

REJOINDER TO BLOCK ON COVID

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ABSTRACT: Block (2022) takes issue with Slenzok’s (2021) argument against universal antipandemic restrictions (UAPR) developed in the context of COVID-19. He purports to have concocted a thought experiment that invalidates Slenzok’s analysis. In this brief reply, it is demonstrated that Block’s scenario is beside the point and that his (qualified) pro-UAPR position is premised on a notion of agnosticism which, if followed consistently, would render libertarianism utterly inapplicable to real-life conditions.

I am beyond honored and truly thrilled that such an eminent Austrolibertarian scholar as Professor Block (2022) has replied to the treatment of universal antipandemic restrictions (UAPR) I laid out during the COVID-19 epidemic (Slenzok 2021). That being said, I remain unconvinced by his argument. As the following will show, Block’s case founders on two counts. First, the thought experiment that he introduces as destructive for my reasoning is irrelevant to the context of COVID. Second, Block’s proposing an example immaterial to the situation in dispute stems from a conception of libertarian agnosticism he advocates, which thwarts his (qualified) defense of UAPR. Furthermore, if Block’s approach were to be accepted, libertarians would be left incapable of taking a stand not only on UAPR but also on any real-life problem whatsoever.

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A LIBERTARIAN CASE AGAINST UAPR RESTATED

Libertarianism is a political philosophy centered around natural private property rights to one's own body and to external resources appropriated in the course of homesteading and subsequent voluntary transfers, production, or acts of compensation/restitution (Kinsella 2009). Property rights are ultimate decision-making rights with respect to scarce resources (Hoppe 2021, 10–17; Steiner 1994, 55–108). Such titles exhaust the set of background rights people may have; all human rights are property rights (Rothbard 1998, 113–20; Steiner 1994, 91). In the world we live in, however, not all legally recognized property titles have emerged in this manner. Some resources are held illegitimately. The most evil among the illegitimate property holders is the state, an entity that derives its putative ownership titles precisely from violations of natural rights on a massive, indeed unprecedented, scale (Rothbard 2006, 55–86). Up to this point there is fundamental agreement between Professor Block and myself.

Now, against this normative backdrop, I developed a two-pronged argument against UAPR (Slenzok 2021). First, as regards properties that have identifiable legitimate owners, it is these owners and only they who are in a position to stipulate who is permitted to roam their properties and under what conditions (including health-related ones). Correlatively, everybody else, members of the state included, is duty-bound not to interfere with their decisions. Thus, UAPR covering those venues are patently unjustifiable. Second, if a property has no identifiable rightful owner, no one possesses a right to stipulate the terms of its use. Consequently, no one has a duty not to use it, meaning that everyone, healthy or sick, inoculated or not, is at Hohfeldian liberty to use it (see Hohfeld 1913). As I tried to demonstrate in detail, so-called public property (i.e., locations arrogated to itself by the state) typically falls into this category of no-man's-land.¹ Therefore, the state (and everyone else) has a duty not to impose UAPR that extend to public property, since to do so would be to infringe upon individuals' self-ownership rights.² With

¹ If it does not fall into the no-man's-land category (as is the case with land directly seized by government—for example, during communist collectivization), the ball is again in the court of the true owners to decide who walks in and who does not.

² In Slenzok (2021), I referred to the liberty people have to roam the public domain as naked liberty. This might be somewhat misleading, though. Naked liberty designates nothing other than the absence of duties and legal claims (claim-rights)

respect to both the private and public domain, then, the state must forbear from introducing lockdowns, vaccine mandates, vaccine segregation, and so forth.

