy.

A strong emphasis on property rights, however, does not encompass all of the relevant libertarian motivations for open borders. The emphasis this type of argument places is on the burdens placed upon a citizen of a country who wishes to invite a foreigner onto his property. It fails, however, to make clear the

ways in which the foreigner is wronged by border restrictions. While Carens aptly constructs a libertarian, property rights argument for open borders using Nozick's *Anarchy, State, and Utopia*, he ultimately fails to conduct a reading on the text which yields a crucial component of the libertarian justification for open borders: freedom of movement as a fundamental human right.

III. NOZICKIAN FREE MOVEMENT

Although the property rights argument for open borders is fairly strong on its own in addressing the ways that open border policy protects the associational rights of citizens, I propose that Carens overlooks a crucial supplementary argument that would strengthen his case for open borders. While a property rights argument brings to bear primarily the interests of the citizen, a supplementary freedom of movement argument offers a more complete justification for open borders which underscores the fundamental rights of aliens. In order to clearly interpret Nozick's work as an affirmation of the fundamental right of freedom of movement, it is essential to look to his utopian model.

The utopian model is a thought experiment designed to generate a theoretical utopian framework which accounts for varied interests and values across individuals. In the model, individuals are allowed to conceive of worlds that reflect their values and desires with the exception that any imagined person in that world has the agency to stay where they have been imagined or to leave and imagine their own world. These imagined persons would likewise have certain constraints placed upon the ways they can be imagined—namely, they could not be imagined such that it would logically follow that they would want to live in a given world or with certain kinds of people. Ideally, individuals would imagine worlds and emigrate to others until every person found themselves in a community which best represented their observed values (Nozick 1974, 300–03). In this way, Nozick endows all individuals in his thought experiment with rights of imagining and emigration for the sake of self-determination.

Through the construction of his utopian model, Nozick illustrates how freedom of movement is integral to affirming an individual's right to make choices with his or her life. These individuals, however, cannot act in such a way that their choices would infringe upon the rights of others (Nozick 1974, 27). Because

the idea of choice in the utopian model is so inextricably tied to an individual's ability to exist or not exist within certain boundaries, it is therefore implied that freedom of movement is essential to the endorsement of free choice. Without the ability to freely move from one given world to another, the individuals in Nozick's utopian model would lack the power to establish themselves in worlds of their choosing with others who endorse values similar to their own. Likewise, aliens who are unable to move freely across borders are unable to determine for themselves what type of society represents their interests most fully because they are constrained by the limits of nations with governments that unilaterally control the openness (or lack thereof) of their borders.

This is not to say that an alien has an absolute right to freedom of movement on the common understanding of the word absolute, however. If an alien has a fundamental right of free movement, it does not necessarily follow that the alien's rights supersede the property rights of citizens. That would be the moral equivalent of asserting that a pagan's right of freedom of religion overrules the right of life of that individual whom they wish to sacrifice for their gods. An alien may move freely only insofar as their movement does not infringe upon the rights of anyone else. In this respect, the right of free movement is not absolutist in the ordinary sense of the word, but it is absolutist* which henceforth shall be understood as absolutist with the singular moral side constraint of being obligated not to violate the rights of others placed upon the general concept.

One may claim, however, that there are relevant distinctions between the endowment of these absolute* rights in imaginary individuals who can create and emigrate from worlds at will in Nozick's theoretical model and in real human beings under non-ideal conditions. And it may, furthermore, be the case that these distinctions complicate our understanding of free movement as a fundamental right. The ways in which the utopian model differs from the model projected onto the world as we know it are as follows:

1. In the utopian model, there are always enough people to live in non-exploitative communities because imaginers can will as many individuals as they see fit into existence while, clearly, this is not the case in the real world.
2. In the utopian model, communities affect one another only insofar as they draw members from each other whereas in the real world, communities may engage in commerce or war.

3. In the utopian model, there are not information costs involved in knowing what communities exist beyond the confines of the most immediate one, but this is the case in the real world; and the possibility of communities restricting information about the outside world is a distinct one in the real world (Nozick 1974, 307–08).

The first distinction, in fact, serves as grounds for stronger justification for the enforcement of free movement across borders. If it is not possible to will people into existence until a substantial number of them espouse the values on which you would found a community, you should be at liberty to move (given you have the resources to do so) until you are able to establish yourself within a community most reflective of your ideals. To deny one's ability to pursue such an end without jeopardizing the liberties of others is an affront to both liberty and humanity.

The second distinction also highlights the importance of free movement in allowing individuals to realize their desired ends. If it is the case that war can befall your nation, should it not just as obviously be the case that you should have the ability to exercise your right to flee to a nation that is not war-torn if the lives of you and your family members are in peril? If a human being is denied the enforcement of this right, there ought to be a substantial justification for it. Few, however, seem compelling enough. The right of self-defense seems to be a relatively uncontroversial right insofar as one accepts that humans are entitled to retaliate against those who threaten their life, liberty, or property. Yet it suddenly becomes contentious once the defense manifests in the form of deserting oppressive political circumstances. Some have even contended that prohibiting the needy from crossing borders to justly obtain necessities for life is tantamount to premeditated murder (Huemer 2010, 431–32). Fleeing from one country to another is sometimes the only means by which an individual is able to stay alive when the country in which he or she lives is systematically threatening the protection of fundamental human rights. There are arguments made in favor of restricting free migration even in such circumstances, but I will address their faults in the next section of this paper.

Lastly, the third distinction between the utopian model and the framework as projected onto the real world does not have any implications regarding the restriction of one's right of freedom

of movement. Rather, it calls into question the extent to which governments have a legitimate role in ensuring that certain material conditions are met for individuals to adequately exercise this right. Does the state, for instance, have a legitimate interest in making sure that children are aware of communities external to their own so they can make informed choices about whether or not they want to remain in the communities they were born into? While this question is a most intriguing one, it is not the concern of this particular paper.³

Thus, it is the case that Nozick's theoretical framework can be interpreted such that individuals are endowed with an absolute* right of free movement and it is subsequently the case that any differences between the theoretical framework and the actualized framework only serve to strengthen the cause for surety of this right. But a close examination of Nozick's argument for how the utopian model projected onto the world yields utopian society gives even more insight into the fundamental nature of this right and how its affirmation is correspondingly an affirmation of human worth.

Nozick opens his argument for the legitimacy of his particular utopian theory by criticizing the weaknesses of utopian theory generally understood. First, he underscores the tendency of utopian thinkers to assume that there is one best world for all people regardless of their differences. Utopian thinkers do not typically imagine that all members of society would engage in the same activities and make the same choices at all times, so why is it then that there is only one best composite world which is generally advocated for? Since human beings differ so greatly in their interests, values, and consciences, it seems that their environments should reflect those variations too. Nozick also notes that utopians tend to evade the problem of implementation, meaning that they do not intimate those details necessary to understanding how utopia would be realized. Would the initiation of force be a requirement for the development of a utopian infrastructure? Would individuals have to be inculcated with a set of perfectionist values in order to be receptive to a utopian solution to the world's problems? Would individuals choose, of their own volition, one singular conception of utopia?

³ Kukathas (2003) and Barry (2001) outline their views on these and related issues.

Assuming that one vision of the world is the correct one, it is important to explain how the world as it is currently will become the world as it should be (Nozick 1974, 310).

Nozick's utopian model projected onto the real world, however, resolves both of these problems characteristic of utopian theory. By describing the perfect world as that world which allows for individuals to determine their unique plans of life, the issue of imposing one schema onto varied individuals is bypassed. There is no schema but that which allows for each human being to forge a way of life for themselves. And if it is the case that there is, on the off-chance, one morally superior arrangement it is because an individual is free to move that the utopian vision would be realized. Individuals would design and filter (Nozick 1974, 312–17) through the various communities until eventually there would be one which appealed to every person. Though this is not necessarily the aim of Nozick's utopian model, it certainly is a feature built into it which solves the problem of implementation that has harrowed utopian theory (Nozick 1974, 328).

Were it not for his reverence for free movement, Nozick would be unable to construct a position that corrected those problems which typified the flawed utopian theory. The existence of a certain community—be it an association, organization, or state—rests entirely upon an individual's voluntary choice to submit to its rules and regulations. The assertion of one's existence within a society is, in this way, comparable to currency which pays into the development of one particular image of utopia. His belonging to one group rather than another signals to others all that is right with the group to which he belongs and all that is wrong with the groups to which he does not. It is by having the freedom to move, and by extension the freedom to shape plans of life, that utopia is possible. To refuse the enforcement of such a right is to erode the efficacy of our rights of life, liberty, and property. When viewed in congruence with the property rights argument for open borders offered by Carens, the freedom of movement argument extrapolated from Nozick's text corroborates the marriage between libertarianism and open border policy.

IV. THE INEFFECTICACY OF BORDER RESTRICTIONS

Now that we have supplemented Carens's original reading of Nozick that justifies open borders on the basis of property rights with

a reading of Nozick that justifies open borders on the basis of free movement, it is important to consider the arguments made against a right of freedom of movement. First, I will anticipate and address arguments that have been made in favor of border restrictions by libertarians. I will focus specifically on arguments advanced by John Hospers (1998) and Hans-Hermann Hoppe (1998). Then, I will address three liberal arguments proffered by David Miller (2005) in his “Immigration: The Case for Limits” against an enforcement of the right of free movement. The last of his arguments will serve as a point of clarification between liberalism and libertarianism. Understanding this difference, I contend, is central to understanding the *modus operandi* of libertarianism.

John Hospers grounds his criticism of enforcing a right of free movement in the claim that some rights are absolute while others are generally accepted until proven injurious (1998, 153–57). He would suggest that a right of free movement would fall into the latter category and would defend libertarian border restrictions on the grounds that a right of free movement is merely a *prima facie* right. This is a highly contentious claim, especially to those working within the libertarian philosophical tradition. Even if it were the case that there could be such a distinction made between kinds of rights, it would *not* be the case that a right of free movement would fall into the latter category by virtue of the superlative human interests which it demonstrably protects. As I indicated earlier, an individual’s right to move freely may be the difference between life and death. Beyond that, free movement is a means by which individuals can affirm their first principles and be surrounded by those that will support them in the realization of their plans of life. Because of this, libertarian thinkers like Hospers would need to justify the violation not only of *prima facie* rights but also of fundamental rights that protect the highest-order human interests of life and life plan revision. A libertarian who accepts the doctrines of self-ownership, non-aggression, and the inviolability of fundamental rights (as most self-proclaimed libertarians do) would likely have no such justification.

Hans-Hermann Hoppe (1998), on the other hand, offers arguments against the enforcement of a right of free movement that are more substantive and interesting to consider. It is important to mention that he does make arguments about the ways that open borders may adversely affect national security which I believe are

worth mentioning in passing, though I do not find them worth addressing at length. I will not examine these kinds of arguments for two reasons. Firstly, they rest on empirical assumptions that are contestable.⁴ Secondly, this paper is concerned with making a case for open borders using libertarian—*not* utilitarian—arguments. The arguments made by libertarians for border restrictions which are of interest to me are those that engage uniquely libertarian intuitions. I wish to show how these types of arguments do not succeed in enshrining libertarian values.

Hoppe ultimately argues against the widely-held libertarian belief that free markets require open borders. He suggests, in fact, that the only way to ensure that markets are free is by restricting immigration. This is because the relationship between trade and immigration is one of elastic substitutability, meaning that having more of one requires less of the other. Hoppe points out that, *ceteris paribus*, businesses relocate to low-wage areas and labor moves to high-wage areas. Since national borders tend to separate low-wage areas from high-wage areas, and high-wage areas are presently engaging in welfare statism on the domestic front and protectionism against low-wage areas internationally, immigration poses a threat to the rights interests of those in nations considered to be high-wage areas. This is because immigration, unlike free trade, involves the “invasion” of citizens by aliens. The following quote is illustrative of the sense in which Hoppe believes free trade and immigration are necessarily distinct:

...with respect to the movement of people, the... government will have to do more in order to fulfill its protective function than merely permit events to take their own course, because people, unlike products, possess a will and can migrate. Accordingly, population movements, unlike product shipments, are not *per se* mutually beneficial events because they are not always—necessarily and invariably—the result of an agreement between a specific receiver and sender. There can be shipments (immigrants) without willing domestic recipients. In this case, immigrants are foreign invaders, and immigration represents an act of invasion. Surely, a government's basic protective function includes the prevention of foreign invasions and the expulsion of foreign invaders. Just as surely then, in order to do so and subject immigrants to the same requirement as imports (of having been invited by domestic residents), this government

⁴ Those interested in perusing literature that questions the previously unquestioned relationship between immigration and national security should see Nowrasteh (2019).

cannot rightfully allow the kind of free immigration advocated by most free traders (1998, 221–27).

It may be, however, that the kind of free immigration required by libertarian commitments is not the kind “advocated by most free traders.” Here, I would like to reiterate that freedom of movement, for our purposes, is not an absolute right but rather an absolute* right. When examined closely, this side constraint precludes the very “openness” that is intuitive to a general understanding of open border policy in terms of libertarianism. It is possible to conceive of a libertarian society where geographically contiguous individuals decide to forbid the entry of foreigners on their private property owned in common. Furthermore, it is conceivable that these individuals could make use of restrictive covenants that would ensure that whoever inherits these properties in futurity would not be allowed to permit foreigners on said private property owned in common. The fundamental difference between this aforementioned society and a society that enforces border restrictions publicly, however, is the voluntarism inherent in the creation of the former society. The ability to act voluntarily, even in an arguably discriminatory manner, is an indispensable human interest because it sanctifies choice and empowers individuals to forge unique life plans. A libertarian is therefore not ideologically committed to unrestricted, free movement. They are only committed to unrestricted, free movement when it is challenged by the authority of a state that claims to be exercising its dominion over individuals regardless of the interests of all those implicated.

Therefore, the argument put forth in this paper evades the force of Hoppe’s criticism of open borders. Hoppe himself concedes that the need for border restrictions entailed by his theorization becomes less urgent as the amount of public property in a nation is reduced. This is because the invasion problem associated with immigration would be dealt with via the corrective measure of enforcing private ownership rights and respecting the ability of property owners to exclude (and admit) aliens and citizens alike from their property (Hoppe 1998, 231). It is natural to wonder at this point whether citizens would be able to exclude aliens from public property. While Hoppe would contend that they can because they are *de facto* owners of public property as taxpaying members of the domestic public, other libertarians do not advance this position (Hoppe 2002, 75–97). Walter Block and Gene Callahan (2003)

suggest that aliens occupying public spaces are homesteading property that is under the illegitimate control of government. If a libertarian enshrines the importance of private property rights (as Hoppe himself does), he must also necessarily commit himself to the illegitimacy of collectively-owned public property. The only reason to treat public property as the property of taxpaying members of the domestic public would be to preserve order in said public spaces, but this is not sufficient grounds for overriding an individual's fundamental right of free movement. If anything, Hoppe's view merely commits him to significantly reducing the amount of public property while respecting individuals' absolute* right of free movement, which is a view to which the present paper is highly amenable.

Now that we have examined libertarian criticisms of the enforcement of a right of free movement, we will turn to liberal criticisms made by David Miller (2005) to clarify what it is that makes libertarianism distinct as a political philosophy. The way that Miller addresses rights, however, is quite foreign from a libertarian perspective. In the libertarian tradition, rights are not enforced because of their instrumental value or because there is a body politic which grants them to its subject population. Rather, libertarians believe rights ought to be enforced because they demand enforcement in and of themselves. Miller makes arguments for why freedom of movement should not be treated as a right, but for the purposes of this paper I shall interpret his arguments as reasons for which the right of freedom of movement ought not be enforced. This is because, even within the libertarian tradition, there are compelling arguments against the enforcement of a certain right when exercised in a particular manner.

In general, libertarians would agree that freedom of speech is a fundamental right that ought not be undermined even when the speech articulated is highly controversial and vastly unpopular. However, a case consistent with libertarian principles can be made against the enforcement of this right when the speech is used to clearly and presently pose a danger to the life, liberty, or property of an individual or group of individuals. Similarly, it might be the case that a right of free movement exists but that there are compelling circumstances under which its restriction may be warranted consistent with libertarian principles. I shall argue in this section that there is a fundamental problem with

the liberal arguments made against the enforcement of a right of free movement when examining them with libertarian principles, but that these failings ultimately illuminate a distinct and central feature of the principles used to unearth them.

The first argument against the enforcement of a right of free movement is what I shall refer to as “the population control argument.” Miller essentially posits that there are two levels at which population size affects the world: the global and national levels. At the global level, the carrying capacity of the Earth may be reached if the population grows without restraint. Miller suggests that, “In such a world it is in all our interests that states whose populations are growing should adopt birth control measures and other policies to restrict the rate of growth” (Miller 2005, 201). He argues that states would not have the incentive to adopt such measures if it was convenient for them to dispose of the population posing a threat to their overall population by encouraging international migration. At the national level, high population density may adversely affect a citizen population by altering its way of life in a fundamental manner. The more people there are in a given state, the less space there is for individuals to enjoy. Moreover, mobility, ecological welfare, and consumption levels would be affected to varying degrees if nations were unable to restrict immigration (Miller 2005, 202).

Needless to say, Miller overlooks the importance of rights considerations when championing particular policies, as he invokes mere consequentialism when he asserts that states with growing populations ought to legislate birth control measures to constrain unstable population sizes. If it is possible to justify birth control measures on the basis of population stability for the common good, would it be possible to justify forcible organ-harvesting on those very same grounds? Effecting birth control measures may compromise the bodily autonomy of individuals who wish to use their bodies to instantiate child-rearing in a manner tantamount to the forcible harvesting of non-vital organs like kidneys, lung lobes, testicles, and ovaries. Would there be a justification for forcible organ-harvesting were it the case that the prosperity of 99.9 percent of the population would upsurge exponentially if 0.1 percent of the population were stripped of their non-vital organs? Imagine if you were to fall in the 0.1 percent. Would you feel as though you are being slighted by your government when it robs you of your body for the sake of others you

may not even know? If you would, this intuition uncovers the basis for the libertarian's commitment to the inviolability of certain rights, including the property right one has in their own person. If a single person's body can be used indiscriminately and non-consensually to the end of some other person's arbitrary amelioration, it seems that person cannot even call his body *his*. The same could be said when a single person's reproductive power can be restrained by the state to the end of some other person's life prospects.

Therefore, people who revere bodily integrity and life for reasons independent of their mere instrumentality in achieving certain unclear, arbitrary ends do not take seriously the type of argument put forth by Miller with regard to restricting immigration for the sake of stabilizing population size alone. If it were truly the case that states would be discouraged from implementing birth control measures because of an open border policy, one may have even *more* reason to champion such a policy. Unrestrained population size may very well be preferable to the nature of dystopian policies which aim to control population size by stripping individuals of their reproductive rights and subsequently their bodily autonomy altogether.

The second argument made by Miller against the enforcement of a right of free movement is what I shall refer to as "the cultural continuity argument." The cultural continuity argument maintains that free migration may threaten the society of a subject nation with unprecedented cultural change. These changes pose a threat of such gravity that they warrant the implementation of border restrictions in order to prevent them. Miller posits that all immigration involves both alien and citizen changing and being changed by their respective values. This fact leads him to conclude that members of a society have a vested interest in stabilizing their culture by effectively ensuring cultural continuity within their nation via the restriction of movement of aliens across borders (Miller 2005, 199–200). In his paper, Miller calls to mind the interest that individuals have in preserving a national linguistic identity and how restricting immigration aids in maintaining cultural continuity with respect to language. Without having a legitimate claim to the formation of culture and those aspects which constitute it, citizens of a certain society would not be able to preserve their language, which is likewise one of their most important distinguishing characteristics (Miller 2005, 200).

The first criticism which I shall levy against Miller's cultural continuity argument is founded on the pragmatic flaws of the argument, while the second criticism is more concerned with its underlying principles. Pragmatically, there is an issue with the claim that restricting free movement is a manifestation of a collective interest in cultural continuity because radical cultural change can occur in spite of such restrictions. Miller's specific fixation on language preservation calls to mind the malleable qualities of language which subject the spontaneous order to the whims of ever-changing colloquialisms. If the preservation of a cultural feature such as language serves as an interest which may require the subversion of a human right, is it possible to conceive of a polity which would justify an extreme form of cultural isolationism that is characterized by governmental barriers being put in place to restrict the communication of individuals across borders via technology? And if so, is it at all practical to believe that any government would be able to imprison its citizens in a way such that language undergoes no crucial alteration? Even when in isolation, it is conceivable to imagine that the communities within a nation would develop linguistic differences that could potentially lead to misunderstandings between national subgroups. While Miller takes great care to underscore the fact that his argument is not meant to be interpreted as an argument against cultural change of any kind but as an argument for cultural continuity of a certain kind, he fails to acknowledge that even within a nation at one given time there can be and often are culturally disparate communities and continuity is not possible when values and customs are inherently at odds.

Regardless, even if it were possible to restrict free movement such that a kind of cultural continuity is achieved by a nation, I would argue that there is something fundamentally wrong with Miller's cultural continuity argument. To assert that an individual has a right to live in a society that is culturally continuous by means of governmental interference is to assert that they have a right to be protected by the government against those things which may pose a threat to cultural continuity. If this is the case, it would be wise to return to Nozick's argument against a positive right to protection from competitive disadvantage which ultimately serves as a rebuttal against the nationalist argument described in the second section of this paper. However, rather than formulating a right to protection against competitive disadvantage in an

economic marketplace, Miller is alluding to the existence of a right to protection against competitive disadvantage in a marketplace of cultural values. However, there is a fundamental right of free movement for all individuals, and the enshrinement of this right is essential to the relevant exercise of other fundamental rights (as demonstrated through the reasoning of the previous section of this paper) in a way that a supposed right to protection against competitive disadvantage is not. Therefore, the enforcement of such a right would abjure the fundamental importance of a right of freedom of movement and is therefore not legitimate.

The last argument which Miller offers against the enforcement of a right of free movement, and arguably his most sophisticated and revealing one, is what I shall refer to as “the sufficiency argument.” The argument essentially highlights the ways in which rights have certain physical extents and how these extents constrain an individual’s right of free movement. While generally individuals should be able to move freely, they cannot move freely about the property of others. Furthermore, individuals cannot move freely such that they neglect traffic laws or any restrictive laws made in the public interest. Miller makes the case that most people would not view these restrictions as violations of fundamental human rights in liberal society and implies that such restrictions are consistent with liberal principles. Though individuals have an enforceable right of freedom of movement, Miller would stress that this right is circumscribed by relevant physical extents and that it ought not be treated as absolute. In short, people in liberal society exercise a *sufficient* amount of their right of free movement rather than exercising it in an *absolute* manner. Miller ultimately suggests that this is how it ought to be as well (Miller 2005, 195).

We have already established that libertarians believe not in absolute rights, but in absolute* rights, so the first stipulation of his sufficiency argument is relatively uncontroversial, even for libertarians. The restriction of free movement as it pertains to the regulation of *public* spaces, however, illuminates a complicated and distinct aspect of libertarianism beyond the scope of the immigration debate. Miller notes that public spaces are often heavily regulated and are consequently characterized by the limits they place on free movement. Examples of these limitations include traffic lights, speed limits, and the hours of operation of public parks (Miller 2005, 195). Within the liberal tradition, it is

not uncommon to accept these sorts of restrictions on one's free movement as necessary to the end of some sort of public order. The restrictions placed upon people within the United States, however, are different than those restrictions placed upon people in the United Kingdom. Take, for instance, the side of the road which Americans drive on and the side of the road which Brits drive on; the rules are different between these two stable liberal democracies, yet it is not the case that people perceive the members of one society as more oppressed than the members of the other, or that the members of either of these societies are oppressed at all.

Within the liberal tradition, rights can very much have the physical extents in public places to which Miller alludes in his paper. This sufficiency argument can also be applied to other rights such as freedom of speech. It is common knowledge that the extent to which an individual's freedom of speech is protected varies across stable liberal democracies and these variations are not seen as different forms of oppression so much as they are seen as separate manifestations of cultural values. And this is the point at which the libertarian tradition diverges from the liberal tradition by which it seems to be so heavily informed.

While liberal thinkers advocate for restrictions placed upon rights of free speech and free movement in the interest of some common good, libertarians recoil at the prospect of permitting the state's determination of a sufficient exercise of a given right. In public spaces, it ought not be the case that regulations can be written to restrict the movement of peoples because the right of free movement would lose the force with which it constrains the powers of the state. If it can be rationalized that free movement is not to be treated as an absolute* right but rather as a right that is to be exercised in sufficient quantity, who then would determine the extent of this right? What if it were the case that the state restricted movement in public spaces to an extent where entire groups of people—perhaps racial minorities—were unable to move in a way that was convenient and comfortable to them for the sake of some allegedly higher good? Libertarians would reject that the state could have any such arbitrary authority and would defend the notion that rights could be circumscribed only by the rights of other rational agents.

Some liberal democrats may attempt to avoid the force of Miller's sufficiency argument by suggesting that the only reason

freedom of movement is legitimately restricted in public spaces is that those individuals subject to the strictures which limit free movement are also participants in the liberal democratic system which is restricting them. Aliens who aim to traverse borders that are closed to them, on the other hand, do not participate in the liberal democratic system which subjects them to state coercion (Abizadeh 2008, 45). Ultimately, this line of reasoning would yield the creation of institutions which would *most likely* enact open border policies because aliens would have a say in the policies which would possibly subject them to state coercion. This line of argumentation, however, fails to acknowledge the severity of a potential outcome of such a system: even despite alien participation in a liberal democratic system, it may still be that they vote for heavily controlled borders.

Regardless of whether or not a majority approves of such a measure, the rights of individuals would still be violated. Individuals are under a moral obligation to abstain from infringing upon the rights of others even if there are circumstances under which a majority expresses a desire to abnegate the rights of certain people. In other words, restricting free movement is not made acceptable when it is done through democratic processes in the same way that forced slavery is not made respectable simply because it is derived from a democratic process. To libertarians, rights are demonstrably primary; to liberals and liberal democrats, they seem to be secondary.

CONCLUSION

We are all human beings, whether we were privileged enough to be born into a society which reflects our values or whether we were unfortunate enough to be born into an oppressive society which we seek to escape through migration. And it is by virtue of our humanity that we are all endowed with those rights discussed *ad nauseam* in this paper: rights of property and free movement. Without these rights, and the enforcement of these rights by a government that actualizes libertarian ideals, it would not be possible for individuals to have the power to make the kinds of choices in life that emblemize freedom. Without an enforceable right of property, individuals would have no claim to the hard-earned fruits of their labor which are integral to the preservation of life and well-being. Without an enforceable right of free movement, individuals would not be able

to determine their plans of life meaningfully. Without having these rights enforced, human beings are effectively gridlocked at the whims of pernicious governments that claim to be defending life and liberty while simultaneously eroding both.

While border restrictions seem to be consistent with liberal values to some extent, they are not compatible with libertarian values at all. Even when thinkers working within the liberal tradition attempt to make liberal cases for open borders, they tend to help themselves to property rights arguments and freedom of movement arguments which are inherently libertarian. However, the invocation of these absolute* rights directly contradicts the application of the enforcement of other rights in liberal theory. As discussed before, the enforcement of an individual's right of free speech varies across liberal democracies; yet, it seems that the type of free movement which is advocated for by open-border liberals resembles the type of free movement which is unique to the libertarian philosophy—free movement which is unbounded with the exception that it cannot be used to encroach upon the rights of others (Jones 2019). Why is it the case that liberal arguments can justify the arbitrary circumscription of some fundamental rights such as free speech while concurrently championing a sort of libertarian absolutism* for others?

It is because liberals fail to venerate the importance of individual rights in affirming the humanity of an individual. It is through free choice and being allowed to pursue a path of life independent of governmental sanction that individuals can avow a sincere generosity, tolerance, and industriousness. And border restrictions prevent individuals from doing so in the most fundamental way: they deny abject peoples those rights which may allow them to raise themselves out of abjection.

REFERENCES

- Abizadeh, Arash. 2008. "Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders." *Political Theory* 36, no. 1: 37–65.
- Barry, Brian. 2001. *Culture and Equality: An Egalitarian Critique of Multiculturalism*. Polity Press.
- Berlin, Isaiah. [1958] 1969. "Two Concepts of Liberty." In *Four Essays on Liberty*, ed. Isaiah Berlin. Oxford: Oxford University Press.
- Block, Walter, and Gene Callahan. 2003. "Is There A Right to Immigration?: A Libertarian Perspective." *Human Rights Review* 5, no. 1: 46–68.

