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Austrian Environmental Economics Redux: A Reply to Art Carden and Walter Block

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ABSTRACT: In March 2014, I presented a paper on Austrian Environmental Economics in Auburn, Alabama, as the F.A. Hayek Memorial Lecture at the Austrian Economics Research Conference, sponsored by the Ludwig von Mises Institute, which was subsequently published in the *Quarterly Journal of Austrian Economics* (Dolan 2014b), along with comments by Art Carden (2014) and Walter Block (2014). This short paper replies by emphasizing the importance of an institutional framework for environmental mass torts, without which a strict application of libertarian ethics leads to corner solutions in which there is a coordination failure.

KEYWORDS: Austrian school, economics, libertarianism, environmentalism, tradable emissions permits

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INTRODUCTION

I thank the QJAE for the opportunity to reply to Walter Block's (2014) and Art Carden's (2014) comments. Carden's short

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comment, which is supportive of my position on many points and skeptical on others, contains a number of constructive suggestions (including suggestions for further reading) that I will take to heart. Block's comment is much longer and more polemical. Nevertheless, when considered substantively, with rhetorical flourishes left to one side, his remarks confirm the validity of several of my major points, as I will explain.

AUSTRIAN PRAXEOLOGY AND LIBERTARIANISM

Both Carden and Block take me to task, and rightly, for failing to distinguish carefully enough between praxeology, as the value-free methodology of Austrian economics, and libertarian ethics. It is a pity that neither of them was at the conference to make the point from the floor, in which case I could have addressed it on the spot. I do agree that paying more heed to the distinction between praxeology and ethics would strengthen my arguments, and I will try to correct that shortcoming in what follows.

However, while agreeing that praxeology and libertarian ethics are two different things—one a method, the other a system of values—I would like to point out that they are closely related. We can see the relationship with the help of a simple table:

	Statist values regarding ethics and policies	Libertarian values regarding ethics and policies
Neoclassical economic method	Abundantly attested	Significant minority
Austrian economic method	Empty	Universal

The point here is that whereas we can find mainstream practitioners of neoclassical economic methods who profess statist ethical values and support interventionist policies, and others who profess libertarian values and support free-market policies, the box that combines Austrian praxeology with statist ethics and policies is, for all practical purposes, empty.

That is no coincidence. In Chapter 6 of his book *Power and Market*, one of Block's heroes, Murray Rothbard (1962) undertakes what he

calls a "praxeological critique of ethics." He argues that although praxeological methodology itself is value free, it can be applied to refute the logical validity of any and all value systems that oppose free markets. That reasoning suggests that the box is empty because the notion of a statist praxeologist is a logical impossibility. Perhaps it is the absence of any non-libertarian variant of Austrian economics that makes it easy for Austrian writers—even Block himself—to fall into the habit of failing to note when they slip from a praxeological perspective to a libertarian one, or vice-versa.

Furthermore, when it comes to policy analysis, the relationship between praxeological and libertarian reasoning is more complex than Block makes it out to be. Speaking of policies that seek to improve environmental coordination through the better definition and enforcement of property rights, he writes,

> The dismal science *qua* dismal science is limited to exploring and explaining economic reality. Economists, but not in their official capacity, along with everyone else, may then use these findings to "resolve" things. But as value free social scientists, they are precluded from making public policy recommendations. There are libertarian policies: those compatible with the non-aggression principle and private property rights. But there are no, there can be no, Austrian policies. (p. 227)

In practice, though, when Austrian economists set out to analyze any policy proposal, whether it has to do with the environment, banking, antitrust, or anything else, they engage in a two-step process. One step is normative. It asks, "are the means and ends of the proposal consistent with libertarian ethical standards, such as nonaggression?" The other step is positive: it applies value-free praxeological reasoning to the question, "*if* this policy were implemented, *would it then* produce the results claimed by its proponents?" Since all Austrian economists are, in practice, also libertarians, the policy proposal will be rejected if it fails either test, or both of them. Only if it passes both tests is it not rejected.

Yes, I suppose we could say that there is some sense in which a declaration by an Austrian/libertarian economist that a certain policy passes both tests does not make it an "Austrian policy,"and a sense in which rejection of a policy because it fails one or both tests is not a "policy recommendation," but that would be splitting hairs. An ordinary person reading what self-professed Austrian

economists say in self-professed Austrian forums would see statements that could easily be taken as Austrian policy recommendations, whatever name we give them.

