

## ARTICLES

Keynes and Plato.....	3
<i>Edward W. Fuller</i>	
Humanism: Progressive Philosophy at Odds with Itself.....	42
<i>James A. Montanye</i>	
Does Being a Libertarian Entail a Necessary Commitment to Open Borders? .....	73
<i>Charles Protheroe</i>	
A Defense of Natural Procedural Rights.....	101
<i>Lamont Rodgers</i>	
Libel, Slander, and Reputation According to Rothbard's Theory of Libertarian Law.....	116
<i>Walter Block and Jacob Pillard</i>	
The Right to Property .....	143
<i>Carlton M. Smith</i>	
The Libertarian Quest for a Grand Historical Narrative.....	156
<i>Hans-Hermann Hoppe</i>	
Who Should Decide What Goes into a Can of Tomatoes? Food Laws from a Voluntaryist Perspective .....	188
<i>Carl Watner</i>	
A Libertarian Analysis of the COVID-19 Pandemic .....	206
<i>Walter E. Block</i>	





# JOURNAL OF LIBERTARIAN STUDIES

FOUNDING EDITOR: Murray N. Rothbard (1926–1995)

EDITOR: David Gordon

ASSOCIATE EDITOR: Timothy Terrell

PUBLICATIONS DIRECTOR: Judy Thommesen

TYPESETTER: J. Mark Stanley

## EDITORIAL BOARD

Marco Bassani, *University of Milan*  
Joseph Becker, *Denver, Colorado*  
Bruce Benson, *Emeritus, Florida State University*  
Stefan Blankertz, *Gestalt Institute of Cologne*  
Walter Block, *Loyola University-New Orleans*  
Hardy Bouillon, *University of Trier*  
Gerard Bramouille, *Emeritus, Aix-Marseille III University*  
Paul Cantor, *University of Virginia*  
Enrico Colombatto, *University of Turin*  
Cristian Comanescu, *Mises Institute of Romania*  
David Conway, *Emeritus, University of Middlesex*  
Raimondo Cubeddu, *University of Pisa*  
Jesus Huerta de Soto, *Universidad Rey Juan Carlos*  
Pierre Desrochers, *University of Toronto at Mississauga*  
Thomas DiLorenzo, *Loyola University-Maryland*  
Frank van Dun, *University of Ghent*  
Paul Gottfried, *Emeritus, Elizabethtown College*  
Jeffrey Herbener, *Grove City College*  
Jörg Guido Hülsmann, *University of Angers*  
Jeffrey Hummel, *San Jose State University*

Peter Klein, *Baylor University*  
Peter Kurrild-Klitgaard, *University of Copenhagen*  
Bertrand Lemennicier, *Emeritus, University of Paris Pantheon-Assas*  
Carlo Lottieri, *University of Verona*  
Christian Michel, *Geneva, Switzerland*  
Roberta Modugno, *Roma TRE University*  
Dario Fernandez-Morera, *Northwestern University*  
Robert Nef, *St. Gallen, Switzerland*  
Angelo Petroni, *University of Bologna*  
George Reisman, *Emeritus, Pepperdine University*  
Morgan Reynolds, *Hot Springs, Arkansas*  
Joseph Salerno, *Emeritus, Pace University*  
Pascal Salin, *Emeritus, University of Paris-Dauphine*  
Frank Shostak, *AAS Economics*  
Josef Sima, *CEVRO Institute*  
Barry Smith, *SUNY-Buffalo*  
Mark Thornton, *Mises Institute*  
Thomas Woods, *TomWoods.com*



## KEYNES AND PLATO

EDWARD W. FULLER

*ABSTRACT:* The central thesis of this article is that Plato's philosophy is the foundation of Keynesian economics. First, Plato's philosophy and his socialism are discussed and it is shown that Keynes was a disciple of his. Next, evidence is presented to show that Keynes advocated a brand of socialism that was virtually identical to Plato's. Finally, the paper demonstrates the Platonic structure of Keynesian economics.

*KEYWORDS:* socialism, Plato, John Maynard Keynes

### INTRODUCTION

It is impossible to completely understand John Maynard Keynes (1883–1946) and his economics without understanding his early philosophical beliefs. His main intellectual interest as a young man was philosophy, not economics. And later, when he turned to economics, he developed Keynesian economics along the lines of his early philosophical beliefs. Robert Skidelsky (2009, 56) agrees that “his economic work was philosophically inspired.” Thus, as Rod O'Donnell (1996, 214) observes, “to understand Keynes's economics fully, we must first take a step backwards and come to grips with his philosophy.”

Conventional accounts of Keynes's intellectual development emphasize the role of his ethical master George Edward Moore (1873–1958). However, ethics is only one branch of philosophy, and any ethical theory must rest on the more fundamental branches

---

Edward Fuller (Edward.W.Fuller@gmail.com), MBA, is a graduate of the Leavey School of Business.



of metaphysics and epistemology. Unfortunately, scholars have almost totally neglected these areas of Keynes's thought. No doubt, this neglect has been convenient for his defenders. The protectors of the Keynesian faith are desperate to portray Keynes as one of history's great liberals (Harrod 1951, 192; Skidelsky 1992, xv; 2009, 157). But his metaphysical and epistemological thought is totally incompatible with liberalism. In metaphysics and epistemology, Keynes's master was the father of socialism: Plato (c. 428–347 BC). Those desperate to associate Keynes with liberalism have overblown Moore's influence at the expense of Plato's.

The central thesis of this article is that Plato's philosophy is the foundation of Keynesian economics. The following section discusses Plato's metaphysics, epistemology, and political philosophy. Section 2 provides evidence that Keynes was deeply influenced by Plato and adopted his metaphysics and epistemology. Section 3 examines the many similarities between Plato's and Keynes's political philosophies. Finally, section 4 illustrates the Platonism inherent in Keynesian economics through a *reductio ad absurdum*.

## 1. PLATO'S PHILOSOPHY AND POLITICS

Before Plato, the Greek philosopher Heraclitus (f. 504 BC) argued that humankind lives in a world of constant change. As Heraclitus exclaimed, "Everything is in flux and nothing is at rest" (Plato, *Cratylus* 402a). Although it may appear that something exists in an unchanging state, this is just a trick played on the mind by the unreliable senses. Given that everything is constantly changing, Heraclitus concluded that nothing can truly exist. But if everything is constantly changing, if nothing truly exists, then it is impossible to have any objective knowledge about reality. After all, it is impossible to know that which does not exist. As Karl Popper writes, "If all things are in continuous flux, then it is impossible to say anything definite about them. We can have no real knowledge of them" (Popper 1945, 23; Guthrie 1975, 32). Heraclitus's theory of flux made him the father of the Sophists, the Greek philosophers who argued that it is impossible to have any objective knowledge of reality.

Plato's goal was to refute the Sophists. He wanted to show that it is possible for human beings to have objective knowledge about reality. Of course, Plato could not deny that things change in this world. But to show that objective knowledge is possible, he felt compelled to show that there are some things that do not change.

Taking a cue from the Pythagoreans, Plato's solution was to argue that there are two different realities. He posits "two kinds of existences, the visible and the invisible" (*Phaedo* 79a). The visible reality in which human beings live is Heraclitus's world of flux. Beyond this visible and changing reality, there is an invisible reality that is completely devoid of change. This invisible and unchanging reality is Plato's famous world of Forms. As Plato writes:

[The world of Forms] keeps its own form unchangingly, which has not been brought into being and is not destroyed, which neither receives into itself anything else from anywhere else, nor itself enters into anything else anywhere, is one thing. It is invisible—it cannot be perceived by the senses at all—and it is the role of understanding to study it. [The visible world] is that which shares the other's name and resembles it. This thing can be perceived by the senses, and it has been begotten. It is constantly borne along, now coming to be in a certain place and then perishing out of it. (*Timaeus* 52a)<sup>1</sup>

W. T. Jones summarizes Plato's theory of two realities as follows:

According to Plato, reality is not exhausted by the world of sense perception. This world of sense perception is the world of physical objects in space and time; but besides this world, different from it but standing in intimate relation to it, is another world—nonphysical, nonspatial, nontemporal. This world Plato called the world of [Forms].... Plato believed that there is a world of Forms, over and beyond the sensible world, and that these forms are nonphysical, nonspatial, and nontemporal, yet very real. (Jones 1952, 103–04; Copleston [1946] 1993, 166; Guthrie 1975, 14, 330)

Plato maintained that it is impossible to obtain objective knowledge about the visible world. However, to Plato it is possible to have objective knowledge about the world of Forms. In fact, all objective knowledge is knowledge of the world of Forms (Copleston [1946] 1993, 149; Jones 1952, 105). This means that the world of Forms is the higher, truer reality. The visible reality in which humans live is merely a poor copy, or distorted reflection, of the perfect and immutable world of Forms.

Plato's metaphysical theory of two realities created an epistemological problem: How do human beings, confined to this lower

---

<sup>1</sup> Plato also expresses his theory of two realities with his Allegory of the Cave (*Republic* 514a–520d). The cave is Plato's analogy for the visible world in which humans live, while the world outside the cave is his analogy for the world of Forms. See Copleston ([1946] 1993, 160) and Jones (1952, 114).

reality, acquire knowledge from the higher world of Forms? Enter Plato's theory of the soul, or psychology. Plato argued that the soul exists in the world of Forms prior to birth:

If those realities we are always talking about exist, the Beautiful and the Good and all that kind of reality, and we refer all the things we perceive to that reality, discovering that it existed before and is ours, and we compare these things with it, then, just as they exist, so our soul must exist before we are born. (*Phaedo* 76d–e)

Since the soul existed in the true reality before birth, it contains all of the objective knowledge from the world of Forms. In contrast to Aristotle, who argued that the human mind is a blank slate (*tabula rasa*) at birth, Plato argued that human beings are born with innate knowledge from the world of Forms.

Again, Plato is faced with an epistemological problem: Why do most humans seem incapable of accessing the soul's objective knowledge from the world of Forms? Plato's solution is his theory of recollection. He argues that the process of being born into this reality causes humans to forget the soul's objective knowledge from the world of Forms. To Plato, acquiring knowledge, or learning, involves remembering the knowledge we possessed while the soul existed in the world of Forms: "For us learning is no other than remembering. According to this, we must at some previous time have learned what we now remember. This is possible only if our soul existed somewhere before it took on this human shape" (*Phaedo* 72e–73a; *Meno* 81c–e). Clearly, Plato's metaphysics requires his epistemology, and vice versa. Metaphysically, there are two realities, and epistemologically, learning in the lower reality means remembering objective knowledge from the higher reality. Frederick Copleston writes on Plato's remembrance theory:

The [Forms] exist in their heaven....Plato's way of speaking about the... [Forms] clearly supposes that they exist in a sphere apart [from the world of Forms]. Thus in the *Phaedo* he teaches that the soul existed before its union with the body in a transcendental realm, where it beheld the subsistent intelligible entities or [Forms]....The process of knowledge, or getting to know, consists essentially in recollection, in remembering the [Forms] which the soul once beheld clearly in its state of pre-existence. ([1946] 1993, 166; Guthrie 1975, 249, 329, 426)

The soul is Plato's indispensable link between his metaphysics and epistemology. According to Plato, the soul consists of three parts (*Republic* 435b–42d; *Phaedrus* 246a–b; Copleston [1946] 1993,

208–10).<sup>2</sup> The first part of the soul is the appetitive soul. This is the lowest part of the soul, and it drives the human desire for food, shelter, wealth, and the like. The second part of the soul is the spirited soul. It is the middle part of the soul, and it is driven by the passions or emotions. The spirited soul impels human beings to power and glory. Finally, the highest part of the soul is the rational soul, and it is driven by reason. According to Plato, every soul contains all three parts: appetitive, spirited, and rational. Importantly, however, the three parts are not equal in every person. One part of the soul tends to dominate each person. In most people the appetitive soul dominates, in some the spirited soul dominates, and in special cases the rational soul dominates.

Plato divides society into three separate classes: the producers at the bottom, the auxiliaries in the middle, and the guardians at the top. These three classes correspond to the three-part soul (*Republic* 441c; Jones 1952, 136–39). The producers are dominated by the appetitive soul, and the money motive is their defining characteristic. Just as the appetitive part of the soul is the lowest part of the soul, the producers are the detestable, money-motivated class at the bottom of society. The auxiliaries are the soldiers, and they are governed primarily by the spirited soul. Finally, the guardians are the philosophers. The guardians are the blessed class, the class whose souls are ruled by reason. Unfortunately, most human beings are dominated by the appetitive soul, and only a special few are dominated by the rational soul. Hence, most members of society are in the depraved producer class, while the blessed guardian class contains only a small number of natural elites (*Republic* 428e).

Plato's division of society into three classes is the key to his politics. Based on his class theory, Plato holds that a nonviolent, spontaneous order is impossible. Since the masses, or producers, are dominated by the appetitive soul, social order must be imposed with systematic government violence.<sup>3</sup> Moreover, the depravity of

---

<sup>2</sup> Plato also expresses his theory of the three-part soul in his Myth of the Metals (*Republic* 412a–415c).

<sup>3</sup> Generally, the ancient Greeks failed to understand how society can be organized nonviolently, or spontaneously, via the invisible hand. Like Plato, Heraclitus and the Sophists advocated violent methods of social organization. Heraclitus claims, "We must know that war is common to all and strife is justice" (*Fragments* 62). For the Sophists Callicles and Thrasymachus, "the superior should take by force what

the masses means that they must be barred from participation in politics; democracy is out of the question:

A mass of any people whatsoever would never be able to acquire this sort of expert knowledge and so govern a city with intelligence...we must look for that one constitution, the correct one, in relation to a small element in the population, few in number, or even a single individual. (*Statesman* 297b–c; Jones 1952, 146–47)<sup>4</sup>

Naturally, Plato insists that the ruler must come from his own class, the guardians. Why? The producers are almost totally removed from the world of Forms. Consequently, they have no real objective knowledge of reality. The auxiliaries are superior to the money-motivated producers, but they are also too far removed from the world of Forms to rule. Only the guardians have an intimate connection with the world of Forms; only the philosophers have objective knowledge of what is true and good (*Republic* 476d–80a). Thus, Plato famously advocates the rule of the philosopher-king:

Until philosophers rule as kings or those who are now called kings and leading men genuinely and adequately philosophize, that is, until political power and philosophy entirely coincide, while the many natures who at present pursue either one exclusively are forcibly prevented from doing so, cities will have no rest from evils, Glaucon, nor, I think, will the human race. (*Republic* 473c–d)

What kind of economic system must the guardians impose? Plato's ideal republic is a socialist, or communist, republic.<sup>5</sup> As Copleston writes, "Plato expressly clings to communism as an ideal" ([1946] 1993, 235; Popper 1945, 40–41). Goldsworthy Lowes Dickinson, one of Keynes's mentors, admits, "[Plato] was, in

---

belongs to the inferior....the better should rule the worse" and "justice is nothing other than the advantage of the stronger" (*Gorgias* 488b; *Republic* 338c).

<sup>4</sup> Plato had personal reasons to reject democracy. He was born into a noble family that despised democracy. His uncle, Charmides, and his cousin, Critias, were members of the notorious Thirty Tyrants (Jones 1952, 92; Guthrie 1975, 11). This group attempted to abolish Athenian democracy in 404 BC. Plato's contempt for democracy only intensified when Athenian democrats executed his master Socrates.

<sup>5</sup> As Ludwig von Mises writes, "There is no economic difference between socialism and communism. Both terms, socialism and communism, denote the same system of society's economic organization, i.e., public control of all the means of production....The two terms, socialism and communism, are synonyms" ([1956] 2006, 38; [1922] 1981, 497; [1949] 1998, 259, 713). Also see note 20.



fact, a communist” (1931, 80; [1896] 1911, 96). Plato advocated a communist republic ruled by an elite philosopher-king.

Many interpreters attempt to moderate Plato by insisting that he only advocated communism for the guardians and auxiliaries. For example, Dickinson argues, “The communism of Plato...applied only to the guardians and soldiers, and not to the productive class on whom they depended” ([1896] 1911, 99). On the contrary, Plato advocates communism for all:

You'll find the ideal society and state, and the best code of laws, where the old saying “friends' property is genuinely shared” is put into practice as widely as possible throughout the entire state....[I]n such a state the notion of “private property” will have been by hook or by crook completely eliminated from life. Everything possible will have been done to throw into a sort of common pool even what is by nature “my own.” (*Laws* 739c, 877d–e; *Republic* 423e–24a)

Certainly, it would be impossible for the guardians and auxiliaries to live in communism without imposing socialism on the producers as well. The guardians and auxiliaries do not produce any goods, let alone the basic goods required for survival. To survive, the guardians would have to systematically pilfer goods and services from the producers. This would require the use of systematic government violence against the producers and their property.<sup>6</sup> Moreover, the guardians would have to exercise significant, if not complete, control over production. The guardians and auxiliaries require certain goods to rule the city-state and wage war, and the guardians would have to force producers to produce those goods in the right quantity and quality at specified times. In turn, this would require the guardians to control key raw materials and capital goods.

Socialism is defined as government control of production (Schumpeter [1942] 2006, 167). Undoubtedly, Plato's ideal society would require extensive government control over production. As Jones writes, “Interference, or intervention, by the state is necessary, Plato held, in every aspect of life....[A]ll would be controlled and regulated from above” (1952, 149–50). And since people can only consume what is produced, government control of production also

---

<sup>6</sup> As Mises stressed, institutionalized violence against person and property is the essence of socialism: “Socialism is the expression of the principle of violence” ([1922] 1981, 320; Huerta de Soto [1992] 2010, 49, 84–85).

gives it control of consumption. In the end, Plato's ideal republic would be a full-blown socialist republic.

All brands of socialism require government control over the size of the population. As Ludwig von Mises writes, "Without coercive regulation of the growth of population, a socialist community is inconceivable. A socialist community must be in a position to prevent the size of the population from mounting above or falling below certain definite limits" ([1922] 1981, 175). Like every consistent socialist, Plato advocates totalitarian controls on the size of the population:

[The guardians'] aim will be to keep the number of males as stable as they can, taking into account war, disease, and similar factors, so that the city will, as far as possible, become neither too big nor too small....And then, as the children are born, they'll be taken over by the [government] officials appointed for the purpose...[T]hey'll take the children of good parents to the nurses in charge of the rearing pen situated in a separate part of the city, but the children of inferior parents, or any child of the others that is born defective, they'll hide in a secret and unknown place, as is appropriate....A woman is to bear children for the city from the age of twenty to the age of forty, a man from the time that he passes his peak as a runner until he reaches fifty-five. (*Republic* 460a–e)

In addition to the size of the population, Plato advocates government control over its quality. He holds that government must prohibit individuals from procreating with members of other classes: "The intermixing of [producers] with [auxiliaries] and [producers] with [guardians] that results will engender lack of likeness and unharmonious inequality" (*Republic* 546e–547a). He even recommends killing inferior children to promote the quality of the human race: "The best men must have sex with the best women as frequently as possible, while the opposite is true of the most inferior men and women...[I]f our herd is to be of the highest possible quality, the former's offspring must be reared but not the latter's" (*Republic* 459d; Adam [1902] 2010, 357–60; Popper 1945, 44). In short, Plato was an early father of eugenics (Taylor [1926] 1955, 275; Copleston [1946] 1993, 229).

Plato was a sexist who held that women are inferior to men.<sup>7</sup> He proclaims, "Do you know of anything practiced by human beings in

---

<sup>7</sup> Plato allowed women to be guardians, and this has led some to argue he was a feminist. But as Gregory Vlastos says, "In his personal attitude to the women in his own contemporary Athens Plato is virulently anti-feminist" (1989, 116). On Plato's anti-feminism, see Annas (1976) and Buchan (1999).

which the male sex isn't superior to the female in all these ways?... It's true that one sex is much superior to the other in pretty well everything....In every way of life women are inferior to men" (*Republic* 455c–d, 388a, 431c, 557c, 563b, 605e). Plato's sexism tainted his politics. As Dickinson notes, "Woman, in fact, was regarded as a means, not as an end; and was treated in a manner consonant with this view" ([1896] 1911, 169). Plato endorses common ownership, or communism, in women: "All these women are to belong in common to all the men... [N]one are to live privately with any man...[T]he children, too, are to be possessed in common, so that no parent will know his own offspring or any child his parent" (*Republic* 457d, 423e–24a).

Like all socialists, Plato despised money and the money, or profit, motive. For Plato, the love of money is detestable, and the producers "are by nature most insatiable for money" (*Republic* 442a). Plato wants individuals to remove themselves from earthly life and live in contemplation of the world of Forms (*Phaedo* 65a–66a). The money motive distracts the soul and prevents the producer from contemplating the higher reality: "The [producer] types pull the constitution towards money-making and the acquisition of land, houses, gold, and silver, while both the [guardians and auxiliaries]—not being poor, but by nature rich or rich in their souls—lead the constitution towards virtue" (*Republic* 547b). For guardians and auxiliaries, "it is unlawful to touch or handle gold or silver" (*Republic* 417a). He wanted to outlaw the producers from hoarding gold and silver: "No private person shall be allowed to possess any gold or silver, but only coinage for day-to-day dealings" (*Laws* 742a). Scorn for money and the profit motive has been a hallmark of socialist thought since Plato.

Plato's ideal republic is a socialist republic ruled by a totalitarian dictator. As Popper (1945, 149) stresses, "Plato's political programme is purely totalitarian." Mises agrees: "Plato... elaborated a plan of totalitarianism" (1962, 120, 85–86).<sup>8</sup> And

---

<sup>8</sup> Some interpreters deny Plato's totalitarianism. But C. C. W. Taylor writes, "It is... uncontroversial that the ideal state of the *Republic* is a totalitarian state. Where there is room for dispute is on the question of what kind of totalitarian state it is" ([1886] 1999, 282). Plato attempted three times to establish a totalitarian state in Syracuse (Jones 1952, 101). Further, as Popper writes, "[Plato's] Academy was notorious for breeding tyrants" (1945, 229n25). At least eight of Plato's students either became tyrants or attempted to become tyrants: Callippus of Syracuse, Chaeron of Pellene, Clearchus of Heraclea, Coriscus of Skepsis, Euagon of Lampsacus, Erastus of Skepsis, Hermias of Atarneus, and Timolaus of Cyzicus.

how did Plato justify the tyranny of the philosopher-king? With his metaphysics and epistemology. To Plato, the human race comprises three fundamentally different species, or animals. Most souls are cursed to domination by the depraved appetitive soul. Given the depravity of the masses, totalitarian socialism must be imposed to establish social order and usher in the utopia. And who must rule the socialist state? Absolute dictatorial power must belong only to the elite philosophers, those blessed few who are dominated by the superior, rational soul. All must submit to the omnipotent philosopher-king, for only he is endowed with the objective knowledge needed to establish the earthly utopia.

A mystic is a person who claims to obtain objective knowledge from a supernatural source. Clearly, Plato was a mystic: "That he was a theist, deeply religious and with more than a touch of mysticism in him, no one would deny" (Guthrie 1978, 33; Dickinson 1931, 76, 194). His metaphysical theory of the world of Forms is a mysticoreligious theory. Even a devoted Platonist such as Alfred E. Taylor ([1926] 1955, 285) must admit that "when the forms are mentioned in a Platonic dialogue, their reality is neither explained nor proved." Questioning Plato is forbidden, however. Any person with the audacity to question the existence of the supernatural world of Forms must have a defective soul. The chief virtue of the ignorant producer is uncritical obedience to the omniscient philosopher-king.

## 2. KEYNES'S PLATONIC METAPHYSICS AND EPISTEMOLOGY

Although Plato's influence on Keynes is almost universally neglected, some scholars have hinted at the connection. For example, O'Donnell admits in a footnote, "It is possible to view Keynes's philosophy as a variety of Platonism" (1989, 345n32). Athol Fitzgibbons acknowledges that "even in the *General Theory*, there remain suggestive structural similarities between Keynes's political philosophy and Plato" (1988, 174, 177). Still, sympathetic commentators have been reluctant to explore his Platonism in any detail.

Keynes became a disciple of Plato when he was an undergraduate at King's College, Cambridge. John P. Hill notes, "There had always been something of a Platonic tradition at Cambridge" (1976, 3). As an undergraduate, Keynes surrounded himself with the Cambridge philosophers George Edward Moore, Goldsworthy Lowes Dickinson, and John M. E. McTaggart. Soon after he arrived

at Cambridge in October 1902, Keynes was invited to join Dickinson's Discussion Society (Skidelsky 1983, 112).<sup>9</sup> In early 1903, he attended Moore's lectures on ethics and McTaggart's lectures on metaphysics (Keynes 1903a, 1903b). On February 28, 1903, he was "born" into the Cambridge Apostles, a secret society of which Moore, Dickinson, and McTaggart were key members (Moggridge 1992, 66).

Keynes read Moore's *Principia Ethica* in October 1903, just after it was published, and he praised it as "a stupendous and entrancing work, the greatest on the subject" (1903c). As Skidelsky says, Moore's *Principia Ethica* was "the most important book in [Keynes's] life" (1983, 119). Unfortunately, Keynes's defenders have failed to stress Moore's Platonism.<sup>10</sup> Moore's fellowship dissertation was titled *The Metaphysical Basis of Ethics*, and he acknowledges, "So far therefore as general philosophical scheme goes, the standpoint here taken up seems to agree most with that of Plato" ([1897] 2011, 14; [1898] 2011, 128). He boasted on August 14, 1898, "I am pleased to believe that this is the most Platonic system of modern times" (1898; Hylton 1990, 137).<sup>11</sup>

Plato's influence in *Principia Ethica* is most apparent in Moore's definition of the good. For Plato, good is an indefinable Platonic Form, and the soul contains innate, or intuitive, knowledge of the good from the world of Forms (*Republic* 476a, 507b, 509b, 517b; *Phaedo* 75d, 77d; *Parmenides* 130b, 135c). As Taylor writes, "the apprehension of [the good] is strictly 'incommunicable' [indefinable].... Either a man possesses it [intuitively] and is himself possessed by it, or he does not, and there is no more to be said" ([1926] 1955, 231, 289; Copleston [1946] 1993, 178, 189). As with

---

<sup>9</sup> Dickinson is perhaps the most neglected figure in Keynes's intellectual development. The Platonist Dickinson wrote in August 1884, "I've just descended from a seventh heaven.... [I've been] reading and meditating on Plato's *Symposium*.... I'm 'sitting at Plato's feet' at present, and have really never experienced such 'ecstasy'" (quoted in Forster 1934, 43). He proclaimed, "I was led by Plato (among other things) to a belief that there was some supernatural mystic avenue to truth" (1973, 67). In May 1908, Dickinson helped secure Keynes a lectureship at Cambridge (Moggridge 1992, 178–79). Unfortunately, the voluminous Keynes-Dickinson correspondence did not survive (Skidelsky 1992, 692).

<sup>10</sup> As O'Donnell admits, "It is significant that a Platonic form of realism pervades... Moore's *Principia Ethica*" (1990, 338n8).

<sup>11</sup> Lytton Strachey aligned Moore with Plato: "[Lytton] saw Moore as another Plato, and *Principia Ethica* as a new and better *Symposium*" (Holroyd [1967] 2005, 89).

all other Platonic Forms, only the philosophers possess objective knowledge of the good: “Most men [are] incapable of knowing the good” (Jones 1952, 146).

Moore was a consequentialist. He argued that we must choose those actions that produce the greatest good. Being a consequentialist, Moore held that “‘good’ is the notion upon which all Ethics depends” ([1902] 1991, 105; 1903, 142). So what is good? Moore built his ethical theory upon Plato’s mystical theory of the good: “if I am asked ‘How is good to be defined?’ my answer is that it cannot be defined, and that is all I have to say about it” (1903, 5). He says, “I deny good to be definable” ([1902] 1991, 13; 1903, 7–8). As Tom Regan explains,

The similarities between Moore’s views and those of Plato’s are unmistakable....[W]hat Moore means when he claims that “Good is indefinable” is barely distinguishable (if distinguishable at all) from what Plato would mean if he said “the Form (or Idea) of Good is indefinable”....Moore explicitly acknowledges the Platonic roots of the metaphysics that grounds his ethical theory. (1991, xxxii)

Like Moore, Keynes was a consequentialist and believed that action must aim at producing the greatest good. And what is good in his view? He writes, “I grant with Moore that good is a simple and indefinable quality which I can only identify by direct inspection [intuition]” (1906a, 2). He claimed to possess “reliable intuitions of the good” (Keynes 1971–89, 10:447; hereafter cited as CW). Following Plato, Keynes held that the good is a mystical Platonic Form only accessible to the special elite: “How amazing to think that we and only we know the rudiments of the true theory of Ethic” (1906b, 123–24). By adopting the Plato-Moore definition of the good, Keynes rooted his ethical theory in Plato’s metaphysics and epistemology.

Keynes’s main philosophical work is *A Treatise on Probability*. Although it was not published until 1921, *A Treatise on Probability* was a reworking of his fellowship dissertation. The fundamental ideas contained in the dissertation and *A Treatise on Probability* can be traced to a paper he read to the Apostles on January 23, 1904, entitled “Ethics in Relation to Conduct” (Keynes 1904a; O’Donnell 1989, 12). On September 27, 1905, he produced his first outline of his dissertation, *Principles of Probability*. His dissertation was rejected on March 21, 1908, and the revised dissertation was finally accepted on March 16, 1909 (Keynes 1908, 1909).

Keynes's theory of probability is called the logical theory of probability, and he developed it in opposition to the frequency theory of probability. According to the frequency theory, empirical observation is the only way to gain objective knowledge of probability. For example, consider the probability of rolling a three-spot on a die. In the frequency theory, the probability can only be found by throwing the die a large number of times in the real, visible world. After throwing it many times, the observer counts the number of times a three-spot occurred. This frequency is the probability of throwing a three-spot on a die.

The frequency theory is incompatible with Plato's philosophy. To Plato, empirical frequencies from the Heraclitian flux can never provide any objective knowledge of probability: "We shall not look for knowledge in sense-perception at all" (*Theaetetus* 187a; *Phaedo* 65a–66a). Being a good Platonist, Keynes rejected the frequency theory: "this view of probability upon [empirical] series is certainly false" (1904, 11).<sup>12</sup> Instead, he argued that probability is mental, or "purely logical" (1908, 18; CW, 8:4). Just as Plato argued that the mind possesses innate knowledge of Forms, Keynes argued that the mind possesses innate, or intuitive, knowledge of probability. In the case of throwing a three-spot, the probability is determined by mental contemplation of the perfect, eternal die in the world of Forms. On Keynes's logical theory, probabilities are mystical Platonic Forms that only exist in the mental realm of ideas. At bottom, *A Treatise on Probability*, Keynes's philosophical opus, is steeped in Plato. Fitzgibbons agrees:

The abstract Platonic insight which permeates Keynes's system is a strict division between the mental sphere of pure ideas [Forms] and the real [visible] world of fluctuation and change....Like G.E. Moore [and Plato], Keynes believed that universals [Forms] originate and exist only in the mind....The Platonic metaphysics was conveyed...in the *Treatise [on Probability]* as the doctrine of rational intuition, which is the central theme of that work. (Fitzgibbons 1991, 130; Gillies 2000, 33)

Keynes also held Platonic views on gender and sexuality. Like Plato, Keynes was a sexist. He wrote to his lover Duncan Grant: "I shall have to give up teaching females after this year. The nervous

---

<sup>12</sup> Like Plato, Keynes was a rationalist who rejected empiricism: "Keynes is a particular kind of rationalist, rather than an empiricist" (O'Donnell 1989, 81). Anna Carabelli agrees, "Certainly, Keynes was not an empiricist" (2003, 214; Dostaler 2007, 74).



irritation caused by two hours' contact with them is intense. I seem to hate every movement of their minds. The minds of the men, even when they are stupid and ugly, never appear to me so repellent" (quoted in Moggridge 1992, 183–84). Skidelsky notes, "women were inferior—in mind and body. Love of young men was, he [Keynes] believed, ethically better than love of women" (Skidelsky 1983, 129; Hession 1984, 40; Deacon 1986, 63–64; Turnbaugh 1987, 28). Like his lover and fellow Platonist Lytton Strachey, Keynes was "a male chauvinist pig" (Levy 2005, xi).<sup>13</sup>

All agree that Keynes had a short-run philosophy, as conveyed in his famous expression "In the long run we are all dead" (CW, 4:65, 28:62).<sup>14</sup> But it has not been emphasized that Keynes's scorn for the long run reflects his belief in Plato's metaphysics. The inferior reality in which human beings live is temporal, whereas Plato's superior world of Forms is nontemporal, or timeless (Jones 1952, 103). Like Plato, Keynes wants human beings to detach themselves from life in the temporal world of past, present, and future. Mental contemplation of the timeless world of Forms is nobler than any possible long-run action taken in the inferior temporal reality. As Keynes put it,

Nothing mattered except states of mind....These states of mind... consisted in timeless, passionate states of contemplation and communion, largely unattached to "before" and "after"....The appropriate subjects of passionate contemplation and communion were a beloved person, beauty and truth, and one's prime objects in life were love, the creation and enjoyment of aesthetic experience and the pursuit of knowledge.... How did we know what states of mind were good? This was a matter of direct inspection, of direct unanalysable intuition [of the world of Forms]. (CW, 10:436–37)

On April 18, 1905, Keynes wrote to Bernard Swithinbank, "I find my chief comfort more and more in Messrs Plato" (1905b, 142). In October, Strachey grumbled to Keynes, "We'll suffer in an eminent

---

<sup>13</sup> Strachey's biographer writes, "Once [Lytton] had relinquished Christianity, Plato's *Symposium* became for him a new Bible" (Holroyd [1967] 2005, 39). As with Plato, Strachey was a "communist" (Strachey [1926] 2005, 556).

<sup>14</sup> For similar statements on his short-term orientation, see Keynes (CW, 1:120, 8:342, 10:445, 23:224, 28:62). In the secondary literature, see Carabelli (1988, 128), Deacon (1986, 173), Fitzgibbons (1988, 49), Hayek ([1960] 2011, 460; 1988, 57, 76, 84), Himmelfarb (1986, 37), Moggridge (1992, 127), O'Donnell (1989, 118, 278), Schumpeter (1946, 506), and Skidelsky (1983, 155–56; 1992, 60; 2000, 156).



silence, and be Platonists till the day after tomorrow" (1905, 211). Keynes consoled Strachey on February 7, 1906:

My dear, I have been deep in Greek philosophy these last few days, Thales and Pythagoras, Zeno and his lover Parmenides: I am sure your sufferings are only due to this prison world, not the particular circumstances in it. Only when after a thousand existences and a thousand loves we have become purified from Not-Being and are a perfect harmony, we may fly on wings of love into the heaven of Pythagoras and Plato and McTaggart, when there is the comfort of souls. I am sure it must be all true. (1906c, 102)

In this passage, "heaven" is an allusion to Plato's world of Forms. The reference to "this prison world" reflects Plato's theory of the soul: there is an inherent conflict between the body and the soul, and the body is a prison that prevents the soul from returning to the heavenly world of Forms. The soul can only escape its earthly existence after "a thousand" reincarnations. The soul can only return to a state of "Being" in Plato's heaven after going through the wheel of birth and rebirth (Copleston [1946] 1993, 212; Guthrie 1975, 476). Although violently opposed to Christianity, Keynes embraced Plato's mystic religion.

*A Treatise on Probability* was an utter failure, and Keynes never wrote another major work on philosophy.<sup>15</sup> Still, he always remained a disciple of Plato. In 1938, he gave a speech called "My Early Beliefs" in which he admitted, "I have called [my] faith a religion, and some sort of relation of neo-platonism it surely was" (CW, 10:438). He boasts that he was "brought up...with Plato's absorption of the good" (10:442). He says of "The Ideal," the sixth chapter of Moore's *Principia Ethica*, "I know no equal to it in the literature since Plato" (10:444). In the summer of 1944, as he traveled to the Bretton Woods conference, he supplemented Friedrich Hayek's *The Road to Serfdom* with a new edition of Plato (Skidelsky 2000, 343). In summary, the evidence confirms that Keynes was a committed Platonist through his entire adult life.

---

<sup>15</sup> Lawrence Klein, a dedicated Keynesian, admits, "Keynes's ideas on probability represent a minority position among current workers on the subject and are not those for which we shall long remember his work....[H]e did not make a sensational advance in probability theory" (1951, 446). Of course, his entire ethical theory collapses if his theory of probability is flawed. See Donald Gillies (2000, 25–49) for a critique of the logical theory.

### 3. KEYNES'S PLATONIC POLITICAL PHILOSOPHY

Keynes's political philosophy is virtually identical to Plato's. However, Plato's totalitarian socialism has made sympathetic commentators reluctant to admit this reality. Fitzgibbons acknowledges that "Platonic metaphysics...permeates Keynes's political philosophy" (1991, 131). Still, he is careful to insist that "Keynes rejected Plato's authoritarian politics" (1988, 174). Skidelsky is the most ardent defender of Keynesianism today, and he notes: "Keynes welcomed the coming to power of a new class of Platonic Guardians" (1992, 224). To protect his master from the bad name of socialism, however, Skidelsky has repeatedly maintained that "Keynes was not a socialist" (1990, 52; 1992, 233; 2000, 478; 2009, 135; Harrod 1951, 333).

But like Plato, Keynes was a socialist. As O'Donnell writes, "Keynes envisaged and espoused a particular form of socialism" and "It is clear, explicit and unambiguous; he used the term socialism to characterise his own views" (1999, 149, 164; 1989, 322; 1992, 781–82). Fitzgibbons admits that "he wanted capitalism to be eventually replaced by a non-Marxist socialism" (1988, 190–91). Still, interpreters who admit Keynes's socialism tend to hedge their admission by insisting that he advocated a milder form called liberal socialism. For example, Gilles Dostaler says, "he proposed liberal socialism" (2007, 98; Moggridge 1992, 469; Groenewegen 1995, 153; Crotty 2019).<sup>16</sup> Contrary to sympathetic commentators, however, the evidence shows that Keynes advocated a brand of socialism that contained nearly all of the totalitarian elements of Plato's socialism.

Like Plato, Keynes had a class theory. As noted, Plato divides society into three classes: producers, auxiliaries, and guardians. Similarly, Keynes divides the population into three classes: investors, consumers, and government. Whereas the producer is the villain for Plato, the investor is the villain for Keynes: "The weakness of the inducement to invest has been at all times the key to the economic problem" (CW, 7:347–48). It should be stressed that in economic science investment does not refer to financial

---

<sup>16</sup> A classical liberal must reject the notion of liberal socialism. For a classical liberal, liberalism and socialism are mutually exclusive, and the notion of liberal socialism is as self-contradictory as the notion of a triangular square. Keynes is better described as a non-Marxist socialist. See Raico (2008) on Keynes's antiliberalism.

investment, but real investment. Investment goods are capital goods, or the means of production. Under capitalism, investors are responsible for controlling the means of production. Hence, Keynes's attack on the investor class bears a close resemblance to Plato's attack on the producer class.

By 1905, Keynes's desire to "swindle the investing public" reflected his scorn for private investors (Skidelsky 1983, xxiii). He exclaimed in 1910, "There are still a good many perfect fools amongst our business men [investors]" (Keynes 1910a). In his 1910 lecture series, *Company Finance and Stock Exchange*, he belittles the accounting and financial tools used by private investors (Keynes 1910b). Keynes's pessimistic theory of investment was the key to *The General Theory* (1936). But he had already developed his gloomy theory of investment by 1910: "[Investment] will often depend upon fashion, upon advertisement, or upon purely irrational waves of optimism or, depression" (CW,15:46, 7:162).<sup>17</sup> Keynes's theory of investor psychology reeks of Plato's theory of producer psychology.

Like Plato, Keynes argued that a spontaneous, nonviolent social order is unworkable. Instead, systematic government violence is the only viable way to organize society. For Keynes, the only solution to the problem of social order is government control, or socialization, of investment: "A somewhat comprehensive socialisation of investment will prove *the only means* of securing an approximation of full employment" (CW, 7:378, emphasis added). Government control of investment means government control over the means of production. And government control of the means of production is the definition of socialism (Mises [1922] 1981, 505; Friedman 1993, 4). Thus, Keynes was correct when he "avow[ed] himself a socialist" (J. N. Keynes, 1911).

Keynes recommended government control over investment many years before *The General Theory*. On June 8, 1924, he drafted an outline for a book with the telling title "Prolegomena to a New Socialism." Here, "Investment of Fixed Capital [is one of the] chief preoccupations of the State" (Keynes 1924a; O'Donnell

---

<sup>17</sup> Anna Carabelli writes, "Keynes's attitude towards investment...remained substantially unchanged from his early articles written at the beginning of the century to the latest contributions written after *The General Theory*" (1988, 195; Skidelsky 1983, 208).

1992, 807). Hence, government control of investment, or fixed capital, is central to his new socialism, or “true socialism of the future” (CW, 19:222). Following Plato, the fundamental problem is the investor class’s lack of objective knowledge: “a great deal of money [is] invested by those who ha[ve] no special knowledge” (Keynes 1924b, 313).<sup>18</sup> Given the lack of objective knowledge, we need “central regulation of the machine” and “public control of entrepreneurs” (1924c, 150–51).

In September 1925, he traveled to the Soviet Union and preached to the Soviet Politburo. As Leon Trotsky ([1925] 1927, 286) recognized, he called for a transition from capitalism to socialism:

I direct all my mind and attention to the development of new methods and new ideas for effecting the transition from the economic anarchy of the individualistic capitalism which rules today in Western Europe towards a regime which will deliberately aim at controlling and directing economic forces. (CW, 19:439)

Like Plato, he advocated “centralized state control” of society:

I believe that there are many other matters, left hitherto to individuals or to chance, which must become in future the subject of deliberate state policy and centralised state control. Let me mention two—(1) the size and quality of the population and (2) the magnitude and direction of employment of the new national savings year by year [for investment]. (19:441)

Beatrice Webb is the most important woman in the history of British socialism, and of Keynes she recorded in 1926: “I see no other man that might discover how to control the wealth [or investment goods] of nations in the public interest” ([1926] 1985, 93–94).<sup>19</sup> In 1928, he proposed an investment politburo, called the National Investment Board, “to mobilise and to maintain the supply of capital and the stream of savings [for investment]” (Keynes 1928a, 69). The socialist politician Hugh Dalton realized, “Such a board will, I believe, be one of our most effective instruments of Socialist

---

<sup>18</sup> Skidelsky says, “What chiefly impressed Keynes about British businessmen was their stupidity” (1992, 259; Johnson and Johnson 1978, 105).

<sup>19</sup> Keynes was close friends with the Webbs. In 1936, he praised the Webbs’ problematic book *Soviet Communism* (CW, 28:333). He considered Beatrice “the greatest woman of the generation” (1943).

planning" (quoted in Pimlott 1985, 218).<sup>20</sup> Keynes demands "a new system of public control" (1928b, 109). He states in his 1929 speech "Social Reform as the New Socialism," "Modern economic organisation is liable to produce unintended and undesired results unless it is controlled from the centre" (1929, 187).

Keynes published his first major work on economics, *A Treatise on Money*, on October 31, 1930. In this work, he argues that private investment is the central economic problem (Patinkin 1982, 230; Meltzer 1988, 113–14; Moggridge 1992, 486). Naturally, he calls for government control of it: "Perhaps the ultimate solution lies in the rate of capital development becoming more largely an affair of the state, determined by collective wisdom and long views" (CW, 6:145). In fact, the penultimate chapter is titled "Control of the Rate of Investment." In it he imagines "socialistic action by which some official body steps into the shoes which the feet of the entrepreneurs are too cold to occupy" (6:335).

Keynes abandoned his flawed *Treatise on Money* almost immediately after it was published, and he started developing *The General Theory* in late 1931.<sup>21</sup> Around this time, he gave a speech to the Society for Socialist Inquiry and Propaganda (Cole 1961, 230, 235). He exclaimed, "Central control of investment" is "urgently called for on practical grounds" (CW, 21:31). In September 1932, he wrote an article in the press calling for "a large measure of control over the volume of new investment" (21:130). He elaborates, "The chief problem would be to maintain the level of investment at a high enough rate to ensure the optimum level of employment....The grappling with these central controls [on investment] is the rightly conceived socialism of the future" (21:137). During the summer of 1933, he gave a speech on his "Control Scheme" in which he said: "My proposals for the control of the business cycle are based on the control of investment" (Keynes 1933, 675).

---

<sup>20</sup> The British Labour Party acknowledged that Keynes advocated socialist policy when it included his National Investment Board in its 1934 program, *For Socialism and Peace* (Labour Party 1934, 14). Keynes voted for the socialist Labour Party three months before he published *The General Theory*.

<sup>21</sup> In September 1930, he admitted that it was a "failure" (CW, 13:176). The Keynesian Don Patinkin writes, "[I]t is not a good book," and "the *Treatise* was not a successful book" (1976, 25; 1982, 32). Also see Laidler (1999, 131), Meltzer (1988, 103), and Moggridge (1992, 530).

As with Plato, Keynes has a psychological class theory in which members of different classes are fundamentally different species, or animals. The word *psychology* comes from the Greek *psyche*, meaning soul. Just as Plato's producers have defective souls, Keynes asserts that the "functionless investor" has "uncontrollable and disobedient psychology" (CW, 7:376, 317). Investors have "animal spirits," meaning that "the mass psychology of a large number of ignorant [investors] is liable to change violently" (7:161–62, 154). Investors must be handled like "domestic animals," because they have "delusions" (21:438). Keynes's theory of investor psychology, or animal spirits, is a Platonic theory of the soul. He wrote in 1905, "the soul is divided into several simpler entities—the spirited, animal, vegetative souls and so on (i.e. Plato)...The body is moved by animal spirits" (1905d, 17).

Keynes published *The General Theory* in 1936 to provide an economic justification for Platonic socialism, or "anti-Marxian socialism" (CW, 7:355). He writes, "I expect to see the State, which is in a position to calculate the marginal efficiency of capital-goods on long views and on the basis of the general social advantage, taking an ever greater responsibility for directly organizing investment" (7:164). He endorses "a somewhat comprehensive socialization of investment," and says that "Socialisation can be introduced gradually" (7:378). He declares, "I conclude that the duty of ordering the current volume of investment cannot safely be left in private hands" (7:320, 29:232). As many reviewers noticed at the time, *The General Theory* argues that "national control of investment is an essential prelude to any permanent solution of unemployment," and that "investment must be socially directed and not left to the vagaries of the individual striving for gain" (Williams 1936, 8–9).

Keynes never abandoned socialism after *The General Theory*. He wrote in 1938, "Durable investment must come increasingly under state direction" (CW, 21:438). For him, "The Board of National Investment would in one way or another control by far the greater part of investment" (14:49). He advocated a society in which "the bulk of investment [is] under public or semi-public control" (27:322). In summary, Keynes's goal was, in his very words, "to move out of the nineteenth century laissez-faire into an era of liberal socialism" (21:500).

As with Plato, Keynes's ideal society is a totalitarian society. If government controls investment goods, it controls what is

produced and, by extension, what is consumed. Moreover, if government controls investment goods, it must also exercise control over the human factors that operate those goods. Government must control each person's occupation and when and where each person works (Mises [1922] 1981, 165; [1944] 2011, 60–61; [1949] 1998, 284). And to do this, it must have ultimate control over where each member of the workforce lives. Of course, some investment goods are unpleasant to operate. State violence would be required to force members of the population to work undesirable jobs on investment goods deemed essential to society. In short, Keynes's plan to socialize investment entails totalitarianism. He admits that his plan "is much more easily adapted to the conditions of a totalitarian state" (CW, 7:xxvi).<sup>22</sup>

Keynes did not advocate communism in women and children as Plato did. Still, he must be considered an opponent of the family. Clarence W. Barron, the legendary financial journalist, met Keynes in September 1918 and noted, "Lady Cunard says Keynes is a kind of socialist and my judgment is that he is a Socialist of the type that does not believe in the family" ([1918] 1930, 189). Following Plato, Keynes advocated totalitarian population controls with far-reaching implications for the family, and especially for women.

Like Plato, Keynes wanted the government to control the size of the population. His 1914 paper "Population" says, "That degree of populousness in the world, which is most to be desired, is not to be expected from the working of natural order," and "There would be more happiness in the world if the population of it were to be diminished." He calls for government to "mould law and custom deliberately to bring about that density of population which there ought to be" (Keynes 1914, 16, 20, 36). He declared on January 4, 1923:

In the light of present knowledge I am unable to see any possible method of materially improving the average human lot which does not include a plan for restricting the increase in numbers....It may prove sufficient to render the restriction of offspring safe and easy....*Perhaps a more positive policy may be required....*[I] would like to substitute schemes conceived by the mind in place of the undesigned outcome of instinct and individual advantage playing within the pattern of existing institutions. (CW, 17:453, emphasis added)

---

<sup>22</sup> Don Patinkin, a Keynesian, observes that Keynes "speaks almost enviously (and, I think, naively) of the greater ease (as it were) with which a totalitarian government can achieve a new equilibrium position" (1976, 122).



Keynes was a eugenicist from 1907 until his death, and, like Plato, he wanted government to control the quality of the population as well. In “Prolegomena to a New Socialism,” he writes, “Population, Eugenics [are] Chief Preoccupations of the State” (Keynes 1924; O’Donnell 1992, 807). He advocates “centralised state control [over the] quality of the population” (CW, 19:441, 19:124). At a meeting of the Malthusian League, of which he was chairman, he declared: “I believe that for the future the problem of population will emerge in the much greater problem of Hereditary and Eugenics. Quality must become the preoccupation” (Keynes 1927, 114). Just weeks before his death, he endorsed “the most important, significant and, I would add, genuine branch of sociology which exists, namely eugenics” (Keynes 1946, 40).

Like Plato, Keynes rejected private property. As noted, Plato wanted “the notion of ‘private property’ [to be] completely eliminated from life” (*Laws* 739c). Like Plato and all socialists, Keynes attacked private property: “There is no ‘compact’ conferring perpetual rights on those who Have or on those who Acquire [property]” (CW, 9:287). No doubt, the Keynesian ethical theory is totally incompatible with the notions of private property, individual rights, and the rule of law.

Although he was a consequentialist, Keynes rejected Moore’s rule consequentialism. In *Principia Ethica*, Moore concluded that general rules must always be obeyed: “With regard to any rule which is generally useful, we may assert that it ought always to be observed.... Though we may be sure that there are cases where the rule should be broken, we can never know which those cases are, and ought, therefore, never to break it” (1903, 162–63). This conclusion was repugnant to Keynes, and he wanted to reverse it. “Ethics in Relation to Conduct” reads, “I am doubtful whether it is ever possible to show that a rule of action is generally right” (1904a, 20). He reaffirmed, “What we ought to do is a matter of circumstance; metaphysically we can give no rules” (Keynes 1905e, 2). He declared in 1938:

[I rejected] the part [of Moore’s theory] which discussed the duty of the individual to obey general rules. We entirely repudiated a personal liability on us to obey general rules. We claimed the right to judge every individual case on its merits, and the wisdom, experience and self-control to do so successfully. This was a very important part of our faith, violently and aggressively held.... We repudiated entirely custom morals, conventions and traditional wisdom. We were, that is to say,



in the strict sense of the term, immoralists....I remain, and always will remain, an immoralist. (CW, 10:446–47)

Keynes developed his Platonic theory of probability to attack general rules of conduct. He thought that the frequency theory forced Moore to advocate general rules. Since the conditions of human action are never repeatable, the frequency theory does not permit us to analyze the consequences of our actions with probability. By contrast, the logical theory allows us to use probability to evaluate the consequences of action. In this way, Keynes's logical theory enhances our ability to understand the consequences of our actions. And if the consequences of violating a general rule are good, then the rule should be violated. Keynes believed he had reversed Moore's case for general rules by Platonizing Moore's ethical framework with the logical theory.

It would be difficult to imagine an ethical theory more radical than Keynes's. Unfortunately, his defenders have been reluctant to spell out the radical politico-economic implications of his ethics. Capitalism is defined as a social system based on private property in the means of production. Thus, capitalism is a social system based on general rules—specifically the rules of private property. By rejecting all general rules, Keynes rejected the rules of private property and, by extension, capitalism. In contrast to capitalism, socialism opposes the general rules of private property: “the theory of the communists [or socialists] may be summed up in the single sentence: Abolition of private property” (Marx and Engels [1848] 1988, 223).<sup>23</sup> Certainly Keynes's policy of socializing investment would require government to overturn the institution of private property. In summary, Keynes was an ethical socialist by January 23, 1904, when he read “Ethics in Relation to Conduct” to the Apostles.

Like Plato, Keynes was an authoritarian. His ethical theory meant that he rejected all rules, or constitutional limits, to restrain government power. He opposed any rules to safeguard individual liberty from government violence. Indeed, he rejected the principle

---

<sup>23</sup> Marx used the terms *socialism* and *communism* interchangeably. As Mises writes, “Until 1917 communism and socialism were usually used as synonyms” ([1944] 2011, 60–61). During the Bolshevik Revolution of 1917, Keynes described himself as a “Bolshevik” and proudly declared: “The only course open to me is to be buoyantly Bolshevik” (CW, 16:266–67). On communism and socialism, see note 5.

of individual liberty. In accordance with Plato's elitist metaphysics and epistemology, he maintained that the masses are too ignorant for liberty: "It is not true that individuals possess a prescriptive 'natural liberty'...[I]ndividuals acting separately to promote their own ends are too ignorant or too weak" (CW, 9:287–88).<sup>24</sup> Only Keynes has objective knowledge of the good, and the good is far more important than individual liberty. Echoing Plato, he calls for a totalitarian government to impose the good life on the masses with institutionalized violence.<sup>25</sup>

As with Plato and all totalitarians, Keynes advocated noble lies.<sup>26</sup> For Plato, "our rulers will have to make considerable use of falsehood and deception for the benefit of those they rule....[A]ll such falsehoods are useful as a form of drug" (*Republic* 459c–d; 414b–15e). Keynes agrees, "A preference for truth or for sincerity as a method may be a prejudice based on some aesthetic or personal standard, inconsistent, in politics, with practical good" (CW, 2:2). He expressed the totalitarian's cynical view on noble lies when he declared, "It's the art of statesmanship to tell lies, but they must be plausible lies" (quoted in Colander 1984, 1574).