- Carens, Joseph H. 1987. "Aliens and Citizens: The Case for Open Borders." *Review of Politics* 49, no. 2: 255–62.
- Freeman, Samuel. 2001. "Illiberal Libertarians: Why Libertarianism Is Not a Liberal View." *Philosophy & Public Affairs* 30, no. 2: 105–51.
- Hoppe, Hans-Hermann. 1998. "The Case for Free Trade and Restricted Immigration." *Journal of Libertarian Studies* 13, no. 2: 221–33.
- . 2002. "Natural Order, the State, and the Immigration Problem." *Journal of Libertarian Studies* 16, no. 1: 75–97.
- Hospers, John. 1998. "The Libertarian Argument Against Open Borders." *Journal of Libertarian Studies* 13, no. 2: 153–57.
- Huemer, Michael. 2010. "Is There a Right to Immigrate?" *Social Theory and Practice* 36, no. 3: 429–61.
- Jones, Reece. 2019. "In Defense of Free Movement." Pp. 264–72 in *Open Borders: In Defense of Free Movement*. Athens: University of Georgia Press.
- Kinsella, N. Stephan. 2003. "A Libertarian Theory of Contract, Title Transfer, Binding Promises, and Inalienability." *Journal of Libertarian Studies* 17, no. 2: 11–37.
- Kukathas, Chandran. 2003. *The Liberal Archipelago: A Theory of Diversity and Freedom*. Oxford: Oxford University Press.
- . 2005. "The Case for Open Immigration." Pp. 207–20 in *Contemporary Debates in Applied Ethics*, ed. Andrew I. Cohen and Christopher H. Wellman. Oxford: Blackwell.
- Locke, John. [1689] 1946. *The Second Treatise of Civil Government*. Oxford: Blackwell.
- Miller, David. 2005. "Immigration: The Case for Limits." Pp. 193–205 in *Contemporary Debates in Applied Ethics*, ed. Andrew I. Cohen and Christopher H. Wellman. Oxford: Blackwell.
- Murray, Charles, David Friedman, David Boaz, and Raymond W. Bradford. 2005. "Freedom: What's Right vs. What Works." *Liberty Magazine* 19, no. 1: 31–39.
- Nowrasteh, Alex. 2019. "Terrorists by Immigration Status and Nationality." *Policy Analysis* no. 866. Washington, D.C.: Cato Institute.
- Nozick, Robert. 1974. *Anarchy, State, and Utopia*. New York: Basic Books.
- Rawls, John. 1999. *A Theory of Justice*. Cambridge: Harvard University Press.
- Rothbard, Murray N. 2006. *For a New Liberty: The Libertarian Manifesto*. Auburn, Ala.: Ludwig von Mises Institute.
- Vallentyne, Peter, and Bas van der Vossen. 2014. "Libertarianism." In *The Stanford Encyclopedia of Philosophy*, ed. E. Z. Zalta. Stanford: Stanford University.
- Wellman, Christopher H. 2008. "Immigration and Freedom of Association." *Ethics* 119, no. 1: 109–41.

A PRACTICAL APPROACH TO LEGAL- PLURALIST ANARCHISM: EUGEN EHRLICH, EVGENY PASHUKANIS, AND MEANINGFUL FREEDOM THROUGH INCREMENTAL JURISPRUDENTIAL CHANGE

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ABSTRACT: John Hasnas (2008) has famously argued that anarchy is obvious and everywhere. It is less well known, however, that Hasnas also argues that anarchy must be achieved gradually. But how can this work? In this paper, I show that directly confronting state power will never produce viable anarchy (or minarchy). Using the example of Soviet jurist Evgeny Pashukanis, I detail an episode in apparent anti-statism which, by relying on the state, ended in disaster for the putative anti-statist. I next show how combining the theories of Austrian legal thinker Eugen Ehrlich and American political philosopher William Sewell, Jr., can lead to a gradual undoing of state power via case law. Finally, I bring in the example of Japanese jurist and early anti-statist Suehiro Izutarō as a warning. Suehiro also attempted to decrease state power by means of case law, but because he lacked a clear anti-statist teleology he ended up becoming an accomplice of state power, even imperialism. The way to Hasnian anarchy/minarchy lies through the skillful application of case law with an eye always towards the attenuation, and eventual elimination, of the power of the state.

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"No one believes that we can transition from a world of states to anarchy instantaneously. No reasonable anarchist advocates the total dissolution of government tomorrow." John Hasnas (2008, 129)

INTRODUCTION

There is nothing more dangerous than the state. (Rummel 1994) The modern nation-state, regardless of the ideology upon which its existence is premised, is an enemy of human freedom and a threat to peace and prosperity at home and abroad. (Rockwell 2014) Proponents of various political arrangements argue endlessly over which kind of state is the best, but these debates merely obscure the central fact of the state: it is always and everywhere a sovereign outlaw predicated on theft, coercion, and violence. (Rothbard 2000)

The state, properly considered, is thus seen as the common foe of humanity. And yet, despite the animosity to it which the state's very nature virtually ensures, the state has shown a remarkable ability to endure. Attempts to confront state power directly almost always fail, while those that succeed tend only to produce even bigger state apparatuses. (Cf. the Bolshevik Revolution, the fall of the Qing Empire, the American Revolution, the French Revolution, and the Meiji Restoration.) Likewise, attempts to declare autonomy from state power through secession or other voluntary forms of disassociation (for example, by refusing to acknowledge the state's jurisdiction over one's privately-held land or property) are also virtually guaranteed to end badly.

For example, in 1861 the Southern States of the United States effected an orderly and thoroughly lawful separation from the North, but this was met with such overweening violence—including widescale attacks on non-combatants—that the newly-formed Confederate States of America were forced to rejoin the larger state on humiliating terms of surrender. (Cisco 2007) Likewise, when law-abiding citizens such as Cliven Bundy and Randy Weaver have attempted to absent themselves from the purview of state power, the state has responded with overwhelming use of force, often lethal. (Grigg 2015)

Anyone who desires freedom is thus presented with a seemingly impossible choice, between submission to the state, which surely ends freedom, and suicidal rebellion, which ends both freedom and life. How does one respond to the dilemma

presented by the state? Is there some way to enhance human freedom within the context of the state while also attenuating state power gradually, with the eventual goal of so diminishing statism that a true Hasnian anarchy becomes possible? I believe there is. In this paper, I argue that the theories of Austrian legal philosopher Eugen Ehrlich point toward the real possibility of greater freedom within a given state and, ultimately, the gentle overthrow of pernicious state power.

However, such a project, although surely worth the attempt, is understandably fraught with peril. States, and statist, are ever mindful of the precariousness of their position, and so are sensitive to even the slightest whisper of rebellion. Not only that, but armed suppression is not the only way that states deal with those who try to carve out non-state spheres for themselves. Many states, and statist, are as expert at co-opting freedom-loving groups and individuals as they are at killing them or throwing them in prison. To give just one example, legal scholar and jurisprudential reformer Suehiro Izutarō, who attempted an Ehrlichian project of his own in interwar Japan, was co-opted by the state due to his failure to maintain the teleology of anti-statism. As a result, Suehiro ended up using Ehrlich's theories, not to chip away at state power, but to further amplify it. (Morgan 2019) I will detail how this happened in the hopes of guiding other would-be Ehrlichian freedom-partisans safely around this hazard. The demise of the state must be the ultimate goal of any truly human society, but this must be accomplished gradually, dialectically, and stealthily. A subdued anarchy, grounded in Ehrlichian legal pluralism, is the surest method for communities to regain their freedom.

I begin with a consideration of Evgeny Pashukanis, a Soviet jurist who attempted to instantiate the Marxian-Engels mythology of the autopoietic 'withering away of the state'. Pashukanis's example proves the folly of directly confronting state power. Before turning to an explication of how the theories of Eugen Ehrlich, put properly and prudently into practice, can advance freedom and sap the state's strength, it is necessary to show what happens when legal theorists try to confront the state head-on.

I. EVGENY PASHUKANIS

Evgeny Bronislavovich Pashukanis (1891–1937) was a Soviet legal thinker who achieved wide renown in the early years of

Stalin's dictatorship. Pashukanis was (seemingly) protected by political connections to people in high office, but he eventually ran afoul of the state by arguing openly that state power should be curtailed. For his naivete he was executed by, of course, the state.

What makes the case of Evgeny Pashukanis especially striking is that, in calling for the end of the state, he was simply repeating what he, and many others, took to be political orthodoxy in that state. Pashukanis never attempted violent revolution. He merely used the same platitudes that the state's ostensible intellectual fathers had advanced—platitudes, indeed, that the theorist had been promoted to chief justice of the state's supreme court for publicly espousing. The absence of all but a faint gloss of legality on the state's swift execution of the theorist when his theories—which were not even his, and which he had long been encouraged by the state to disseminate—fell from favor provide a chilling capstone to this lesson against directly facing off against statism.

Pashukanis's most well-known argument was little more than a recapitulation of Marx's and Engels's teaching that, with the advent of socialism, the state would "wither away." (The 'withering away of the state' was first predicted by Friedrich Engels. (Engels 1878, 302, cited in Kelsen 1988, 25 fn. 62.)) When this happened, Pashukanis said, law would become superfluous. Although much of the legal thinking in Marx and Engels is ambiguous at best, the Soviet Union was founded by Lenin as an experiment in putting the ideas of Marx and Engels into practice, and Lenin himself had expanded upon Marx and Engels' legal ideas by accentuating their prophecy of the state's quiet self-destruction.² It therefore seemed entirely safe for Pashukanis to argue in favor of a doctrine from the philosophical forebears of the Bolsheviks and from the Bolsheviks's leader, Lenin. And yet, it was for precisely this that Stalin, Lenin's heir and thus the world's chief enforcer of Marxist-Leninist thought, had Pashukanis killed. Stalin revised the thinking of Marx, Engels, and Lenin to justify a permanent state with himself at the head. Stalin was therefore not interested in the withering away of the state, because that would have meant the withering away of Stalin. Pashukanis confronted state power directly, albeit unintentionally, and was killed as a result.

Pashukanis came from humble beginnings, but for a time his studies in the law led to a rapid rise in his notoriety and access to

² See Lenin ([1917] 1932, 149), in Kelsen (1955, 51 and 51, fn 1).

state power. Pashukanis studied at the University of St. Petersburg during World War I, and later became a circuit judge after joining the Bolsheviks in 1918.³ He was then “a legal adviser in the People’s Commissariat of Foreign Affairs” in the early 1920s.⁴ Pashukanis remained virtually unknown until the 1924 release of the book that would both win him fame and position, and also lead to his eventual purge and execution: *The General Theory of Law and Marxism: An Experiment in the Criticism of Basic Juridical Concepts*. (*Obshchaia teoriia prava i marksizm*, cited in Stuckha 1988, 41, fn. 1) The book, written as Pashukanis’s attempt to work through some initial ideas about jurisprudence in a purely socialist society based on the writings of Engels and Marx, quickly gained a prominence out of all proportion to the author’s modest motivations in writing it.⁵

Working under the general aegis of Marx-Engels thought, Pashukanis borrowed from German philosopher Hegel and Soviet historian M.N. Pokrovsky in emphasizing the “distinction between essence and appearance,” attacking the “*Roman lex persona* [as] an insufficient basis for the universality of rights attached to individual agents under capitalist modes of production” (Beirne and Sharlet 1990, 41, fn. 7; citing Pashukanis 1931) and insisting that “the development of Russian capitalism must be understood in the context of the historical primacy of mercantile capital” (Beirne and Sharlet, 1990, 41, fn. 8; citing Pokrovsky n.d.). For Pashukanis, it was key that:

Marx had begun his analysis of the inner dialectic of the capital-labor relationship (the production of surplus value) with a critique of the categories of bourgeois political economy. [...] In order to apprehend the historically specific form of the relationship of capitalist exploitation, one had first to pierce the veil of appearances/semblances/forms which the real relationship inherently produced, and on which it routinely depended for its reproduction.

In other words, Pashukanis took seriously the polylogism that was central to Marx’s class-materialist analysis of capitalism and applied it to the field of law, premising his own analysis on the

³ See Hazard (1980), and Bellingham (2018).

⁴ Beirne and Sharlet (1990, 17). See also Hazard (1971, 143) citing also Hazard (1938, 244).

⁵ Beirne and Sharlet, (1990, 41, fn. 1). Hazard sees Pashukanis’s early work as not systematic. See Hazard (1938, 245).

Marx-Engels dogma that the state would become superfluous under full socialism.

Pashukanis wrote his 1924 treatise during the first flowering of Lenin's New Economic Policy (NEP), a strategic retreat into temporary capitalism in order to strengthen the Soviet experiment in the long term. In the earliest stages of the revolution, the Bolsheviks aggressively dismantled the legal order on the grounds that it had been a function of the bourgeoisie's domination of the proletariat. A skeletal framework of institutions was left in place in order to accomplish the move into full socialism, and the law itself was largely discarded in favor of Bolshevik judges' use of "revolutionary consciousness" in undoing what few legal remnants continued to exist. (Beirne and Sharlet 1990, 24) The Russian Civil War, though, necessitated a more robust court system for rooting out and punishing so-called enemies of the revolution. Pashukanis saw this move in the same way Lenin characterized the NEP, i.e., as an expediency and not as a permanent feature of a truly classless society. (Beirne and Sharlet 1990, 25). This also necessitated a retreat from the anti-intellectualism of the early Bolshevik turmoil (David-Fox 1997).⁶ This dramatic shift in policy and the lack of abiding principles it betrayed might have alerted Pashukanis against assuming that safety would lie in adherence to Marxist thought, no matter how orthodox.

In the event, however, Pashukanis's abiding concern in joining Marx and Engels in anticipating the withering away of the state was his belief, which he found also in Marx's *The Critique of the Gotha Program* (1875), that the commodity form was inextricably linked to, and indeed gave rise to, the legal form. Because of this, "proletarian or socialist law was a conceptual, and therefore a practical, absurdity. While the market bond between individual enterprises (either capitalist or socialist) remained in force, so also the legal form had to remain in force." (Beirne and Sharlet 1990, 25) Eventually, the law would come to resemble what Pashukanis saw as the only sustainable feature of the NEP, namely, its "administrative-technical rules which governed the economic plan." (Beirne and Sharlet 1990, 25) Once socialist man had been freed of his bourgeois shackles, he would need only economic tinkering. Crime would be as unthinkable as the

⁶ David-Fox cites structuralist Theda Skocpol (1979) in accentuating this point.

spontaneous exchange of goods for a profit. Indeed, Pashukanis was so convinced that Marx had intended such an evaporation of the legal “superstructure” that Pashukanis called the withering away of the law “the yardstick by which we measure the degree of proximity of a jurist to Marxism.” (Beirne and Sharlet 1990, 25, citing Pashukanis 1929, 268)

Central to Pashukanis’s critique was what he saw as the artificial juridical and economic individualism underpinning bourgeois society. Taking Marx’s “club-law is law nevertheless”⁷ as his touchstone, Pashukanis held that:

law, like barter, is a means of intercourse between disunited social elements. The degree of such disunion may be greater or less historically, but it never disappears entirely. Thus the enterprises belonging to the Soviet state perform one general task in fact; but—working by the methods of the market—each of them has its own isolated interest; they are opposed to each other as buyer and seller, and they act at their own risk and peril—accordingly they must necessarily be in *juridic intercourse*. The final victory of the planned economy will put them exclusively into an association with each other based on technical expediency and will make an end of their juridic personality (Pashukanis 1924, 181).⁸

Because of this rigid conformity to Marxist ideology, Pashukanis was forced into a concomitant adherence to the archetypical Marxian history of the rise of the state as a tool of merchants and class exploiters:

As an organization of class dominance and an organization for the conduct of external wars, the state neither requires—nor essentially admits of—legal interpretation. These are domains where the so-called *raison d’etat*—that is to say, the principle of bare expediency—holds sway. Conversely, authority—as the guarantor of exchange in the market—cannot only be expressed in the terminology of law but itself is represented as law and only law: that is to say, it merges completely with an abstract objective norm. Accordingly, every sort of juridic theory of the state which would embrace all the state’s functions is necessarily inadequate—it furnishes only an ideological—that is to say a distorted—reflection of reality and cannot reflect faithfully all the facts of state life. (Pashukanis 1924, 183)

⁷ Korsch (1922), cited in Pashukanis (1924), in Babb (1951, 180). For Marx’s views of the state see Marx (1938, 8, 17) and Engels (1875), cited in Marx 1938, 31.

⁸ See also Kelsen (1955), esp. ch. 1, “The Marx-Engels Theory of State and Law.”

For Pashukanis, the law was a fundamentally bourgeois concept and could not be reformed. As the state inevitably disappeared, the law, too, would just as inevitably disappear along with it.⁹

Pashukanis's theories were in plain agreement with Marx-Engels orthodoxy (such as it was) on the subject of law, and as herald and prophet of the state's demise under the conquering Bolsheviks Pashukanis was appointed in swift succession to a variety of top-ranking positions in various departments in the emerging Soviet government. Pashukanis's ideas, reprisals of those of Marx and Engels, themselves became part of the Bolshevik canon. As John Hazard points out:

Pashukanis' influence was such that courses in civil law in the law schools were abandoned. Courses in the administrative law of planning, called in Pashukanis' parlance 'economic law', as in Germany, replaced them. A few hours only were devoted at the end of the full year's course to those aspects of civil law which Pashukanis interpreted as the vestige of the past. Textbooks on Civil Law likewise were replaced by textbooks entitled *Economic Law*. A similar atrophy of criminal law was anticipated, with the substitution of 'general principles' to guide the judges instead of precise articles defining types of crime and setting specific penalties (Hazard 1980, xxxi).

Pashukanis's place in the Soviet legal pantheon seemed assured.

Had Pashukanis been able to study the works of Ludwig von Mises, he might have understood that "the state" cannot act, and cannot wither away, because "the state" is nothing more than a grouping of individual people. (Mises 1949) Among different people, many will be interested in free trade and peaceful cooperation. Some will be comparatively hostile to fruitful interaction, but will do the bare minimum necessary to get by. Given human nature, a few will lie, cheat, steal, and even kill in order to advance their individual ambition. It is against such people that societies have always arranged some system of self-defense. Pashukanis imagined a socialist society free

⁹ Cf. Lenin: "With the extinction of classes the state itself will inevitably pass out of existence. The society which will organize production on a new basis of free and equal associations will relegate the state where it shall belong: to the museum of antiquities along with the spinningwheel and the bronze axe." Lenin, *Sochineniya*, vol. 21, p. 372, quoted in Chakste (1949, 22). Pashukanis's view of the state was also informed by Engels' conceptualization of the state as a kind of Leviathan cork keeping potential class warfare in check. See Pashukanis (1924, 184), citing Engels 20th German ed., 177–78.

of individual aggression because, by a process of the denaturalization of mankind as a class partisan, free of juridical and economic individuals per se. But what Pashukanis got instead was Josef Stalin. The emerging Soviet state was hijacked by one man bent on converting the state apparatus into the machinery for effecting his personal designs, including revenge on enemies and former allies.

The first stirrings of trouble for Pashukanis came in April of 1929, when Stalin gave a speech on Leninism in which he denounced his erstwhile friend, the Old Bolshevik Nikolai Bukharin, for the latter's insufficient understanding of dialectics. Chief among Bukharin's failings, according to Stalin, was his having presumed to lecture (the deceased) Lenin on "the problem of the state." Stalin accused Bukharin of failing to make the distinction between the bourgeois state and the state of the dictatorship of the proletariat as used for the purpose of furthering revolution internally and defending the homeland from hostile forces abroad. Stalin was asserting, in his speech, his sole heirship to the mantle of Lenin—asserting, that is, the sole right to interpret Lenin's writings and speeches and to pass judgment upon what was orthodox and what was not. Even more ominously, Stalin was announcing his personal identification with the state. Those who called for the "withering away of the state" were being put on notice that such pronouncements were henceforth liable to being interpreted as calls for the withering away of Stalin himself.

In retrospect it is obvious why Stalin could not dispense with the machinery of the law and the state—he needed the courts as a stage for the show trials that would later clear away the last of his rivals among the Old Bolsheviks, principally Bukharin himself. There is also a separate, but related, element of deception in Stalin's appropriation of Leninism. (See Tucker 1979, 347–66) As Adam Przeworski and Michael Wallerstein write in "Structural Dependence of the State on Capital":

The central and only distinctive claim of Marxist political theory is that under capitalism all governments must respect and protect the essential claims of those who own the productive wealth of society. Capitalists are endowed with public power, power which no formal institutions can overcome. People may have political rights, and governments may pursue popular mandates. But the effective capacity of any government to attain whatever are its goals is circumscribed by the public power of capital. The nature of political forces that come into office does not

alter these limits, it is claimed, for they are structural—a characteristic of the system, not of the occupants of governmental positions nor of the winners of elections.¹⁰

Surrounded by ascendant capitalist states (and forced thereby to admit that the worldwide triumph of communism would be at best seriously delayed, thus necessitating a period of accommodation to reality), Stalin actually adopted a Fordist approach to economics and emphasized vast programs of production (his notorious “Five-Year Plans”) for the quasi-market of perpetual “War Communism.”¹¹ It was in part to avoid the embarrassment of having this betrayal of Marxism-Leninism made theoretically plain that Stalin purged Pashukanis, who as a faithful mouthpiece for orthodox Marxian thought was a hindrance to Stalin in his plans to co-opt Marxism and Leninism for his own private ends.¹²

By the end of the first Five-Year Plan, the National Socialists had taken power in Germany and the Bolsheviks were preparing for what many in both the Communist and National Socialist camps saw as the inevitable war between the two totalitarian systems. (Reisman 2014) Given the realities of the age, the War Communism of the Russian Revolution was giving way to Stalin’s assertion that socialism was possible, at least for the time being, in one country. As such, the state, Stalin argued, was indispensable, both for carrying forward the revolution domestically, and for protecting it from enemies closing in from abroad. Pashukanis’s insistence on a rigid interpretation of Marx’s and

¹⁰ Przeworski and Wallerstein (1988, 11), also citing Luxemburg (1970) and Pashukanis (1924) in Babb, (1951). See also Fred Block (1977, 6–27), cited in Przeworski and Wallerstein (1988).

¹¹ The “transition” period from bourgeoisie rule to pure socialism was under-theorized by Marx and Engels, and the problems associated with the transition were dealt with largely ad hoc. Cf. Hans Kelsen: “Marx says that in the phase of transition from the proletarian revolution to the establishment of perfect communism, that is to say, during the period of the dictatorship of the proletariat, there will be still a law, but that this law, in spite of its progress as compared with the bourgeois law, will still be ‘infected with a bourgeois barrier (*mit einer bürgerlicher Schranke behaftet*).’” Kelsen (1955, 3), citing a letter from Marx to Bracke, May 5, 1875, published in *Neue Zeit*, IX–1, 1890–91, 561 *et seq.* See also Hazard (1938, 247), citing Taracouzio (1935). On the challenges of internationalism for the Soviet Union and for Soviet law, see Hazard (1957, 387–88). On later Soviet internationalism, see Hirsch (2008, 701–30).

¹² Cf. Marx, *Gesamtausgabe* I–1, 574, cited in Kelsen (1955, 19, fn 47). See also Lenin (1917, 221), cited in Kelsen (1955, 55 and 55, fn. 18).

Engels's teaching about the transience of the state under pure socialism was a liability, and Stalin set about removing both the theories and their main proponent.

After a telling failure to gain election to the Academy of Sciences (the 'immortals', as the Soviets called its members), there followed a scathing denouncement by Stalin of Pashukanis's theories (and charges of treason and espionage) published in the September 1, 1937, issue of *Bolshevik*. (Hazard 1980, xxix) The handwriting on the wall was unmistakably clear. In the wake of Stalin's 1929 speech sharply criticizing Bukharin, and implicitly putting Pashukanis on notice, too, Pashukanis had written a revised version of his *General Theory of Law and Marxism* and had published articles and given speeches in which he "confessed" to his own ideological errors and attempted to restore himself to the Soviet leadership's good graces. All was for naught. On January 4, 1937, Pashukanis was disappeared from his Deputy Commissar office, driven past his house on Gorky Street so he could see his files being thrown in the back of a truck, and, after being investigated by "impartial" officers from the Ukrainian branch of the NKVD and arraigned by his former friend Vasilii Vasilievich Ulrikh—one of the leading jurists at Stalin's show trials—was later condemned to death, also by Ulrikh. The sentence was carried out by firing squad just a half hour after it was read into the record (Vaksberg 1991, 129–33).

There is much irony in Pashukanis's having been executed in this way, especially given his opposition to capital punishment and his refusal to incorporate it into the early Bolshevik legal guidelines on the grounds that it was unworthy of an enlightened socialist state. But there is even further irony in Pashukanis's having been executed by the same state, and under the same law, that he was sure would soon wither away as mankind entered into a new mode of existence following the disappearance of class warfare and the false juridical monadism that Pashukanis saw as the grounds of the legal form. But it should also be remembered that Pashukanis had also benefitted greatly from statism. Although he had championed a 'withering away of the state', he could hardly have failed to notice that all of his political opponents had been dispensed with by the same state that Pashukanis was prophesying would meet its own demise.

As historian Robert Sharlet writes in "Stalinism and Soviet Legal Culture":

The jurisprudence of terror [i.e., of Stalin's rolling purges] flourished rapidly along the interface of the strengthened prerogative and the weakened normative state. The fruit of this development was an especially grotesque species of political justice. Legal forms were co-opted for extra-legal purposes, judicial process was subordinated to political ends, and law itself was used to legitimize and rationalize terror. The jurisprudence of terror institutionalized and routinized political terror within the context of formal legalism. In effect, terror was 'legalized' and the criminal process 'politicized'. (Tucker 1977, cited in Bellingham 2018, endnote 22)

Pashukanis must have known this. In fact, John Hazard, who studied under Pashukanis in the 1930s as an American foreign exchange student in the Soviet Union, remembered that "those who strayed from Pashukanis's line were castigated ... or denied faculty appointments, promotions and salary raises. [...] Teachers [were] compelled to conform not only to ideas of Marx but also to those of Pashukanis." (Hazard 1980, xiii–xiv, cited in Bellingham 2018, endnote 43) Pashukanis seems to have been confident that the statist forces which had elevated him to the primacy of his profession and cleared the field of his rivals would never turn against him.

Pashukanis's example is a stark reminder that confronting the state directly is suicidal. It is essential that the state be overcome so that those who would cartelize under the statist banner be denied a platform for their plans, but it is also equally essential that the state be done away with by slow degrees, and not all at once (and certainly not by marrying a putatively anti-state ideology to state power). I therefore propose that communities engage with the state dialectically, weakening and transforming the state incrementally over time. The best way to do this is through case law. A legal-pluralist caselaw system, coupled with jury trials, is the surest path toward the downfall of the state. A clue as to how this might be undertaken comes first from a little-known Austrian legal thinker, while one of that thinker's disciples provides a cautionary tale against implementing anti-state ideas without a clear anti-state teleology in mind.

II. EUGEN EHRLICH

Evgeny Pashukanis had the misfortune of living under one of the most brutal regimes in human history, but his case is not generically unique. Stalin and the Bolsheviks acted with acute ruthlessness against Pashukanis. However, virtually any other state would also have taken steps to eliminate someone who

actively challenged state authority, even abstractly. Virtually any contemporary state would do likewise, as the examples of Edward Snowden and Julian Assange amply attest. In light of these realities, let us turn to another legal thinker whose work offers some hope that the state may, perhaps, be challenged, and eventually defeated, incrementally, stealthily, and with low risk for the challengers. Austrian legal philosopher Eugen Ehrlich (1862–1922) offers a model for how such a project might unfold.

Born into a deracinated Jewish family in Czernowitz in the Austria-Hungarian province of Bukovina, Eugen Ehrlich did his Habilitation on Roman law in Vienna in 1894. He was never able to rise above the post of rector at Franz-Josef University in Czernowitz, a second-rate appointment attributable largely to Ehrlich's Jewish background.¹³ Taking advantage of his *de facto* exile in the hinterland, Ehrlich was among the seminal group of law-and-society thinkers at the turn of the century that launched the sociological turn in both jurisprudence and in legal philosophy. Ehrlich, along with Hermann Kantorowicz (1877–1940), founded the *Freirechtsbewegung* (Free Law Movement) in the first decade of the twentieth century and, together with Kantorowicz, Max Weber (1864–1920), Émile Durkheim (1858–1917), Hugo Sinzheimer (1875–1945), and Roscoe Pound (1870–1964), formed the nucleus of what would later become known as the law and society movement.

Disillusioned with state power for a variety of reasons both personal and intellectual, Ehrlich sought the legitimacy of the law in something other than the reigning corporatist-positivist state. Specifically, Ehrlich conducted extensive research in community custom, which he saw as a way to reform Austrian law by means of insisting on the validity of legal pluralism within the existing Civil Code jurisprudential system. For many thinkers in the German tradition, the state and its laws were seen as forming an unassailable edifice not open to reform. While some German thinkers had posited a distinction between *Gemeinschaft*, or community, and *Gesellschaft*, or civil society, the legal system itself conceptually “saw” only *Gesellschaft*. Most theorists admitted of a working identity between law and the state. Ehrlich, on the other hand, argued that the state and the law are not the same. In many

¹³ Rottleuthner (1987, 19). Ehrlich converted to Roman Catholicism ca. 1894. Johnston (1983, 89).

ways, they are at odds with one another, if not opposites. German experience itself tends to prove this. Ehrlich's groundbreaking *Grundlegung der Soziologie des Rechts* (1913), for example, offers clues to the ability of the law to endure even amidst political crisis, such as in the wake of the Second Reich's defeat in World War I.

Ehrlich, along with Kantorowicz, observed that societies organically and spontaneously generate their own legal orders apart from the oversight of a state, and often in contradiction to the state's Pandekten-style law (a centralized system of law based on the Pandects, a codification of Roman law) claiming a totality of legal sovereignty.¹⁴ The plurality of law in Ehrlich's Bukovina region of Austria-Hungary was probably the source of his initial puzzlement over the gap between what the law in the books said, and what the people in the villages and towns actually did. While interpersonal disputes were meant to be adjudicated according to the Weberian scheme of the state's monopoly of violence, in reality those disputes were often resolved according to customs and practices that often seemed to have very little to do with the codified positive law. For Ehrlich, the application of the law involved, not the robotic matching of real-life happenings to an ethereal and abstracted Civil Code, but, rather, a great deal of human agency floating clear of the legal realm and drawing on norms better understood by the new discipline of sociology. (Rottleuthner 1987, 5) *Gemeinschaft*, in other words, was not an ideal imposed from above by the *Gesellschaftlich* corporatist state, but a process of messy discovery taking place in actual lived society far removed from state control.