ENVIRONMENTAL MASS TORTS AND THE COORDINATION PROBLEM

As I note in my QJAE paper (Dolan 2014b) and at greater length elsewhere (Dolan 2014a), the Austrian approach characteristically views environmental issues as coordination problems. Following that reasoning, environmental problems arise when two or more parties have conflicting uses for a given resource. In an example I use, a hypothetical Vermont farmer, Nancy Norman, wants to use certain land for growing maple trees, while certain Midwest power plants want to use the airshed in which that land is located for disposal of gases and particles that are harmful to maple trees. The problem is how to coordinate these conflicting uses in a way that allows the realization of potentially mutually beneficial arrangements. For example, in return for certain payments or voluntary exchanges of property rights, the parties might agree to use the airshed exclusively for waste disposal, or exclusively for growing trees, or for waste disposal up to a certain threshold that they negotiate, based on their subjective valuations of the costs of pollution abatement and any resulting harm to the trees.

In cases where the parties are unable to achieve coordination, we can often trace the failure, in the words of Roy Cordato (2004), to "a lack of clearly defined or enforced property rights." If so, then one path to improving coordination would be to develop better rules for defining and enforcing said property rights.

And by the way, when writers like Cordato talk of property rights as the key to resolving the environmental coordination problem, I think they have something different in mind from what Block apparently does. Block says, "while property rights are indeed the key to resolving environmental problems, this is a basic element of libertarianism, a normative pursuit, not economics, a positive one." On the contrary, I construe Cordato's proposition as a positive one: *if* we improve the clarity and enforceability of property rights, *then* it will be possible better to coordinate the competing plans of the affected parties. On a normative plane,

I have no doubt that Cordato believes the clear definition and enforcement of property rights to be consistent with libertarian ethics, but the practical importance of what he has to say lies in his positive, not his normative analysis.

What would "clearly defined and enforced property rights" look like? Austrian writers have, from time to time, addressed this question. As an example, I use a set of normative legal principles for environmental property rights that is based on the principle of homesteading, advanced by Rothbard (1982) in a piece that is well known in Austrian circles.

When he comes to this point in my paper, Block correctly zeroes in on the following passage, which presents one of my central propositions:

> The property rights approach works best when the number of parties involved in environmental dispute are few and proximate. When they are many and remote, neither face-to-face bargaining nor common law litigation works well. Many of the most important environmental issues of our times fit this pattern, including urban smog, acid rain, ozone depletion, ocean acidification, and anthropogenic climate change. I will refer to this class of problems as *environmental mass torts*. (Dolan, 2014b, p. 204)

Block critiques my application of this proposition to the Nancy Norman example as follows:

> First, if the midwestern power plants polluted first, our girl Nancy is "coming to the nuisance." Thus, she should not win her case against them. But what is wrong with that?
>
> …Second, "Norman would have to prove actual damage. In any legal action, she would have to bear the cost of expert testimony regarding the science of acid rain, and would have to rebut defendants' testimony that some other agent, say a fungus, might be harming her maple trees. The testimony would have to establish her contentions beyond a reasonable doubt." But what, pray tell, is wrong with that? If I accuse Dolan of stealing my car, I would have to prove this claim before any court, even an extant one, would award me damages. And proving this might be expensive to me. But surely Dolan would not want the court to compel him to pay me under any other circumstances. (pp. 231, 232)

Unfortunately, Block muddies the water here by not following his own admonition to distinguish between the value-free Austrian method of praxeology and libertarian ethics. Let me spell it out.

If Block's "But what is wrong with that?" is construed as meaning "But what is wrong with that as a matter of libertarian ethics?" then the answer is "nothing." I agree that as a matter of ethics, or of normative jurisprudence, no court should find a person guilty of a crime or tort unless the accuser is able to produce evidence of guilt in accordance with the proper legal procedures. To use a noneconomic example, many outsiders who followed news accounts of the O. J. Simpson trial felt sure that the defendant had murdered his wife. Yet, as a matter of judicial ethics, we would not have wanted the judge in the case to conclude it by saying, "Despite the inability of incompetent prosecutors to present the evidence in a way that was convincing to the jury, I sentence the defendant to life in prison."