Like Plato, Keynes condemned the love of money. He exclaimed, "The love of money is detestable" and "The moral problem of our age is concerned with the love of money" (CW, 9:268, 331). As with Plato's producers, Keynes's investors are driven by the money, or profit, motive. Socializing investment will abolish the profit motive, and "once we allow ourselves to be disobedient to the test of an accountant's profit, we have begun to change our civilization" (21:241–42). Plato also condemned interest as unnatural and called for its prohibition (*Laws* 742). By 1904, Keynes was attacking

---

<sup>24</sup> Dostaler notes the connection between Keynes's "elitism" and "paternalism," and he acknowledges that Keynes thought "working people [are] incapable of managing their own lives" (2007, 102).

<sup>25</sup> Gordon Fletcher admits, "Keynes's scheme does seem to favour the notion of a forced march to utopia" (2008, 175). As Dostaler observes, "He was and would always remain convinced that only an intellectual elite, of which he undoubtedly considered himself a gifted member, could understand the complex mechanics of economics and politics and would thus be able to implement the reforms necessary to achieve happiness" (2007, 89).

<sup>26</sup> See Hayek ([1944] 1994, 172; 1988, 138) and Popper (1945, 122–23) on the link between Plato, totalitarianism, and noble lies.

“unearned increments” such as interest and rent (1904b; 1914, 21). He advocated “the euthanasia of the rentier [or interest earner], and, consequently, the euthanasia of the cumulative oppressive power of the capitalist to exploit the scarcity-value of capital” (CW, 7:376). Keynes’s socialist views on money, gold, hoarding, profits, and interest smack of Plato.

Like Plato, Keynes was also a utopian. He describes himself as “among the last of the utopians” (CW, 10:447).<sup>27</sup> He denies that scarcity is an inevitable feature of human existence: “There are no intrinsic reasons for the scarcity of capital” (7:220). Like so many charlatans throughout history, he promised that his plan would produce an earthly utopia: “We should in 25–30 years have constructed all capital required. We would increase quantity of capital until it has ceased to be scarce” (Keynes 1989, 179–80; CW, 9:326, 21:37–38). Keynes’s goal was to abolish capitalism and establish a socialist utopia on earth.

Conventional portraits present Keynes as the intentional saviour of capitalism....The conventional picture, however, is badly incomplete and misleading....Keynes was very much concerned with the long term abolition of capitalism as he conceived it. His ultimate goal was a non-capitalist, ethically rational utopia, whose characteristics resembled more closely those of communist or left-wing utopias. (O'Donnell 1991, 15–16; 1989, 294)

And who must rule in Keynes’s socialist utopia? Like Plato, Keynes rejected democracy (Fitzgibbons 1988, 185, 197; Skidelsky 1992, 228). Just as the masses are too stupid for liberty, they are too stupid to participate in politics. “I get the feeling that most of the rest never see anything at all—too stupid or too wicked” (1905f, 124). Instead, Keynes’s ideal socialist republic would be ruled by a cadre of elite economists, such as himself. He writes, “The right solution will involve intellectual and scientific elements which must be above the heads of the vast mass of more or less illiterate voters” (CW, 9:295). Whereas Plato advocated the rule of

---

<sup>27</sup> On Keynes’s utopianism, see Brunner (1996, 208), Dostaler (2007, 99), Fitzgibbons (1988, 68, 191), Fletcher (2008, 171, 175), Hansen (1953, 215), Hession (1984, 375), Johnson and Johnson (1978, 228), Meltzer (1988, 185), Raico (2008, 171–73), Salerno (1992, 18), and Skidelsky (1992, 234–38; 2000, 478). Mises describes Plato as a “utopian” ([1962] 2006, 111).

the philosopher-king, Keynes advocates the rule of the omniscient economist-king: “No! The economist is not king; quite true. But he ought-to be!” (17:432).<sup>28</sup>

#### 4. PLATO AND KEYNES’S *GENERAL THEORY*

Keynesian economics is Platonic to the core, and this is best illustrated with a *reductio ad absurdum*.<sup>29</sup> As the Keynesian economist Paul Davidson writes, “Keynes’s primary level of attack on classical theory involved the expansion of demand into two distinct classes” (2005, 456–57; Hansen 1953, 26).<sup>30</sup> Keynes divided aggregate demand between consumers and investors, and he vilified the investor class. But aggregate demand can be divided in any way to vilify any class. To illustrate, imagine that all spenders are either auxiliaries or producers. In this case, total income ( $Y$ ) equals spending by the auxiliaries ( $A$ ) plus spending by the producers ( $P$ ):

$$Y = A + P$$

After expanding aggregate demand into the auxiliary and producer classes, it is necessary to invent a theory of spending for each class. The auxiliaries are dominated by the spirited part of the three-part soul, meaning that they spend in a highly disciplined, robotic manner. It is asserted that there is a strict mathematical, or “functional,” relationship between auxiliary spending and income (CW, 7:90). It is possible to formulate the auxiliary spending function, where  $a$  is autonomous auxiliary spending and  $b$  is the slope of the auxiliary spending function:

$$A = a + bY$$

Now comes the fundamental psychological law: “[Auxiliaries] are disposed, as a rule and on average, to increase their consumption as their income increases, but not by as much as the increase in their

---

<sup>28</sup> Roy Harrod admits that Keynes “cultivated the appearance of omniscience” (1951, 468). Quentin Bell reports that members of the Bloomsbury group resented “Maynard’s claim to omniscience” (1995, 97).

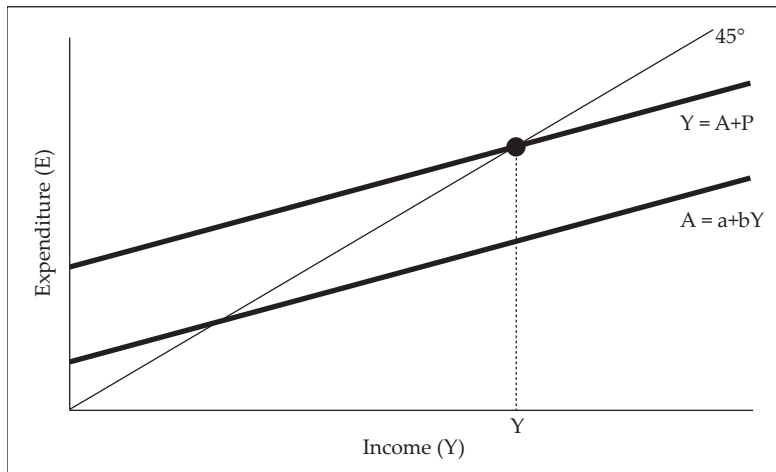
<sup>29</sup> Skidelsky notes, “One of Keynes’s favourite and most effective techniques was the use of the *reductio ad absurdum* to ridicule the reasoning of his opponents” (1992, 425; Johnson and Johnson 1978, 36).

<sup>30</sup> Also see Dillard (1984, 425), Dostaler (2007, 170), Pasinetti (1974, 36), Patinkin (1982, 244), and Skidelsky (1992, 498, 544; 2009, 90).

income" (CW, 7:96). The fundamental psychological law means that the slope of the auxiliary spending function ( $b$ ) must be between zero and one. The use of the term "psychological" in the name of this fundamental law is significant. Recall, the Greek for soul is *psyche*. Thus, the fundamental psychological law is a Platonic theory of the soul.

Given Plato's theory of the three-part soul, the producer is a fundamentally different species, or animal. Hence, the theory of producer spending is radically different from the theory of auxiliary spending. Producer spending is not a function of income at all, because, unlike the disciplined auxiliaries, producers are dominated by "animal spirits" (CW, 7:161–62). Since producers are dominated by the appetitive soul, there is no tendency for producer spending to be optimal: "There is no reason to suppose that there is 'an invisible hand'...which ensures...that the amount of...[producer spending] shall be continuously of the right proportion" (21:386–87). The analysis can be diagrammed to give the theory a scientific aura. Figure 1 can be called the Platonic cross.

FIGURE 1: PLATONIC CROSS



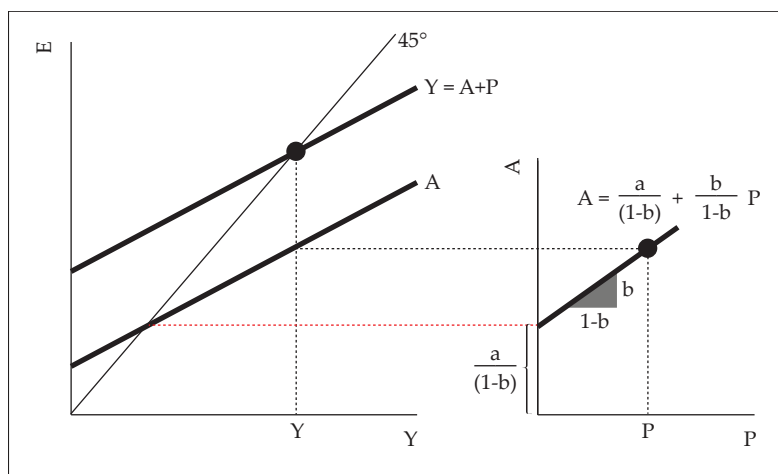
The producers' defective souls, their psychological disobedience, means that society cannot be organized with nonviolent methods. To illustrate, we combine the income equation with the auxiliary spending function. This gives us Plato's demand constraint.<sup>31</sup>

<sup>31</sup> On the Keynesian demand constraint, see Roger Garrison (2001, 136).

$$A = \frac{a}{1-b} + \frac{b}{1-b} P$$

Plato's demand constraint means that overall living standards depend on producer spending. If producer spending is high, then the amount of auxiliary spending must be high too. If producer spending is low, then the amount of auxiliary spending must also be low. Therefore, the amount of auxiliary spending can only be optimal if producer spending is optimal. Figure 2 illustrates the precise, positive relationship between producer spending and auxiliary spending.<sup>32</sup>

FIGURE 2: PLATONIC DEMAND CONSTRAINT

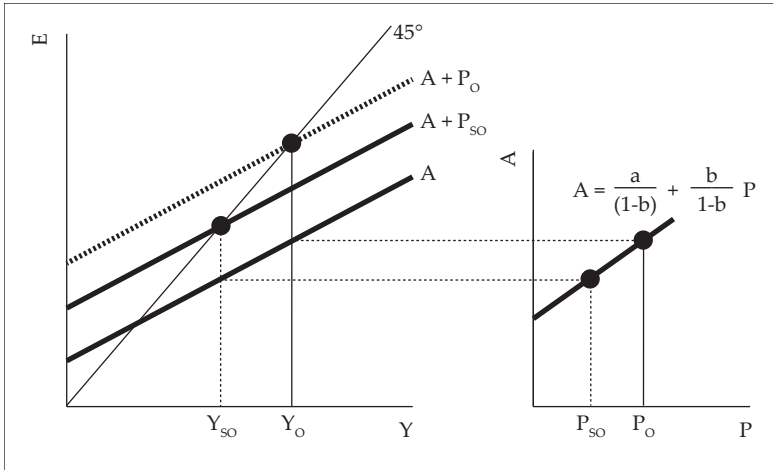


Chronic economic stagnation is thus the fundamental economic problem facing humankind. Since the producers have defective souls, their spending is normally suboptimal. Chronically low producer spending causes chronic economic stagnation and unemployment: “There should be on the average a tendency to severe unemployment [of resources and workers]” (Keynes 1988, L9; CW, 7:249–50). In figure 3, producer spending is optimal at  $P_0$ . However, producer spending tends to be suboptimal at

<sup>32</sup> Keynes's theory “holds not that C[onsumption] and I[investment] are alternatives but rather they move together” (Keynes 1988, L9). On the positive relationship between investment and consumption in Keynesian theory, see Dimand (1988, 151, 189), Garrison (2001, 136), and Meltzer (1988, 153).

$P_{so}$ . Given the Platonic demand constraint, this means that the amount of auxiliary spending will also be chronically suboptimal. In short, suboptimal producer spending means that the national income is chronically stuck below the optimal national income, at  $Y_{so}$  rather than  $Y_o$ .

FIGURE 3: CHRONIC STAGNATION



Chronic stagnation is the central economic problem, for it prevents humankind from entering the utopia.<sup>33</sup> What must be done? The philosopher-king must take control. In terms of figure 3, the philosopher-king forcibly increases producer spending to the optimal level, from  $P_{so}$  to  $P_o$ . This increases national income to the optimal level, from  $Y_{so}$  to  $Y_o$ . After the optimal national income is achieved, the philosopher-king must permanently maintain producer spending at the optimal level, year in and year out. If this is done, humankind will enter the utopia “within a single generation” (CW, 7:220).

<sup>33</sup> Keynes’s main economic concern is not the business cycle, but “a chronic state of unemployment” (Patinkin 1976, 114; 1982, 88). Skidelsky writes, “[Keynes] thought that a state of unemployment or underemployment was the general condition of mankind,” and that “suboptimal performance is normal” (1992, 615; 2009, 99). Also see Brunner (1996, 196), Dillard (1948, 3–4, 155, 269), Fletcher (1987, 165, 186), Garrison (2001, 129, 145, 168, 177), Johnson and Johnson (1978, 27, 204), Laidler (1999, 154, 265), Meltzer (1988, 6, 123, 153, 172, 300), and Schumpeter (1946, 501).

This *reductio ad absurdum* illustrates an essential point: Keynesian economics can be repurposed to attack any class. In the example above, aggregate demand was divided between auxiliaries and producers rather than consumers and investors. But aggregate demand can be divided between men and women, whites and blacks, Aryans and Jews, heterosexuals and homosexuals, proletarians and capitalists, etc. Then the “philosopher-economist” asserts that the superior class’s spending is a function of income, while the inferior class’s spending depends on animal spirits. The pseudoscientific Keynesian equations and diagrams can be formulated to vilify any class. And the analysis always leads to the same conclusion: everyone can live in a utopia if a totalitarian government controls society. No matter the class division, it is impermissible to question the scientific validity of the theory. Only the elite philosopher-economist can peer into the world of Forms. Anyone who doubts the new economics is an ignorant soul trapped in the Heraclitian flux.<sup>34</sup>

## CONCLUSION

John Maynard Keynes is perhaps the most important Platonist in modern history. He adopted Plato’s metaphysics and epistemology in 1903 when he was an undergraduate student at Cambridge. And, as it is prone to do, Plato’s philosophical system led him step by step to socialism. By 1904, Keynes built a socialist ethical theory on the basis of Plato’s metaphysics and epistemology. From his socialist ethical theory he derived a political philosophy that was virtually identical to Plato’s totalitarian socialism. Finally, decades later, he invented Keynesian economics to justify his brand of Platonic socialism. In summary, Keynes’s economic theory has its ultimate origins in Plato’s philosophy.

The Platonic origins of Keynesian economics must trouble economists. Like Plato, Keynes was an old-fashioned mystic: “I am sure it must be all true. We are mystic numbers,” and “I have called [my] faith a religion, and some sort of relation of neo-platonism it surely

---

<sup>34</sup> Bertrand Russell and others noticed that “Keynes dismissed opponents as idiots” (Holroyd [1967] 2005, 104). Hubert Henderson observed that Keynes regarded opponents of Keynesianism as “intellectually inferior beings” ([1936] 2003, 540). Harrod wrote, “I admit that [Keynes’s] manners, where his own theories are concerned, are impossible” ([1936] 2003, 532).



was" (1906c, 102; CW, 10:438).<sup>35</sup> He believed he had special access to objective knowledge in a transcendental, mystical reality. From this supernatural realm he obtained knowledge of the good, of probability, of class psychology, and, most importantly, of Keynesian economics. Keynes's Platonism means that Keynesian economics is a mysticoreligious theory, not legitimate economic science. Not only are the Platonic origins of Keynesian economics deeply unscientific, but they are dangerous. For totalitarian socialism naturally follows from any philosophy that holds that the elite have exclusive access to objective knowledge in a mystical reality.<sup>36</sup>

## REFERENCES

- Adam, James, ed. [1902] 2010. *The Republic of Plato*. 2 vols. Cambridge: Cambridge University Press.
- Annas, Julia. [1976] 1999. "Plato's Republic and Feminism." Pp. 265–79 in *Plato 2: Ethics, Politics, Religion, and the Soul*, ed. Gail Fine. Oxford: Oxford University Press.
- Barron, Clarence W. [1918] 1930. "Note, 27 September [1918]." Pp. 187–89 in *They Told Barron: Conversations and Revelations of an American Pepys in Wall Street*, ed. Arthur Pound and Samuel Taylor Moore. New York: Harper and Brothers.
- Bell, Quentin. 1995. *Bloomsbury Recalled*. New York: Columbia University Press.
- Brunner, Karl. 1996. *Economic Analysis and Political Ideology: The Selected Essays of Karl Brunner*, ed. Thomas Lys. 3 vols. Cheltenham, U.K., and Brookfield, Vt.: Edward Elgar.
- Buchan, Morag. 1999. *Women in Plato's Political Theory*. New York: Routledge.
- Carabelli, Anna M. 1988. *On Keynes's Method*. New York: Palgrave Macmillan.
- . 2003. "Keynes: Economics as a Branch of Probable Logic." Pp. 207–18 in *The Philosophy of Keynes's Economics*, ed. Runde and Mizuhara. New York: Routledge.
- Colander, David. 1984. "Was Keynes a Keynesian or a Lernerian?" *Journal of Economic Literature* 22, no. 4: 1572–75.

---

<sup>35</sup> Kinglsey Martin confirmed that Keynes described his philosophy "as a religion" (1966, 99), and Skidelsky admits that he "thought of himself as a part of the 'clerisy'" (1992, 8).

<sup>36</sup> O'Donnell confesses, "Plato's republic was to be governed by highly educated philosopher-guardians. For Keynes, it was the intelligentsia....Far from being a mere personality trait, the intellectual elitism detectable in some of Keynes's writings and attitudes can be given some foundation in his philosophy. Elitism is always a possible companion of intuitionist [i.e., Platonic] philosophies" (1989, 66).

- Cole, Margaret. 1961. *The Story of Fabian Socialism*. Stanford, Calif.: Stanford University Press.
- Copleston, Frederick. [1946] 1993. *A History of Philosophy*. Vol. 1, *Greece and Rome*. New York: Image Books.
- Crotty, James. 2019. *Keynes against Capitalism: His Economic Case for Liberal Socialism*. New York: Routledge.
- Davidson, Paul. 2005. "The Post Keynesian School." Pp. 451–73 in *Modern Macroeconomics: Its Origins, Development and Current State*, ed. Brian Snowdon and Howard R. Vane. Cheltenham, U.K., and Northampton, Mass.: Edward Elgar.
- Deacon, Robert. 1986. *The Cambridge Apostles: A History of Cambridge University's Elite Intellectual Secret Society*. New York: Farrar, Straus and Giroux.
- Dickinson, G. Lowes. [1896] 1911. *The Greek View of Life*. 7th ed. New York: Doubleday, Page and Co.
- . 1931. *Plato and His Dialogues*. London: George Allen and Unwin.
- . 1973. *The Autobiography of G. Lowes Dickinson, and Other Unpublished Writings*. London: Duckworth.
- Dillard, Dudley. 1948. *The Economics of John Maynard Keynes: The Theory of a Monetary Economy*. Englewood Cliffs, N.J.: Prentice-Hall.
- . 1984. "Keynes and Marx: A Centennial Appraisal." *Journal of Post Keynesian Economics* 6, no. 3: 421–32.
- Dimand, Robert W. 1988. *The Origins of the Keynesian Revolution: The Development of Keynes's Theory of Employment and Output*. Stanford, Calif.: Stanford University Press.
- Dostaler, Gilles. 2007. *Keynes and His Battles*. Cheltenham, U.K.: Edward Elgar.
- Fitzgibbons, Athol. 1988. *Keynes's Vision: A New Political Economy*. Oxford: Clarendon Press.
- . 1991. "The Significance of Keynes's Idealism." Pp. 126–32 in *Keynes and Philosophy: Essays on the Origin of Keynes's Thought*, ed. Bradley W. Bateman and John B. Davis. London: Edward Elgar.
- Fletcher, Gordon A. 1987. *The Keynesian Revolution and Its Critics*. London: Macmillan.
- . 2008. *Dennis Robertson*. New York: Palgrave Macmillan.
- Friedman, Milton. 1993. "The Changing Role of Private and Government Markets." *World Capitalism Review* 1: 3–5, 10–14. Collected Works of Milton Friedman Project records, 2016c21.1391. Hoover Institution Archives. Stanford, Calif. <https://miltonfriedman.hoover.org/objects/57675>.
- Garrison, Roger W. 2000. *Time and Money: The Macroeconomics of Capital Structure*. New York: Routledge.

- Gillies, Donald. 2000. *Philosophical Theories of Probability*. London: Routledge.
- Groenewegen, Peter. 1995. "Keynes and Marshall: Methodology, Society, and Politics." *History of Political Economy* 27, supplement: 129–55.
- Guthrie, W. K. C. 1975. *A History of Greek Philosophy*. Vol. 4, *Plato: The Man and His Dialogues: Earlier Period*. Cambridge: Cambridge University Press.
- . 1978. *A History of Greek Philosophy*. Vol. 5, *The Later Plato and the Academy*. Cambridge: Cambridge University Press.
- Hansen, Alvin H. 1953. *A Guide to Keynes*. New York: McGraw-Hill.
- Harrod, Roy F. [1936] 2003. Roy F. Harrod to Hubert Henderson, March 28, 1936. Pp. 532–36 in *Correspondence, 1936–39*, ed. Daniele Besomi. Vol. 2 of *The Collected Interwar Papers and Correspondence of Roy F. Harrod*. Northampton, Mass.: Edward Elgar.
- . 1951. *The Life of John Maynard Keynes*. London: Macmillan.
- Hayek, Friedrich A. [1944] 1994. *The Road to Serfdom*. Chicago: University of Chicago Press.
- . [1960] 2011. *The Constitution of Liberty*, ed. Ronald Hamowy. Vol. 17 of *The Collected Works of F. A. Hayek*, ed. Bruce Caldwell. Chicago: University of Chicago Press.
- . 1988. *The Fatal Conceit: The Errors of Socialism*, ed. W. W. Bartley III. Vol. 1 of *The Collected Works of F. A. Hayek*, ed. Bruce Caldwell. Chicago: University of Chicago Press.
- Henderson, Hubert. [1936] 2003. Hubert Henderson to Roy F. Harrod, April 2, 1936. Pp. 536–41 in *Correspondence, 1936–39*, ed. Daniele Besomi. Vol. 2 of *The Collected Interwar Papers and Correspondence of Roy F. Harrod*. Northampton, Mass.: Edward Elgar.
- Hession, Charles H. 1984. *John Maynard Keynes: A Personal Biography of the Man Who Revolutionized Capitalism and the Way We Live*. London: Macmillan.
- Hill, John. 1976. *The Ethics of G. E. Moore: A New Interpretation*. Amsterdam: Van Gorcum.
- Himmelfarb, Gertrude. 1986. "A Genealogy of Morals: From Clapham to Bloomsbury." Pp. 32–49 in *Marriage and Morals among the Victorians*. New York: Alfred A. Knopf.
- Holroyd, Michael. [1967] 2005. *Lytton Strachey: The New Biography*. New York: W. W. Norton and Company.
- Huerta de Soto, Jesús. [1992] 2010. *Socialism, Economic Calculation and Entrepreneurship*, trans. Melinda Stroup. 3d ed. Northampton, MA: Edward Elgar.
- Hylton, Peter. 1990. *Russell, Idealism, and the Emergence of Analytic Philosophy*. New York: Clarendon Press of Oxford University Press.

- Johnson, Elizabeth S., and Harry G. Johnson. 1978. *The Shadow of Keynes: Understanding Keynes, Cambridge and Keynesian Economics*. Chicago: University of Chicago Press.
- Jones, W. T. 1952. *A History of Western Philosophy*. New York: Harcourt, Brace and Company.
- Keynes, John Maynard. 1971–89. *The Collected Writings of John Maynard Keynes* (CW). 30 vols. London: Macmillan and Cambridge University Press for the Royal Economic Society.
- . 1988. “Keynes’s Lectures, 1932–35: Notes of Students.” Unpublished typescript.
- . 1903a. “Lecture Notes on Modern Ethics, Given by G. E. Moore.” John Maynard Keynes Papers, UA/1/1. King’s College Archives, Cambridge University, Cambridge.
- . 1903b. “Lecture Notes on Metaphysics, Given by J. C. McTaggart.” John Maynard Keynes Papers, UA/1/2. King’s College Archives, Cambridge University, Cambridge.
- . 1903c. “John Maynard Keynes to Bernard Swithinbank, 7 October.” John Maynard Keynes Papers, PP/45/321/101. King’s College Archives, Cambridge University, Cambridge.
- . 1904a. “Ethics in Relation to Conduct.” John Maynard Keynes Papers, UA/19/2/2–22. King’s College Archives, Cambridge University, Cambridge.
- . 1904b. “Cambridge Union Notes, 16 February.” John Maynard Keynes Papers, OC/6/17. King’s College Archives, Cambridge University, Cambridge.
- . 1905a. “Scheme for an Essay on the Principles of Probability.” John Maynard Keynes Papers, TP/D/913. King’s College Archives, Cambridge University, Cambridge.
- . 1905b. “John Maynard Keynes to Bernard Swithinbank, 18 April.” John Maynard Keynes Papers, PP/45/321/141–42. King’s College Archives, Cambridge University, Cambridge.
- . 1905c. “John Maynard Keynes to Lytton Strachey, 26 October.” John Maynard Keynes Papers, PP/45/316/1/138–39. King’s College Archives, Cambridge University, Cambridge.
- . 1905d. “Modern Philosophy I, Descartes to Leibnitz.” John Maynard Keynes Papers, UA/4/6/1–65. King’s College Archives, Cambridge University, Cambridge.
- . 1905e. “Modern Civilisation.” John Maynard Keynes Papers, UA/22/1–10. King’s College Archives, Cambridge University, Cambridge.
- . 1905f. “John Maynard Keynes to Lytton Strachey, 18 October.” John Maynard Keynes Papers, PP/45/316/1/124–25. King’s College Archives, Cambridge University, Cambridge.

- . 1906a. "Egoism." John Maynard Keynes Papers, UA/26/1–12. King's College Archives, Cambridge University, Cambridge.
- . 1906b. "John Maynard Keynes to Lytton Strachey, 21 February." John Maynard Keynes Papers, PP/45/316/2/122–24. King's College Archives, Cambridge University, Cambridge.
- . 1906c. "John Maynard Keynes to Lytton Strachey, 7 February." John Maynard Keynes Papers, PP/45/316/2/101–2. King's College Archives, Cambridge University, Cambridge.
- . 1908. "The Principles of Probability." John Maynard Keynes Papers, TP/A/1/1–177, TP/A/2/1–198. King's College Archives, Cambridge University, Cambridge.
- . 1909. "The Principles of Probability." John Maynard Keynes Papers, MM/6/2–369. King's College Archives, Cambridge University, Cambridge.
- . 1910a. "John Maynard Keynes to John Neville Keynes, 29 August." John Maynard Keynes Papers, PP/45/68/7/73. King's College Archives, Cambridge University, Cambridge.
- . 1910b. "Lectures on Company Finance and Stock Exchange." John Maynard Keynes Papers, UA/6/3/3–110. King's College Archives, Cambridge University, Cambridge.
- . 1914. "Population." John Maynard Keynes Papers, SS/1/1–37. King's College Archives, Cambridge University, Cambridge.
- . 1924a. "Prolegomena to a New Socialism." John Maynard Keynes Papers, P/6/24. King's College Archives, Cambridge University, Cambridge.
- . 1924b. "Edinburgh Chamber of Commerce Luncheon to Mr. J. M. Keynes." John Maynard Keynes Papers, PS/2/313–18. Cambridge, UK: King's College Archives, Cambridge University.
- . 1924c. "Policy Divisions between the Liberal and Labour Parties." John Maynard Keynes Papers, A/24/150–51. King's College Archives, Cambridge University, Cambridge.
- . 1927. "Speech to the Malthusian League, 26 July." John Maynard Keynes Papers, PS/3/107–17. King's College Archives, Cambridge University, Cambridge.
- . 1928a. "Resolution to Establish a National Investment Board." John Maynard Keynes Papers, PS/4/65–80. King's College Archives, Cambridge University, Cambridge.
- . 1928b. "Debate: That the Socialist Solution to the Economic Evils of Today Is to Be Preferred to That Contained in the Liberal Industrial Report." John Maynard Keynes Papers, PS/4/109–16. King's College Archives, Cambridge University, Cambridge.
- . 1929. "Social Reform as the New Socialism." John Maynard Keynes Papers, PS/4/187–91. King's College Archives, Cambridge University, Cambridge.

- . 1933. "Mr. Keynes's Control Scheme." *American Economic Review* 23, no. 4: 675.
- . 1943. "John Maynard Keynes to Bernard Shaw, 4 May" John Maynard Keynes Papers, PP/45/291/21. King's College Archives, Cambridge University, Cambridge.
- . 1946. "The Galton Lecture, 1946: Presentation of the Society's Gold Medal." *Eugenics Review* 38, no. 1: 39–42.
- . 1989. *Keynes's Lectures, 1932–35: Notes of a Representative Student*. London: Macmillan.
- Keynes, John Neville. 1911. "Diary Entry, 6 September." Diary of John Neville Keynes, Add.7861/249. Cambridge University Library, Cambridge.
- Klein, Lawrence R. 1951. "The Life of John Maynard Keynes." *Journal of Political Economy* 59, no. 5: 443–51.
- Labour Party. 1934. *For Socialism and Peace*. London: Labour Party.
- Laidler, David. 1999. *Fabricating the Keynesian Revolution: Studies of the Inter-war Literature on Money, the Cycle, and Unemployment*. New York: Cambridge University Press.
- Levy, Paul. 2005. *Introduction to The Letters of Lytton Strachey*, ed. Paul Levy, pp. vii–xv. New York: Farrar, Straus and Giroux.
- Marshall, Alfred. [1911] 1996. Alfred Marshall to John Maynard Keynes, May 18, 1911. In *Towards the Close, 1903–1924*, ed. John K. Whitaker. Vol. 3 of *The Correspondence of Alfred Marshall*, Economist. Cambridge: Cambridge University Press.
- Martin, Kingsley. 1966. *Father Figures*. London: Hutchinson of London.
- Marx, Karl, and Friedrich Engels. 1988. *Economic and Philosophic Manuscripts of 1844* and *The Communist Manifesto* [1848], the former trans. Martin Milligan. Amherst, N.Y.: Prometheus Books.
- Meltzer, Allan H. 1988. *Keynes's Monetary Theory: A Different Interpretation*. New York: Cambridge University Press.
- Mises, Ludwig von. [1922] 1981. *Socialism: An Economic and Sociological Analysis*, trans. J. Kahane. Indianapolis, Ind.: Liberty Fund.
- . [1944] 2011. *Omnipotent Government: The Rise of the Total State and Total War*. Indianapolis, Ind.: Liberty Fund.
- . [1949] 1998. *Human Action: A Treatise on Economics*. Scholar's ed. Auburn, Ala.: Ludwig von Mises Institute.
- . [1956] 2006. *The Anti-Capitalistic Mentality*, ed. Bettina Bien Greaves. Indianapolis, Ind.: Liberty Fund.
- . [1962] 2006. *The Ultimate Foundation of Economic Science: An Essay on Method*, ed. Bettina Bien Greaves. Indianapolis, Ind.: Liberty Fund.
- Moggridge, Donald E. 1992. *Maynard Keynes: An Economist's Biography*. London: Routledge.

- Moore, George Edward. [1897] 2011. "The 1897 Dissertation: the Metaphysical Basis of Ethics." Pp. 3–94 in *G. E. Moore: Early Philosophical Writings*, ed. Thomas Baldwin and Consuelo Preti. New York: Cambridge University Press.
- . [1898] 2011. "The 1898 Dissertation: The Metaphysical Basis of Ethics." Pp. 117–237 in *G. E. Moore: Early Philosophical Writings*, ed. Thomas Baldwin and Consuelo Preti. New York: Cambridge University Press.
- . 1898. "G.E. Moore to Desmond McCarthy, 14 August." Papers of G. E. Moore, Add.8330/2/5/6. Cambridge University Library, Cambridge.
- . [1902] 1991. *The Elements of Ethics*, ed. Tom Regan. Philadelphia: Temple University Press.
- . 1903. *Principia Ethica*. Cambridge: Cambridge University Press.
- O'Donnell, Rod. M. 1989. *Keynes: Philosophy, Economics, and Politics: The Philosophical Foundations of Keynes's Thought and Their Influence on His Economics and Politics*. New York: St. Martin's Press.
- . 1990. "The Epistemology of J. M. Keynes." *British Journal of the Philosophy of Science* 41: 333–50.
- . 1991. "Keynes's Political Philosophy." Pp. 3–28 in *Themes in Pre-Classical, Classical and Marxian Economics*, ed. William J. Barber. Vol. 5 of *Perspectives on the History of Economic Thought*. Aldershot, U.K.: Edward Elgar.
- . 1992. "The Unwritten Books and Papers of J. M. Keynes." *History of Political Economy* 24, no. 4: 767–817.
- . 1996. "What Can Economists Learn from Keynes's Philosophy?" *History of Economics Review* 25: 213–16.
- . 1999. "Keynes's Socialism: Conception, Strategy, and Espousal." Pp. 149–75 in *Keynes, Post-Keynesianism and Political Economy: Essays in Honour of Geoff Harcourt*. ed. Peter Kriesler and Claudio Sardoni. Vol. 3. London: Routledge.
- Pasinetti, Luigi L. 1974. *Growth and Income Distribution: Essays in Economic Theory*. New York: Cambridge University Press.
- Patinkin, Don. 1976. *Keynes' Monetary Thought: A Study of Its Development*. Durham, N.C.: Duke University Press.
- . 1982. *Anticipations of the General Theory?* Chicago: University of Chicago Press.
- Pimlott, Ben. 1985. *Hugh Dalton*. London: Jonathan Cape.
- Popper, Karl. 1945. *The Open Society and Its Enemies*. Vol. 1, *The Spell of Plato*. London: George Routledge and Sons.
- Raico, Ralph. 2008. "Was Keynes a Liberal?" *Independent Review* 13, no. 2: 165–88.



- Regan, Tom. 1991. Editor's introduction to *The Elements of Ethics*, by George Edward Moore, pp. xiii–xxxiii. Ed. Tom Regan. Philadelphia: Temple University Press.
- Salerno, Joseph T. 1992. "The Development of Keynes's Economics: From Marshall to Millennialism." *Review of Austrian Economics* 6, no. 1: 3–64.
- Schumpeter, Joseph A. [1942] 2006. *Capitalism, Socialism and Democracy*. New York: Routledge.
- . 1946. "John Maynard Keynes, 1883–1946." *American Economic Review* 36, no. 4: 495–518.
- Skidelsky, Robert. 1983. *John Maynard Keynes: Hopes Betrayed, 1883–1920*. New York: Viking.
- . 1990. "Interview with Robert Skidelsky." Pp. 49–54 in *John Maynard Keynes: Life, Ideas, Legacy*, ed. Mark Blaug. New York: St. Martin's Press.
- . 1992. *John Maynard Keynes: The Economists as Savior, 1920–1937*. New York: Viking.
- . 2000. *John Maynard Keynes: Fighting for Freedom, 1937–1946*. New York: Viking.
- . 2009. *Keynes: The Return of the Master*. New York: PublicAffairs.
- Strachey, Lytton. 1905. "Lytton Strachey to John Maynard Keynes, 5 December." *John Maynard Keynes Papers*, PP/45/316/1/209–11. King's College Archives, Cambridge University, Cambridge.
- . [1926] 2005. Lytton Strachey to Dara Carrington, August 30, 1926. Pp. 555–56 in *The Letters of Lytton Strachey*, ed. Paul Levy. New York: Farrar, Straus and Giroux.
- Taylor, Alfred E. [1926] 1955. *Plato: The Man and His Work*. London: Methuen and Co.
- Taylor, C. C. W. [1986] 1999. "Plato's Totalitarianism." Pp. 280–96 in *Plato 2: Ethics, Politics, Religion, and the Soul*, ed. Gail Fine. New York: Oxford University Press.
- Trotsky, Lev D [Leon]. [1925] 1927. "D. I. Mendeleev i marksizm" [D. I. Mendeleev and Marxism]. Pp. 268–88 in *Sochineniia*. Vol. 21. Moscow: Gosizdat.
- Turnbaugh, Douglas Blair. 1987. *Duncan Grant and the Bloomsbury Group*. Secaucus, N.J.: Lyle Stuart Inc.
- Vlastos, Gregory. [1989] 1997. "Was Plato a Feminist?" Pp. 115–28 in *Plato's Republic: Critical Essays*, ed. Richard Kraut. Lanham, Md.: Rowman and Littlefield.
- Webb, Beatrice. [1926] 1985. "Diary Entry, 9 August [1926]." Pp. 93–94 in *The Diary of Beatrice Webb*, ed. Norman MacKenzie and Jeanne MacKenzie. Vol. 4. Cambridge, Mass.: Belknap Press of Harvard University Press.



Williams, Francis. 1936. "Social Control of Investment Essential, 4 February." John Maynard Keynes Papers, GTE/8/8–9. King's College Archives, Cambridge University, Cambridge.

## HUMANISM: PROGRESSIVE PHILOSOPHY AT ODDS WITH ITSELF

JAMES A. MONTANYE

*ABSTRACT:* Humanism is a longstanding intellectual tradition dedicated to moral, aesthetic, and social perfectibility. Classical liberalism and modern libertarianism are products of classical humanist thinking; so is Enlightenment humanism, which substituted science and secular reason for theological dogma and ignorant superstition. Today's progressive humanist movement, by contrast, transcends freedom, liberty, and reason by seeking utopian perfection through flawed secular dogma and compulsory communitarianism. This article traces the development of humanist thinking and argues that humanism's progressive values cannot be achieved via compulsory means, as evinced by the repeated failure of intellectual attempts to transform functioning societies into social utopias. Perfectibility—within the realm of inherent human possibility—is possible only through the philosophy of classical liberalism.

*KEYWORDS:* humanism, liberalism, libertarianism, progressivism, unitarianism

*[O]ne should not require precision in all pursuits alike, but in each field precision varies with the matter under discussion and should be required only to the extent to which it is appropriate to the investigation. – Aristotle ([n.d.] 1962, 18)*

*Men, almost certainly, are capable of more than they have ever so far achieved. But what they achieve...will be a consequence of their remaining anxious, passionate, discontented human beings. To attempt, in the quest for perfection, to raise men above that level is to court disaster; there is no level above it, there is only a level below it. – Passmore ([1969] 2000, 258)*

---

James A. Montanye (jmont.ccg@gmail.com) is retired from economics consulting. He lives in Falls Church, Virginia.



## INTRODUCTION

Humanism is a longstanding intellectual tradition dedicated to the moral, aesthetic, and social “perfectibility of man” (the Marquis de Condorcet introduced the phrase; see Passmore [1969] 2000 for coverage). Today’s humanist movement bills itself as “a progressive philosophy of life that, without supernaturalism, affirms our ability and responsibility to lead ethical lives of personal fulfillment that aspire to the greater good of humanity” (American Humanist Association 2003). Its declared mission is “to manifest in clear and positive terms the conceptual boundaries of Humanism, not what we must believe but a consensus of what we do believe” (ibid.). The movement nevertheless has transformed classical humanism’s penchant for the humanities into the flexible set of progressive political beliefs and values espoused by self-styled humanists, for whom perfection entails a fanciful stream of something-for-nothing social benefits, financed from a perpetual endowment of national economic surplus that is presumed to flow regardless of the productive behavioral incentives that foster economic growth. Formal membership in humanist organizations at all levels is estimated to be less than fifty thousand; perhaps ten times that number access humanist websites via social media. These numbers are misleading in part: progressive humanist values presently are shared by a substantial majority of Americans.

The essence of contemporary humanism is summarized by the prominent academic psychologist, and self-identified Enlightenment humanist, Steven Pinker:

The goal of maximizing human flourishing—life, health, happiness, freedom, knowledge, love, richness of experience—may be called humanism....It is humanism that identifies *what* we should try to achieve with our knowledge. It provides the *ought* that supplements the *is*. It distinguishes true progress from mere mastery....There is a growing *movement* called Humanism, which promotes a non-supernatural basis for meaning and ethics: good without God. (Pinker 2018, 410)

Pinker’s embrace of humanism is in tension with his earlier stance against the progressive intellectual tendency toward “the denial of human nature” (Pinker 2002): he argues in that context that perfectibility must flow from human nature as it is; he opposes adopting hypothetical measures of perfection that are predicated upon normative imaginings of what human nature *ought* to be. The

conflict between *ought* and *is*—between logic and experience—sets humanism at odds with itself.

This essay argues instead that human perfectibility cannot be achieved via progressive humanist means. Rather, it can be achieved—to the extent inherently possible—only through the philosophy and economics of classical liberalism, by which ordinary individuals remain free to perfect themselves and their societies through human creativity and voluntary cooperation.

Progressive humanist philosophies, when implemented, degenerate perforce into tyrannies that are regressive and dystopian. These ineluctable outcomes ironically preclude the possibility of true human perfectibility by obliging individuals to believe and obey normative creedal doctrines that are derived from false *a priori* axioms that run counter to inherent human nature. The upshot is social and political discord, domestic violence (alternatively characterized nowadays as “domestic terrorism” and mental illness), rising rates of suicide (particularly among the police and soldiers who are charged with enforcing progressive policies), alcoholism, drug addiction, and penal incarceration. These outcomes are inevitable for a variety of sufficient reasons, the principal ones being that the progressive intellectuals espousing humanist doctrines are neither omniscient nor Platonically passionless. The digitalization of homeland security, public finance, and regulatory compliance has facilitated progress toward the progressive movement’s warped vision of “true liberty” à la Rousseau (see, for example, Gupta et al. 2017).

The humanist movement has tempered its aggressive stance in recent decades, downplaying radical means for achieving perfection. The movement’s progressive ends nevertheless imply compulsive means. Tiffany Jones Miller, among many historians, explains how progressive intellectuals of all stripes have “discarded the Founders’ conception of individual freedom as natural rights in favor of a new conception of freedom synonymous with the fullest possible development or ‘perfection’ of human nature” (Miller 2012, 227). The conception of democratic citizenship has shifted, from being one of negative freedom (i.e., the absence of official compulsions), to one of compulsory, positive freedoms that ostensibly enable “the people” collectively to prosper and flourish at normatively higher levels. The meaning of “liberalism” became inverted (perverted) by Progressive Era social thinkers (especially

Herbert Croly and Walter Lippmann) to suit this changed notion of freedom within industrial American democracy. Miller quotes the Progressive theologian Samuel Zane for the proposition that “true liberty is a positive thing, and to consider its negative aspects alone is to miss its high and divine significance” (227).

Humanism expresses itself through culture, “that uniquely human realm of artifice in which human beings escape their natural animality to express rational humanity as the only beings who have a ‘supersensible faculty’ for moral freedom” (Arnhart 1998, 64). To this end, progressive humanism emphasizes secular reason and science, accepts humanity as an evolved aspect of Nature, and (following Aristotle) recognizes that ethical values represent pragmatic means for satisfying individual needs and interests. It goes on to characterize stylized visions of human fulfillment, the moral significance of relationships, and the fundamental elements of happiness—a litany representing “not what [humanists] must believe but a consensus of what [humanists] do believe” (American Humanist Association 2003).

Progressive humanists ironically are willing, and often eager, to trade off human liberty—nominally a cardinal humanist value—for the sake of perfecting not only “the people,” but also the human species as a whole, and to do so regardless of the cost to discrete individuals. But why stop with perfecting humanity? Pinker notes that “[d]espite the word’s root, *humanism* doesn’t exclude the flourishing of animals” (Pinker 2018, 410). The balance of this essay confines itself to the human species alone.

Ideals of human perfectibility are neither universal nor consistent among humanists. The Catholic philosopher Jacques Maritain saw perfection in a fusion between spirituality and the humanities. Earlier humanists imagined that humanity could perfect itself as a species via active and passive eugenics policies. Modern humanists accept the necessity of social discipline and sacrifice, especially among other individuals. The French general and statesman Charles de Gaulle claimed that “[t]he self-sacrifice of individuals for the sake of the community, suffering made glorious—those two things which are the basic elements of the profession of arms—respond to both our moral and aesthetic concepts. The noblest teachings of philosophy and religion have found no higher ideals....Had not innumerable soldiers shed their blood there would have been no Hellenism, no Roman civilization, no Christianity, no Rights

of Man and no modern developments” (de Gaulle [1932] 1960, 14, 69), and therefore no humanism. President Woodrow Wilson shared de Gaulle’s sunny view of militaristic perfection: “I am an advocate of peace, but there are some splendid things that come to a nation through the discipline of war” (quoted in Goldberg 2007, 107; see Pinker 2018, 165 for other examples). Humanism admits a broad range of values, and much of it is intrinsically contradictory.

Progressive humanists believe that even the most reluctant individuals would voluntarily embrace a perfected world in which secular authorities orchestrate, via combinations of noble lies, nudges, and coercion, a normative mix of compulsory economic cooperation and exchange, self-sacrifice, and arbitrary visions of social justice, culminating in a utopian “end of history.” Regrettably, attempts to effect perfected states of nature and grace—from the French Revolution to modern times—have ended in abject horror, followed eventually by regression to humanity’s inherently egoistic nature. The fanciful hopes and denials of progressive intellectuals nevertheless spring eternal. The economist and Nobelist F. A. Hayek observed that

Most people are still unwilling to face the most alarming lesson of modern history: that the greatest crimes of our time have been committed by governments that had the enthusiastic support of millions of people who were guided by moral impulses. It is simply not true that Hitler or Mussolini, Lenin or Stalin, appealed only to the worst instincts of their people: they also appealed to some of the feelings which also dominate contemporary democracies. (Hayek 1976, 134)

Progressive philosophies that purport to “make democracy work for everyone” by establishing elected tyrannies have made most ordinary individuals worse off most of the time by leveling people downward rather than uplifting them.

Humanists, aided and abetted by an indefinitely large number of parallel progressive movements, are in the vanguard of modern intellectual excesses. Success and failure by their lights tends to be judged by the elegance of their theories and intentions, while foreseeable adverse outcomes are ignored. The historian and philosopher of science Timothy Ferris considers a parallel case:

French revolutionaries suffered two closely related misfortunes. First, they neglected the fundamental lesson of science and liberalism—that the key to success is to experiment and to abide by the results—assuming instead that the point of a revolution was to implement a particular philosophy. Second, they chose the wrong philosophy. (Ferris 2010, 113)

The economist Julian Simon explained that

Many unselfish well-off persons think they know better than do poor people what is good for the poor and for the world. Most of us secretly believe that we know how some others should live their lives better than they themselves know. But this belief matters only when it is hitched up with arrogance and the willingness to compel others to do what we think they ought to do." (Simon 1996, 542)

Hayek explains the roots of this hubris:

The intellectual, by his whole disposition, is uninterested in technical details or practical difficulties. What appeals to him are the broad visions, the specious comprehension of the social order as a whole which a planned system promises....there can be few more thankless tasks at present than the essential one of developing the philosophical foundation on which the further development of a free society must be based. Since the man who undertakes it must accept much of the framework of the existing order, he will appear to many of the more speculatively minded intellectuals merely as a timid apologist for things as they are; at the same time he will be dismissed by men of affairs as an impractical theorist....If he takes advantage of such support as he can get from men of affairs, he will almost certainly discredit himself with those on whom he depends for the spreading of his ideas. (Hayek [1949] 1990, 20, 22).

Intellectual humanist philosophy persists, because it provides an efficient platform for signaling the professional, intellectual, and social virtues of conformity, cooperation, and trustworthiness.

The first two sections below illuminate humanism's intellectual history. The third section critiques its false presuppositions, and the final section argues that humanism itself is perfectible only through classical liberalism.

## 1. CLASSICAL HUMANISM: MORE, COMTE, AND CROLY

Classical humanism unfolds along a bright line running through Thomas More's sixteenth-century utopian vision, August Comte's nineteenth-century "positivism," and the progressivism of Comte's twentieth-century American disciple Herbert Croly. These three visions are summarized below.

### Thomas More

Humanist thinking dates to antiquity, although humanism *per se* is attributed to a handful of sixteenth-century Renaissance thinkers. Chief among them were the Dutch philosopher

Desiderius Erasmus and the English philosopher and courtier Sir Thomas More; the latter was immortalized in Robert Bolt's play *A Man for All Seasons* (1966). Erasmus and More were friends and mutual admirers: Erasmus advised friends to read More's novel *Utopia* if they "wished to see the true source of all political evils" (quoted in More [1516] 1806, 10).

More's novel is styled as a colloquy between himself and a traveler, Raphael Hythloday, who recounts his impressions of life among the Utopians. The Utopians' spirit of peace and brotherhood epitomized human perfection: few laws were needed to control these eusocial (highly social) people and their benevolent government, and economic resources miraculously were abundant despite economic prosperity generally being no greater than in antiquity (see DeLong 1998). Like the socialist author Upton Sinclair upon his return from a chaperoned tour of the Soviet Union, Hythloday believed that he had seen the future and that it worked.

More's characterization of Utopia's attainments echoes loudly within progressive humanist thinking. Consider, for example, this exchange between Hythloday, More, and a fellow interlocutor regarding political economy:

I must freely own that as long as there is any property, and while money is the standard of all other things, I cannot think that a nation can be governed either justly or happily: not justly, because the best things will fall to the share of the worst men; nor happily, because all things will be divided among a few (and even these are not in all respects happy), the rest being left to be absolutely miserable. Therefore, when I reflect on the wise and good constitution of the Utopians, among whom all things are so well governed and with so few laws, where virtue hath its due reward, and yet there is such an equality that every man lives in plenty—when I compare with them so many other nations that are still making new laws, and yet can never bring their constitution to a right regulation; where, notwithstanding every one has his property, yet all the laws that they can invent have not the power either to obtain or preserve it, or even to enable men certainly to distinguish what is their own from what is another's, of which the many lawsuits that every day break out, and are eternally depending, give too plain a demonstration—when, I say, I balance all these things in my thoughts, I grow more favourable to Plato, and do not wonder that he resolved not to make any laws for such as would not submit to a community of all things; for so wise a man could not but foresee that the setting all upon a level was the only way to make a nation happy; which cannot be obtained so long as there is property, for when every man draws to himself all that he can compass, by one title or another, it must follow that, how plentiful soever a nation may be, yet



a few dividing the wealth of it among themselves, the rest must fall into indigence. (More [1516] 1806, 62–63)

More, speaking as himself, and foreshadowing the tenets of classical liberalism, responded skeptically to Hythloday's rosy account:

it seems to me men cannot live conveniently where all things are common. How can there be any plenty where every man will excuse himself from labour for as the hope of gain doth not excite him, so the confidence that he has in other men's industry may make him slothful. If people come to be pinched with want, and yet cannot dispose of anything as their own, what can follow upon this but perpetual sedition and bloodshed, especially when the reverence and authority due to magistrates falls to the ground? For I cannot imagine how that can be kept up among those that are in all things equal to one another. (64–65)

A fellow interlocutor, whose comments foreshadowed Burkean conservatism, was equally skeptical:

You will not easily persuade me that any nation in that new world is better governed than those among us; for as our understandings are not worse than theirs, so our government (if I mistake not) being more ancient, a long practice has helped us to find out many conveniences of life, and some happy chances have discovered other things to us which no man's understanding could ever have invented." (65–66)

The novel ends with More concluding that

though it must be confessed that he [Hythloday] is both a very learned man and a person who has obtained a great knowledge of the world, I cannot perfectly agree to everything he has related. However, there are many things in the commonwealth of Utopia that I rather wish, than hope, to see followed in our governments. (More [1516] 1806, 192)

More doubted that the elimination of money and property could improve the social order within a functioning society. And as a staunch Catholic who maintained facilities in his private residence for torturing religious heretics, he surely would not have countenanced the Utopian's cheerful acceptance of alternative religions. His fictional account of perfection is descriptive rather than prescriptive or predictive—descriptive perhaps of prevailing populist sentiments, with Hythloday foreshadowing Voltaire's sunny character Dr. Pangloss. The novel can be read partly as a satirical commentary on populism. Its humanistic spirit nevertheless anticipated the philosophy of classical liberalism and modern libertarianism.

## August Comte

A comprehensive “positive polity” along utopian lines was described three centuries after More by the French philosopher August Comte. Comte claimed to disdain utopian social visions, despite proposing, by his own account, “the wildest of them all,” viz., “to systematize the art of social life” by directing “the spiritual reorganization of the civilized world.” His positivist motto Love, Order, Progress survives in Brazil’s national motto, *Ordem e progresso* (Order and Progress), although Comte would not recognize modern Brazil as being a child of his creative imaginings. He is best remembered instead for having coined the terms *sociology* (also termed *social physics*) to describe his *positive* approach to social theory (not to be confused with logical positivism) and *altruism* to describe the sacrifices that his philosophy demanded from all individuals.