By the same token, pace Hans-Hermann Hoppe (2007a, 137–70; 2021, 99–132), the state also ought to repeal all anti-immigration laws. What makes the problems of immigration and UAPR symmetrical is the role played in the analysis of both by the question of ownership rights in the public domain. If, as my argument has it, the public domain is a no-man’s-land (i.e., if no one has a claim-right to it), then everyone is free to traverse it irrespective of their health or citizenship status, provided that others’ self-ownership rights are left intact. If, on the other hand, the public domain is truly a property owned collectively by victims of a state, chiefly its domestic taxpayers (Hoppe 2018, 46; Kinsella 2005), then the owners also have the right to stipulate the terms of its use. This encompasses both the health condition and the origin of users.³

to somebody else’s noninterference. Hobbes’s state of nature would be an example of a universe filled with perfectly naked liberties and no claim-rights whatsoever. By contrast, vested liberty denotes a liberty safeguarded by a protective perimeter of claim-rights. My being free to light up a cigarette in my own apartment would be an instance of such a vested liberty protected by a claim-right (my ownership right in the apartment). Now, it is plain that a given liberty may lie on a continuum between naked and vested. In libertarian justice theory, there exist no purely naked liberties (except maybe those exercised by people who have voluntarily given themselves away into slavery or forfeited all their rights due to crimes committed), since whatever we do, we are shielded from others’ interference by our self-ownership rights. On the other hand, a number of liberties are indeed essentially naked precisely because actions they pertain to are undertaken in a no-man’s-land, meaning that we do not have rights that would correlatively entail others’ forbearance duties save the rights we otherwise have to our bodies and movables (see Steiner 1994, 75–76). That is exactly the case with people roaming the public space (state-claimed roads, sidewalks, parks, arenas, etc.) during epidemics. They must not be shot, battered, robbed, or perhaps even uninvitedly approached (should a virus be virulent enough [see Block and Barnett 2008]), and to this extent their liberty to roam is vested. Yet at the same time no one is entitled to show up where others have already gathered expecting this or that form of protection from possible contagion. It is to this degree that their liberty to roam is naked.

³ An anonymous *Journal of Libertarian Studies* referee levels an objection against the above-outlined argument. He holds that the whole discussion of public property is of no import for the problems of UAPR and immigration, since to draw any prescriptions for the management of public property from its status as a no-man’s-land is a non sequitur. Rather, argues the reviewer, the only valid conclusion would be that the state ought to disband and allow its former possessions to be homesteaded. As long as this does not happen, he holds, whatever laws are passed with respect to the state-claimed land are imposed in violation of natural, libertarian property rights. Yet in the libertarian literature on the immigration issue, the

BLOCK'S MALADY

Professor Block appears to accept the foregoing proprietarian analysis, especially its proimmigration upshot. Nevertheless, he

centrality of the public property question is emphasized by the advocates of open (Gregory and Block 2007; Guenzl 2016) and closed (Dominiak 2016, 92–96; Hoppe 2018, 45–46; Kinsella 2005) borders alike. To my knowledge, the only exception is Gordon (2017, 98), who, much like the referee, interprets Hoppe's original case against free immigration to the effect that "libertarian theory leaves undetermined what course should be followed if public property exists," putting government in a position to design immigration policies based on purely prudential considerations. I find this argument highly implausible. First and foremost, it is odd for a libertarian to maintain that a question concerning the very subject matter of libertarian political philosophy (i.e., the legitimate use of physical violence [Rothbard 1998, 25–26]), should be resolved in a nonprincipled, prudential fashion. After all, barring antivaxxers or foreigners from using public property requires nothing less than stopping them by force. Fortunately, libertarians do not have to give up so easily on making use of our conception of justice. As has been demonstrated both in Slenzok (2021) and in the foregoing summary, that the existence of the public domain is in and of itself a breach of rights does not entail that the state may add insult to injury by committing further rights violations within that domain. And this is precisely what happens when government coerces people into not doing things they are at liberty to do (e.g., walk unvaccinated or without a U.S. visa through a public park). Second, the point made by Gordon and the referee in fact proves the vitality of the public domain ownership issue for the problem of UAPR. For to say that the existence of the public domain allows for the formulation of prudential policy recommendations but no principled policy recommendations is tantamount to conceding that prudently crafted UAPR covering that domain are permissible. The reason they are impermissible is, to reiterate, (a) because the public domain constitutes a no-man's-land, and (b) because the lack of claim-rights to the public domain correlatively implies a Hohfeldian liberty to use it.