Unlike his predecessors, Ehrlich was almost indifferent toward the existence of the state within the framework of actually-existing legal practice. Ehrlich's turn away from German legal idealism found expression in his theory of Free-Law:

As a Free-Law advocate [...], Ehrlich criticized the ideal of the seamless web of a codified legal order, and made clear that the decision in an individual case could not be understood as a logical derivation from general norms (or even concepts), performed 'with the aid of a hair-splitting machine and a hydraulic press'. Like Fuchs, he too emphasized the creative role, the personal moment, in the application of law. However, by this he did not intend that the

¹⁴ Cf, e.g., "Pandektenrecht und deutsches Privatrecht," Hatoyama et al. (1916).

private intuition of the judge be set free. Rather this is the point where his specific understanding of legal sociology came into play: when the law permits no orientation, the application of law should orient itself on social norms, on the norms of the law which was actually alive in society. In his legal sociology, Ehrlich stressed precisely the central role of society—as the totality of human associations—for the emergence and development of law. Legislation, jurisprudence, and judicial decision-making, by contrast, were considered secondary phenomena. The true legal science—understood as legal sociology—had to capture the law that was ‘alive’ in society. Traditional jurisprudence was blind to this sphere and only took into account laws and the norms of judicial decisions.¹⁵

For Ehrlich, the central question of law was this tension between the people and the state. The Pandekten idealists and strong-state advocates had things precisely backwards. Increasing the power of the state—to legislate, regulate, and control ever-greater swaths of private life and to co-opt ever more non-state institutions through promises of political inclusion—led only to greater corruption and a wider gulf between law and society. Left to their own devices, people actually fared much better without interference from the state. A political solution to social ills was therefore not even misguided; it was oxymoronic.

With the theories of Eugen Ehrlich we have a blueprint for foregrounding communities and communal custom and practice as the “groundwork” for an entirely new kind of law. But how can this new law be animated and deployed to challenge the power of the state? The answer lies in the works of American sociologist and historian William Sewell, Jr. In chapter four of *Logics of History*, for example, Sewell posits a relationship between structure and agency that is open to interventions and contingencies. (Sewell 2005, 124–51) Sewell’s kinetic view of the interaction between people and institutions expands on Anthony Giddens’s “duality of structure” and Pierre Bourdieu’s *habitus* to envision complex of social, political, cultural, and economic influences that more closely approximates the reality of human life amid structural patterning. (“By this [i.e., ‘duality of structure’] he [i.e., Giddens] means that [structures] are ‘both the medium and the outcome of the practices which constitute

¹⁵ Rottleuthner (1987, 5), citing Ehrlich, lecture at *Juristische Gesellschaft*, Vienna, April 3, 1903, reprinted in Ehrlich (1967, 196), and Ehrlich (1913, 196).

social systems' (Giddens 1976, 1979, 1981, 1984). Structures shape people's practices, but it is also people's practices that constitute (and reproduce) structures. In this view of things, human agency and structure, far from being *opposed*, in fact *presuppose* each other." (Sewell 2005, 127)) This approach "(1) recognize[s] the agency of social actors, (2) build[s] the possibility of change into the concept of structure, and (3) overcome[s] the divide between semiotic and materialist visions of structure." (Sewell 2005, 126–27) Sewell's rethinking of structural malleability is the key to setting legal-pluralist anarchy against the existing state, chipping away at the state one small interaction at a time. The dialectic is the key to the ongoing existence and substantive autonomy of the *Gemeinschaft* vis-à-vis the *Gessellschaft*, and especially the *Gessellschaft* writ large, the state.

The absence of a state short-circuits this dialectic, destabilizing the legal-pluralist *Gemeinschaft* and inviting reprisal, such as Stalin's against his enemies (including Pashukanis). Giving up the notion that structures themselves are negotiable, pliable, and subject, at least partially, to human agency — or, as Sewell put it, that structures (such as law) are "continually evolving outcome[s] and matri[ces] of process[es] of social interaction" — leaves a *Gemeinschaft* with no partner in the dialectic diminishment of the state. (Sewell 2005, 151) *Gemeinschaftlich* autonomy via legal-pluralist anarchy is much better accomplished by means of case-law interactions with state authorities. Case-law trials, even in the state's courts, are small-scale legal skirmishes, as it were, that afford small *Gemeinschaften* a fighting chance of winning small victories against state power and incrementally undermining the state's power.

This tension among law, society, and the state was summed up by Ehrlich himself, although in the context of legislation and not case law. The important point, however, is that, for Ehrlich, law was a means of *attenuating* state power, not augmenting it:

Legislation is commonly considered the oldest, the original, the peculiar task of the state. In reality, however, the state becomes a law-giver only late in its existence. The original state is a purely military center of might and is concerned neither with law nor with courts. The original state, so far as it is not yet Europeanized, knows no legislation. We speak, it is true, of the legislation of Moses, of Zarathustra, of Manu, of Hammurabi, but these are only collections of judicial and juristic laws together with numerous religious, moral, ceremonial and hygienic provisions such as we can see in popular or popular-scientific writings.

An oriental despot can, if he pleases, level a city to the earth or condemn a few thousand human beings, but he cannot introduce civil marriage into his kingdom.¹⁶

The more central planners work to bind up law and society through executive power, the farther law and society drift apart from one another. Local communities can achieve a measure of autonomy from state interference by acknowledging and reflecting the spontaneity and unpredictability of social order under the banner of legal pluralism, with jury trials as a key feature of this arrangement.

Also, when communities or their members have no choice but to interact with the state's courts, this helps to ensure that the state's judges will be forced to divorce their decisions from statist-ideological presuppositions. Legal-pluralist decentralization and the promotion of anti-statist jurisprudence are both effective at carving out spheres of autonomy for local *Gemeinschaften*. The gradual "withering away," one case at a time, of the state's monopoly on the justice process, along with the championing of legal pluralism and spheres of law separate from the state's legislative prerogative, are the two abiding promises of Ehrlichian jurisprudence.

III. SUEHIRO IZUTARŌ

In the ideas of Eugen Ehrlich and their animation when coupled with the theories of William Sewell we thus have a blueprint for reducing statism and recovering human freedom in our time. Through discrete dissociation from the jurisprudential machinery of the state via an Ehrlichian exercise of community-based common law, those who are willing may be able to attenuate the state's monopoly on "justice" (in the case of the state, this almost always means, simply, "arbitrary immunity from arbitrary violence") and effect real justice organically and in accordance with the natural law. What's more, Ehrlich's program does not even require that its practitioners repair to a commune and convene trials apart from the state's court systems. In fact, it is even more effective if the Ehrlichian practitioner turn the tables on the state by using the state's courts as an entrepôt for importing *Gemeinschaftlich* justice into statist jurisprudence. By means of case law, an Ehrlichian may

¹⁶ Eugen Ehrlich, "The Sociology of Law," under the heading "An Appreciation of Eugen Ehrlich," Pound (1922, 137), cited in Rokumoto (1994, 101).

be able to establish precedent and cultivate judges of conscience, such that pockets and veins of humanity may begin to appear within the statist apparatus. Eventually, if all goes well, the state will be defeated from the bottom up and the inside out. Without firing a shot, the justice-minded jurist will be able to bring the state to heel.

However, the example of someone who tried just such a project should give us pause. Suehiro Izutarō, a Japanese jurist, student of Eugen Ehrlich, and one of the founders of the law-and-society movement in Japan, returned from a period of research with Eugen Ehrlich determined to use case law to upend the Japanese legal system and bring about a quiet Ehrlichian revolution in Japanese society. Under Suehiro's plan, courts, instead of being adjuncts of the state, were to become levers of the disenfranchised people. The force of the masses, case by case, would be brought to bear on the courts, thus bringing the promises of that sweeping zeitgeist of liberalization and social change known as "Taishō Democracy" to the men and women in the street who remained without the right to vote.

But it was not so simple. Eventually, Suehiro was himself converted from Ehrlichian champion of the underclasses to legal technician in the service of the imperial state. Without grounding in principles and focusing only on Ehrlichian method, Suehiro fell into the state's powerful gravity field and turned against the original aims of his youthful Ehrlichian ambitions. His case, somewhat akin to Pashukanis's but with key differences, is thus also a warning of what can happen whenever someone tries to undo the evils of the state, even indirectly and even using Ehrlichian means. Without the teleology of anti-statism, incremental anti-statist activities run the risk of, conversely, amplifying state power and leading to the cooptation of would-be anti-statists.

Suehiro Izutarō began his legal career as a high statist. Like virtually every other law student of his time in Japan, Suehiro had been trained largely in the conceptual jurisprudence then fashionable in Europe and taught to view the changeless legal code as both the means and the end of courtroom reasoning. Legislatures, however constituted, were thought to produce timeless tables of law, into which the various cases that came before a judge's bench were to be fitted in order to conform to the Platonic ideals expressed in the Civil Code. (Aomi [1967] 2007, 154) In response to the ongoing disenfranchisement of the vast majority of the Japanese population, Suehiro began to formulate a plan to use case law as

a way to apply pressure on judges to turn aside from the state-centric mode of forcing individual cases to fit into the Japanese Civil Code, which had been modeled on the French and German codes. In doing this, Suehiro reasoned, judges would be obliged to pay attention to the details of the cases brought before their benches, thereby rendering individual plaintiffs and defendants at least visible to the judge, and therefore, in theory, more likely to receive the justice that was their due.

Under the statism of the Meiji Constitution of 1889, (Kawagishi 2007, 308–31, esp. 315–16) the court system, which might have exerted a measure of supervision over the political and administrative processes *qua* extensions of the imperial person, was almost exclusively a site for the one-sided application of state power (Takayanagi and Blakemore, in Mehren 1963, 9–10, and Haley 1991, 78). Cases—even those in which the judicial system was called upon to interpret actions of the legislature—were understood to be adjudicated in the emperor’s name. (Kawagishi 2007, 314ff) Checkmated by the ascendancy of Prussian-style conceptions of the relationship between the individual and the state, liberals, natural lawyers, and other non-statists in Japan began to search for ways to involve those of the lower classes more fully in the political process. Suehiro realized that a systematic approach was needed in order to pressure judges to act as individuals, thus forcing a space to open up even within the state’s Code-based legal order for the Ehrlichian “living law” practices of communities whose traditional practices had previously been invisible to the state. And the way to do that was to continually adapt statutory law to social realities by means of case law.

In particular, Suehiro attempted to develop, within the existing court system, an entirely new strategy for adjudicating cases, along with an entirely new body of case law as a result. By introducing the case method, Suehiro hoped to make visible to the courts the classes excluded from the judicial process, and also to make judges—and, ultimately, the political network as a whole—more responsive to those classes. Using Ehrlich’s work on the law-and-society movement as a guide, Suehiro established the Civil Code Caselaw Research Group (*Minpō hanrei kenkyūkai*) at the University of Tokyo in 1921. In volume after volume of case-law reports, Suehiro and his university acolytes pounded away at the status quo in the Japanese courts, revealing again and again—by dint

of a simple investigation of the facts of a given case—that most supreme court (*Daishin'in*) judges could not possibly have sought to administer justice to those who appeared before their bench. Almost universally ignorant of the particularities of a given suit or case, the judge, as Suehiro and his research group showed, was most likely to have glanced at a brief summary of the case, applied some abstract tenet of the Civil Code, and then declared the case to be closed and the matter resolved. By publishing their case-law reports, Suehiro and his team exposed the travesties of Code-based justice, thereby applying intense social pressure on judges to act more equitably in making their decisions.

Suehiro saw “the security of the law” (*Rechtssicherheit*, *hōteki anzen*) as an important guarantee of autonomy for local *Gemeinschaften*:

It is a certainty that those who hold law to form a perennially perfect *Geschlossenheit* [cohesive unity] will, of course, deny that legal decisions have the power to create law. [...] The first and most important point we stress in the study of caselaw is not about how a court understands a phrase in a law text in an abstract, scholarly way. Nor is it the formal logic apparent in a decision, nor is it simply the conclusion itself. Judges are people who, when faced with the concrete details of a case, engage, unconsciously, in a complex set of behaviors that goes beyond formal logic and rigid reasoning. The essential point of the study of caselaw is to attempt to arrive at a thoroughgoing, concrete legal security, *Rechtssicherheit*, by discerning fixed principles from within that set of behaviors.¹⁷

This security of the law, bought by pushing back against the state in an ongoing, low-level dialectic via the medium of the caselaw, was to be a key transitional strategy in Suehiro's legal-pluralist anarchical scheme.

In Suehiro's case, however, the absence of underlying legal principles and of a clear anti-statist teleology eventually left him scrambling for the security, not of the law, but of the state, when the political order around him began to break down. As Japan entered a phase of autarky during its high-imperial expansion into Asia and the Pacific, the state gradually expanded to conquer even internal epistemes, such as legal studies, and co-opt formerly non-state and anti-state actors into the imperial project. The state became the nation, and the nation became the state. In this milieu, Suehiro proved helpless to resist state power. Proclaiming the

¹⁷ Minpō Hanrei Kenkyūkai (1922, 1877). Cf., e.g., Ernest Gellner's *geschlossener Handelstaat*, or “autarchic modern state,” in Gellner (1983, 107).

rendering of jurisprudence as a scientific pursuit, with statistical data to be used in both legislation and interpretation of laws, Suehiro proposed strengthening the command economy by carrying out surveys of places that had recently come under the control of the Japanese Empire.¹⁸

For example, in the October, 1938 issue of *Hōritsu Jihō*, Suehiro laid out the justifications for surveys of North China, noting that:

Henceforth, the most important thing that we can do for the sake of Japan's political contact with the Chinese masses is first to learn what legal customs are current among those masses. [...] The most important preparation that we can make is to respect those [legal customs] and to continue using them, thus regulating our relations with them [i.e., the Chinese]. [...] Even if, for instance, we refuse to do this on the grounds that this kind of survey would have no political value, it would still have a tremendous scholarly significance to do this kind of large-scale survey of the legal customs current among the Chinese masses, as such a survey should have been carried out before but so far has not sufficiently been undertaken. (Suehiro 1938, 2–3)

The order of the justifications is significant. As legal history scholar Ishida Makoto argues:

It is noteworthy here that [Suehiro's] emphasis on the political significance of the surveys comes before [his emphasis on] their scholarly significance. From the very beginning, Suehiro called for this survey with a clearly political intention to contribute to the control of occupied territory in the aftermath of the start of the Second Sino-Japanese War.¹⁹

The earlier, Ehrlichian Suehiro would have couched seeking out the “social facts of law” (*Rechtstatsachen*) as they prevailed among a non-state setting.²⁰ However, the Suehiro of 1938 foregrounded the fact that one of his express goals in proposing, organizing, and completing the survey was to aid in the Japanese government's administration of recently-conquered Chinese territory.

In the introduction to a work on his 1930s and 40s China surveys, Suehiro wrote:

¹⁸ Ishida Makoto, in Rokumoto (2004, 170), citing Suehiro (1941, 61–62).

¹⁹ Ishida, in Rokumoto (2004, 170–71), citing Suehiro (1938, 2–3). See also Suehiro, “Hōritsu to kanshū: Nihon hōri tankyū no hōhō ni kansuru hito kōsatsu,” in *Chūgoku nōson kankō chōsa kankōkai* (1955, 25–32); quotes taken from 27.

²⁰ See Coutu (2009, 593).

Of course, neither economic nor social laws are absolutes. In whatever way, the dictates of political disingenuousness stand to change [these laws] quite extensively. This goes without saying. Nevertheless, we must very severely admonish [those who would] fall into the way of thinking which ignores completely the authority of [economic and social] laws, and hold that political power should be given free rein to shape everything. While I think that, in order to prevent the damage that would result [from such an approach], we must make preliminary efforts to separate and set in opposition the state, which is the symbol of political power, and society, which is the symbol of social laws, I also think that the scientific method is the most suitable for studying the state, politics, and law. (Chūgoku nōson kankō chōsa 1955, 25–32; quotes taken from 31)

The scientific method notwithstanding, Suehiro wrote these words as an introduction to a report on surveys carried out for the more efficient administration of areas of China conquered by the Japanese Imperial Army.

IV. CONCLUSION

The failure of Suehiro to build up communities apart from the state and to continue to attack the state incrementally using case law led to his identification with the state and the end of his original, Ehrlichian anti-statist program. Likewise, Pashukanis was executed by the state for naively claiming that the state would eventually wither away with the ascendancy of Marxist ideology. In light of these historical realities, I propose a blending of the insights afforded by Suehiro, Pashukanis, Ehrlich, and Sewell in order to outline a general program for establishing communities as independent as possible from state authority, while also voluntarily interacting with the state in order incrementally to attenuate that authority, acting as a constant corrosive against the self-aggrandizement of the state's leaders and agents.

First, as William Sewell's insights into structures and events make clear, the state is a given and is not going to disappear by force. If anything, force used against the state only makes the state stronger. As Evgeny Pashukanis learned, even those who do nothing more than write books about the state's disappearance are often deemed a threat to the state's monopoly of violence.

But, second, the state *can* be ignored, at least to some extent. Amish communities and American Indian tribes, along with monasteries and other non-statist *Gemeinschaften*, are witness to the

fact that isolation from the state often affords more autonomy than does openly challenging the state or theorizing its dissolution.

Third, an Ehrlichian legal order unique to a given community and evolving from within it, such as the English Common Law or Germanic tribal law did, is a virtually ready-made way to ensure stability in an anarchical community. Jury trials are the best way to ensure that law does not become tyranny over society. Furthermore, state courts should, and can, be avoided at all costs in order to maintain *Gemeinschaftlich* autonomy as far as possible.

Fourth, when it becomes necessary to interact with state courts, a case-law method is best. Case law forces judges to think using synderesis and not statist ideology, prying them away from their Code-based justifications and entangling them in the limiting skeins of the natural law. As a bonus to case law, each case becomes precedent that, ideally, incrementally undermines Code law, thus attenuating the power of the state while also injecting more of the “living law” into the jurisprudential corpus of a given state.

The state is a threat to the freedom of people everywhere. John Hasnas has rightly argued that anarchy is “obvious” and that our human communities and daily lives do not require the state. Indeed, the state, in any form, is not only deleterious to human freedom but positively hostile to human life and incompatible with human flourishing. Rome will not be un-built in a day. It will take patience, planning, and no small degree of wiliness. But it can be done. Taken as a set, the examples I offer here show us how the state can be taken on and, eventually, made to wither away.

REFERENCES

- Babb, Hugh W. 1951. “Soviet Legal Philosophy.” *20th Century Legal Philosophy Series*, vol. V. Cambridge: Harvard University Press.
- Bellingham, Justen. 2018. “Commodity Exchange is Nine-Tenths of the Law: The Life and Work of a Bolshevik Jurist.” *Marxist Left Review*, no. 15.
- Beirne, Piers, ed. 1990. *Revolution in Law: Contributions to the Development of Soviet Legal Theory, 1917–1938*. Armonk, N.Y.: M.E. Sharpe.
- Beirne, Piers, and Robert Sharlet. 1990. “Toward a General Theory of Law and Marxism: E.B. Pashukanis,” in *Revolution in Law: Contributions to the Development of Soviet Legal Theory, 1917–1938*, ed. Piers Beirne. Armonk, N.Y.: M.E. Sharpe.
- Block, Fred. 1977. “The Ruling Class Does Not Rule: Notes on the Marxist Theory of the State.” *Socialist Revolution* 33.

- Chakste, Mintauts. 1949. "Soviet Concepts of the State, International Law and Sovereignty." *American Journal of International Law* 43, no. 1.
- Chūgoku nōson kankō chōsa kankōkai, ed. 1955. *Chūgoku nōson kankō chōsa*, vol. 1. Tokyo: Iwanami Shoten.
- Cisco, Walter. 2007. *War Crimes against Southern Civilians*. Gretna, Louisiana: Pelican.
- Coutu, Michel. 2009. "Review of Marc Hertogh, ed., *Living Law: Reconsidering Eugen Ehrlich*." *Osgoode Hall Law Journal* 47, no. 3.
- David-Fox, Michael. 1997. *Revolution of the Mind: Higher Learning among the Bolsheviks, 1918–1929*. Cornell, N.Y.: Cornell University Press.
- Edelman, Bernard. 1979. *Ownership of the Image: Elements for a Marxist Theory of Law*. Boston: Routledge and Kegan Paul.
- Ehrlich, Eugen. 1913. *Grundlegung der Soziologie des Rechts*. Munich and Leipzig: Duncker und Humblot.
- . 1922. "The Sociology of Law," in Roscoe Pound, "An Appreciation of Eugen Ehrlich." *Harvard Law Review* 36, no. 2.
- . 1967. Reh binder, Manfred, ed. *Recht und Leben: Gessamelte Schriften zur Rechtstatsachenforschung und zur Freirechtslehre*. Berlin: Duncker und Humblot, 1967.
- Engels, Friedrich. n.d. *The Origin of the Family, Private Property and the State*, 20th German ed.
- . 1875. Letter to August Bebel, March 18–28.
- . 1878. *Herrn Eugen Dührings Umwälzung der Wissenschaft* (Anti-Dühring). Leipzig.
- Gellner, Ernest. 1983. *Nations and Nationalism*. Cornell, N.Y.: Cornell University Press.
- Giddens, Anthony. 1976. *New Rules of Sociological Method: a Positive Critique of interpretative Sociologies*. London: Hutchinson.
- . 1979. *Central problems in Social Theory: Action, Structure and Contradiction in Social Analysis*. London: Macmillan.
- . 1981. *A Contemporary Critique of Historical Materialism. Vol. 1. Power, Property and the State*. London: Macmillan.
- . 1984. *The Constitution of Society: Outline of the Theory of Structuration*. Cambridge: Polity.
- Grigg, William Norman. 2015. "Lon Horiuchi: American Sniper," *Pro Libertate Blog*. Last modified February 6, 2015. <https://www.lewrockwell.com/2015/02/william-norman-grigg/lon-horiuchi-american-sniper/>
- Haley, John Owen. 1991. *Authority without Power: Law and the Japanese Paradox*. New York: Oxford University Press.

- Hasnas, John. 2008. "The Obviousness of Anarchy." In *Anarchism/Minarchism: Is a Government Part of a Free Country?* ed. Roderick Long and Tibor Machan. Burlington, Vt.: Ashgate.
- Hatoyama Hideo, Mitsuma Shinzō, and Suehiro Gentarō, comp. 1916. *Zivilrechtliche Lesestücke*. Tokyo: Maruzen.
- Hazard, John N. 1938. "Cleansing Soviet International Law of Anti-Marxist Theories." *American Journal of International Law* 32, no. 2.
- . 1957. "Pashukanis is No Traitor." *American Journal of International Law* 51, no. 2.
- . 1969. *Communists and Their Law: A Search for the Common Core of the Legal Systems of the Marxian Socialist States*. Chicago: University of Chicago Press.
- . 1971. "Renewed Emphasis Upon a Socialist International Law." *American Journal of International Law* 65, no. 1.
- . 1980. "Memories of Pashukanis," Foreword to Evgeny Pashukanis, *Selected Writings on Marxism and Law*, ed. Peirs Beirne and Robert Sharlet. London and New York: Academic Press.
- Hirsch, Francine. 2008. "The Soviets at Nuremberg: International Law, Propaganda, and the Making of the Postwar Order." *American Historical Review* 113, no. 3.
- Johnston, William M. 1983. *The Austrian Mind: An Intellectual and Social History, 1848–1938*. Berkeley: University of California Press.
- Kawagishi, Norikazu. 2007. "The Birth of Judicial Review in Japan." *International Journal of Constitutional Law* 5.
- Kelsen, Hans. [1955] 1988. *The Communist Theory of Law*. London: Stevens and Sons Limited, 1955; reprinted Littleton, Colorado: Fried B. Rothman.
- Korsch, Karl. 1922. *Introduction to the Critique of the Gotha Programme*. <https://www.marxists.org/archive/korsch/1922/gotha.htm> Accessed October 19, 2019.
- Lenin, V.I. 1917. *State and Revolution*, in *Collected Works*, Vol. XXI–2. New York: International Publishers.
- Long, Roderick and Tibor Machan, eds. 2008. *Anarchism/Minarchism: Is a Government Part of a Free Country?* Burlington, Vt.: Ashgate.
- Luxemburg, Rosa. 1970. *Reform or Revolution*. New York: Pathfinder.
- Marx, Karl. 1938. *Critique of the Gotha Programme, with Appendices by Marx, Engels, and Lenin*. New York: International Publishers.
- Mehren, Arthur Taylor von, ed. 1963. *Law in Japan: The Legal Order in a Changing Society*. Cambridge, MA: Harvard University Press.
- Minpō Hanrei Kenkyūkai. 1922. *Furoku: Minpō hanrei kenkyūroku*. Tokyo: Yuhikaku.

- Mises, Ludwig von. 1949. *Human Action: A Treatise on Economics*. New Haven: Yale University Press.
- Morgan, Jason. 2019. *Law and Society in Imperial Japan: Suehiro Izutarō and the Search for Equity*. Amherst, N.Y.: Cambria.
- Pashukanis, Evgeny B. [1924] 1980. *The General Theory of Law and Marxism*. Trans. Peter B. Maggs. In *Selected Writings on Marxism and Law*, ed. Peirs Beirne and Robert Sharlet. London and New York: Academic Press.
- . 1931. "Hegel on State and Law." *Sovetskoe gosudarstvo*, 1–32.
- Pokrovsky, M.N. 1910–1912. *History of Russia from the Earliest Times to the Rise of Commercial Capitalism*, trans., ed. J.D. Clarkson and M.R.M. Griffiths. London: Martin Lawrence.
- Pound, Roscoe. 1922. "An Appreciation of Eugen Ehrlich." *Harvard Law Review* 36, no. 2.
- Przeworski, Adam and Michael Wallerstein. 1988. "Structural Dependence of the State on Capital." *American Political Science Review* 82, no. 1.
- Reisman, George. 2014. *Why Nazism Was Socialism and Why Socialism is Totalitarian*. Laguna Hills, Calif.: TJS Books.
- Rockwell, Jr., Llewellyn H. 2014. *Against the State: An Anarcho-Capitalist Manifesto*. Auburn, Ala.: Rockwell Communications.
- Rokumoto, Kahei, ed. 1994. *Sociological Theories of Law*. New York: New York University Press.
- . 2004. *Suehiro Izutarō to Nihon no hōshakaigaku*. Tokyo: Yuhikaku.
- Rothbard, Murray N. 2000. *Man, Economy, and State*. Auburn, Ala.: Ludwig von Mises Institute.
- Rottleuthner, Hubert. 1987. *Three Legal Sociologies: Eugen Ehrlich, Hugo Sinzheimer, Max Weber*. Madison, Wis.: University of Wisconsin-Madison Law School.
- Rummel, R.J. 1994. *Death by Government*. New Brunswick, N.J.: Transaction Publishers.
- Sewell, Jr., William. 2005. *Logics of History: Social Theory and Social Transformation*. Chicago: University of Chicago Press.
- Sharlet, Robert. 1978. "Pashukanis and the Withering Away of Law in the USSR." In *Cultural Revolution in Russia, 1928–1931*, ed. Sheila Fitzpatrick. Bloomington, Ind.: Indiana University Press.
- Shibuya Kenjiō. 2012. "Pashukānisu hōiron no saikentō (ichi): 'hō no ippan riron to Marukusushugi' wo megutte." *Kōbe Hōgaku Zasshi* 62, nos. 1 and 2.
- . 2013. "Pashukānisu hōiron no saikentō (ni, kan): 'hō no ippan riron to Marukusushugi' wo megutte." *Kōbe Hōgaku Zasshi* 62, nos. 3 and 4.
- Skocpol, Theda. 1979. *States and Social Revolutions*. Cambridge: Cambridge University Press.

- Suehiro Izutarō. 1938. "Shina ni okeru chōsa no hitsuyō." *Hōritsu Jihō* 10, no. 10.
- . 1941. "Hōritsugaku no kagakuka." *Hōritsu Jihō* 13, no. 9.
- Takayanagi Kenzō and Thomas L. Blakemore. 1963. "A Century of Innovation: The Development of Japanese Law, 1868–1961." In *Law in Japan: The Legal Order in a Changing Society*, ed. Arthur Taylor von Mehren. Cambridge: Harvard University Press.
- Taracouzio, Timothy Andrew. 1935. *The Soviet Union and International Law*. New York: Macmillan.
- Tucker, Robert C., ed. 1977. *Stalinism: Essays in Historical Interpretation*. New York: W.W. Norton.
- . 1979. "The Rise of Stalin's Personality Cult." *American Historical Review* 84, no. 2.
- Vaksberg, Arkady. 1991. *Stalin's Prosecutor: The Life of Andrei Vyshinsky*, trans. Jan Butler. New York: Grove Weidenfeld.

THE HETERODOX ‘FOURTH PARADIGM’ OF LIBERTARIANISM: AN ABSTRACT ELEUTHEROLOGY PLUS CRITICAL RATIONALISM

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ABSTRACT: This article first explains the key libertarian insight into property and orthodox libertarianism’s philosophical confusion. It suggests making and applying distinctions among abstract liberty, practical liberty, moral defences, and critical rationalism. The two dominant (‘Lockean’ and ‘Hobbesian’) conceptions of interpersonal liberty are explained. A general account of libertarianism as a subset of classical liberalism is provided, and defended from a narrower view. Two abstract (non-propertarian and non-normative) theories of interpersonal liberty are developed and defended, and practical implications for these are derived and compared. This positive analysis is briefly related to morals. It is conjecturally concluded that this new paradigm of libertarianism solves the problems of the old paradigms.