Comte’s positive polity substituted “the permanent [secular] government of Humanity for the provisional government of God” (Comte [1851] 1875, 325). It proposed “a systematic religion developing the unity of man; for it has at length become possible to constitute such a religion immediately and completely...the priesthood becomes the soul of true sociocracy” (Comte [1852] 1858, 48, 340). Comte appointed himself the high priest of his positive and universal religion, an artifact perhaps of his earlier bout with clinical insanity. Nevertheless, his characterization of theocentric and secular religions as being substitutable behavioral responses to resource scarcity was prescient and is widely accepted nowadays (see Tillich [1951] 1973, 221; Montanye 2006; Nelson 1991, 2001, and 2010).

Comte’s voluminous philosophy was grounded on a foundation of sacrificial altruism:

Our harmony as moral beings is impossible on any other foundation but altruism. Nay more, altruism alone can enable us to live, in the highest and truest sense. The degraded being who at present exist[s] only to live, would be tempted to give up their brutal selfishness, had they but once had a real taste of what you so well call the pleasures of devotedness. They would then understand that, to live for others is the only means of freely developing the whole existence of man....In this way you see how happiness and duty will necessarily coincide. (Comte [1852] 1858 [1852], 310–11)

Comte’s vision dealt only in duties; no collateral rights were necessary, because all individuals were presumed to know, in their heart of hearts, the sweet feeling that comes from obedience. John

Stuart Mill, whose utilitarianism was influenced by Comte, ultimately described Comte's vision as being "the completest system of spiritual and temporal despotism which ever yet emanated from a human brain" (quoted in Passmore [1969] 2000, 224). Comtean positivism nevertheless sparked considerable interest among free-thinking intellectuals in Europe and America.

### Herbert Croly

One American utilitarian thinker who took a keen interest in Comte's philosophy was Herbert Croly. Croly's progressive opus, *The Promise of American Life* (1911), became the twentieth century's intellectual blueprint for perfecting humanity. His vision materially influenced the policy proposals of Woodrow Wilson (who committed America to making the world safe for a version of democracy that would enable visionary leaders like himself to enact progressive policies most easily) and Franklin Roosevelt's New Deal. It also influenced the American humanist movement, which is discussed below. Croly's vision, like Comte's, amounted to a secular Sermon on the Mount, albeit one that facilitated fascism and war across Europe and the world, and that since then has fostered social and political unrest in America.

Croly's argument follows from his belief that "[t]he faith of Americans in their own country is religious, if not in its intensity, at any rate in its almost absolute and universal authority. It pervades the air we breathe" (Croly 1911, 1). He described how America's early promise of democracy had become negated by

manifestations of economic slavery, of grinding the faces of the poor, of exploitation of the weak, of unfair distribution of wealth, of unjust monopoly, of unequal laws, of industrial and commercial chicanery, of disgraceful ignorance, of economic fallacies, of public corruption, of interested legislation, of want of public spirit, of vulgar boasting and chauvinism, of snobbery, of class prejudice, of respect of persons, and of a preference of the material over the spiritual. In a word, America has not attained, or nearly attained, perfection. (18–19)

The upshot for Croly (foreshadowing progressive politics and law) was that:

No preestablished harmony can then exist between the free and abundant satisfaction of private needs and the accomplishment of a morally and socially desirable result. The Promise of American life is to be fulfilled — not merely by a maximum amount of economic freedom, but by a

certain measure of discipline; not merely by the abundant satisfaction of individual desires, but by a large measure of individual subordination and self-denial. And this necessity of subordinating the satisfaction of individual desires to the fulfillment of a national purpose is attached particularly to the absorbing occupation of the American people—the occupation, viz.: of accumulating wealth. The automatic fulfillment of the American national Promise is to be abandoned, if at all, precisely because the traditional American confidence in individual freedom has resulted in a morally and socially undesirable distribution of wealth. (22)

The gravamen of Croly's thesis entailed a critical choice: "The antithesis is not between nationalism and individualism, but between an individualism which is indiscriminate, and an individualism which is selective" (409).

Croly saw the failure of America's promise in

the political corruption, the unwise economic organization, and the legal support afforded to certain economic privileges are all under existing conditions due to the malevolent social influence of individual and incorporated American wealth; and it is equally true that these abuses, and the excessive 'money power' with which they are associated, have originated in the peculiar freedom which the American tradition and organization have granted to the individual. (Croly 1911, 23)

Specifically, "[t]he millionaire, the Boss, the union laborer, and the lawyer, have all taken advantage of the loose American political organization to promote somewhat unscrupulously their own interests, and to obtain special sources of power and profit at the expense of a wholesome national balance" (138). This result seemed incongruous to Croly, for whom America's "sovereign popular will" had redefined the meaning of American constitutional democracy: "For better or worse the American people have proclaimed themselves [via the abolition of slavery] to be a democracy, and they have proclaimed that democracy means popular economic, social, and moral emancipation" (270). Accordingly, "[t]he fulfillment of a justifiable democratic purpose may demand the limitation of certain rights, to which the Constitution affords such absolute guarantees; and in that case the American democracy might be forced to seek by revolutionary means [sic] the accomplishment of a result which should be attainable under the law" (36). Croly asserted further that

[d]emocracy must stand or fall on a platform of possible human perfectibility. If human nature cannot be improved by institutions, democracy is at best a more than usually safe form of political organization; and

the only interesting inquiry about its future would be: How long will it continue to work? But if it is to work better as well as merely longer, it must have some leavening effect on human nature; and the sincere democrat is obliged to assume the power of the leaven. (400)

According to Pace Croly, America's constitutional plan for republican democracy was designed to harness the self-interest of ordinary individuals rather than to leaven it. The Founders' plan also sought to restrain the destructive tendencies of government itself. Croly recognized that "[n]o plan of political organization can in the nature of things offer an absolute guarantee that a government will not misuse its powers; but a government of the kind suggested, should it prove to be either corrupt or incompetent, could remain in control only by the express acquiescence of the electorate" (Croly 1911, 333). Yet, six decades after Croly's progressive vision first gained social, political, and legal traction, the political scientist Theodore Lowi ([1969] 1979) observed that America's "promise" remained enslaved by interest group politics. The upshot of Croly's progressive liberalism differed only in detail from the post-Civil War state of affairs against which he railed.

Croly recognized that his overall proposal for restoring America's promise "may be disagreeable, but it is not to be escaped. In becoming responsible for the subordination of the individual to the demand of a dominant and constructive national purpose, the American state will in effect be making itself responsible for a morally and socially desirable distribution of wealth" (Croly 1911, 23). He recognized as well that his proposed remedy would not be acceptable immediately because of the sacrifices it entailed. Force, therefore, would be required, especially in public education, where social indoctrination is easiest (see Lott 1990):

Men being as unregenerate as they are, all worthy human endeavor involves consequences of battle and risk. The heroes of the struggle must maintain their achievements and at times even promote their objects by compulsion. The policeman and the soldier will continue for an indefinite period to be guardians of the national schools, and the nations have no reason to be ashamed of this fact. It is merely symbolic of the very comprehensiveness of their responsibilities—that they have to deal with the problem of human inadequacy and unregeneracy in all its forms. (Croly 1911, 284)

Until the nation's "unregenerate" population withered away, Croly proposed following Robespierre's promise "to lead the people by reason and the people's enemies by terror."

## 2. THE HUMANIST MOVEMENT

The twentieth century experienced worldwide expressions of humanist values (see [www.americanhumanist.com](http://www.americanhumanist.com) for coverage). The International Humanist and Ethical Union sitting in Amsterdam issued declarations in 1952 and 2002, professing to proffer “the official defining statement of World Humanism.” American manifestos (statements of principles and intent) were issued in 1933, 1973, and 2003, the first by the Unitarian Humanist Fellowship founded in 1927 and the latter two by its successor organization, the American Humanist Association (AHA), founded in 1941 and which has absorbed other humanist groups since then. Each of these proclamations expressed conventional humanist principles, viz., the evil of theological dogmatism, the superiority of scientific explanations and empirical evidence, the nature of human values, and the quest to perfect human potential. The 2002 Amsterdam *Declaration* included artistic creation and imagination as humanist values; the 2003 American *Humanist Manifesto III* added joy and beauty, human rights, resource equality, and environment protection. A *Secular Humanist Declaration*, issued in 1980 by the Council for Democratic and Secular Humanism, raised concerns that the rise of politically conservative Christian fundamentalism threatened American democracy’s progressive agenda. Nowadays humanists of all stripes assert a grab bag of *ad hoc* “natural” human rights that ironically are among the first to be sacrificed in the quest for human perfectibility.

The three *Humanist Manifestos* promulgated by the AHA demonstrate the evolution of modern progressive humanist principles.

### Humanist Manifesto I (1933)

The AHA’s first manifesto claimed that “[m]an is at last becoming aware that he alone is responsible for the realization of the world of his dreams, that he has within himself the power for its achievement. He must set intelligence and will to the task.” To this end, the statement asserted a bold point (number 14) that echoed More, and was fully worthy of both Comte and Croly:

The humanists are firmly convinced that existing acquisitive and profit-motivated society has shown itself to be inadequate and that a radical change in methods, controls, and motives must be instituted. A socialized and cooperative economic order must be established to the end that the equitable distribution of the means of life be possible. The goal of

humanism is a free and universal society in which people voluntarily and intelligently cooperate for the common good. Humanists demand a shared life in a shared world.

The word *socialized* suggests humanism's philosophical orientation, although its vision actually is communitarian—more Leninist than Marxist. In this regard the manifesto hewed to Croly, who asserted that “[t]he national economic interest demands, on the one hand, the combination of abundant individual opportunity with efficient organization, and on the other, a wholesome distribution of the fruits; and these joint essentials will be more certainly attained under some such system as the one suggested than they are under the present system” (Croly 1911, 380). Socialism *per se* entails only the collective ownership of productive capital; it makes no demand for “a wholesome distribution of fruits.” The manifesto, by contrast, endorsed not only economic regulation and joint public-private enterprise, but also the “wholesome distribution” of economic surplus (if any), objectives that are more totalitarian than socialist. To this end, Mussolini coined the term *totalitarian* to “describe a society where everybody belonged, where everyone was taken care of, where everything was inside the state and nothing was outside” (Goldberg 2007, 14). Totalitarianism aptly characterizes progressive humanist thinking.

### Humanist Manifesto II (1973)

The abject failures of Crolyism, early progressive humanism, fascism, and communism “to realize the world of [man’s] dreams” had become painfully evident by the end of World War II, although Croly’s political journal, the *New Republic*, nevertheless continued touting the desirability and presumed successes of Soviet communism. Grudging acceptance of these failures, however, compelled the AHA to issue a revised manifesto in 1973. The statement opened with an oblique apology for having gotten the first manifesto’s fourteenth point so wrong:

It is forty years since Humanist Manifesto I (1933) appeared. Events since then make that earlier statement seem far too optimistic. Nazism has shown the depths of brutality of which humanity is capable. Other totalitarian regimes have suppressed human rights without ending poverty. Science has sometimes brought evil as well as good. Recent decades have shown that inhumane wars can be made in the name of peace. The beginnings of police states, even in democratic societies, widespread government espionage, and other abuses of power by military, political,



and industrial elites, and the continuance of unyielding racism, all present a different and difficult social outlook. In various societies, the demands of women and minority groups for equal rights effectively challenge our generation.

As we approach the twenty-first century, however, an affirmative and hopeful vision is needed. Faith, commensurate with advancing knowledge, is also necessary. In the choice between despair and hope, humanists respond in this Humanist Manifesto II with a positive declaration for times of uncertainty.

The revised manifesto abandoned its predecessor's radical means for reaching heaven on earth. It nevertheless retained a "commitment to the positive belief [candidly grounded partly upon the certitude of 'faith'] in the possibilities of human progress and to the values central to it." Rather than specifying concrete means by which to proceed, this statement merely set forth "a set of common principles that can serve as a basis for united action—positive principles relevant to the present human condition. They are a design for a secular society on a planetary scale." The statement rejected doctrines that "sacrifice individuals on the altar of Utopian promises," without acknowledging that its litany of "shoulds" and "oughts" could not be achieved without sacrificing individuals for the collective perfection of humanity.

### Humanist Manifesto III (2003)

The AHA's third manifesto tersely characterized humanism as "a progressive philosophy of life." Its "lifestyle"—which is "guided by reason, inspired by compassion, and informed by experience—encourages us to live life well and fully." This revision reflected the AHA's "ongoing effort to manifest in clear and positive terms the conceptual boundaries of Humanism, not what we must believe but a consensus of what we do believe." It also reflected "the informed conviction that humanity has the ability to progress toward its highest ideals." To facilitate this progress, the AHA established a lobbying presence in Washington in addition to tilting litigiously at theocentric iconography in the public square—the Bladensburg, Maryland "Peace Cross," for example (see *American Legion et al. v. American Humanist Assn. et al.*, S. Ct. Slip Op. 17-1717 [2019]).

The ends of "movement" humanism remain those described by More, Comte, and Croly. However, the abject failure of humanist means—i.e., central planning by omniscient political deities



who are presumed to be capable of divining the “general” and “popular” will, and the “sovereign national spirit” by which individuals might be compelled to be “free”—has left humanism without a coherent means (apart from lobbying and litigation) of achieving its aspirational ends.

### 3. HUMANISM AND ITS DISCONTENTS

Progressive humanism rests as an intellectual curiosity until its aspirational goals and *ad hoc* means become operational, at which point it changes from idle fantasy into tyranny and chaos. These consequences are foreordained because one-dimensional humanist thinking overlooks the connection between progressive ends and the necessary means for achieving them. The subsections below consider eight contradictions within humanist philosophy: abuse of reason, presumption of altruism, religion, fairness, elective fascism, central planning, the lack of staying power, and the inability to perfect humanism from within.

#### Abuse of Reason

Contrary to the way its proponents present it, humanism’s commitment to fallacious, presuppositional reasoning and pseudoscientific positivism is both wistfully romantic and intrinsically anti-Enlightenment. The economist Ludwig von Mises characterized such commitments as representing

man’s revolt against reason, as well as against the condition under which nature has compelled him to live [economic resource scarcity]. The romantic is a daydreamer; he easily manages in imagination to disregard the laws of logic and nature. The thinking and rationally acting man tries to rid himself of the discomfort of unsatisfied wants by economic action and work; he produces in order to improve his position. The romantic is too weak—too neuroasthenic [sic]—for work; he imagines the pleasures of success but he does nothing to achieve them. He does not remove the obstacles; he merely removes them in imagination. He has a grudge against reality because it is not like a dream world he has created. He hates work, economy, and reason. (Mises [1922] 1981, 365)

Mises’s comment was directed at public enthusiasm for socialism and communism, but it applies equally well to progressive humanist thinking.

Croly soft-pedaled his scheme as an experiment: “A democracy organized into a nation and imbued with the national spirit, will

seek by means of experimentation and discipline to reach the object which Tolstoy would reach by an immediate and a miraculous act of faith" (Croly 1911, 282). The framers of the American Constitution similarly considered their project to be an "experiment": the word appears nearly fifty times in *The Federalist Papers* (1787); Thomas Jefferson wrote in 1804 that "[n]o experiment can be more interesting than that we are now trying, and which we trust will end in establishing the fact, that man may be governed by reason and truth" (quoted in Ferris 2010, 162). Compare Jefferson's observation with Stalin's response to Lady Astor's blunt question "How long are you going to keep on killing people?" Stalin's reply: "As long as it is necessary....you blame us for killing a handful [upwards of 30 million] for the most promising social experiment in history?" (quoted in Chambers [1952] 2002, 82). The conspicuous difference between these two experiments is that the American one (at least what's left of it) still generates prosperity and flourishing; the Soviet experiment diminished both before collapsing. Failed theories are abandoned within the natural sciences. Not so within the intellectual tradition of progressive social science.

## Altruism

Progressive humanism's ideals demand discipline and sacrifice. Croly explained that

The Promise of American life is to be fulfilled—not merely by a maximum amount of economic freedom, but by a certain measure of discipline; not merely by the abundant satisfaction of individual desires, but by a large measure of individual subordination and self-denial....To ask an individual citizen continually to sacrifice his recognized private interest to the welfare of his countrymen is to make an impossible demand, and yet just such a continual sacrifice is apparently required of an individual in a democratic state. The only entirely satisfactory solution of the difficulty is offered by the systematic authoritative transformation of the private interest of the individual into a disinterested devotion to a special object. (Croly 1911, 22, 418)

Croly's program, like More's utopian vision and Comte's positive polity, depended upon individuals being purposefully *altruistic* (sacrificially benevolent) with respect to life and property. Yet sociobiology, evolutionary psychology, and modern economics teach that sacrificial altruism among humans occurs naturally only within the family unit; otherwise, it is deemed a likely symptom of mental illness. Ordinary *generosity*, by comparison, is financed

voluntarily out of economic surplus, and so entails no true sacrifice (see Montanye 2018). The ethicist John Mueller clarifies the progressive distinction between altruism and generosity: “*benevolence* [altruism], or good will, can be extended to everyone in the world, and *beneficence* [generosity], or doing good, cannot” (Mueller 2010, 36). About progressive schemes based upon the presumption of human altruism, Pinker notes:

Today’s fascism light, which shades into authoritarian populism and Romantic nationalism, is sometimes justified by a crude version of evolutionary psychology in which...humans have been selected to sacrifice their interest for the supremacy of their group. (This contrasts with mainstream evolutionary psychology, in which the unit of selection is the gene).” (Pinker 2018, 448)

The biologist Richard Dawkins, who introduced “selfish gene” theory, and who is both an avowed humanist and a socialist, sides with Pinker on the facts but differs on the spirit: “Human superniceness is a perversion of Darwinism, because, in a wild population, it would be removed by natural selection....Let’s put it even more bluntly. From a rational choice point of view, or from a Darwinian point of view, human superniceness is just plain dumb. But it is the kind of dumb that should be encouraged” (Dawkins 2017, 276–77).

Altruism is chimerical, because an inherent sense of *property* (relationships between individuals and things) is ingrained in human nature; for example, children that are denied property rights in personal possessions become socially maladjusted and remain so well into later life (Pipes 1999, chap. 2). The distinguished biologist E. O. Wilson once (he has partly apostatized) offered a curt explanation for the failure of altruistic social schemes among humans: “Wonderful theory. Wrong species” (quoted in Pinker 2002, 296). Contemporary social commentators nevertheless carp ignorantly about inherent egoism’s dominance (see, for example, Tomasky 2019, 123–51, 189–237). Rousseau at least was barking up the right tree when he proclaimed that “[t]he first man who, having enclosed a piece of ground, bethought himself of saying ‘This is mine,’ and found people simple enough to believe him, was the real founder of civil society” (Rousseau [1754] 1992, 183).

## Religion

Pinker asserts that “[t]he members of Humanist associations would be the first to insist that the ideals of humanism belong to

no sect” (Pinker 2018, 411). If this is so, then they remain willfully blind to humanism’s conspicuously religious form. The movement was proffered initially as a “new religion” (Potter 1930)—Unitarianism (professing reason and conscience) but with most vestiges of God exorcised. This vision was prophetic. Mises observed that progressive politicians and bureaucrats act (à la Comte) as if from a desire to emulate, if not to be, gods:

the terms “society” and “state” as they are used by the contemporary advocates of socialism, planning, and social control of all the activities of individuals signify a deity. The priests of this new creed ascribe to their idol all those attributes which the theologians ascribe to God—omnipotence, omniscience, infinite goodness, and so on” (Mises [1949] 2008, 151).

As secular societies became self-defining, covenants that once were symbolized by rainbow, cross, and crescent became symbolized instead by flags, pulp slogans, reimagined evils, and all-too-human deities.

Croly’s vision of America’s promise and future carried evangelical overtones as well: “If such a moment ever arrives, it will be partly the creation of some democratic evangelist—some imitator of Jesus who will reveal to men the path whereby they may enter into spiritual possession of their individual and social achievements, and immeasurably increase them by virtue of personal regeneration” (Croly 1911, 453–54). Americans routinely witness this evangelical zeal in their political candidates. The writer Jonah Goldberg notes that

The New Deal amounted to a religious breakthrough for American liberalism. Not only had faith in the liberal ideal become thoroughly religious in nature—irrational, dogmatic, mythological—but many smart liberals recognized this fact and welcomed it. In 1934 [the philosopher John] Dewey defined the battle for the liberal ideal as a “religious quality” in and of itself. Thurman Arnold, one of the New Deal’s most influential intellectuals, proposed [trumpeting Croly] that Americans be taught a new “religion of government,” which would finally liberate the public from its superstitions about individualism and free markets. (Goldberg 2007, 223).

Indeed, *Humanist Manifesto I* (discussed earlier) was proffered overtly as a “new” secular religion that was necessitated by “science and economic change having disrupted the old beliefs [along with ‘increased knowledge and experience’].”

Denying humanism's religiousness at this juncture is disingenuous.

## Fairness

Humanists regard "fairness" as key to social "equality" as if both concepts were intrinsically free of ambiguity and contradiction. The linguist George Lakoff shows that fairness and equality actually have multiple conflicting dimensions, some of which are progressive ("equality of distribution and need-based fairness"), others of which are conservative ("equality of opportunity and contractual fairness") (Lakoff 2006, 50–51). These dimensions include:

- Equality of distribution (one child, one cookie)
- Equality of opportunity (one person, one raffle ticket)
- Procedural distribution (playing by the rules determines what you get)
- Equal distribution of power (one person, one vote)
- Equal distribution of responsibility (we share the burden equally)
- Scalar distribution of responsibility (the greater your abilities, the greater your responsibilities)
- Scalar distribution of rewards (the more you work, the more you get)
- Rights-based fairness (you get what you have a right to)
- Need-based fairness (you get what you need)
- Contractual distribution (you get what you agree to)

Former President Lyndon Johnson famously committed his administration to replacing America's traditional "equality of opportunity" with a new "equality of distribution" (Johnson [1965] 2019). His policy of "affirmative action" toward selected identity groups reified Croly's demand for political discrimination: "The national government must step in and discriminate; but it must discriminate, not on behalf of liberty and the special individual, but on behalf of equality" (Croly 1911, 190).

Progressives' obsession with equality responds directly to the human propensity for envy (see Schoeck [1966] 1987). The philosopher Harry Frankfurt (along with some economists) aptly argues that

Economic inequality is not, as such, of any particular moral importance; and by the same token, economic inequality is not in itself morally

objectionable. From the point of view of morality it is not important that everyone should have *the same*. What is morally important is that each should have *enough*. If everyone had enough money, it would be of no special or deliberate concern whether some people had more money than others. (Frankfurt 2015, 7)

Progressive humanist intellectuals forcefully disagree.

## Elective Fascism

The term *fascism* has become shorthand for those means and ends of which progressive humanists disapprove. Goldberg offers instead a comprehensive definition that coincidentally describes its spiritual form:

Fascism is a religion of the state. It assumes the organic unity of the body politic and longs for a national leader attuned to the will of the people. It is *totalitarian* in that it views everything as political and holds that any action by the state is justified to achieve the common good. It takes responsibility for all aspects of life, including our health and well-being, and seeks to impose uniformity of thought and action, whether by force or through regulation and social pressure. Everything, including the economy and religion, must be aligned with its objectives. Any rival identity is part of the “problem” and therefore defined as the enemy.... [“American fascism is milder, more friendly, more “maternal” than its foreign counterparts; it is what [the late comedian] George Carlin calls ‘smiley-face’ fascism.”] (Goldberg 2007, 8, 23)

Goldberg terms the smiley-face variety “liberal fascism.” Woodrow Wilson described his own version as obliging the individual “to marry his interests to the state.” Hayek observed that “while the ideas of Hume and Voltaire, of Adam Smith and Kant, produced the liberalism of the nineteenth century, those of Hegel and Comte, of Feuerbach and Marx, have produced the totalitarianism of the twentieth [and now beyond]” (Hayek 1955, 206).

## Central Planning

Humanism entails intellectual efforts to perfect societies via central planning and control. Dewey (one of thirty-four signatories to the *Humanist Manifesto I*), argued that “comprehensive plans” were necessary “if the problem of social organization is to be met.” The alternative is “atomistic individualism...a continuation of a regime of accident, waste and distress.” For Dewey, “dependence upon intelligence” was the only alternative to “drift and improvisation” (quoted in Sowell 2009, 51). Friedrich Engels similarly

described spontaneous social organization as a chaotic system by which “what each individual wills is obstructed by everyone else, and what emerges is something that no one willed” (quoted in Sowell 2009, 51). For Dewey and Engels, nothing short of contemplation and construction was worthy of respect; spontaneous social organization lacked intellectual standing.

These views were wilfully blind both to their impossibility, and to their unintended outcomes. Similarly blind were Franklin Roosevelt’s New Deal policies: Roosevelt candidly acknowledged that “what we are doing in this country were some of the things that were being done in Russia and even some of the things that were being done under Hitler in Germany. But we are doing them in an orderly way” (Goldberg 2007, 122, quoting Roosevelt’s interior secretary Harold Ickes). Roosevelt naïvely valued impossible guarantees of freedom from “want” and “fear” over the potential for collateral dystopian tyranny, which ironically would come to hobble some of his other policy guarantees, such as freedom of speech and a diversity of deliberated opinion.

So great was the seductive rhetoric of the new communitarian “religion of government” that the writer, news magazine editor, and avowed communist Whittaker Chambers continued discounting the “invidious evil” of progressive tyranny even after apostatizing his faith in Soviet religion: “I know that I am leaving the winning side for the losing side, but it is better to die on the losing side than to live under Communism” (Chambers [1952] 2002, 541). The socialist philosopher Jean-Paul Sartre more aptly conceded that his and Chambers’s chosen political religion had to be judged by its rosy intensions rather than its dismal results.

America’s flirtation with progressive social policies has yielded many conspicuous failures. Lowi ([1969] 1979) shows how attempts by Croly’s progressive heirs to deliver on America’s ostensible promise by means of social planning and control, guided by fanciful visions and good intentions, ratcheted American politics into a deep state of organized privileges and entitlements, wrought through smiley-face legislative bargaining. European nations, by comparison, dispensed with bargaining, instead choosing blunt-force fascism as the means for achieving their progressive goals. The AHA’s *Humanist Manifesto II* candidly acknowledged the tyranny that these goals and policies entailed.

## Staying Power

Many attempts at creating heaven-on-earth utopias followed in the wake of More's classic novel and Comte's positive polity. The United States alone witnessed the rise of 137 altruism-based utopian sects between 1787 and 1860 (Bushman 2005, 165). Most struggled for about two years before their followers reverted to inherent human egoism and the sects dissolved. The Mormons remain the most successful communitarian sect to have arisen during this period, although their social experiment nearly collapsed early on:

The economic reform put Joseph Smith's Zion in company with scores of utopians who were bent on moderating economic injustices in these years....The system never worked properly....After its brief life in Jackson County, Joseph never put consecration of property in full effect again....to this day the principle of consecration [merely] inspires Mormon volunteerism and the payment of tithes to the church. (155, 183)

Croly's treatise was similar in one respect to Joseph Smith's *Book of Mormon*, which assumed

that by giving a nation an alternative history, alternative values can be made to grow....[It was] a "document of profound social protest" against the dominant culture...[an] amalgam of Enlightenment, republican, Protestant, capitalist, and nationalist values that constituted American culture....[It] turned American history upside down. (Bushman 2005, 104)

Croly's work, unlike Smith's, was fundamentally secular, although it too projected an essentially religious vision.

A sufficiently long period of coercive progressivism (several generations at least) might succeed in "perfecting" the human species via the so-called Baldwin effect, by which the process of Darwinian natural selection incorporates purposefully efficient behavioral responses into genetic propensities. This possibility remains untested in political contexts: voluntary utopian societies tend either to dissolve or transform within a few years. Longer-term tyrannies tend to be overthrown, collapsed under their own deadweight, or else survive in modified form by adopting classical liberal values and means. Progressivism presently continues unabated, although the humanist movement appears to be in descent.



## Perfecting Humanism from Within

Humanism, as philosophy, fails conventional tests of truth—it is not coherent, it lacks close correspondence with reality, and it is unsuccessfully pragmatic. Alternative approaches, based on principles of love and social science, have been proposed as methods for fine-tuning humanism's means without diminishing its progressive ends. They too fail muster.

The economist Lionel Robbins canonically defined economics as “the science which studies human behavior as a relationship between ends and scarce means that have alternative uses” (Robbins 1935, 16). Mueller, among others, proposes instead a “science” of economics that restores Augustinian and Thomistic ideals of Christian *love*—

the loves (and hates) that motivate and distinguish us as human beings.... As Augustine was the first to point out, all economic choice involves not one but two kinds of preferences: a ranking of persons as ends, which is reflected in the way we distribute the use of our wealth, and a ranking of scarce means, which is reflected in the particular contents of our wealth. (Mueller 2010, 2, 92)

Mueller claims that grounding economic theory upon love, instead of production and distribution, restores economics' “missing element” (108–12). To this end, he proposes revising Robbins's definition of economics to refer to “the science of human providence—personal, domestic, and political—for oneself and other persons, using scarce means that have alternative uses” (129). The proposed approach entails altruistic moral choices, rather than economic tradeoffs, and so lies beyond the realm of economic science. Mueller proposes a return to the moral philosophy, theology, and providential political economy from which economic science emerged in the late nineteenth century.

George Edgin Pugh, an automation and decision consultant, who turned later to motivation and behavior studies, and then to sociobiology and ethics, commits a similar error. Pugh begins well enough by noting that human perfectioneering traditionally

concentrated on the prescriptive function. The fact that most of these [ethical] theories failed as a descriptive or predictive science was not generally considered a serious defect. It was assumed that if a theory could define what people ought to do, then the problems would be solved because they would naturally want to do what the theory said they “should.” Unfortunately this hypothesis has not been confirmed

by subsequent experience. Many of the traditional ethical theories have had little practical impact because people did not “want” to do what the theory said the “should.” (Pugh 1977, 342–43)

He goes wrong by proposing to

reconcile the concepts of ‘should do’ and ‘want to do’ [via] a new science of economics, one that can relate economic means to human objectives. The real goal of a science of economics should be to align the economic structure so that it is as efficient as possible in the support of human objectives. There is no reason why such a science cannot be developed, but it will require us to recognize human values as the primary criterion for economic policy. (441)

Pugh shifts casually and deceptively between notions of science and policy, tacitly echoing Comte’s assertion that “our economists can do nothing better than repeat, with pitiless pedantry, their barren aphorism of absolute industrial liberty” (quoted in Martineau 1858, 448–49). Pugh implies, without proof and contrary to voluminous evidence, that a revised “economic structure” can support “human objectives” better than a process that is grounded upon the classical system of individual liberty and property rights.

An earlier decision scientist, Norbert Wiener, argued against the quasi-scientific mechanization proposed by Pugh:

The great weakness of the machine—the weakness that saves us so far from being dominated by it—is that it cannot yet take into account the vast range of probability that characterizes the human situation. The dominance of the machine presupposes a society in the last stages of increasing entropy, where probability is negligible and where the statistical differences among individuals are nil....a community that puts its dependence upon such a pseudo-faith is ultimately bound to ruin itself because of the paralysis which the lack of a healthy growing science imposes upon it. (Wiener [1954] 1988, 181, 193)

Hayek agreed, noting that although the

ambition to imitate science in its methods rather than its spirit has now dominated social studies, it has contributed scarcely anything to our understanding of social phenomena, not only does it continue to confuse and discredit the work of the social disciplines, but demand for further attempts in this direction are still the latest revolutionary innovations which, if adopted, ill secure rapid increases in progress. (Hayek 1955, 14)

#### 4. ACHIEVING PERFECTION THROUGH CLASSICAL LIBERALISM

Classical liberalism offers an alternative means for reforming progressive humanism. It has the virtue of meeting the methodological challenges of philosophy and science while respecting inherent human nature.

Progressive humanism's rich history of failure reveals that the key to human perfectibility lies outside prevailing humanist philosophy. One likely place to seek relief is within the philosophy of classical liberalism. This philosophy matters, as Ferris notes, because "the freedoms protected by liberal democracies are essential to facilitating scientific inquiry, and...democracy itself is an experimental system without which neither science nor liberty can flourish" (Ferris 2010, 2). Simon emphasized that

human imagination can flourish only if the economic system gives individuals the freedom to exercise their talents and to take advantage of opportunities. So another crucial element in the economics of resources and population is the extent to which the political-legal-economic system provides personal freedom from government coercion. Skilled persons require an appropriate framework that provides incentives for working hard and taking risks, enabling their talents to flower and come to fruition. The key elements of such a framework are economic liberty, respect for property, and fair and sensible rules of the market that are enforced equally for all. (Simon 1996, 408)

The notion of human perfectibility is rendered impossible by Simon's lights, because *a priori* knowledge of perfection is impossible. Humanists could not recognize "perfection" even if it were to be achieved.

The Institute for Humane Studies proposes four classically liberal rules for guiding humanity *toward* perfection (Hayek [1949] 1990, 27):

- Recognition of inalienable rights and the dignity and worth of each individual
- Protection of those rights through the institutions of individual private property, contract, and the rule of law
- Voluntarism in all human relations
- The self-ordering market, free trade, free migration, and peace

The overarching goal here is to increase human freedom, in part by shrinking the centralizing tendencies of the modern state. The

Institute's proposals stop short of characterizing all government activity as a fundamentally criminal enterprise—that is, as a “stationary bandit that monopolizes and rationalizes theft in the form of taxes” (Olson 1993, 567). It alludes instead to the government's role as setting “market rules that are as impersonal and as general as possible, allowing individuals to decide for themselves how and what to produce and what to consume, in a manner that infringes as little as possible on the rights of others to do the same, and where each pays the full price of the costs to others of one's own activities” (Simon, 1996, 584). In this way, “each generation leaves a bit more true wealth—the resources to create material and nonmaterial goods—than the generation began with....[I]f humankind did not have a propensity to create more than it uses, the species would have perished long ago” (582). By this light, the successes that Pinker (2018) attributes to Enlightenment humanism owe more to classical humanism's other child, classical liberalism.

The distinguished legal scholar Richard Epstein similarly distills to a few simple rules the path to perfectibility:

individual autonomy, first possession, voluntary exchange, control of aggression, limited privileges for cases of necessity, and just compensation for takings of private property, with a reluctant nod toward redistribution within the framework of flat taxes....[E]ven though there are some daunting exceptions, these rules do have the virtue of offering solutions for 90 to 95 percent of all possible situations....The effort to clean up the last 5 percent of the cases leads to an unraveling of the legal system insofar as it governs the previous 95 percent. No single, carefully constructed hypothetical case offers sufficient practical reason to overturn any rule that has stood the test of time. (Epstein 1995, 53, 307)

Epstein follows Lowi by documenting the means by which the explosion of vague progressive policies, coupled with the outsourcing of legislative, executive, and judicial functions to autonomous regulatory agencies, has replaced America's rule of law tradition with an incoherent system of rule *by* law. This transformation has created a breeding ground for wasteful social and political corruption that surely would have revolted Croly.

Compare Epstein's simple rules with this alternative vision offered by another prominent legal scholar, Cass Sunstein, who directed the Obama administration's regulatory reform program:

I contend that in three categories of cases, private preference, as expressed in consumption choices should be overridden. The first category

involves what I call collective judgements, including considered beliefs, aspirations for social justice, and altruistic goals; the second involves preferences that have adapted to undue limitations in available opportunities or to unjust background conditions; the third category points to intrapersonal collective action problems that, over a lifetime, impair personal welfare or freedom. In all of these cases, I suggest, a democracy should be free and is perhaps obliged to override private preferences. (Sunstein 1997, 44)

This dictum both echoes Croly and epitomizes the “abuse of reason” against which Hayek and other thoughtful scholars rail.

## CONCLUSION

This essay began with two epigraphs: one presenting Aristotle’s claim that intellectuals should rest content with the degree of precision that matters allow; the other concluding that efforts to perfect humanity against its inherent nature only make things worse. Progressive humanists, despite their ostensible commitment to reason and science, do not take such insights to heart. Attempts at perfecting humanity along lines that run counter to human nature ineluctably immiserate ordinary individuals. Classical liberalism succeeds where progressive humanism fails by freeing individuals to pursue, with minimal interference, their own notions of the good, rather than obliging them to follow the dictates of false social prophets.

Progressive humanist philosophy itself is perfectible, but only within the compass of human nature, and only to the extent that principles of classical liberalism are reincorporated. Humanism’s progressive ends cannot be achieved through a faith-based belief “in the possibilities of human progress and the values central to it” (AHA 1973). The most worthy possibilities and values can be achieved only by allowing human nature to run its natural course.

## REFERENCES

- American Humanist Association. 1933. *Humanist Manifesto I*. <https://americanhumanist.org/what-is-humanism/manifesto1/>.
- . 1973. *Humanist Manifesto II*. <https://americanhumanist.org/what-is-humanism/manifesto2/>.
- . 2003. *Humanist Manifesto III*. [https://americanhumanist.org/what-is-humanist.org/what-is-humanism/manifesto3/](https://americanhumanist.org/what-is-humanism/manifesto3/).
- Arnhart, Larry. 1998. *Darwinian Natural Right: The Biological Ethics of Human Nature*. Albany: State University of New York Press.

- Aristotle. [n.d.] 1962. *Nichomachian Ethics*, trans. M. Oswald. New York: Macmillan.
- Bushman, Richard. 2005. *Joseph Smith: Rough Stone Rolling*. New York: Alfred A. Knopf.
- Comte, August. [1852] 1858. *The Catechism of Positivism*. London: John Chapman.
- . [1851] 1875. *System of Positive Polity*. Vol. 1. London: Longmans, Green, and Company.
- Chambers, Whittaker. [1952] 2002. *Witness*. 50th anniversary ed. Washington, D.C.: Regnery Publishing.
- Croly, Herbert. 1911. *The Promise of American Life*. New York: Macmillan.
- Dawkins, Richard. 2017. *Science in the Soul: Selected Writings of a Passionate Rationalist*, ed. Gillian Somerscales. New York: Random House.
- De Gaulle, Charles. [1932] 1960. *The Edge of the Sword*, trans. G. Hopkins. London, Faber and Faber Limited.
- DeLong, J. Bradford. 1998. "Estimating World GDP, One Million B.C.–Present." Available at <https://www.bradford-delong.com/2014/05/estimates-of-world-gdp-one-million-bc-present-1998-my-view-as-of-1998-the-honest-broker-for-the-week-of-may-24-2014.html>.
- Epstein, Richard. 1995. *Simple Rules for a Complex World*. Cambridge, Mass.: Harvard University Press.
- Ferris, Timothy. 2010. *The Science of Liberty: Democracy, Reason, and the Laws of Nature*. New York: HarperCollins.
- Frankfurt, Harry. 2015. *On Inequality*. Princeton, N.J.: Princeton University Press.
- Goldberg, Jonah. 2007. *Liberal Fascism: The Secret History of the American Left from Mussolini to the Politics of Meaning*. New York: Doubleday.
- Gupta, Sanjeev, Michael Keen, Alpa Shah, and Geneviève Verdier, eds. 2017. *Digital Revolutions in Public Finance*. Washington, D.C.: International Monetary Fund. <http://www.bookstore.imf.org/drpf>.
- Hayek, Friedrich A. [1949] 1990. *The Intellectuals and Socialism*. Fairfax, Va.: Institute for Humane Studies.
- . 1955. *The Counter-Revolution of Science: Studies on the Abuse of Reason*. New York: The Free Press.
- . 1976. *Law, Legislation, and Liberty*. Vol. 2, *The Mirage of Social Justice*. Chicago: University of Chicago Press.
- Johnson, Lyndon. 2019. "Howard University Commencement Address (1965)." In *The American Yawp Reader*, ed. Joseph Locke and Ben Wright. Vol. 2, *After 1877*. Stanford, Calif.: Stanford University Press. Last modified in 2020. <https://www.americanyawp.com/reader/27-the-sixties/lyndon-johnson-howard-university-commencement-address-1965/>.

- Lakoff, George. 2006. *Whose Freedom? The Battle over America's Most Important Idea*. New York: Farrar, Straus and Giroux.
- Lott, John. 1990. "An Explanation for Public Provision of Schooling: The Importance of Indoctrination." *Journal of Law & Economics* 33, no. 1: 199–231.
- Lowi, Theodore. [1969] 1979. *The End of Liberalism: The Second Republic of the United States*. 2d ed. New York: W.W. Norton and Company.
- Martineau, Harriet. 1858. *The Positive Philosophy of August Comte, Freely Translated and Condensed*. New York: Calvin Blanchard.
- Miller, Tiffany Jones. 2012. "Freedom, History, and Race in Progressive Thought." Pp. 220–54 in *Natural Rights, Individualism, and Progressivism in American Political Philosophy*, ed. Ellen Frankel Paul, Fred D. Miller Jr., and Jeffrey Paul. New York: Cambridge University Press.
- Mises, Ludwig von. [1922] 1981. *Socialism: An Economic and Sociological Analysis*, trans. J. Kahane. Indianapolis, Ind.: Liberty Fund Portable Library of Liberty.
- . [1949] 2008. *Human Action: A Treatise on Economics*. Scholar's ed. Irvington-on-Hudson, N.Y.: Foundation for Economic Education.
- Montanye, James A. 2006. "The Apotheosis of American Democracy." *Independent Review* 11, no. 1: 5–17. <https://www.independent.org/publications/tir/article.asp?id=582>.
- . 2018. "Altruism: From Pagan Virtue to Political Biology." *Essays in the Philosophy of Humanism* 26, no. 1: 1–19. <http://americanhumanist.org/wp-content/uploads/2019/05/art-4-Montayne-Altruism.pdf>.
- More, Thomas. [1516] 1806. *Utopia*. London: Cassell and Company.
- Mueller, John. 2010. *Redeeming Economics: Rediscovering the Missing Element*. Wilmington, Del.: ISI Books.
- Nelson, Robert. 1991. *Reaching for Heaven of Earth: The Theological Meaning of Economics*. Lanham, Md.: Roman and Littlefield.
- . 2001. *Economics as Religion: From Samuelson to Chicago and Beyond*. University Park, Pa.: Pennsylvania State University Press.
- . 2010. *The New Holy Wars: Economic Religion vs. Environmental Religion in Contemporary America*. University Park, Pa.: Pennsylvania State University Press.
- Olson, Mancur. 1993. "Dictatorship, Democracy, and Development." *American Political Science Review* 87, no. 3: 567–76.
- Passmore, John. [1969] 2000. *The Perfectibility of Man*. 3d. ed. Indianapolis, Ind.: Liberty Fund Portable Library of Liberty.
- Pinker, Steven. 2002. *The Blank Slate: The Modern Denial of Human Nature*. New York: Viking.

- . 2018. *Enlightenment Now: The Case for Reason, Science, Humanism, and Progress*. New York: Viking.
- Pipes, Richard. 2000. *Property and Freedom*. New York: Vintage Books.
- Potter, Charles Francis. 1930. *Humanism: A New Religion*. New York: Simon and Schuster.
- Pugh, George Edgin. 1977. *The Biological Origin of Human Values*. New York: Basic Books.
- Robbins, Lionel. 1935. *Essay on the Nature and Significance of Economic Science*, 2d. ed. London: Macmillan.
- Rousseau, Jean-Jacques. [1754] 1923. "A Dissertation on the Origin and Foundation of the Inequality of Mankind." In **The Social Contract and Discourses by Jean-Jacques Rousseau**, trans. G. D. H. Cole, pp. 162–207. London and Toronto: J. M. Dent and Sons. <https://oll.libertyfund.org/titles/638>.
- Schoeck, Helmut. 1987 [1966]. *Envy: A Theory of Social Behavior*. Indianapolis: Liberty Fund.
- Simon, Julian. 1996. *The Ultimate Resource 2*. Princeton: Princeton University Press.
- Sowell, Thomas. 2009. *Intellectuals and Society*. New York: Basic Books.
- Sunstein, Cass. 1997. *Free Markets and Social Justice*. New York: Oxford University Press.
- Tillich, Paul. [1951] 1973. *Systematic Theology*. Vol. 1, *Reason and Revelation, Being and God*. Chicago: University of Chicago Press.
- Tomasky, Michael. 2019. *If We Can Keep It: How the Republic Collapsed and How it Might Be Saved*. New York: Liveright Publishing.
- Wiener, Norbert. [1954] 1988. *The Human Use of Human Beings: Cybernetics and Society*. New York: Da Capo Press.



## DOES BEING A LIBERTARIAN ENTAIL A NECESSARY COMMITMENT TO OPEN BORDERS?

CHARLES PROTHEROE

*ABSTRACT:* In this paper I investigate whether Wellman's freedom of association argument provides libertarians with a compelling argument against open borders. In the first section I set out Wellman's argument, highlighting its appeal to libertarians. In the second section I address some objections to his argument, and in the third section I discuss some specifically libertarian objections. I conclude that the freedom of association argument is a strong argument against open borders and that thus libertarians are not necessarily committed to unrestricted immigration.

### INTRODUCTION

Immigration is a confusing subject for libertarians. Libertarians would seem to be natural advocates of open borders: not only are they suspicious of the power of the state, but to promote closed borders would be to restrict the liberty of both immigrants and those in the country who wish to interact with them. But libertarianism is a doctrine which aims always to defend individual rights, so to conclude that open borders are the only tenable position is to oversimplify and miss a lot of nuance. But can one be a libertarian and also be against open borders?

To test this, I will take an argument against open borders (namely Christopher Wellman's freedom of association argument) and assess whether it is compatible with libertarianism, and, further, whether it is potentially compelling to libertarians. For the sake

---

Charles Protheroe (charlesprotheroe@hotmail.com) was most recently head of philosophy at St. James Senior Boys' School in London, UK.



of simplicity, I shall restrict my focus to immigrants without any special claim to membership who are moving to a country indefinitely—thus excluding refugees, holiday makers, students, those on business trips, temporary residents, and the like. I will also exclude the more morally dubious area of immigration to bring families together, as this is a subject worthy of debate beyond the scope of this paper. This will focus discussion upon the majority of immigrants, rather than outliers and special cases.

My argument can be summarized as follows:

- (1) If Wellman's freedom of association argument is compatible with libertarianism, then libertarians are not necessarily committed to open borders.
- (2) Wellman's freedom of association argument *is* compatible with libertarianism.
- (3) Therefore, libertarians are not necessarily committed to open borders.

In part one, I will show that Christopher Wellman's freedom of association argument is a sound argument against open borders. I will start by explaining why libertarianism seems to have a *prima facie* commitment to open borders, and why it appears that core libertarian principles lead to a belief in open borders. I will then set out Wellman's argument, showing that his assumptions and foundations are very appealing to libertarians and that in fact his commitment to self-determination is a central aspect of libertarianism. Along the way, it becomes necessary to have a definition of "rights," and I shall use Nozick's, not only to use a "libertarian" definition, but also because doing so further emphasizes how Wellman's argument has an appealingly libertarian flavor. By the end of the first part I hope to have demonstrated the compatibility of the freedom of association argument with libertarianism even if Wellman's conclusion is not very libertarian.

It seems that libertarians accept Wellman's premises, but not his conclusion. There are only three ways to solve this dilemma. The first way is to show that there is some mistake or flaw in Wellman's reasoning which leads him to draw the wrong conclusion. To this end, in part two I shall address two key internal criticisms of his argument, the first concerning immigrants' association with the state and the second concerning immigrants and the harm principle. I conclude that neither of these claims—while

undoubtedly powerful—refutes Wellman's conclusion, thus leaving it sound.

The second way to solve the dilemma is to concede that Wellman's argument is sound but deny that it is compatible with libertarianism. I will set out several strong libertarian objections to Wellman's conclusion. Firstly, that in the resulting conflict between individual and state rights, libertarians should always side with the individual, so the state cannot force an immigration policy on its citizens. Secondly, that there should be no borders at all, let alone ones with restrictive entrance criteria. Finally, libertarians could point to the "utopian" libertarian society and argue that immigration policy should align with that. I believe that all three of these charges can be met and adequately responded to so that the fears of the libertarian are assuaged, and that the state can be shown to have a right to exclude.

This leads to the conclusion that the third solution to the dilemma is the correct one: that, although it may not seem so initially, Wellman's argument is compatible with libertarianism, so libertarians are not necessarily committed to open borders.

## PART I

### LIBERTARIANISM AND OPEN BORDERS

Very few libertarians are in favor of immigration controls, because libertarianism seems to go hand in hand with open borders. People, like goods and money, should be able to cross national boundaries as freely as possible. Certainly, the state should not stop immigration, just as it should not impose tariffs on imported goods. But even at this early stage the analogy fails. Goods are never imported without somebody wanting to buy or receive them. This is obviously not the case for immigrants.

The core tenets of libertarianism indicate a commitment to open borders. Robert Nozick is considered by many to be the father of right libertarianism, and in his influential book *Anarchy, State, and Utopia* (1974) he explains the foundations of the ideology. A brief look at them furthers the argument that libertarianism should be committed to open borders.

Self-ownership is perhaps the fundamental element of libertarianism. Nozick views the individual as a self-aware, rational

agent, able to form a plan for life, and it is for this reason that he calls humans “self-owners.” That people are self-owners also precludes their treatment as objects or instruments. This is essentially the definition of self-ownership: that it is wrong to subject an individual to nonconsensual and unprovoked manipulation, enslavement, or killing.

If people are self-owners, then it follows that they must have certain rights. More specifically, the single right of self-ownership generates many other rights, not least of which are property rights. If one owns oneself, then one owns one’s labor, and if one owns one’s labor, then one owns the fruit of that labor. Owning something amounts to possessing a bundle of rights in that thing: the rights to possess it, dispose of it, and determine what to do with it. The property rights I have in my laptop mean that I can use it whenever I want, can sell it if I wish, and can use it however I please (so long as I do not violate anyone else’s rights with it). One also has property rights in one’s home (if one owns it), and it is this that allows one to invite people onto one’s property, while anyone who enters uninvited is trespassing and liable to be punished accordingly.

Neither self-ownership nor property rights give any indication that immigration restrictions would be justified. In fact, they seem to point the other way. If I own my property, then I can invite whomever I want onto it, be they compatriots or foreigners. It seems that any attempt to limit immigration would be to limit property rights. A look at the basics of libertarianism therefore seems to lead to a commitment to open borders.

#### WELLMAN’S ARGUMENT FROM FREEDOM OF ASSOCIATION

But the basics of libertarianism are just that: the basics. Any conclusion drawn from such a cursory and simplistic overview is bound to be premature. To really test whether libertarianism is necessarily committed to open borders, one must apply it to an argument *against* open borders. Wellman’s argument from freedom of association is an obvious choice. It is perhaps the most liberal argument against open borders, and one which is (until its conclusion) very complimentary to and compatible with libertarian principles.

Self-determination is a key component of libertarianism, and it seems to go hand in hand with self-ownership. When one is

murdered, self-ownership is denied. Self-ownership means a right to life, insofar as our existence shouldn't depend on anyone else. I cannot call myself truly self-owning if I owe my continued survival to the mercy of someone else who chooses to not kill me. But beyond this self-ownership means being free to live your life as you see fit. You own yourself, so can do as you please (while respecting other people's rights). This is self-determination.

Because of the deep connection between self-ownership and self-determination, Wellman's argument begins with appealing foundations for libertarians. He starts with an assumption of the importance of self-determination. It seems impossible to live one's life as one wishes without having self-determination. In fact, it is impossible to be free without being self-determining, without "being the author of one's own life" (Wellman 2011, 30). If I choose your career, home, pets, and pastimes for you, then I am restricting your freedom and determining the course of your life. You must be free to choose your own path and determine the course of your own life—otherwise, quite simply, you are not free. Individual liberty, which is at the heart of libertarianism, necessitates self-determination. Because libertarians firmly believe that individuals have their own lives to lead, it is impossible for them to deny that individuals must be self-determining. In every aspect that one is not self-determining, one is no longer free. Self-determination is, indeed, an incredibly appealing foundation for libertarians, and one which resonates at the heart of the ideology.

Wellman goes on to explain that self-determination in turn necessitates freedom of association. If you are to determine your own life, then you must be able to choose with whom you associate. To show that "freedom of association is a crucial element of self-determination," Wellman (2011, 30) asks us to consider a society in which this freedom is denied us:

Suppose, for instance, that a governmental agency were empowered to decide not only who would marry and who would remain single, but who would get married to whom, whether or not various couples would get divorced (and after what duration of marriage), and which children would be assigned to be raised by whom. Thus, this agency might tell Jennifer that she is to remain unmarried and raise five children who will be assigned to her; it may tell Jill and Jack that they are to be married for the duration of their lives but may not raise any children (any children borne by Jill would be reassigned to others of the government's

choosing); and it might tell John and Joe that they are to be married for twelve years before divorcing and remaining single and childless for the remainder of their lives.<sup>1</sup>

It might well be that the government prescriptions lead to the maximally efficient, happy, and prosperous lives for these characters. On the other hand, it is eminently possible that they would not: our personal preferences, likes, and dislikes are our own, and to be free we must be able to act on them. So, whether happy or not, “the lives of the citizens in this society would not be self-determined,” because they would not be free to associate as they please. Wellman has, of course, chosen the most extreme and personal form of association in marriage, but would it be acceptable for the government to choose your friends or pets? It seems that the same problems would arise, and that once again one would not be self-determining.