Another objection raised by the referee is that the no-man's-land approach to public property leads to strikingly undesirable consequences, such as letting people pitch tents in the middle of a street or permitting the homeless to shoot up heroin in public libraries. Well, this may oftentimes be true, and certainly far more glaringly unwelcome scenarios could be conjured up. Yet in political philosophy, and particularly under a rationalistic, deontological justice theory such as libertarianism, bullets must be bitten every now and then. Indeed, given many other counterintuitive beliefs articulated by libertarian thinkers, libertarians may already see themselves as seasoned bullet biters. (Just think of, for example, Rothbard's [1998, 97–112] views on children's rights.) On the other hand, with respect to specific cases, more factors might be relevant than the land ownership question. As for pitching tents, context is everything. If you camp on a sidewalk, it is probably fine. But if you try to do it on a highway, you jeopardize the lives of other users, just as scavengers stealing parts of railroad tracks do. The same goes for immigration issues: although traversing public property is permissible in principle, sometimes it may not be so. In 2021, Belarus's dictator, Alexandr Lukashenko, started trafficking thousands of immigrants from the Middle East and North Africa to Poland, Lithuania, and Latvia. Although there is no room here to cover the moral complexity of this case, it may be argued that those immigrants are accomplices of an enemy state with clearly hostile intentions, and the authorities of the said European Union countries are in the right building border walls and pursuing pushbacks.

purports to have come up with a scenario that escapes it. Here is his example: “A dread disease, call it XYZ, will kill anyone not inoculated against it. It works through exhaling. All human breathers who are not vaccinated, will kill all others, inoculated or not. That is to say, we no longer need herd immunity of 80–90 percent or so. We need 100 percent. No exceptions at all. Anyone who refuses a jab of it, which works perfectly and has no negative side implications, is in effect a mass murderer. Are the forces of law and order justified in imposing UAPR on every last person on the planet? Absolutely” (Block 2022, 265).

Admittedly, Block’s scenario strikes at a tacit assumption of my argument: namely, that the transmission of a virus does not cross the boundaries of property domains. If it does, the case I made simply does not apply. It seems that the above example proves this much. True enough, if a deadly virus is transmitted by mere breathing, killing everybody wherever they are, then living and breathing is in and of itself a breach of others’ rights that may be permissibly remedied with a compulsory vaccine jab. Borders of property in land have no role to play here, and neither does my argument. But does this prove it wrong? Not in the least bit.

Recall that the title of Slenzok (2021) was “Libertarianism, Property Rights, and the *COVID-19* Pandemic Policies” (italics added). The same goes for Block’s (2020) contribution, which my article was criticizing: “A Libertarian Analysis of the *COVID-19* Pandemic” (italics added), reads the title. Hence, the question arises whether Block’s scenario is in any way analogous to COVID. Of course, the answer is no. Carriers of COVID do not kill all their fellow humans on the planet just by breathing, without even venturing onto the doorsteps of their own homes. Like the flu or the ordinary cold, COVID is contracted via proximate contact with a carrier, which in the vast majority of cases takes place *within* the boundaries of property domains. Therefore, my argument—as a case against *anti-COVID* policies—stands firm.⁴

⁴ It is also worth noting that in Slenzok (2021) I was focusing largely on lockdowns, since as the article was being written (in the fall of 2020), it was they that were on the table. Vaccine mandates were mentioned in the essay only in passing, since they were not yet the talk of the town. And insofar as lockdowns are concerned, they are handled perfectly by my argument. After all, the assumption of my anti-UAPR case (i.e., that COVID is contracted in close contact with others and within the borders of property domains) was also the very rationale for lockdowns.

Having dealt with the thought experiment, let me spend the remainder of this essay discussing Professor Block's broader point, which seems to derail his take on anti-COVID UAPR.

AGNOSTICISM?

I will start by quoting what I take to be the core of Block's (2022, 267–68) agnostic approach to COVID: "I insist upon specialization and the division of labor. Libertarians are experts in that part of ethics having to do with just law, and the use of violence in society. Qua libertarians, none of us are experts in anything else under the sun. Not in boxing. Not in chess. Not in astronomy. And certainly not in epidemiology. Therefore, it ill behooves us, and risks undermining our precious philosophy, to make confident statements about disease, contagion, COVID, the XYZ malady, or any such other matter. We should stick to our knitting."