“It’s an amazing fact that the nature of liberty is one of the least-discussed topics in what libertarians like to call ‘the literature of liberty’.”
Irfan Khawaja (2009, 155)

INTRODUCTION

The issue here is ‘liberty’ (from a Latin root), or ‘freedom’ (from an Anglo-Saxon root). But it is not ‘liberty’ in its most general sense: for that also applies outside the social realm, including to such matters as arise in physics and engineering (as any internet search

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shows; and it can be hard to preclude such references when one is not interested in them). The issue here is only social or interpersonal liberty: the liberty that people have in relation to each other. This essay will sometimes refer to ‘interpersonal liberty’ and sometimes simply to ‘liberty’, but the former is always what is meant.

There is a philosophical approach to libertarianism that is very different from the mainstream, or orthodox, varieties.¹ It has two principal differences: an abstract theory of interpersonal liberty (i.e., non-propertarian and non-normative); and critical-rationalist epistemology² (i.e., no attempt to provide ‘*supporting*’³ justifications⁴ or ‘foundations’).⁵ This heterodox philosophical paradigm remains largely unknown and otherwise largely misunderstood. In general attempts to explain different types of libertarianism it is typically completely absent.⁶ If for no other reason, therefore, it would seem worthwhile to attempt to explain and defend it in outline; and that is one purpose of this essay. However, this is also an attempt to do this with more clarity, precision, and context than hitherto; and this has prompted some new arguments,

¹ Three main types are distinguished in Mack (2018, 1): “the natural rights approach, the cooperation-to-mutual-advantage approach, and the indirect utilitarian approach.”

² For detailed explanations of critical rationalism see, for instance, Popper ([1963] 1978) and Miller (1994).

³ ‘Supporting justifications’ entail circularities, infinite regresses, or dogmatic assumptions. As critical rationalism explains, all observations, arguments, explanations, and even logical inferences rest on, and thus logically amount to, assumptions. They thereby cannot offer support that transcends their assumptions (but those assumptions are either true or false, depending on the external facts). However, they can be criticized and tested—all within a framework of assumptions, of course (and presumably reality will tend to aid true assumptions to withstand criticisms and tests better than false ones, and true ones should resurface even if mistakenly rejected).

⁴ This is emphatically not to object to ‘justification’ used in the completely different sense that means *explaining* a conjecture and *squaring* (justifying) it with any known criticisms or ostensible counterexamples by adequately responding to them (which cannot, of course, offer any support to the conjecture: it merely appears to remain unrefuted so far).

⁵ It would be possible to accept the abstract theory of liberty but reject or ignore critical rationalism. But all the logical problems of attempting to support theories are unavoidable.

⁶ It is absent in, for instance, Mack (2018), Vossen (2019), Zwolinski (n.d.), and Boaz, (n.d.). This is a factual observation, not a complaint.

explanations, and conjectures.⁷ The result is still very far from being a pellucidly clear⁸ and completely settled account. It would undoubtedly benefit from greater critical scrutiny if only in order to clarify it further, and it might even be significantly corrected or utterly refuted. But regardless of how right or wrong this theory is, it poses questions and problems that the orthodox varieties do not and which need to be answered and solved.

THE KEY LIBERTARIAN INSIGHT AND ITS CONFUSED ORTHODOX INTERPRETATIONS

Whatever the various libertarian theories are stated to be, there appears to be one key insight that is behind them all. This is the realization—if only at an intuitive level—that property rights tend to protect and promote two very important things at once: some sense of interpersonal liberty as people not interfering with, or initiating constraints on, each other's lives (sometimes generally expressed as 'live and let live'); and maximal productivity, or economic efficiency, that benefits one and all (sometimes generally expressed as 'a rising tide lifts all boats'). However, as we shall see, this insight remains philosophically confused in the various orthodox forms of libertarianism: there is no clear analysis and clarification of the distinguishable parts. Instead, there is a conflation of certain kinds of deontological rights, good consequences, property rights, and 'supporting justifications'; and all the while being oblivious to the (absurd and ironic) fact that there is no explicit theory of interpersonal liberty to explain any of this.⁹ At the same time, these orthodox positions are often perceived and presented by advocacy texts as being crystal clear and completely cogent.¹⁰ Critical

⁷ This is partly intended to be a better version of the attempts that were Lester (1997; 2014, ch. 10).

⁸ Some typical, and thereby useful, misunderstandings that arise in one anonymous review will be dealt with in footnotes at various points.

⁹ Two classic examples are Nozick (1974) and Rothbard ([1973, 1978] 2006). But see virtually any mainstream libertarian text. The philosophical sophistication of the Nozick text obscures the fact that it is at the same time ultimately superficial as regards some of the issues raised in this essay.

¹⁰ A good short example is Long (2014). And see the critical response that is Lester (2014, ch. 6)

texts cite real philosophical problems^{11,12,13} but they are usually answered with, unwittingly, ad hoc maneuvers.¹⁴ The problem is that both the best criticisms and the best defences are fatally flawed insofar as they incorrectly assume, as they usually do, that something approximating to the current orthodox philosophical assumptions¹⁵ is necessary and sufficient to explain libertarianism and that supporting justifications¹⁶ are possible. General problems with the orthodox assumptions will be explained in what follows. More-detailed criticisms can be found in the texts cited in the various footnote references. But this essay is primarily a short explanation of the heterodox paradigm.

A CLEARER APPROACH: SEPARATING DISTINCT ISSUES

An adequate philosophical theory of libertarianism needs to make the following distinctions:

- 1) An abstract theory of interpersonal-liberty-in-itself that is independent of any type of property (i.e., ownership), or normativity.¹⁷
- 2) The practical and contingent, derived, objective applications of the abstract theory.
- 3) The separate moral and value defences of the abstract theory and its objective applications.
- 4) At every stage the abandonment of ‘supporting justifications’ in favour of critical rationalism, which explicitly uses

¹¹ Friedman (1989, ch. 41, 42). And see the critical response that is Lester ([2000] 2012, 71-123).

¹² “For Nozick, ... there is justice when there is no restriction on freedom. But freedom is then itself defined in terms of non-violation of rights, and the result is a tight definitional circle and no purchase either on the concept of freedom or the concept of justice,” Cohen (1995, 61).

¹³ See Sobel (2012, 2014).

¹⁴ E.g., Block (2011). And see the response that is Lester (2014, ch. 8).

¹⁵ Self-ownership, homesteading, just property, and either deontology or consequentialism are somehow ‘foundational’ to libertarianism—and all without an explicit theory of liberty.

¹⁶ I.e., “supporting justifications” as such, not of any particular assumptions. A review overlooks or misunderstands the references to critical rationalism and asks, “Supporting justifications of what?”

¹⁷ It will later be explained how Hobbes’s account in *Leviathan* is not adequate.

conjectures and criticisms.

That these distinctions are needed should become clearer as this explanation proceeds. This approach appears to be sufficiently radical to amount to a different philosophical paradigm of libertarianism. And this is a fortiori true if also combined with the extreme version of the, implicit, classical-liberal/libertarian compatibility conjecture: there is no systematic *practical* clash between interpersonal liberty (or the libertarian ideology) and want-satisfaction welfare (or preference-utilitarian morals). Some general philosophical explanations of this compatibility will be suggested at various points, but there cannot be a comprehensive social scientific defence of this conjecture here. The following account attempts a new, short, explanation of just such theories of liberty and libertarianism.

INTERPERSONAL LIBERTY

There are various competing conceptions of interpersonal liberty. But there are only two dominant conceptions in both common sense and in political or social philosophy. They are not negative liberty and positive liberty, as might be supposed. Rather, they are both types of so-called 'negative liberty'. One conception is that of people not *initiating* constraints on each other. This is something that could, as far as is practical, be universally observed: everyone could have maximal such liberty at the same time. This is more or less the conception that John Locke (1632–1704) uses in his *Second Treatise of Government* (1690).¹⁸ The other conception is that of people not being constraints in any way on each other. And this is something that will, in practice, be a universal zero-sum game: someone can gain such liberty only at the expense of someone else's loss of such liberty. This is more or less the conception that Thomas Hobbes (1588–1679) uses in his *Leviathan* (1651), but here restricted

¹⁸ For instance, in section 57: "Liberty is freedom from restraint and violence by others; and this can't be had where there is no law. This freedom is not—as some say it is—a freedom for every man to do whatever he wants to do (for who could be free if every other man's whims might dominate him?); rather, it is a freedom to dispose in any way he wants of his person, his actions, his possessions, and his whole property—not to be subject in any of this to the arbitrary will of anyone else but freely to follow his own will, all within whatever limits are set by the laws that he is under." However, as we shall see later, bringing in "property" and "law" at this stage is partly what prevents this account from being the abstract theory of liberty that will be argued to be necessary.

only to interpersonal constraints—which Hobbes does not do.¹⁹ Neither conception is usually explicitly, clearly, and abstractly theorized, even by libertarian philosophers. Consequently, people sometimes switch between one and the other, or conflate the two, without realizing that this is what they are doing.²⁰

LIBERTARIANISM

‘Libertarianism’, in the social or political sense, is a modern name for a long-existing subset of classical liberalism:²¹ that which advocates maximum interpersonal liberty and either a minimal ‘night watchman’ state (minarchy) or no state (anarchy).²² The version of interpersonal liberty that libertarianism tends to assume is no-initiated-constraint liberty. This will be the primary focus here. However, it sometimes assumes no-constraint liberty. A clearer and more explicit theory of each can avoid much philosophical confusion and solve many related philosophical problems. This is useful not only for libertarianism; it will also apply to the common-sense conceptions whether or not they are being used by libertarians.

Some self-described libertarian texts make the characterisation of ‘libertarianism’ more precise. They assume that libertarianism

¹⁹ For instance, in chapter xxi. Of the liberty of subjects, “Liberty, or FREEDOME, signifieth (properly) the absence of Opposition; (by Opposition, I mean externall Impediments of motion;)” (“Liberty What”); and “A FREE-MAN, is ‘he, that in those things, which by his strength and wit he is able to do, is not hindred to doe what he has a will to” (“What It Is To Be Free”). And so we see that Hobbes’s account relates to zero-sum action.

²⁰ Such due, general, acknowledgements to Locke and Hobbes are not intended to imply that what follows is about the details or implications of their specific theories of liberty.

²¹ For instance: “political philosophy that takes individual liberty to be the primary political value. It may be understood as a form of liberalism” (Boaz n.d.) “full-fledged libertarianism, as opposed to more moderate forms of classical liberalism.” (Zwolinski n.d.) “Depending on the context, libertarianism can be seen as either the contemporary name for classical liberalism, adopted to avoid confusion in those countries where liberalism is widely understood to denote advocacy of expansive government powers, or as a more radical version of classical liberalism.” (Conway 2008, 295–98).

²² On anarchism, see especially Molinari ([1849] 1977), and Bastiat ([1850] 2007). But there are also Jakob Mauvillon (1743–94), Julius Faucher (1820–78), and various others. Hence libertarianism (*avant la lettre*) seems to have long been be a type of classical liberalism, *contra* S. Freeman (2001). It is less clear that the politically-correct “liberalism” defended in that essay is entirely a version of classical liberalism.

involves “foundational philosophical commitments”²³ to some combination of certain deontological rights,²⁴ or self-ownership,²⁵ or the non-aggression principle (or axiom),²⁶ or ‘just’ (i.e., ‘libertarian’) private property, etc. This might²⁷ be seen as implying that the overall approach taken here is ‘not, real, libertarianism’. Such a position would appear to be somewhat like a Catholic rejecting Protestantism as ‘not, real, Christianity’. It would be dogmatism rather than precision. As what follows is explained as a heterodox paradigm of libertarianism in which abstract liberty is explicitly theorized and very similar practical implications are derived, it would seem perverse to deny that it is a form of libertarianism. If anything, it appears to be more coherently libertarian than the mainstream varieties.

AN ABSTRACT THEORY OF INTERPERSONAL LIBERTY

THE PHILOSOPHICAL PROBLEM AND ITS INTUITIVE BUT INCORRECT SOLUTIONS

A ‘practical theory of interpersonal liberty’ can be explained as an attempted account of what interpersonal liberty involves in contingent practice as regards rules and consequences. This can be done by using an intuition that implies a tacit theory²⁸ of

²³ “Most of the libertarian theories we have surveyed in this article have a common structure: foundational philosophical commitments are set out, theories are built upon them, and practical conclusions are derived from those theories.” (Zwolinski n.d.)

²⁴ The most well-known being Nozick (1974).

²⁵ Which even “left libertarianism” makes foundational. See Vallentyne, Steiner, and Otsuka (2005).

²⁶ For instance, Block (2003).

²⁷ Or, *therefore*, it also might not. This is not to imply, as a *JLS* review incorrectly supposes is intended, that all foundationalists would reject this as a form of libertarianism. However, some responses appear to do so; not least, Block (2019) which, for instance, calls “private property rights, the be-all, and end-all of libertarianism, along with the NAP” (p. 142). Reply in progress.

²⁸ A quoted *JLS* review comment with interspersed replies: This “suggests that intuitions about liberty are based on tacit theories of interpersonal liberty”. Yes, intuitions that rules and consequences can be categorized as fitting or not fitting liberty in practice thereby imply possession of some sort of theory, however muddled or protean, of abstract liberty to sort them. However, the far more important—non-psychological—matter here is that the possibility of an explicit, abstract theory of liberty is implied by such categorization. “But it isn’t clear that such theories have to be based on complete theories of interpersonal liberty”. It is

interpersonal liberty; and this is what most orthodox accounts of libertarianism do. But if we are explicitly to derive these rules and consequences, then we first need to have an explicit, abstract theory of interpersonal liberty. An ‘abstract theory of interpersonal liberty’ can be explained as an attempted account of what interpersonal liberty is in itself before any contingent practical applications.

How is an abstract theory of the liberty of libertarianism—and thereby also of the relevant dominant common-sense conception—to be understood? To have a theory of liberty that inherently involves particular property rules and particular moral rights is not to have a clearer and stronger theory. Rather, it is to attempt to have an unfalsifiable or uncriticisable theory. And that, as Karl Popper explained, is not clearer and stronger: it is really to avoid saying anything substantive at all. It is certainly to have no proper theory of liberty. Instead, it is in effect to assume the legitimacy or morality of certain rules or rights and then stipulatively or persuasively—and thereby vacuously—define those rules or rights as ‘libertarian’ and their flouting as ‘unlibertarian’ (or even ‘aggression’²⁹, or—still worse—‘coercion’³⁰). Texts that are

clear that they rarely are; they are usually inchoate and tacit. Why next mention “in particular theories of libertarian rights”? Why bring in rights at this stage? Before one can coherently assert “libertarian rights” one must first determine what is non-normatively libertarian (what factually fits liberty); whether there is a right to that is a separate, later, and normative question. “Someone might, [...] if Popper is right, have some theory in mind, but it might not be a worked-out but tacit complete theory of interpersonal liberty.” Of course it isn’t “worked-out” or “complete”. It would hardly be tacit if it were.

²⁹ The idea that libertarianism is about the absence of aggression, or the Non-Aggression Principle (NAP), or Non-Aggression Axiom—as found in Block (2003), for instance—means, it is explained, that one should “not initiate (or threaten) violence against the person or legitimately owned property of another.” Even if we interpret “violence” to mean only ‘violations’, this raises two crucial problems. 1) How do we know that any so-called “legitimately owned property” actually fits interpersonal liberty (after all, not all property rights fit liberty) unless we have an explicit abstract theory of liberty? 2) If “non-aggression” is absolute (as “non” ipso facto implies), then how can any ‘boundary crossings’, such as even the smallest pollution, be allowed or otherwise dealt with? Rothbard and his followers attempt answers (see, for instance, Block (2011, esp. 2.2–2.5); but they do not work (see in response, Lester [2014, ch. 8, esp. 2.2–2.5]).

³⁰ The narrow, plain-English meaning of ‘coercion’ is “the use of force to persuade someone to do something that they are unwilling to do” (<https://dictionary.cambridge.org/dictionary/english/coercion>), or “[a]ctual or threatened force for the purpose of compelling action by another person” (<https://en.wiktionary.org/wiki/coercion>). In this sense, legitimate coercion is not a contradiction in

critical of libertarianism often note this. Therefore, it is better not to tie a theory of interpersonal liberty to specific property rules or to specific moral rights. Then it can be used independently to assess and explain whether any property rule or any moral right is in accord with liberty. Moreover, it is necessary that some such abstract theory is possible. For it is always coherent to ask whether, and how, some property rule or moral right is compatible with interpersonal liberty as a factual matter—rather than by some ideological definition of 'liberty' or 'libertarianism'.³¹ And if mainstream libertarianism—of all ideologies—cannot give a coherent answer to such a question, then it is in a state of philosophical confusion that is acutely ironic: it cannot; it is. In any case, the correct eleutherology (philosophical study and theorizing concerning interpersonal liberty) is a fundamental philosophical problem—not only one for libertarians. It is surely no less important than the correct epistemology, for instance. Therefore, if the following account is not the correct abstract theory of interpersonal liberty, still there must be such an abstract liberty to be correctly theorized and it is important that it be attempted.

Is it possible to formulate a libertarian theory of interpersonal liberty that is sufficiently abstract such that it is both non-proper-tarian and non-normative? First consider the dominant 'Lockean' conception. Conceptually, liberty is always about the absence of some kind of constraints on something. Here it is about the absence of some kind of constraints on people by people: interpersonal constraints (it is not about intrapersonal constraints—limits within a person—or the constraints of the natural world). More precisely here, it must be some sense of the absence of people *initiating*—whether intentionally or not—relevant constraints on each other in some

terms. A libertarian society would use legitimate coercion to defend liberty (and sometimes coercion is contractual or even the whole point of some libertarian interaction: boxers are using coercion on each other). However, libertarian texts sometimes use 'coercion' to mean any action that is 'unlibertarian' or flouts 'libertarian' property rights. For instance, "...liberty is by definition an absence of coercion..."; Machan (1998, 184).

³¹ A quoted *JLS* review comment followed by a reply: "This assumes that in order to answer the question, one must have a theory of interpersonal liberty. But couldn't one attempt to answer the question by pre-theoretical intuitions about liberty?" No, "pre-theoretical intuitions about liberty" cannot *explain* "whether, and *how*, some property rule or moral right is compatible with interpersonal liberty as a *factual* matter". At most they can assign an intuitive libertarian category to the "property rule or moral right".

way: a *purely* reactive or defensive constraint would preserve interpersonal liberty; a proactive or offensive constraint would reduce interpersonal liberty. But what, in the most abstract sense, is it about a person that cannot be proactively constrained by other people if he is to have his interpersonal liberty? This is the key question.

As we have seen, it cannot be either his property or his rights as such—however intuitive such answers may appear.³² It may, of course, be some of, or all of, or only his property or rights where these are compatible with liberty. But that brings us back to the problem. Without an independent, explicit, and abstract theory of liberty, we cannot determine with any clarity what is compatible with liberty. The other main intuitive contender is actions. That also runs into clear difficulties. Proactive constraints on possible actions that someone does not want to perform may not be cared about, or even noticed; so they will not be in any way oppressive (felt as constraining). And some proactive constraints on wanted actions will be perceived as much more oppressive than others in a way that cannot be explained merely in terms of actions. Moreover, sometimes it is not an action but some other wanted state of affairs that might be being constrained; and, again, in a way that admits of theoretically unexplained degrees of oppression. Therefore, abstract interpersonal liberty also does not appear to be about the absence of proactive constraints on actions as such.

THE COUNTER-INTUITIVE BUT CORRECT SOLUTION

So what is being relevantly constrained? The clues are in the references to people's wants. It is the proactive constraining of the satisfaction of wants. This is the most general description of what we do not want others to proactively constrain with respect to ourselves. And, therefore, it seems to fit what is required for the abstract theory of liberty, despite being a counter-intuitive answer for most orthodox libertarians. Hence we can theorize such 'libertarian liberty' as 'the absence of interpersonal proactively-imposed constraints on want-satisfaction' (or 'preference-satisfaction': as no distinction is made here). *Ex hypothesi*, this rules out both proactively imposing wants themselves (by—*ipso facto* unwanted—violent threats, fraud, secret drugging, etc.) and

³² What is currently intuitive for holders of any theories may change for them in the light of a perceived better alternative.

want-satisfactions that themselves would proactively constrain another person's want-satisfactions (for constraints on them would not be proactive but reactive). Otherwise, the wants may be indefinitely many, heterogeneous in nature, sometimes apparently incommensurable, varying in intensity and importance, biological necessities, or entirely contingent and transitory.

A focus on—and aggregation of ostensibly disparate types of—want-satisfactions ought not to seem too strange. Such want-satisfaction is fairly well understood in economics and in utilitarianism: whatever diverse things people actually want, they must in some sense be obtaining *ex ante* utility (or usefulness) from them; and people do make some kind of utility-maximising trade-offs among all of their own very different types of wants. Want-satisfaction, in itself, is even one interpretation of 'utility' in economics and in preference utilitarianism. Preference utilitarianism is distinguished from the other types by not necessarily having a positive conscious sensation as an effect or a goal. It has only a conscious 'utility' as a cause or motive: at the thought of achieving whatever is wanted (even if that is never experienced or known to come about by the person who wants it to be). Consequently, happy delusions are ruled out—unless those happen to be what someone spontaneously does want. Hence preference-utility (or want-satisfaction) is part of what helps us to make sense of the abstract conception of liberty and also of liberty's ultimate congruence with maximizing one conception of human welfare. For human welfare is rightly perceived as the other main social desideratum, but wrongly perceived as often in serious and systematic conflict with liberty.³³

A possible—even likely—criticism may be that this is, therefore, really some strange variety, or subset, of utilitarianism being presented as libertarianism. But positively promoting utility is no part of this abstract theory of liberty, let alone using some people for the benefit of others. The theory solely rules out proactive interpersonal constraints on individuals achieving their (non-proactively-constraining) goals. Utility does not even need to be mentioned. However, it is sometimes convenient to speak in terms of utility in order to explain the congruence of liberty with free-market economics and preference-utilitarian welfare.

³³ As already stated, this conjecture cannot be defended here in social scientific terms. That is primarily a task for economists.

A further criticism may be that, nevertheless, there are still some interpersonal-utility comparisons implied by this theory, and that this is—at the very least—problematic. And here it has to be conceded that an element of interpersonal-utility comparison is indeed implied. It appears to be theoretically unavoidable for the abstract theory. However, as we shall see later, it is only necessary to make the plausible assumption that people are very broadly similar in their responses to certain very fundamental choices. This is not to suppose, or require, or imply either complete homogeneity or any cardinality of people's want-satisfaction responses.³⁴

Now that the abstract theory of interpersonal liberty has been theorized as “the absence of interpersonal proactively-imposed constraints on want-satisfaction”, it may be convenient to abbreviate this unwieldy expression. “No” is shorter than “the absence of”; we are unlikely to forget that it is “interpersonal”, so that can usually be omitted; but “proactively” is crucial here, so best included (usually, at least); “constraints on” someone's “want-satisfaction” (from what it otherwise would have been) is an ‘imposed cost’ to him (in the sense of the opposite of a merely withheld benefit). Therefore, the full formulation can conveniently be abbreviated to ‘no proactively-imposed costs’ (or more briefly, ‘no proactive impositions’). Ten words have been reduced to four (or three). Whenever an abbreviated formulation is used, the full theory will be implied. Thus any alleged ‘proactively-imposed cost’ must in principle be translatable into the longer formulation. But none of these particular words really matter. The same abstract theory of liberty might be expressed in a different way, as long as the general idea is understood. (And it is now possible simply to

³⁴ At this point a review makes a somewhat muddled intervention: “if rights and non-aggression are just contingently related to liberty, how is it that wants are intrinsically connected to liberty in a way rights are not? Unless ‘wants’ and ‘liberty’ are equivalent, the inherent connection between the two calls out for an explanation that is not given.” A reply is best given in stages. 1) It is always best to accurately quote rather than to assume that a paraphrase is accurate. 2) To make a conceptual distinction between two things is not to imply that they are only “contingently related” (any particular number is conceptually distinct from mathematics as a subject, but they are necessarily related). 3) A positive theory of interpersonal liberty and what it entails in practice appears to be conceptually separable from a normative theory of “rights and non-aggression” and what they entail in practice. 4) It is explained in the text how wants relate to an abstract (non-propertyarian and non-normative) theory of interpersonal liberty. 5) Rights are either propertyarian or normative, and so cannot be part of any such abstract theory.

add—by analogy with all of the foregoing explanation—that the no-constraint, 'Hobbesian', theory of interpersonal liberty will be 'no impositions'.)

Note that this verbal formulation is not a *definition* of the word 'liberty'. It is a philosophical *theory* about the nature of the abstract liberty that libertarianism, and common sense, presupposes or entails. Definitions attempt to provide the meanings of words (whether by usage or by stipulation). Theories attempt to provide descriptions of the world. And the world includes the realm of all abstractions (which is also inhabited by all the entities of logic and mathematics). It is very remiss to fail to make, or fail to grasp, this crucial distinction. It is part of the philosophical philistinism of common sense when philosophy is seen as "merely arguing about words." Indeed, one orthodox response to what is being discussed here is that it is mere semantics that does not really contradict or correct anything in mainstream libertarianism.³⁵ As ought to be clear, that response does not bear serious philosophical scrutiny.³⁶

This may still appear to be too unlike any theory of what libertarian liberty plausibly could be. But we have seen that orthodox libertarianism has no proper abstract theory of liberty, and that abstract liberty cannot be explained in terms of property, or rights, or actions. That mainstream libertarianism does not have an explicit abstract theory of interpersonal liberty is as strange and scandalous as it would be if utilitarianism were to offer no explicit abstract theory of utility (in fact there are several). It might also be thought that this unorthodox account has not been given a, sufficient, 'supporting justification'. And that is correct. For, as critical rationalism explains, 'supporting justifications' are logically impossible. Nevertheless, it would still be possible to further explain and defend this abstract account of interpersonal liberty at an abstract level. But rather than do that in this new, short, explanation, it will now be applied to the apparent contingent circumstances of the world. Will it produce the results

³⁵ Private communication. Name withheld to protect the guilty.

³⁶ A review asks, "How is it that the meanings of words and descriptions of the world are so separate?" Put as simply as possible, to define what a word means ("God", "phlogiston", "Yeti") is not to assert that the definition describes a real thing. Here we appear to have a real abstract thing—a tacit theory of abstract libertarian liberty—and we are attempting to provide an explicit theory that accurately describes it.

that libertarianism requires? If it does, then that should itself help to explain and defend it.

HYPOTHETICAL DERIVATIONS OF SELF-OWNERSHIP AND EXTERNAL PROPERTY

As initially stated, the focus has been on the no-initiated-constraint—‘Lockean’—view of interpersonal liberty. But there are self-described ‘Hobbesian’ libertarians.³⁷ It should be illuminating to show how both of the main abstract theories of interpersonal liberty explained here can be applied to derive practical conclusions. These are hypothetical derivations concerning what the application of abstract liberty factually, or positively, entails; they are not advocacy, or normative. Then there is also the issue of whether these approaches are in any way different in their practical outcomes.

APPLYING NO-PROACTIVE-IMPOSITION LIBERTY

Here interpersonal liberty is interpreted as being free from peoples’ *proactively*-imposed constraints on our want/preference-satisfactions; that is, people are not initiating interferences—whether intentionally or not—on our having what we want. If no one is proactively constraining us in this way, then we have full interpersonal liberty. If Adam initiates any control on—interferes with—Eve’s body against Eve’s preferences, then that is a proactive constraint on Eve: the body that, contingently, Eve more or less is. We can imagine a world where a person (understood as a unitary consciousness with appropriate capacities) does not care about control of their body or is not physically attached to a particular body (and can easily move to a different one). In either case, liberty might have different practical implications. But in the reality we seem to observe, for Adam to flout Eve’s preferences as regards her body is not for Adam to exercise his own interpersonal liberty—as here conceived—but to exercise power over another person. And if Eve manages to prevent this, then she is not, significantly, proactively imposing on Adam (except, for instance, to the trivial, and reciprocal, degree that her body comprises natural resources that Adam might otherwise have used³⁸) but reactively defending

³⁷ Such as Hillel Steiner and Jan Narveson.

³⁸ Therefore, even this example does have some conflict in applying pure liberty. In which case it is immediately clear that all that can be achieved is the more

herself.³⁹ Hence, having ultimate control of one's body normally follows from having (more strictly, maximally applying) such liberty. This factual and contingent consequence is before needing to assume the legal institution of property (or needing to assume morals either). However, in order better to protect this ultimate control of one's body, it is efficient to institute self-ownership (which can be done with spontaneously-arising law⁴⁰ rather than by state command⁴¹).

With external resources (that is, resources external to people's bodies) it might be supposed that, logically, we at least need to

libertarian option (maximising liberty) and not perfect liberty. Another example might be the non-trivial disutility proactively imposed on Adam by Eve's existence and rejection of him versus the extreme disutility of Eve if Adam were to force himself upon her to reduce his disutility.