Having established freedom of association as a necessary factor in self-determination, Wellman (2011, 31) makes the crucial point that freedom of association is meaningless without including the freedom to not associate, or disassociate:

One is fully self-determining only if one may choose whether or not to marry a second party who would have one as a partner, whether or not to raise children with this partner, and whether to stay married to this partner. And crucially, one must not only be permitted to join with a willing partner, a potential partner must not be allowed to associate with you unless you too are willing. In other words, one must have the discretion to reject the proposal of any given suitor and even to remain single indefinitely if one so chooses.

Just as one does not have free speech if one is only allowed to toe the party line, neither does one have freedom of association if one must accept all offers that come one’s way. When Jack proposes to Jill, Jill must be able to reject his advances if she so wishes—it is neither right nor fair for her to have to accept his offer against her wishes. Thus, a necessary part of freedom of association is the ability to reject a potential association, or, in other words, the right to exclude. This is intuitively appealing: after all, if we don’t like someone, we shouldn’t have to be friends with them, and if we did

---

<sup>1</sup> Wellman’s example here seems to be adapted from Nozick’s (1974, 263) own marriage metaphor in *Anarchy, State, and Utopia*. This is yet more evidence of Wellman’s libertarian influence.

have to, then it would be hard to see how we are free to choose our associations. The libertarian appeal is equally clear. Just as freedom of speech is vacuous if it does not include the freedom for you to say things which I dislike, so too must the freedom to associate as we please include the possibility of your excluding me from associating with you.

The right to exclude brings with it the thorny topic of rights. Although Wellman has written extensively about rights, I believe that Nozick's definition is equally compatible, and more insightful. Nozick's definition of rights is a key component of libertarianism, and by borrowing his definition, we can illuminate further the links between freedom of association and libertarianism.

Nozick (1974, 92) defines rights quite simply and succinctly as "permissions to do something and obligations on others not to interfere." The first part of this is the simpler: if you have a right to do *x*, you obviously have permission to do *x*. The second part—others' obligation not to interfere—requires surprisingly more explanation. Nozick introduces moral side constraints as a particular property of rights. Side constraints entail a negative view of rights: you have a right to something insofar as your right to it is not infringed. "They specify types of conduct that may not be done to individuals rather than types of conduct that must be done for people" (Mack 2015). In other words, they do not tell us what the right holder is permitted to do so much as what we are not permitted to do to the right holder. This is because for each right you enjoy there is a corresponding moral constraint upon everyone else to not violate it. X's right to life entails the corresponding moral constraint on everyone else to not murder X. And this right is unconditional: Matthew is forbidden from murdering Luke, even if, by some strange turn of events, Matthew murdering Luke is the only way to prevent John killing the England football team. It is simply the case that murder is always morally wrong. To act morally, we must not violate any constraints.

The alternative to moral side constraints is a consequentialist system which attempts to maximize overall rights. This may seem intuitively preferable: after all, if something is valuable, shouldn't we act to promote as much of it as possible? If you have a right to free speech, it is not the case that you have the right only insofar as you say controversial things—it seems that you possess it even if you never use it. Nor does it seem to be that you have more free

speech if you are outlandish but less if you're not. In short, your right to free speech isn't something that *you* possess. Rather, your right to free speech entails an obligation on everyone else to let you say whatever you want. Rights are, in this sense, inherently negative: a right to do *x* means that everyone else is obligated to allow you to.

The way rights work means that the only way to maximize overall rights is to minimize the total number of rights violations. But this would "require us to violate someone's rights when doing so minimizes the total (weighted) amount of the violation of rights in the society" (Nozick 1974, 28). For example, imagine that you are the mayor of a town in which someone has been wrongly killed by the police. Now a mob is rampaging through the streets, demanding that Policeman Pat be punished, even though you know he is innocent. This mob is violating the rights of many townsfolk, so it would be justifiable to punish Pat, because violating his rights would stop the mob and minimize overall rights violations. But this seems wrong to us. It just doesn't seem right that an innocent man should be made a sacrificial lamb. This is because rights reflect the "moral inviolability of individuals," and Pat would not be morally inviolable—nor would any of us be—were he vulnerable to violations by the mayor, even if only to protect the rights of other townsfolk (Mack 2015). The inviolability of individuals means that there are certain things we cannot do to others *under any circumstances*, so "not even the minimization of the violation of the right against being killed can justify the violation of that right" (Mack 2015). Likewise, "our core reason for abstaining from murder is not that abstention advances the goal of minimizing murders," but rather that there is something inherently bad about murder. Nozick's definition is grounded on the belief that no matter what one's goals or motivations, one would be acting immorally by violating moral constraints.

With Nozick's definition of rights, Wellman's first point becomes clearer. A right to freedom of association entails a right to exclude; therefore, others are morally constrained in their actions to not violate that right. When Jack proposes to Jill, she is free to turn him down. Her right to do so means that Jack is constrained in his potential actions: namely he would be acting immorally were he to force marriage upon her. Defining rights in the negative way that Nozick does strengthens Wellman's intuition that a right to



exclude is a necessary part of self-determination. For Jill to be self-determining, others, such as Jack, must respect her decisions. It is impossible to see how she would be self-determining in any meaningful way were her choices to be ignored. Thus, for her to be self-determining Jack is morally obliged to constrain his possible actions according to her wishes, and vice versa.

Nozick's definition of rights also further highlights Wellman's libertarian appeal. When Wellman writes that "self-determination involves being the author of one's own life," he echoes Nozick, who writes that "there are only individual people, different individual people, with their own individual lives" (Wellman 2011, 30; Nozick 1974, 33). The message in both is clear: individuals must be the masters of their own fate. When Wellman (2011, 31) later claims "that each of us enjoys a privileged position of moral dominion over our self-regarding affairs," he is expressing the idea of the inviolability of individuals just as Nozick was. He seems to intuitively employ a negative conception of rights when he argues for the wrongness of state-arranged marriages. That the state must abstain from interfering in Jill's associations is based on an essentially negative definition of her right to freedom of association. Thus, Wellman's argument is to this point not only compatible with libertarianism, but seems to grow out of the same assumptions.

It is not just individuals who possess the right to exclude. Wellman claims that it is equally important for groups. A golf club may have membership criteria such as respecting the rules of the course and contributing to the upkeep of the club. It seems perfectly permissible for the golf club to exclude potential members who fail to meet or subject themselves to these criteria. It is not *their* association, achieving *their* goals, if they cannot exclude people whom they deem inappropriate. To illuminate further the prima facie necessity of a group's right to freedom of association, imagine if no group were granted the right. Sports teams would not only be prohibited from discriminating based on sex, but also on sporting ability. Clubs for children would be powerless to stop adults joining. Groups for ethnic minorities would include members of the ethnic majority. There is an inherent and important interest in the makeup of the membership of the group, because it is the members of the group who determine its future. It is for this reason that, as Stuart White (1997, 373) writes, "we cannot simply repudiate the right to exclude, for we correctly intuit that this right

is, to some degree, an integral and important part of freedom of association, and we most certainly do not want a society in which people lack this freedom.”

The appeal of groups’ right to freedom of association is clear for libertarians. Libertarianism has long held a commitment to the freedom of private education, for example, and the right of a private educational establishment to limit its membership to a single sex, social group, or based on other qualifications. The belief is that if someone wishes to start his own school, then no one should be able to stop him from making it an all-boys one. Equally, libertarians have often been voices against government incursions into group freedom of association. For example, Jim Crow laws in certain states imposed segregation upon businesses by making it illegal for restaurants and hotels, among other businesses, to serve white and black customers together. Libertarians were against this, claiming that businesses should be free to choose who their customers should be, though they ultimately believed that establishments that made the choice of segregation would be penalized in the free marketplace. This libertarian belief rests upon a commitment to groups as well as individuals having a right to freedom of association.

It is only at his next, final, step that Wellman takes libertarians into uncomfortable ground. Wellman claims that if individuals and groups have a right to exclude, then so too do states. Of course, it does not logically follow that if individuals and groups have this right then states must too. Rather, states—like individuals—are entitled to self-determination, so they too must be entitled to freedom of association and its corresponding right to exclude. Having proven that self-determination requires freedom of association, which entails the freedom to exclude, all that is left is to show that states are, indeed, entitled to self-determination. Wellman makes a good claim that this is the case. Again he takes a negative approach and asks us to imagine what it would be like if states were not self-determining. Firstly, supranational bodies provide evidence of state self-determination. If states were not self-determining, then the EU could force Switzerland to join, or force the UK to remain, as neither country would have the ability to control its future. Secondly, by denying self-determination, one denies sovereignty, and so it would be permissible for one state to interfere in another’s legal system. There is therefore no

reason to stop the United States, for example, from imposing stricter drug laws on Mexico, such as the death penalty for drug dealers. But the idea of the USA unilaterally punishing Mexicans for selling drugs in Mexico seems wrong, because Mexico and only Mexico should have this power. Both of these examples are elements of a greater fear: denying self-determination essentially makes it permissible to annex another state. If Portugal has no self-determination, and no sovereignty, then what is wrong with Spain annexing it? If it is done peacefully, and Spain is benevolent, then it is hard to see what is wrong. And yet it *is* wrong, and it is wrong precisely because Portugal is entitled to autonomy, which means that it cannot be subjugated against its will. But this is not just a question of international law. Without self-determination, states would lose what makes them states: self-determination is an integral part of the definition of a state. It is not even a matter of whether or not states *ought* to be self-determining: Wellman is arguing that if a state does not possess self-determination then it is no longer a state in any meaningful sense. Even if the state in question were nothing more than Nozick's minimal state, it would still have to meet his two criteria: that within its territory it has a monopoly (or close to) of legitimate force, and that it provides protective services for all. Wellman's examples demonstrate that a state without self-determination fails to meet these criteria: Mexico does not possess anything close to a monopoly of legitimate force if the USA punishes drug dealers in Cancún, and Portugal cannot provide protective services for all if it has been annexed by Spain.

And so, if states are self-determining, then they (like all self-determining individuals and groups) must have freedom of association, and thus its corresponding right to exclude. This, of course, does not seem acceptable to a libertarian. However, it is not immediately apparent why this is the case. Wellman has drawn his conclusions from premises which are very appealing to libertarians; and it is certainly the case that libertarians would not wish to deny either that individuals or groups have a right to exclude.

If states, like individuals and groups, are self-determining, then they must have the right to freedom of association, as it is a necessary component of self-determination. With a right to freedom of association comes the right to exclude. I have used Nozick's definition of rights as moral side constraints, meaning that one is morally constrained in one's actions to respect a state's

right to exclude. If a state wants to exclude you, then you cannot force yourself—and your association—upon it. In fact, it would be immoral if one were to do so, as one would be violating the state's autonomy, albeit in a small way. This, therefore, provides a moral justification against open borders.

## PART II

### INTERNAL OBJECTIONS TO WELLMAN'S ARGUMENT

Wellman's premises seem to be compatible with libertarianism, and yet his conclusion does not. But on what grounds can libertarians disagree? There are three possible solutions to this dilemma. Firstly, it could be the case that there is some internal error in his argument, which renders it unsound. Secondly, it may be the case that, although sound, his argument is at odds with libertarian principles and therefore must be rejected as being unlibertarian. I hope to show over parts II and III, respectively, that neither of these is the case and that the third option must be true: that Wellman's conclusion is compatible with libertarianism, even though it may initially seem otherwise.

Perhaps the reason why libertarians disagree with Wellman's conclusion is that his argument is internally unsound. It could be the case that his argumentation does not justify the step he took from groups to states having a right to exclude. There are two objections that support this. The first is that Wellman has drawn the wrong conclusion from his examples of annexation and other international affairs and that these examples show why states have an international right to exclude but not necessarily an intranational one. The other objection is that the right to exclude cannot be as general or absolute as Wellman assumes, because he fails to take into account exclusion's harmful effect on a group's or state's nonmembers. If one, or both, of these objections is true, then Wellman's argument is unsound, and his conclusion that states have a right to exclude would be refuted.

### IMMIGRATION AND ASSOCIATION

Wellman provides the examples of annexation, supranational bodies, and interference in another state's laws to support his claim that states are by definition self-determining, and his point is both persuasive and correct. The examples show that states

must be self-determining and that they have a right to freedom of association, and thus a right to exclude or disassociate from other states or international bodies. However, it does not seem obvious that Wellman's examples prove that states have a right to exclude *individual immigrants*. Annexation is bad, because it ignores the right of a state to choose its own path, but how do economic immigrants threaten this right? It appears that Wellman has shown that states have a right to freedom of association between states, but not that they have this right when it comes to the people within the state. In other words, states have an international right to exclude, but not an intranational one.

Wellman's argument can be summarized in the following points:

- (1) States' right to self-determination gives them the right to choose with whom they wish to associate.
- (2) Immigrants associate with the state.
- (3) Therefore, states with a right to self-determination have a right to choose whether or not they allow immigration.<sup>2</sup>

Wellman's international examples may well demonstrate (1), but they do not demonstrate (2). In fact, set out this way, this objection evolves into one which is troubling on a far more fundamental level for Wellman. Point (2) begs the question of what it means for immigrants to *associate with the state*, and some, including Bas van der Vossen (2015), respond that it is *not* the case that immigrants actually associate with it. In analyzing Wellman's position, Van der Vossen differentiates between the collective and individualist conceptions of group self-determination. In the case of the former, which Wellman implies is at play, "groups as a whole are seen as agents that are capable of acting freely and as having a right to self-determination" (Van der Vossen 2015, 6). This is certainly the conception Wellman uses in his examples. But in this sense immigrants do not associate with the state, so (2) is false. Immigrants do not seek relations with states in the same way that Estonia does with the European Union, that the United States does with Canada, or that Catalonia does with Spain. Instead, immigrants "seek to *join* the state, to become an indistinguishable part of the collective body that constitutes the state as it is" (Van der Vossen 2015, 12).

---

<sup>2</sup> Van der Vossen (2015, 11).

It must be the case, then, that Wellman's examples were just meant to establish that states are self-determining entities and should not be read into any more than that. Instead of the collective conception of group self-determination, perhaps Wellman intended a more individualist one—which sees group self-determination “as an extension of the individual autonomy of its members” (Van der Vossen 2015, 6). In that case (2) becomes true, because immigrants do indeed associate with the *members* of the state. As we saw with groups, one necessary element of self-determination is the ability to control the membership of the group. Therefore, because states are self-determining, they must be able to control who is and who is not a citizen. Controlling membership is not important because the citizens of a state should be free to choose who they simply meet on the street—“the mere presence of immigrants within the state's borders cannot be a serious problem with regard to the associational rights of the citizens” (Fine 2010, 343). Equally, foreign tourists, those on business trips, and those just passing through are of no meaningful importance. Rather, the right to control membership reflects the importance of citizens' right to choose their political associates. The political community determines the future of the state, so of course it is vital that citizens be able to control who enters it.

The right of a populace to control its members, though, rests on the assumption that letting someone into the country indefinitely will lead to them becoming a member of the political community, or conversely that there is no way to prevent an indefinite immigrant resident from becoming a member. Joseph H. Carens (2013) argues that this is the case. His popular theory of social membership argues that living in a society generates social membership claims.<sup>3</sup> Being a resident over time generates justified moral claims to legal rights and other aspects of social membership, one being the ability to vote. The longer an immigrant is in a country, the more “they sink roots in the place where they have settled” (Carens 2013, 159). People establish careers, families, friends, and other vital interests over time, making social membership unavoidable for long-term immigrants, and this social membership establishes moral claims

---

<sup>3</sup> Popular in academia but evidently not so with the layman or politician, hence the recent Windrush Scandal.

for legal rights such as voting, if not full-blown citizenship.<sup>4</sup> Thus, since long-term immigrants would eventually become members of the political community, the only way to prevent them from joining the community would be to prevent them entering the country in the first place. This answers the objection. States are self-determining, and a necessary part of self-determination for any group is control of its membership. Regarding the state, this means controlling membership of the political community. All long-term residents have social membership claims, meaning that they have a moral claim to membership in the political community. Therefore, the only way to control the membership of a state's political community is to control the admission of immigrants.

But there is no reason to assume that libertarianism supports a social membership theory such as Carens's. In fact, libertarians would probably disagree with Carens in one of two ways, leading to two different scenarios. In scenario one, libertarians would claim that the state should undertake few, if any, of the social projects that it currently does. There should be no national healthcare, no unemployment or disability benefits, and no social housing, among others. In this scenario, there would not be much for one to be a social member *of*. The legal rights and social programs that Carens assumes to be in place, which an immigrant would become entitled to, simply would not exist. Social membership would not amount to much, so immigrants would miss out on very little (if anything) by not being citizens. This would massively weaken Carens's claims for social membership, because social membership itself would not be as valuable as he assumes. However, Carens's argument and reasoning still stand as far as voting and political membership. If people are in a society long enough, then one could say that they build up claims to have a political say in it. In this sense, immigrants would be associating with their society (politically), making both (1) and (2) true and validating Wellman's conclusion.

The second scenario is more problematic, and arises because it seems perfectly acceptable for libertarians to deny that immigrants even have claims to political membership. If this is the case, then it is hard to see in what meaningful way immigrants

---

<sup>4</sup> I do not intend to discuss Carens's theory of social membership in great depth, but only enough to set it out as a viable argument that long-term residence necessarily leads to inclusion in the political community.



are associating with the society—making (2) false. When it comes to group membership or employment, for example, libertarianism advocates contracts. One may join a club or take up a job so long as one accepts certain conditions. If Luke offers John a job paying £8 per hour, then John faces a choice: Does he want to do the work in return for £8 compensation per hour? If not, then he is free to refuse the offer, and Luke may well offer him more money, or else look elsewhere for employees. Libertarianism is against minimum wage laws, because they undermine this reasoning. It is equally plausible for a libertarian to claim that one could be granted permission to enter a country indefinitely on the condition that one will never possess political membership. If immigrants entered on these terms, then one could claim that just living in the country and obeying its laws means that immigrants would not be associating any more meaningfully with the state than temporary residents or holidaymakers, so there would be no more grounds for restricting immigration than for restricting visits.

However, for this to be a meaningful offer there must exist the possibility to exclude those who do not agree to its terms. If the state offers potential immigrants indefinite residency, so long as they forgo political membership claims, there is the implication that those who refuse this offer will be rejected. After all, what would be the point of making the offer if the state in question let you in anyway (with political membership rights) if you refused? The borders are clearly not “open”—they are only open to those who accept the offer.

### THE PROBLEM OF HARM

The next internal critique of Wellman’s argument is that the right to exclude is not as general or absolute as Wellman assumes (and requires), because exclusion can harm excluded nonmembers. The major worry that comes along with unbridled freedom of association is the potential for discrimination. If a group can exclude potential members, then it can exclude them based on skin color, for instance, so we find ourselves with a conflict between two widely accepted liberal values: How is the right to freedom of association compatible with the right to freedom from discrimination? For some libertarians, though, this is no problem. It is not uncommon for libertarians to believe in the right to discriminate, even if doing so is reprehensible, or if (as is more commonly believed) doing so



would be detrimental in a free market. In a sense this argument is similar to theist counterarguments to the problem of evil. If God truly gave man freedom, then He must have given man the freedom to be evil. Likewise, how are we really free if we are not free to do the “wrong” thing? If we have a right to liberty, then we have a right to discriminate (Levy 2016).

In the sense of state-enforced prohibition, it is hard to see how a libertarian could be in favor of banning discrimination in the private domain. Nearly all economic behavior is discriminatory: universities discriminate in their intake based on grades while employers discriminate based on experience and personality. Yet these seem perfectly acceptable. The retort would be that these, though, are not real discrimination. But it is impossible to adequately define “real” discrimination. Antidiscrimination laws have often arisen in response to previously discriminatory laws: for example, the 1964 Civil Rights Act in the United States repealed and replaced the Jim Crow laws. The ideal libertarian position would have been to have neither of these laws, and certainly not to have laws which infringe on the key rights to freedom of speech, religion, and association. Antidiscrimination laws by restricting freedom proscribe behavior and deny individuals their self-ownership.

A more sophisticated and potent formulation of this objection to exclusion utilizes the harm principle. One of the central tenets of libertarianism is that one may not wrongfully harm another. Nozick (1974, 34) clearly states that a nonaggression principle is at the heart of libertarianism, so the intentional and unprovoked harm of others must be avoided. So, although libertarians would aim to be absolutists about freedom of speech and association, they would stop short when doing so would harm others. For example, freedom of speech would not extend as far as inciting harm or violence against someone. When it comes to freedom of association, this would be limited by a group’s ability to harm nonmembers through exclusion. Sarah Fine (2010, 346) shows that groups do have the potential to (often indirectly and unintentionally) harm third-party nonmembers. She argues that, if a private club on your road frequently organizes parties that go on well into the night, then “while seemingly going about its own business, the private club has the potential to harm the interests of non-members.” A libertarian may respond that although this is true, it misses an important nuance. If the club existed on your

road long before you moved there, then you cannot really claim it is harming you. By deciding to move to that house, you have accepted the conditions on the road, much in the same way as I live under the Heathrow Airport flightpath and so cannot justifiably claim that the 5 a.m. flights harm me, as I knew this was “part of the deal” of living where I do (or at least I would have known had I done adequate research). On the other hand, the club may have been established after you bought the property. In this case, it would seem that you are being harmed by its parties, especially as there is no reasonable way that you have consented. Either way, this highlights the importance of time in determining harm, and time must be considered when it comes to immigration, as will become clear later.

But because immigration is more important than moving house—and possesses a greater potential for harm—could the analogy be bolstered up? Perhaps there is a point at which the club would be harming you even though you had in some way consented. Could it throw parties every night? There is no immediate reason why not. Many people live above or near nightclubs, for example, and in each instance a tradeoff is made: sleep versus the cheaper cost of the property. If one chooses the former, then one should live elsewhere; if the latter, then sleep is a cost that must be accepted.

Fine’s next example is more closely related to the members of a group harming nonmembers in the same manner as immigration could. It is the example of membership in a national teachers’ union being a necessary condition for working in education. The previous counterargument also applies here. If this rule had always been in place, then it would in effect be no different from being required to join a professional body to practice in an industry, such as having to be a member of the Law Society to be a barrister. It is a requirement, but not a harmful one. It would be irrational and unreasonable for me to say that my dream of being a barrister was thwarted, and so I was harmed, because I did not want to join the Law Society. Membership requirements, if they have been in place prior to one’s desire to join the group, cannot be harmful. But this is to miss the uniqueness of state-imposed rules. For one school to require teachers to be union members is one thing, but for the state to require it is another. This is because the state offers no options, no shades of grey, and simply prohibits alternatives. It restricts the freedom of both schools and potential teachers. Libertarianism

would be against such a law. The implication for immigration is that immigrants should not be at the whim of membership rules like this because they are unnecessarily restrictive. The fact that one school does not wish to hire nonunionized teachers should not mean that no school can; similarly, that some people might not want to associate with immigrants should not mean that no one can.

This is a powerful objection—and one I shall return to later—but it does not shed further light on the *harm* aspect. It does not counter the point that, if the rule were always in place, it would be hard to see where the harm lies. Obviously, if the rule had not always been in place, then it seems clear that the would-be teacher or barrister *could* be harmed. This is the case in Fine's other example: a public park which is bought and made private, for members only.

Is it then the case that a group could harm third-party nonmembers by exercising its right to exclude? If a group has always existed with a certain admission criteria, then it is hard to see how one could be harmed by being excluded. If the golf club only accepts residents of a certain area, then, although I may feel it unfair, I cannot be harmed by it because I was never entitled to membership. On the other hand, it seems that rule changes or changes in circumstances have potential to harm, and so, if a group changes its rules for membership, then it is eminently possible that it may harm third party nonmembers. This problem of the harm principle will arise again later, not least as it seems there is now a strict rule governing avoiding harming third parties: rules must not change.

Is it the case that exclusion from a nation would harm the excluded individual? Looking again at the golf club example is insightful. The potential for harm to nonmembers comes from the fact that golf clubs are often more than just golf clubs: they are places where valuable contacts and business deals are made and better employment can be found. In short, exclusion from a club like this can restrict one's future success. In this sense, it is very similar to immigration. Being restricted access to a nation such as the United Kingdom or the United States limits one's potential for earnings, education, good healthcare, and more. For example, Paul lives in Togo but wants to move to the US. If we think about it counterfactually and compare the Paul who was granted access to the Paul who was not, it is hard to see how the excluded Paul is not harmed. Or, at the very least, that he is much worse off. This is indeed a serious worry.

But if we were to define harm as the violation of rights, then although Paul's position is still troubling, it is not harmful, because no rights are being violated. Being denied membership in a club, or entrance to a country, is not a violation of any right one possesses. There is no right to having the best possible life. This assertion is bolstered by the definition of rights as moral side constraints. To claim that Paul has a right to a better life is to obligate people to facilitate it, be it by allowing him access to clubs and countries or giving him a job. But this is clearly wrong. No one has an obligation to employ someone because they should provide people with better lives. It seems that this is an egalitarian criticism, but not a libertarian one.

Even if conceded that restricting immigration can be harmful, it would not entail fully open borders. Setting aside cold analysis, it is very hard to see how Paul from Togo isn't being harmed in very meaningful ways by not being allowed into the US. But that is not to say that *all* immigration restrictions are harmful. Exclusion does not harm immigrants from the UK to the USA or from France to Germany to anywhere near the same level as it does Paul. It would seem to devalue the meaning of "harm" if we were to say that a Swiss banker moving to Hong Kong would be harmed were he denied entrance. Even if we concede that immigration restrictions can be harmful, it does not follow that all immigration restrictions are. Therefore, because it is not necessarily the case that all closed borders are harmful, so too is it not necessarily the case that all borders must be open.

Wellman's freedom of association argument survives the objections aimed at undermining this conclusion. It does not appear to be the case that the argument suffers from a failed analogy, or that it is undermined by the harm principle. So Wellman's argument can still provide a sound argument against open borders.

### PART III

#### LIBERTARIAN OBJECTIONS

Having shown that Wellman's argument is not unsound, there are only two routes available to resolve the tension between libertarianism and Wellman's conclusion. Either Wellman's conclusion is incompatible with libertarianism, or else it is compatible

despite not appearing so. To prove the latter, the former must be eliminated. I will therefore lay out and respond to three arguments which seek to show that libertarianism cannot accept Wellman's conclusion that states have a right to exclude immigrants.

### THE EXISTENCE OF BORDERS

Perhaps libertarianism is opposed to the existence of borders at all. It is sometimes said by libertarians that the border between nations should be of no greater importance than the boundary between my property and that of my neighbor. This is meant to signify the libertarian commitments to free trade and the general privation of state interference in people's lives, but it is an analogy which is also used to back the claim that the state should not enforce a formal and coercive border, which limits movement and so unnecessarily restricts the freedom of individuals.

But this charge is easily rebutted. For libertarians, the role of the state is to enforce contracts and protect its citizens' rights. One aspect of this is protecting its citizens from external attack or invasion. This is the reason why libertarians are (generally) in favor of government spending for a strong, efficient, and effective police and military. To refute the allegation that libertarians are against the existence of borders, all that must be shown is that borders are at least a justified extension of the state's arsenal for defending the rights of its citizens, if not a necessary one. And this is clearly the case. It is wholly justifiable to claim that knowing who is entering a country is a valid and effective way of protecting the citizens. After all, the best medicine is prevention: so, the best way to stop a foreign terrorist from attacking your country is to stop him from entering it in the first place. To stop someone entering, or even to just keep track of who is, there must be some physical location at which you stop entrants and check their identification. This is all a border is. Therefore, the existence of borders in general is wholly acceptable to libertarians.

One might object that this is a naïve and simplistic view of borders, as they do not just stop people to check their passports, reject terrorists, then let everyone else through. They are far more restrictive than that. This may well be the case, but the claim here is simply that even in a country with a completely open-door immigration policy, where everyone except known terrorists is let in, it would still be justifiable and acceptable to libertarians that the country has an

enforced border. Therefore, it is not valid to claim that libertarianism entails a belief that borders should not exist in any form.

### INDIVIDUAL VERSUS STATE RIGHTS

A second, and stronger, libertarian objection to Wellman's conclusion is that a policy of closed borders causes a conflict between individual and state rights and that in these conflicts libertarians should side with individuals. If the state restricts immigration, then individuals' freedom is likewise limited. Imagine Mr. McDonald has a farm. When harvest time comes along, he wishes to employ cheap immigrant labor and, because it is his land and his farm, he should be able to do as he wishes. But because he lives in a country with a points-based immigration system, none of the low-skilled workers he wants can enter. He therefore must settle for more expensive, less experienced, local workers. Clearly his freedom has been curtailed here. As a property owner, he should be able to invite whomever he wants onto his land, and yet this is exactly what has been denied him.

The first response is that nothing in Wellman's argument explicitly stops the farmer from hiring immigrant workers. The argument specifically refers to immigrants who are staying in a nation indefinitely and are thus able to build up social membership claims, which would entitle them to membership in the political community. Therefore, if Mr. McDonald wished to hire temporary migrant laborers for the harvest, Wellman's argument would not stop him. But this is an unsatisfactory response, and flounders once the example is bolstered up. Perhaps Mr. McDonald wishes to hire migrant laborers to stay and work on his land indefinitely, doing all manner of jobs throughout the year. In this case, it is a conflict of the right of the property owner to do as he wishes on his property against the apparent right of the state to exclude potential immigrants.

The point is that immigration restrictions are beyond the bounds of the libertarian state, whose power should be limited to the protection of rights and contracts. Hillel Steiner (1992, 90) claims that immigration restrictions are "defending neither contractual agreements nor property rights," and so are illegitimate. He points out that immigration restrictions only protect the *value* of rights, such as what one's property is worth (thanks to there being no competition from immigrants), rather than protecting the right to property itself—and libertarianism believes that this is acting

beyond the state's remit. For libertarians, it is just as wrong for the state to restrict immigration as it would be for it to impose tariffs or redistribute wealth.

However, Steiner has not considered the state's right to freedom of association. If there is a collective right to control political membership, then the state *can* act to protect that right. Now the question becomes whether Mr. McDonald's right to invite whomever he wants onto his property violates the collective right to control political membership. To claim that an individual's right should always triumph over the group would be to assume it to be completely general and absolute—but this is not the case. No libertarian believes that any right is perfectly general or absolute. I have the right to freedom of speech, but I cannot use it to incite harm. The right to freedom of movement does not entitle me to walk into your house uninvited. My rights are restricted by other people's rights. The rights of other people are the limits of my rights: the right to freely move my fist, for example, is limited by the proximity of your chin. I have the right to do *x*, so long as doing so does not violate anyone else's rights. When we see it as Mr. McDonald versus the rest of the members of the state, we see that the crux of this objection is the tension between individuals, rather than the conflict between an individual and a state.

It is not the case that there is some individual trump card in these situations. Wellman (2011, 81) argues that the existence of even the most minimal state requires some violation of individual property rights, in disagreement with Nozick.<sup>5</sup> To Wellman the debate hinges on weighing up costs. To what extent are the rights of the group to freely associate violated compared to the rights of Mr. McDonald? If he only wants to hire one worker, then it is hard to see that the group's right is being violated in any meaningful way. On the other hand, if he wishes to hire ten thousand workers, then it certainly is. This is what must be decided by the political community, including Mr. McDonald. However, that there is a decision to be made is a testament to the fact that the border must not *necessarily* be open, for it would not seem right to violate the right to freedom of association of every other member of the community simply to protect one member's property right. The

---

<sup>5</sup> Even if one were to side with Nozick and agree that the minimal state does not violate rights, Wellman's overarching objection to Steiner still stands.



right to freedom of association may not be so perfectly general and absolute as to perpetually deny Mr. McDonald from hiring immigrant workers, but neither are property rights so general and absolute as to justify unfailing support of him.

## LIBERTARIAN UTOPIA

The final objection is to look at the libertarian “utopia,” because some claim that in the perfect libertarian society there would be open borders and that therefore libertarianism is indeed opposed to restricted immigration. As said before, it is widely believed that the minimal state would not have a restrictive immigration policy, because it would only act to protect the rights of its citizens and enforce contracts, neither of which restricting immigration would do. Therefore, if the goal of libertarianism is the minimal state, and the minimal state would have open borders, then libertarianism does indeed lead to open borders.

However, there are two problems with this argument. First, as mentioned previously, it fails to account for protecting the right to freedom of association. Imagine a small sovereign island whose citizens are mildly xenophobic and are content living without immigration. In fact, they agree that they want a totally closed-door immigration policy. In this case, it would seem both strange, and at odds with libertarianism, to insist that they have an open immigration policy. Their right to freedom of association would unilaterally be violated if this were the case. Therefore, even if only in such niche circumstances, Wellman’s freedom of association argument explains why libertarianism does not necessarily entail open borders.

But there is a second, even stronger rebuttal to this point which not only refutes it but shows that the minimal state could in fact necessitate *closed* borders. Many libertarians see the anarcho-capitalist state (or something not far removed), as envisioned by Nozick (among others), as the ultimate goal of libertarianism. In the anarcho-capitalist society, all land would be privately owned by some person or group, and communities would be independently run, with no state-owned property. One key feature of owning property is that no one can enter your property without your permission—trespassing violates your rights. Onora O’Neill (1992, 117) outlines the consequences of this:



The only legitimate restrictions on movement and association are those imposed by the individual owners on access to their property or their company. These, of course, may be legion; in a world without public provision or public spaces, they could be infinitely more restrictive than immigration and emigration constraints now imposed by states.

Murray N. Rothbard (1994, 7) builds upon this, writing:

Rethinking immigration on the basis of the anarcho-capitalist model, it became clear to me that a totally privatized country would not have "open borders" at all. If every piece of land in a country were owned by some person, group, or corporation, this would mean that no immigrant could enter there unless invited to enter and allowed to rent, or purchase, property. A totally privatized country would be as "closed" as the particular inhabitants and property owners desire. It seems clear, then, that the regime of open borders that exists *de facto* in the U.S. really amounts to a compulsory opening by the central state, the state in charge of all streets and public land areas, and does not genuinely reflect the wishes of the proprietors.

In a nation where all land is privately owned, all immigrants would have to be invited. Essentially, the whole question of immigration would need rethinking. The question of who should be let in would no longer be a valid one, rather it would be a question of who has been invited, and everyone else would be a trespasser.

Van der Vossen (2015, 14) astutely observes that the freedom of association argument fails to explain "why *the state* is the unit with the right to exclude immigrants." It is almost as if Wellman has employed circular reasoning by assuming that the state has a right to exclude in an effort to prove so. After all, freedom of association gives no indication of why subgroups within the state could not likewise exclude outsiders. The argument seems to just as validly support England's right to exclude Scots, or London's right to exclude everyone else, as it does the UK's right to exclude foreigners. Wellman is begging the question: Why the state? Why not anything smaller?

The anarcho-capitalist model provides an answer to Van der Vossen's problem. Subgroups within the state *may* exclude outsiders, as is their property right, but so too does the state have that right—they are not mutually exclusive. Just as a privately owned Alabama would have a right to exclude outsiders, so too would the USA have a responsibility to protect the rights of property owners by not allowing entrance to uninvited immigrants—in other words, by not having open borders.

Libertarianism is not so much a proponent of open borders so much as it is “against the control of international movement by any actor other than the individual property owner.” It says “nothing about what migration policies individual property owners morally ought to enact” (Higgins 2013, 92). To protect its citizens’ property rights, the state should prevent trespass, and this would require closed borders. Any libertarians who follow Nozick in aspiring toward the anarcho-capitalist state should bear in mind that even this would not necessarily have open borders.

Obviously, in reality many immigrants would be “invited,” so, in practice, borders would probably be very much open. However, there is a huge difference between this and a necessary commitment to open borders.

All three of these objections fail to refute the conclusion that Wellman’s freedom of association argument is compatible with libertarianism. Libertarianism is not, as is sometimes claimed, against the existence of borders. It is also not a valid argument to claim that open borders are necessary because they are the only way to prevent rights violations. And finally, it is not the case that the ideal libertarian state would have open borders. Therefore, the conclusion that libertarians should accept Wellman’s freedom of association argument is still valid, and therefore libertarianism does not necessarily entail open borders.

## CONCLUSION

Wellman’s freedom of association argument provides a tenable position for libertarians to defend restricted immigration. Because of this, libertarianism does not necessarily entail a commitment to open borders.

Whether any libertarians would, or should, accept Wellman’s argument is a different question. Most likely libertarians will maintain their commitment to open borders, and Wellman’s argument certainly does not provide a refutation of that. However, what it does do is open a debate. Is it legitimate to close borders on the grounds of freedom of association, and if so, when? I believe that the freedom of association argument challenges the assumption that libertarians must be committed to open borders, and it is not a challenge that can be easily brushed away. It is a valid argument against open borders which makes it possible for one to consistently and without contradiction be both a libertarian and against open borders.

Libertarians seem to have a penchant for being purists. There is a joke about libertarians: they love freedom so much that they would be happy seeing a twelve-year-old child on her way down a mine so that she can earn enough money to buy herself some heroine. For example, Gary Johnson (the US Libertarian Party's 2016 presidential candidate) was derided by some as watering down libertarianism in pursuit of centrist votes when he described his ideology as fiscally conservative and socially liberal—which is by no means an unfair summary of libertarianism. Likewise, immigration is treated as a shibboleth for libertarians, whereat those in favor of open borders can be labeled libertarians, while those opposed can easily be dismissed as more traditional conservatives. I believe that Wellman's argument provides an alternative to this assumption: libertarians can be against open borders.

There is no question that there are many good arguments in favor of open borders. However, freedom of association is a strong argument against it. Until it can be refuted, it cannot be claimed that libertarians must necessarily be committed to unrestricted immigration.

## REFERENCES

- Askren, Russell Wayne. 2012. "Liberalism and Borders: Finding Moral Consensus in the Open Borders Debate." PhD diss., University of Utah.
- Carens, Joseph H. 1987. "Aliens and Citizens: The Case for Open Borders." *Review of Politics* 49, no. 2: 251–73.
- Carens, Joseph H. 2013. *The Ethics of Immigration*. New York: Oxford University Press.
- Blake, Michael. 2012. "Immigration, Association, and Antidiscrimination." *Ethics* 122, no. 4: 748–62.
- Fine, Sarah. 2010. "Freedom of Association Is Not the Answer." *Ethics* 120, no. 2: 338–56.
- Higgins, Peter W. 2013. *Immigration Justice*. Edinburgh: Edinburgh University Press.
- Levy, Robert A. 2016. "Libertarianism and the Right to Discriminate." *Cato Institute Policy Report*, March/April 2016. <https://www.cato.org/policy-report/marchapril-2016/libertarianism-right-discriminate>.
- Kant, Immanuel. 2002. *The Groundwork for the Metaphysics of Moral*, ed. and trans. Allen Wood. New Haven, Conn.: Yale University Press.
- Mack, Eric. 2015. "Robert Nozick's Political Philosophy." In *Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta. Summer 2015 ed. Stanford University, 1997–. Article published June 22, 2014; last modified June 15, 2018. <https://plato.stanford.edu/archives/sum2015/entries/nozick-political/>.

- Nozick, Robert. 1974. *Anarchy, State, and Utopia*. New York: Basic Books.
- O'Neill, Onora. 1992. "Commentary: Magic Associations and Imperfect People." In *Free Movement: Ethical Issues in the Transnational Migration of People and of Money*, ed. Brian Barry and Robert E. Goodin. University Park, Pa.: Pennsylvania State University Press.
- Rothbard, Murray N. 1994. "Nations by Consent: Decomposing the Nation-State." *Journal of Libertarian Studies* 11, no. 1: 1–10.
- Sangiovanni, Andrea. 2017. *Humanity without Dignity: Moral Equality, Respect, and Human Rights*. Cambridge, Mass.: Harvard University Press.
- Seglow, Jonathan. 2005. "The Ethics of Immigration." *Political Studies Review* 3, no. 3: 3–21.
- Steiner, Hillel. 1992. Libertarianism and the Transnational Migration of People. In *Free Movement: Ethical Issues in the Transnational Migration of People and of Money*, ed. Brian Barry and Robert E. Goodin. University Park, Pa.: Pennsylvania State University Press.
- Todea, Diana Virginia. 2010. "Libertarianism and Immigration." *Libertarian Papers* 2, art. no. 30.
- Van der Vossen, Bas. (2015), "Immigration and Self-determination." *Politics, Philosophy and Economics* 14, no. 3: 270–90.
- Wellman, Christopher Heath. 2008. "Immigration and Freedom of Association." *Ethics* 119, no. 1: 109–41.
- Wellman, Christopher Heath, and Phillip Cole. 2011. *Debating the Ethics of Immigration: Is There a Right to Exclude?* New York: Oxford University Press.
- White, Stuart. 1997. "Freedom of Association and the Right to Exclude." *Journal of Political Philosophy* 5, no. 4: 373–91.

## A DEFENSE OF NATURAL PROCEDURAL RIGHTS

LAMONT RODGERS

*ABSTRACT:* In this essay, I argue that we should believe that agents have what I call natural procedural rights. On the one hand, agents have rights to prevent their rights from being violated, rights to stop those who are violating their rights, and rights to rectification when their rights are violated. In pursuing these rights, I argue that—at least under some conditions—agents have an obligation to inform others of the extent to which they are prepared to go in enforcing these rights. This obligation is grounded in an agent’s right to know if he is a rights violator in the first place. There is broad agreement that, in most cases, a knowing rights violator is rightly subject to penalties that unknowing rights violators are not. These procedural rights thus target the epistemic space between a knowing rights violator and an accidental rights violator.

*KEYWORDS:* procedural rights, Barnett, Block, Nozick, natural rights, rights

In this essay, I argue that we should believe that agents have what I call natural procedural rights.<sup>1</sup> On the one hand, agents have rights to prevent their rights from being violated, rights to stop those who are violating their rights, and rights to rectification when their rights are violated. In pursuing these rights, I argue that—at least under some conditions—agents have an obligation to inform others of the extent to which they are prepared to go in enforcing these rights. This obligation is grounded in an agent’s right to know if he is a rights violator in the first place. Rights, after all, are a two-way street. I have a right to kick you off my

---

Lamont Rodgers (lamont.rodgers@hccs.edu) is professor of philosophy at Houston Community College.

<sup>1</sup> I will drop the “natural” henceforth. I just want to be clear that I am not discussing legal or conventional rights, though.



property, but you have a right to resist that kicking if you're not actually on my property. I argue that you may resist my eviction if you have no reason to believe that you are trespassing. Similarly, if you graze the edge of my lawn, you do not expect me to engage in an eviction of any sort, let alone a violent one. I argue that before I engage in any sort of eviction, I have to inform you that I will evict you. This is because you have no reason to expect me to enforce my eviction rights in cases such as this. There is broad agreement that, in most cases, a knowing rights violator is rightly subject to penalties that unknowing rights violators are not (Nozick 1974; Mack 2006; Block 2011; Werner 2015). These procedural rights thus target the epistemic space between a knowing rights violator and an accidental rights violator.

Three bits of clarification are in order before I begin the central argument of this paper. First, I will assume here that individuals have robust rights over their own persons and over the private property that they legitimately acquire. I will also assume that these rights entail the right to exclude others from accessing the property in question. If I own my belly, I may stop you from touching it. Similarly, individuals have rights to stop rights violators. If I own my house and you enter it without my permission, I may throw you out. Finally, these rights entail the right to seek rectification. If you take my prized garden gnome, I have a right to see that you return it. I will not defend any of these positions here.

Second, the central argument of this paper is focused only on showing that there are cases in which individuals have procedural rights. I do not deny that there may be concerns of urgency, history, or the like that excuse agents from abiding the procedural rights of others. If someone is throttling me, I do not need to croak out a warning before, say, shooting that person. Similarly, if a person is a serial rights violator, I might not have good reasons to warn him before using force against him. Of course, it seems that all natural rights are contingent upon factors like this.

Finally, I do not offer a full account of the necessary and sufficient conditions under which individuals' procedural rights hold. Instead, my interest here is in presenting an argument to show that such rights exist in some cases. The necessary and sufficient conditions for the existence of those rights is beyond the scope of this article.

## SKEPTICISM ABOUT PROCEDURAL RIGHTS

Robert Nozick observes a practical problem with the natural rights tradition. The problem is that it focuses only on rights themselves and not what evidence we owe to individuals subject to punishment for violating rights. He holds that the natural rights tradition “offers little guidance on precisely what one’s procedural rights are in a state of nature, on how principles specifying how one is to act have knowledge built into their various clauses, and so on.” He holds that “persons within this tradition do not hold that one may not defend oneself against being handled by unreliable or unfair procedures” (Nozick 1974, 101). This is a problem for the natural rights tradition, because we often do not know if someone has violated our rights, or if we have violated theirs.

In response to this, Randy Barnett argues that “the natural rights tradition does hold or, at least, should hold...that there are no natural procedural rights.” His argument for this focuses on the distinction between the metaphysical question of whether someone has violated a right and the epistemological question of how we can know that someone has violated a right.

Though only the innocent party may rightfully use self-defense, it is often unclear to neutral observers and the parties involved just who is innocent. As a result there exists the practical problem of determining the facts of the case and then the respective rights of the disputants. But I must stress here that this is a practical question of epistemology not a moral question. The rights of the parties are governed by the objective fact situation. The problem is to discern what the objective facts are, or, in other words, to make our subjective understanding of the facts conform to the objective facts themselves. (Barnett 1977, 17)

What Barnett wishes to show is that a procedure’s reliability is irrelevant to the question of whether a right has been violated. Instead, all that matters is that the procedure, whatever it is, gets the right answer. When it does, no rights are violated. When it does not, rights are violated. He then argues, contra Nozick, that “You have the right to defend yourself against all procedures if you are innocent, against no procedures if you are guilty.”

The actual rights of the parties, then, are unaffected by the *type* of procedure, whether reliable or unreliable. They are only affected by the *outcome* of the procedure in that enforcement of an incorrect judgment violates the actual rights of the parties however reliable the procedure might be. (Barnett 1977, 17)

I confess that Barnett's remarks just seem to grant Nozick's point. For the natural rights tradition to be useful in lots of real-world cases, it needs to provide guidance when we do not know if we have right to defend ourselves against a particular procedure or if our rights have been violated. In the following section, I make three arguments in favor of procedural rights. The first two are that there are rationales—or motivations—for such rights already in the natural rights tradition. The third is that belief in procedural rights explains our reactions to several thought experiments in which epistemic considerations bear on the permissibility of rights enforcement.

## MOTIVATING PROCEDURAL RIGHTS

In this section, I offer three considerations in favor of procedural rights. The first is that such rights preserve the practical advantages of compossibility. Proponents of natural rights often lament the proliferation of rights that has occurred since the middle of the twentieth century (Steiner 1977, 1995; Lomasky 1987, 4; Block 2011). One of the many criticisms these theorists make of “new” rights, such as the right to healthcare, paid vacation time, and so on, is that they seem to introduce tension into a system of rights. If you have a right to healthcare and I am the only person who can administer it, do you have a right to force me to provide it? If you do, this seems to impinge on my right to self-determination. I do not mean to say (here, at least) that there is no way of squaring self-determination with the enforceable obligation to provide a service. Rather, the point is that natural rights theorists tend to oppose rights to services in part because such rights *seem* to make a set of rights incoherent. Part of the appeal of a coherent system of rights is that it makes exercises of rights compossible, as Hillel Steiner puts it (Steiner 1977, 1994).

A possible set of rights is such that it is logically impossible for one individual's exercise of his rights within that set to constitute an interference with another individual's exercise of his rights within that same set. (Steiner 1977, 769)

Systems that see individuals as having rights that can come into conflict are *prima facie* incoherent. Insofar as moral claims are to be true, these systems cannot be right, for contradictions cannot



be true.<sup>2</sup> However, for a set of compossible rights to celebrate the fact that its rights can be exercised without contradiction, I contend that advocates of those rights should not throw their hands up when epistemic questions arise.<sup>3</sup> Otherwise, it may be true that in lots of cases only one person has a right to do something, but multiple agents may justifiably believe that they are acting on their rights given the information available to them. This may happen even when the agents are thwarting each other's actions. The victory of compossibility is thus somewhat hollow. I think that the natural rights tradition can extend its advantage over rivals if it can say something more about these epistemic questions. I think that procedural rights can make a great deal of headway in that regard.

The second argument I want to press is related to cost. Part of the rationale for attributing rights to others is that rights, as typically understood within this tradition, are the least costly means of respecting the fact that others rightly pursue their own ends (Nozick 1974, 110–11; Lomasky 1987). If one agent must as a matter of course perform services for another, the agent typically endures a cost greater than if the agent simply had to leave the other alone. However, this is an empirical question, and although it may be true in general, there are exceptions (Mack 2006).

To illustrate the sort of case I have in mind, consider this scenario: we are in the state of nature. You have no reason to believe that anyone owns a particular section of the woods. You enter this area to enjoy its beauty. I own this section of the woods, however. When you trespass, I, without warning, set my hounds on you. They severely injure you.

It is difficult to say that you endured less cost here than if I had had to warn you that the land in question was my property and that I was prepared to engage in a violent eviction. Although the cost might have been greater for me if I had had to call out a warning and/or post some signs, the cost to you in the original scenario is substantial. This sort of thing is not a strange one-off, or so I

---

<sup>2</sup> For a contrary view, see Kramer (1998). Steiner (1998) offers a response to Kramer.

<sup>3</sup> I am not claiming that this is what Steiner does.

contend.<sup>4,5</sup> I think that there are plenty of real-world cases in which rights violators are innocent enough that we should say that they have a right to a warning before enforcement rights are exercised. If we may, without warning, harm those who unwittingly violate rights, the cost to them in attributing those rights to us is severe. Although the right to enforcement is a vital part of having a right in the first place, the price of allowing others to enforce their rights in certain ways is too great. Modest requirements of warning and evidence reduce that cost. My claim, then, is that in order to keep the costs of respecting those rights down, we should believe that agents have procedural rights.

The third argument I want to offer is explanatory. I argue that procedural rights explain our reactions in two sets of cases. First, we often do not expect people to enforce some of their rights. In these cases, we might admit that individuals ultimately have a right to take certain courses of action against others, but we deny that they may do so without proper warning. Indeed, those who do not expect to be harmed may defend themselves. Second, I argue that if we are going to enforce our rights against agents who are innocently (or innocently enough) unaware that they have violated our rights, then we must have evidence that those individuals have done so before we may seek rectification. Epistemic issues play a crucial role in both of these cases.

To begin this argument, I want to discuss cases in which epistemic issues appear only to be at the periphery. Consider the following scenario:

Judo 1: Norm does not like to be touched by other people. He is seated at the end of the bar when Frasier, a newcomer to the saloon, puts his hands on Norm's shoulders. Norm

---

<sup>4</sup> It will not do to say that posting signs just is part and parcel of coming to own property. This convention need not hold in all conceivable systems of private property. See Mack (2010) for a discussion.

<sup>5</sup> Travis Rodgers informs me of an incident involving Danny Bonaduce and John Fairplay. Both were appearing at an awards show. When Bonaduce entered the stage, Fairplay jumped on Bonaduce and wrapped his legs around him. Bonaduce slammed Fairplay to the ground, knocking out several of his teeth and concussing him. Fairplay sued Bonaduce. Although Bonaduce did not face criminal charges, he settled the lawsuit out of court. Perhaps this shows (a) that our criminal justice system believes that Bonaduce had the right to prevent Fairplay from touching him, but that (b) he should have warned Fairplay of his willingness to hurt him before doing so. I am not fully confident that this is right, though.

initiates a judo throw, but Frasier blocks it and sends Norm crashing to the floor.

I think that most will have the intuition that Norm's action was impermissible but Frasier's was not. Norm was not merely a jerk; he did something that he had no right to do. However, Norm surely has a right to stop others from touching his body—his personal property. Yet, I think that Norm's action is impermissible in Judo 1. To get at why, consider Judo 2.

Judo 2: Norm does not like to be touched by other people. He is seated at the end of the bar when Frasier, a newcomer to the saloon, puts his hands on Norm's shoulders. Norm informs Frasier of his desire not to be touched and warns Frasier that he will violently enforce his right not to be touched. Frasier does not move his hand. Norm initiates a judo throw, but Frasier blocks it and sends Norm crashing to the floor.

The vast majority of people that I have run this case by have deemed *Norm's* action to be permissible, while Frasier's was not. What is the difference between Judo 1 and Judo 2? Surely, it is the warning Norm gave Frasier. Norm improved Frasier's epistemic situation so that Frasier had reason to expect a method of prevention that he previously had no reason to expect.

This point also seems to apply to preventing others from accessing one's extrapersonal property. To see this, consider a modified version of a thought experiment offered by Walter Block (2011).

Shotgun 1: Jeremiah owns some acres of woods. He has laid claim to the land according to all the local rules. However, Alexander Supertramp manages to enter those woods without seeing Jeremiah's signs. When Jeremiah sees Alexander trespassing, he shoots him without calling out any sort of warning.

Most people think that Shotgun 1 is impermissible. Yet they have precisely the opposite judgment in the following case.

Shotgun 2: Jeremiah owns some acres of woods. He has laid claim to the land according to all the local rules. However, Alexander Supertramp manages to enter those woods without seeing Jeremiah's signs. When Jeremiah sees Alexander trespassing, Jeremiah calls out a warning that if Alexander does not leave he

will be shot. Alexander refuses to leave, so Jeremiah shoots him.

If Shotgun 2 is permissible, but Shotgun 1 is not, what is the difference?<sup>6</sup> I think the explanation is that in Shotgun 2, Jeremiah makes Alexander aware that he is violating Jeremiah's rights.