In other words, Professor Block has found a clever escape route from the obvious challenge presented above: he maintains that whether his monster pestilence and COVID are medically on a par is of no importance insofar as libertarianism is concerned, for libertarians—qua libertarians—have nothing to say about medicine. As ingenious as it may be, this rebuttal strikes one as highly problematic. At the end of the day, all aprioristic theories—of which libertarian ethics is one—need to be applied somehow to empirical reality. As Kant (2000, B75) famously put it in his *Critique of Pure Reason*: "Thoughts without content are empty."

By way of analogy, consider Austrian economics. In this tradition, as in libertarian ethics, the body of the theory is thought of as apodictic. However, contenting oneself with a priori theorems would not get one very far in the pursuit of understanding and explaining real-world processes. As aptly summarized by Hoppe (2007b, 25–26; see also Wiśniewski 2014, 44–45), there are three steps in economic reasoning:

- (1) an understanding of the categories of action and the meaning of a change occurring in such things as values, preferences, knowledge, means, costs, etc.;
- (2) a description of a world in which the categories of action assume concrete meaning, where definite people are identified as actors with definite objects specified as their means of action, with some definite goals identified as values and definite things specified as costs. . . .

(3) a logical deduction of the consequences which result from the performance of some specified action within this world, or of the consequences which result for a specific actor if this situation is changed in a specified way.

To make sense of, for instance, the Great Depression, the *a priori* alone will not do. In the first place, the economist needs to know that the crisis occurred. Before harnessing the Austrian business cycle theory, he also needs to find that in 1929, institutions such as fiduciary media and fractional reserve banking were in operation. Then and only then can he apply his deductive theory to those realities.

The same is true of libertarian ethics. To make an accurate moral judgment in a concrete situation, the libertarian has to (1) correctly understand the ethical theory itself, (2) grasp what is actually going on empirically, and (3) apply the theory accordingly to the case at hand. As an example, think of an evident instance of murder: A approaches B on a crowded street and shoots him dead before dozens of onlookers. In the course of an impeccably reliable trial, the court adjudicates that A's murderous act was inexcusable: he killed B out of envy over the latter's successful career. Now, can libertarians—*qua* libertarians—call a spade a spade by dubbing A a murderer, or would Professor Block advise us to “stick to our knitting” by recounting *ad nauseam* the principles of libertarian justice while declaring forlorn agnosticism as to whether A violated them?

Were this approach right, there would also be no libertarian position on the Gulag, the Great Leap Forward, or the Holocaust; on Stalin, Mao, or Hitler. For these are all historical (and thus empirical) events and figures, and libertarians—*qua* libertarians—are not experts on them. Yet we do not have to succumb to such paralyzing skepticism. Granted: technically speaking, if libertarianism—as it should be—is defined as Block and other Rothbardians define it (i.e., as a justice theory), then no historical proposition can itself constitute a part of the theory's very concept. That is incontrovertibly correct. Hence, in purely conceptual terms, a libertarian may be a haplessly misinformed Gulag denier, Mao worshipper, or, for that matter, prolockdown hawk while still claiming the proud libertarian name. Nevertheless, it is likewise clear that in doing so, he formulates glaringly wrong moral judgments: that Stalin was not guilty of the horrors of the

Gulag, that Mao was, say, a freedom fighter, or that the 2020–21 lockdowns were justified as means of rights protection. And because the prescriptive basis for these judgments is nothing other than libertarianism, then our misguided libertarian comrade most certainly makes them—and errs fundamentally—qua libertarian.

Here, Block might counter that there is a world of difference between the historical examples in question and the health risks involved with COVID. To wit, he might argue, the claim that the Communist and Nazi crimes did happen is somehow obvious or otherwise not up for debate, whereas the same cannot be said of the perils of COVID, or at least it could not back in 2020.⁵ Even if this is the case, it applies to Block’s XYZ malady as well: it is obvious that COVID was unlike it, and it was obvious even in the spring of 2020.