³⁹ A quoted *JLS* review comment with interspersed replies: "The author plausibly conjectures that the disutility to an individual from allowing interferences with his body will normally outweigh the utility gained by someone who interferes with it." That utilitarian comparison may be true, however what fits abstract liberty is not calculated by what is utilitarian. The correct abstract libertarian comparison is that the proactively imposed disutility on person A of interferences with A's body by person B far outweighs any proactively imposed disutility on B by his being required not thus to interfere. However, the basic idea can also be explained intrapersonally: it is far less of a proactively imposed cost to be required not to interfere with other's bodies than it is to be required to suffer their interference with yours. This "seems very plausible for two-person cases, but [...] what if one person, or the members of a small minority, is hated by a vast number of people and elimination of the hated would increase the utility of the majority?" Or, rather, what if it would decrease the proactively imposed disutility of the majority that the existence of one person, or a minority, causes? This is somewhat similar to one of the many criticisms dealt with in Lester ([2000] 2012): "A Critic of Religion" (pp. 66–69) (not all of those criticisms and replies could be incorporated into this relatively brief exposition). However, to reply directly but briefly, consider the universalized and long-term effects of institutionalizing a rule that a sufficiently hated person, or minority, can be put to death to minimize the proactively imposed cost that their mere existence causes. This would universally undermine toleration and stoke up hatred and fear. No one would dare to become too well known in case that somehow turned to infamy. To even express an opinion in public might become a serious risk. Therefore, such a rule would appear to allow more proactive impositions than not allowing it. Expressed individually, it is a lesser proactively imposed cost by far to know that someone you hate continues to live (even though you never need to see him or hear anything about him: if you choose to find out about him—or choose to experience media that might mention him—then that is not proactively imposed on you) than it is to live in fear that you, or any one of the many individuals that you value, can be killed if enough people somehow come to feel sufficient hatred.

⁴⁰ Or 'natural law', but only in the same sense that there are natural languages.

⁴¹ See, for instance, Benson (1990).

derive self-ownership first and proceed from that. This does not appear to be the case, for the explanation runs independently: self-ownership does not need to be mentioned, or presupposed, or implied. In fact, a living human body can be thought of as simply one type of resource; just one that contingently happens to be tied to a particular person (intellectually conceived) with very strong and stable fundamental wants or preferences about controlling it. However, because bodies are more or less what we are, and external resources are not, the situation with external resources is somewhat different.

Once we have begun to use⁴² a natural resource for some purpose, then it typically proactively⁴³ imposes a significant cost on us if someone takes that resource from us or uses it in a way that flouts our purposes. By possessing and controlling it we might proactively impose a cost on other people too; but this is mainly to the, usually small and reciprocal, extent of the unmodified resource's want-satisfaction value to them. For to be denied a benefit that someone else has somehow produced—such as a wooden cabin—is not in itself to be proactively imposed on.^{44,45} Therefore, it appears that the

⁴² There need be no labor-mingling. It is possible to find a use for something by its remaining as it was found: a beautiful tree outside our abode, or the sunlight that falls daily on us. Neither need labor-mingling be using something: to walk across mud is to mix one's labor of walking with that mud, but not thereby to use the mud (which is, we may suppose, a mere nuisance). Hence, it is use that is fundamental.

⁴³ A review asserts that "no account of what 'proactively' means or describes is adequately given". Why is this needed? 'Proactive' is in most dictionaries; it is the antonym of 'reactive'. Perhaps the review means 'proactively imposed'. However, a little above in the text that expression is explained as "initiating interferences". And earlier still the text explains "a *purely* reactive or defensive constraint would preserve interpersonal liberty; a proactive or offensive constraint would reduce interpersonal liberty". Can this be made plainer? The basic idea is more generally expressed simply as an 'interference'. But rather than belabor this point further, it is probably easier to deal with specific examples as they arise.

⁴⁴ However, to simplify matters, this ignores discussions of costs relating to envy, frustrated desire, lost status, 'utility monsters', and other mainly 'self-inflicted', or moral hazard, or reciprocal examples: all of which it would, at least overall and in the long term, proactively impose more to allow to limit ultimate control by initial use and subsequent voluntarily agreed transfer. But see the index of Lester ([2000] 2012) for relevant discussions of such things.

⁴⁵ A review asserts that "the claim that ownership does not proactively frustrate the non-owners' preferences is ad hoc at this point." Several responses are relevant. 1) Accurate quotation is better than inaccurate attempted paraphrase. 2) There is no such assertion or implication. 3) This is "at this point" about ultimate control and

least proactive⁴⁶ imposition on people's preference-satisfactions is usually to allow ultimate control to the initial user,⁴⁷ and thereafter control by voluntarily agreed transfer⁴⁸ (as mentioned above, these interpersonal comparisons plausibly assume only that people are very broadly similar in their responses to certain fundamental choices). Assuming the theory of liberty, this entails that it usually maximally observes, or instantiates, liberty to have personal ultimate control of external resources where one has initiated a use (or subsequently received them by voluntarily agreed transfer). This factual and contingent consequence is also before needing to assume the legal institution of property (or needing to assume morals). However, in order better to protect liberty, it is efficient to institute property rights in such resources.⁴⁹

not about "ownership". 4) It is stated in the main text that "we might proactively impose a cost on other people too; but this is mainly to the, usually small and reciprocal, extent of the unmodified resource's want-satisfaction value to them." 5) It is stated in the footnote that "to simplify matters, this ignores discussions of costs relating to envy, frustrated desire, lost status, 'utility monsters', and other mainly 'self-inflicted', or moral hazard, or reciprocal examples ..." (and a reference to discussions of such issues is given). 6) There is a severe limit on how much detail is possible in this relatively short explanation.

⁴⁶ A review asserts that "it is not clear how degrees of proactivity are even relevant at this point." It is not about "degrees of proactivity" but 'degrees of proactively imposed cost'. It has already been explained how these can be on both sides with both a person's body and external resources. In all such, ubiquitous, cases liberty can only be maximized.

⁴⁷ But exceptions can be imagined, such as where this monopolizes a vital natural resource that other people would themselves have discovered.

⁴⁸ A review asserts that the "conclusion on this point is insufficiently supported". This is, again, to overlook, or reject without explanation, the assumed epistemology that is cited and outlined earlier. It would only be relevant to produce a criticism that is inconsistent with the text.

⁴⁹ A review asserts that "the notion that property and trade maximize liberty (and not merely want satisfaction) [...] requires both [1] data to show that property and trade do satisfy wants more than the alternatives and [2] an explanation of how those satisfied wants are indeed of the type that are included in the theory of liberty." Replies to both points follow. 1) This is philosophy and not social science, so empirical "data" cannot usually be more than background assumptions. Assuming critical rationalism (as this essay does), which includes falsificationism, no amount of "data" can "show" (i.e., support or justify) anything. What has here been called the "classical-liberal/libertarian compatibility conjecture" cannot be defended here apart from a few passing philosophical aspects. 2) A philosophical explanation has been provided of the fundamental relationship between want-satisfaction and the property and trade that is implied by applying the abstract theory.

In short, we can derive both self-ownership and external private property (usually arising from initial use and thereafter voluntarily agreed transfer) because, contingently (for we can imagine worlds where this is not so), they maximally observe such interpersonal liberty. They are not what interpersonal liberty is in abstract theory, but what maximum interpersonal liberty entails in practice (hence they are not, philosophically, the ‘foundational’ assumptions of libertarianism—as is often supposed). And once self-ownership and such property are thus derived from maximally observing abstract liberty, we can use them as strong, *prima facie*, positive rules as to what is ‘libertarian’: that is, factually maximally liberty-instantiating in practice. Therefore, we have arrived at the two main rules that libertarians intuit to fit liberty, but now with an explicit, non-propertyarian, non-normative, abstract theory of liberty to explain that intuition.

Such ‘rule libertarianism’ (but non-moral at this stage) is analogous with rule utilitarianism. This may sound odd mainly because orthodox libertarianism jumps straight to normative rules without any explicit non-normative, act-libertarian, abstract theory. It might even seem that this abstract theory necessarily implies act-libertarianism. But that seems to be as mistaken as the view that utilitarianism necessarily implies act-utilitarianism instead of rule-utilitarianism.⁵⁰ Now that these practical property rules are derived, it is only necessary to go back to the abstract theory of interpersonal liberty in problem cases or to answer further philosophical questions.

However, there is an immediate and obvious problem that has already been touched on with respect to deriving self-ownership and external-resource ownership. Very often a near-absence of proactive impositions is impossible because there is a significant reciprocal clash. For instance, either you suffer the smoke-pollution from my fire or I suffer going without warmth and cooking: both the allowance and the disallowance of the fire will proactively impose, but on different people (confused criticisms of deontological or rule libertarianism often see *only* the allowance of pollution as imposing⁵¹).⁵² In such cases it is impossible to achieve

⁵⁰ If the compatibility conjecture is true, then libertarian rules are also utilitarian rules.

⁵¹ For instance, Zwolinski (2015). And see the reply that is Lester ([2011] 2016, ch. 31).

⁵² Either of us could move our dwelling places, of course. But that would be, we may assume, an even greater proactive imposition on whichever side did this.

anywhere near perfect liberty or to apply any plausible interpretation of the so-called 'non-aggression principle', for liberty can only be maximized as best as is practical; and this might involve compromise or compensation. It is important not to misunderstand this point. Dealing with inevitable clashes by *maximising* liberty might appear to be collectively consequentialist (in some non-moral sense at this stage, at least). But that can't be right; for no one's liberty is curtailed in order to promote the maximum liberty of other people in general. It is simply that maximisation is all that is possible when specific liberties conflict. These specific liberties might include indefinitely large groups of indeterminate people ('the public'), and be best dealt with by a class, or representative, law suit. But even such 'collective' minimising of proactively imposed costs on indeterminate people is not 'collectivist' in any way that overrides libertarian individualism in principle. As a consequence, applying this theory of liberty inherently internalizes externalities (but in a pre-property sense) as far as is practical and thereby tends to be economically efficient. And this is one significant philosophical link between liberty or libertarianism and want-satisfaction or preference-utilitarianism.

Once all this is understood, it is possible to apply the abstract theory of liberty to derive relatively precise and clear implications for an indefinite variety of other issues within libertarianism. For instance, intellectual property, restitution and retribution, emergency situations, etc.⁵³ But none of this can be attempted here.

APPLYING NO-IMPOSITION LIBERTY

As we have seen, a straightforward no-constraint-on-actions approach to interpersonal liberty is in itself more or less zero-sum: if you have more interpersonal liberty, then someone else has just that much less. By this conception, a slave-owner *qua* slave-owner has more liberty where, and to the exact extent that, his slaves have less: whatever he can enforce that the slaves cannot prevent. Such zero-sum interpersonal liberty cannot in itself be maximized or protected; it can only be competed over or redistributed for some non-liberty reason—such as utility or equality. Therefore, it cannot be the liberty required by most versions of libertarianism (and one common-sense conception). Yet some libertarian texts do

⁵³ As found throughout Lester ([2000] 2012, [2011] 2016, 2014).

seem to accept it. They usually opt for something along the lines of ‘maximum like (i.e., similar or equal) [valuable] liberty for all’ — the word ‘valuable’ often being implicit.⁵⁴ Hence, in these theories, liberty-in-itself cannot be the criterion or the goal that is to be maximized or protected. They have the rather different criterion or goal of *valuable* liberties that *all can share equally*.

However, if the subjective intensities of interpersonal impositions are taken into account, then this does allow for a liberty-maximising interpretation. Adam might prefer to have ultimate control of Eve’s body. And Eve prefers that Adam doesn’t. In the event of such clashes of no-imposition liberty, the most ‘libertarian’ (i.e., liberty-instantiating) approach is to have whichever option is the lesser constraint.⁵⁵ Almost universally, it is a greater constraint on one’s preference-satisfactions to have any aspects of one’s body under someone else’s ultimate control than it is to be denied any similar control of another person’s body (or to have any other system of bodily control). Therefore, no-imposition liberty is maximally observed if people have ultimate control of their own bodies. This factual consequence is before the legal institution of property (and also before morals) needs to be assumed. However, an efficient way to protect this ultimate control of one’s body is then to institutionalize this as the property right of self-ownership.

A similar type of argument also applies to the control of all other resources. It is typically a greater constraint on our preference-satisfactions for other people to deny us ultimate control of the resources we already use (and thereafter receive by voluntarily agreed transfer), than it is to be denied access to resources that others are already using. Etc., etc.⁵⁶

⁵⁴ For instance, “every man may claim the fullest liberty to exercise his faculties compatible with the possession of like liberty to every other man” and “each has freedom to do all that he wills provided that he infringes not the equal freedom of any other”; Spencer (1851, ch. 4, sec. 3). More recently, “everyone has an equal right to the most extensive liberty compatible with the like liberty for all”; Rawls (1971, sec. 11).

⁵⁵ With the possibility of compensation in certain cases. Perhaps where there is no similar reciprocity, for instance.

⁵⁶ A review asserts that “[1] The argument of [this section] seems to apply equally well to the author’s argument, [2] for the author never shows that want satisfaction is a non-zero-sum game, [3] nor does the author make a convincing case that interpersonal liberty, as defined by rights or some other criteria, is actually zero sum.” There appears to be confusion here. 1) This section shows how it is

DO THESE TWO THEORIES HAVE ANY DIFFERENT PRACTICAL OUTCOMES?

In light of these two explanations of interpersonal liberty, one important question immediately arises: are they fully equivalent in terms of what they entail in practice? Both conceptions of interpersonal liberty appear—at least initially—to have the same practical implications. Thus one could explain interpersonal liberty using either. With the no-imposition approach, we still have to say that a slave-owner is having his liberty lessened if his slaves are freed without his consent; just not as much liberty as his slaves gain by being freed. Similarly, a would-be murderer has less liberty if his target-victim escapes; just not as much as his target-victim preserves his liberty by escaping that intended murder. This seems to be a coherent account. However, it is not how people mainly think about interpersonal liberty—either as self-described libertarians or otherwise. People typically think that when someone escapes proactively-imposed slavery he gains liberty; but his previous master has lost only his power over him. And the would-be murderer does not have his liberty lessened if his target-victim escapes him; his target-victim's liberty is simply preserved. Thus the no-imposition view fails to capture the intuitions that people usually have (as a matter of fact: this is not to advocate anything here) that there is a real causal and also moral difference between withholding a benefit and proactively imposing a cost even when the outcomes are the same. Consider a well-known example in the philosophical literature: coming across a drowning child in a shallow pond. Not saving the child will usually be viewed as morally reprehensible and despicable, but it is not usually viewed as causally or morally equivalent to pushing a child into the pond so that he drowns: to the equivalent of murder.⁵⁷ Hence it is closer to the main libertarian, and also more popular, approach to view abstract interpersonal liberty as the absence of people's *proactively-imposed*

possible to *avoid* the zero-sum-game interpretation of 'Hobbesian' liberty "if the subjective intensities of interpersonal impositions are taken into account". 2) This essay's main theory is not about mere want-satisfaction but the absence of proactive constraints on want-satisfaction. 3) Interpersonal liberty as somehow "defined by rights" may very well not be zero-sum. But, for the reasons explained, that cannot be an abstract theory of liberty (which does indeed use "some other criteria").

⁵⁷ Matters would be different if one were contractually employed as a lifeguard: then not saving the child would be proactively imposing by breaking one's contractual duties (on deriving contracts see Lester ([2000] 2012, 80–85).

constraints on our preference-satisfactions. And that fact possibly means that it is more stable and less costly to preserve. If so, other things being equal, more liberty should result. Thus that may be one important practical difference, after all.

Nevertheless, there are—as mentioned—some self-described “Hobbesian” libertarians (although they would probably not give the same account as here). And there are also anti-libertarians that take a Hobbesian approach to liberty. Therefore, it is useful to be able to explain both of these two approaches. It is also possible that one of these approaches is in some way logically incoherent or in some other way unfixably faulty. In which case, it is good to have the other to fall back on. But if they are *both* logically incoherent or unfixably faulty, then that would mean starting again. For it seems that there must be a *tacit*, non-property, non-normative, abstract conception of interpersonal liberty that distinguishes between those rights, property rules, and activities that instantiate (or fit) liberty and those that do not. And so an *explicit* account of that conception should be possible.

LIBERTARIAN MORALS

An abstract theory of interpersonal liberty and of what it entails in practice has now been broadly explained. Orthodox libertarianism brings morals into the picture before this has been done. But it seems that only after this has been done can it be fully coherent to ask ‘how does liberty and what it entails relate to morals?’ Given—as seems to be the case—that there cannot be any supporting justifications, it can only be a bold conjecture that such abstract and practical libertarianism is morally preferable to any alternative. This conjecture needs to be defended in the light of any criticisms that arise. It can be explained and defended how there does not appear to be any significant clash between libertarianism and the most defensible versions of various morally desirable things: rights and duties, justice, social justice, a social contract, human flourishing, human welfare, etc. But this does not mean that libertarianism is thereby morally *supported* by any of these things (or any combination of them). It remains a separate conjecture that libertarianism is morally desirable, and all moral criticisms are potential refutations that require adequate responses.⁵⁸

⁵⁸ A review suggests, without any explanation (or ‘justification’), that this short section should be omitted. Perhaps the implied reason is that it is better to say nothing about

CONCLUDING CONJECTURES

This philosophical essay is, ineluctably, more than averagely broad and speculative. Consequently, even if it were not assuming critical rationalism, it is not being presented as completely clear and convincing. However, it would be remiss not to conclude with some bold⁵⁹ conjectures that ought to be eminently criticisable. As regards interpersonal liberty, the abstract theory captures and explains it. As regards libertarianism, a “paradigm shift”⁶⁰ is required. The fundamental philosophy involved with mainstream libertarianism is a refuted and “degenerating research programme”.⁶¹ The philosophy involved with this new paradigm is an unrefuted and highly fruitful one. It offers a clearer understanding, better and more comprehensive solutions to problems, and more convincing replies to criticisms. However, despite its radical and important differences, the new paradigm is not fundamentally ideologically at odds with libertarianism itself—although that is sometimes the mainstream perception. For it reaches more or less the same conclusions⁶² but with greater philosophical clarity and cogency.

So far, this heterodox paradigm has been largely unnoticed or ignored. Where it has occasionally been subjected to criticism⁶³ it

libertarian morals rather than to fail to produce a scholarly length ‘justification’ of what is being explained here. But to say nothing may leave it mysterious to many readers how morals are supposed to relate to libertarianism with this theory. Or it may be thought that morals are still what will give it a ‘supporting justification’. Or it may be supposed that morals are implied to be not needed.

⁵⁹ A *JLS* review notes the Popperian approach to bold conjectures but suggests that “it does not follow from accepting this methodology that one must make bold and extravagant comments about the value of one’s conjectures”. However, no specific examples are quoted or explained to be “extravagant”. And none of the comments ought to be read as intentionally “extravagant”, although a sound criticism may reveal them to be so.

⁶⁰ To put it in the terms used and popularized by Thomas Kuhn.

⁶¹ To put it in the terms used by Imre Lakatos. Referring to Popper, Kuhn, and Lakatos might seem to be epistemologically promiscuous and inconsistent. However, the different expressions seem to capture important phenomena. Also, Kuhn’s approach can be interpreted as more sociological than epistemological. And Lakatos did not see his own work as contradicting Popper’s basic epistemology.

⁶² It deals precisely with any exceptions in a principled way where mainstream libertarianism is either unable to answer or is forced to make ad hoc assumptions.

⁶³ For instance, Gordon and Modugno (2003), Frederick (2013, 2105).

appears to have been misunderstood.⁶⁴ This is only to be expected. It is sufficiently radically different from the current orthodoxy to confuse most mainstream libertarians, even philosophers.⁶⁵ It is still ‘axiomatic’ to them that self-ownership, ‘just’ property, and some version of morality are somehow ‘foundational’ to explaining and ‘justifying’ libertarianism philosophically (and all without an explicit, abstract theory of liberty), despite the increasingly obvious problems with such assumptions. It will only slowly become clear that it is necessary to make the philosophical distinctions of abstract liberty, applied liberty, and moral defenses, while using critical-rationalist epistemology.⁶⁶

REFERENCES

- Bastiat, Frédéric. [1850] 2007. *The Law*. Auburn, Ala.: Ludwig von Mises Institute. <https://mises.org/library/law>.
- Benson, Bruce L. 1990. *The Enterprise of Law*. San Francisco: Pacific Research Institute for Public Policy.
- Block, Walter E. 2003. “The Non-Aggression Axiom of Libertarianism.” LewRockwell.com. <http://archive.lewrockwell.com/block/block26.html>.
- . 2011. “David Friedman and Libertarianism: A Critique.” *Libertarian Papers* 3: 1–33.
- . 2019. “Response to J. C. Lester on David Friedman on Libertarian Theory.” *MEST Journal* 7: 1: 127–55.
- Boaz, David. n.d. “Libertarianism.” *Encyclopædia Britannica*. Accessed December 7, 2018. <https://www.britannica.com/topic/libertarianism-politics>.
- Cohen, G.A. 1995. *Self-Ownership, Freedom, and Equality*. New York: Cambridge University Press.

⁶⁴ Replies to the critical texts listed in the previous footnote can be found here: Lester (2014, ch. 9, 10; 2017). Links to other replies to reviews: <http://www.la-articles.org.uk/lwa.htm>.

⁶⁵ As illustrated by the review quoted throughout.

⁶⁶ A review objects that this essay “has provided nowhere near the argument necessary” for its concluding conjectures. Of course, conjectures cannot be supported by arguments: only explained and defended. However, there have been short explanations of 1) the fundamental philosophical problems with mainstream libertarianism, and 2) how an alternative approach can solve those problems. The review has offered no sound criticism of any part of these explanations. Hence it “has provided nowhere near the argument necessary” as a criticism to refute the concluding conjectures.

- Conway, David. 2008. "Liberalism, Classical." Pp. 295–98 in *The Encyclopedia of Libertarianism*, ed. R. Hamowy. Thousand Oaks, California: SAGE Publications; Cato Institute.
- Frederick, Danny. "A Critique of Lester's Account of Liberty," *Libertarian Papers*, 5, 1 (2013): 45–66;
- . 2015. "Adversus Homo Economicus: Critique of Lester's Account of Instrumental Rationality" Working paper. https://www.academia.edu/2037838/Adversus_Homo_Economicus_Critique_of_Lester_s_Account_of_Instrumental_Rationality.
- Freeman, Samuel. 2001. "Illiberal Libertarians: Why Libertarianism Is Not a Liberal View." *Philosophy and Public Affairs* 30, no. 2: 105–51.
- Friedman, David. 1989. *The Machinery of Freedom: Guide to a Radical Capitalism*, 2d ed. La Salle, Ill.: Open Court.
- Gordon, David, and Roberta A. Modugno. 2003. "Book Reviews." *Journal of Libertarian Studies* 17, no. 4: 101–09.
- Khawaja, Irfan. 2009. "Review Essay." *Reason Papers* 31: 149–70.
- Lester, J. C. 1997. "Liberty as the Absence of Imposed Cost: The Libertarian Conception of Interpersonal Liberty." *Journal of Applied Philosophy* 14, no. 3: 277–88.
- . [2000] 2012. *Escape from Leviathan: Libertarianism Without Justificationism*. Buckingham: University of Buckingham Press.
- . [2011] 2016. *Arguments for Liberty: a Libertarian Miscellany*. Buckingham: The University of Buckingham Press.
- . 2014. *Explaining Libertarianism: Some Philosophical Arguments*. Buckingham: University of Buckingham Press.
- . 2017. "Adversus 'Adversus Homo Economicus': Critique of the 'Critique of Lester's Account of Instrumental Rationality'" Working paper. <https://philpapers.org/rec/LESAAH-2>.
- Long, Roderick. 2014. "Why Libertarians Believe There Is Only One Right." Accessed May 25, 2016. praxeology.net/onerightREVdraft.doc.
- Machan, Tibor. 1998. *Classical Individualism: The Supreme Importance of Each Human Being*. Abingdon: Routledge.
- Mack, Eric. 2018. "An Epitome of Libertarianism." *Journal of Private Enterprise* 33: 1–20.
- Miller, David W. 1994. *Critical Rationalism: A Restatement and Defence*. Chicago and La Salle, Ill.: Open Court.
- Molinari, Gustave de. [1849] 1977. *The Production of Security*. New York: Center for Libertarian Studies.
- Nozick, Robert. 1974. *Anarchy, State, and Utopia*. Oxford: Basil Blackwell.
- Popper, Karl R. [1963] 1978. *Conjectures and Refutations*. London: Routledge and Kegan Paul.

- Rawls, John. 1971. *A Theory of Justice*. Harvard: Harvard University Press.
- Rothbard, Murray N. [1973, 1978] 2006. *For a New Liberty: The Libertarian Manifesto*. Auburn, Ala.: Ludwig von Mises Institute.
- Sobel, David. 2012. "Backing Away from Libertarian Self-Ownership." *Ethics* 123, no. 1: 32–60.
- . 2014. "Self-Ownership and the Conflation Problem." Ch. 5 in *Oxford Studies in Normative Ethics: Vol. 3*, ed. Mark Timmons. Oxford: Oxford University Press.
- Spencer, Herbert. 1851. *Social Statics*. London: John Chapman.
- Vallentyne, Peter, Hillel Steiner, and Michael Otsuka. 2005. "Why Left-Libertarianism Is Not Incoherent, Indeterminate, or Irrelevant: A Reply to Fried." *Philosophy and Public Affairs* 33, no. 2: 201–15.
- Vossen, Bas van der. 2019. "Libertarianism" *Stanford Encyclopedia of Philosophy*. Stanford, Calif.: Metaphysics Research Lab. plato.stanford.edu.
- Zwolinski, Matthew. n.d. "Libertarianism" *Internet Encyclopedia of Philosophy*. Accessed December 7, 2018. <https://www.iep.utm.edu/libertar/>.
- . 2015. "Libertarianism and Pollution: The Limits of Absolutist Moralism." London: Institute of Economic Affairs. <https://iea.org.uk/blog/libertarianism-and-pollution-the-limits-of-absolutist-moralism>.

SOCIALISM AND THE ANARCHY OF PRODUCTION

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ABSTRACT: The goal of this article is to extend the argument about the possibility of economic calculation under socialism first advanced by Ludwig von Mises (and later extended by Rothbard) to a related topic, the possibility of developing a comprehensive plan of production as a whole when all of the means of production are owned by a single entity. A division of ownership of the means of production permits a division of intellectual labor, a necessity when the scale of production is large. When plans of production are made independently, there is always the chance that the content of Plan A will not be compatible with the content of Plan B. I make a distinction between the direct coordination of plans of production and the indirect coordination of plans of production, which is effected by the direct coordination of plans to buy and to sell. Buying and selling requires two owners, which means that the indirect coordination of plans of production is impossible when there is only one owner, which means that the indirect coordination of plans of production is impossible under socialism. I explain in detail why it is impossible for anyone to come up with a comprehensive plan of production as a whole, i.e., with a Plan, and then apply that conclusion to the experience of the Soviet Union: there may have been central planners in the Soviet Union, but there never was central Planning for the simple reason that central Planning is impossible.

INTRODUCTION

Peter and Paul are bank robbers. Both have read Adam Smith. Peter's specialty is cracking safes; Paul's is driving the get-away car. Peter and Paul decide to collaborate. A division of labor ensues. Peter draws up a plan for cracking the safe, and Paul does the same

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for the get-away car. If the content of Peter's plan is selected by Peter and the content of Paul's plan is selected by Paul, what reason is there to think that the contents of both plans will be compatible?

Unless the content of Peter's plan is compatible with the content of Paul's plan, the best laid-plans ... grief and pain, etc. If Peter plans to walk out of the bank with the stolen money at 3 A.M. and Paul plans to arrive with the get-away car at 10 A.M., both men may end up regretting the uncoordinated nature of their plans. For that reason, Peter and Paul will probably compare the contents of their plans before they attempt to implement them. Removing any inconsistent elements in the two plans will produce a unified plan. Until such time as someone has consciously combined the elements of Peter's plan with the elements of Paul's plan, Peter and Paul have no plan to rob a bank. Rather, Peter and Paul have plans to rob a bank, and the content of Peter's plan may be incompatible with the content of Paul's plan. The direct coordination of plans requires a conscious agent, and the result of that activity is a unified plan: *e pluribus unum*.

The distinction between the direct coordination of plans of production and what one might call the indirect coordination of those plans is every bit as significant as the distinction between direct exchange, or barter, and indirect exchange, which requires a medium of exchange. The subject will be discussed in some detail in the fourth part of the third section of this work. For the time being it is sufficient to state that the indirect coordination of plans of production is effected by the direct coordination of plans to buy and to sell.

The following sections are an examination of some of the problems created when ownership of the means of production resides in a single entity. In an article published in 1920, Ludwig von Mises argued that economic calculation is impossible when all of the means of production are owned by the state. Oskar Lange offered a rebuttal in the 1930s (Lange 1936, 1937). I not only hope to show in the body of this work that Lange never rebutted Mises, I also hope to show that the problem of economic calculation under socialism can best be understood when it is seen as one aspect of a larger problem, the problem of planning the production of everything when all of the means of production are owned by a single entity. The unavoidable conclusion of the argument is that it is impossible to produce a unified plan of production as a

whole when all of the means of production are owned by a single entity. In the light of that conclusion, a brief examination of central planning in the Soviet Union will follow.

In an attempt to forestall misunderstanding, I should mention now that some words or phrases will appear with upper-case letters where they would not normally be required. The reader will encounter the phrases "single manufacturer," "single owner," and "a plan," but he will also encounter the phrases "Single Manufacturer," "Single Owner," and "a Plan." In the latter examples the upper case has been used to signify the fact that the entity in question is not simply one member of a class but also the sole, or only, member of that class. For example, a Single Manufacturer is not simply a manufacturer but also the sole, or only, manufacturer. In like manner, a Plan of production would be not simply a plan of production but also the sole, or only, plan of production. A distinction between socialism and Socialism will also be made in the conclusion, but the distinction—and the reason for it—will be explained then.

I. THE ANARCHY OF PRODUCTION

A. Time to Hammer Home a Point

What is the best way to hammer home a point? With a hammer. The only problem is, where to get one? Assume that I am a manufacturer of hammers. Problem solved. Where to get a hammer? From me. Where did I get the hammer? I manufactured it. Which means what? It means that I had a plan which I implemented. Part of the content of that plan clearly involved the factors of production required for the manufacture of the hammer. Unless I already had the factors of production on hand, i.e., owned them, I clearly would have needed to acquire them. How could I have done so?