If we agree with Barnett that the epistemological question does not matter, then we should say that Judo 1 and 2, along with Shotguns 1 and 2, are all equally permissible. Norm had the right to stop Frasier from touching his shoulder and Jeremiah had the right to prevent Tom from entering his property. So, the warnings should not matter. Yet that is not what most people say. This reaction suggests that Barnett is wrong when he says, "You only have a right to a procedure, like any other service, if someone, e.g. your protective association has contracted to provide you with it" (Barnett 1977, 17). I might have to give you sufficient reasons to believe that you are violating my rights before I may enforce those rights.

I want to push this argument a step further. I think there is a strong case to be made that procedural rights bear on cases in which one agent seeks rectification but the other does not have good reason to expect to owe it. To get at this case, consider Azaleas 1 and 2.

Azaleas 1: Bob awakes to find that someone trespassed in his garden and trampled his prized azaleas. He will lose \$500 because of this. However, Bob made a list of twenty people he suspects and rolled a twenty-sided die. He then decided that the guilty party was the person whose name corresponded to the number on the die. Tom, who was drunk when the azaleas were

---

<sup>6</sup> One further explanatory advantage of the position I am pushing is that it elucidates a judgment from the natural rights theorist Eric Mack. He presents a version of Shotgun 1 in which the trespasser breaks into the cabin to find that the owner has rigged a shotgun to kill trespassers. The trespasser finds this out just as he dies from the blast. Mack agrees that the action in his version of Shotgun 1 would be impermissible. However, he says that he does "not have a confident account of that judgment." (Mack 2006, 125) If people have a right to be put in the epistemic position to understand the harm they face in violating rights, this may account for Mack's judgment. No hiker expects to be shot to death just for breaking into an uninhabited cabin. Once the hiker/graffiti artist knows that his expectation is mistaken, he is subject to enforcement of the right of exclusion. (He may be shot.) I do not wish to defend this judgment here, so, I note only that explaining Mack's judgment *might* be an advantage of my position.

trampled, has no idea if he is guilty. Bob knows that Tom keeps \$500 on his kitchen counter. Bob takes \$500 from Tom.

Is Bob's action permissible or impermissible?

Azaleas 2: Bob awakes to find that someone trespassed in his garden and trampled his prized azaleas. He will lose \$500 because of this. However, Bob has a set of reliable security cameras near his garden. He sees Tom from both a bird's eye view and several street angles. He even compares the footprints in the mud to Tom's shoes and discovers that they are a match. Bob shows Tom all the evidence, but Tom refuses to compensate Bob. Bob knows that Tom keeps \$500 on his kitchen counter. Bob takes \$500 from Tom.

Is Bob's action permissible or impermissible?

In the first case, it sure seems that Bob has done something impermissible. In the latter, it might not seem that way. The difference is that in the latter case, Bob shows Tom that the enforcement of the right was permissible. Putting Tom in the epistemic position to see that he violated a right appears to be the reason why the extraction of the \$500 was ostensibly permissible. Otherwise, Tom would have had no reason to expect Bob to extract anything from him.<sup>7</sup>

I do not think that this should be surprising at all. From the first two thought experiments, it seems that I have to warn someone that he is going to suffer a much harsher penalty than he had reason to expect in order to ensure that he is not an accidental rights violator. Why, then, should I not have to warn someone who has no reason to believe that he violated any rights that he is about to suffer a penalty for doing so? One who denies that we have procedural rights would need to explain away this asymmetry. Once we grant that people have procedural rights, there is no asymmetry.

It is in cases like this that the motivation for procedural rights becomes important. If Tom may resist Bob, but Bob may try to extract damages from him in Azaleas 1 since Tom is guilty, the advantage of compossibility falls away—at least at the practical

---

<sup>7</sup> This case is a complicating factor for Wellman (2012). I do not endorse Wellman's views, but I also do not claim to be offering a refutation of them here. This is just a complication.

level. I think that we can say that Bob may not extract damages from Tom in *Azaleas 1*, even though Tom violated his rights. This is because Bob lacks sufficient evidence to enforce his right to rectification. This preserves the compossibility of rights.

## THE SHADOW OF POSITIVE RIGHTS

As I hinted earlier, I suspect that part of the reason that people within the natural rights tradition are leery of procedural rights is that they come very close to being positive rights. Briefly, a positive right is usually treated as something like the right to be supplied with some good or service. Rights to free healthcare, a job, or free college would be positive rights, for example. Negative rights are rights against interference.<sup>8</sup> The right not to be murdered, raped, falsely imprisoned, and so on are all negative rights. It seems that this concern lurks behind some of Barnett's remarks. When he says that you "only have a right to a procedure, like any other service, if someone, e.g. your protective association has contracted to provide you with it," I suspect that he means that we cannot have a noncontractual right to have someone perform a service for us (Barnett 1977, 17).

I think that general skepticism about positive rights is well founded. However, there are at least two reasons why that skepticism does not undermine the case for procedural rights. First, if one makes the judgment that *Judo 1*, *Shotgun 1*, and *Azaleas 1* were impermissible, the most obvious explanation within the natural rights tradition for that impermissibility is that it violates someone's rights. Otherwise, one should say that the actions are blameworthy, irresponsible, mean, and so on, but *permissible*. Proponents of natural rights are willing to admit that not all exercises of rights are free from blame. A landowner who forces someone to walk the perimeter of his field rather than pass unobtrusively through is, or at least might be, a jerk. However, once we say that this sort of behavior is impermissible, we open the door for all kinds of impermissible actions not constrained by the rights of others. Once that happens, at least some of the freedoms that natural rights theorists defend become imperiled. Perhaps legal paternalism, which many natural rights theorists oppose, becomes permissible.

---

<sup>8</sup> For a defense of the importance of the distinction between positive and negative rights, see Rodgers (2018).

Another reason why the concern with positive rights does not need to arise here is an analogy between procedural rights and things that proponents of natural rights have no problem accepting. Walter Block, who opposes both positive obligations and positive rights, presents a thought experiment identical in spirit to the ones I have considered thus far. He writes, “if A sees B stepping on his lawn, as a first step A may not blow B away with a bazooka. Rather, A must notify B of his trespass, and if B immediately ceases and desists, perhaps even with an apology thrown in, that is the end of the matter. It is only if B turns surly, hostile and aggressive, and refuses to budge, that A may properly escalate” (Block 2011, 5). He concludes that one must enforce eviction rights in the “gentlest manner possible” (1, 7). He holds that “in countering a rights violation, we want to ensure that we stop just on this side of violating the rights of the rights violator” (5). Indeed, in cases of abortion, Block argues that a mother may evict a fetus provided that she notifies “an appropriate agency, such as new adoptive parents, a church, a monastery, an orphanage, Craig’s List, etc.” (6).<sup>9</sup>

My position and Block’s align in holding that people might have to perform actions before exercising their rights. In that sense, the *implications* of my argument should not be problematic. The difference, *if there is one*, is that I am openly linking this requirement to the rights of others. However, it might be the case that Block also acknowledges natural procedural rights and that his gentleness requirement is a means of codifying them in practice. (I am uncertain about whether Block thinks this requirement is linked to rights, however.) His position seems to be that we must evict in the gentlest manner possible in order to avoid violating rights (Block 2011, 5). We must do this in order not to violate rights ourselves. This is a reasonable position and I have no problem with it as far as it goes. It seems, for example, to explain the difference between Judo 1 and Shotgun 1, on the one hand, and Judo 2 and Shotgun 2 on the other. Perhaps one may not enforce one’s rights against accidental rights violators in the same manner that they may against intentional rights violators. So, to turn to aggression before knowing that Frasier and Alexander are knowingly violating rights is itself a rights violation. I think that requirement is a procedural right.

---

<sup>9</sup> Obviously, the sort of actions one must take is shaped in part by the available technology.

Block's position also explains the Azalea cases. If one must not risk being a rights violator, then surely Bob should not extract payment from Tom with the flimsy evidence he has in Azaleas 1. However, if we suppose that Tom was guilty of trampling Bob's azaleas, then it seems that Bob had a right to extract payment from Tom, even if Bob did not really know that he did. Here, Block has to claim one of two things. One option is to say that Bob's behavior was blameworthy, since he risked violating Tom's rights, but was *not* a rights violation, since Tom did owe Bob the \$500. If this is Block's position, he parts ways with his own characterization of libertarianism: "the individual can do whatever he wants to do. In the libertarian society, he has complete freedom. Except; he cannot violate the equal rights of all others, by attacking their bodies (murder, rape, assault and battery), or their property (theft, fraud, counterfeiting), or even threaten such activities" (Block 2004, 128). Alternatively, Block can say that Bob's behavior was a rights violation and that that is why it is blameworthy. If his position is the latter, then our arguments are not in tension.

Although it is possible that my view and Block's are coextensive in their requirements in the cases canvassed so far, I want to argue that Block's requirement that we enforce rights in the gentlest manner possible does not go far enough. It does not cover all cases in which we might believe that someone has procedural rights. Consider Azaleas 3.

Azaleas 3: Bob awakes to find that someone trespassed in his garden and trampled his prized azaleas. He will lose \$500 because of this. However, Bob has a set of reliable security cameras near his garden. He sees Tom from both a bird's eye view and several street angles. He even compares the footprints in the mud to Tom's shoes and discovers that they are a match. Bob knows that Tom keeps \$500 on his kitchen counter and Bob is very good at sneaking undetected into people's homes (for reasons that are fully legitimate, pretend). Bob studies Tom's habits, waits for the propitious moment and sneaks into Tom's house to seize his money. Despite Bob's best efforts, Tom sees Bob enter his house. Tom calls out for Bob to leave and draws his pistol. Bob grabs the money and makes a break for it.



Now, I do not think that I need to finish the story for us to see that at least one of the individuals will violate the other's rights here. It seems to me that we have to blame Bob for all of this, even though he had a right to rectification. Bob acted as gently as possible, at least as the word functions in common language. Yet, given Tom's epistemic position, he would rightly take himself to have a right to shoot the fleeing Bob. If natural rights are to be compossible and practical, then it seems that we should argue that Bob was obligated to let Tom know that he had violated Bob's rights before seeking rectification. Bob has a right to rectification; Tom has a right to defend his possessions. What we need is a means of allowing agents, when possible, to determine what courses of actions are and are not rights violations. I do not see how Block's gentleness requirement achieves this goal.

One might contend that Tom has a right not to be made a rights violator. Perhaps Bob has made Tom a rights violator by putting him in the position to kill or injure someone to whom he owes damages. I think this is right; I would simply call this a procedural right. Nozick suggests that the natural rights position does not tell us what individuals may do when subjected to unreliable procedures for detecting guilt. There is no obvious reason not to extend this to unreliable methods of recovering one's property. I also think that this is not how the word *gentle* functions in ordinary language. (I can gently steal, for example.) Bob is being gentle; he is not going to do physical harm to Tom. But any well-functioning court system would acquit Tom in the case I have described.

## CONCLUDING MATTER

It might be that the content of procedural rights is to a degree culturally informed. If people in an area do enforce their property rights violently and with no more warning than, say, a sign indicating that it's private property, then others have good reason to expect that enforcement. In that regard, they have no procedural rights *against that kind of enforcement*. However, this does not change the point that when individuals either have no reason to expect enforcement or a particular level of severity in enforcement, then there are good reasons to believe that they have procedural rights. Local habit can only inform what one has good reason to expect. Thus, these rights are not cultural or political rights; they are rights that all agents have.

Along these same lines, it is important to see what I am, and am not, saying. I am not arguing that one has a right to see video evidence that one is guilty before others may enforce their rights to rectification. Such a principle would have precluded most people in human history from enforcing their rights. I am arguing that there must be some sufficient level of evidence offered to the person subject to punishment, at least when the person is innocently (or innocently enough) ignorant of whether he violated rights. The form that evidence might take may vary, but that is not surprising. After all, Nozick tells us that principles of justice in transfer may vary across different societies (Nozick 1974, 150). He also tells us that social rules may take sundry forms (322–31). I do not see why something similar could not happen with procedural rights.

This article has argued that we have rights not merely against certain types of behavior, but to be informed that we are rights violators and subject to rights enforcement. In order to protect the compossibility of rights, to keep down the cost of respecting rights, and to explain our reactions to the vignettes I constructed, I have argued that we should extend the scope of rights to include two things. First, individuals have rights to be informed that they are subject to rights enforcements that they have no reason to expect from others. Otherwise, individuals may resist, having insufficient reason to expect anyone to enforce those rights. Second, individuals have a right to be warned that they are subject to more severe penalties than they have reason to expect. These are natural procedural rights.

## REFERENCES

- Barnett, Randy. 1977. "Whither Anarchy? Has Robert Nozick Justified the State?" *Journal of Libertarian Studies* 1, no.1: 15–21.
- Block, Walter. 2011. "Evictionism Is Libertarian; Departurism Is Not: Critical Comment on Parr." *Libertarian Papers* 3, no. 36.
- Kramer, Mathew, N. E. Simmonds, Hillel Steiner. 1998. *A Debate over Rights*. New York: Oxford University Press.
- Locke, John. 1980. *Second Treatise of Government*, ed. C. B. Macpherson. Indianapolis, Ind.: Hackett.
- Lomasky, Loren. 1987. *Persons, Rights, and the Moral Community*. New York and Oxford: Oxford University Press.
- Nozick, Robert. 1974. *Anarchy, State, and Utopia*. New York: Basic Books.

- Mack, Eric. 2006. "Non-Absolute Rights and Libertarian Taxation." *Social Philosophy and Policy* 23, no. 2: 109–41.
- Mack, Eric. 2010. "The Natural Right of Property." *Social Philosophy and Policy* 27, no. 1: 53–78.
- Rodgers, Travis. Forthcoming. "The Equivalence Thesis and the (In)significance of Violating Negative Rights." *Southwest Philosophical Studies*.
- Steiner, Hillel. 1977. "The Structure of a Set of Compossible Rights." *Journal of Philosophy* 74, no. 12: 767–75.
- Steiner, Hillel. 1994. *An Essay on Rights*. Oxford: Blackwell.
- Werner, Preston J. 2015. "Self-Ownership and Non-culpable Rights Violations." *Politics, Philosophy, and Economics* 14, no. 1: 67–83.
- Wellman, Christopher Heath. 2012. "The Rights Forfeiture Theory of Punishment." *Ethics* 122: 371–93.

## LIBEL, SLANDER, AND REPUTATION ACCORDING TO ROTHBARD'S THEORY OF LIBERTARIAN LAW

WALTER BLOCK AND JACOB PILLARD

*ABSTRACT:* Rothbard's principal conclusion that libel and slander laws have no place in libertarian law is correct. We build upon his brilliant insight on this matter and wrestle with the following questions: How does a reputational right operate? Who, properly, owns such a right? Is this property right alienable—transferable? How would this work in practice? Is recovery for damages precluded under libertarian law? We do take issue with Rothbard's rejection of voluntary slavery contracts and relate this matter to reputation ownership.

### LIBEL AND SLANDER

Libertarian philosophy in the Rothbardian sense does not base itself on moral claims but only on legitimate natural law. Legitimate natural law<sup>1</sup> can be regarded as self-evident or god given. The two basic axioms are ownership and nonaggression. Self-ownership exists according to Rothbard by virtue of being human (Rothbard 1978, 33–34). Ownership of objects exists through the mixing of our labor with objects in nature (*ibid.*, 42–43). The second axiom, the nonaggression principle (NAP),

---

Walter Block (wblock@loyno.edu) is the Harold E. Wirth Eminent Scholar Endowed Chair in Economics at Loyola University and senior fellow at the Mises Institute.

Jacob Pillard (jakepillard@gmail.com) is an independent scholar.

<sup>1</sup> Natural law, roughly, constitutes that which promotes human flourishing. The “legitimacy” aspect of it is conferred by the two principles mentioned immediately below.

provides “that no man or group of men may aggress against the person or property of anyone else” (ibid., 27). If someone breaks this rule, the victim<sup>2</sup> may use force in return in order to protect a person or property.<sup>3</sup>

In the most basic sense, the libertarian philosophy is devoid of moral claims. When Chelsea smashes Amy’s figurines to pieces and mutters, to Amy’s dismay, a series of expletives about her, the libertarian should be appalled about the property damage but indifferent to the expletives. There is, of course, nothing preventing a libertarian from reading the Stoics, Aristotle, or Kant and developing his own personal moral compass, just so long as this does not involve abridging the self-ownership rights of others through unwarranted aggression.

In many respects, the same sort of indifference felt towards the expletives is present in the realm of libel and slander. People with a strong moral compass will watch with disgust as our titular villain Chelsea lies in the most exorbitant manner about Amy’s failures. “It’s wrong!” they will shout. “This is hideous, unconscionable, and dare we say undefendable!” However, Rothbard maintains that Amy cannot find reprieve in our legal system, since she does not own the thoughts of the listeners to whom Chelsea directs her venom. Targets of libel and slander are left to defend themselves in the court of public opinion. That is their only legal option under Rothbard’s libertarian framework.

Specifically, Rothbard writes that “since every man owns his own mind, he cannot, therefore, own the mind of anyone else” (Rothbard 2015, 126). Reputation, he writes, “is purely a function of the subjective attitudes contained in the minds of *other people*” (ibid.) Finally, he asserts that a person “may not legitimately own the thoughts of others”(ibid.) The point is that Chelsea did not violate any of Amy’s rights with her utterances.<sup>4</sup> Yes, the former “stole” the reputation of the latter. Chelsea, we may suppose, is eloquent and convinces all and sundry of Amy’s many and serious flaws. But, paradoxically, Amy does not own her own reputation. She may work hard to garner a good one and benefit from it when

---

<sup>2</sup> Or his agent, or even a passerby.

<sup>3</sup> For a deeper understanding of this matter, see Rothbard (1978).

<sup>4</sup> In sharp contrast, Chelsea’s destruction of Amy’s physical property is a crime.

she has.<sup>5</sup> But, paradoxically, it is not her property, since it consists solely, and only, of the thoughts of other people, and she does not own their thoughts.

But is this always, and necessarily, the case?

## OWNING THE THOUGHTS OF OTHERS

This section will demonstrate that at least one instance exists where a person could overcome Rothbard's ownership objection that denies victims of libel or slander from recovering damages.

What if it were possible for Amy to own the thoughts of others? In order to explore this possibility, we will use an extreme example, voluntary slavery. To begin, we note that such a concept is controversial and not fully accepted as even a possibility by many libertarian scholars.<sup>6</sup> Even Rothbard himself rejected the idea (Rothbard 2015, 40–41; more on that later). The term *voluntary slavery* connotes a free person who voluntarily enters into a contract with another to become a slave. For the purposes of this example, the slave is now completely owned by the slave owner.

Consider the following scenario: standing among the gathering of onlookers listening to Chelsea's slander of Amy is none other than Brett. Brett had no luck in life, and when his mother became deathly ill from her lifelong smoking habit, he had no way to raise the funds for the expensive treatment without resorting to extremes. As a result, Brett the ever honorable son, wrote up a contract and handed it to Amy. Amy, a successful entrepreneur, upon receiving the contract, read it out loud, "I, Brett, hereby voluntarily agree to become Amy's slave indefinitely when the sum of \$2 million is sent to my mother." Amy immediately accepted. Brett's mother was able

---

<sup>5</sup> Often, when a business firm is sold, its "good will," that is, its reputation, is worth a significant amount.

<sup>6</sup> In the view of Boldrin and Levine (2008, 254): "Take the case of slavery. Why should people not be allowed to sign private contracts binding them to slavery? In fact economists have consistently argued against slavery—during the 19th century David Ricardo and John Stuart Mill engaged in a heated public debate with literary luminaries such as Charles Dickens, with the economists opposing slavery, and the literary giants arguing in favor." For supporters of this doctrine, see Andersson (2007); Block (1969, 1979, 1988, 1999, 2001, 2002, 2003, 2004, 2005, 2006, 2007a, 2007b, 2009a, 2009b); Boldrin and Levine (2008); Frederick (2014); Kershnar (2003); Lester (2000); *Bionic Mosquito* (2014); Nozick (1974, 58, 283, 331); Steiner (1994, 232–33; 2013, 230–44); Thomson (1990, 283–84).

to get treatment. Brett's first task was to purchase spinach and eggs to make Amy a fantastic breakfast. During his shopping adventures, Brett happened upon Chelsea giving a speech; Chelsea convinced Brett through her slander that Amy was a charlatan and a huckster involved with the most notorious of criminals. These claims have no basis in fact, but Chelsea was able to convince Brett through her excellent persuasion skills. Brett, who has an aversion to criminals, now hates Amy and works for her at reduced efficiency.

Amy, the complete owner of Brett as property, would by definition also own that part of her reputation that now exists in Brett's mind. Amy's property has therefore been damaged by Chelsea's slander.

## THE LEGITIMACY OF THE RIGHT

This section will provide a robust endorsement of freedom of contract, reject Rothbard's rejection of voluntary slavery, and highlight what it means to be a voluntary slave and how it can relate to libel law.

When Rothbard wrote about libel law he never specifically rejected the idea of an ownership right in a reputation. Rather his critique was that the libellee had no ownership right in the minds of other people (Rothbard 2015, 1978). However, the previous master-slave example illustrated a situation where this precise reputational right could possibly come to be owned. At the outset such an extreme example seems too fringe to be of any practical use. We contend that it is not.

Freedom of contract looms large in the minds of most libertarians. Its two axioms are ownership and the right to be free from aggression (NAP). The ownership axiom includes self-ownership. Therefore, with these two axioms in mind a libertarian would not wish to interfere with a contract between two consenting adults who voluntarily enter into a contract.<sup>7</sup> After all, they are each doing so with their own private property, without violating the rights of anyone else.<sup>8</sup> If someone else or some third entity intervened

---

<sup>7</sup> At least not violently. But it would be perfectly alright to "interfere" in other ways, such as speaking, writing, etc., under the libertarian code of law.

<sup>8</sup> In the view of some libertarians, voluntary fractional reserve banking contracts are an exception to this general rule. This is so for reasons the explication of which would take us too far afield from our present topic. On this see Bagus (2003); Bagus, Howden and Block (2013); Barnett and Block (2005, 2009a, 2009b);

in this exchange and told *B* that he couldn't enter into a contract with *A*, a libertarian would properly view this as a violation of property rights absent some other voluntary contract from either party prohibiting such a contract.

Since the master-slave relationship is the most extreme example of complete ownership, all lesser forms are derivative. For instance, as a slave owner Amy owns Brett. In theory, Amy owns Brett's body, his organs, his labor, his ability to enter into new contracts; the list goes on and on. There is *nothing* he previously owned that is not now her property. Amy has complete dominion over everything Brett has to offer, from his intellect to his physical attributes. This, by definition, means that Amy has control over Brett's thoughts. Just as Amy can instruct Brett to curse Chelsea, Amy can instruct him to hate Chelsea and despise her accordingly. A critic might aver that a slave can only sell his physical attributes, but why can't he sell everything? We can easily imagine a machine that allows scientists to interpret our thoughts in the not so distant future. Would such a critic maintain that a voluntary slave would be able to willfully defy his owner's commands after having sold himself into voluntary slavery? Again, Brett sold in its entirety his property interest in himself. But surely if Brett can sell his entire property interest in himself, nothing is stopping him from selling only a part of that property interest instead.

In the sale of real property, selling a property in its entirety would be regarded as selling it in fee simple absolute. Real property rights are often described as a bundle of sticks. So a complete bundle of sticks is fee simple absolute (Sprankling and Coletta 2015, 316). However, individual sticks include and are not limited to the right to transfer, the right to exclude, the right to use, and the right to destroy (*ibid.*, 25–26). Property takes various forms; for instance, *A* rents to *B* for one year, but prohibits *B* from renting to a subtenant. Here *A* still owns the property but has given up the right to use it for one year. *B* owns the right to use the property for one year,

---

Batamarco (2014); Baxendale (2010); Block (2008); Block and Caplan (2008); Block and Garschina (1996); Block and Humphries (2008); Davidson (2008); Davidson and Block (2011); Hanke (2008); Hazlitt (1979); Hollenbeck (2013, 2014a, 2014b); Hoppe (1994); Hoppe, Hülsmann, and Block (1998); Howden (2013); Huerta de Soto (1995, 1998, 2001, 2006, 2010); Hülsmann (1996, 2000, 2002a, 2002b, 2003, 2008); Murphy (2011, 2018a, 2018b); North (2009); Polleit (2010); Reisman (1996, 2009); Rothbard (1975, 1990, 1991, 1993); Salerno (2010a, 2010b, 2011); Shostak (2017a, 2017b).



but the right to transfer it to a subtenant has been excluded. In addition, *B*'s ownership interest presumably does not permit him to destroy the property, but as a tenant he would retain the right to exclude other persons, up to and including *A*, the landlord, from the premises for one year.<sup>9</sup>

Most notably, the individual sticks in the bundle can be divided even further. For instance, the right to exclude could have an exception for annual walkthroughs or emergencies. Likewise, the right to use need not be general; it could be limited to mineral or grazing rights. The sticks in the bundle are distinct and divisible. As a result of such voluntary contracts, a property could find itself with tenants, mortgages, liens, licenses, easements, and all manner of encumbrances.

Leaving real property aside and returning to the subject of people, we find that free individuals have without compulsion sold their organs, their labor, and their right to do or not do an action. All of these individual private property rights are found bundled together in the master-slave relationship. No new sticks were created in the master-slave relationship that did not already exist individually in the bundle of property rights under the previous owner's legal control, Brett in the present instance. Ergo, it must be the case that the reputational right in Brett's mind (about Amy, in this case) is not an exception to this general rule. Since it can come to be owned as part of a complete bundle of rights, Brett's thoughts can come to be owned individually without the other sticks in the bundle—the other property interests.

At this point, it is appropriate to return to Rothbard, who rejected voluntary slavery. At the outset of this small detour, it should be noted that rejecting voluntary slavery does not sink the analysis thus far. Rather, rejecting voluntary slavery is simply rejecting the idea that the *entire* bundle of sticks can be offered up to the market; however, even in this view, each individual stick in the bundle may still be offered.

Rothbard writes as follows:

The distinction between a man's alienable labor service and his inalienable will may be further explained: a man can alienate his labor

---

<sup>9</sup> *B* could even exclude *A*, the very owner of this property, for the twelve months, apart from inspections, with notice, if this proviso is part of the arrangement, which it might well be.

service, but he cannot sell the capitalized future value of that service. In short, he cannot, in nature, sell himself into slavery and have this sale enforced—for this would mean that his future will over his own person was being surrendered in advance. In short, a man can naturally expend his labor currently for someone else's benefit, but he cannot transfer himself, even if he wished, into another man's permanent capital good. For he cannot rid himself of his own will, which may change in future years and repudiate the current arrangement. (Rothbard 2015, 40–41)

Rothbard offers the following hypothetical,

Suppose that Smith makes the following agreement with the Jones Corporation: Smith, for the rest of his life, will obey all orders, under whatever conditions, that the Jones Corporation wishes to lay down. Now, in libertarian theory there is nothing to prevent Smith from making this agreement, and from serving the Jones Corporation and from obeying the latter's orders indefinitely. The problem comes when, at some later date, Smith changes his mind and decides to leave. Shall he be held to his former voluntary promise? Our contention—and one that is fortunately upheld under present law—is that Smith's promise was not a valid (i.e., not an enforceable) contract. There is no transfer of title in Smith's agreement, because Smith's control over his own body and will are inalienable. Since that control cannot be alienated, the agreement was not a valid contract, and therefore should not be enforceable. (Rothbard 2015, 135–36)

We find this line of argument unconvincing. Suppose Smith entered into a contract to work for Jones Corporation for ninety-nine years. After one day, Smith breaks his contract. How is this any different? While his entire “will” is not at issue, his ability to contract his labor in the future was certainly constrained; according to Rothbard, this would not be enforceable. In both cases, Smith agreed to something that would prevent him from doing something else because of the deal struck at an earlier date. Instead of ninety-nine years, suppose it was one year, or six months, or thirty days or eight hours; does that make a difference? Surely not. Consider a contract whereby Smith offers to deliver a certain number of widgets each month for one year at a fixed price. Surely all such deals among consenting adults must be enforced. What about a five-year lease agreement with monthly payments? Accepting a contract now must mean that you are held accountable in the future if property rights are to mean anything.

What about suicide? Should my ability to constrain my “will” in such a manner be illegal and not permitted? One of Rothbard's points about the “will” is that present-day decisions should not shackle future actions. What about the sale of my kidney?

Although it is now a great time to sell it in the *ex ante* sense, I may soon experience some *ex post* regret as my future self realizes the importance of having two working kidneys. The sale of the kidney constrained my “will” with respects to future uses of the kidney, so am I entitled to a refund?<sup>10</sup> Another difficulty with the Rothbardian position is that it implies that suicide would be a crime, since it alienates the (future) will; this is a difficult stance for a libertarian to take; for that matter, the same applies to dying. These objections render Rothbard’s principal complaint about voluntary slavery untenable.

What we are now discussing are specific performance contracts. The usual example is *X* hires *Y* to sing at his wedding. At the last moment, *Y* reneges. In our view, *X* would have the right to frog march *Y* to the venue and compel him to sing at the point of a gun. Even we realize that this appears problematic. Our critic would object that if *X* is worried about being disappointed, he could arrange with *Y* to post a bond, which the latter would forfeit, in case he does not uphold his side of the arrangement. Or, *X* could rely on *Y* to show up, since if he did not, his reputation would suffer, and the demand for his services would slacken. So, let us consider a much more powerful case on behalf of specific performance contracts, e.g., voluntary slavery of a temporary sort. Here *D* is a tightrope walker; he performs his act of daring one hundred feet up in the air. *D* hires *E* to hold a net under him in case he falls. *D* starts his performance, and while he is in the middle of it, *E* decides to down tools, that is, walk off the job. *F*, a friend of *D* tells *E* that if he quits in the middle of *D*’s performance, he, *F*, will shoot *E*. Is *F* entitled to make this threat of physical violence against *E*, the would-be quitter? Most people would now agree, since *D*’s very life is at stake. The emotional impact changes from the case of the wedding singer to that of the net holder, but the two should be considered legally equivalent.

Returning now to libel and slander, in *Defending the Undefendable II* Walter Block discussed how a libertarian theater owner would deal with a fire “screamer” in a free market setting (Block 2013, chap. 10). In essence, how could a libertarian prevent a paying customer from shouting “Fire!” in a crowded theater? The answer

---

<sup>10</sup> Not only a refund. In this view, I should be able to seize my (ex?) kidney out of the body of the person who purchased it from me.

is simple. The theater owner would make entry contingent upon a contract whereby the customer would agree not to falsely scream fire in his theater.

By analogy, something similar should work with libel and slander.

### THE FREE MARKET APPROACH TO LIBEL: THE CASE OF THE THEATER OWNER

Here we take the next logical step and ask how the free market would interact with libel and slander. The ultimate conclusion seems to provide relief to the wronged party.

Suppose the following: Amy recently opened up a successful movie theater and is in direct competition with Chelsea's similar establishment, located down the street. Chelsea, who is losing business to Amy, resorts to making false claims about Amy and her business in order to gain more customers. Brett, a customer who frequents Amy's movie theater agrees, contingent on the purchase of a ticket, to sell one of the sticks in the bundle; specifically, Brett's property interest of Amy's reputation in his own mind. We have established under the master-slave relationship that Amy's reputation can be owned, since it exists in Brett's mind but Amy owns him, lock, stock, and barrel. Absent that master-slave relationship, by virtue of being a free person, Brett may sell this property interest in Amy's reputation to Amy. Suppose that Brett does this and that the next day he is convinced by Chelsea's false claims that Amy's theater has no permit to operate, is rat infested, and that Amy is funded by notorious gangsters. Brett, well-known and highly respected on the internet, takes to social media to express his dissatisfaction with Amy's establishment, and thanks Chelsea most endearingly for alerting him to these new "facts."

In theory, at trial, after Amy disproves these claims, she can call Brett to the stand. Brett would truthfully testify that he learned this information from Chelsea, believed it, and thus her reputation in his mind was damaged. Since Amy own's Amy's reputation in Brett's mind, property damage will have occurred. Thus the state could intervene, whether it be through civil or criminal law to rectify the wrong.

If you are NOT willing to accept that Amy can recover damages because her reputation was ruined in the mind of her slave, of whom she has complete ownership, then why not? If you are NOT

willing to accept that Amy can recover because her reputation was damaged in the mind of her customer, of whom she acquired an ownership interest, then why not? Rothbard opposed libel laws, because he focused only on the fact that Amy did not own her reputation (since it consisted of the thoughts of others, which Amy did not own). In this the eminent libertarian theorist was absolutely correct.<sup>11</sup> We diverge from him only in this matter of owning other people fully, outright, as in the case of voluntary slavery, or owning one of these “sticks”—the thoughts in other people’s minds, which, we claim, people can sell. Do people not own the contents of their minds? Are free people not free to contract? The point is, if you cannot sell something, then, to that extent, you are not really the full owner of it.<sup>12</sup> And if you are the complete and total owner of something, as Brett is of his thoughts, then you may prevent others from stealing them from you and, indeed, sell them. We owe Rothbard an intellectual debt for realizing and acquainting us with the fact that Amy cannot own her reputation. We stand on Rothbard’s shoulders when we combine this insight with our view on voluntary slavery and on selling this particular “stick.”

It cannot be denied that it is difficult to tell your slave what to think. Cogitation is almost like an involuntary reflex, akin to sneezing, breathing, a heartbeat, moving your foot when your knee is struck with a rubber hammer, etc. Does this mean that the thinking of the (voluntary) slave cannot at all be controlled by his master? Threats will not do, since pondering, deliberation, are private acts, and it would be exceedingly difficult for the owner to know, precisely, what is on her slave’s mind.<sup>13</sup> However, there are drugs. If they cannot be counted upon to direct rumination along the lines preferred by the owner, at least they can be relied upon to ensure that he does not think at all. This might well decrease his

---

<sup>11</sup> Importantly though, the ownership argument doesn’t deny the existence of reputation as a property right; quite the opposite: it denies instances of libel because another party has ownership.

<sup>12</sup> Philosopher Norman Malcolm recounts a discussion with his mentor Ludwig Wittgenstein (Malcolm 1958, 31–32): “On one walk he ‘gave’ to me each tree that we passed, with the reservation that I was not to cut it down or do anything to it, or prevent the previous owners from doing anything to it: with those reservations it was henceforth mine.”

<sup>13</sup> It may not even be necessary to instruct your slave how to think for a libeler to then cause damage. A change from whatever the prior state of mind happened to be could be sufficient.

overall productivity, but there is a cost to everything. If engaged in, this process will all but ensure that Brett is not being swayed by the Chelsea's lies against his owner, Amy.

## HOW TO THINK ABOUT THE ROTHBARDIAN CRITIQUE ON LIBEL AND WHAT PRECISELY IS WRONG WITH LIBEL UNDER THE LIBERTARIAN FRAMEWORK?

Let's take a step back and view the larger picture. Rothbard's most interesting objection to the libellee recovering damages from the libeler was that the libellee did not own his reputation, the one besmirched by the libeler. Rather, the libellee's reputation consists of the thoughts in the listener's mind and the libellee did not own them.<sup>14</sup> This implies that the right to reputation can be owned and that the reputation of another in an individual's mind is a discernible, albeit problematic, property right.

A critic might aver that Rothbard errs in thinking that a reputation cannot be owned at all because that "commodity" consists of the thoughts of third parties, owned by neither the libeler nor the libellee. But Rothbard's error is that a reputation *can* be owned but that it just isn't owned by the correct party. To wit, the libellee's reputation isn't owned by the libellee, but it *is* owned by the third parties, because the libellee's reputation consists of the thoughts of these latter folks. This was Rothbard's primary argument, and if it were the only argument such a criticism would be well founded. But this is an invalid criticism, since reputations cannot be owned at all, by anyone. They consist of information, thoughts. But, we cannot own intellectual property, since it is not scarce.<sup>15</sup> More on this later. Thus, this criticism by Rothbard fails.

These two views are mutually exclusive. If the challenge is one of ownership, it presumes a valid property interest in reputation, whereas if the problem is a lack of scarcity with regard to intellectual property, the conclusion is that reputation is not a valid property interest. Therefore, criticizing of Rothbard on this ground would

---

<sup>14</sup> We now put aside for the moment the issue of voluntary slavery, in which one person may possibly own the thoughts of another.

<sup>15</sup> See Block (2013); Boldrin and Levine (2008); De Wachter (2013); Kinsella (2001, 2012); Long (1995); Menell (2007a, 2007b); Mukherjee and Block (2012); Navabi (2015); Palmer (1989).

be unfair. We believe that under libertarian law free people may enter into any contract they wish regarding a valid property interest and that those contracts should be enforced. Rothbard rejected this insight as concerns voluntary slavery and contracts that restrain an individual's future will. We believe that the logical outgrowth of adopting Rothbard's primary ownership argument against libel invites troublesome aspects, as seen in this paper, even if the property interest is inalienable. Rothbard had a different take on what was and was not an enforceable contract. It would be improper to criticize him for not adopting the intellectual property argument, because he never accepted what we consider to be a logical outgrowth of the ownership argument—that being free, people may buy and sell their property interests in other people's reputations.

#### INSTEAD OF SELLING TO AMY, SUPPOSE BRETT RETAINED OWNERSHIP OF HIS PROPERTY INTEREST OF AMY'S REPUTATION IN HIS MIND

As we continue to explore the odd reality of how libel law would operate in different situations, keep in mind what this sort of society would look like. For the purposes of these next sections, we are tabling our concerns with libel law and carrying out the recognition of a valid property interest in reputation to its logical end. If you are not yet troubled by the outcome, you soon will be.

Using the above movie theater example, now assume the truth of the facts as stated therein, but with one difference. Brett never agreed to sell Amy's reputation in his mind to Amy and therefore remained the owner of that right. On these facts is Brett prohibited from recovering damages? Absolutely not. Although it is true Amy's reputation is harmed, she cannot under libertarian law recover, because she holds no property interest. Brett on the other hand, by virtue of being the holder of that property interest,<sup>16</sup> is harmed since the reputation of Amy in his mind is no longer reflective of what it would be had the truth prevailed.

Remember that the property right in Amy's reputation exists in Brett's mind.<sup>17</sup> So at first, it seems rather bizarre. How has Brett been

---

<sup>16</sup> We are now assuming away, *arguendo*, our point about not being able to own intellectual property to demonstrate the broad impact of the ownership argument given our robust acceptance and embrace of freedom of contract.

<sup>17</sup> We know that Amy cannot own her own reputation, since it consists of the thoughts of others, such as Brett, etc. However, in the voluntary slavery case,



harmed by libel against Amy? Since falsity was used and believed, the damage to this property, the reputation of Amy in his own mind, occurred, and that allows the property owner to be compensated regardless of whose reputation is being damaged. The enforcement of a property right should be the same regardless of the identity of the property holder. Property rights are property rights, are property rights. In proper libertarian law, all that matters is who holds the legal property interest in question. As such, Brett need not base his harm anywhere else, such as in refusing future contracts with Amy at his own expense, because simply as the owner of Amy's damaged reputation in his mind, he can recover damages.

We must take a moment and pause, and remind ourselves of the quirkiness of the property right in question and its relation to truthfulness, because a reputational right is indeed peculiar. *A* owns an old car; *B* without permission keys the car. *A* owns an old car; *B* without permission gives the car a brand-new paint job. In instance one, *B* has caused a negative change in value and in instance two he has created a positive change in value.<sup>18</sup> Nonetheless, *B* in both instances violated private property.

With a reputational right, matters are similar. *A* says, "*B* is a pedophile." *A* says, "*B* is verifiably the most handsome and charming individual on earth." In instance one, the words have a negative effect and in instance two they have a positive effect on the reputation of *B*. Just like in the car example, a negative or positive change makes no difference in the analysis; all that matters is that a change occurred. However, how that change occurs matters for this type of property right. Under a reputational property right system, we must ask if the statements are true or false. If true, then all positive and negative claims are permitted, because people should not be punished for saying what is, in fact,

---

where Brett sells to Amy all of his possessions apart from his thoughts, she can own them. Ignoring that, can Brett own (part of) Amy's reputation, since that consists, in part, of his thoughts? This, to be sure, is an awkward way of putting the matter, but we answer this in the affirmative. Ownership consists of the right to do anything at all with the "commodity" owned and to preclude others from using it except with the owner's permission as long as the NAP is not violated. So, what may Brett do with his (partial) ownership of Amy's reputation? Since it is a negative one, thanks to Chelsea's lies, Brett is fully within his rights if he boycotts Amy's movie house. Brett also has the ability to recover the damage done to Amy's reputation as the owner of the property interest.

<sup>18</sup> Assuming that the owner sees matters in that way. Possibly he may have preferred the unpainted look.



the case, absent some contract calling for silence. The truth cannot be an illegal invasion of a property right under the nonaggression principle.<sup>19</sup> Therefore, damage to a reputational property interest comes necessarily from false statements regardless of whether the claims are themselves positive or negative.

This can lead to bizarre situations. Imagine if Chelsea convinced Brett that she was a most accomplished musician when in reality she has never played an instrument. Brett as the owner of Chelsea's reputation in his mind will have experienced damage by both the libeler and the libellee despite the fact it enhances Chelsea's reputation as a musician.

So, to reiterate, truthful claims do not violate the nonaggression principle. Although truthful claims may help or hurt someone's reputation, the truthful nature of the claims reflects reality and is thus not an instance of aggressing against someone's property, whereas false claims concerning someone's reputation perpetrate a fraud or deception, hence violating the nonaggression principle.<sup>20</sup>

Conversely, a critic may argue that general lies not concerning a reputation may violate the nonaggression principle based on this logic. However, Rothbard<sup>21</sup> and most societies today recognize reputation as a distinct property interest and reject general lies as too abstract to be a distinct property interest. Therefore general lies cannot be aggressed against consistent with libertarian law. So when Chelsea lies and convinces Brett that  $2+2=5$ , Brett believes a falsehood, but the dynamic is entirely different, because lies of a general character do not violate a property interest.

---

<sup>19</sup> On the other hand, we must take cognizance of the fact that truthful critical statements can ruin reputations. Joe is a child pornographer. We truthfully "out" him as such. His reputation sinks like a stone except among fellow members of the child pornography community). Nonetheless he would be barred from recovery, since the statement is truthful. We are presuming validity of the property right in reputation but not for general lies. Truth being a defense from libel, it would necessarily be the case that false claims concerning reputation would be libelous but not truthful ones.

<sup>20</sup> This holds true only if reputation is recognized under libertarian law as a valid property interest. Otherwise, lies concerning reputation would be no different from lies of a general character and both would be permitted.

<sup>21</sup> The ownership argument that Rothbard principally advances in discussions of libel, slander, and reputation presumes that reputation is a valid property right. If reputation under libertarian law fails for other reasons, such as the intellectual property argument, the ownership argument is moot.

But why have virtually all societies mandated reputation as a property right? We can only speculate. Perhaps it is because the individual relies so much on a good reputation; perhaps it is because individuals work so hard to cultivate a good reputation among their peers; perhaps it is because the harm is twofold: both the listener and his object (the libelee) are harmed. Perhaps it is because the harm done is of an entirely different character from that of a general lie. An untruth about someone's reputation can destroy his occupation, his social life, his family relationships, and so much more. Even if the falsehood concerning a reputation is rebutted, the damage is already done and the person harmed may be wrongly associated with it for the rest of his days.

### THE HOT NEW MARKET!

This section takes the next logical step. If the slave owner can come to own the thoughts of her slave and voluntary people can sell that interest, and individual people can recover damages, then how would this society function and how would it look?

Most property is generally regarded as alienable, which means transferable. Under a libertarian scheme, it seems entirely the case that all property is alienable unless otherwise contracted to by the parties. For why should consenting adults be denied the right to sell their property? If you legally cannot sell something, then to that extent you are not really its full owner.<sup>22</sup> Thus, unless otherwise agreed to in the contract, all examples of inalienable property are properties regulated by the state—for instance, in most of the world it is illegal to sell body parts.

The reputation of the libellee in the mind of a listener as a property right is therefore no different and should also be regarded as alienable. Thus Brett's mind is in effect a type of commodity! Buyer Y might try to purchase the reputation of everyone in Brett's mind or Buyer Z might try to do the same regarding a select few such as A-list actors and politicians, who may be exposed to libel more often. But it is not only Brett's view of {insert anyone or everyone} that is up for sale; viz., every person's thoughts become a commodity, since we all have in our minds the reputations of many others.

---

<sup>22</sup> See footnote 25, *supra*

So, instead of or in addition to bundling, buying, or selling mortgages, life insurance policies, and equities, individuals and companies should be legally allowed to start buying up reputations in the minds of individuals.

### RATHER DRACONIAN?

Libel has several definitions, but generally it occurs when an individual makes false statements that cause damage to someone's reputation. Rothbard noted that the libellee does not own his reputation, as it exists only in the mind of another, but, as established *supra*, it is in theory possible given voluntary slavery that it can be sold. If permitted in that case, free individuals should be able to transfer that individual stick in the bundle of property interests separately. Even if one rejects alienability, that only means that the property interest cannot be transferred. However, the person with the reputation at stake, the libellee, is of little importance; rather the person with the property interest in the reputation of the person at stake is important. Thus, someone like Brett, who owns the reputation of Amy in his own mind, can recover damages when that property interest is harmed by Chelsea even if it is an inalienable property interest.

What could this all possibly mean under libertarian law? There would be an immediate chilling of the press. Since everybody can recover damages, enforcement will occur much more frequently. This is in contrast to the current system in which only the person with the reputation in question can sue. In the name of protecting property rights the government would be watching closely as people publish words on social media, in the newspaper, and elsewhere. The written word or a mere utterance could land otherwise law-abiding people in the hot seat with the government. There would be endless plaintiffs lining up to persecute all those who deal in misinformation and falsities.

Rothbard arguably understood this absurdity and listed several examples:

Let us consider, in fact, the implications of believing in a property right in one's "reputation." Suppose that Brown has produced his mousetrap, and then Robinson comes out with a better one. The "reputation" of Brown for excellence in mousetraps now declines sharply, as consumers shift their attitudes and their purchases, and buy Robinson's mousetrap instead. Can we not then say, on the principle of the "reputation" theory,

that Robinson has injured the reputation of Brown, and can we not then outlaw Robinson from competing with Brown? If not, why not? (Rothbard 2015, 127)

The answer is an unequivocal no. That property becomes damaged or loses value does not constitute a violation in the libertarian sense. Brown's mousetrap is simply inferior to Robinson's, so consumers have shifted their demand accordingly. Are consumers not allowed to do this? Are products not allowed to improve and compete with others? Where are the false statements, where is the libel? If a competitor is harmed by a better business that is not the sort of physical invasion associated with the nonaggression axiom, therefore, it would not be a violation. Nonetheless, Brown's reputation has indeed suffered. This is but further evidence that loss of reputation is not actionable, at least not by the person harmed in this manner.

Rothbard continues:

Or should it be illegal for Robinson to advertise, and to tell the world that his mousetrap is better? In fact, of course, people's subjective attitudes and ideas about someone or his product will fluctuate continually, and hence it is impossible for Brown to stabilize his reputation by coercion; certainly it would be immoral and aggressive against other people's property right to try. Aggressive and criminal, then, either to outlaw one's competition or to outlaw false libels spread about one or one's product.(ibid.)

This is a more interesting example only because if one mousetrap is advertised as better, then it follows that it is better in relation to others. This could very well be libel, in effect, albeit in an unusual sense, because false statements are less particular and concrete. Saying one product is better to the detriment of another is wholly different from directly lying about the product in question. However, on the whole, if a product is verifiably not better, the trier of fact may be convinced that it is indeed libel. Conversely, some level of puffery is common practice. The term *better* is often normative, and thus the creator of the mousetrap will no doubt subjectively believe his mousetrap is better. However, we could imagine a situation where the claimed "objectively better" mousetrap is in fact objectively inferior based on extensive testing and people now consider the reputation of the objectively better mousetrap as inferior. In such a case, a violation will have occurred. In all similar cases, determining whether a word

is subjective or objective is a question of fact, and a trier of fact, whether it be a judge or a jury should make these determinations. In short, reasonable persons may differ on whether this would be a violation of libel under a libertarian regime, and it would no doubt turn on a rather fact-intensive inquiry into the nature of the advertisement, its wording, custom, and much more.

Rothbard provided additional examples.

[S]uppose that Robinson publishes an investment advisory-letter, in which he sets forth his opinion that a certain corporation's stock is unsound, and will probably decline. As a result of this advice, the stock falls in price. Robinson's opinion has "injured" the reputation of the corporation, and "damaged" its shareholders through the decline in price, caused by the lowering of confidence by investors in the market. Should Robinson's advice therefore be outlawed? (ibid.)

This is similar to the mousetrap example. The letter is advisory, meaning that Robinson is of the opinion that the stock will decline. The mere fact that the corporation was harmed by Robinson's opinion does not imply that a libertarian axiom was violated. When a person propagates a subjective opinion as Robinson has done, it should almost never be considered libel.<sup>23</sup> Suppose that Robinson writes, "I believe the stock will probably decline in the future." This is not a false statement; it is premised on Robinson's belief and thus it would not be libelous. Now consider this: Robinson writes, "The corporate stock is unsound. Investigation underway by SEC. Officials are contemplating bankruptcy; record bonuses are going to the executive team. Sell or short now!" If at trial it can be established that the corporation was not contemplating bankruptcy, that there was no SEC investigation, and that executive bonuses were modest, with an increasing dividend payout expected for shareholders, Robinson will have indeed made false statements and thus would be guilty of libel. Both statements are opinions; one is based on Robinson's subjective belief while the other masquerades as fact.

According to Rothbard:

A writes a book; B reviews the book and states that the book is a bad one, the result is an "injury" to A's reputation and a decline in the sales

---

<sup>23</sup> We make a bad faith argument concerning subjective opinions below, in the discussion on the Nazi book.

of the book as well as A's income. Should all unfavorable book reviews therefore be illegal? (Rothbard 2015, 127n5)

We answer, absolutely not. If *A* is of the opinion that the book is bad, that statement is not false, and thus not libel. If *A* instead lies about the contents of the book and claims that it is pro-Nazi when in fact it clearly and concisely does not support those conclusions, that would be libel. What if *A* were *actually* of the belief that the book took that position? Here the trier of fact would have to determine the mental state of *A*. If *A* persisted in that absolutely unfounded belief in spite of clear and replete evidence, it seems entirely possible that *A* did so not out of an earnest belief, but out of an attempt at libel, but we would need more facts and in such a situation it would be up to the trier of fact to make the decision.

But, again, even if this were considered libelous, there would be no relief for the libellee, because although his reputation was indeed ruined, he does not own it.

These lines of commentary by Rothbard do not attempt to show how his anti-libel law view is consistent with libertarianism, as his commentary on the libellee not owning the thoughts of others did. Instead, this short section only appeals to our intuitions.<sup>24</sup> But in order to be critical in the libertarian sense, we must return to the two axioms. In doing so, we must confront whether a reputational right is a private property right.

## REPUTATION HAS NO PLACE AS A PROPERTY RIGHT

Alas, here we are. Having presented the logical outgrowth of Rothbard's ownership argument but with a robust embrace of freedom of contract, we have created a rather unpleasant world to live in. To recap, Rothbard's anti-libel law stance is based on the ownership argument—that reputation consists of thoughts owned by other people, not the libellee. This precludes the libellee from being made whole, since he has no ownership interest. This argument presumes a valid property interest in reputation. The master-slave example illustrated an example where the libellee could, in theory, come to own his reputation. If a person can sell himself into slavery, then nothing is stopping him from selling

---

<sup>24</sup> This is our homage to Nozick's (1974) "utility monster" and "experience machine" thought experiments. He, too, was appealing to our intuitions.

something less. We then postulated a world in which people owned, purchased, and sold like a commodity the reputation of others in their own minds. This fostered a rather draconian situation.

All of this holds true for libertarians who embrace freedom of contract if reputation is a valid property right. However, we have some news for you! Such a property right does not exist at all, on the part of anyone, particularly to the Bretts of the world, who have been misled by Chelsea about Amy.<sup>25</sup> Our opinions belong to us. How can they not? Who else could they belong to? But merely because something can “belong” to us, does not automatically render it a property right. Our thoughts about other people are endless. Although others may work to make those thoughts positive and not negative, they are still only thoughts at the end of the day. They seem oh so important, but there are few things more intangible and less scarce than our thoughts about others. Therefore, we reject the existence of such a property right on the part of anyone. Abstractions, information, knowledge, and the like simply cannot be owned. To allow such would convey an ownership interest over the most basic essentials, precluding others from using even their most basic faculties.

There is yet another reason for drawing this conclusion. We have seen that when Chelsea bad-mouths Amy to Brett, Amy has no case in law for loss of reputation, since her reputation consists of Brett's (and others') thoughts, which Amy cannot own.<sup>26</sup> But Brett, to be sure, owns his own thoughts, and Chelsea has besmirched them with her lies about Amy. So, Chelsea did not violate Amy's rights (Amy does not own Brett's thoughts), but does Brett have a legal case against Chelsea? By extending Rothbard's logic perhaps,<sup>27</sup> but under libertarian law she does not. One reason

---

<sup>25</sup> When you stand on the shoulders of a giant like Rothbard, it is easier to see far afield.

<sup>26</sup> Absent a voluntary slavery contract, in which Brett sells himself lock, stock, and barrel to Amy, in which case she owns all of him, including his thoughts, e.g., the right to compel him to think along the lines she prefers. In addition, because we are dealing with an alienable property interest, it is not exclusively tied to a voluntary slave contract. An individual could sell his interest in it to another. We can imagine a deed of sale that states “Brett hereby transfers his ownership interest in the reputation of Amy in his mind to Reputations R US, LLC.”