More generally, Block (2020; 2022) is making two distinct points. On the one hand, he emphasizes that “the correct view is one of agnosticism, *since the facts from which either policy could be deduced are not known at present with enough certainty*” (2020, 206–7; italics added). This is an *epistemic* argument: libertarians should embrace agnosticism due to the lack of sufficient knowledge. Regarding this point, I can only repeat that for the purposes of my argument, the available knowledge has been by all means sufficient from the very outset of the pandemic. On the other hand, Block writes “My main criticisms of several leading libertarians are that they are adamant in their views, not properly tentative, *and that they do not carefully state that they are not speaking qua libertarians*” (2020, 207; italics added). This a purely *conceptual* issue: no matter how much we know, we ought to suspend our judgment, or at least keep adding tedious caveats to it, as long as what is known is known to us not qua libertarians. But, to reiterate, following this admonition would render libertarians qua libertarians incapable of passing any case-specific moral judgment whatsoever.⁶

⁵ In fact, history is not free of controversies either. For instance, some revisionist historians, most notably David Irving, argue (rather implausibly) that since Hitler never signed any document regarding the Holocaust, it is dubious whether he knew about it at all. Does condemning Hitler as a perpetrator of the Holocaust therefore also transcend the purview of libertarianism? I do not think so. As the analogy to Austrian economics indicates, assessing the controversy in question and judging Hitler accordingly is part of the job of (applied) libertarian theorists, just as analyzing America’s Great Depression is the Austrian economist’s occupation.

⁶ Professor Block does not appear to believe this himself. Elsewhere, Block (2018, 62) criticizes a libertarian organization for refraining from taking a stand on U.S. foreign

CONCLUSION

This article has highlighted two fallacies besetting Professor Block's analysis of COVID and UAPR. For one thing, he relies on a manifestly irrelevant thought experiment. For another, his extremely parsimonious notion of libertarianism leaves all applications of this philosophy to empirical circumstances on the cutting-room floor.

Let me end on a less philosophical and more pragmatic note. During the recent pandemic, dissenters were castigated time and again by fear-mongering talking heads that they should close their eyes and "heed the experts." Funnily enough, this intellectual dictatorship of physicians even took over the noble name of "critical thinking," as opposed to mindlessly deferring to "conspiracy theories." I am not suggesting that Professor Block has joined this camp. In fact, he—at variance with his own advice but in accordance with truly critical thinking—did the exact opposite, except that he allegedly did so not *qua* libertarian: as regards the threat posed by COVID, Block opined that "the governments of most nations have wildly overestimated the threat to human life posed by this disease" (2020, 207). What I do fear, however, is that his extreme agnosticism may inadvertently invite such dangerous dogmatism. Worse still, by refraining from taking a stand on the most pressing challenges of contemporary politics (which Block's agnosticism logically commits us to do), libertarians would help the builders of the totalitarian therapeutic-welfare state proceed uninterrupted by any critical voice for liberty. It is this strategy that, if adopted, would really "undermine our precious philosophy" (Block 2022, 268).

policy. He avers: "There are only three broad areas on which libertarians may have a position: economics, personal liberties, and . . . foreign policy." In fact, given Block's agnostic statements on UAPR, one might think that libertarians can have a position on none of these fields. After all, UAPR are precisely an economic and personal liberties issue. Furthermore, although many (though surely not all) libertarians do have expertise in economics, this is because they just happen to be economists and libertarians at the same time. *Qua* libertarians, their views on the nature of welfare or the causes of business cycles are as good as those of cabdrivers. Finally, as regards foreign policy, hardly any libertarian scholar, including Professor Block, is an international relations or area studies expert. And yet Block is known for making plenty of bold foreign policy statements, some of which, parenthetically, go far beyond the remit of ethics and ethical assessment by, in his own words, "pontificating" (Block 2020, 215) extensively on purely factual matters (see, e.g., Block's [2023] comments on the ongoing Russo-Ukrainian war and its causes).

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