If a factor of production that I require and do not yet own has no owner, I can appropriate it. Assume that I need some land for a factory in which to manufacture the hammer. Fortunately, there is some land nearby which no one owns. I appropriate it for my purpose by erecting a factory on it. Suppose, however, that all the factors of production required for the implementation of my plan are owned by someone else. I'm left with three alternatives: the owner of a factor I require can give it to me, I can buy it from its owner, or I can steal it. That exhausts the possibilities.

Now let us eliminate two of those alternatives. Assume that I am reluctant to steal a factor of production, perhaps because of moral scruples. Also assume that none of the owners of the factors that I require are philanthropists, friends, or relatives—and therefore are not disposed to give them to me. The only remaining course of action is to buy those factors from the person or persons who own them. Each such transaction requires not simply two parties but also two owners. I own whatever is being transferred to someone else in exchange for the factor I am buying from him, and the person I am buying the factor from owns that factor until such time as he has transferred its ownership to me. Every voluntary exchange requires two owners. The full significance of that fact should become apparent later in this work.

Do I intend to manufacture the hammer for my own use (meaning, of course, do I intend to retain ownership of the hammer after I have manufactured it?), or do I intend to manufacture the hammer and then transfer its ownership to someone else? Assume the latter. Also assume that I am not a philanthropist and have no friends or relatives. It would then seem to be a reasonable assumption that my intention in manufacturing the hammer is to sell it to someone else (I presumably would not manufacture it with the intention that it be stolen nor with the intention of abandoning it).

Now let us up the ante. Assume that I plan to manufacture ten thousand hammers, all of which I intend to sell to someone else. Also assume that the production of each hammer requires one pound of steel. If my math is correct (and I hate to think what a discussion of economics would be like with no math), the production of ten thousand hammers would require ten thousand pounds of steel. Because steel does not grow on trees—it needs to be manufactured—how do I acquire it? Let us rule out appropriation (no abandoned steel), theft, and gift. What is left? I can either manufacture the steel myself or buy it from someone else. How do I decide?

Maybe I am a calculating guy who thinks that manufacturing the steel myself would cost two dollars per pound. If I can buy the steel I need from someone else for one dollar per pound and my goal is to manufacture the hammers as cheaply (in terms of money) as possible, my decision has been made for me: two owners, of whom I am one, will engage in a voluntary exchange.

Maybe I am a lazy guy whose goal is not to manufacture the hammers as cheaply (for as little money) as possible but to

manufacture them with as little effort on my part as possible. Not only is time required to implement a plan, it is also required to make one. Not having to plan the production of steel would save me both time and labor. I may therefore decide to buy the steel I need from someone else rather than to manufacture it myself. If so, two owners, of whom I am one, will engage in a voluntary exchange.

Now assume that my goal is to sell the hammers for more money than it costs me to manufacture them, that my calculations have shown that it costs eight dollars to manufacture and sell each hammer, and that I think ten dollars is a nice, round figure that will more than cover the cost of each hammer. My plan to manufacture and sell the hammers is beginning to take shape. During the coming month I intend to manufacture ten thousand hammers in a factory which I own. I will buy the remaining factors of production that I require (including ten thousand pounds of steel at one dollar per pound) from someone else. When the hammers have been manufactured, I will sell them to someone else for ten dollars apiece, which will leave me with a profit of two dollars on each hammer sold. My plan has been made. In order to implement it, what conditions must be met?

It should be obvious that the implementation of my plan requires the cooperation of at least two other parties, the party from whom I buy the steel and the party to whom I sell the hammers. If I plan to buy steel from someone else, the implementation of my plan requires a corresponding plan on someone else's part to sell it to me. If I plan to sell hammers to someone else, the implementation of my plan requires a corresponding plan on someone else's part to buy them from me. In short, the implementation of my plan requires that its content is compatible with the content of the plans made by at least two other parties.

B. Omniscience and the Lack Thereof

Now let us make an assumption that almost no economist has made for more than a century. Assume that I am not omniscient. That assumption might prove a blow not only to my pride but also to my wallet. After all, unless I were omniscient, I might not know the content of other parties' plans. Let us examine some of the possible consequences of my ignorance.

As a result of my ignorance I may find it impossible to implement my plan to manufacture hammers for eight dollars and sell them

for ten. Perhaps another manufacturer of hammers, unbeknownst to me, has decided to flood the market with his hammers, making it impossible for me to sell mine for ten dollars apiece.¹ As a result of competition from the same manufacturer I may find it impossible to find a manufacturer of steel who will sell it to me for one dollar per pound—or perhaps the competition has come from a manufacturer of sickles. Maybe the problem is simply that the customers for my product have pulled a disappearing act—perhaps a fad for sickles is the culprit. It is certainly easy to see why the phrase “anarchy of production” has been used to describe a situation in which the content of every party’s plan is not known to every other party. How much simpler, and perhaps more profitable, production would be if it were. How to solve the problem? One could assume that all the parties are omniscient, but I am not sure that that would solve the problem anywhere except on paper. Perhaps one could permit the parties to exchange information about the content of their plans with one another? Sounds like a good idea. Let us examine it.

Why not permit every manufacturer to place a monthly phone call to all the other manufacturers in an attempt to learn something about the content of their plans? I can see at least two drawbacks to this proposed solution to the problem of ignorance. The first

¹ Cf. Wootton (1935, 151):

This tendency arises from the fact that no producer, planning his own production programme, knows what his colleagues are doing. He knows only that it is to his interest, first, that the total production of the kind of goods in which he deals should not pass the point at which these can be profitably sold; and, second, that as large a part of that total as possible should be produced by himself, and not by any of his fellows, so that he may reap the profit and not they. The obvious consequence is that all the producers between them, in their anxiety to look after this second interest, neglect the inevitably damaging consequences of their action upon the first.

Cf. also Cole (1935, 196):

But under competitive conditions, no single entrepreneur can, even by the most correct anticipation of demand, assure himself of satisfactory selling conditions. For he does not know what anticipations other entrepreneurs will make, or how they will act in the light of them. Even if he could know—as he cannot—the exact total demand at a given price, he cannot be sure that anything he can do will cause this to be the ruling price, for the actions of his competitors may cause the total supply offered for sale to exceed, or to fall below, what is for him the optimum quantity.

is, other manufacturers might be reluctant to disclose the content of their plans to parties they regard as their competitors (maybe the other manufacturers of hammers do not want me to know what they are up to). The second is, one might end up with a huge phone bill. The price of the steel I require to manufacture hammers depends, after all, not only on the content of the plans of other manufacturers of hammers but also on the content of the plans of those who manufacture anything containing steel. Not only would I have to call every manufacturer of hammers, I would also have to call every manufacturer of sickles. Indeed, I would have to call every manufacturer who used—or might use—any of the factors of production that I might use myself. That is a lot of phone calls.

Consider my plight. I am not omniscient, and I know that I am not omniscient. Indeed, when you get right down to it, I am ignorant, and I know that I am ignorant. And look what happens when I try to do something that might dispel my ignorance. I spend all my time on the phone trying to get in touch with other manufacturers, and most of them will not return my calls. And when I finally find another manufacturer who will return my call, I have to worry that I will be prosecuted for collusion by some bureaucrat whose salary I pay. If only there were an easier way to make a living.... If only there were some way that I could learn something about the content of other parties' plans without the need for an explicit disclosure of that content by those parties.... If only I did not have to spend so much time on the phone.... If only there were things called prices which changed in response to the underlying conditions of supply and demand.... Fortunately, there are. We will postpone an examination of them until the third section of this work.

By this point it should be apparent that the existence of parties who are ignorant of the content of other parties' plans creates the possibility that some plans will gang aft agley. Some parties may be unable to implement the plans they have made if the content of those plans requires corresponding content in the plans of other parties. Plans that require, but lack, corresponding content in another plan are incompatible. If two plans are incompatible, neither one can be implemented. Anarchy of production? So it would seem—unless we can figure out some way to reduce the ignorance of the parties who make the plans. If we cannot? Maybe we should take a different tack. Maybe we should reduce the number of parties who make plans.

II. SOCIALISM

A. An End to the Anarchy of Production?

Many socialists have presented socialism as an alternative to what they called “the anarchy of production.” That phrase can be found in the works of Marx, Engels, and Lenin. We saw in the previous section that the phrase “anarchy of production” might seem to be an apt description of a situation in which the parties who make plans are ignorant of the content of one another’s plans. If only one party made a plan, there is no possible way he could be ignorant of the content of other parties’ plans. Other parties would have no plans—for all practical purposes there would be no other parties. Before pursuing that thought, however, we need to examine what one might call the skeleton of every plan.

The implementation of every plan made by man requires the use of at least two distinct factors of production, land and labor. Land—at least in the sense of space—clearly is a prerequisite: every man is located somewhere. So, too, is labor: what plan made by man has ever been implemented without the use of his body? Ownership is control of the use of that which has extension. The implementation of every plan therefore requires the ownership of at least two distinct factors of production. If the person who is using something doesn’t own it, someone else does. Any discussion of the implementation of a plan that ignores the subject of ownership is suspect.

Returning to our discussion of socialism, we find that socialism, which ordinarily is defined as ownership (note the word) of the means of production by the state, almost certainly was a proposal by some socialists to eliminate the anarchy of production by reducing the number of owners. If the state is the only manufacturer of hammers, does it need to worry that the market will be flooded by other manufacturers? There are no other manufacturers. If the state is the only manufacturer, does it need to worry about competition for the factors of production from other manufacturers? There are no other manufacturers. If the state is the only manufacturer of hammers, does it need to worry that the market for those hammers will disappear? What market? There is no market. If the state is the only owner of the means of production and hammers themselves are means of production, there is no possible way to sell those hammers: there is no other

party to sell them to. Those hammers were not produced with the intention of selling them.

What an exceptionally elegant solution to the problems created by a multiplicity of owners, most or all of whom are ignorant of the content of the plans made by the other owners. Why not replace a multiplicity of owners with a Single Owner? Would that owner be ignorant of the content of the plans made by other owners?² How could he be? There are no other owners—and thus no other plans. Would the content of the plan made by the Single Owner be incompatible with the content of a plan made by another owner? How could it be? There is no other owner—and thus no other plan. The heck with plans, it is time for a Plan.³ It sounds like a good idea. Perhaps it is time to subject it to some scrutiny.

² Cf. Dobb (1945, 271):

So far as what may be termed the mechanics of each system are concerned (with which the present chapter will mainly deal), the essential contrast is between an economy where the multifarious decisions which rule production are taken each in ignorance of all the rest and an economy where such decisions are co-ordinated and unified.

Cf. also Schumpeter (1950, 186):

solution of the problems confronting the socialist management would be not only just as possible as is the practical solution of the problems confronting commercial managements: it would be easier. Of this we can readily convince ourselves by observing that one of the most important difficulties of running a business—the difficulty which absorbs most of the energy of a successful business leader—consists in the uncertainties surrounding every decision. A very important class of these consists in turn in the uncertainties about the reaction of one's actual and potential competitors and about how general business situations are going to shape. Although other classes of uncertainties would no doubt persist in a socialist commonwealth, these two can reasonably be expected to vanish almost completely. The managements of socialized industries and plants would be in a position to know exactly what the other fellows propose to do and nothing would prevent them from getting together for concerted action.

³ Cf. Steele (1992, 255):

The replacement of "the market" by planning means the replacement of many plans by one plan, a 'single great plan' in the words of Engels. These two forms of planning are not only distinct; they are at odds. The more that is decided by a single great plan, a society-wide plan, the less can be decided by individuals or by groups (other than the individual or group which makes the single great plan).

B. TIME FOR THE OTHER SHOE TO DROP

In a performance at the United Nations on Oct. 12, 1960, Nikita Khrushchev used a shoe to hammer home a point (there was probably a shortage of hammers in the Soviet Union at the time). That shoe was manufactured somewhere, and it was manufactured somewhere only after a decision had been made to manufacture it. What decisions were implicated by the decision to manufacture it? Let us interrogate the usual suspects: who, what, where, when, and why. Who is going to produce something? Peter? Paul? Peter and Paul? What is going to be produced? A shoe? As we will see shortly, that decision raises more questions than it answers. Where will something be produced? Europe? Canada? Europe and Canada? When will something be produced? This week? Next week? This week and next week? And last and—in this context—least, why will something be produced? I intend to ignore that question and to compress the other four suspects into what one might call the two questions of production, what will be produced and how will it be produced. Back to Khrushchev's shoe.

Assume that the manufacturer of Khrushchev's shoes knew the dimensions of Khrushchev's feet and therefore knew the size of the shoes that needed to be manufactured. What questions still needed an answer? Who should manufacture them. A mason? A carpenter? A cobbler? The cobbler named Peter? When should they be manufactured. This week? Next week (please bear in mind that engaging the services of the cobbler named Peter for the coming week will not do much good if the shoes cannot be manufactured until the following week)? Where should they be manufactured. If the manufacturer has two factories at his disposal, in which factory will the pair of shoes be made? If the manufacturer has no factory at his disposal, where and how will he acquire one?

Even after the manufacturer of shoes has answered the preceding questions, we still do not know much about some of the shoes' characteristics. Do they have leather uppers? If so, did the leather come from a cow? From a horse? From an alligator? Do the shoes have leather heels or rubber heels? Are the soles made of leather or of a composite material? Are the soles attached to the uppers with glue or with thread? Are the heels attached with nails? If so, are the nails made of steel? Iron? Wood? I may be belaboring the obvious, but a decision to manufacture a pair of shoes is a decision to make a lot of decisions.

Assume that our manufacturer has answered the questions raised in the preceding paragraph and has decided that the shoes in question will have leather (from a cow) uppers, that the soles will be made of leather and will be sewn to the uppers, and that the heels will be made of rubber and will be attached with steel nails. Planning the production of a relatively simple product like a shoe can be hard work. Perhaps our manufacturer could use some time off?

Not so fast. If the state owns all the factors of production, socialism entails the existence of a Single Manufacturer. Which means what? It is not enough for a manufacturer under socialism merely to plan the production of shoes; he must also plan the production of all the other products that are used to make the shoes. In the example given in the previous paragraph, not only would the manufacturer have to plan the production of the shoes, he would also have to plan the production of the leather used for the uppers, the rubber used for the heels, the leather used for the soles, the thread used to attach the soles to the uppers, and the steel nails used to attach the heels to the soles.

Now let us examine the decisions the manufacturer would have to make when planning the production of something as apparently trivial as those steel nails. Where will the raw materials needed to make the steel come from? How will they be transported from those locations to the place where the steel is manufactured? What source of energy will be used when the steel is manufactured? Any electricity? If so, where will it be generated? And how? Oil? Gas? Coal? Hydro? Nuclear? Does our manufacturer of shoes have to plan the construction of a hydro-electric project in order to come up with the electricity needed to manufacture the steel used for the nails?

Once the steel has been manufactured, where and how will it be fashioned into nails? If the plant where the nails are manufactured is five hundred miles from the shoe factory, how will those nails be transported a distance of five hundred miles? Airplane (does our manufacturer of shoes also have to plan the production of airplanes—if he does, his list of things-to-do is getting longer by the second)? Rail (does our manufacturer of shoes also have to plan the production of a railroad)? Truck (does our manufacturer of shoes also...)?

Assume that the answer is a truck. Trucks require fuel. Assume that the fuel is gasoline. Where will the refinery (must our

manufacturer of shoes also...) be located? Who will staff it? And where will the crude oil come from? If wells already exist, from which well or wells will it be taken? If there are no wells, where should our manufacturer sink one—and what equipment will he need to do so? Must our manufacturer of shoes now plan the production of the drilling equipment used to extract the crude oil which will be refined into the gasoline used to transport one of the components of his shoes from the place where it was manufactured to the place where the shoes are manufactured?

The examples that I have given could be multiplied endlessly, but I trust that by this point it is clear that a manufacturer of shoes who is also the manufacturer of every thing (i.e., capital good) used to make those shoes and is also the manufacturer of every thing used to make every thing which is used to make those shoes and is also ... I am out of breath. Suffice it to say, a Single Manufacturer has his work cut out for him. If the notion of a Plan seems simple, the actual drafting of a Plan should not. Would anyone blame our Single Manufacturer if he went in search of a short-cut? Is there a short-cut?

C. THE DIVISION OF OWNERSHIP AND THE DIVISION OF INTELLECTUAL LABOR

In an example given in the preceding section a manufacturer of shoes found himself forced not only to plan the production of those shoes but also to plan the production of every product used to make those shoes—and then found himself forced to plan the production of every product used to make every product used to make those shoes, and then found himself forced.... What created so much work for the manufacturer? The reason the manufacturer had to plan the production of so many things was that the manufacturer in question was the only manufacturer of every thing. There was no other manufacturer to plan the production of any thing, which is why the task of planning the production of every thing fell on the Single Manufacturer. And there was no other manufacturer because there was no other owner: our manufacturer of shoes owned all the factors of production.

Suppose that there had been other owners. Suppose, for example, that there had been a manufacturer of nails as well as a manufacturer of shoes (i.e., two distinct manufacturers). The only way that one can acquire the ownership of that which has an owner is gift, theft, or purchase. Ignore the first two possibilities.

If the manufacturer of shoes buys the nails that he needs from the manufacturer of nails, does the manufacturer of shoes need to plan the production of those nails? The only thing that he needs to plan is their purchase. The task of planning the production of those nails falls on the manufacturer of the nails.

The implementation of every plan requires the ownership of at least two factors of production. The manufacturer of nails cannot implement his plan for their production unless he owns the factors of production needed to make them; so, too, with the manufacturer of shoes. Single owner? Single producer. Single producer? Single plan. Single plan? Single planner. More than one owner? The possibility of more than one producer. More than one producer? At least two plans—and planners.

A division of ownership of the means of production permits a division of intellectual labor. A Single Owner, in the nature of the case, is responsible for planning the production of everything. Where there is more than one owner, no single owner needs to do all of the planning. After all, some of that planning can always be done by ... another owner.

Return to the case of the Single Manufacturer of shoes who was also the manufacturer of all the products used to make those shoes. Is there any reason why, faced with a task that exceeds his capacity (planning the production of everything—in short, producing a Plan), he cannot farm out the task of planning the production of some of those things to other parties? No, there is not, but that will not solve the problem. Unless the Single Manufacturer can consciously combine the elements of all the plans made by all the different parties (planners) with the elements of his own plan—and so eliminate all of the incompatible elements—the result of all that farming out, that division of intellectual labor, will be a mish-mash of plans that have not been coordinated, not a unified plan of production as a whole (i.e., a Plan). The Single Manufacturer will find the task of directly coordinating all of those disparate plans to be no less impossible than the task of making all of those plans by himself. Indeed, the task—and the problem—that he faces will be the same in both cases.⁴

⁴ Cf. Hayek (1997, 141):

The first point which must be stressed is that it is the very complexity of the task—i.e., the very fact which usually makes comprehensive planning

The second part of this section ended with a Single Manufacturer looking for a short-cut that would make the task he faced less burdensome. Has a short-cut been unearthed? The task faced by a single manufacturer can be made less burdensome by enlisting the services of another manufacturer. No such shortcut is available to a Single Manufacturer. Part B of the first section of this work also ended with a producer who was looking for a short-cut. The destination he wanted to reach? Knowledge of the content of other parties' plans. Let us see if such a short-cut can be found.

III. PRICES

A. The Role of Prices in the Reduction of Ignorance

We saw in the first section of this work that when plans are made by different parties, each party might want to know something about the content of the other parties' plans because the content of those plans could have a bearing on its ability to implement its own. The problem, of course, was how to acquire that knowledge. No easy solution seemed to be available. Fortunately, one is: sometimes if you want something badly enough, the only thing you have to do is pay the price.

What is a price? The price paid for anything is the property whose ownership one relinquishes in a voluntary exchange. One buys something from someone by selling him something else. A market is the place where a voluntary exchange occurs. A price therefore presupposes the existence of a market and a voluntary exchange, and a voluntary exchange presupposes the existence of at least two owners. And every voluntary exchange entails the existence not merely of one price but of two: there are always two parties in a voluntary exchange who are relinquishing the ownership of something.

Are any prices current? Not really. The only voluntary exchanges that have ever occurred are those which have already occurred. The only prices we can have any knowledge of are

necessary—which renders it impracticable for the economic system as a whole. In a plan, as the engineer draws it up, all the relevant facts must enter, and to make it a coherent plan all these facts must in the last resort be commanded and mastered by a single mind. This sets a limit on the degree of complexity of the task which can be solved by completely thinking it through, because the number of variables which any mind, even with the best assistance, can manipulate is limited.

prices from the recent past (commonly called current prices) and the not-so-recent past.

Is it possible to compare prices? We will return to the subject shortly, but if Peter paid two apples to buy one orange and Paul paid one lemon to buy one orange, it is by no means clear that it is possible to compare the prices paid by Peter and Paul.

We do not seem to be making much progress. In the first place, every voluntary exchange presents us with two prices rather than with one. The only prices we can have any knowledge of are prices from the past, and all plans are prospective: no one ever makes a plan to do something two years ago. And different prices might be incommensurable. On the other hand, having money has been known to solve a lot of problems.

If Peter paid two dollars (what a dollar is need not concern us provided that one dollar is a unit of money) for the orange and Paul paid one dollar, we know that the price that Peter paid was more than the price that Paul paid. And if we assume that money is one of the prices paid in every voluntary exchange (every voluntary exchange, remember, engenders two prices), the remainder of those prices begin to speak in a common tongue. We are still left with the fact that the only knowledge provided by prices is knowledge of the past. When we reflect, however, on the fact that decisions made in the past often have a bearing on future events, we will probably be grateful for such knowledge as we have. Why? Because prices convey information about the contents of other parties' plans.

Prices talk, and it is not just idle chatter. Assume again that I am a manufacturer of hammers. The demand of another manufacturer of hammers for steel expresses itself in the price that he pays for that steel; so, too, does the demand of a manufacturer of sickles. Better still, not only does the price of steel convey information about the content of other parties' plans, it conveys that information in an abridged, and therefore manageable, form.⁵ Do

⁵ Cf. Hayek (1948, 86–87):

The most significant fact about this system [the price system] is the economy of knowledge with which it operates, or how little the individual participants need to know in order to be able to take the right action. In abbreviated form, by a kind of symbol, only the most essential information is passed on and passed on only to those concerned. It is more than a metaphor to describe the price system as a kind of machinery for registering change, or a system of

I need to know all the ends for which steel is being purchased? Do I need to know all the contents of other parties' plans? Not only do I not need to know all the contents of other parties' plans, it is by no means clear that I would want to. Assume that there are one million other plans that have some bearing on my own. How could I ever digest the contents of those plans if they were fed to me in all their excruciating detail? The information that prices provide is imperfect, but it is significant and, no less important, concise.

B. THE ROLE OF PRICES IN THE FORMATION OF PLANS

Earlier in this work I said that the two questions of production are what to produce and how to produce it. The information that prices provide can help producers decide what to produce and how to produce it—in other words, it can help producers make their plans.

Prices can help producers answer the “what” question of production. A producer who wants to satisfy the preferences of buyers cannot base his decisions on his knowledge of what those preferences will be. Production takes time. The preferences that will express themselves in future transactions are unknown to all parties, buyers included. A producer who wants to satisfy the preferences of buyers can only proceed on the basis of what he thinks those preferences will be, but he can use his knowledge of what those preferences were as a clue that may help him solve that mystery.

If Peter's desire to acquire the ownership of a lemon owned by someone else is stronger than his desire to retain the ownership of an apple, he may very well buy a lemon by selling his apple—provided, of course, that he can find someone else with the opposite preference. If Peter makes that exchange, his preference is manifested by the transaction itself. Knowledge of that transaction is knowledge of that preference. Knowledge of that transaction can also be knowledge of other preferences on Peter's part. The fact that Peter bought a lemon rather than an orange—assuming that an orange costing one apple was there for the taking—tells us that Peter wanted to acquire ownership of the lemon more than he wanted

telecommunications which enables individual producers to watch merely the movement of a few pointers, as an engineer might watch the hands of a few dials, in order to adjust their activities to changes of which they may never know more than is reflected in the price movement.

to acquire ownership of the orange. How can buyers express their preferences? By buying. How can sellers learn something about those preferences? When prices talk, they can listen.

Prices can also help producers answer the “how” question of production. Every producer will want to produce his “what” with the expenditure of as few valuable resources as possible. What does the word *expenditure* mean in this context? An item is expended when it is no longer owned. If I buy a dollar’s worth of gasoline, I no longer own that dollar. And when that gasoline has been expended, I no longer own that gasoline. What does the word *valuable* mean in this context? A valuable resource is something worth owning. Every producer will want to produce his “what” with the expenditure of as few valuable resources as possible.

The broader the definition of the “what,” the more leeway a producer has in terms of the “hows” available to him. If the “what” is a hammer, he can use steel to manufacture it, but he can also use other materials, e.g., titanium. If the “what” is a steel hammer, the choice of using titanium has disappeared. Given the “what,” the producer will want to employ that “how” which will result in the expenditure of as few valuable resources as possible. This need not mean that he will always attempt to produce his “what” at the lowest possible cost in terms of money. Money may be a valuable resource to the producer, but it need not be the only one. Having said which, money does enable the producer to compare the costs of different “hows” in terms of money and to make a selection on that basis if he so chooses.

The same caveat needs to be made about prices in connection with the “how” question of production that was earlier made in connection with the “what” question. A producer who does not yet own the factors of production that he requires does not know how much it will cost to acquire them, i.e., he has no knowledge of future prices. If the caveat is the same, so also is the response: the producer can base his expectations of those future costs on such knowledge as he has of the prices those factors have fetched in the past. Prices not only can help a producer answer the “what” question of production, they can also help him answer the “how” question.

Although the information that prices convey can help producers make their plans, that information by itself will not be sufficient to ensure that the content of any plan so made is—or will be—compatible with the contents of the plans made by other parties.

The only way to ensure that the content of a plan one has made is compatible with the content of a plan made by someone else is to compare the contents of both plans. When a producer uses his knowledge of prices to select the content of his plan, he is not attempting to directly coordinate the content of that plan with the contents of the plans made by other parties. Indeed, one could almost say that that is the very thing he is attempting to avoid.

Making a plan and implementing a plan are two different things. When producers use their knowledge of prices to select the contents of their plans, they are making plans that they think they will be able to implement at some future date because they know that similar plans were implemented in the past. The coordination of the contents of those plans with the contents of the plans made by other parties ordinarily will occur—if it does occur—only when attempts are made to implement them.

C. THE ROLE OF PRICES IN THE REVISION OF PLANS

Plans need not be writ in stone. Indeed, plans are often revised on the basis of information discovered during the attempt to implement them.⁶ Producers not only can use the information that prices convey when they make their plans, they can also use that information when they revise them.

A developer buys one hundred acres of land with the intention of building one hundred houses on it. Before he can secure financing for the construction of the houses, he notices that prices in the local

⁶ Cf. Hayek (1948, 85–86):

Fundamentally, in a system in which the knowledge of the relevant facts is dispersed among many people, prices can act to co-ordinate the separate actions of different people in the same way as subjective values help the individual to co-ordinate the parts of his plan. It is worth contemplating for a moment a very simple and commonplace instance of the action of the price system to see what precisely it accomplishes. Assume that somewhere in the world a new opportunity for the use of some raw material, say, tin, has arisen, or that one of the sources of supply of tin has been eliminated. It does not matter for our purpose—and it is significant that it does not matter—which of these two causes has made tin more scarce. All that the users of tin need to know is that some of the tin they used to consume is now more profitably employed elsewhere and that, in consequence, they must economize tin. There is no need for the great majority of them even to know where the more urgent need has arisen, or in favor of what other needs they ought to husband the supply.

housing market are showing signs of weakness. On thinking the matter over, he decides that the market is much too soft to continue with his plan. He therefore revises it: for the time being (a plan, remember, includes a “when”), his plan is on hold.

A housewife heads to market with a plan to buy beef for dinner that evening—she will not, however, pay more than six dollars a pound for the beef. She revises her plan and buys chicken instead of beef when she discovers that all of the available beef costs more than six dollars a pound. Alternatively, she revises her plan and buys chicken instead of beef not because no beef is available for six dollars a pound—it is—but because the chicken is on sale. Plans are neither made nor revised exclusively by producers who intend to sell their products.

Plans of production are revised by the parties who made them for a variety of reasons. The developer’s original plan presumably called for the construction and sale of the houses in the not too distant future (perhaps during the coming eighteen months) at prices the developer found acceptable. He revises his plan not because he knows that the plan cannot be implemented (he certainly can have no knowledge of future prices) but because new information—in the form of current prices—has led him to think that the implementation of his original plan is doubtful.

The housewife who revised her plan to buy beef for dinner because all the beef available cost more than six dollars a pound revised her plan because she discovered that she could not implement it: the content of her plan was incompatible with the content of the plan to sell it made by the owner of the beef. If, however, she revised her plan to buy beef only because she discovered that chicken was on sale, she revised her plan to buy beef for dinner not because she could not implement it but because, prompted by the price of chicken, she came up with what she thought was a better plan.

The “prices” encountered by the housewife in the previous paragraph were not prices proper but rather asks. Bids and asks are what one might call potential prices: they are offers to buy and to sell. A price is formed only when a second party accepts the offer. Having said which, I can see no reason not to treat bids and asks in the same manner as prices proper: they certainly convey information about the content of the plan made by the party that makes the offer, a second party can use that information when he makes

or revises his own plan, and they are current in a way in which even “current” prices are not. Potential prices may even perform a more conspicuous role in the coordination and implementation of plans than prices proper. That subject will be explored in the next part of this section.