<sup>27</sup> Rothbard's logic opposes libel law but heavily relies on ownership problems to justify his opposition. As demonstrated throughout this paper, that line of logic is deeply problematic if you embrace freedom of contract. Even if you did not fully embrace freedom of contracts and were left with an inalienable property

appears above: intangibility. A second comes about in this way: thoughts are information. Brett now looks askance at Amy, thanks to Chelsea. But information cannot be owned, at least not based on libertarian theory, since information is not scarce, and only scarce commodities can be owned.<sup>28</sup> If there were no scarcity whatsoever, there would be no private property rights under libertarianism, nor any need for them, since, by definition, no conflicts could possibly arise if everyone could have everything they wanted.<sup>29</sup> In one sense, if Brett's thoughts consist of X instead of Y, the conflict would be in that difference. However, the act of Brett changing from X to Y is done at virtually zero cost. In this way our thoughts are akin to the air we breathe or salt water at any ocean beach, so plentiful and easy to acquire again that conflicts need not arise.

## REFERENCES

- Andersson, Anna-Karin. 2007. "An Alleged Contradiction in Nozick's Entitlement Theory." *Journal of Libertarian Studies* 21, no. 3: 43–63. [http://mises.org/journals/jls/21\\_3/21\\_3\\_3.pdf](http://mises.org/journals/jls/21_3/21_3_3.pdf).
- Bagus, Philipp. 2003. "The Commons and the Tragedy of Banking." *Mises Daily*, Nov. 12, 2003. <http://mises.org/story/1373>.
- Bagus, Philipp, David Howden, and Walter E. Block. 2013. "Deposits, Loans and Banking: Clarifying the Debate," *American Journal of Economics and Sociology*, 72, no. 3: 627–44. <http://onlinelibrary.wiley.com/doi/10.1111/ajes.12023/abstract>.
- Barnett, William II, and Walter E. Block. 2005. "In Defense of Fiduciary Media— a Comment; or, What's Wrong with "Clown" or Play Money?" *Quarterly Journal of Austrian Economics* 8, no. 2: 55–69. [http://mises.org/journals/qjae/pdf/qjae8\\_2\\_4.pdf](http://mises.org/journals/qjae/pdf/qjae8_2_4.pdf).
- Barnett, William, and Walter E. Block. 2009a. "Time Deposits, Dimensions and Fraud," *Journal of Business Ethics* 88: <https://doi.org/10.1007/s10551-008-9976-9>.
- Barnett, William, and Walter E. Block. 2009b. "Financial Intermediaries, the Intertemporal-Carry Trade, and Austrian Business Cycles; or; Crash and Carry: Can Fraudulent Time Deposits Lead to an Austrian

---

interest, this would still be problematic, because individual people could still sue but could not sell their interests.

<sup>28</sup> See footnote 27, *supra*

<sup>29</sup> Defeating scarcity is a manifestly impossibility, since there will always be alternative costs of time, and, as long as we all inhabit bodies, two of them cannot occupy the very same space.



- Business Cycle? Yes." *Journal Etica e Politica/Ethics and Politics* 11, no. 1: 455–69. [http://www2.units.it/~etica/2009\\_1/BARNETT\\_BLOCK.pdf](http://www2.units.it/~etica/2009_1/BARNETT_BLOCK.pdf).
- Bateman, Robert. 2014. "Austrians, Fractional Reserves, and the Money Multiplier." *Mises Daily*, Sept. 2, 2014. <https://mises.org/library/austrians-fractional-reserves-and-money-multiplier>.
- Baxendale, Tony. 2010. "Free Banking, the Balance Sheet and Contract Law Approach." Cobden Centre, Mar. 15, 2010. <http://www.cobdencentre.org/2010/03/free-banking-the-balance-sheet-and-contract-law-approach/>.
- Bionic Mosquito (blog). 2014. "The Sanctity of Contract." Apr. 19, 2014. <http://bionicosquito.blogspot.com/2014/04/the-sanctity-of-contract.html>.
- Block, Walter E. 1969. "Voluntary Slavery." *Libertarian Connection* 1, no. 3: 9–11.
- Block, Walter E. 1979. Review of *Baby Selling: The Scandal of Black Market Adoptions*, by Nancy C. Baker. *Libertarian Review* 7, no. 12: 44–45.
- . 1988. "Rent-a-Womb Market." *Thunder Bay Ontario Daily*, June 26, 1988.
- . 1999. "Market Inalienability Once Again: Reply to Radin." *Thomas Jefferson Law Journal* 22, no. 1: 37–88. [http://www.walterblock.com/publications/market\\_inalienability.pdf](http://www.walterblock.com/publications/market_inalienability.pdf).
- . 2001. "Alienability, Inalienability, Paternalism and the Law: Reply to Kronman." *American Journal of Criminal Law* 28, no. 3: 351–71. [http://www.walterblock.com/publications/reply\\_to\\_kronman.pdf](http://www.walterblock.com/publications/reply_to_kronman.pdf).
- . 2002. "A Libertarian Theory of Secession and Slavery." LewRockwell.com, June 10, 2002. <http://www.lewrockwell.com/block/block15.html>.
- . 2003. "Toward a Libertarian Theory of Inalienability: A Critique of Rothbard, Barnett, Gordon, Smith, Kinsella and Epstein." *Journal of Libertarian Studies* 17, no. 2: 39–85. [http://www.mises.org/journals/jls/17\\_2/17\\_2\\_3.pdf](http://www.mises.org/journals/jls/17_2/17_2_3.pdf).
- . 2004. "Are Alienability and the Apriori of Argument Logically Incompatible?" *Dialogue* no. 1: 1–10. <https://dlib.uni-svishtov.bg/handle/10610/2128>.
- . 2005. "Ayn Rand and Austrian Economics: Two Peas in a Pod." *Journal of Ayn Rand Studies* 6, no. 2: 259–69.
- . 2006. "Epstein on Alienation: A Rejoinder." *International Journal of Social Economics* 33, nos. 3–4: 241–60.
- . 2007a. "Secession." *Dialogue* no. 4; pp. 1–14. <https://dlib.uni-svishtov.bg/handle/10610/2113>.
- . 2007b. "Alienability: Reply to Kuflik." *Humanomics* 23, no. 3: 117–36. <http://www.emeraldinsight.com/Insight/viewContentItem.do?sessionid=0685BBB744173274A5E7CE3803132413?contentType=Article&contentId=1626605>.

- . 2008. "Posner vs. Block." LewRockwell.com, Nov. 29, 2008. <http://archive.lewrockwell.com/block/block114.html>.
- . 2009a. "Yes, Sell Rivers! And Make Legal Some Slave Contracts." *The Tyee*, July 25, 2009. <http://thetyee.ca/Opinion/2009/07/24/SellRivers/>.
- . 2009b. "Privatizing Rivers and Voluntary Slave Contracts." LewRockwell.com. July 27, 2009. <http://www.lewrockwell.com/block/block134.html>.
- . [2013] 2019. *Defending the Undefendable II: Freedom in All Realms*. Auburn Ala.: Ludwig von Mises Institute. <http://store.mises.org/Defending-the-Undefendable-2-P10932.aspx>.
- Block, Walter, and Bryan Caplan. 2008. "Walter E. Block versus Bryan Caplan on Fractional Reserve Banking." LewRockwell.com. Nov. 1, 2008. <http://www.lewrockwell.com/block/block110.html>.
- Block, Walter, and Kenneth M. Garschina. 1996. "Hayek, Business Cycles and Fractional Reserve Banking: Continuing the De-Homogenization Process." *Review of Austrian Economics* 9, no. 1: 77–94. [http://www.mises.org/journals/rae/pdf/rae9\\_1\\_3.pdf](http://www.mises.org/journals/rae/pdf/rae9_1_3.pdf).
- Block, Walter, and John Humphries. 2008. "Humphries v Block on FR-Banking." Australian Libertarian Society (website), Nov. 17, 2008. <http://alsblog.wordpress.com/2008/11/17/fractional-reserve-banking/>.
- Boldrin, Michele, and David K. Levine. 2008. *Against Intellectual Monopoly*. Cambridge: Cambridge University Press. <http://www.dklevine.com/general/intellectual/against.htm>; <http://levine.ssnet.ucla.edu/general/intellectual/against.htm>; <http://mises.org/store/Against-Intellectual-Monopoly-P552.aspx>.
- Davidson, Laura. 2008. "Fractional Reserve Banking Is Indeed Fraudulent." LewRockwell.com, Nov.17, 2008. <http://archive.lewrockwell.com/orig9/davidson-l1.html>.
- Davidson, Laura, and Walter E. Block. 2011. "The Case against Fiduciary Media: Ethics Is the Key." *Journal of Business Ethics* 98, no. 3: 505–11. <http://www.springerlink.com/content/j76323752648720g/>; <http://dx.doi.org/10.1007/s10551-010-0590-2>; [10.1007/s10551-010-0590-2](http://dx.doi.org/10.1007/s10551-010-0590-2).
- De Wachter, Joren. 2013. "IP Is a Thought Crime: Joren De Wachter at TEDxLeuven." *TEDxLeuven*. June 6, 2013. YouTube video. [http://www.youtube.com/watch?feature=player\\_detailpage&v=E5BOBs3Nmbw](http://www.youtube.com/watch?feature=player_detailpage&v=E5BOBs3Nmbw).
- Frederick, Danny. 2014. "Voluntary Slavery." *Las Torres de Lucca* 4: 115–37. [http://www.lastorresdelucca.org/index.php?option=com\\_k2&view=item&id=145:laesclavitud-voluntaria&Itemid=24&lang=en](http://www.lastorresdelucca.org/index.php?option=com_k2&view=item&id=145:laesclavitud-voluntaria&Itemid=24&lang=en).
- Hanke, Steve. 2008. "Banking Crises: Plus Ça Change." *GlobeAsia*, November 2008, pp. 168–69. Available at <https://www.cato.org/publications/commentary/banking-crises-plus-C-change>.
- Hazlitt, Henry. 1979. "Gold versus Fractional Reserves Part 1." *The Freeman*, May 1979. <https://fee.org/articles/gold-versus-fractional-reserves/>

- Hollenback, Frank. 2013. "Insuring Deposits, Ensuring Insolvency." *Mises Daily*, July 24 2013. <http://mises.org/daily/6487/Insuring-Deposits-Ensuring-Insolvency>.
- . 2014a. "Confusing Capitalism with Fractional Reserve Banking." *Mises Daily*, Aug. 6, 2014. <https://mises.org/library/confusing-capitalism-fractional-reserve-banking>.
- . 2014b. "The Fraud in Fractional Reserve Banking." *Mises Canada Daily*, Nov. 26, 2014. <http://us2.campaign-archive2.com/?u=7e6cc2f6072b7ebfaa847047f&id=189c14aa12&e=53fc31c1bb>.
- Hoppe, Hans-Hermann. 1994. "How is Fiat Money Possible? or, the Devolution of Money and Credit." *Review of Austrian Economics* 7, no. 2: 49–74.
- Hoppe, Hans-Hermann, Guido Hülsmann, and Walter E. Block. 1998. "Against Fiduciary Media." *Quarterly Journal of Austrian Economics* 1, no. 1: 19–50. [http://www.mises.org/journals/qjae/pdf/qjae1\\_1\\_2.pdf](http://www.mises.org/journals/qjae/pdf/qjae1_1_2.pdf).
- Howden, David. 2013. "A Simple Math Question for Bankers." *Mises Canada Daily*, Dec. 28, 2013. <http://mises.us2.list-manage1.com/track/click?u=7e6cc2f6072b7ebfaa847047f&id=b10182ff5e&e=cb339c58df>; [http://www.economicpolicyjournal.com/2013/12/the-best-critique-i-have-ever-read.html?utm\\_source=feedburner&utm\\_medium=email&utm\\_campaign=Feed%3A+economicpolicyjournal%2FKpwH+%28EconomicPolicyJournal.com%29](http://www.economicpolicyjournal.com/2013/12/the-best-critique-i-have-ever-read.html?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+economicpolicyjournal%2FKpwH+%28EconomicPolicyJournal.com%29).
- Huerta de Soto, Jesús. 1995. "A Critical Analysis of Central Banks and Fractional-Reserve Free Banking from the Austrian Perspective." *Review of Austrian Economics* 8, no.2: 25–38.
- . 1998. "A Critical Note on Fractional-Reserve Free Banking." *Quarterly Journal of Austrian Economics* 1, no. 4: 25–49.
- . 2001. "A Critical Note on Fractional Reserve Free Banking." *Quarterly Journal of Austrian Economics* 1, no. 4: 34–35
- . 2006. *Money, Bank Credit, and Economic Cycles*. Auburn, Ala.: Ludwig von Mises Institute.
- . 2010. "Economic Recessions, Banking Reform, and the Future of Capitalism." *Mises Daily*, Nov. 1, 2010. <http://mises.org/daily/4817>.
- Hülsmann, Jörg Guido. 1996. "Free Banking and the Free Bankers", *Review of Austrian Economics* 9(1), 3–53.
- . 1998. "Free Banking and Fractional Reserves: Reply to Pascal Salin." *Quarterly Journal of Austrian Economics* 1, no. 3: 67–71. [http://www.mises.org/journals/qjae/pdf/qjae1\\_3\\_8.pdf](http://www.mises.org/journals/qjae/pdf/qjae1_3_8.pdf).
- . 2000. "Banks Cannot Create Money." *Independent Review* 5, no. 1: 101–10. [http://www.independent.org/pdf/tir/tir\\_05\\_1\\_hulsman.pdf](http://www.independent.org/pdf/tir/tir_05_1_hulsman.pdf).
- . 2002. "Free Banking and the Free Bankers." *Review of Austrian Economics* 9, no. 1: 3–53; [http://www.mises.org/journals/rae/pdf/rae9\\_1\\_1.pdf](http://www.mises.org/journals/rae/pdf/rae9_1_1.pdf)

- . 2003. "Has Fractional-Reserve Banking Really Passed the Market Test?" *Independent Review* 7, no. 3: 399–422. <http://www.independent.org/publications/tir/article.asp?a=90>.
- . 2008. *The Ethics of Money Production*. Auburn Ala.: Ludwig von Mises Institute.
- Kershnar, Stephen. 2003. "A Liberal Argument for Slavery." *Journal of Social Philosophy* 34, no. 4: 510–36
- Kinsella, N. Stephan. 2001. "Against Intellectual Property." *Journal of Libertarian Studies* 15, no. 2: 1–53. [http://www.mises.org/journals/jls/15\\_2/15\\_2\\_1.pdf](http://www.mises.org/journals/jls/15_2/15_2_1.pdf).
- . 2012. "Economic Freedom of the World Rankings and Intellectual Property: The United States' Bad Ranking is Even Worse Than Reported." Center for the Study of Innovative Freedom, Sept. 18, 2012. <http://c4sif.org/2012/09/economic-freedom-of-the-world-indexes-and-intellectual-property-the-united-states-bad-ranking-is-even-worse-than-reported/>.
- Lester, Jan Clifford. 2000. *Escape from Leviathan*. New York: St. Martin's Press.
- Long, Roderick. 1995. "The Libertarian Case against Intellectual Property Rights." *Formulations* 3, no. 1. <http://freenation.org/a/f3111.html>.
- Malcolm, Norman. 1958. *Ludwig Wittgenstein: A Memoir*. Oxford: Oxford University Press.
- Menell, Peter S. 2007a. "Intellectual Property and the Property Rights Movement." *Regulation* 30: 36–42. <https://www.cato.org/sites/cato.org/files/serials/files/regulation/2007/10/v30n3-6.pdf>.
- . 2007b. "The Property Rights Movement's Embrace of Intellectual Property: True Love or Doomed Relationship?" *Ecology Law Quarterly* 34, no. 2: 713–54.
- Murphy, Robert P. 2011. "The Fractional-Reserve Banking Question." *Mises Daily*, June 14, 2011. <http://mises.org/daily/4499>.
- . 2011. "Why Fractional Reserve Banking Poses a Threat to Market Stability." *Mises Wire*, May 4, 2011. <https://mises.org/wire/why-fractional-reserve-banking-poses-threat-market-stability>.
- . 2018. "George Selgin Misunderstands Rothbard's Position on Fractional-Reserve Banking." *Mises Wire*, Sept. 10, 2018. <https://mises.org/wire/george-selgin-misunderstands-rothbards-position-fractional-reserve-banking>.
- Mukherjee, Jay, and Walter E. Block. 2012. "Libertarians and the Catholic Church on Intellectual Property Laws." *Las Torres de Lucca* no. 1: 59–75; <http://www.lastorresdelucca.org/index.php/ojs/article/view/69>.
- Navabi, Ash. 2015. "To Taylor, Love Freedom." Ludwig von Mises Institute of Canada (site discontinued), June 23, 2015.

- North, Gary. 2009. "What Is Money? Part 5: Fractional Reserve Banking." LewRockwell.com, Oct. 10, 2009. <http://archive.lewrockwell.com/north/north769.html>.
- Nozick, Robert. 1974. *Anarchy, State and Utopia*. New York: Basic Books..
- Palmer, Tom. 1989. "Intellectual Property: A Non-Posnerian Law and Economics Approach." *Hamline Law Review* 12, no. 2: 261–304.
- Polleit, Thorsten. 2010. "The Faults of Fractional-Reserve Banking." *Mises Daily*, Dec. 23, 2010. <http://mises.org/daily/4880>.
- Reisman, George. 1996. *Capitalism*. Ottawa, IL: Jameson Books.
- . 2009. "A Pro-Free-Market Program for Economic Recovery." *Mises Daily*, Nov. 20, 2009. <http://mises.org/daily/3870>.
- Rothbard, Murray N. [1963] 1975. *America's Great Depression*. Kansas City: Sheed and Ward.
- . 1978. *For a New Liberty: The Libertarian Manifesto*. Auburn, Ala.: Ludwig von Mises Institute.
- . 1988. "The Myth of Free Banking in Scotland." review of *Free Banking in Britain: Theory, Experience, and Debate, 1800–1845*, by Lawrence H. White. *Review of Austrian Economics* 2: 229–45. [http://mises.org/journals/rae/pdf/RAE2\\_1\\_15.pdf](http://mises.org/journals/rae/pdf/RAE2_1_15.pdf).
- . 1990. *What Has Government Done to Our Money?* Auburn, Ala.: Ludwig von Mises Institute. <http://www.mises.org/rothbard/rothmoney.pdf>.
- . [1962]1991. "The Case for a 100 Percent Gold Dollar." Pp. 94–136 in *In Search of a Monetary Constitution*, ed. Leland B. Yeager. Auburn, Ala.: Ludwig von Mises Institute. <http://mises.org/story/1829>.
- . [1962]1993. *Man, Economy, and State*. Auburn, Ala.: Ludwig von Mises Institute.
- . 2015. *The Ethics of Liberty*. New York: New York University Press.
- Salerno, Joseph T. 2010a. *Money, Sound and Unsound*. Auburn, Ala.: Ludwig von Mises Institute.
- . 2010b. "White contra Mises on Fiduciary Media." *Mises Daily*, May 14, 2010. <http://mises.org/daily/4389>.
- Salerno, Joseph T. 2011. "Dr. Joseph Salerno Explains Everything You Ever Wanted to Know about Money (But Were Afraid to Ask)." *Daily Bell*, July 3, 2011. <http://www.thedailybell.com/2602/Anthony-Wile-Dr-Joseph-Salerno-Explains-Everything-You-Ever-Wanted-to-Know-About-Money-But-Were-Afraid-to-Ask>.
- Shostak, Frank. 2017a. "Money Creation and the Boom-Bust Cycle." *Mises Wire*, Jan. 2, 2017. <https://mises.org/wire/money-creation-and-boom-bust-cycle>.
- . 2017b. "Why Fractional-Reserve Banking Would Be Limited in an Unhampered Market." *Mises Wire*, Jan. 16, 2017. <https://mises.org/wire/why-fractional-reserve-banking-would-be-limited-in-an-unhampered-market>.

org/wire/why-fractional-reserve-banking-would-be-limited-unhampered-market.

Sprankling, John, and Raymond Coletta. 2015. *Property: A Contemporary Approach*. Saint Paul, Minn.: West Academic Publishing.

Steiner, Hillel. 1994. *An Essay on Rights*. Oxford: Blackwell Publishers.

———. 2013. "Directed Duties and Inalienable Rights." *Ethics* 123: pp. 230–44.

Thomson, Judith Jarvis. 1990. *The Realm of Rights*. Cambridge, Mass.: Harvard University Press.

## THE RIGHT TO PROPERTY

CARLTON M. SMITH

*ABSTRACT:* This paper begins with propositions whose truth is evident, and from them conclusions are derived whose truth has been made evident by deduction. In this paper, the foundations of the right to property are laid out, with implications for the acquisition of unowned property and the ability of a person to transfer that ownership. This includes ownership rights over one's body. The slave is a slave because his body is owned by someone else, and that owner is not the rightful owner. Slavery is theft, and theft is also slavery. Slavery exists wherever theft exists, and socialism is theft writ large. Socialism is therefore slavery writ large, and slavery is indefensible morally. I show further that the right to property is the only right held by a rational animal by showing that what are purported to be two other human rights—the right to privacy and the right to life—are in fact subsumed under the right to property.

### INTRODUCTION

The foundation for everything that follows begins with some propositions whose truth is either evident or whose truth is capable of being made evident by deduction from those propositions whose truth is evident. Those propositions whose truth is evident are preceded by the letter *E*; those whose truth is proved by deduction from the two preceding propositions are preceded by the letter *C*.

*E* (1) Man is a rational animal.<sup>1</sup>

*E* (2) Man, like all animals, has a body.

---

Carlton M. Smith (cmsmith@roadrunner.com) is an independent scholar.

<sup>1</sup> The fact that man has a body is not in dispute; the fact that man is rational, e.g., is capable of making assertions, cannot meaningfully be denied.

- E (3) Man's body, like all bodies, is located somewhere and occupies space.
- E (4) Man's body, like all bodies, has extension, and so, therefore, does the space which it occupies.
- E (5) Man's body requires the use of the space which it occupies.
- E (6) Ownership is control of the use of that which has extension.
- C (1) The space occupied by man's body is therefore owned.
- E (7) Property is that which is owned.
- C (2) All property has extension.
- E (8) Because all property has extension, it makes no sense to say that something that lacks extension is owned.
- E (9) Neither one's self nor one's person has extension.
- C (3) It therefore makes no sense to say that man owns himself or his person.
- E (10) Man's ratio, or the intellect that informs man's body, controls its use.<sup>2</sup>
- C (4) The intellect that informs man's body owns that body.

## APPROPRIATION

We saw in the introduction that ownership is control of the use of that which has extension. How does one acquire ownership of something extended? In the case of man's body, the answer is obvious: the intellect that informs man's body is born with it. And in the case of something other than man's body? Something which is owned either had no prior owner or was acquired from the prior owner.

How does one acquire the ownership of something that is unowned? The answer often given is that one acquires ownership of something unowned by mixing one's labor with it, but the correct answer is so simple that it is very easy to miss what takes place: one acquires ownership of something unowned by acting as the owner. Ownership is control of the use of something which has extension. One acts as the owner when one controls the use of something which has extension.

---

<sup>2</sup> Any objection would require the use of the body of a rational animal by the intellect that informs it.



Let us consider the case of a man who finds himself on a tract of land that no one else owns. That tract of land contains a cave and a pond. Mr. Crusoe decides to use the cave as his dwelling and to use the pond for drinking and bathing—and proceeds to do so. A term often used for the acquisition of ownership of something unowned is *appropriation*. Although it should be obvious that Mr. Crusoe is the owner of the property he has appropriated, a question that also deserves consideration is, Does Mr. Crusoe—or anyone else for that matter—have the right to appropriate something that previously lacked an owner and so become not merely its owner but also its rightful owner?

## THE RIGHT TO APPROPRIATE UNOWNED LAND

Let us construct an obstreperous chap, Mr. Strawman, who objects on principle to appropriation and therefore rejects Mr. Crusoe's right to appropriate something unowned. We need not concern ourselves with the reasons why Mr. Strawman objects to appropriation; we only need to consider the implication. Mr. Strawman certainly cannot have a right to prevent Mr. Crusoe from appropriating unowned land, because having that right would make Mr. Strawman the owner of the land in question: ownership is control of the use of that which has extension, and it would then be Mr. Strawman who controls its use. Mr. Strawman, in other words, will have appropriated unowned land, yet it is precisely the right to appropriate something unowned which Mr. Strawman disputes. It is time to dispatch Mr. Strawman. Does anyone have a match?

One cannot be rightfully prevented from acting in a manner that infringes no one else's right. This is not a play on words. One can only be rightfully prevented from acting in a particular manner when someone else has the right that one not act in that manner.

No one can have the right that someone else not appropriate something unowned, because the appropriation of something unowned violates no one else's right. We can safely conclude that everyone has the right to appropriate that which is unowned and that those who do so by using it thereby become not merely the *de facto* owners of the property in question, but also its rightful owners.

## THE ACQUISITION OF OWNERSHIP

We saw in the previous section that one can acquire ownership of something by appropriating it. Indeed, the only way to acquire

ownership of something unowned is by appropriation. The acquisition of ownership by something other than appropriation therefore requires that the property being acquired already have an owner. Consider the cave which Mr. Crusoe appropriated. Perhaps Christmas is fast approaching and Mr. Crusoe thinks that his cave would make a suitable present for his favorite niece. One can use something that one owns as a gift, and when so used, the gift transfers ownership to the recipient. Because Mr. Crusoe was the rightful owner of the cave before he made the gift and had the right to use it as he saw fit (provided, of course, that its use did not violate anyone else's right), Mr. Crusoe had the right to give his cave to his niece, which made her the rightful owner once the gift had been given.

Is inheritance another way to acquire the ownership of something that is owned? The only thing that distinguishes a bequest from a gift made during one's lifetime is the timing: one gift occurs before death; the other occurs after death. For that reason we do not need a separate category for inheritance: a gift is a gift regardless of when it is made.

Another way that one can use something that one owns is to sell it in order to acquire ownership of something else. Perhaps Mr. Crusoe has found someone who wants to acquire ownership of the cave by buying it, i.e., by offering to exchange something which he himself owns for Mr. Crusoe's cave. Every voluntary exchange requires two owners, each one of whom transfers something he owns to the other party in return for the ownership of something else. Let us assume that Mr. Crusoe, the rightful owner of the cave, sells it to Mr. Moneybags in exchange for colored beads. Let us also assume that Mr. Moneybags was the rightful owner of those beads. The result of that voluntary exchange makes Mr. Crusoe the rightful owner of some colored beads and Mr. Moneybags the rightful owner of a cave.

It should now be clear that one can acquire ownership of something by appropriation, by gift, and by voluntary exchange. Does that exhaust the possibilities? Unfortunately, there is one other way to acquire property: one can acquire the ownership of something by stealing it from someone else.

## THEFT

Mrs. Matron is the rightful owner of some splendid jewelry, but said splendid jewelry now finds itself, alas, in the possession of a

burglar. Mr. Burglar did not appropriate the jewelry (it already had an owner), he was not given it by the owner, nor did she sell it to him in a voluntary exchange. Mr. Burglar is now the owner of the jewelry, for he, and not Mrs. Matron, controls its use. He is not, however, the rightful owner, for he acquired his ownership by theft, by stealing the jewelry from someone else.

Need stolen property always be in the possession of the thief? Let us return to the case of Mr. Crusoe and his cave. Mr. Crusoe appropriated the cave and in so doing became its rightful owner. That gave him the right to use the cave in any way he saw fit, provided, of course, that in so doing he violated no one else's right (from this point forward I will ignore the qualification). One way that he could use the cave is to acquire the ownership of money by renting the cave to someone else. If Mr. Crusoe is prevented from renting his property to someone else at a price that both parties find acceptable, an act of theft has occurred: Mr. Crusoe may still be able to use the cave as his dwelling (he may, that is to say, retain partial ownership of the cave), but partial ownership of the cave, i.e., partial control of the use of the cave, has been stolen by someone else. Ownership may not be fungible, but it certainly is divisible.

## PARTIAL OWNERSHIP

I live in the country and own twenty acres of land. I am willing to sell half of the land that I own, but I do not want a dwelling erected close to what will become the property line that will divide what I will still own from what I intend to sell. I therefore include a stipulation in the contract that no dwelling may be erected on the land I am selling within two hundred yards of what will soon be the new property line. That stipulation is a *restrictive covenant*, and the covenant means that only partial—and not full—ownership of the land is being transferred to the buyer. Partial ownership—partial control of the use—of some of the land is being retained by the seller. Restrictive covenants are not uncommon.

Let us return to the case of Mr. Crusoe, who plans to spend the winter in Florida and wants to rent his cave to someone else while he is working on his suntan. He lists the cave for rent on Airbnb (fortunately, no one contests his right to sell his property to a willing buyer at a price that both parties find acceptable) and quickly finds a renter, but Mr. Crusoe, too, includes a restrictive covenant: no subletting. The only significant difference between

the sale of land in the previous paragraph and the rental of the cave in this one is that the transfer of partial ownership is permanent (unlimited with respect to duration, at any rate) in the first case and temporary in the second. Restrictive covenants not only are common in rental agreements, they are often extraordinarily detailed and comprehensive.

## TEMPORARY OWNERSHIP

When the duration of ownership is limited by the terms of the contract, ownership of the property in question reverts to the seller after the specified period of time. It is customary to use the term *rent* to refer to the payment one receives in exchange for a temporary, i.e., limited in duration, sale of real estate, but real estate is not the only form of property that can be sold for a limited period of time. Money can be—and often is—rented, but the term routinely used for the “rent” one receives for money is *interest*. One can also sell the use of one’s body to someone else for a limited period of time—that is to say, rent it out—but the terms ordinarily used in connection with the rental of one’s body are *wages* and *salary*.

In case one objects to the idea that one has rented the use of one’s body when one agrees to work as an employee, consider the following: when one agrees to hew wood and draw water for someone else in exchange for payment, said services are performed by using one’s body; and when one agrees to perform brain surgery for someone else in exchange for payment, said services are performed by using one’s body. The factors of production are land, labor (which always requires the use of the body of a rational animal), and capital goods, and the rental of those factors is widespread in a free market.

## OWNERSHIP OF SOMEONE ELSE’S BODY

We saw in the previous section that an employer acquires temporary ownership of the employee’s body—albeit, almost always with an extensive set of restrictive covenants—when the employee agrees to use his body to perform services for the employer. Is not ownership of someone else’s body—even if only temporary, and even if only partial (what with all those restrictive covenants)—precisely what is meant by the term *slavery*? After all, consider a slave who is on the auction block. Surely it is the fact that his body is being bought and sold that makes him a slave?

Not at all. In the first place, buying and selling does not engender ownership; it transfers it: the seller relinquishes ownership and the buyer acquires it, but that can only mean that the thing being sold was owned by the seller before the sale. A slave is still a slave even when he is not on the auction block.

What distinguishes the free man from the slave is that the free man voluntarily transfers temporary ownership of his body; the slave voluntarily transfers nothing. The slave owner's control of the use of the slave's body has its origin in the gun and the whip, not in a voluntary exchange. This makes the slave owner a thief *par excellence*, for his ownership of the slave did not begin with an act of appropriation (the body of the slave was never unowned: it belonged at birth to the intellect that informed it); it did not begin with a gift from the slave; and it did not begin in a voluntary exchange.

The slave is a slave because his body is owned by someone else, and that owner is not the rightful owner. Slavery is theft. Is theft also slavery?

## OWNERSHIP OF PROPERTY THAT RIGHTFULLY BELONGS TO SOMEONE ELSE

We saw in the previous section that slavery exists when ownership of a body is stolen from the rightful owner, the intellect that informs that body. Is it possible to steal something from the rightful owner other than the body of a rational animal? Of course. Consider the case of Mr. Burglar, who stole jewelry from its rightful owner, Mrs. Matron. Or consider the case of the thief, Mr. Rent Control, who stole partial ownership of Mr. Crusoe's cave from Mr. Crusoe, the rightful owner. Theft is the wrongful acquisition of ownership of something that is the rightful property of someone else, and it clearly is possible to steal something other than the body of a rational animal.

If we all agree that slavery involves the theft of property that rightfully belongs to someone else, viz., the slave's body, why should we restrict the use of the term *slavery* exclusively to the theft of someone else's body? Why indeed: someone whose body is stolen is prevented by the thief from using it as he, the rightful owner, sees fit; someone whose jewelry is stolen is prevented by the thief from using it as she, the rightful owner, sees fit; and someone whose cave is stolen is prevented by the thief from using it as he, the rightful owner, sees fit. The offense in all three cases is

the same—theft—and I see no reason why only one of them should be designated as slavery.

If the theft of one's body makes one someone else's slave, so, too, does the theft of any other form of property. Indeed, one is enslaved to the extent that that which is one's rightful property is stolen, and one is enslaved, because one's right to use that property as one sees fit has been violated, because one's freedom to use that property as one sees fit has been abridged. That makes every thief a slave owner because the victim of the theft has been enslaved.

## SOCIALISM

Socialism ordinarily is defined as ownership of the means of production by the state. The factors of production are land, labor, and capital goods. If the state owns a public park (land), socialism exists. If the state owns the bodies of the people who produce goods and provide services (labor), socialism exists. If the state owns highways or bridges (capital goods), socialism exists. How does the state come to acquire such ownership? Let us start with land.

We saw previously that the acquisition of ownership has its origin in appropriation, gift, purchase, or theft. How does the state acquire the ownership of land? It is not through (rightful) appropriation, for all land owned by the state either had a previous owner or was acquired by denying other people the right to appropriate it. In some cases it may have been acquired by donation from the rightful owner—for example, the land for a public park may have been donated to the state by its rightful owner—but in almost all cases it was acquired either by—to use the technical term—“pulling a William the Conqueror”<sup>3</sup> or by buying it from the previous owner with money acquired through taxation.

How does the state come to acquire the ownership of the bodies of the people who produce goods and provide services? In some cases those people may donate the use of their bodies to the state (consider the case of volunteers who join police in the search for a missing person), but in the vast majority of cases the state either steals the ownership of those bodies (forced labor in the gulag is a good example—indeed, Joseph Stalin may have owned more

---

<sup>3</sup> “Pulling a William the Conqueror” ordinarily involves the theft of land from people who already own it as well as the (wrongful) appropriation of unowned land by denying other people the right to appropriate it.

slaves than anyone else in history) or buys them with money that comes from taxation.

The state's acquisition of ownership of capital goods follows the same pattern as in the cases of land and labor. We have already seen that the state can acquire ownership of factors of production by buying them with money acquired through taxation. All property has a genealogy, and that includes property that is acquired through taxation.

When the state imposes a (money) tax on someone, does it appropriate that money? Hardly. That money already had an owner. Was that money donated to the state? Although it is possible, and maybe even common, for a rightful owner to donate money to the state (consider the case of someone who gives money to a public university for a scholarship or a building), money acquired through taxation is not donated. Was it, then, acquired in a voluntary exchange? If paying taxes is voluntary, why can one not say "Thanks anyway, but I think I'll take a pass"? What is left? The only alternative left is theft.

Socialism cannot exist without theft. Almost all of the factors of production owned by the state were acquired by theft or by buying them with money stolen from its rightful owners. And even when the property owned by the state arrives with a clean bill of health, e.g., land donated to it by its rightful owner, disease soon sets in: the state invariably needs to extort money from the peasants in order to maintain its ownership. I think we're justified in concluding that socialism is theft. We saw in the previous section that slavery exists wherever theft exists, and socialism is theft writ large. Socialism is therefore slavery writ large, and slavery is indefensible morally.

## THE RIGHT TO PROPERTY

As we saw in the section of this article entitled "The Right to Appropriate Unowned Land," one has the right to appropriate something that no one else owns. One has that right, because no one else can have the right that one not appropriate it. When one exercises one's right to appropriate property, one becomes the rightful owner of it. One is also the rightful owner of the body that one's intellect informs except when one has voluntarily transferred its ownership to someone else. One has the right to use the property of which one is the rightful owner in any way that one sees fit, and two ways of using it are to give it to someone else or

to sell it to someone else in a voluntary exchange. The recipient of property acquired from the rightful owner either as a gift or in a voluntary exchange then becomes its rightful owner.

I now propose for the sake of brevity to call the right enjoyed by all rational animals to appropriate property and to use the property of which one is the rightful owner in any manner that one sees fit the *right to property*. I also hope to show that the right to property is the only right held by a rational animal by showing that what are purported to be two other human rights are in fact subsumed under the right to property.

### A RIGHT TO PRIVACY?

Far be it from me to be contentious, so I will refrain from pointing out that a supposed right to privacy has been used on more than one occasion as the pretext for an expansion of the power of the federal government of the United States. Instead of raising the question of whether or not a right to privacy is protected by the US Constitution, I will concern myself instead with the question, “What conduct could possibly be prohibited by a right to privacy?”

Does one have the right to eavesdrop on one’s own property? It is a hot summer evening, and the house that I own has no air conditioning. I therefore park myself outdoors under one of the eaves and hope that a breeze will supply some relief from the heat. While there, I overhear a conversation that takes place in my living room: the windows of the living room are open, because the occupants also are hoping for a breeze. Have I violated the right to privacy of the living room’s occupants? It is possible that the occupants did not want me to hear what was being said, but the space underneath the eave where I parked my body belonged to me, and parking myself there violated no one else’s right: I was using property that was rightfully mine in the manner that I saw fit. If the occupants of the living room had not wanted me to hear the conversation, they could have closed the windows (actually, because I owned the windows, the occupants would have needed my permission to open or close them).

Now let us consider the case of the eavesdropper who eavesdrops on someone else’s property. An eavesdropper parks himself without my permission under one of the eaves of my house, and he overhears some of the conversation of the parties inside the house. The fact that he overhears a conversation is beside the point. The



eavesdropper has violated my right to property, because he is using my property without my consent, and that violation would have occurred even had he not overheard the conversation—even if there had been no conversation. What the second eavesdropper is guilty of is not violating someone else's right to privacy; he is guilty of trespass, which itself is a form of theft. A right to privacy either is subsumed under the right to property, or it simply does not exist.

## A RIGHT TO LIFE?

If there is indeed a right to life, what conduct is prohibited by it? Approaching the subject from a different angle, how does one kill someone? One kills someone by doing something to his body. Poison, bullet, knife, baseball bat, strangulation—all are methods that can be used to kill someone, and all of them have no effect without the presence of someone else's body. Does one have the right to use someone else's car for target practice? Does one have the right to use someone else's body for target practice? The intellect that informs a rational animal's body is the rightful owner of that body in the same way that it may be the rightful owner of a car. One cannot use a car that is the rightful property of someone else for target practice without the owner's permission. In how many recorded cases in history did a murderer ask for permission to do something to the body of his victim?

The right to life is subsumed under the right to property, and the conduct that it prohibits is the same conduct that is prohibited by the right to property: one has no right to do anything to that which is the rightful property of someone else without the permission of the rightful owner. The only human right is the right to property, and one might not even have the right to dispute that assertion.<sup>4</sup>

---

<sup>4</sup> Hans-Hermann Hoppe (2006, 372–74) writes,

Now, as a necessarily practical affair, any propositional exchange requires a proposition-maker's exclusive control (property) over some scarce means. No one could possibly propose anything, and no one could possibly become convinced of any proposition, if one's right to make exclusive use of one's physical body were not already presupposed. It is one's recognition of another's mutually exclusive control over his body which explains the distinctive characteristic of propositional exchanges: that while one may disagree about what has been said, it is still possible to agree at least on the fact that there is disagreement. It is obvious, too, that such a property right in one's own

## A NOTE ON HOPPE'S ETHICS OF ARGUMENTATION

I think it is safe to say that the conclusions at which Hoppe arrives by means of his ethics of argumentation are substantially the same as the conclusions at which I arrive here. The only difference is the route taken. Hoppe begins with the ethical norms that must be accepted by those who engage in rational argument, then deduces from those norms other norms that comprise (or come close to comprising) what I call "the right to property." I begin with propositions whose truth is evident, and from them I attempt to derive conclusions whose truth has been made evident by deduction.

---

body must be said to be justified *a priori*, for anyone who would try to justify any norm whatsoever must already presuppose an exclusive right of control over his body simply to say, 'I propose such and such.' Anyone disputing such a right would become caught up in a practical contradiction, since in arguing so one would already implicitly have accepted the very norm that one was disputing.

Finally, it would be equally impossible to engage in argumentation, if one were not allowed to appropriate in addition to one's body other scarce means through homesteading, i.e., by putting them to use before someone else does, or if such means were not defined in objective, physical terms.

For if no one had the right to control anything at all, except his own body, then we would all cease to exist and the problem of justifying norms—as well as all other human problems—simply would not exist. The fact that one is alive presupposes the validity of property rights to other things. No one who is alive could argue otherwise.

And if a person did not acquire the right of exclusive control over such goods by homesteading, by establishing some objective link between a particular person and a particular physical resource before anyone else had done so, but instead late-comers were assumed to have ownership claims to things, then literally *no one would be allowed to do anything with anything at any time* unless he had the prior consent of all late-comers. Neither we nor our forefathers nor our progeny could survive or will survive if we were to follow this rule. Yet in order for any person—past, present, or future—to argue anything it must evidently be possible to survive. And in order for us to do this, property rights cannot be conceived of as timeless and nonspecific regarding the number of people concerned. Rather, property rights must necessarily originate through action at definite places and times for specific acting individuals. Otherwise, it would be impossible for anyone to say anything at a definite time and place and for someone else to reply. To assert that the first-user-first-owner rule of private property can be ignored or is unjustified implies a contradiction. One's assertion of this proposition presupposes one's existence as a physically independent decision-making unit at a given point in time, and the validity of the homesteading principle as an absolute principle of property acquisition.

For example, for Hoppe “the right of original appropriation through actions is compatible with and implied in the nonaggression principle as the logically necessary presupposition of argumentation” (Hoppe 1989, 136). For me, the right of appropriation can be deduced from two evident propositions: that one must have a right to do that which no one else has a right that one not do, and that no one can have the right that someone else not appropriate something unowned.

As another example, for Hoppe “the norm implied in argumentation is that everybody has the right of exclusive control over his own body.” (Hoppe 1989, 132) For me, the right of ownership of one’s body begins with the far from insignificant fact that one is born with it, i.e., the intellect that informs that body is the original and therefore rightful owner of it until such time as its ownership is transferred to someone else. At no point is that body unowned, i.e., a fit object for appropriation by someone else.

The most important proposition to which we both subscribe is that “reason can claim to yield results in determining moral laws which can be shown to be valid *a priori*.” (Hoppe 1989, 131) An *a priori* truth is a necessary truth, i.e., one which cannot be untrue, and the goal of this article is nothing if not the articulation of some necessary truths in the field of moral law.

## REFERENCES

- Hans-Hermann Hoppe. 1989. *A Theory of Socialism and Capitalism*. Norwell, Mass.: Kluwer.
- . 2006. *The Economics and Ethics of Private Property*. Auburn, Ala.: Mises Institute.

## THE LIBERTARIAN QUEST FOR A GRAND HISTORICAL NARRATIVE

HANS-HERMANN HOPPE

**ABSTRACT:** The greatest challenge for libertarians, whether economic or otherwise, is to develop a grand historical narrative that is to counter and correct the so-called Whig theory of history that all ruling elites, everywhere and at all times, have tried to sell to the public: that is the view, that we live in the best of all times and that the grand sweep of history, notwithstanding some ups *and* downs, has been one of more or less steady progress. This Whig theory of history, despite some setbacks motivated in particular by the experiences of the two disastrous world wars during the first half of the twentieth century, has again become predominant in the public mind. But while the present democratic social order may be the technologically most advanced civilization, it most certainly is not the most advanced socially. In fact, by some measures it falls far behind the Middle Ages. The principal counterstrategy of *recivilization* must be a return to “normality” by means of decentralization. The process of territorial expansion that went hand in hand with the centralization of all authority in one monopolistic hand must be reversed. The paper concludes with comments on Steven Pinker’s attempt to rescue the Whig theory of history and demonstrate that we live in the best of all worlds—an attempt which is in fact an utter failure.

“To historians is granted a talent that even the gods are denied—to alter what has already happened!” (*David Irving*)

---

Hans-Hermann Hoppe is Professor Emeritus of economics at the University of Nevada at Las Vegas, Distinguished Senior Fellow with the Mises Institute, and president of the Property and Freedom Society.

This paper is adapted from a lecture delivered to the Property and Freedom Society on September 16, 2018.



## INTRODUCTION

It is no secret that I am not a Hayekian. Still, I consider Hayek a great economist—not in the same league as Mises, but few if any economists are. Hayek's fame in the public mind, however, has less to do with his economic writings but stems largely from his writings in political theory, and it is in this area that I consider him mostly deficient. Not even his system of definitions here is internally consistent. His excursions into the field of epistemology are quite ingenious, yet here he also falls short of the accomplishments of his teacher Mises. Nonetheless, owing to his wide-ranging interdisciplinary oeuvre, which contains a treasure trove of keen insights into many issues, I consider Hayek one of the twentieth century's outstanding intellectuals writing in the social sciences.

As a reflection of this esteem, Hayek was also quoted in the programmatic statement of the Property and Freedom Society.

We must make the building of a free society once more an intellectual adventure, a deed of courage. What we lack is a liberal Utopia, a programme which seems neither a mere defence of things as they are nor a diluted kind of socialism, but a truly liberal radicalism which does not spare the susceptibilities of the mighty..., which is not too severely practical and which does not confine itself to what appears today as politically possible. We need intellectual leaders who are prepared to resist the blandishments of power and influence and who are willing to work for an ideal, however small may be the prospects of its early realization. They must be men who are willing to stick to principles and to fight for their full realization, however remote.... Unless we can make the philosophical foundations of a free society once more a living intellectual issue, and its implementation a task which challenges the ingenuity and imagination of our liveliest minds, the prospects of freedom are indeed dark. But if we can regain that belief in the power of ideas which was the mark of liberalism at its best, the battle is not lost.

Hayek of course did not follow his own advice, but ended up, in his political philosophy, with a mishmash full of internally inconsistent compromises. Yet this does not mean that his plea for an uncompromising intellectual radicalism, which has been the purpose and become the hallmark of the PFS, is not worthwhile or correct.

But this shall not be my topic here. Rather, I want to speak about another important, if complementary, insight of Hayek's that can be found in the introduction he wrote for the collection of essays gathered in *Capitalism and the Historians*. Here, Hayek makes the

point that although uncompromising intellectual radicalism is necessary as a source of energy and inspiration for the leaders of a liberal-libertarian movement, this is not sufficient to make for public appeal. Because the general public is not used to or capable of abstract reasoning, high theory, and intellectual consistency, but forms its political views and convictions on the basis of historical narratives, i.e., of prevailing interpretations of past events, it is upon those who want to change things for a better, liberal-libertarian future to challenge and correct such interpretations and propose and promote alternative, revisionist historical narratives.

Let me quote from Hayek to this effect:

While the events of the past are the source of the experience of the human race, their opinions are determined not by the objective facts but by the records and interpretations to which they have access....Historical myths have perhaps played nearly as great a role in shaping opinion as historical facts....The influence which the writers of history thus exercise on public opinion is probably more immediate and extensive than that of the political theorists who launch new ideas. It seems as though even such new ideas reach wider circles usually not in their abstract form but as the interpretations of particular events. The historian is in this respect at least one step nearer to direct power over public opinion than is the theorist....Most people, when being told that their political convictions have been affected by particular views on economic history, will answer that they never have been interested in it and never have read a book on the subject. This, however, does not mean that they do not, with the rest, regard as established facts many of the legends which at one time or another have been given currency by writers on economic history. (Hayek 1954, 3–8)

The central theme of *Capitalism and the Historians* is the revision of the still popular myth that it was the system of free market capitalism, at the beginning of the so-called Industrial Revolution, around the early 1800s, which has been responsible for the economic misery that caused even little children to have to work for sixteen hours or more under atrocious conditions in mines or similarly uncomfortable workplaces, and that it was only due to the pressure of labor unions and government intervention in the economy by way of so-called social policy means and measures that this “inhumane” system of “capitalist exploitation” was gradually overcome and improved.

When first hearing this sad story, one would think that the immediate question coming to mind should be: Why would any parent subject his child to such a treatment and hand him over to

some evil capitalist exploiters? Did these children have a jolly good time before, strolling around in meadows and fields, healthy and with red cheeks, picking flowers, eating apples off the trees, fishing and swimming in creeks, rivers, and lakes, playing with their toys and attentively listening to their grandparents' tales? In that case, what horrible people must these parents have been! Merely asking these questions should be sufficient to realize that this story *cannot* be true. And in fact, as Hayek and his collaborators demonstrated, it is just about the opposite of the truth.

Until the Industrial Revolution, England and the rest of the world, for thousands of years, had lived under Malthusian conditions. That is, the supply of consumer goods provided by nature and by human production through means of intermediate tools and producer goods was not sufficient to ensure the survival of a growing population. Population growth exceeded the growth of production and any increases in productivity; hence, not only in England, but everywhere, an "excess" of population regularly had to die off due to malnutrition, ill health, and ultimately starvation. It was only with and since the Industrial Revolution that this situation fundamentally changed and the Malthusian trap was successively overcome, first in England, then in continental Europe and the European overseas dependencies, and finally also in much of the rest of the world, so as to allow not only for a steadily growing population, but one with continuously rising material standards of living. And this momentous achievement was the result of free market capitalism, or more precisely a combination and interplay of three factors. For one, the general security of private property; second, low time preference, i.e., the ability and willingness of a growing number of people to delay immediate gratification so as to save for the future and accumulate an ever larger stock of capital goods; and third, the intelligence and ingenuity of a sufficient number of people to invent and engineer a steady stream of new productivity-enhancing tools and machines.

The parents of the poor children, who handed them over to the "evil capitalists" during the Industrial Revolution were not bad parents, then, but like most parents everywhere who want the best for their children, they chose to do so, because they preferred their children alive, even if it was a miserable life, rather than dead. Contrary to still popular myth in leftist circles, then, capitalism did not cause misery, but literally saved countless millions of people from death

by starvation and gradually lifted them from their previous state of abject poverty. Labor unions' and governments' so-called social policies did not help in this regard, but hampered and retarded this process of gradual economic improvement, and were and still are responsible for countless numbers of unnecessary deaths.

There are many other related myths, equally or even more absurd, propagated by, to use Nicholas Taleb's label, IYIs (intellectuals yet idiots) and widely believed by the general public: that you can legislate greater economic prosperity by simply passing minimum wage laws, or else that economic misery can be overcome by simply increasing monetary spending.—But why, then, not legislate hourly wage rates of \$100 or \$1000, and why, then, is India, for instance, still a poor country? Are the ruling elites in India too dumb to know about this magic formula? —Why, then, since everywhere nowadays governments can easily increase the quantity of paper money in practically unlimited amounts, is there still any poor person around?

Nor are such faulty historical narratives restricted only to economic history. Rather, much of what we have learned as the established truth from our standard history books about World War I and World War II, about the American and the French Revolutions, about Hitler, Churchill, FDR or Napoleon, and on and on and on, also turns out to be faulty history—facts mixed in, whether intentionally or not, with hefty doses of fiction, and fake.

Important as the revision of all these myths is, however, the greatest challenge for libertarians, whether economic or otherwise, is to develop a grand historical narrative that is to counter and correct the so-called Whig theory of history that all ruling elites, everywhere and at all times, have tried to sell to the public: that is the view, that we live in the best of all times (and that *they* are the ones who will guarantee that this stays so) and that the grand sweep of history, notwithstanding some ups *and* downs, has been one of more or less steady progress. This Whig theory of history, despite some setbacks motivated in particular by the experiences of the two disastrous world wars during the first half of the twentieth century, has again become predominant in the public mind, as indicated by the success of such books as Francis Fukuyama's *The End of History and the Last Man* (1992) or, still more recently, Steven Pinker's *The Better Angels of Our Nature* (2011) and *Enlightenment Now* (2018).



According to the proponents of this theory, what makes the present age so great and qualifies it as the best of all times is the combination of two factors: for one, never before in human history have technology and the natural sciences reached as high a level of development and have the average material living standards been as high as today— which appears essentially correct and which fact without doubt contributes greatly to the public appeal and acceptance of the Whig theory. Secondly, never before in history have people supposedly experienced as much freedom as today with the development of “liberal democracy” or “democratic capitalism”— which claim, despite its widespread popularity, I consider a historical myth. In fact, since the degree of freedom and of economic and technological development are indeed positively correlated, this leads me to the conclusion that average material living standards would have been even higher than they presently are if history only had taken a different course.

But before offering an alternative, grand revisionist historical narrative and indicating where Pinker and his ilk go off the rails with their Whiggish world history, a few remarks on the history of *science* are in order. Until relatively recently, the belief in a steady growth of *science*, if nothing else, has never been much in doubt— until the early 1960s, with the historian of science Thomas Kuhn and his book *The Structure of Scientific Revolutions* (1962). Kuhn, in contrast to the orthodox Whig-ish view on the matter, portrayed the development of science not so much as a continuous march upward and into the light, but rather as a sequence of “paradigm shifts” that followed each other much like—directionless—one lady-fashion follows another. The book became a huge success and for quite some time Kuhn’s view became a widespread fashion in philosophical circles. Kuhn notwithstanding, however, I still regard the traditional view concerning the development of science as essentially correct. The central error of Kuhn as well as of many philosophers of science—revealingly expressed again and again, for instance, by Sheldon Cooper, the super science nerd—theoretical physicist character in the hugely popular TV series *The Big Bang Theory*—lies in a fundamental misconception regarding the interrelation between science on the one hand and engineering or technology on the other.