However, the essence of my argument about the property rights approach to environmental mass torts is not about ethics at all. Rather, it is a value-free if-then proposition that is fully consistent with Austrian praxeology: *If* there are many pollution victims and many sources of pollution and *if* property rights are defined and enforced as outlined by Rothbard, *then* the parties to the dispute will fail to coordinate their conflicting uses for the resource in question. "What is wrong here" is not that the outcome of the property rights approach is unjust, but that as a matter of positive economics, it offers no help in resolving the very coordination problem that it professes to address. The property rights approach fails not the first, but the second of the two tests that I outlined above.

Interestingly, Rothbard himself acknowledges that individual pollution victims would have little chance, under his proposed rules, of prevailing in a tort action against multiple, remote polluters. The reason is that whether there is a causal relationship between emissions and harm to the victim or not, the presence of other emitters or of natural sources is likely to mask the evidence of causation in a way that would make it impossible for the victim to prevail in court. Here is how he puts it in a passage that I quote in my paper:

> The prevalence of multiple sources of pollution emissions is a problem. How are we to blame emitter A if there are other emitters or if there are natural sources of emission? Whatever the answer, it must not come at the expense of throwing out proper standards of proof, and conferring unjust special privileges on plaintiffs and special burdens on defendants. (Rothbard, 1982, p. 87.)

Instead, he says, if the burden of proof is insurmountable, then pollution victims "must assent uncomplainingly."

TRADABLE EMISSION RIGHTS

Another issue that I address in my paper is the Austrian animus against tradable emission rights, or TERs as Block calls them. I maintain that there are no grounds in libertarian ethics for a blanket condemnation of TERs. Rather, I point out that as long as the rights being traded are legitimately held to begin with, the process of trading them is also legitimate. The example I use is an exchange on which trading takes place in rights to noise emission that have been legitimately established by Rothbard's homesteading method.

This proposition seems to throw Block aback. He cannot deny it, so he quickly shifts his target. Immediately after quoting my proposal for trading of homesteaded noise easements—rights that he concedes are legitimately owned by the seller, he writes "But this is not at all what tradable emissions is all about. Rather there is no recognition in mainstream depictions of this phenomenon." He then continues to criticize what he construes as a "mainstream" version of TERs that involves trading of rights that are not legitimately owned.

Block covers his shift of target by contending that "Dolan is extrapolating from a case where the rights to emit noise, or whatever, was licitly owned, to one where it most certainly is not," but that is simply not the case. The "extrapolation" is Block's own, not mine. He and I are in complete agreement that TERs cannot be ethically justified unless the rights in question are licitly owned.

I am not quite sure why Block opposes TERs so fervently, when logically, he should endorse them as applied to legitimately owned emission rights. Once TERs pass the first test, that is, once we establish legitimate ownership, then it is self-evident that they also pass the second. It is fully consistent with positive praxeology to say that voluntary trading of legitimately owned property will advance the cause of coordination (in my example, the coordination of the plans of the owners of the airport and the owners of surrounding homes). If it did not do so, then the parties in question would simply not trade.

Although Block does not say so, my own suspicion is that he may not believe that there are any cases—at least none that fit the profile of environmental mass torts—in which we can, in practice, identify a group of emitters who legitimately own the rights they claim and distinguish them from otherwise similar emitters who do not legitimately own their claimed rights. If there are such cases, I invite Block to specify them and then to explain why a TER approach would not be helpful in facilitating coordination for that case. If there are no such cases, then Block has provided a further validation of my contention that the property rights approach, while conceptually sound, is of little practical use in cases of environmental mass torts.

A PENCHANT FOR CORNER SOLUTIONS

Part of the value of comments is that they often help us to see things more clearly than we did at the outset. Block's comment has helped me in just that way with regard to a point that I did not focus on sufficiently in my original paper: The tendency of the Austrian approach to environmental economics to produce what economists call "corner solutions."

In the case of a coordination problem, a corner solution can be defined as one in which one party gets everything and the other gets nothing. Some situations, for example certain sports and games, have a zero-sum character that makes corner solutions inevitable, but we rarely encounter such situations in economics. If the participants in an economic situation start from a corner solution, they will almost always find it mutually beneficial to move away from the corner through some kind of voluntary exchange.