D. PRICES AND THE INDIRECT COORDINATION OF PLANS OF PRODUCTION

A self-sufficient household has no need to coordinate its plans of production with the plans of production of another self-sufficient household because the successful implementation of its plans does not depend on the content of the plans made by the other self-sufficient household. It only needs to ensure that such plans as it has made are compatible with one another, which is not a particularly difficult task, and an easy remedy is available if (perhaps through inadvertence) they are not: the plans can be revised—indeed, must be revised—by the household that made them.

Once households begin to engage in trade, some households may discover that some of the plans of production they have made are incompatible with the plans of production made by other households. Peter and Paul are neighbors. Each one has decided to produce more eggs than his household can consume and to sell his surplus to his neighbor. In such a situation it may be possible to remedy the problem by means of the direct coordination of those plans. Peter and Paul may agree, for example, that Peter should continue to produce a surplus of eggs and Paul should attempt to produce a surplus of milk, which he could then exchange for some of Peter’s eggs. The direct coordination of plans of production need not be difficult provided that the number of plans that need to be coordinated is small.

Suppose, however, that there are ten million households (more generally, entities) that engage in production and trade. How could anyone possibly compare the contents of the plans of production made by those ten million entities, eliminate the incompatible elements, and so produce a unified plan of production as a whole (in other words, a Plan)? Some of those entities may be able to engage in the direct coordination of plans of production with some other of those entities, but no one will be able to effect the direct coordination of all of those plans. Put differently, the direct coordination of plans of production will still be possible at what

one might call the micro level, but the direct coordination of all of those plans will not be possible at the macro level.

The distinction between the direct coordination of plans of production and the indirect coordination of plans of production is no less significant a distinction than the one between direct exchange, or barter, and indirect exchange, which requires a medium of exchange. Just as indirect exchange is effected by acts of direct exchange with a particular character—the direct exchange of a less marketable commodity for a commodity that is more easily marketable and will be used in that capacity, i.e., sold—so is the indirect coordination of plans of production effected by the direct coordination of plans with a particular character, plans to buy and to sell. Plans to buy and to sell are directly coordinated by the decisions made by different parties to buy and to sell particular goods and services.

It is almost impossible to exaggerate the significance of the fact that some of the content of the plans of production which are made in a free market almost always involves the purchase and sale of goods and services. A farmer plans to buy a new tractor for one hundred thousand dollars and to use that tractor to increase his output of wheat. Should we say that the farmer really has two plans, a plan to buy a tractor and a plan to use the tractor to increase his output of wheat, or should we say that the farmer really has only one plan, a plan which is composed of two segments (mini-plans?) which have been combined by the farmer into a unified plan? The language that we use is not important; grasping the import of the content of one of those mini-plans, or segments, is.

Ten farmers all plan to buy a new tractor for one hundred thousand dollars and to use that tractor to increase their outputs of wheat. Only eight new tractors are available for sale. The plans made by the ten farmers to increase the production of wheat are incompatible with the plans of production previously made by the manufacturers of tractors. Clearly, we have a problem, ten farmers and eight tractors. How do we resolve it? We don't have to. The problem will be resolved by the decisions made by the farmers themselves and by the owners of the tractors.

If we make the appropriate assumption about the conditions under which the tractors are sold (that the tractors, in effect, are sold at auction), it is clear that all ten farmers will need to revise at least one segment of their plans of production. If the price that

emerges for a new tractor is one hundred and ten thousand dollars, eight farmers will revise a segment of their plans to increase the production of wheat, the segment to buy a new tractor for one hundred thousand dollars, but the remainder of those eight plans—the segment to use a new tractor to increase the production of wheat—will remain intact. Two farmers will not only have to scuttle their plans to buy a new tractor for one hundred thousand dollars, they will also have to scuttle their plans to use those new tractors to increase the production of wheat. The eight remaining plans to increase the production of wheat are now compatible with the plans of production made previously by the manufacturers of tractors. Plans of production have been coordinated indirectly by the direct coordination of plans to buy and to sell.

What is it about the indirect coordination of plans of production that makes it so useful? What makes it so useful—indeed, so essential—is that it eliminates almost all of the need for a direct coordination of plans of production. In the example just given, does a farmer need to know anything about the plans made by the manufacturers of tractors to acquire the factors of production necessary to manufacture those tractors? Does the farmer need to know anything about the plans of production made by other farmers to increase their production of wheat? The only thing a farmer needs to know in order to bring his plan of production into synch—to coordinate it—with all the other plans of production made by all the other producers is, in this example, the price at which he can buy a tractor; the only thing a manufacturer of tractors needs to know in order to bring his own plan of production into synch—to coordinate it—with all the other plans of production made by all the other producers is the price at which he can sell a tractor. Omniscience is still in short supply, but so is the need for it.

Let us give the socialists their due. When plans are made by ignorant parties, it may not be possible to implement all of them. Many of them may be incompatible. How do we extricate ourselves from this morass? If a free market exists, we do not have to. The parties who made the incompatible plans will extricate themselves by revising those plans. It is not as if they have any choice in the matter: a plan that cannot be implemented has to be revised.

The solution to the problem of ignorance proposed by some socialists was socialism itself. How to eliminate what were sure to be the unfortunate consequences if a myriad of independent

producers made their plans in ignorance of the content of one another's plans? Eliminate the producers and replace them with a Producer; eliminate the plans and replace them with a Plan. The fact that it is impossible for anyone to produce a Plan makes that a less than ideal solution to the problem of ignorance.

Is there a better—at any rate a more feasible—solution to the problem of ignorance? Maybe Marx spoke truer than he knew. The free-market version of the anarchy of production contains within itself the seeds of its own destruction. Those seeds are called prices. The only adequate solution to the problem of ignorance and all that it entails—the proliferation of plans that have not been coordinated—is that reduction of ignorance effected by those things we call prices.

IV. MISES AND LANGE

A. Mises

In an article published in 1920⁷ Ludwig von Mises argued that socialism and economic calculation could never know a peaceful co-existence. Consider first the following passage:

It will be evident, even in a socialist society, that 1,000 hectolitres of wine are better than 800, and it is not difficult to decide whether it desires 1,000 hectolitres of wine rather than 500 of oil. There is no need for any system of calculation to establish this fact: the deciding element is the will of the economic subjects involved. But once this decision has been taken, the real task of rational economic direction only commences, i.e. economically, to place the means at the service of the end. That can only be done with some kind of economic calculation. The human mind cannot orient itself properly among the bewildering mass of intermediate products and potentialities of production without such aid. It would simply stand perplexed before the problems of management and location.

It is an illusion to imagine that in a socialist state calculation *in natura* can take the place of monetary calculation. Calculation *in natura*, in an economy without exchange, can embrace consumption goods only; it completely fails when it comes to deal with goods of a higher order. And as soon as one gives up the conception of a freely established monetary price for goods of a higher order, rational production becomes completely impossible. Every step that takes us away from private ownership of the means of production and from the use of money also takes us away from rational economics.⁸

⁷ Mises (1920); cf. Hayek (1935, 87).

⁸ See Hayek (1935), pp. 103–04.

What point did Mises make in the passage just quoted? Mises is willing to grant that what was earlier called the “what” question of production will not be a particularly difficult decision to make.⁹ That decision can be “grounded in the will of the economic subjects involved.” That leaves us with the “how” question, i.e., which means will be used to produce that “what”? For Mises this is the heart of the matter.

A producer will want to achieve his end, his “what,” with the expenditure of as few valuable resources as possible. That means, of course, that a “how” that requires the expenditure of less valuable resources will be a better “how” than a “how” that requires the expenditure of resources which are more valuable. How does one determine the value of the resources expended in a “how”? Allow Mises to answer the question:

Picture the building of a new railroad. Should it be built at all, and if so, which out of a number of conceivable roads should be built? In a competitive and monetary economy, this question would be answered by monetary calculation. The new road will render less expensive the transport of some goods, and it may be possible to calculate whether this reduction of expense transcends that involved in the building and upkeep of the next line. That can only be calculated in money. It is not possible to attain the desired end merely by counterbalancing the various physical expenses and physical savings. Where one cannot express hours of labour, iron, coal, all kinds of building material, machines and other things necessary for the construction and upkeep of the railroad in a common unit it is not possible to make calculations at all. The drawing up of bills on an economic basis is only possible where all the goods concerned can be referred back to money. (Hayek 1935, 108–09).

For Mises, the only way to express the value of the different factors of production used in a “how” is “in a common unit.” I said previously that when money is one of the prices paid in every voluntary exchange, the remainder of those prices begin to speak in a common tongue. When there is no common unit? Babel. Mises let his readers off the hook by not drawing up a bill computed in something other than money. I see no reason to be that charitable.

I paid a teenager five dollars to mow my lawn. He used my lawnmower, which runs on gasoline. The cost of the gasoline was one dollar. My lawnmower cost two hundred dollars, and I have

⁹ Please bear in mind that for Mises the “what” in question is a consumption good. The argument I am presenting differs slightly from his argument. See note 14.

decided that it is good for another one hundred and ninety-nine jobs—this was its first. I produced a mown lawn. What did it cost? Seven dollars. Note that the cost is computed in terms of money. In what else could it be computed? I suppose one could compute its cost in terms of the factors of production used to produce it.

What were those factors of production? I will here ignore the land (volume of space, soil, and grass) and concentrate on the remaining factors: labor, gasoline, and lawnmower. Assume that the teenager spent one hour mowing my lawn and that a half-gallon of gasoline was used. The factors of production spent on the production of a mown lawn were an hour of the teenager's labor, a half-gallon of gasoline, and 1/200th of a lawnmower. Even if the factors of production do not speak in a common tongue, enumerating those factors seems to be a relatively simple task. Not necessarily.

In the example just given, I bought the gasoline from another party, and I did the same with the lawnmower. That means that there were at least three (I was one of them) distinct producers. Because I did not produce the gasoline, I did not have to compute the cost of its production. That was a job for another producer. So, too, with the lawnmower. Here is another illustration of a point made earlier, that a division of ownership permits a division of intellectual labor: if I only produce one thing, I only have to compute the cost of one thing.

Suppose, however, that production took place where there was only a Single Producer—what would I, or anyone else for that matter, have to do in order to compute the cost of one mown lawn? Clearly my job will not have ended when I have specified the factors of production used to mow the lawn. I will also have to specify the factors of production used to make the factors of production (i.e., the capital goods) used to mow the lawn. Am I finished yet? Of course not. I will also have to specify the factors of production used to make the factors of production used to make the factors of production used to mow the lawn. Am I finished yet? Of course not. I will also have to specify....

Consider the gasoline that was used to fuel the lawnmower. Some portion of the cost—specified in terms of the factors of production used to produce it—of the refinery where the gasoline was produced will have to be allocated to that half-gallon of gasoline. So, too, with the crude oil: some portion of the factors of production used to produce it will have to be allocated to that half-gallon of

gasoline. Some portion of the cost—specified in terms of the factors of production required to produce it—of the drilling equipment used to sink the well from which the crude oil was extracted will therefore have to be allocated to that half-gallon of gasoline. I could continue, but it is time to let my readers off the hook.

I trust that it is clear by now that computing the cost of a good or service in a state of socialism will not be easy, and I hope that it is apparent that part of the reason why it will be difficult is the same reason why it will be difficult to plan the production of one good or service in a state of socialism: once you start, where do you stop? No Single Planner in a state of socialism can enlist the services of another planner, for there is no other planner. In the same sense no Single Accountant can enlist the services of another accountant, for there is no other accountant. The computation of cost occurs within the boundaries set by ownership. Where there is a Single Owner, there are no boundaries.

A distinction should be made between the computation of cost and the calculation of costs. The computation of cost is historical; the calculation of costs is prospective. It is important to compute cost when one wants to evaluate prior actions. It is important to calculate costs when one wants to select future actions. Calculating the costs of goods and services enables the producer to husband his resources. Killing two birds with one stone might make more sense than killing two birds with two stones. If stones are a valuable resource, it does make more sense. Where two different “hows” are available, the calculation of costs enables the producer to select the “how” that requires the expenditure of the less valuable resources.

“The drawing up of bills on an economic basis is only possible where all the goods concerned can be referred back to money.” The obvious question is, why can the factors of production not be referred back to money in a state of socialism? Why must each factor speak a different language? As usual, Mises provides the answer: “Moreover, just because no production-good will ever become the object of exchange, it will be impossible to determine its monetary value. Money could never fill in a socialist state the role it fills in a competitive society in determining the value of production-goods. Calculation in terms of money will here be impossible.”¹⁰ The factors of production cannot be referred back to money in a state

¹⁰ *Ibid.*, p. 92.

of socialism because the factors of production are never bought and sold. And the factors of production are never bought and sold because...? There is no other party to buy something from or sell something to: there is, after all, only one owner.

“Calculation in terms of money will here be impossible.” What consequence follows from that fact? “Where there is no free market, there is no pricing mechanism; without a pricing mechanism, there is no economic calculation.”¹¹ What point is Mises making? That without monetary calculation there can be no economic calculation.¹²

Why must there be monetary calculation if there is going to be economic calculation? Consider the alternative. How could one compare the cost of electricity generated at a large hydro-electric project with the cost of electricity generated at a nuclear power plant if the cost of that electricity had to be specified in terms of all the concrete factors of production that had played a role, however small, in its generation? Calculation *in natura* would be unnatural. It would also be impossible.

What does the absence of economic calculation entail? Again, Mises has the answer:

Without economic calculation there can be no economy. Hence, in a socialist state wherein the pursuit of economic calculation is impossible,

¹¹ *Ibid.*, p. 111.

¹² Mises makes it clear that economic calculation without monetary calculation can occur when the conditions of production are primitive:

Only under simple conditions can economics dispense with monetary calculation. Within the narrow confines of household economy, for instance, where the father can supervise the entire economic management, it is possible to determine the significance of changes in the processes of production, without such aids to the mind, and yet with more or less of accuracy. In such a case the process develops under a relatively limited use of capital. Few of the capitalistic roundabout processes of production are here introduced: what is manufactured is, as a rule, consumption-goods or at least such goods of a higher order as stand very near to consumption-goods. The division of labour is in its rudimentary stages: one and the same labourer controls the labour of what is in effect, a complete process of production of goods ready for consumption, from beginning to end. All this is different, however, in developed communal production. The experiences of a remote and bygone period of simple production do not provide any sort of argument for establishing the possibility of an economic system without monetary calculation. (Hayek 1935, 102–03)

there can be—in our sense of the term—no economy whatsoever. In trivial and secondary matters rational conduct might still be possible, but in general it would be impossible to speak of rational production any more. There would be no means of determining what was rational, and hence it is obvious that production could never be directed by economic considerations.¹³

What point is Mises making? How can one select the least costly “how,” i.e., how can one deploy one’s resources in an economical manner, if one does not know what the least costly “how” is?¹⁴ Mises’s contention is not that socialism is impossible but that production under socialism could never be directed by economic considerations.¹⁵

B. LANGE

In two papers published in 1936 and 1937¹⁶ Oskar Lange responded to Mises’s argument. How should production proceed in a socialist state? Consider first the following passage:

The decisions of the managers of production are no longer guided by the aim of maximizing profit. Instead, certain rules are imposed on them by the Central Planning Board which aim at satisfying consumers’ preferences in the best way possible. These rules determine the combination of factors of production and the scale of output.

One rule must impose the choice of the combination of factors which minimizes the average cost of production. This rule leads to

¹³ Hayek (1935, 105).

¹⁴ The point Mises actually made was more comprehensive than I have made it out to be. Economic calculation can come into play not only when a choice of “hows” is available, it can also come into play when only one “how” is available. In that situation the question is, “Given both the ‘what’ and the ‘how,’ does it make sense to proceed with the ‘what’?” In other words, does the value of the “what” justify the expenditure entailed by the “how”? For Mises’s position, read the text to notes 7 and 9.

¹⁵ Cf. Hayek (1935, 36):

But although the discussion on this point dragged on for several years, in the course of which Mises twice replied to his critics, it became more and more clear that in so far as a strictly centrally directed planned system of the type originally proposed by most socialists was concerned, his central thesis could not be refuted. Much of the objections made at first were really more a quibbling about words caused by the fact that Mises had occasionally used the somewhat loose statement that socialism was impossible, while what he meant was that socialism made rational calculation impossible.

¹⁶ See Lippincott (1939, 57).

the factors being combined in such proportion that the marginal productivity of that amount of each factor which is worth a unit of money is the same for all factors. This rule is addressed to whoever makes decisions involving the problem of the optimum combination of factors, i.e., to managers responsible for running existing plants and to those engaged in building new plants. A second rule determines the scale of output by stating that output has to be fixed so that marginal cost is equal to the price of the product. This rule is addressed to two kinds of persons. First of all, it is addressed to the managers of plants and thus determines the scale of output of each plant and, together with the first rule, its demand for factors of production. The first rule, to whomever addressed, and the second rule when addressed to the managers of plants perform the same function that in a competitive system is carried out by the private producer's aiming to maximize his profit, when the prices of factors and of the product are independent of the amount of each factor used by him and of his scale of output.¹⁷

Lange here informs us that the "what" decisions will be governed by consumers' preferences. In a different passage he also discusses a situation where the "what" decisions are governed by the preference scale of the Central Planning Board, but that discussion introduces no new issues and so can be ignored. For Mises, remember, the "what" decisions are largely peripheral.

Before examining Lange's position in more detail, let me note one curious fact: according to Lange, managers are going to make decisions. Why is that curious? It certainly is not curious if managers make decisions in a free market, but managers who make decisions in a state of socialism—what could be more curious? No manager of a plant makes decisions in a state of socialism; he implements the decisions made by someone else.¹⁸ His job, after all, is not to make plans. We're all supposed to be socialists here—don't want no anarchists messing with the Plan. Don't want, in short, no anarchy of production.

Now let me note an even more curious point about Lange's response: Lange could not be more outspoken about the role played by prices in the system he has devised. According to Lange, his managers must have prices if they are going to follow his rules: "To enable the managers of production to follow these rules the

¹⁷ *Ibid.*, pp. 75–76.

¹⁸ Cf. Dobb (1945, 276): "Competition necessarily implies not only diffusion but also autonomy of separate decisions.... Either planning means overriding the autonomy of separate decisions or it apparently means nothing at all."

prices of the factors and of the products must, of course, be given. In the case of consumers' goods and services of labor they are determined on a market; in all other cases they are fixed by the Central Planning Board. Those prices being given, the supply of products and the demand for factors are determined."¹⁹

The operation of Lange's system might seem to resemble the operation of a free market in most respects. Indeed, Lange makes that very point:

Our study of the determination of equilibrium prices in a socialist economy has shown that the process of price determination is quite analogous to that in a competitive market. The Central Planning Board performs the functions of the market. It establishes the rules for combining factors of production and choosing the scale of output of a plant, for determining the output of an industry, for the allocation of resources, and for the parametric use of prices in accounting. Finally, it fixes the prices so as to balance the quantity supplied and demanded of each commodity. It follows that a substitution of planning for the functions of the market is quite possible and workable.²⁰

Perhaps it does, but does it follow that a substitution of Planning for the functions of the market is quite possible and workable? Where in Lange's system can one discover any Planning whatsoever? Where in Lange's system can one discover either a Planner who produces a Plan by himself or an Uber-planner who consciously combines the elements of the plans made by the different managers into a unified plan of production (i.e., a Plan) devoid of incompatible elements? One cannot. And it is not even clear that his "central planners" qualify as central planners. In fact, it is quite clear that they do not. His "central planners" make rules; his managers make plans of production.²¹

What does Lange have to say on the subject of an efficient allocation of resources? Lange tells us that "there is no way of measuring

¹⁹ Lippincott (1939, 78).

²⁰ *Ibid.*, pp. 82–83.

²¹ Cf. Polanyi (1951, 125):

Unnoticed both by its advocates and its critics, modern Socialist theory, by adopting the principles of commerce, has quietly abandoned the cardinal claim of Socialism: the central direction of industrial production. Apart from calling his chief economic authority by the name of Central Planning Board, Oscar Lange makes no reference to planning in the proper sense.

the *efficiency* in carrying out the plan without a system of accounting prices which satisfies the objective equilibrium condition, for the rule to produce at the minimum average cost has no significance with regard to the aims of the plan unless prices represent the relative scarcity of the factors of production.”²² Lange’s position is that it is possible to talk about an efficient allocation of resources only if the prices of the factors of production are equilibrium prices.

Lange has already informed us that one responsibility of the Central Planning Board is to fix the prices so as to balance the quantity supplied and demanded of each commodity. Why is this such an important task? Lange provides the answer:

The condition that the quantity demanded and supplied has to be equal for each commodity serves to select the equilibrium prices which alone assure the compatibility of all decisions taken. *Any price different from the equilibrium price would show at the end of the accounting period a surplus or a shortage of the commodity in question.* Thus the accounting prices in a socialist economy, far from being arbitrary, have quite the same objective character as the market prices in a regime of competition. Any mistake made by the Central Planning Board in fixing prices would announce itself in a very objective way—by a physical shortage or surplus of the quantity of the commodity or resources in question—and would have to be corrected in order to keep production running smoothly.²³

Please read once more the first sentence in the passage from Lange just quoted. As we saw in the first section of this work, when plans are made independently, there is always the possibility that they will not be compatible. Lange is fully aware of the fact that the decisions (i.e., plans) of his managers might not be compatible. How is that possible? Suppose that ten managers, misled by an artificially low price, bid for eight tractors (and there are only eight tractors because the managers of the tractor plants were misled themselves by the artificially low price of tractors and so produced only eight). The result, of course, would be a shortage: there is no way all ten plans could be implemented. Does the phrase “anarchy of production” spring to mind? How could it not?

²² Lippincott (1939, 94). Lange makes this point when discussing production governed by the preference scale of the Central Planning Board, but it clearly applies also to production aimed at satisfying the preferences of consumers. He also mentions in a footnote a special case where prices are not needed to carry out the plan efficiently, but the special case, in his own words, is “extremely unrealistic.”

²³ *Ibid.*, pp. 81–82.

Lange has told us that if the Central Planning Board makes a mistake by fixing prices too low, there will be a shortage and production will not run smoothly. That is a bit of an understatement. Consider the case in which ten managers want eight tractors. Not only will two would-be users of tractors find it impossible to implement their plans, the plans of other would-be producers could suffer a similar fate. Indeed, many of the plans whose content depends on the content of the plans of the two managers who do not get the tractors would suffer a similar fate. No tractors? No grain. No grain? No flour. No flour? No bread. No bread? No thanks.

What Lange has told us in the passage we have been examining can only be called astonishing. Any price in the entire system that is something other than an equilibrium price will cause problems—and will cause problems to the extent that the plans of the producers are compatible with one another. Out of chaos, order? Out of order, chaos. And who is responsible for the existence of a price that is not an equilibrium price? Who, if not the Central Planning Board that fixed it? The obvious question is, why permit the Central Planning Board—or any body—to fix prices? Why not permit buyers and sellers to set the proper prices themselves? The answer, of course, is that if the state is a Single Owner, there can be no buyers and sellers. Lange's prices for the factors of production are ersatz prices because they have to be.

In the passage we have been examining, Lange never tells us what will happen before the Central Planning Board has corrected its mistake. Assume that the Central Planning Board sets the "price" of a tractor at one hundred thousand roubles, that eight tractors are available, and that ten managers want those tractors at that "price". What procedure will determine which eight of those ten managers get the tractors? Only three (I here ignore the possibility of bribery) methods can be adopted: first come, first served; a lottery; and an allocation.

First come, first served: the tractors are acquired by the first eight managers who place dibs on them. In technical language this is known as a queue. A lottery: stick the names of all would-be "buyers" in a hat and extract the appropriate number of names. This might not be the worst solution, but it is difficult to believe that any self-respecting "scientific" socialist would adopt it. An allocation: someone, presumably from the Central Planning Board, allocates the eight tractors to eight of the ten would-be "buyers."

The lineaments of Lange's response to Mises should now be clear. It is time for a verdict.

C. THE VERDICT

In the article published in 1920 Mises argued that socialism and production directed by economic considerations are incompatible. With no market for the factors of production, monetary calculation is impossible. Because no substitute for monetary calculation exists, there can be no economic calculation. Because economic calculation is impossible, no attempt can be made to deploy resources in an economical manner.

Did Mises overstate his case? Not only did Mises not overstate his case, the argument against socialism that he presented can be made even more comprehensive and compelling. As Murray Rothbard has shown,²⁴ the argument that Mises advanced applies not merely to one type of owner, the state, but also to any other Single Owner. In addition, one can also assert with absolute confidence that central Planning (i.e., Planning by the state) is impossible whenever the task of planning the production of everything, i.e., producing a Plan, is too great a task for any one planner to accomplish. If central Planning is impossible, how does that square with what took place in the Soviet Union? As we will see in the next section, central Planning never existed in the Soviet Union.

What was Lange's response to Mises's argument? Did Lange deny that prices for the factors of production are necessary for an efficient allocation of resources? Deny it? He insists on it—and notes that those prices had better be equilibrium prices or else. Did Lange argue that economic calculation is possible in the absence of monetary calculation? No, he quotes with approval Kautsky's rejection of such a notion.²⁵ How, then, did Lange rebut Mises? He did not. He "rebutted" Mises by conceding the very points that Mises made. Nice work ... if you can get it.

What was Mises's verdict on Lange's "rebuttal"?

It is therefore nothing short of a full acknowledgment of the correctness and irrefutability of the economists' analysis and devastating critique

²⁴ See Rothbard (1962, 548–49).

²⁵ See Lippincott (1939, 136–37).

of the socialists' plans that the intellectual leaders of socialism are now busy designing schemes for a socialist system in which the market, market prices for the factors of production, and catallactic competition are to be preserved. The overwhelmingly rapid triumph of the demonstration that no economic calculation is possible under a socialist system is without precedent indeed in the history of human thought. The socialists cannot help admitting their crushing final defeat. (Mises 1966, 706)

Well put.

V. PRODUCTION IN THE SOVIET UNION

A. The Structure of the Five-Year Plans

Did Joseph Stalin ever draft a Five-Year Plan by himself? Did anyone else in the Soviet Union ever draft a Five-Year Plan by himself? "Don't be absurd—the length of the first Five-Year Plan was approximately forty thousand pages.²⁶ The Five-Year Plans were the product of the collaboration of countless central planners." Indeed they were—and therein lies the problem. Did Joseph Stalin ever read a Five-Year Plan? Did anyone else in the Soviet Union ever read a Five-Year Plan? Allow me to answer the questions: "Don't be absurd—the length of the first Five-Year Plan was approximately forty- thousand pages."

Let me see if I have this straight. If every Five-Year Plan was really a collection of disparate plans produced by different parties and if no one ever even read all of those disparate plans, who then combined all those disparate plans into a unified plan of production devoid of incompatible elements? Who engaged in the direct coordination of all of the plans of production? Who served as the uber-planner? The answer, of course, is, "No one."

Every Five-Year Plan was a mish-mash of different plans that were, so to speak, stapled together and then fobbed off on the credulous as a Plan.²⁷ It is no mere play on words to say that the existence of central planners almost certainly precludes the

²⁶ "In Russia the authorities decide that in a particular year there shall be woven so many thousand yards of cotton cloth; and they publish this decision, or perhaps we should rather say this good resolution, somewhere in the forty thousand pages of their Five Year Plan." (Wootton 1935, 17)

²⁷ Cf. Polanyi (1951, 134):

existence of a central Plan. If there are central planners, there must also be an uber-planner who directly coordinates all of the different plans made by those central planners. Absent that uber-planner, there is no central Plan. The only possible conclusion one can reach is that although central planners existed in the Soviet Union, central Planning did not.²⁸

Incidentally, when I refer to the length of a Five-Year Plan as approximately forty thousand pages, I trust that it is understood

Bearing this in mind, let us now examine the structure of a national production plan. Such plans state the sum of various types of goods and services that are to be produced. The products are divided into classes and sub-classes. We may see for example Industry and Agriculture as our main divisions. Then Industry may be subdivided into Production of Raw Materials, Finished Products and Industrial Services, while Agriculture may again fall into parts, such as Food Production, Forestry and Raw Materials for Industry. Each of these classes can be subdivided again into sub-classes and this process can be continued until we finally come down to the proposed quantities of individual products, which form the ultimate items of the plan.

At first sight, this looks exactly like a true plan, namely like a comprehensive purpose elaborated in detail through successive stages; the kind of plan, in fact, which can be carried out only by appropriate central direction.

But in reality such an alleged plan is but a meaningless summary of an aggregate of plans, dressed up as a single plan. It is as if the manager of a team of chess-players were to find out from each individual player what his next move was going to be and would then sum up the result by saying: "The plan of my team is to advance 45 pawns by one place, move 20 bishops by an average of three places, 15 castles by an average of four places, etc." He could pretend to have a plan for his team, but actually he would be only announcing a nonsensical summary of an aggregate of plans.