This is the popular misconception of science as coming before, having priority over, and assuming a higher rank and dignity

vis-à-vis engineering and technology as only secondary and inferior intellectual enterprises, i.e., as mere “applied” science. In fact, however, matters are exactly the other way around. What comes methodologically first, and what makes science as we know it at all possible and at the same time provides its ultimate foundation, is human engineering and construction. Put plainly and bluntly: without such purposefully designed and constructed instruments as measuring rods, clocks, planes, rectangles, scales, counters, lenses, microscopes, telescopes, audiometers, thermometers, spectrometers, x-ray and ultrasound machines, particle accelerators, and on and on, no empirical and experimental science as we know it would be possible. Or to put it in the words of the great late German philosopher-scientist Peter Janich: “Handwerk” comes before and provides the stable foundation and groundwork of “Mundwerk.” Whatever controversies or quibbles scientists may have, they are always controversies and quibbles within a stable operational framework and reference system defined by a given state of technology. And in the field of human engineering, no one would ever throw out or “falsify” a working instrument until and unless he had another, better working instrument available.

Hence, it is engineering and advances in engineering that make science and scientific progress possible and at the same time prevent from happening that which Karl Popper’s “falsificationist” philosophy of science that currently dominates intellectual public opinion must admit as “always possible”: not only scientific *regression* but even the complete breakdown of our entire system of knowledge due to the supposedly “always possible” falsification of even its seemingly most basic hypotheses. What prevents this nightmare from happening and what exposes both Kuhn’s relativism and Popper’s related falsificationism as involving an elementary methodological error is the existence of “Handwerk” and its methodical priority and primacy over the mere “Mundwerk” of science.

(Note: I am not denying here the possibility of periods of regression in the development of science. But I would explain any such regression as the consequence of a prior loss of practical engineering knowledge. “Harmlessly” in the normal course of economic development, certain skills may die out and be forgotten, because there is no longer any demand for their products. This does not necessarily imply a step back in engineering knowledge, however.

Indeed, such loss can be more than made up by the development of different skills required for the manufacturing of different, more highly demanded products. Loss here is the springboard of technological progress. Old tools and machines are replaced by better new ones. But another, less “harmless” development is possible as well, and has indeed taken place at certain times and places. Due to a pestilence, for instance, the population size, and with it also the division of labor, might dramatically shrink and lead to a huge and widespread loss of accumulated engineering knowledge and skills, so as to require a return to earlier and more primitive modes of production. Or a population might simply become less bright, for whatever reason, than its forebears and unable to maintain a given (inherited) level of technological advancement.)

With this out of the way, I can now turn to the *fake* part of the Whig theory of history—concerning *social* history. Although it is comparatively easy to diagnose technological progress, and along with this also scientific progress (progress occurs whenever we learn how to successfully accomplish some additional, quicker, or better result in our purposeful dealings with the nonhuman world of material objects, plants, and animals), it is significantly more difficult to define and diagnose *social* progress, i.e., progress in *interpersonal* dealings or *man-to-man* interactions.

To do this, it is first necessary to define a model of *social perfection* that is in accordance with human nature, i.e., of men as they really are, which can serve as a reference system to diagnose the relative proximity or distance of various historical events, periods, and developments to this ideal. And this definition of social perfection and social progress must be strictly separate, independent, and analytically distinct from the definition of technological and scientific growth and perfection (even if both progress or growth dimensions are empirically positively correlated). Conceptually, that is, it must be allowed that there can be societies that are (near) perfect socially but technologically backward, as well as societies that are technologically highly advanced and yet socially backward.

For the libertarian, this ideal of social perfection is *peace*, i.e., a normally tranquil and frictionless person-to-person interaction—and a peaceful resolution of occasional conflict—within the stable framework of private or several (mutually exclusive) property and property rights. I do not want to appeal only to libertarians with this, however, but to a potentially universal, or “catholic,”

audience, because the same ideal of social perfection is essentially also the one prescribed by the ten biblical commandments.

Setting the first four commandments aside, which refer to our relation to God as the one and only ultimate moral authority and the final judge of our earthly conduct and the proper celebration of the Sabbath, the rest, referring to worldly affairs, display a deep and profoundly libertarian spirit.

5. Honor your father and your mother, as the LORD your God has commanded you, that your days may be long, and that it may be well with you in the land which the LORD your God is giving you.
6. You shall not murder.
7. You shall not commit adultery.
8. You shall not steal.
9. You shall not bear false witness against your neighbor.
10. You shall not covet your neighbor's wife; and you shall not desire your neighbor's house, his field, his male servant, his female servant, his ox, his donkey, or anything that is your neighbor's.

Some libertarians may argue that not all of these commandments have the same rank or status. They may point out, for instance, that the fifth and the seventh commandments are not on a par and of the same dignity as the sixth, eighth, and tenth commandments; that this may also be the case with commandment nine, prohibiting libel; or that desiring another's wife or servant is not on a par with coveting his house or field. However, the Ten Commandments do not say anything about the *severity* and suitable *punishment* of violations of its various commands. They proscribe all mentioned activities and desires, but they leave open the question of how severely any of them deserves to be punished.

In this, the biblical commandments go above and beyond what many libertarians regard as sufficient for the establishment of a peaceful social order: the mere strict adherence to commandments six, eight, and ten. Yet this difference between a strict and rigid libertarianism and the ten biblical commandments does not imply any incompatibility between the two. Both are in complete harmony if only a distinction is made between legal prohibitions on the one hand, expressed in commandments six, eight, and ten, violations of which may be punished by the exercise of physical violence, and

extralegal or moral prohibitions on the other hand, expressed in commandments five, seven, and nine, violations of which may be punished only by means below the threshold of physical violence, such as social disapproval, discrimination, exclusion, or ostracism. Indeed, thus interpreted the full six mentioned commandments can be recognized as even an improvement over a strict and rigid libertarianism—*given* the common, shared goal of social perfection: of a stable, just, and peaceful social order.

For surely any society of people who habitually disrespect their parents and routinely mock the idea of natural ranks and hierarchies of social authority, which underlies the institution of the family; who pooh-pooh the institution of marriage and cavalierly regard adultery as inconsequential, faultless, or even liberating; or who habitually scoff at the idea of personal honor and honesty and routinely or even gleefully engage in libelous activity, i.e., the practice of “bearing false witness against one’s neighbor”—any such society will quickly disintegrate into a group of people ceaselessly disturbed by social strife and conflict rather than enjoying enduring and lasting peace.

Taking this biblical-libertarian ideal of social perfection as a benchmark, then, the next step in our argument must be the *diagnosis*, i.e., the comparative evaluation and ranking of various historical periods and developments regarding their relative proximity or distance to this ultimate, ideal goal.

In this regard, immediately a first diagnosis concerning the contemporary world impresses itself. Even if we may grant that the dominant Western model of “liberal democracy” or “democratic capitalism” comes closer to the ideal than the models of social organization presently followed elsewhere, outside the so-called Western world, it still falls glaringly short of the ideal. Indeed, it explicitly and unequivocally contradicts and violates the “Catholic” biblical commandments, and the proponents and promoters of this model, then, manifestly (even if not admittedly) deny and oppose God’s will and turn out advocates of the devil instead.

For one, even with the greatest intellectual contortions it is impossible to derive the institution of a state from these commandments. If no one may steal, murder, or desire another person’s property, then no institution that may steal, murder, and desire another person’s property can ever be permitted to come into existence. Yet like all other societies today, all present

Western societies are societies with *states*, which may routinely steal (tax), murder (go to war), and covet other people's property (legislate). Moreover, in Western *democratic* state societies in particular, the moral sin of desiring another man's property is not only *not* strictly and universally outlawed (but routinely put in practice), but this sin is actually promoted and "cultivated" to its utmost—devilish—extreme. With democratic elections installed as the centerpiece of social life, everyone is "liberated" from God's commandment and made "free" to desire whatever he wants of the property of others and to express his immoral desires through regular anonymous votes.

Surely, this liberal-democratic model of social organization cannot be the end of history, neither for a libertarian nor for anyone taking the biblical commandments to heart. Indeed, Fukuyama's (1992) claim to the contrary borders on the blasphemous.

Regardless of how disastrous the diagnosis of the contemporary world turns out to be, however, it might still be the case that the present state of affairs represents some sort of progress. It might not be the *end* of history, but it might be a closer approximation to the goal of social perfection than anything historically preceding it. To refute the Whig theory of history in its entirety, then, it is further necessary to identify some earlier (and thus, naturally, technologically less advanced) society that adhered more closely to the biblical commandments and came nearer to social perfection. And so as to carry any weight in public debate (in the battle of rival historical narratives), the counterexample in question should be a "big" one. That is, it should not be only a short time span in some tiny place, but a large-scale and long-lasting historical phenomenon. And for the same reason of potential popular appeal, the example should be connected, both geographically and genealogically, as a historical predecessor to the contemporary Western model of democratic state societies, and it should not lie too far in the dark and distant past.

In my own attempts at offering a revisionist account of Western history—in particular in my two books *Democracy: The God That Failed* (2001) and *A Short History of Man* (2015)—I have identified the European Middle Ages, or what is sometimes also and better referred to as Latin Christendom—the roughly thousand-year period from the fall of Rome until the late sixteenth or early seventeenth century—as such an example. Not perfect in many ways, but

closer to the ideal of social perfection than anything that followed it, and in particular closer than the present democratic order.

Not surprisingly, this is also the very period in Western history that our current—godless—democratic rulers and their court historians have chosen to portray in the darkest of terms. In Greek and Roman society, they can see some “good” and value, even if it supposedly lags far behind the level of social advancement reached with the contemporary democratic social order. But the Middle Ages are routinely portrayed as dark, cruel, and filled with superstition, best forgotten and ignored in all of standard history and historical narrative.

Why this particularly unfavorable treatment of the Middle Ages? Because, as many historians, old and contemporary, have of course noticed too, the Middle Ages represents a large-scale and long-lasting historical example of a stateless society and as such represents the polar opposite of the present, statist social order. Indeed, the Middle Ages, notwithstanding its many imperfections, can be identified as a God-pleasing—a *gott-gefaellige*—social order, whereas the present democratic state order, notwithstanding its numerous achievements, stands in constant violation of God’s commandments and must be identified as a satanic order. To answer the question, then, Satan and his earthly followers will of course go all out to make us ignore and forget about God and belittle, besmirch, and denigrate everything and anything that shows His hand.

This is all the more reason for any libertarian and God-pleasing “Catholic” to study and draw inspiration from this historical period of the European Middle Ages—something, incidentally, made easier nowadays and likely to encounter little opposition from the powers that be and their increasingly rigorously enforced speech code of “political correctness,” because any such study has long since been relegated to the status of a nerdy, quaint, and exotic interest, far distant in time from the present and without any contemporary relevance.

In standard (orthodox) history we are told, as a quasi-axiomatic truth, that the institution of the state is necessary and indispensable for the maintenance of social peace. The study of the Middle Ages and Latin Christendom shows that this is untrue, a historical myth, and how, for a lengthy historical period, peace was successfully maintained without a state and thus without open renunciation of libertarian and biblical precepts.



Although many libertarians fancy an anarchic social order as a largely horizontal order without hierarchies and different ranks of authority—as “antiauthoritarian”—the medieval example of a stateless society teaches otherwise. Peace was not maintained by the absence of hierarchies and ranks of authority, but by the absence of anything but *social* authority and *ranks* of social authority. Indeed, in contrast to the present order, which essentially recognizes only *one* authority, that of the state, the Middle Ages were characterized by a great multitude of competing, cooperating, overlapping and hierarchically ordered ranks of social authority. There was the authority of the heads of family households and of various kinship groups. There were patrons, lords, overlords, feudal kings with their estates, their vassals, and the vassals of vassals. There were countless different and separate communities and towns, and a huge variety of religious, artistic, professional, and social orders, councils, assemblies, guilds, associations, and clubs, each with its own rules, hierarchies and rank orders. In addition, and of utmost importance, there were the authorities of the local priest, the more distant bishop, and of the Pope in Rome.

But no authority was absolute, and no one person or group of people held a monopoly on its position or rank of authority. The hierarchical feudal lord-vassal relationship, for instance, was not indissoluble. It could be broken if either side violated the provisions of the fealty oaths they both had sworn to uphold. Nor was the relationship between lord and vassal a transitive one. That is, the lord of a vassal was not on account of his lordship also the lord of all his vassal’s vassals. Indeed, such vassals could be tied to a different lord, or they could, elsewhere and regarding other things, be lords themselves, which precluded any involvement in their affairs in question. It was thus near impossible for anyone to exercise any straight top-down authority and hence also immensely difficult in particular to raise and maintain a large standing army and engage in large-scale or even continent-wide war. That is, the phenomenon which we have come to regard as perfectly normal today, that a command that is directly binding on all of society is given from the top on down, from its highest ranks down to the lowliest, was absent in the Middle Ages. Authority was widely dispersed, and any one person or position of authority was constrained and kept in check by another. Even feudal kings, bishops, and indeed even the Pope himself could be called upon and brought to justice by other competing authorities.



“Feudal law” reflected this “hierarchic-anarchic” social structure of the Middle Ages. All of law was essentially *private* law (i.e., law applying to persons and person-to-person interactions), all of litigation was between a personal defendant and a personal plaintiff, and punishment typically involved the payment of some specified material compensation by the offender to his victim or his lawful successor. However, this central characteristic of the Middle Ages as a historical model of a private law society did not mean that feudal law was some sort of unitary, coherent, and consistent legal *system*. To the contrary, feudal law allowed for a great variety of locally and regionally different laws and customs, and the difference in the treatment of similar offences in different localities could be quite drastic. Yet at the same time, with the Catholic Church and the Scholastic teachings of the natural law, there was an overarching institutional framework and moral reference system in place to serve as a morally unifying force, constraining and moderating the range of variation between the laws of different localities.

Needless to say, there were many imperfections that future historians, to this day, would focus on and highlight so as to discredit the entire period. During the Middle Ages, under the influence of Catholic Church, the institution of slavery, which had been a dominant feature of Greek and Roman society, had been increasingly discredited and pushed back to near extinction, but it had not entirely disappeared. As well, the institution of serfdom, from a moral point of view “better” than slavery but still not without moral blemish, was yet a widespread social phenomenon. Moreover, plenty of small-scale wars and feuds took place during the entire period. And as we are never allowed to forget: the punishments dished out in various law courts for various offences here or there, were sometimes (for modern sensibilities, in any case) extreme, harsh, and cruel. A murderer might be hung or beheaded, quartered, burnt, boiled, or drowned. A thief might have his finger or hand cut off and a false witness his tongue torn out. An adulteress might be stoned, a rapist castrated, and a “witch” burnt.

It is these features in particular that we are told in standard history to associate with the Middle Ages so as to arouse our moral indignation and feel elated about our own enlightened present. Even if all true, however, any such exclusive concentration on

these features as a distinctive characteristic of the Middle Ages is to miss the mark, or the wood for the trees. It takes accidents for nature and what is natural and normal. That is, it ignores, whether deliberately or not, the central characteristic of the entire period: the fact that it was a stateless social order with widely dispersed, hierarchically ordered, and rivaling centers of authority. And this focus then conveniently closes the eyes to the fact that the “excesses” of the Middle Ages actually pale in comparison to those of the present democratic state order, for surely slavery and serfdom have not disappeared in the democratic world. Rather, some increasingly rare “private” slavery and serfdom have been replaced by a near-universal system of “public” tax slavery and serfdom. As well, wars have not disappeared, but only become of a larger scale. And as for excessive punishments and witch hunts, they have not gone away either. To the contrary, they have multiplied. Enemies of the state are tortured in the same old gruesome or even technically “refined” ways. Moreover, countless people who are *not* murderers, thieves, libelers, adulterers, or rapists, i.e., people who live in complete accordance with the ten biblical commandments and once would have been left alone, are nonetheless routinely punished today, up to the level of lengthy incarceration or the loss of their entire property. Witches are no longer called that, but with just one sole authority in place, the “identification” of anyone as a “suspect of evil-doing” or a “troublemaker” is greatly facilitated, and the number of people so identified has accordingly multiplied; and although such suspects are no longer burnt at the stake, they are routinely punished by up to lifelong economic deprivation, unemployment, poverty, or even starvation. And while the primary purpose of punishment was once restitution, i.e., the offender had to compensate the victim, the primary purpose of punishment today is submission—the offender must compensate and satisfy not the victim, but the state (thus victimizing the victim twice).

With this we can state a first conclusion. The present democratic social order may be the technologically most advanced civilization, but it most certainly is not the most advanced socially. As measured by biblical-libertarian standards of social perfection, it falls far behind the Middle Ages. Indeed, as measured by those standards, the transition in European history from the anarchic medieval to the modern statist world is nothing less than the transition from a God-pleasing to a godless social order.

At various places, in the most condensed form in my essay *From Aristocracy to Monarchy to Democracy* (2014), I have analyzed and tried to reconstruct this process of *decivilization*, which has by now been going on for half a millennium, and to explain the calamitous and deleterious consequences and ramifications that it has had for the development of law and economics. I shall not repeat or recapitulate any of this here. Rather, I only want to shed some light on the principal strategy that all statists, from the late Middle Ages on until today, have pursued to reach their statist ends, so as to also gain (if only indirectly) some insight into any possible counterstrategy that could lead us out of the current predicament. Not back to the Middle Ages, of course, because too many permanent and irreversible changes have taken place since, both in regard to our mental and our material conditions and capacities, but to a new society that takes its cues from the study of the Middle Ages and understands and knows of the principal reason for its demise.

The strategy was dictated by the quasi-libertarian, stateless medieval starting point, and it suggested itself “naturally,” first and foremost to the top ranks of social authority, in particular to feudal kings. In a nutshell, it boils down to this rule: instead of remaining a mere *primus inter pares*, you must become a *solus primus*, and to do this you must undermine, weaken, and ultimately eliminate all competing authorities and hierarchies of social authority. Beginning at the highest levels of authority, with your most immediate competitors, and from there on down, ultimately, to the most elementary and decentralized level of social authority invested in the heads of individual family households, you (every statist) must use your own initial authority to undermine each and every rival authority and strip away its right to independently judge, discriminate, sentence, and punish within its own territorially limited realm of authority.

Kings other than you must no longer be allowed to freely determine who is another or the next king, who is to be included or excluded from the rank of kings, or who may come before them for justice and assistance. And likewise for all other levels of social authority, for noble lords and vassals as well as all separate local communities, orders, associations, and ultimately all individual family households. No one must be free to autonomously determine his own rules of admission and exclusion. That is, to determine who is supposed to be “in” or “out,” the conduct to

expect of those who are “in” and want to remain in good standing, and what member conduct instead results in various sanctions, ranging from disapproval, censure, and fines to expulsion and corporal punishment.

And how to accomplish this and centralize and consolidate all authority in the hands of a single territorial monopolist, first an absolute monarch and subsequently a democratic state? By enlisting the support of everyone resentful of not being included or promoted in some particular community, association, or social rank, or of being expelled from them and “unfairly” punished. Against this “unfair discrimination” you, the state or would-be state, promise to get the excluded “victims” in and help them get a “fair” and “nondiscriminating” treatment in return for their binding commitment to and affiliation with you. On every level of social authority, whenever and wherever the opportunity arises, you encourage and promote “deviant behavior” and “deviants” and enlist their support in order to expand and strengthen your own authority at the expense of all others.

Accordingly, the principal counterstrategy of *recivilization*, then, must be a return to “normality” by means of decentralization. The process of territorial expansion that went hand in hand with the centralization of all authority in one monopolistic hand must be reversed. Each and every secessionist tendency and movement, then, should be supported and promoted, because with every territorial separation from the central state another separate and rival center of authority and adjudication is created. And the same tendency should be promoted within the framework of any newly created separate and independent territory and center of authority. That is, any voluntary membership organization, association, order, club, or even household within the new territory should be free to independently determine its own house rules, i.e., its rules of inclusion, of sanctions, and of exclusion, so as to successively replace the current statist system of forced territorial and legal integration and uniformation with a natural, quasi-organic social order of voluntary territorial and legal-customary association and dissipation. Moreover, as an important addition, in order to safeguard this order of increasingly decentralized centers, ranks, and hierarchies of natural social authority from internal corruption or external (foreign) attack, each newly (re)emerging social authority should be encouraged to build as wide as possible

a network with similarly placed and like-minded authorities in other, “foreign” territories and jurisdictions for the purpose of mutual assistance in case of need.

With this I have reached a stage of conceptual analysis and of historical insight and background information that allows me, as my second task, to comment in some detail on the most recent attempt by Steven Pinker, with his book *The Better Angels of Our Nature* (2011), to give new impetus to the Whig theory of history, i.e., the myth that human history has been a somewhat rocky but nonetheless steady march upward and into the light, and that we today, in the Western world, live, if not in the best of all *possible* worlds, in a world better than anything that came before.

The book, unsurprisingly, has been enthusiastically greeted by the ruling elites and become a great commercial success, further boosted, undoubtedly, by Pinker’s status as a charismatic Harvard professor. In eight hundred pages of small print, Pinker assembles a huge mass of interesting pieces of information and interpretation concerning all sorts of things, but as far as the case he makes for some steady social progress culminating in the present, my verdict is entirely negative. Pinker may be an excellent psychologist, but he is out of his depth in the areas of philosophy, methodology, economics, and history, which all are required to pass sound judgment on the degree of social perfection of the various stages and long-run development of human history. In particular, his historical narratives frequently strike one as cherry-picked and either missing the wood for the trees or vice versa, but more often the trees for the wood.<sup>1</sup>

There is plenty to complain about in the book, not least the fact that Pinker is less than careful in unambiguously defining his terms so as to avoid all internal inconsistency or equivocation. Here, however, I shall concentrate my criticism on only two central points: first, Pinker’s “measurement” or criterion of social progress—his explanandum—and then his explanation for the thus “measured” phenomenon—his explanans.

Throughout his entire work, Pinker shows a remarkable hostility toward religion and hence it is hardly surprising that it does not cross his mind to use the biblical commandments

---

<sup>1</sup> See on the following also Blankertz (2018), Cirillo and Taleb (2017), and Gray (2015).

(which, incidentally, he grossly misrepresents) as a benchmark for social perfection. Rather, his benchmark is “violence,” and social progress is defined as a reduction in violence. At first sight, this criterion does not seem too far away from the biblical-libertarian goal of peace. In fact, however, it turns out to be something quite different. His prime examples of violence are homicides and war casualties. The book is filled with tables and statistics on these indicators of violence. Incredibly, however, Pinker does not make a categorical distinction between aggressive and defensive violence. In the biblical commandments, with their explicit recognition of the sanctity of private property, such a distinction is made. It makes a difference if violence is used to take another man’s property or if a man uses violence in defense of his property against an aggressor. Murder is a categorically different thing from the killing of someone in self-defense. Not so for Pinker. Property and property rights do not systematically figure in his analyses. Indeed, the terms do not even appear in the book’s thirty-page subject index. For Pinker, violence is violence, and the reduction of violence is progress, regardless of whether this reduction is the result of the successful suppression of a people by and vis-à-vis another, conquering people, or the result of their own successful suppression of aggressors and conquerors. In Pinker’s world, a “stable” master-slave relationship is a sign of civilization, while a slave revolt accompanied by violence is a sign of decivilization. Likewise, a system of compulsory taxation—another term which like *property* is completely missing from the index (not coincidentally)—is an indicator of civilization regardless of the height of taxation, as long as it is simply stable, i.e., as long as the mere threat of punishment by the tax authority is sufficient to achieve general compliance on the part of the taxed. Any tax revolt and resistance is to count as decivilization. One is peace and progress to Pinker, whereas the other is violence and regression.

Pinker does not follow his own logic to the bitter end, but this must be done to reveal the full depravity of his thought. According to him, a smoothly run concentration camp, for instance, guarded by armed men who do not murder the inmates and in fact prevent them from killing each other, but who supply them with “happiness drugs” to keep them quietly working for the benefit of the guards until their natural (nonviolent) deaths, is the perfect model of peace and social progress, while the violent overthrow of the guards by the inmates is, well, violence and decivilization.

Based on this depraved view of social progress that knows no property and property rights violations, but only counts the number of unnatural deaths, bodily injuries, and broken bones, it should be expected that Pinker's evaluations of various historical episodes must yield some rather awkward or even grotesque conclusions, as in fact they do. In particular, it also explains how Pinker could misrepresent the present democratic age as the best of all times.

But is it, even on Pinker's own terms? Are we living in the least violent of times?

The answer is ambiguous. On the one hand there are wars, which throughout history have always been responsible for the largest number of casualties, far outweighing those resulting from "regular" small-scale interpersonal violence. In this regard, as Pasquale Cirillo and Nicholas Taleb ([2017]) have shown in response to Pinker's progression thesis, no statistically discernable trend can be established. According to Taleb, for the 600-year period from about 1500 to today, for which we have relatively reliable data, no significant change to the frequency of war or the number of war casualties (always set in relation to the total population) can be made out. Indeed, if anything, there has been a slight uptick in war-related violence with the spread of democracy (contrary to the proponents of the so-called democratic peace theory). And as for the seventy-year period since the end of World War II, which Pinker identifies as exceptionally peaceful and warless, Taleb points out that wars and especially large-scale wars are highly irregular and comparatively rare events and that an observation period of just seventy years, then, is far too short to serve as the basis for any far-reaching conclusions. But, as John Gray (2015) has argued contra Pinker, even this assessment of "modern times" is likely too rosy a picture, because it tends to systematically underestimate the number of war-related casualties among *noncombatants*, i.e., the number of civilians dying from various diseases spread through war or from long-term side effects of war such as "slow deaths" caused by economic deprivation and starvation. (The same danger of underestimation does not exist, at least not to the same extent, for the wars of the European Middle Ages, because they were typically small-scale, territorially restricted events and involved a comparatively sharp distinction between and separation of combatants and noncombatants.)



On the other hand, there exists indeed plenty of empirical evidence to speak of a suprasecular trend toward a reduction in violence—not to be confused with a reduction in infringements on property rights—as measured in particular by homicide rates (a homicide is a homicide regardless of who kills whom, why, or how). In this extra- or amoral sense, we can indeed speak of a “civilizing process,” as Pinker does and demonstrates in great detail. Pinker adopts this term from Norbert Elias and his book *The Civilizing Process* (1969), first published in German in 1939 and translated into English thirty years later. In this book, Elias describes and aims to explain the changes in everyday etiquette, from table manners to sexual mores, that occurred during the European Middle Ages and since. Put briefly, this process can be described as the gradual transition from brutish, gross, crude, boorish, bearish, immodest and intemperate, etc. pp., behavior to increasingly refined, controlled, considerate, modest and temperate, etc. pp., human conduct. Taking his cues from Elias, Pinker merely generalizes and expands Elias’s civilizing thesis from human etiquette to all of everyday life and behavior—and in this, in my judgment, he is by and large successful.

However, Pinker’s *explanation* for this extra- or amoral form of social progress from brutish to increasingly refined behavior is fundamentally mistaken. What he identifies as the principal cause of this development, and I will come to his cause in a moment, has actually, if anything, retarded and distorted this development. That is, absent Pinker’s cause, there would have been not less but more (and a significantly different) refinement in human conduct.

In fact, the grand, long-run historical tendency toward increasingly refined (or less brutish) behavior can be explained, simply enough, as the quasi-natural byproduct of the widening and deepening of the division of labor in the course of economic and technological development. The development of increasingly more and different productivity-enhancing tools and instruments proceeded hand in hand with the development and increasing differentiation of human crafts, skills, and talents. Put briefly, the importance of muscle power for economic success declined relative to the importance of brain power, physical finesse, and mental agility. Moreover, as I have tried to explain in my *A Short History of Man*, especially under Malthusian conditions, which prevailed for most of human history, a systematic premium for economic



success and indeed human survival is placed on the progressive development and growth of human intelligence, of low time preference, impulse control, and patience (which personal characteristics are at least partially hereditary and thus passed on through subsequent generations).

Pinker's explanation for this tendency toward a progressive refinement of human conduct is very different, however. His explanation for this development is the institution of states, i.e., territorial monopolists of ultimate decision-making. He claims that the most decisive and all-important step in the progressive refinement of human conduct has been the transition from a stateless social order to a statist society. And in this he is not entirely wrong—*given* that his definition of progressive refinement is an extra- or amoral one. Certainly, the institution of states, and more specifically of democratic states, is the principal cause of many central features and observations concerning our present-day conduct and routines—except to notice that many or most of them have little or nothing to do with moral progress and stand in open contradiction to biblical commandments. As well, violence as defined by Pinker may indeed have gone down—except to notice that the exercise of violence has been so “refined” and redefined under state auspices as to no longer fall under his narrow definition of the term. “Witches,” for instance, are no longer violently burnt, but shipped off instead, seemingly peacefully, into psychiatric wards to be drugged and pacified by medical professionals. Neighbors are no longer robbed of their property violently, but, in a much “refined” way and apparently without any physical violence, presented with regularly recurring tax bills to be quasi-automatically paid via bank transfer into the accounts of the state.

The central cause for social progress and increasing social perfection that Pinker identifies, then—the instituting of a state—actually turns out to be a central force of *decivilization*, retarding and distorting the underlying civilizing process naturally set in motion by the deepening and widening of the division of labor in the course of economic development. The institution of the state may explain the *refinement of violence* in the course of time, but it is itself a constant source of violence, however refined, and the driving force for its expansion and intensification. The subtitle of Pinker's book, *Why Violence Has Declined*, would lead most potential readers to expect an answer to a *moral* question or problem, because

of the typically negative of the term *violence*. Yet as such the book's title is an ingenious attempt at false and deceptive advertisement, because Pinker does nothing of the sort. Instead, he answers the very different question of how to "technically" or "scientifically" define violence so as to make the morally most depraved and violent institution of all appear as a peacemaker, or to make Satan look like an angel.

And how does he do this? First, by throwing out logic and plain common sense and then fudging the data and historical narratives to fit his plain nonsensical basic premise. Pinker presents this basic premise in the form of a simple diagram (2011, 35). In any two-person scenario, both parties may have a motive for violence, either as an aggressor, to prey on the other, or as a victim, to retaliate. Consequently, similarly to Hobbes, Pinker pictures this state of affairs as one of interminable violent conflict, as a *bellum omnium contra omnes*, a war of all against all. But miraculously, there is a cure to this problem, a third party, which Pinker calls a bystander, that acts as judge and assumes the role of a territorial monopolist of violence so as create lasting peace. But would this bystander not also be a potential predator? And would his predatory motives not be even strengthened if he were the monopolist of violence and did not have to fear any retaliation from his victims? Pinker does not address these rather obvious questions, let alone provide a systematic answer to them. Nor does he provide an answer to the question of why anyone would submit himself, without resistance, to any such bystanding monopolistic judge. Would no one recognize the potential danger for his own property from such an arrangement and put up resistance against its establishment? To be sure, Pinker cannot help noticing later on that empirically states qua territorial monopolists of violence did not emerge spontaneously or quasi-organically, but mafia-like, as some sort of protection racket. Yet this observation does not lead him to revise or reject his fundamental thesis about the principal role of the state as a peacemaker, nor does it lead him to the recognition that many if not most of the civilizing achievements that he ascribes to the workings of the state are in fact the results of popular *resistance* against state power, whether active and violent or passive and nonviolent. Indeed, as mentioned before, Pinker classifies any violent resistance against the state as decivilization, which implies that the prior violence exercised by the state vis-à-vis the resister must have been a civilizing and pacifying activity, not

to be counted as violence at all. It is almost needless to say that such mental acrobatics inevitably lead to various contradictions from which Pinker can extricate himself only through more or less ingenious but always intellectually painful contortions.

Pinker's identification of the state as the all-important force in the process of civilization coincides, of course, perfectly well with the assessment of all state rulers everywhere, and it is essentially the very same lesson that we all have been taught in school and university to accept as a quasi-axiomatic truth. In particular, it is the same lesson taught by all contemporary "leading economists." And yet it flatly contradicts one of the most elementary laws of economics: production under monopolistic conditions will lead to higher prices and lower quality of whatever is produced as compared to the production of the same product under competitive conditions, i.e., under conditions of "free entry." Most contemporary economists recognize this law, but they fail to apply it to the peculiar monopoly that is the state—most likely because most of them are employed by the state. But in fact it applies to the state as well, regardless of how one describes the specific product that it produces. If we describe the state, as Pinker does, as a territorial monopolist of peacemaking, then peace will be more expensive and of lower quality. If we describe it as a monopolist of justice, then justice will be of higher cost and of lower quality. If we describe it as a monopolist of violence, violence will be more expensive and of worse quality. Or if we describe it, as I think best, as a territorial monopolist of expropriation charged with the task of property protection, then we will predictably get much expropriation, which benefits the monopolist, and little protection, which will be only costly for the state. In any case, the result is always the same, and Pinker's central thesis concerning the civilizing effect of the institution of a state, then, must be rejected on logical grounds alone.

What about Pinker's empirical case, then? Logic cannot be refuted by empirical data, but if one throws out logic one is bound to misinterpret empirical data. Pinker offers a huge number of empirical data, tables, and graphs of great interest. I have quarrels with some of them, but here I accept them all for the sake of argument. My criticism concerns solely his interpretation of these data. In fact, and as mentioned before, I can largely go along with his generalized Elias-thesis about a civilizing process from brutish to refined human conduct. Based on logic, however, I would

interpret it differently. Whatever civilizing process there was, it did not occur because of the state, but in spite of or in resistance against the state; and whatever decivilizing process there was, it did not occur because of the absence of a state, but in spite of its absence, or as the late lingering effect of a prior (now dissolved) state and its earlier decivilizing tendencies. Post hoc does not imply propter hoc.

I will restrict my criticism to two central exhibits that Pinker offers in empirical support of his thesis, one concerning global affairs and another more regionally specific one that is most directly related to my earlier observations on European or Western history.

The empirical support for the global progression thesis is summarized in two tables (Pinker 2011, 49, 53). The first is supposed to show the decline of war deaths (as percentage of population) from human prehistory to the present. For this Pinker distinguishes four historical stages: prehistory, hunter-gatherer societies, hunter-horticulturalist societies, and finally state societies. He then provides data to show that there was at best only a minimal improvement from the highly violent prehistoric era to the hunter-gatherer stage; that violence increased again with the introduction of horticulture and agriculture (as there was then more economic inequality and more to loot); and that it finally dropped off sharply to a level never seen before in human history with the introduction of state societies. To further bolster his thesis, the second table compares the rate of death in warfare for “modern” nonstate societies (of the nineteenth and twentieth centuries) with equally “modern” state societies, supposedly demonstrating once more the civilizing effect of states.

As said before, I shall not quibble about the numbers and estimates presented in these tables, except to note that any estimate concerning human prehistory and the far distant hunter-gatherer-horticulturalist stage(s) of human history must be viewed with a good dose of skepticism. Archeological findings of broken skulls, for instance, can provide a basis for some reasonable estimate of violence at particular places and times, and you may then also scale up such estimates to the approximated total world population at the time to calculate the violent death rate for any given period. But what you cannot do, and what is for rather obvious technical reasons and at least until today nearly impossible to do, is show that your sample of violence data is a representative *random*

sample, from which alone it would be legitimate to generalize specific findings to the population total.

The central reason, however, why Pinker's data fail to demonstrate what he wants to demonstrate is a different one. In his attempt to compare nonstate societies with state societies he is comparing what cannot be compared. His examples of nonstate societies, whether ancient or modern, refer almost exclusively to some obscure tribes outside of Europe (or in a few rare European cases to tribes living thousands of years prior to the Christian era); and all of them have either literally died out or else left no lasting trace in history in that it is nearly impossible today to trace any one contemporary society back to them genealogically as their historical predecessor. In distinct contrast, all the examples of state societies are taken from Europe and the Western world, where such genealogical back tracing is easily possible for periods of hundreds or even thousands of years. Obviously, such a comparison can yield an unbiased conclusion only under the assumption that the only relevant factor distinguishing European or "Western" people from Pinker's various tribesmen is the presence or absence of a state and that otherwise both peoples are the same, with the same physical and mental constitution and endowment.

Pinker never explicitly states this assumption, crucial for his own case. Probably because it would cast some immediate doubt on the validity of his conclusion. And, indeed, as a matter of fact there have been countless empirical studies in the meantime, in many disciplines, that demonstrate the utter falsehood of this assumption. Substantial differences exist in the physical and mental makeup and endowments of different people. Europeans, or more generally "Westerners," are decidedly *not* the same sort of people that Pinker's tribesmen are—and with that his first "empirical proof" of his progression thesis collapses. His proof is a nonstarter and proves nothing.

In addition, Pinker misses the trees of humans for the global wood of mankind in another regard, for according to his own data there are also some nonstate societies, even if only a few, that equal or even surpass the level of peacefulness achieved in state societies.

As a brief aside, Pinker might not even be aware of the fact that some sort of (false) human "equality" assumption is necessary to make his point, but he assumes it anyhow, again and again, if only implicitly or surreptitiously. Deep down, Pinker is an egalitarian,

as is particularly evident from his outspoken sympathy for the “progress” brought about by the so-called civil rights movement and the “noble” Dr. Martin Luther King Jr. as well as Nelson Mandela, “one of history’s greatest statesmen” (notwithstanding both men’s well-known communist connections). Pinker is not an extreme (and extremely silly) egalitarian, of course. He makes distinctions between sexes, ages, races, and classes, and he is well aware of the unequal distribution of various human traits and talents within society—of intelligence, diligence, impulse control, sociability, etc. But as a politically correct “progressive,” he cannot bring himself to the recognition that the unequal distribution of these human traits and talents within society may be very different in different societies.

With Pinker’s first, global empirical “proof” rejected, what about his second, regional one? Here, all data come from Europe and insofar the danger of comparing incompatibles is avoided. Pinker devotes some ten pages (2011, 228–38) to this case, and the key information is condensed in a single graph (*ibid.*, 230) depicting the “Rate of Death in Conflicts in Greater Europe, 1400–2000.” If anything, however, this graph demonstrates the opposite of Pinker’s progress thesis. What it shows is that the longest period of (relative) peacefulness and low levels of violence was the almost two hundred years from 1400 until the very end of the sixteenth century. Yet this period falls precisely within the longer period of the European Middle Ages (and marks its end), and the Middle Ages, as I have argued before, are a prime example of a *stateless* social order. (Interestingly, Pinker concurs with this assessment of medieval Europe as *stateless*, but he then fails to see that it implies, according to his own data, an empirical refutation of his thesis.)

And it gets worse for Pinker’s case. According to the same graph, the following historical period, from the late sixteenth century to the present, is characterized by three huge spikes in the level of violence. The first spike, from the late sixteenth century until the Westphalian Peace in 1648, is largely associated with the Thirty Years’ War; the second, from the late eighteenth century until 1815 and somewhat less steep than the first, is associated with the French Revolution and the Napoleonic Wars; and the third and greatest spike, from 1914–45, is associated with the twentieth century’s two world wars. As well, for all intermediate periods the level of violence remained well above that of medieval times, a

level that was only reached again three centuries later, during the period from 1815–1914 and again during the post–World War II era. All in all, then, the record for postmedieval Europe in terms of violence appears rather depressive. And yet the entire period, from the late sixteenth century until today, is the era of states, which Pinker considers the driving forces of a “civilizing process.”

Pinker associates the first drastic spike in violence with religion and the “Wars of Religion.” In fact, however, they were wars to make states. Feudal kings and princes aspiring to the rank of absolute ruler made war to bring increasingly larger contiguous territories under their supreme control. In this, they took advantage of the recent split within Latin Christendom between Catholics and Protestants, and it was they who actually invented the term “Wars of Religion”—if only to deceive and hide their real purpose of state making, which had little if anything to do with religion. The second spike marks the turning point from monarchic to democratic states and was the result of Napoleonic France using war in the attempt to establish hegemony over all of continental Europe. And the third and most drastic spike in the level of violence marks the beginning of the era of full-fledged democracy and is the result of Britain and the USA going to war to establish world hegemony.

In his interpretation of these data, Pinker tries to make the best out of (for him) a rather desperate looking case. For one, he points out with the help of a second graph (2011, 229), that throughout the entire period the number of violent conflicts declined as the number of states fell due to territorial consolidation and centralization. A greater number of small-scale wars with few casualties was replaced with a smaller number of large-scale wars with many casualties. This does not appear much like progress, however, especially if it is kept in mind that the rate of death in conflicts actually increased over the entire statist era, even if the number of violent conflicts declined. To rescue his progress thesis, then, Pinker advances two auxiliary arguments. First, he claims that the more lethal character of (less frequent) modern wars has nothing to do with states *per se* or with their territorial expansion and consolidation, but is instead the quasi-accidental result of advances in military technology (a thesis that he elsewhere rejects when he states that the development of technology is essentially “neutral” to the level of violence). And secondly, to add more weight to his thesis about the decline in the frequency of war (but



*not*, to emphasize again, the decline of the war-related death rate!), he points out that the process of political centralization, i.e., the increasingly smaller number of states with increasingly larger territories was *not* accompanied by a corresponding increase in civil or intrastate war, and hence represents a *real civilizing gain* (and not just an accounting trick). Essentially, according to Pinker, with each political centralization, and ultimately the establishment of a world state, the likelihood of war declines and ultimately disappears, along with a parallel decline in and disappearance of civil war. In short: states civilize and a world state civilizes best. Or in reverse: each secession decivilizes and complete freedom of secession decivilizes most.

Economic logic (praxeology) dictates a very different interpretation of all this, however. States are not spontaneous voluntary associations. They are the result of war. And the existence of states increases the likelihood of further wars, because under statist conditions the cost of war making must no longer be borne privately, but can at least partially be externalized onto innocent third parties. That the number of wars then declines as the number of states falls and that there can be no interstate war once the number of States has been reduced to a single world state is not much more than a definitional truth. Even if less frequent, however, the further advanced the process of political centralization and territorial consolidation, i.e., the closer to the ultimate statist goal of a world state, the more lethal such wars will become.

Nor can the institution of a world state deliver what Pinker promises. True, there can then be no interstate wars, by definition. For the sake of argument, we may even concede that the frequency and the casualty rate of internal, civil wars may decline as well (although the empirical evidence for this appears increasingly doubtful). In any case, however, what can be safely predicted about the consequences of a world state is this: with the removal of all interstate competition, i.e., with the replacement of a multitude of different territorial jurisdictions with different laws, customs, and tax and regulation structures by a single worldwide uniform jurisdiction, any possibility of voting with one's feet against a state and its laws is removed as well. Hence, a fundamentally important constraint on the growth and expansion of state power is gone, and the cost of the production of justice (or whatever it is that the state claims to produce) will accordingly rise to unprecedented



heights, while its quality will reach a new low. There may or may not be less of the broken bones–type violence à la Pinker, but in any case there will be more “refined” violence, i.e., property rights violations that do not count as violence to Pinker, than ever before; and the world-state society, then, will look more like the stable concentration camp scenario mentioned earlier than anything resembling a free, convivial social order.

Stripped down to its bare bones Pinker’s central argument amounts to a string of logical absurdities: according to him, tribal societies somehow “merge” to form small states and small states successively “coalesce” into increasingly larger states. If this “merging” and “coalescing” were, as the terms insinuate, a spontaneous and voluntary matter, however, the result, by definition, would not be a state but an anarchic social order composed of and governed by free membership associations. If, on the other hand, this “merging” and “coalescing” results instead in a state, it cannot be a spontaneous and voluntary matter but must, of logical necessity, involve violence and war (in that any territorial monopolization necessitates the violently enforced prohibition of “free entry”). But how, then, can anyone such as Pinker, who wants to reduce violence and war to a minimum and possibly eliminate it entirely, prefer a social system, any system, that *necessitates* the exercise of violence and war to a system that does *not* do so? Answer: only in throwing out all of logic and claiming that the relationship between the state and violence and war is *not* a logically necessary one, but a merely contingent, empirical relationship instead—that just as it is indeed an entirely *empirical* matter whether or not *you or I* commit violence and go to war, so it is also a purely contingent, empirical matter whether or not a *state* commits violence and goes to war.

Thus, according to Pinker, World War II with all its atrocities, for instance, had essentially nothing to do with the institution of states but was a historical fluke, owing to the evildoings of a single, deranged individual, Adolf Hitler. Indeed, unbelievably and seemingly without blushing (although that is admittedly difficult to tell from a written text) Pinker approvingly quotes historian John Keegan saying that “only one European really wanted war—Adolf Hitler.” (2011, 208) Question: But how much evil can a single, deranged individual do without the institution of a centralized state? How much evil could Hitler have done within

the framework of a stateless society such as those of the Middle Ages? Would he have become a great lord, a king, a bishop, or a Pope? Indeed, how much evil could he have done even within the framework of a thousand ministates, such as Liechtenstein, Monaco, or Singapore? Answer: not much, and certainly nothing comparable to the evils associated with World War II. “No Hitler, no Churchill, no Roosevelt, or no Stalin, then no war,” as Pinker would have it, holds *not*, then, but rather: “no highly centralized state, then no Hitler, Churchill, Roosevelt, or Stalin.” Remove the state, and they may have become a Jack the Ripper, a Charles Ponzi, or even harmless people, but not the mass-murdering monsters that we know them to have been. Institute the state, and you create, attract, and breed monsters.

In sum, then, Pinker’s attempt to rescue the Whig theory of history and demonstrate that we live in the best of all worlds turns out an utter failure. Indeed, one may even say that his book and its great commercial success is itself empirical proof of the contrary.

## REFERENCES

- Blankertz, Stefan . 2018. “Pinker versus Anarchy: Are Tyrants the Lesser Evil?” LewRockwell.com, May 10, 2018. [https://www.lewrockwell.com/2018/05/no\\_author/pinker-versus-anarchy-are-tyrants-the-lesser-evil/](https://www.lewrockwell.com/2018/05/no_author/pinker-versus-anarchy-are-tyrants-the-lesser-evil/).
- Cirillo, Pasquale, and Nassim Nicholas Taleb. [2017]. “The Decline of Violent Conflicts: What Do the Data Really Say?” Paper presented at Nobel Foundation Symposium 161, [2017]. <http://www.fooledbyrandomness.com/pinker.pdf>.
- Elias, Norbert. [1939] 1969. *The Civilizing Process*. Oxford: Blackwell.
- Fukuyama, Francis. 1992. *The End of History and the Last Man*. New York: Free Press.
- Gray, John. 2015. “John Gray: Steven Pinker Is Wrong about Violence and War.” *The Guardian*, Mar. 13, 2015. <https://www.theguardian.com/books/2015/mar/13/john-gray-steven-pinker-wrong-violence-war-declining>.
- Hayek, Friedrich A., ed. 1954. *Capitalism and the Historians*. Chicago: University of Chicago Press.
- Hoppe, Hans-Hermann. 2001. *Democracy: The God That Failed*. Oxford: Taylor and Francis.
- . 2014. *From Aristocracy to Monarchy to Democracy: A Tale of Moral and Economic Folly and Decay*. Auburn, Ala.: Ludwig von Mises Institute.
- . 2015. *A Short History of Man: Progress and Decline*. Auburn, Ala.: Ludwig von Mises Institute.

Kuhn, Thomas S. 1962. *The Structure of Scientific Revolutions*. Chicago: University of Chicago Press.

Pinker, Steven. 2011. *The Better Angels of Our Nature: Why Violence Has Declined*. New York: Viking Books.

———. 2018. *Enlightenment Now: The Case for Reason, Science, Humanism, and Progress*. New York: Viking.

## WHO SHOULD DECIDE WHAT GOES INTO A CAN OF TOMATOES? FOOD LAWS FROM A VOLUNTARYIST PERSPECTIVE

CARL WATNER

*ABSTRACT:* This paper recounts the history of food inspection from a voluntaryist perspective. In England and the United States, the efforts to achieve food safety have relied upon two main methods: education and legislation. Governments did nothing that could not be done on the free market (and in many cases was already being done). Books on how to test for adulterated products at home were published. Some manufacturers voluntarily observed the highest standards of sanitation and cleanliness in their manufacturing plants. Private commercial testing labs were established, and third-party certifications such as the Good Housekeeping Seal came into being. At the same time, we might ask: Why was not strict liability for causing sickness or death imposed upon manufacturers and retailers that sold foods or drugs? Where were the insurance companies that might have provided product liability insurance? To answer these questions, this article looks at the historical evolution of negligence, product liability, and tort law.

When I took over the operation of Inman Feed Mill in late 1987, none of the animal products that we processed and bagged were tagged. Cracked corn, whole corn, sweet feed, and chicken scratch all went out the loading door in plain, unmarked bags. The feed mill had been started in the early 1950s in a very rural area of upstate South Carolina, and most of its customers had face-to-face contact with the various owners. Never was there a doubt in the customer's mind about what they were getting. Feed bags were not sewn; pieces of string tied in the ubiquitous miller's

---

Carl Watner ([editor@voluntaryist.com](mailto:editor@voluntaryist.com)) is an independent scholar. This article appeared in *The Voluntaryist*, digital issue 192 at [voluntaryist.com](http://voluntaryist.com).



knot secured their contents. If there was a question, we only had to untie the bag, show the contents to the customer, or place it on the scale if somehow the customer doubted how many pounds he was buying. If there were federal feed and grain laws, there was no evidence of their enforcement. However, there were South Carolina Department of Agriculture regulations which mandated that statements of feed ingredients and analysis (of protein, fat, and fiber content) be placed on the bags. Due to very lax enforcement by state inspectors and the very local nature of our business, the tagging laws were not enforced until about 2015.

Why am I recounting this history? Because this was how most food and drugs for people were sold well into the late nineteenth and early twentieth centuries—no food labels; no statements of ingredients; no stated weight; no serving breakdowns of calories, fat, fiber, sugar, and protein; and no prescriptions required—not even for dangerous drugs. What first called my attention to this topic was a book by Deborah Blum titled *The Poison Squad: One Chemist's Single-Minded Crusade for Food Safety at the Turn of the Twentieth Century*. The Poison Squad consisted of young healthy men who volunteered as human guinea pigs to test the safety of additives, adulterants, and preservatives in foods sold for human consumption. It was an experimental program designed to test the toxicity of ingredients in food. It was begun in late 1902 by Harvey Wiley, who was chief chemist of the United States Department of Agriculture from 1882 to 1912. Wiley used the the Poison Squad's results and the publicity surrounding the publication of Upton Sinclair's *The Jungle* to promote the Pure Food and Drug Act, which was passed in 1906.

The purpose of this paper is to recount the history of food inspection from a voluntarist perspective. In England and the United States, the efforts to achieve food safety have relied upon two main methods: education and legislation (Whorton 2010, 156). I suppose one could argue that if education were sufficient and successful, legislation would be unnecessary, but we shall see how this argument worked out historically. But even if legislation were necessary, which I am not granting, governments did nothing that could not be done on the free market (and in many cases was already being done). Books on how to test for adulterated products at home were published. Some manufacturers voluntarily observed the highest standards of sanitation and cleanliness in their manufacturing plants and used

only the best ingredients in their products. . Private commercial testing labs were established, and third-party product certifications such as the Good Housekeeping Seal came into being. At the same time, we might ask: Why was not strict liability for causing sickness or death imposed upon manufacturers and retailers that sold foods or drugs? Where were the insurance companies that might have provided product liability insurance? To answer these questions requires a look at the historical evolution of negligence, product liability, and tort law.

As B. I. Smith (2013) has noted, “Legislation designed to prevent the sale of unsafe or unwholesome food represents one of the oldest forms of government” intervention in the marketplace. The English Assize of Bread and Ale, enacted during the reign of King John during the mid-1200s, contains one of the earliest references to food adulteration. Both in England and in British North America the establishment of public markets was usually a prerogative of city governments. The first meat inspection law in North America was enacted in New France (now Canada) in 1706 and required butchers to notify the authorities before animals were slaughtered (Institute of Medicine 1990). Municipal legislation covered everything from licensing vendors, mandating the use of just weights and measures, and “prohibitions on buying and selling outside the public market, prohibition on reselling, forestalling, and engrossing.” “In New York, unsound beef, pork, fish, or hides were to be destroyed by municipal officials by ‘casting them into the streams of the East or Hudson rivers,’” and in New Orleans, officials were authorized to throw diseased meat into the Mississippi. In 1765, Lord Mansfield upheld the existence of public market regulations by referring to “the need for the ‘preservation of order, and the prevention of irregular behavior’” (Novak 1996, 95–98).

In England, during much of the nineteenth century there were few regulations on the sale of adulterated foods and poisons. For example, arsenic—which is very similar in color and texture to white sugar, flour, or baking powder—was sold by grocers and an odd assortment of tradesmen and hucksters. “In short, anyone could sell” and anyone could buy. “Nothing more was expected of buyers than they must mind what they were buying.” The rule was *caveat emptor*. The burden of proof was on the buyer to be sure that his purchase caused him no harm. Since there was no statutory definition of a druggist or chemist, anyone could sell arsenic,

and people commonly purchased it for use as a rat killer. The British Pharmaceutical Society, founded in 1841, devoted much of its activity to “achieving a Parliamentary definition of the title ‘Chemist and Druggist’” and agitated for a law that would permit only those vendors who met the legislative requirements to traffic in drugs and poisons (Whorton 2010, 113–14, 135).