For example, suppose the legitimate owner of a parcel of land finds that it contains the only known deposit of a new and useful rare earth, "misesium." We would not expect the owner of the deposit to hoard it all, nor to sell the rights to a single user. Rather, we would expect the owner to initiate a process of trading, the likely outcome of which will be to bring quantities of the substance under the ownership of many parties, each of whom has his or her own ideas about how it can best be put to use.

When, following Cordato and others, we formulate environmental issues as problems of coordinating conflicting human purposes for

resources like air, land, and water, we naturally envision a process of free, mutually beneficial adjustments among the plans of numerous parties. In our airport case, that might, for example, involve purchase of land by the airport for a buffer zone; offers of monetary compensation to settle victims' noise complaints; payments by landowners and developers to induce the airport to invest in noise abatement; or even a purchase of the airport by a consortium of landowners with the intention of closing it. Even if no outsider can determine the optimal end point of the coordination process, we can say confidently that voluntary transactions such as those just listed would result in movements toward better coordination.

When the parties are few and proximate, for example, in conflicts over water rights or land use, we can find cases where the property rights approach does enable such compromises. However, in the case of environmental mass torts, property rights approach would, in practice, be more likely to produce all-or-nothing outcomes where one party gets everything and the other gets nothing.

In one kind of corner solution, the polluter gets everything and the victim gets nothing. Block's "What is wrong with that?" response to the plight of my hypothetical Vermont farmer is a case in point: The polluter emits at will and the farmer gets no relief at all. Rothbard appears to agree that this is a likely result when he tells us that, if the nature of an environmental mass tort makes it impossible for pollution victims to meet the required burden of proof, they must "assent uncomplainingly."

We less often encounter the opposite kind of corner solution, in which the pollution victim gets everything and the polluter nothing, but at the very end of his comment, Block helpfully provides an example: At one point in my paper, I raise the issue of climate change. I note that all too often, Austrian writers, when dealing with climate change, remove both their praxeological and libertarian hats in order to put on a third one, that of the amateur climatologist. Rather than do the hard slog of showing how market mechanisms and property rights could resolve the coordination issues raised by climate change, they take the easy route of saying we don't have to worry, because there is no such thing as anthropogenic climate change. In my paper, I admonish Austrians, instead, to approach the topic in the spirit of "What if Chicken Little is right this time?"

Block, to his credit, accepts the challenge, responding as follows:

> [I]f Chicken Little is right, and underarm deodorants, aerosols, refrigerants, etc. really cause global warming, which in turn leads to cancer and other dread diseases, then by gum and by golly, the libertarian would prohibit them at the point of a gun. Using these products would under these wild-eyed assumptions be akin to shooting howitzers up into the air, with no consideration of where they may land. But the point is, libertarians have already responded to this "spirit" called for by Dolan. And the answer is clear. Then, they would be NAP [non-aggression principle] violations. (p. 243)

And, if I may ask, what is wrong with that? Nothing, in terms of libertarian ethics. Everything in terms of coordination. To put it as a value-free, if-then statement, *if* greenhouse gases cause climate change, and *if* we prohibit all such emissions at the point of a gun, *then* there will be no coordination, no balancing of the conflicting interests of polluters and victims. But that result would be the opposite of a free-market solution. It would be literally a *market-free* solution, a solution in which there is no trading and no mutually beneficial adjustments of conflicting plans take place. It would be completely unlike the kind of coordination we get in a market economy when, say, one party wants to use tin to can salmon while another wants to use tin to solder electrical wires, and the prices of tin, salmon, and electrical devices all adjust to reflect the interplay of conflicting interests.

THE BOTTOM LINE

Let me close by again thanking Carden and Block for their helpful comments. Despite their differing styles of presentation, I find that both are generally supportive of my main conclusions:

- To date, the property rights approach, as expounded by writers who are both libertarians and Austrian-school economists, has produced some elegant conceptual analysis of environmental issues but little of practical value for facilitating the coordination in cases of environmental mass torts.
- The missing link is a practically workable institutional framework that would allow us to distinguish which claimed property rights are valid and which are not, and to enforce

those that are valid. Without such an institutional framework, strict application of libertarian ethics inevitably leads to corner solutions in which justice is served but coordination is not.

- If the institutional issues of legitimizing and enforcing property rights could be resolved, then the objection to mechanisms like TERs would vanish and we could begin to move away from the corners toward a genuine resolution of the pressing environmental problems of the day.

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