²⁸ Cf. Lavoie (1985, 156):

The point is not only that the Soviet model has performed badly but also that the extent to which the Soviet economy has managed to muddle through corresponds to the degree to which its planning agencies have relinquished effective control over economic decisions to the plant managers. In a very important sense the Soviet economy is not really a centrally planned economy at all. As Eugene Zaleski concluded in his monumental study of the Soviet economy, "The centralization of power does not imply an equal concentration of decision-making authority, and the formal appropriation of all power does not carry with it the ability to exercise that power." As his research shows, "The existence of ... a central national plan, coherent and perfect, to be subdivided and implemented at all levels, is only a *myth*. What actually exists, as in any centrally administered economy, is an endless number of plans, constantly evolving, that are coordinated *ex post* after they have been put into operation." In short, what exists is not planning but economic rivalry.

that I am referring to what should be called the abridged versions of those Five-Year Plans. The forty thousand page monsters were really only outlines that needed to be fleshed out as they were distributed to lower and lower levels of the food chain. Although I can give no reference to support my figures, by the time the Five-Year Plans reached the level of the plants or enterprises where production actually took place, the length of those Five-Year Plans had to have numbered in the tens of millions of pages, maybe even in the hundreds of millions. Ideal candidates to tote to the beach this summer? *Nyet*.

B. ECONOMIC CALCULATION IN THE SOVIET UNION

If economic calculation requires prices for the factors of production and if there were no markets for factors of production (labor excepted) in the Soviet Union, it might be tempting to conclude that economic calculation was impossible in the Soviet Union, that central planners could not even attempt to deploy resources in an economical manner. That conclusion would be false. We saw earlier that prices can help producers decide what to produce and how to produce it, can help them when they make their plans of production. The absence of prices for the factors of production inside the Soviet Union did not mean that no prices for those factors were formed outside the Soviet Union.

Consider the following case. A plant that will generate electricity is going to be built in the Soviet Union. Should the burners be fueled by natural gas or by oil? Central planners in the Soviet Union could “cheat” by peeking at the prices for which the two commodities were sold in the markets of the world—and use that information to help them arrive at a decision. Inside the Soviet Union the state may well have been a Single Owner (insofar as the Five-Year Plan was concerned, it was); in the world at large, that state was but a single owner. Economic calculation was possible in the Soviet Union but only because the world contained a multiplicity of owners.²⁹

²⁹ Cf. Mises (1951, 136):

The attempt of the Russian Bolsheviks to transfer Socialism from a party programme into real life has not encountered the problem of economic calculation under Socialism, for the Soviet Republics exist within a world which forms money prices for all means of production. The rulers of the

C. THE COORDINATION OF PLANS OF PRODUCTION IN THE SOVIET UNION

Planning the production of everything produced in the Soviet Union was a task no mere mortal could have accomplished. The task of planning production was therefore sub-divided—there was a division of intellectual labor in the Soviet Union. Alas, the task of directly coordinating all of the plans of production made by the central planners was also a task no mere mortal could have accomplished.

We know that all of the plans of production made in the Soviet Union were never directly coordinated. How, then, were plans of production coordinated? Were they coordinated? The fact that the direct coordination of all of the plans of production was impossible does not mean that the direct coordination of some of those plans was impossible. There can be no doubt that the direct coordination of plans of production did take place in the Soviet Union, but the direct coordination of plans of production will only take you so far. Indeed, it may even create its own problems.

In order to illustrate what I mean when I say that the direct coordination of plans of production will only take you so far, let us make as favorable an assumption as possible about the quality of work done by the central planners in the Soviet Union. Assume that one of the Five-Year Plans called for the production of two new tractors at each of five different plants and the delivery of one new tractor to each of ten different state farms. We will also assume that the new tractors were included in the plans of production made for those state farms. No central planner has made a mistake: all the relevant plans of production are compatible. Now assume that a fire occurs at one of the plants with the result that only eight new tractors are produced. We now find ourselves in the same situation we found ourselves in previously when discussing Lange's system, eight tractors with ten suitors.

Soviet Republics base the calculations on which they make their decisions on these prices. Without the help of these prices their actions would be aimless and planless. Only so far as they refer to this price system, are they able to calculate and keep books and prepare their plans. Their position is the same as the position of the state and municipal Socialism of other countries: the problem of socialist economic calculation has not yet arisen for them. State and municipal enterprises calculate with those prices of the means of production and of consumption goods which are formed on the market. Therefore it would be precipitate to conclude from the fact that municipal and state enterprises exist, that socialist economic calculation is possible.

Ten “farmers” plan (hope?) to acquire (the word *buy* should be conspicuous by its absence) a new tractor and to use that tractor to increase the output of wheat. Four tractor plants each plan to release (the word *sell* should be conspicuous by its absence) two new tractors to the appropriate parties. It will no longer be possible to implement the ten plans of production made for the ten state farms. The plans of production made for two state farms will need to be revised, and some procedure will have to be selected in order to deal with the shortage of tractors. Before we examine how the problem was solved in the Soviet Union, let us ask ourselves what did not occur.

The eight tractors were not sold to the highest bidders. Why not? The plants where the tractors were manufactured did not own the tractors. Those tractors—and the plants that produced them—were owned by the state. And the ten suitors? The ten state farms were also owned by the state. How do you sell something to yourself? You cannot. A voluntary exchange requires two owners. The “market” for those eight tractors was never cleared by the direct coordination of plans to buy and to sell because there was no market, and there was no market because there were no buyers and sellers: there was only one owner. How, then, was the “market” for tractors cleared in the Soviet Union? We will return to the subject shortly.

What else did not occur in the Soviet Union? A great deal of the coordination of plans of production that occurs in a free market is effected indirectly, is effected by the direct coordination of plans to buy and to sell. Where there are no plans to buy and to sell, there can be no indirect coordination of plans of production. We saw in the previous part of this section that central planners in the Soviet Union could “cheat” by using prices that were formed outside the Soviet Union to help them make their plans of production. One cannot “cheat” when it comes to the indirect coordination of plans of production. The absence of a market for capital goods and land inside the Soviet Union made the indirect coordination of plans of production that required the use of capital goods or land impossible. Put differently, the indirect coordination of plans of production was illegal in the Soviet Union.

Back to the eight tractors. Who got them, and why? If we ignore the cases where the manager of a state farm bribed the manager of a tractor factory (an extremely common practice in the Soviet

Union), the tractors were allocated. The winners were selected at a higher level of the food chain. What criteria were used to select the winners? The usual suspects. Was the manager of State Farm No. 7 a crony of a powerful bureaucrat? A relative? Married to a relative? Willing to pay a bribe to a powerful bureaucrat? Allocation by its very nature is arbitrary. For that reason one cannot produce a formula that would enable one to specify the winners. Let us move on to a different subject, the revision of plans of production.

Producing a Five-Year Plan was an arduous task. So was revising a Five-Year Plan. Consider the task the central planners would have faced as a result of the fire at the tractor plant. Not only would it have been necessary to revise the plans of production made for one tractor plant and two state farms, it would also have been necessary to revise all of the plans of production that had been directly coordinated with the plans of production made for those two state farms. Fewer tractors presumably means less fuel consumed. Plans for the production or distribution of fuel will need to be revised. Fewer tractors presumably means less wheat produced. Less wheat produced presumably means less flour. Does that mean that the planned expansion of a flour mill should be placed on hold? Less flour presumably means less bread. Or does it mean less pasta? Or does it mean less bread and less pasta? If less bread is going to be produced, will it be necessary to revise plans made for the production of jam? How many millions (tens of millions?) of pages will this revision of a Five-Year Plan require?

Revising a Five-Year Plan was so difficult that it was often revised only at the end of the period to which it applied. One tabulated the results that had been achieved during the period in question, one then revised the numbers in the original Five-Year Plan, and, *abracadabra*, another successful implementation of a Five-Year Plan.³⁰ Let us give credit where credit is due. Central

³⁰ Cf. Steele (1992, 267):

The Soviet economy never was planned in the sense that a group of people at the top were able to work out what everyone should do and then tell them to do it. "Plans" were published: five-year plans, which generated yearly, quarterly, and monthly plans, and, of course, the attempts to implement these plans did have major effects. But the plans were usually issued after the commencement of the period to which they applied, and were always amended repeatedly in the course of "implementation." When the government triumphantly announced that the five-year plan had been fulfilled, this was a

planners in the Soviet Union were able to achieve two things that might previously have been thought impossible. I said earlier that all plans are prospective, that no one ever makes a plan to do something two years ago. In the sense just described, a Five-Year Plan was really a plan to do something during the previous five years. And—wonder of the ages—the plan succeeded.

The other achievement may have been even more spectacular. Not only was the Soviet Union always awash in plans of production that could not be implemented because the content of those plans was incompatible with the content of other plans, i.e., in plans of production that had not been coordinated, the Soviet Union was always awash in plans of production that could not be implemented because they had been directly coordinated. Consider the case of the fire at the tractor plant. One could not implement the plans of production made for the two state farms that did not get the new tractors—nor any of the other plans of production that had been directly coordinated with those two plans—not because they were incompatible with the plans of production made for the tractor plants but because they had been directly coordinated with those plans.

Central planning takes the anarchy of production to a whole new level. You begin with central planners who could not possibly know all of the contents of the plans of production made by other central planners—you begin, that is, with the anarchy of production—and you allow them to directly coordinate as many of those plans as possible. It will not, of course, be possible to directly coordinate all of them. You then toss in a plan whose content is incompatible with the content of another plan—those two plans have escaped direct coordination—and the havoc you wreak is proportional to the extent to which the plans of production have been directly coordinated (where is the indirect coordination of plans of production now that we need it?). I am not even sure that the term “anarchy of production” does it justice. I think the term we need for central planning is “THE ANARCHY OF PRODUCTION.” After all, central planning really is the anarchy of production writ large.³¹

drastically different document than had been first published under that name about four years earlier.

³¹ Cf. Brutzkus (1935, 49):

CONCLUSION

A distinction should be made between socialism, or ownership of some of the means of production by the state, and Socialism, or ownership of all of the means of production by the state. If the state owns some, but not all, of the means of production, it follows that the means of production have more than one owner. In the light of that distinction, Mises's argument in the paper published in 1920 was that economic calculation under Socialism is impossible. It certainly was not his contention that socialism is impossible (see Note 29), nor was it his contention that Socialism is impossible (see Note 15).

Murray Rothbard extended the argument made by Mises by showing that the argument applied to all cases of Single Ownership, that economic calculation is impossible when all of the means of production are owned by any entity, not just by the state. One goal of this work was to take the argument against Single Ownership even further by examining the problem that would confront the Single Owner when it came time to plan the production of everything—the argument advanced by Mises and Rothbard dealt with the problem that would confront a Single Owner when it came time to plan the production of one thing. The Single Owner would never be able to plan the production of everything by himself—the mere suggestion that he would is ludicrous. The Single Owner would therefore be forced to employ a division of intellectual labor and farm the planning of production out to different parties.

The result of that division of intellectual labor would be a collection of disparate plans made by different people who could not possibly know all of the contents of all of the plans made by all the different parties. The result of that division of intellectual labor would be the dreaded condition known as the anarchy of production. In order to escape from its clutches—in order to ensure that all the different plans were compatible—it would be necessary for an uber-planner to directly combine all the disparate plans into a unified plan of production as a whole.

It is obvious that an economic system which possesses no mechanism for co-ordinating production with the needs of society cannot be maintained. Socialism overcomes the "anarchy of capitalist production" by substituting a condition of super anarchy; and in comparison with this 'super anarchy' capitalism presents a picture of the utmost harmony.

That clearly could not have occurred, and it is ludicrous even to suggest otherwise. Nor would the Single Owner and his minions be able to escape from the clutches of the anarchy of production and all that it entails by enlisting the services of the indirect coordination of plans of production, which is effected by the direct coordination of plans to buy and to sell: the Single Owner, after all, is nothing if not the Single Owner.

It should now be clear that Planning itself is impossible, that the creation of a unified plan of production as a whole, i.e., a Plan, cannot be achieved. It follows, of course, that central Planning, or Planning by the state, is impossible. It does not follow that central planning is impossible. Central planning (central plans-ing?) isn't impossible, it is merely disastrous, and it is disastrous because it makes the indirect coordination of plans of production impossible. How so? The problem is the same as the problem of economic calculation under Socialism: where there is only one owner, i.e., a Single Owner, there can be no buying and selling.

What is it that makes the division of intellectual labor that occurs in a free market fruitful³² and the division of intellectual labor that occurs under central planning barren? In the latter case there is no underlying division of ownership. The planning of production occurs within the boundaries set by ownership. Where there is a Single Owner, there are no boundaries. No entity in a free market needs to coordinate all of the plans of production because no entity in a free market is responsible for planning the production of everything. The only plans of production that it needs to coordinate are its own.

All of the plans of production that are made in a free market are ultimately coordinated because the parties that made them have

³² Cf. Rothbard (1962, 765–66):

One reason why economics has tended to concentrate on the free market is that here is presented the problem of order arising out of a seemingly 'anarchic' and 'planless' set of actions. We have seen that instead of the 'anarchy of production' that a person untrained in economics might see in the free market, there emerges an orderly pattern, structured to meet the desires of all individuals, and yet eminently suited to adapt to changing conditions. In this way we have seen how the free, voluntary actions of individuals combine in an orderly determination of such seemingly mysterious processes as the formation of prices, income, money, economic calculation, profits and losses, and production.

to coordinate them: a plan that cannot be implemented because its content is incompatible with the content of another plan has to be revised. A great deal of that coordination is effected indirectly, is effected by the direct coordination of plans to buy and to sell. The “fact” that the plans of production that are made in a free market are never coordinated isn’t an argument in favor of central planning. Rather, it is a gross falsehood that can only proceed from gross stupidity—or from something worse.

REFERENCES

- Brutzkus, Boris. 1935. *Economic Planning in Soviet Russia*, trans. Gilbert Gardiner. London: George Routledge and Sons.
- Cole, G.D.H. 1935. *Principles of Economic Planning*. London: MacMillan and Co.
- Dobb, Maurice. 1945. *Political Economy and Capitalism*. New York: International Publishers.
- Hayek, Friedrich A., ed. 1935. *Collectivist Economic Planning*. London: George Routledge and Sons.
- . 1948. *Individualism and Economic Order*. Chicago: University of Chicago Press.
- . 1997. “Socialism and War.” In *The Collected Works of F. A. Hayek*, vol. 10, ed. Bruce Caldwell. Chicago: University of Chicago Press.
- Lange, Oskar. 1936. “On the Economic Theory of Socialism, Part One.” *Review of Economic Studies* 4, no. 1: 53–71.
- . 1937. “On the Economic Theory of Socialism, Part Two.” *Review of Economic Studies* 4, no. 2: 123–42.
- Lavoie, Don. 1985. *Rivalry and Central Planning: The Socialist Calculation Debate Reconsidered*. Cambridge: Cambridge University Press.
- Lippincott, Benjamin E., ed. 1939. *On the Economic Theory of Socialism*. Minneapolis: University of Minnesota Press.
- Mises, Ludwig von. [1920] 1990. *Economic Calculation in the Socialist Commonwealth*, trans. S. Adler. Auburn, Ala.: Ludwig von Mises Institute.
- . 1951. *Socialism: An Economic and Sociological Analysis*, trans. J. Kahane. London: Jonathan Cape.
- . 1966. *Human Action: A Treatise on Economics*. 3d revised ed. Chicago: Henry Regnery Company.
- Polanyi, Michael. 1951. *The Logic of Liberty: Reflections and Rejoinders*. Chicago: University of Chicago Press.
- Rothbard, Murray N. 1962. *Man, Economy, and State: A Treatise on Economic Principles*. Los Angeles: Nash Publishing.

Schumpeter, Joseph A. 1950. *Capitalism, Socialism and Democracy*. 3d ed. New York: Harper and Row.

Steele, David Ramsey. 1992. *From Marx to Mises: Post-Capitalist Society and the Challenge of Economic Calculation*. La Salle: Open Court.

Wootton, Barbara. 1935. *Plan or No Plan*. New York: Farrar and Rinehart.

THE MURRAY ROTHBARD MEMORIAL LECTURE

THE INESCAPABILITY OF LAW, AND OF
MISES, ROTHBARD, AND HOPPE

DAVID DÜRR

I was invited to talk on “how I came to develop my novel anarchistic arguments against the classical liberal and social democratic conceptions of the state, which parallel, but are not based on the views of Murray Rothbard and Hans Herman Hoppe.” Indeed, I am not a longtime participant in your conferences and the Mises Institute. It is relatively late that I got in contact with you. But it was at a moment, when I realized, there is a group, there is a movement whose way of thinking is precisely or let’s say, very close to what I think.

In any event, I feel deeply honored to present this Murray Rothbard Lecture on how I came to these almost same conclusions. The short answer is, because it’s inescapable. And a more extensive answer on how I came to this inescapable result will follow now.

WHAT IS LAW?

At the beginning, there was not something like, there is a fundamental problem with the state, or property rights should

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be supported in a much better way. At the beginning, there was a different and quite simple question: What is law? When I began to study this subject, I didn't know exactly why. If you choose medicine as the subject of your education, it's much easier to imagine the topic. But law is something quite abstract and I really wanted to learn what it was. The answers in the first courses were quite disappointing. In the basic studies as well as in later courses for the bar exam I just learned something like a professional craft, but not what this remarkable phenomenon of law is.

A bit later I came closer to the answer of my question, when I spent a year at Harvard Law School with interesting comparisons between our European system of codified law on the one hand and the US and English tradition of the precedent-based common law on the other hand. There I met different ways of thinking about sources of the law and related questions such as whether the law is just there or whether it emerges on special occasions and whether the law needs judges to apply and legislators to produce it. I then deepened these aspects in my habilitation thesis some years later and came to the conclusion that law does not depend on official authorities such as judges, magistrates or legislators, but that the law gives answers even though there are no statutes or no precedents at all, and that the final "source" of law is the conflict at the occasion of which the law is called upon. Or in short, the conflict creates its own legal solution.

That gave a first answer to what law is: Law is a phenomenon that emerges under certain situations. It is not just there as a preexisting body of abstract norms, but it is something, some reaction, some need that appears if there is a conflict to be solved.

Law, that was a further consequence, is somehow a side effect of a world in movement and in change, it is a function of something which is happening. It is a dynamic phenomenon, not a static one. It is a correction of something happening and not a correction of something being.

And thirdly, law depends on being articulated within a conflict of colliding and therefore incompatible interests. I.e., law is something that arrives loudly, which in turn has to do with its dynamic aspect just mentioned. The law is articulated, there are outraged arguments, there may be crying or shouting, there are subjects impacted by the conflict and assuming the role of parties of a legal dispute.

LEGAL PRINCIPLES

Now, within this context, parties are relevant only as far as they collide with each other. Any other properties or features of the parties are irrelevant, i.e. no party is of more value than another party. They just collide. And out of just the collision all elements to deal with the case emerge. This quite trivial aspect is nothing less than the principle of Equality before the Law.

Then, only as far as their collision is in contrast with the parties' subjectivity, you have to deal with law. Otherwise, i.e. if a party agrees with the collision there is no need to consider the legal consequences. This—again quite trivial—aspect shows a further well-known principle of law, i.e. the principle of consent or of contract, or in Latin: *volenti non fit iniuria*, no injustice is done to the consenting party.

And a third triviality, so to speak, that can be drawn out of the facts of a conflict is that preexisting positions are stronger than later ones. What you already have, such as your body, your personal belongings, the land you stand on etc. become objects of a conflict if somebody else touches or takes or destroys them. What is then being articulated by the previous holder of these objects is nothing but property and the nonaggression principle or again in Latin: *neminem laedere*, do not hurt anybody.

All these principles are developed out of the conflicts themselves. Historically too, one could say that almost all western legal tradition, not only the common law tradition, the European one as well, have emerged from court cases. The ancient Roman law is primarily court-made law. Even most parts of the famous *Corpus Iuris Iustiniani* were not state made legislation. They were long time collections of court decisions. And private law in general, even in the European continental system, is court-made law. The many codes in that tradition are derivations out of court decisions, at least until the mid-19th century.

All this means that both theoretically as well as historically, principles of law do not need the state. They just come out of the conflicts at stake and of long traditions of courts handling them. You do not need anybody, namely no state legislator, to make law, you just need people and organizations that find it, such as judges, courts, or mediators. This was especially interesting for me as a civil law lawyer accustomed to look first for answers in the state

made code. In any event this brought me close to anarchism, even though I did not say yet the State is illegitimate. That came later.

It came when I thought that those principles of Equality before the Law, of Consent and of Nonaggression should be applied to the state as well, and then realized that the state violates these principles in an almost excessive way:

EQUALITY OF LAW

According to the *lex, rex* slogan, formulated in the Scottish enlightenment by Samuel Rutherford, the king or the state should be subject to law. This is what we call today the “Rule of Law”, i.e. that the state should not act arbitrarily but according to legal rules. And in fact, if you look at the formalities of today’s state behavior you see that the state—usually—corroborates his activities with paragraphs of statutes, ordinances, guidelines etc. The problem, however, is that all these laws are made by the state itself. I.e., the law that should guide and control the state is made by itself!

And so, it is no accident, that the state preaches water and drinks wine (as we say), i.e., the state grants broad privileges to itself while he denies them to normal people. The most prominent case is the explicit distinction between private and criminal law on the one hand and public law on the other. Private law for normal people like you and me or private enterprises, and public law for the State itself. In practice this means that the state allows itself to collect taxes even against the will of the taxpayer while the very same behavior made by a citizen, would be punished as a criminal offense, namely theft. And it furthermore means that in case of litigation between the state and a citizen, it is a state paid court that decides on the case, while an analogous dependence of a judge from one party in a private lawsuit would be prohibited. And there are many more examples. There is an institutionalized violation of the principle of equality before the law, a breach of this important principle by the very fundamental structure of our law system.

A next element of the Rule of Law is Separation of Power, in order to prevent the risk of concentration of state power. Traditionally, we distinguish between the legislative power, the executive power and the judicial power which means that these are three different organizations for these three functions. Now are there three organizations? In reality there is just one! The notion “branches of governments” is as accurate as it is treacherous: Three branches

of the one and very same tree, a concentration of all three powers to one organization. All three powers are on the same payroll, financed by taxes levied by the one and same state.

DEMOCRACY

Now, what about the next principle, the principle of consent we developed from the conflict? Once you scale up this principle from a small-scale contract to society as a whole, you will get to a principle of democracy. Since the state's field of activity is society as a whole—and if the state respects the principle of consent—then it must grant democracy. In a strict sense of the Greek *Demos* and *Kratein*, it is the people who govern themselves. Or in a saying of the French revolution "... that under democracy men are not governed by other men but exclusively by laws, and thus by laws that nobody has made but themselves."

This sounds convincing, but reality is different. Take as an example Switzerland, which is proud of its direct democracy, as opposed to just an indirect, parliamentary one. Here, the figures—on the federal level—show this:

Level of Democracy	quote-part of enact-ments	Ratio of Democracy		Total
Direct Democracy	0.8%	Rate of Approval	55%	0.09082%
		Participation in the Vote	43%	
		Rate of Swiss Citizens	80%	
		Rate of Full Age Citizens	80%	
		"Fading out" Rate	75%	
			11%	
Indirect Democracy via Parliament	25%	Rate of Lists reaching Parliament	66%	0.00003%
		Rate of Candidates reaching Parliament	40%	
			26%	
		Participation in the Election	48%	
		Rate of Swiss Citizens	80%	
		Rate of Full Age Citizens	80%	
		"Fading out" Rate	95%	
			8%	
		Rate of Representation	1/30,000	
		Representation by Parliament	0.00026%	
		Rate of Approval in Parliament	66%	
		Participation in the Vote	75%	
0.00013%				
Legislation Delegated to Executive Branch	74.2%	Representation by Parliament	0.00026%	0.00011%
		Rate of Approval in Parliament	66%	
			100%	
		Participation in the Vote	0.00017%	
		Rate of Approval in Executive	90%	
			0.00015%	
Total	100%	Aggregate Ratio of Democracy		0.09096%

Direct democracy—in the meaning that people vote on material legislative bills—sometimes takes place indeed, but to an almost negligible extent. It is rather an allusion to democracy, than democracy itself. Much more legislation is rendered by the people's

representatives, i.e. the deputies in the two parliamentary chambers. But this is not a representation such as a power of attorney you can grant along with specific instructions and withdraw again, it is rather something like tutorship by a guardian. Because you share “your” representative with 30,000 other “principals,” you are not allowed to give instructions and you cannot withdraw the power. Therefore, the ratio of representation, beside other quantitative modification, must be divided by 30,000 which leads to a very low rate under indirect democracy. And finally, 74 percent of all legislation is not even rendered by the parliament but by the executive branch, which has nothing to do with democracy at all.

When I realized that all the many state interventions such as taxation, economic regulation etc. are based on virtually no consent of the people themselves, which is a flagrant violation of the principles mentioned before including the Nonaggression Principle, I became even more sympathetic with anarchy. It was clear now that the state is not only unnecessary in order to have legal order, but that it is the pure opposite of lawfulness. In other words, with a state you cannot have a legal order.

MORE KNOWLEDGE ABOUT THE LAW

This outcome, in turn, is an exemplary case of the theory mentioned earlier, i.e. that law emerges out of a conflict. The unlawfulness of the state is not just there, it becomes evident only at the many occasions of its interferences with the interests of the people. It is this aggression that creates reactions, argumentations, and hence the counterreaction by the state trying to justify its behavior. Not by accident it refers to principles that are objectively convincing in cases of conflicts, such as equality of law, consent and nonaggression. But since its excuses are false, he turns out to be unlawful, i.e. law forbids its aggression.

In other words, law emerges in case of need and disappears (not when justice is established, but) when unlawfulness is eliminated. Law is the absence of unlawfulness, such as for instance the unlawfulness of the State. Law is essentially negative. It is destructive, but what it destroys is worth being destroyed, namely unlawfulness.

Unfortunately, this does not mean that law is always successful against unlawfulness. Its main adversary is power, and quite often power is stronger than law. So, what about the force of law? How can law have effects on unlawful facts? The answer to this again,

has to do with that interrelation between unlawfulness and law: The force of law comes out of the unlawfulness it reacts with. The heavier the unlawfulness, the stronger the reaction by law. Action equals reaction. The law does not need to be put into force. It is a myth that law needs some strong instance that helps enforcing it, such as the State. Law takes place, you do not need to order it and you cannot escape it. Law is essentially inescapable. Law is what no one can escape from, not you, not me, not the universe, and of course not the state. Law is—and I think this is the answer to my original question—inescapability.

And by the way of law's inescapability, I became an anarchist.

LUDWIG VON MISES, MURRAY ROTHBARD, AND HANS HOPPE

As inescapable as are law and anarchism, as inescapable are Mises, Rothbard and Hoppe.

Ludwig von Mises himself deals in some contexts with inescapability of law, though less of legal laws but of the laws of the market (Mises 1951). He showed how “the discovery of the inescapable interdependence of market phenomena overthrew ... [the] opinion of an ideal state. ... In the course of social events there prevails a regularity of phenomena to which man must adjust his action if he wishes to succeed.” And what convinced me most: “One must study the laws of human action and social cooperation as the physicist studies the laws of nature.” (Mises [1949] 1998, 2). I think it convinced me more than Mises did himself, since in later writings he seems to be somehow reluctant to follow this point of view.

Murray Rothbard was more important for me, namely because he—unlike Mises—explicitly advocated anarchism. After I had already converted to anarchism myself, I came across a small article entitled “Society Without the State,” some few pages, very precisely written in 1975, by an author, so far unknown to me, called Murray Rothbard. And I read sentences like “The basic point, however, is the legal state is not needed to arrive at legal principles or their elaboration...” and

[I]ndeed, much of the common law, the law merchant, admiralty law, and private law in general, grew up apart from the State, by judges not making the law but finding it on the basis of agreed upon principles derived either from custom or reason. The idea

that the State is needed to make law is as much a myth as that the State is needed to supply postal or police service.... (Rothbard [1975] 2016, 283)

That was precisely what I thought too, when I realized that conflicts produce their own solution. That was precisely the reason why the State is not needed. And then, of course, there are these very clear and true sentences: "Thus the State, by its very nature, must violate the generally accepted moral rules, to which most people adhere. ... Thus, the State is a coercive *criminal* organization that subsists by a regularized large-scale system of taxation-theft, and which gets away with it by engineering the support of the majority" (Rothbard [1982] 2016). By the way, it is never a majority, it is always a tiny minority, as demonstrated in my chart above.

So much for the inescapability of Murray Rothbard. And finally comes the inescapability of **Hans Hermann Hoppe**. There is that interesting link from Rothbard to Hans Hoppe: "And yet, remarkably and extraordinarily, Hans Hoppe has proven me wrong. He has done it: He has deduced, an anarcho-Lockean rights ethic from self-evident axioms." What Rothbard alludes to here is Hoppe's concept of argumentation. Its ethics are not derived from sources such as natural law, customs etc. but rational consistency, avoidance of self-contradiction. And it seems to me that this approach is quite close to mine, once you accept that rational consistency is always related to some object. There is no meaningful argumentation without an object, no meaningful legal argumentation without a conflict to argue and to fight about. And the other way round, there is no conflict without subjects articulating their respective positions. In other words, the Hoppean Argumentation is part of the phenomenon that conflicts create their own solution, that they provoke arguments and that these arguments help to find a solution for the conflict.

Hans Hoppe's approach is more on the rational level of how to argue about the conflict, while mine is more on the real level of the conflict as such. We debated these issues on several occasions already, and by this we became good friends, inescapably. Many thanks!

REFERENCES

- Mises, Ludwig von. [1949] 1998. *Human Action: A Treatise on Economics*. Scholar's Edition. Auburn, Ala.: Mises Institute.

———. 1951. *Socialism: An Economic and Sociological Analysis*. New Haven: Yale University Press.

Rothbard, Murray N. [1975] 2016. "Society without the State," Pp. 268–283 in *The Rothbard Reader*, ed. Joseph T. Salerno and Matthew McCaffrey. Auburn, Ala.: Mises Institute.

———. [1982] 2016. *The Ethics of Liberty*. Auburn, Ala: Mises Institute.