As a result, arsenic was often implicated in both accidental and purposeful deaths. Unhappy wives often used arsenic to poison their husbands, and even if they were indicted for manslaughter, “juries were reluctant to convict unless it could be demonstrated that the suspect had actually bought some of the poison.” People who caused accidental poisoning were usually not punished at all. Between 1837 and 1839, over five hundred cases of accidental poisoning by arsenic were reported. Deaths continued to mount during the 1840s. A classic example of a possible poisoning was that of a little girl in 1851 who was sent to a rural grocer to get “tea, sugar, flour, currants, red herrings, and two ounces of arsenic to deal with rats.” Absent labeling, how was her mother to know which was arsenic? Parliament finally passed An Act to Regulate the Sale of Arsenic in June 1851, which required records be made of every sale and mandated that any quantity of less than ten pounds be colored so that it could not be confused with food ingredients (Whorton 2010, 114, 131, 133).

The law was often ignored by both buyers and sellers. Less than three months after its passage a woman used uncolored arsenic to kill her husband. She was executed, and the two pharmacists who sold her the arsenic were fined. Violations of the law continued, finally culminating in a ghastly tragedy in Bradford, Yorkshire, on October 25, 1858, when a confectioner’s assistant requested a quantity of plaster of Paris, which was supposed to be used as an adulterant in the candy they were making, but was mistakenly sold uncolored arsenic. Despite the fact that one worker became sick while mixing the arsenic into the peppermint lozenges that he was preparing and that “the candies took an unusually long time to dry and were darker in color than usual,” the confectioner did not realize there was a problem. He sold forty pounds of the lozenges to a vendor at Bradford’s Saturday market and mixed the remainder into an assortment of other sweets, known as a Scotch mixture. In less than three days, twenty-one people had died from eating the candy and over seventy-eight were known to be seriously ill. The

confectioner and the chemist and his apprentice, who had sold the arsenic, were arrested and indicted for manslaughter. “When the trial was held...the jury could find no violation of the law. The episode was simply a highly regrettable accident” even though it was a case of gross negligence (Whorton 2010, 135–37, 139, 163).

Similar incidents of death and sickness due to food poisoning occurred in the United States. In his 1853 book *The Milk Trade in New York and Vicinity*, John Mullaly “included reports from frustrated physicians that thousands of children were killed in New York City every year by dirty (bacteria-laden) and deliberately tainted milk,” which was commonly known as “swill” milk. Thomas Hoskins, a Boston physician, published his *What We Eat: An Account of the Most Common Adulterations of Food and Drink with Simple Tests by Which Many of Them May Be Detected* in 1861. In an 1879 speech before the American Social Science Public Health Association, George Thorndike Angell “recited a disgusting list of commercially sold foods that included diseased and parasite-ridden meat...that poison and cheat the consumer.” Jesse Battershall, a New York chemist, published his book *Food Adulteration and Its Detection* in 1887, in which he decried “candy laced with poisonous metallic dyes, mostly arsenic and lead chromate,” and “warned of cyanide, indigo, soapstone, gypsum, sand, and turmeric in teas” (Blum 2018, 2, 15, 29).

During the Spanish-American War, the US Army contracted with Swift, Armour, and Morris, three of the biggest meat-packing companies in Chicago, to supply refrigerated and canned meat provisions to soldiers in Cuba and the Philippines. Much of the meat arriving in Cuba “was found to be so poorly preserved, chemically adulterated, and/or spoiled that it was toxic and dangerous to consume.” After the war a court of inquiry was held to investigate these problems, and Commanding General Nelson A. Miles of the American forces in Cuba referred to the refrigerated products provided to the army as “embalmed beef.” General Charles P. Eagan, commissary general, defended his procurement practices and in the end “there were no official findings of large-scale trouble with meat supplies” (“United States Army Beef Scandal” 2020).

The “embalmed beef scandal” was just one of many events that gave impetus to the passage of new federal laws. Muckrakers at the beginning of the twentieth century highlighted the problems



they saw in the Chicago meat-packing industry. The publication of Upton Sinclair's *The Jungle* as a magazine series in 1905, and then its publication as a book in early 1906, brought pressure to bear on President Theodore Roosevelt to push for the adoption of the Meat Inspection Act and the Pure Food and Drug Act. Prior to their passage on June 30, 1906, there had been a number of what can only be called "political inspections" of the meat processors in Chicago. One inspection supported the the meat companies' claims that their processing facilities and methods were sufficiently up to industry standards, while another confirmed the descriptions in *The Jungle*. On March 10, 1906, investigators sent by Secretary of Agriculture James Wilson arrived in Chicago to report on the conditions in the packing houses. They held Sinclair responsible for "willful and deliberate misrepresentation of fact" (Schlosser 2006). In their initial report a month later, they "concluded that meat inspection could and should be improved, but (they) also refuted most of the charges made in...*The Jungle*" (Ogle 2013,78). Finally, in a June 8, 1906, letter to the president transmitting the reports of the Agricultural Department's committee's inspection of the stock yards, the inspectors stated that they believed that Sinclair had "selected the worst possible conditions which could be found in any establishment as typical of the general conditions existing in the Chicago abattoirs, and...willfully closed his eyes to establishments where excellent conditions prevail" (US House of Representatives 1906, 349). By early May 1906, Roosevelt had already decided to dispatch Commissioner of Labor Charles P. Neill and Assistant Secretary of the Treasury James B. Reynolds to Chicago for further investigation. This time "Roosevelt's inspectors found stockyard conditions comparable to those Sinclair had portrayed and told of rooms reeking with filth, of walls, floors, and pillars caked with offal, dried blood, and flesh of unspeakable uncleanness" (Goodwin 2013, 462).

The Meat Inspection Act of 1906 amended the earlier Meat Inspection Acts of 1890, 1891, and 1895, which had provided for "inspection of slaughtered animals and meat products but (which) had proven ineffective in regulating many unsafe and unsanitary practices" (Rouse 2020). The new law provided for the inspection of "all cattle, swine, sheep, goats, and horses both before and after they were slaughtered for human consumption," as well as establishing new sanitary standards and ongoing monitoring and inspection of all slaughter and processing operations (ibid.) The Pure Food and Drug

Act of 1906, on the other hand, banned all “foreign and interstate traffic in adulterated or mislabeled food and drug products” (“Pure Food and Drug Act” 2020). It was primarily a “truth in labeling law” that for the first time in federal legislation defined “misbranding” and “adulteration” by referring to the standards set by the US Pharmacopoeia and the National Formulary. As Harvey Wiley, chief chemist and the chief proponent of the new law put it, “The real evil of food adulteration (and mislabeling) was the deception of the consumer” (Blum 2018, 103).

Despite these laws a new tragedy occurred some three decades later. During September and October of 1937, more than one hundred people in fifteen states died after having taken the Elixir Sulfanilamide, which had been formulated by the chief chemist of the S. E. Massengill Company of Bristol, Tennessee. Sulfanilamide had been used in powder and tablet form to treat streptococcal infections. When it was found that it could be dissolved in diethylene glycol, it was marketed in liquid form after being tested for flavor, appearance, and fragrance. It was not, however, tested for toxicity, and the formulating chemist failed to realize that diethylene glycol was a deadly poison. After the product had been distributed, reports came back of deaths and sickness. The Food and Drug Administration then attempted to retrieve all of the product that had been sold. “Although selling toxic drugs was undoubtedly bad for business and could damage a firm’s reputation, it was not illegal. In 1937 the law did not prohibit sale of dangerous, untested, or poisonous drugs.” The unsold and unused elixir was seized, because it was misbranded, not because it was poisonous. According to the FDA, “elixir” implied that the product was in an alcoholic solution, whereas diethylene glycol contained no alcohol. “If the product had been called a ‘solution’ instead of an ‘elixir’ no charge of violating the law could have been made.” Dr. Samuel Evans Massengill, the owner of the firm, refused to accept any responsibility: “My chemists and I deeply regret the fatal results, but there was no error in the manufacture of the product. We have been supplying a legitimate professional demand and not once could have foreseen the unlooked-for results. I do not feel there was any responsibility on our part.” The company paid a fine of \$ 26,100 for mislabeling and the commissioner of the FDA at that time, Walter Campbell, “pointed out how the inadequacy of the law had contributed to the disaster.... [T]hen citing other harmful products, [he] announced that ‘The

only remedy for such a situation is the enactment by Congress of an adequate and comprehensive national Food and Drug Act," which came about the following year (Ballentine 1981).

How would these tragedies have been handled on the free market? No one can say for sure that they could have been avoided, because there are no guarantees in this world. Would the free market provide more equitable, practical, and moral solutions to the problems of swindling and cheating that have been part of human history? We do not maintain that market solutions would solve all of humanity's problems, but neither can we assume that because markets and other social mechanisms produce imperfect results that a central monopolistic authority will produce better ones. "Markets are desirable not because they lead smoothly to improved knowledge and better coordination, but because they provide a process for learning from our mistakes and the incentives to correct them" (Knych and Horwitz 2011, 33). As voluntaryists, we conclude from examining human nature, human incentives, and human history that a stateless society would not be perfect but would be a more moral and practical way of dealing with human aggression than reliance on a centralized, monopolized institution. Governments require taxes; taxes require coercion; coercion necessitates the violation of persons and properties, hardly moral or practical alternatives. Furthermore, we can say that government regulation usually gives consumers a false sense of security and reduces their incentive to do their own checking and acquire information about what they are buying. Government inspection and meeting government standards tend to preempt nongovernmental forms of inspection, such as product testing by third parties.

It is safe to say that a thorough application of the libertarian common law legal code and common sense would go far in preventing the kinds of catastrophes described here. The first thing to recognize is that in the absence of the state every manufacturer and every retailer would have strict liability for the products they sold. This incentive would induce them to exercise extreme care. As we have seen, particularly in the Massengill episode, neither the manufacturer nor any officials in the government's Food and Drug Administration recognized that they had any personal responsibility for what happened. So long as they met the technical requirements of the statutory law, they were not liable for the deaths caused by sulfanilamide. As Rothbard has

pointed out in *Power and Market*, with government regulation and reliance on government experts there is not the same measure of success or failure as when the individual relies on competitive market experts. “On the market, individuals tend to patronize those experts whose advice proves most successful. Good doctors or lawyers reap rewards on the free market, while the poor ones fail; the privately hired expert tends to flourish in proportion to his demonstrated ability” (Rothbard 1970, 17).

Where governments exist and government regulations and government inspections fail to prevent something like the sulfanilamide tragedy, what do the government regulators do? They call for new and more encompassing regulations. It is comparable to a successful terrorist attack today being used to call for stricter gun regulations and new antiterrorist laws. This is a perfect example of one government intervention leading to another.

How would the disasters described here be handled under the libertarian legal code? As Rothbard has written, “The free-market method of dealing, say, with the collapse of a building killing several persons is to” hold the owner of the building responsible for manslaughter.” Furthermore “a mis-statement of ingredients is a breach of contract—the customer is not getting what the seller states in his product.” This is “taking someone else’s property under false pretenses,” and therefore “under...the legal code of the free society which would prohibit all invasions of persons and property” the perpetrator would become liable. If the adulterated product injures the health of the buyer by substituting a toxic ingredient, the seller is further liable for prosecution for injuring and assaulting the person of the buyer (Rothbard 1970, 34).

Even with the existence of government, meat packers and manufacturers such as Armour and Swift still had an incentive to maintain quality and prevent food poisonings and deaths caused by their products. But they also had an incentive to use the fact that their products met government minimum standards as a shield against potential liability. As one commentator put it, “the responsible packer cannot afford to put upon the market meat virulently diseased. Government inspection, however...permits the packer to sell under sanction of law questionable products as first class” (US House of Representatives 1906, 345). This confirms Rothbard’s analysis that setting quality standards has an injurious effect upon the market:

Thus, the government defines “bread” as being of a certain composition. This is supposed to be a safeguard against “adulteration,” but in fact it prohibits *improvement*. If the government defines a product in a certain way, it prohibits change. A change, to be accepted by consumers, has to be an improvement, either absolutely or in the form of a lower price. Yet it may take a long time, if not forever, to persuade the government bureaucracy to change the requirements. In the meantime, competition is injured, and technological improvements are blocked. “Quality” standards, by shifting decisions about quality from the consumers to arbitrary government boards, impose rigidities and monopolization on the economic system. (Rothbard 1970, 18, 34)

Even in the face of government inspection and regulation, there is nothing to keep reputable producers from trying to exceed government standards. In England, Crosse and Blackwell, purveyors of food to the royalty, began using purity as a general marketing device in the mid-1850s. (Wilson, 141–143) Henry J. Heinz’s company, which is still in existence today, is another example. “Between 1865 and 1880, the H. J. Heinz Company had established a reputation for high-quality condiments.” Heinz predicated his business upon his belief that a “wide market awaited the manufacturer of food products who set purity and quality above everything else.” All of the company’s marketing and advertising efforts were focused on “Pure Food for the Table” and maintaining an unblemished brand record. In 1890, Heinz opened his factories to the public and invited his customers to come and inspect his operation for themselves. “Within a decade, more than 20,000 people per year were touring (his) manufacturing facilities.” As early as 1901, Heinz became one of the first companies to hire chemists and establish a quality control department. Nevertheless, Heinz was one of the few large-scale producers that supported government legislation covering “food production, labeling, and sales” (Koehn 2001, 72–86). As one historian has noted:

Heinz’s involvement in the campaign for food regulation grew out of his commitment to producing safe, healthy food. But he also had strategic reasons for championing federal regulation. Heinz believed that such legislation would help increase consumers’ confidence in processed foods, legitimating the broader industry and guaranteeing its survival. Stringent guidelines for food manufacturing and labeling, he believed, would enhance the reputation of the overall (food processing) business. Such guidelines might also focus public attention on his brand’s core attributes of purity and quality. Heinz’s standards for ingredients, production processes, and cleanliness were among the highest in the industry. The entrepreneur welcomed another opportunity to promote his products and his company’s identity.

From Heinz's perspective, there were other advantages to endorsing federal regulation. Government-imposed standards for food manufacturing, labeling, and distribution would alter the terms of competition in the industry, forcing some companies to change their operating policies, usually at higher cost. Other manufacturers would be driven out of business. Both possibilities, Heinz realized, would enhance the Heinz Company's competitive position. (Koehn 2001, 86–87)

So, there were definitely mixed motives at work among those who supported or opposed the passage of government legislation governing food inspection. The problem is that given the existence of government, opposition to specific legislation is exactly that. One can support it, or call for its amendment, but in either case one is in effect legitimizing the government. True opposition on voluntaryist grounds would be to oppose the government itself, calling for its abandonment rather than trying to challenge it on grounds that certain of its regulations are too stringent or inadequate.

What historical elements can we discern at work that give us some idea of how the free market in food safety might work were there no government? As we have seen, there were books written about food adulteration and how to detect adulterants. The *What to Eat Magazine* began publishing in August 1896 and made consumers aware of the importance of food safety. In England, the names of manufacturers and of their toxic food products were made known to the public via books and lectures (Whorton 2010, 148, 151). During the nineteenth century, "Canada's Hiram Walker Company, producer of Canadian Club blended whiskey, reacted to fakery in the U.S. market by hiring detectives to hunt cheats. The company took out newspaper advertisements listing the perpetrators or had names listed on billboard posters proclaiming 'A Swindle, These People Sell Bogus Liquors.'" From the company's perspective this was more effective than instituting legal proceedings against those who copied their blend. Other nineteenth-century examples include a variety of clubs such as the General Federation of Women's Clubs, the National Consumers League, and the Woman's Christian Temperance Union (which opposed the use of cocaine in Coca-Cola), all of which could have mobilized consumer boycotts that would have pressured producers to change their ways (*ibid.*, 148, 151, 157). Today, other professionals and their associations, such as the National Association of Nutrition Professionals, would certainly promote healthy foods. Health insurance companies, who have a proprietary interest

in seeing that their customers come to no harm, would want to alert them to untested, potentially dangerous, and toxic food and chemicals (Blum 2018, 50, 114, 299).

The *Good Housekeeping* magazine was a commercial enterprise sustained by subscription and advertising revenues. It was first published in 1885, and by 1912, when Harvey Wiley (of Poison Squad notoriety) resigned his post at the Department of Agriculture and became director of the Good Housekeeping Bureau of Foods, Sanitation, and Health, it had over four hundred thousand subscribers (Blum 2018, 272). By 1925 it had over 1.5 million subscribers (Anderson 1958, 24). Its Experiment Station was started in 1900 and was the predecessor of the Good Housekeeping Research Institute, which was established in 1910. "In 1909, the magazine established the Good Housekeeping Seal of Approval," which continues to this day. Consumers' Research was started in 1929, and its spinoff, Consumers Union, was organized in 1936. Both were devoted to publishing "comparative test results on brand-name products and publicized deceptive advertising claims ("Consumers' Research" 2020). The principals involved in these organizations published a best-selling book in 1933 titled *100,000,000 Guinea Pigs* in which they pointed out that "pure food laws do not protect you" (Blum 2018, 285). The Non-GMO Verified Project is another example of a consumer education organization. Begun in 2007 by two food retailers who wanted consumers to know that their products contained no genetically modified ingredients, its first official food label was applied to tea products in 2012. A more recent effort can be found in The Moms Across America's Gold Standard seal program, which began in late 2019. It "is a multi-tiered level of verification that can be achieved only by food and supplement brands that" meet the most stringent standards (Temple 2019). There can be problems with corruption and violation of trust within such private groups, but this same criticism applies equally to government organizations, which are supported by taxes and even more prone to be influenced by lobbyists.

As we ponder this history, several overriding questions remain. Whether we champion the free market or the state, why did these abuses happen? Why weren't manufacturers and retailers held responsible? Where were the insurance companies that could have provided some measure of protection to both the consumers and manufacturers? It certainly is a criticism of both the common law



and government legislation that people who were readily known and identified were not held responsible for their actions, which caused death and harm to others. The bottom-line answer is that “during the 19th century, manufacturers had no liability for the goods they made. The liability of manufacturers for the losses suffered by consumers took several centuries to be established” in both common law and statutory legislation ( “Example of the Development of Court Made Law” n.d.).

There are two aspects of the common law with which we need to be concerned. The common law concerns itself with contracts, under which two parties engage in a transaction in which the terms are normally outlined in advance and evidenced by a written or oral agreement. Fraud, which is intentional deception, usually occurs within the context of a contract (“Fraud” 2020). Torts, which are “wrongdoings not arising out of contractual obligations” evolved out of the common law of prosecutions in eighteenth-century England ( “The Historical Development of Law of Torts in England” 2017, introduction). Negligence is a form of tort. “A person who is negligent does not intend to cause harm” but is still held responsible, “because their careless actions injured someone” (FindLaw 2018a). Most of the deaths we have discussed here are examples of torts. The people who died were not intentionally poisoned but rather died due to accidents caused by carelessness.

As Rothbard explains,

In the free economy, there would be ample means to obtain redress for direct injuries or fraudulent “adulteration.”...If a man is sold adulterated food, then clearly the seller has committed fraud, violating his contract to sell the food. Thus, if A sells B breakfast food, and it turns out to be straw, A has committed an illegal act of fraud by telling B he is selling him food, while actually selling straw....The legal code of the free society...would prohibit all invasions of persons and property.... [I]f a man simply sells what he calls “bread,” it must meet the common definition of bread held by consumers, and not some arbitrary specification. However, if he specifies the composition on the loaf, he is liable for...breaching a contract—taking someone else’s property under false pretenses. (Rothbard 1970, 19)

Under the common law, as it was interpreted throughout most of the nineteenth century, “a plaintiff could not recover for a defendant’s negligent production or distribution of a harmful instrumentality unless the two were in privity of contract” (“Common Law” 2020). Under this doctrine, there was no privity between a



consumer who bought a product from a retailer and the manufacturer that produced it. An 1837 case in England, well-known to law students, illustrates how privity was originally seen.

A man purchased a gun from a gun maker, warranted to be safe. The man's son used the gun and one of the barrels exploded, resulting in the mutilation of the son's hand. As the son did not buy the gun there was no remedy in contract law. The court was asked to consider if the son could sue the gun seller or manufacturer, and if so what for. The Court said he could not sue because 1) in contract the son did not buy the gun and 2) could not sue for negligence because negligence did not exist in law. ("Example of the Development of Court Made Law" n.d.)

In another English case five years later, the court "recognized that there would be 'absurd and outrageous consequences' if an injured person could sue any person peripherally involved, and knew it had to draw the line somewhere.... The Court looked to the contractual relationships, and held that liability would only flow as far as the person in immediate contract ('privity') with the negligent party." An early exception to the privity rule is found in a New York State case of 1852. Here it was held that mislabeling a potentially poisonous herb which could "put human life in imminent danger" was reason enough to breach the privity rule, especially since the herb was intended to be sold through a dealer. In an English case of 1883, a ship's painter was injured when the platform (slung over the side of the ship) on which he was standing collapsed. The platform was faulty but there was no contract between the injured painter and the company that built it. The court ruled that the builder of the platform owed a duty to whomsoever used it, regardless of whether there was privity between them. As the court opined, "It is undoubted, however, that there may be the obligation of such a duty from one person to another although there is no contract between them with regard to such duty" ("Common Law" 2020).

Nevertheless, the privity rule survived. In 1915, a federal appeals court for the New York region held that "a car owner could not recover for injuries (caused by) a defective wheel." The car's owner's contract was with the automobile dealer, not with the manufacturer. The court concluded that manufacturers were "not liable to third parties for injuries caused by them, except in cases of willful injury or fraud" ("Common Law" 2020). Finally, in 1932, the English courts recognized that third parties had the right to seek damages even if they had no direct dealings with

the manufacturer of defective goods. A new rule of law, known as the duty of care, was enunciated. “The new law placed on the manufacturer a direct duty of care (due) to the consumer, not just the purchaser.” The ultimate consumer—“the person for whom the goods were intended”—was now protected under the law of negligence even though there was no contract between the end user and the producer of the product (“Example of the Development of Court Made Law” n.d.). Thus the core concept of negligence as it has developed in English and American law is that “people should exercise reasonable care in their actions, by taking account of the potential harm they might foreseeably cause to other people or their property” (“Negligence” 2020).

So, to return to our question: where were the insurance companies? The answer must be that for the most part, until the development of product liability, implied warranty, and negligence laws, there was nothing for the insurance companies to insure. However, it is clear from the general role that insurance companies would play in a free society that they would have a very significant impact on assuring food safety and setting requirements which their insureds would have to meet in order to maintain product liability coverage.

It is interesting to see how recent federal laws were applied to those responsible for a deadly outbreak of salmonella poisoning that occurred in 2008 and 2009. Executives and owners of the Peanut Corporation of America knowingly ordered that tainted peanut butter be shipped out to their distributors with the result that nine people died and at least 714 others were sickened. Here are excerpts from a CNN report: “Food safety advocates said the trial was groundbreaking because it’s so rare corporate executives are held accountable in court for bacteria in food. Never before had a jury heard a criminal case in which a corporate chief faced federal felony charges for knowingly shipping out food containing salmonella.” (Basu 2014) “Stewart Parnell (one of the owners) and his co-defendants were not on trial for poisoning people or causing any deaths stemming from the outbreak, and prosecutors did not mention these deaths to the jury” (ibid.). In other words, the perpetrators were still not held responsible for the death and sickness caused by their bad product. This was little different from the Bradford, Yorkshire, case 150 years ago, where the claim was that “no law was violated” or from the 1937 Massengill tragedy, where the most that could be claimed was a case of mislabeling.

Would the libertarian legal code be more robust in response to such events? All we can hope is that it would be so.

Who is responsible for the foods that consumers put into their mouths, the market or the government, the buyer or the seller? As one consumer advocate has concluded, “government intervention to stop bad food has always come later than it should; and it has never been adequate to the problem” (Wilson 2008, 326–27). “Who is right? Who can say?” (Wilson 2008, 247) Paraphrasing Ayn Rand: Who decides what is the right way to make an automobile? Her answer was: “any man who cares to acquire the appropriate knowledge and to judge, at and for his own risk and sake.” So, to return to the question posed in our title: Who should decide what goes into a can of tomatoes? (Ogle 2013, 67) The answer is relatively simple: the owner of the can, the owner of the tomatoes, the insurance company that insures them, and the person who acquires the appropriate knowledge as to what is safe and is not safe, and is willing to take the responsibility for that decision (Rand 1990). Additionally, it is up to us as individual consumers to “do what is in our power to prevent ourselves and our families” from being cheated and poisoned. “Buy fresh foods, in whole form. Buy organic, where possible. Buy food from someone you can trust.... Cook it yourself.... Above all, trust your own senses” (Wilson 2008, 326–27).

## REFERENCES

- Anderson, Oscar E. Jr. 1958. *The Health of a Nation*, Chicago: University of Chicago Press.
- Ballentine, Carol. 1981. “The Taste of Raspberries, Taste of Death: The 1937 Elixir Sulfanilamide Incident.” *FDA Consumer Magazine*, June 1981. [www.fda.gov/media/110479/download](http://www.fda.gov/media/110479/download).
- Basu, Moni. 2014. “Unprecedented Verdict: Peanut Executive Guilty in Deadly Salmonella Outbreak.” CNN. Updated Sept. 20, 2014. edition. [cn.com/2014/09/19/us/peanut-butter-salmonella-trial/index.html](http://cn.com/2014/09/19/us/peanut-butter-salmonella-trial/index.html).
- Blum, Deborah. 2018. *The Poison Squad: One Chemist’s Single-Minded Crusade for Food Safety at the Turn of the Twentieth Century*. New York: Penguin Press.
- “Example of the Development of Court Made Law.” n.d. University of Western Australia Law School. Accessed June 16, 2020. [http://www.law.uwa.edu.au/\\_\\_data/assets/pdf\\_file/0008/1838186/Example\\_Development-of-law-negligence.pdf](http://www.law.uwa.edu.au/__data/assets/pdf_file/0008/1838186/Example_Development-of-law-negligence.pdf)
- FindLaw. 2018a. “Intentional vs. Negligent Torts.” Torts and Personal Injuries. Updated Dec. 6, 2018. <https://injury.findlaw>.

com/torts-and-personal-injuries/intentional-vs-negligent-torts.html#:~:text=A%20key%20difference%20between%20an,their%20careless%20actions%20injured%20someone..

———. 2018b. “Product Liability Law: Some Legal Background.” Product Liability. Updated Dec. 5, 2018. <https://injury.findlaw.com/product-liability/product-liability-background.html>.

Good Housekeeping Institute. n.d. “The History of the Good Housekeeping Institute.” Good Housekeeping (website). Accessed June 16, 2020. [www.goodhousekeeping.com/institute/about-the-institute/a17940/good-housekeeping-institute-timeline/](http://www.goodhousekeeping.com/institute/about-the-institute/a17940/good-housekeeping-institute-timeline/).

Goodwin, Doris Kearns. 2013. *The Bully Pulpit*. New York: Simon Schuster.

“The Historical Development of Law of Torts in England.” 2017. UKEssays. Apr. 27, 2017. [www.ukessays.com/essays/history/the-historical-development-of-tort-law.php](http://www.ukessays.com/essays/history/the-historical-development-of-tort-law.php).

House of Representatives, United States. 1906. *Hearings before the Committee on Agriculture*. Washington, D.C.: Government Printing Office.

Institute of Medicine. 1990. “Introduction and Historical Review of Meat Inspection.” Chap. 2 of *Cattle Inspection*. Washington, D.C.: National Academies Press. <https://doi.org/10.17226/1588>.

Jones, Ian F. 2000. “Arsenic and the Bradford Poisonings of 1858,” *The Pharmaceutical Journal* 265, no. 7128 : 938–39. [www.pharmaceutical-journal.com/news-and-analysis/features/arsenic-and-the-bradford-poisonings-of-1858/20003896.article?firstPass=](http://www.pharmaceutical-journal.com/news-and-analysis/features/arsenic-and-the-bradford-poisonings-of-1858/20003896.article?firstPass=).

Knych, Jack, and Steven Horwitz. 2011. “The Importance of Failure.” *The Freeman*, November 2011.

Koehn, Nancy. 2001. “H. J. Heinz, 1844-1919.” Pp. 45–90 in *Brand New: How Entrepreneurs Earned Consumers’ Trust*. Boston: Harvard Business School Press.

Linnekin, Baylen J. 2012. “The Food-Safety Fallacy: More Regulation Doesn’t Necessarily Make Food Safer,” *Northeastern University Law Journal* 4: 89–109.

Novak, William J. 1996. *The People’s Welfare: Law and Regulation in Nineteenth-Century America*. Chapel Hill: The University of North Carolina Press.

Ogle, Maureen. 2013. *In Meat We Trust*. Boston: Houghton Mifflin Harcourt.

Pasour, Ernest C. Jr. 1998. “We Can Do Better than Government Inspection of Meat.” Independent Institute, May 1, 1998. [www.independent.org/publications/article.asp?id=190](http://www.independent.org/publications/article.asp?id=190).

Rand, Ayn. 1990. “Who Is the Final Authority in Ethics?” In *The Voice of Reason: Essays in Objectivist Thought*, ed. Leonard Peikoff. New York: New American Library.

Reed, Lawrence W. 2013. “Of Meat and Myth.” Foundation for Economic Education, Feb. 8, 2013. [fee.org/articles/of-meat-and-myth/](http://fee.org/articles/of-meat-and-myth/).

- Rothbard, Murray. 1970. *Power and Market*. Menlo Park, Calif.: Institute for Humane Studies, Inc.
- Rouse, Kristen L. 2020. "Meat Inspection Act of 1906." In *Encyclopaedia Britannica Online*, Feb. 26, 2020. [www.britannica.com/topic/Meat-Inspection-Act](http://www.britannica.com/topic/Meat-Inspection-Act).
- Schlosser, Eric. 2006. "I Aimed for the Public's Heart, and...Hit It in the Stomach." *Chicago Tribune*, May 21, 2006. [www.chicagotribune.com/news/ct-xpm-2006-05-21-0605210414-story.html](http://www.chicagotribune.com/news/ct-xpm-2006-05-21-0605210414-story.html).
- Schmid, Ron. 2014. "Pasteurize or Certify: The Two Solutions to 'The Milk Problem.'" *Realmilk.com*. Updated Feb. 5, 2014. [realmilk.com/safety/pasteurize-or-certify/](http://realmilk.com/safety/pasteurize-or-certify/).
- Smith, B. I. 2013. "Food Legislation." In *The Canadian Encyclopedia*. Updated Dec. 16, 2013. [thecanadianencyclopedia.ca/index.php/en/article/food-legislation](http://thecanadianencyclopedia.ca/index.php/en/article/food-legislation).
- Temple, Anne. 2019. "Who Do You Trust with Your Family's Health?" Blog. Moms Across America, Dec. 19, 2019. [www.momsacrossamerica.com/trust?utm\\_campaign=who\\_do\\_you\\_trust&utm\\_medium=email&utm\\_source=yesmaam](http://www.momsacrossamerica.com/trust?utm_campaign=who_do_you_trust&utm_medium=email&utm_source=yesmaam).
- Tucker, Jeffrey A. 2014. "When Government Spreads Disease: The 1906 Meat Inspection Act." Foundation for Economic Education, Nov. 3, 2014. [fee.org/articles/when-government-spreads-disease-the-1906-meat-inspection-act/](http://fee.org/articles/when-government-spreads-disease-the-1906-meat-inspection-act/).
- Wikipedia contributors. 2020. "Common Law." Wikipedia. Last modified June 10, 2020. [en.wikipedia.org/wiki/Common\\_Law](https://en.wikipedia.org/wiki/Common_Law).
- . 2020. "Consumers' Research." Wikipedia. Last modified May 27, 2020. [en.wikipedia.org/wiki/Consumers%27\\_Research](https://en.wikipedia.org/wiki/Consumers%27_Research).
- . 2020. "Fraud." Wikipedia. Last modified June 15, 2020. [en.wikipedia.org/wiki/Fraud](https://en.wikipedia.org/wiki/Fraud).
- . 2020. "Good Housekeeping." Wikipedia. Last modified June 7, 2020. [en.wikipedia.org/wiki/Good\\_Housekeeping](https://en.wikipedia.org/wiki/Good_Housekeeping).
- . 2020. Negligence. Wikipedia. Last modified Apr. 12, 2020. [en.wikipedia.org/wiki/Negligence](https://en.wikipedia.org/wiki/Negligence).
- . 2020. "Peanut Corporation of America." Wikipedia. Last modified June 10, 2020. [en.wikipedia.org/wiki/Peanut\\_Corporation\\_of\\_America](https://en.wikipedia.org/wiki/Peanut_Corporation_of_America).
- . 2020. "Pure Food and Drug Act." Wikipedia. Last modified May 24, 2020. [en.wikipedia.org/wiki/Pure\\_Food\\_and\\_Drug\\_Act](https://en.wikipedia.org/wiki/Pure_Food_and_Drug_Act).
- . 2020. "United States Army Beef Scandal." Wikipedia. Last modified June 10, 2020. [en.wikipedia.org/wiki/United\\_States\\_Army\\_beef\\_scandal](https://en.wikipedia.org/wiki/United_States_Army_beef_scandal).
- Whorton, James C. 2010. *The Arsenic Century*. Oxford: Oxford University Press.
- Wilson, Bee. 2008. *Swindled: The Dark History of Food Fraud*. Princeton: Princeton University Press.

## A LIBERTARIAN ANALYSIS OF THE COVID-19 PANDEMIC

WALTER E. BLOCK

*ABSTRACT:* What is the correct analysis, from a libertarian point of view, of governmental action in the face of the coronavirus? Is the state justified in imposing quarantines or vaccines to cure this disease? These are the questions we shall be wrestling with in this paper.

*KEYWORDS:* infection, property rights, threats, disease, pandemic, COVID-19, contagion

### INTRODUCTION

The libertarian movement seems divided on this issue. There are those who are quarantine “hawks,” who favor heavy government involvement as a solution to the problem. They do so reluctantly, since this initiative amounts to, in effect, kidnapping or the jailing of innocents, albeit under house arrest, not prison. Then there are others who bitterly oppose this practice as a clear and present violation of rights. These are the “doves.” They favor individualism, initiative, decentralization; they are adamant about this position.

The thesis of the present paper is that both sides are wrong. The correct view is one of agnosticism, since the facts from which

---

Walter Block ([wblock@loyno.edu](mailto:wblock@loyno.edu)) is the Harold E. Wirth Eminent Scholar Endowed Chair in Economics at Loyola University, senior fellow of the Mises Institute, and regular columnist for [LewRockwell.com](http://LewRockwell.com).

I have greatly benefited from discussions on this subject with Philipp Bagus and Bernardo Ferrero, neither of whom agrees with my analysis.



either policy could be deduced are not known at present with enough certainty.

That is, agnosticism *qua* libertarianism. We each have our own prudential judgments. 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. Let me now give my own assessment of the coronavirus situation. But I do so not as a libertarian.

In my prudential judgment, the governments of most nations have wildly overestimated the threat to human life posed by this disease. They have counted as due to it the deaths of people who were aged and/or had other debilitating health threats such as cancer, heart disease, obesity, emphysema, diabetes, etc. That is, they have counted as deaths due to this virus those that were merely accompanied by it. They have used scare tactics to vastly inflate their power. COVID-19 does indeed pose a serious threat to the elderly and the seriously ill, but to virtually no one else. Therefore, the preservation of human life would be maximized if such people were to isolate themselves, or were forcibly subjected to house arrest. All those younger than sixty years old with no serious debilitations should be encouraged to lead normal lives forthwith.<sup>1</sup> Even those most vulnerable to this virus would benefit from such a public policy, as all too many of them cannot have their health issues other than the coronavirus attended to, because (1) hospitals have to too great an extent been given over to this one threat, and (2) with the economy in the doldrums, food supplies are endangered.

But these are mere matters of pragmatism, perhaps unworthy of even being mentioned in a journal devoted to deontological libertarian theory. In contrast, the libertarian question, the *only* libertarian consideration, concerns deontology, not utilitarianism. For this philosophy, saving lives is of no moment;<sup>2</sup> rather, the essence of libertarianism concerns rights, obligations, duties, the nonaggression principle (NAP), and private property rights. This

---

<sup>1</sup> I write on Apr. 25, 2020. The news of this disease changes practically every day, not to say every hour. Hence, these thoughts of mine are very hesitant, based as they are on a vast sea of ignorance, at least as I see matters.

<sup>2</sup> This sounds unduly callous. Those without a cast iron stomach may be comforted by the fact that if libertarian rights are without exception protected, more lives will be preserved than otherwise.

is the prism through which I will attempt to lay out an analysis of the pandemic. That will be the burden of section III.

In section I we consider, and reject, the views of the “doves,” those opposed to compulsory quarantines and vaccines; here, we ponder the views of Jörg Guido Hülsmann, Lew Rockwell, Philipp Bagus and Richard Epstein. Section II will be devoted to the hawks, strong supporters of these modalities, such as Walter Olson and Ilya Shapiro. I contend that they are equally mistaken. We conclude in section IV.

## I. DOVES

### HÜLSMANN

In the view of Jörg Guido Hülsmann (2020)<sup>3</sup> “I do not have any epidemiological knowledge or expertise.... My protest does not concern the medical assessment of the COVID-19 virus and of its propagation. It concerns the public policies designed to confront this problem.”

I find this problematic at the outset. With no “epidemiological knowledge or expertise” how is it even possible to criticize the public policies that have been set forth to confront the coronavirus? This reminds me of the statement “I’m not an economist, but...” and then the speaker holds forth, usually at great length, with his analysis of economic problems and how to solve them. I have never heard or read the analogous “I’m not a physicist, but....” But with Hülsmann we have “I’m not an epidemiologist, but...”<sup>4</sup>

Here is Hülsmann’s plan of attack: “these policies are based on one extraordinary claim and two fundamental errors.” Let us consider these three elements of his analysis, in the same order as he deals with them.

What is “the extraordinary claim”? It is “that war-time measures such as confinement and shut-downs of commercial activity are

---

<sup>3</sup> Unless otherwise specified, all citations of this scholar are of this one article of his.

<sup>4</sup> Hülsmann also says this of himself: “I do have some acquaintance with questions of social organisation, and I am also intimately familiar with scientific research and with the organisation of scientific research.” Again, I must part company with this scholar. Here he is vastly, and unduly, modest. In my opinion, the very opposite of “some acquaintance” is the case. He is a world-class intellect in this discipline.



justified by the objective to ‘save lives’ which are at risk because of the burgeoning coronavirus pandemic.”

If “extraordinary” means unusual, I cannot but agree with this author. These measures are indeed rare, uncommon, infrequent, and virtually unprecedented. However, if this word is interpreted as meaning “incorrect,” the evidence that Hülsmann adduces for his position is unconvincing.

Here is what he offers:

Now, in the traditional conception, the state is supposed to protect and promote the common good. Protecting the lives of the citizens might therefore, arguably, justify massive state interventions. But then the very first questions should be: how many lives are at stake? Government epidemiologists, in their most dire estimates—*the factual basis is still not solidly established*—have considered that about ten percent of the infected persons might be in need of hospital care and that a large part of those would die. It was also known, by mid-March already, that this mortal threat in the great majority of cases concerned very old people, the average COVID-19 victim being around 80 years of age.

The claim that wartime measures, which threaten the economic livelihood of the great majority of the population and also the lives of the poorest and most fragile people of the world economy—a point on which I will say more below—in order to save the lives of a few, most of whom are close to death anyway, is an extraordinary claim, to say the least. (emphasis added).

My skepticism arises from the fact that even Hülsmann concedes that “the factual basis is still not solidly established.” This, coupled with his disqualification of himself as an epidemiologist, is the very core of the matter. Hülsmann undertakes no empirical study of his own on the basis of which he can confidently claim anything about “ten percent” or “a large part of.” He is merely reporting what some experts have said on the matter. But other seemingly equally qualified specialists dispute these figures. The point is that nothing is really “known” at least not for sure.<sup>5</sup>

---

<sup>5</sup> Hülsmann offers telling *reductio ad absurdum*: “it would have been possible to ‘save lives’ by allocating a greater chunk of the government’s budget to state-run hospitals, by further reducing speed limits on highways, by increasing foreign aid to countries on the brink of starvation, by outlawing smoking, etc.” He decisively notes that abortion continues on a large scale with government approval; this policy is also incompatible with the self-styled desire of the authorities to “save lives.” Yes, he notes, “It is difficult to avoid the impression that the ‘war to save lives’ is a farce. The truth seems to be that the COVID19 crisis has been used

What is the first fundamental error that Hülsmann sees in the present situation? It is “to hold that... the experts know and all the rest of us should trust them and do as they tell us.” Here, he waxes eloquent, and brilliantly, about numerous errors made by experts. He avers:

The truth is that even the most brilliant academics and practitioners have in-depth knowledge only in a very narrow field; that they have no particular expertise when it comes to devising new practical solutions; and that their professional biases are likely to induce them into various errors when it comes to solving large-scale social problems such as the current pandemic. This is patent in my own discipline, economics, but not really different in other academic fields.

Yes, none of this can be denied. But from whom should we seek knowledge about whether reality is based on waves or particles? Physicists or the man in the street? Who is more likely to know whether Pluto should be considered a planet or not? Astronomers or bus drivers? This attack on the part of Hülsmann against experts can all too readily be interpreted as a critique of specialization and the division of labor. Joke: an economist was asked “How is your wife?” Came the answer, “Compared to what?” Precisely. Hülsmann cannot be gainsaid regarding his evisceration of expert epidemiologists. With whom are we to compare them with? Economists? Libertarians? Hardly.

Hülsmann is nothing less than exquisite in his evisceration of the experts. But he offers no evidence, none at all, calling into question the contention that quarantines will save lives.

What is the second fundamental error that Hülsmann sees?

It consists in thinking that civil and economic liberties are some sort of a consumers’ good – maybe even a luxury good – that can only be allowed and enjoyed in good times. When the going gets tough, the government needs to take over and all others should step back – into confinement, if necessary.

I hate to sound like a broken record, but, once against this author offers telling arguments against this contention, but only in the abstract. That is, he offers not a scintilla of evidence concerning the point at issue: will compulsory house arrest save lives, in this case,

---

to extend the powers of the state.” But this does not constitute evidence for his contention that the lockdowns will not save lives.

to a greater degree than lives will be lost due to economic disarray. Nor should he be obligated to do any such thing. Only epidemiologists and others of that ilk are qualified to do any such thing.

## ROCKWELL

Lew Rockwell (2020)<sup>6</sup> starts out on the right foot. No libertarian analysis that begins with the thoughts of Murray “Mr. Libertarian” Rothbard can be rejected out of hand. States this author:

the principles this great thinker taught us can help us answer questions about the coronavirus outbreak which trouble many of us. Would the US government be justified in imposing massive involuntary quarantines, in order to slow down the spread of disease? What about vaccines? If government scientists claim that they have discovered a vaccine for coronavirus, should we take it? If we refuse, can the government force us to do so? These are the sort of problems we can solve if we look to Murray for help.

Rockwell, further, properly concedes:

You might at first think that you can use the NAP to justify forced quarantines against the coronavirus. Suppose someone had a deadly disease that would always spread to others if he came in contact with them. Probably the person would want to isolate himself and not infect others, but if he refused, wouldn’t the people in danger be justified in isolating him? He is a threat to others, even if he doesn’t intend to harm them.

But this presumption can be defeated, avers Rockwell, citing Rothbard:

It is important to insist, however, that the threat of aggression be palpable, immediate, and direct, in short, that it be embodied in the initiation of an overt act. Any remote or indirect criterion—any “risk” or “threat”—is simply an excuse for invasive action by the supposed “defender” against the alleged “threat.” (Rothbard 1998, qtd. in Rockwell 2020)

In his book, Rothbard (1998, 238–39) later hammers home the point. He says,

Once one can use force against someone because of his “risky” activities, the sky is the limit, and there is virtually no limit to aggression against the rights of others. Once permit someone’s “fear” of the “risky” activities of others to lead to coercive action, then any tyranny becomes justified.

Rockwell continues:

---

<sup>6</sup> Unless otherwise specified, all citations of Rockwell are of his 2020 article.

When we apply what Murray says to the coronavirus situation, we can answer our question about forced quarantines. People are not threatening others with immediate death by contagion. Rather, if you have the disease, you might pass it on to others. Or you might not. What happens if someone gets the disease is also uncertain.

Here is where I depart not from Rothbard, but from Rockwell's application of Rothbard's entirely correct analysis to our present situation regarding COVID-19. Yes, the person infected with this virus will not die "immediately." But the "threat" itself can be "palpable, immediate, and direct." A approaches B and points a gun at him. A says to B: "Give me your money or I'll shoot you." Surely, a rights violation has now occurred; the libertarian nonaggression principle includes "mere" threats such as these, not only the initiation of physical violence. A has violated the rights of B even if he breaks off the encounter and runs away, leaving B with his wallet intact.

Suppose that I sneeze at you and you will certainly die as a result. However, the incubation period for this contagious disease is three to five days. Surely we can interpret this as "immediate" even though you still may have almost a week to live. Does Rockwell know that the coronavirus will not have this effect, at least upon some people? He does not. The elderly, those with weakened immune systems due to cancer, diabetes, obesity, pneumonia, or both appear to be particularly vulnerable. He offers no evidence in favor of ruling out this eventuality. Therefore, I conclude, Rockwell may not utilize Rothbard's (1998) keen analysis in his application to the present pandemic.

If we extrapolate from Rockwell's perspective, it would have been a rights violation to quarantine Typhoid Mary.<sup>7</sup> The people she infected with that dread disease did not die immediately, either, nor did everyone with whom she came in contact succumb. The *reductio ad absurdum* of this point of view is that quarantines are *never* justified, unless death from infection follows "immediately" that is, only seconds after infection. But this appears to be a conclusion not compatible with any reasonable interpretation of the NAP of libertarianism.

---

<sup>7</sup> She was an asymptomatic carrier of this disease, who infected several dozens of people, but only a few of them died. For the moral case in favor of quarantining, see Giubilini, Douglas, Maslen, and Savulescu (2017); Upshur (2003).

Rockwell weakens his position by acknowledging that “The key fact about the disease is that we know very little about it.” But if our information is so paltry, we cannot be sure that its threat is *not* “immediate” at least not in the relaxed sense of that word we have been contemplating.

## BAGUS

Philipp Bagus (2020)<sup>8</sup> also asks “What Would Rothbard Say about the COVID-19 Panic?” This is quite proper, as this philosopher is not only our most distinguished and accomplished libertarian theoretician, but also the founder of our modern movement.

Bagus starts as follows:

As a response to the epidemic, Western governments have infringed upon private property rights to an unprecedented degree in peace times. They have expropriated and confiscated medical equipment and material, they have taken control of private health companies and hospitals, they have decreed the forced closure of private businesses, such as private kindergartens, schools, universities, or retail stores. They have even ordered the closure of private parks and gardens. Moreover, they have severely restricted the freedom of movement.

He is quite correct in maintaining that the latter restriction is unjustified, in that while government is the *de facto* owner of the streets upon much freedom of movement occurs, this is not valid *de jure*. As Rothbard (1998, 183) maintains: “as a criminal organization with all of its income and assets derived from the crime of taxation, *the State cannot possess any just property.*” Thus, only the owners of private streets would determine who uses them and on what basis.<sup>9</sup>

Bagus concludes this section of his essay on the following note: In short, the state has no right to determine who can use public streets and who cannot. A curfew is a blatant violation of private property rights and cannot be justified. What is a curfew? It is a prohibition against anyone leaving their home.<sup>10</sup> Bagus is taking the position

---

<sup>8</sup> Unless otherwise specified, references to Bagus are to his 2020 article.

<sup>9</sup> For further support of private streets, see Block (2009).

<sup>10</sup> This usually applies to certain times of the day, such as from sunset to sunrise. But it could be done on a 24-hour basis. If so, it would amount to a quarantine, or house arrest, for the entire population.

that it would be impossible for such an act to be compatible with the non-aggression principle (NAP) of libertarianism. I think he goes too far here.

Let us focus on this question from two different perspectives, anarchism on the one hand and minarchism or very limited government libertarianism on the other. In the former case, the issue resolves into asking whether a private defense agency could forbid private road owners from allowing people onto their property. In the latter, the question would be whether the state is justified in making such a proclamation.

In my view, such a scenario would be very rare, but counter-examples, unfortunately, readily come to mind. For example, our present pandemic. Let us stipulate, at least *arguendo*, that the COVID-19 disease is deadly, and easily contagious, but that this situation would only last for a week. We can even posit that all homeowners have sufficient food so that no one will starve for this duration. Then could such a requirement pass muster under the libertarian code?

I maintain that it could. For anyone venturing forth onto the streets would *necessarily* be violating the NAP. It is as if he is automatically shooting a gun at random or swinging his fists without being able to stop. As such he constitutes a threat. The NAP proscribes not only physical invasions but also the threat thereof. Under the scenario we have depicted, this is indeed the case, only instead of bullets or punches the traveler would be hurling a deadly virus at everyone else.

One may readily object that this state of affairs bears no resemblance to reality. But whether that is true is purely an empirical question. As such, it lies entirely outside of the environs of libertarian theory. Rothbard is a staunch advocate of the NAP, but we cannot have him on record as to his assessment of the dangers of the coronavirus.

Of course, it cannot be denied, the burden of proof lies with the state, in case of limited government, or with the relevant private defense agency in forbidding entrance onto the private or public streets. But whether or not either institution has met this burden is, strictly speaking, not a question which libertarians are competent to determine. There is such a thing as specialization and the division of labor, after all. It applies not only to economic issues, but also to matters of proper law, as in the present case.

Hoppe (2015) may help in our deliberations on this matter. He states:

This does not mean that, with the discovery of the principles of natural law, all problems of social order are solved and all friction will disappear. Conflicts can and do occur, even if everyone knows how to avoid them. And, in every case of conflict between two or more contending parties, then, the law must be applied – and for this juris-prudence and judgment and adjudication (in contrast to juris-diction) is required. There can be disputes about whether you or I have misapplied the principles in specific instances regarding particular means. There can be disagreements as to the “true” facts of a case: who was where and when, and who had taken possession of this or that at such and such times and places?

How is this relevant? I interpret Hoppe at claiming that there can be legitimate disputes among even well-meaning parties, both of whom are dedicated to upholding the NAP of libertarianism. In contradistinction, I see Bagus as denying this insight. For the latter, in my view, at least in this case, it is a matter of being open and shut. Those who are imposing a quarantine on others are *per se* guilty of a NAP violation. There is not even the scintilla of a possibility that they are doing so on the basis of prevention an invasion of innocent people by those carrying the COVID-19 virus.

Hoppe (2015) continues: “Difficult as these problems may occasionally be, however, the guiding principles to be followed in searching for a solution are always clear and beyond dispute.”

What I conclude from this statement is that Bagus and I are as one on libertarian principle. There is not a dime’s worth of difference between the two of us insofar as the NAP is concerned. Our “guiding principles” are identical. But, even though this be the case, we can upon occasion diverge as to their application. I maintain that this is precisely what is now occurring in this case. My interpretation of Bagus is that he denies this. He maintains that libertarian principles alone, if properly interpreted, can lead us to the only proper analysis of the quarantine issue. He and I will have to agree to disagree on this matter.

#### EPSTEIN

Another libertarian pontificator is Richard Epstein. His publications on this issue (2020a, 2020b, 2020c, and 2020d) have mostly concerned his estimates of the likely number of deaths due to the coronavirus, and what steps can best be taken to reduce their incidence. In the first of these essays he wildly underestimated the

death toll severity, placing it at five hundred total for the US. He was widely excoriated for this miscalculation (Coaston 2020, Chait 2020, Chotiner 2020), for which he duly apologized. None of this unduly concerns me. While his critics denounced libertarianism for these errors, Epstein was not at all blameworthy on this ground. If a high-profile libertarian such as Epstein lost money in the stock market, or through sports betting, or underwent a divorce, our philosophy would be widely condemned on these grounds. That is par for the course and cannot be helped. However, Epstein (2020b) explicitly brought libertarianism into the mix, there to sink or swim based upon, among other things, his statistical calculations. He averred:

“The central Hayekian principle applies: All of these choices are done better at the level of plants, hotels, restaurants, and schools than remotely by political leaders. Our governors have failed to ask a basic question: When all the individual and institutional precautions are in place, what is the marginal gain of having the government shut everything down by a preemptive order? Put otherwise, with these precautions in place, what is the extent of the externalities that remain unaddressed?

Progressives think they can run everyone’s lives through central planning, but the state of the economy suggests otherwise. Looking at the costs, the public commands have led to a crash in the stock market, and may only save a small fraction of the lives that are at risk. In addition, there are lost lives on both sides of the equation as many people will now find it more difficult to see a doctor, get regular exercise, stay sober, and eat healthily. None of these alternative hazards are addressed by the worthy governors.

A minor problem, here, as I see matters, is that when Epstein brings our philosophy into the mix, it sinks or swims, at least in the public eye, based on the accuracy of his predictions. It is as if Murray Rothbard, Mr. Libertarian, were to engage in professional tennis, *qua libertarian*, crediting this philosophy for his victories. The pragmatic difficulty is that there is no intrinsic connection between Rothbard’s ability to engage in this sport and the philosophy that he so brilliantly espoused. But the same holds true regarding Epstein’s undoubted accomplishments as a libertarian legal philosopher. When he explicitly invokes libertarianism in his predictions, as he does here, he joins them in the public eye.

But the major problem is that Epstein errs when he maintains, as if no other alternative were even remotely possible, that



decentralization is always the best means of dealing with threats to the public weal. Right now, murder, rape and theft are everywhere outlawed. Would it really be better, more libertarian, if “plants, hotels, restaurants, and schools” made up their own rules regarding these crimes, making it legal here, but not there? Nor is this analogy invalid. Say what you will about COVID-19, not one, not even Epstein, denies that it is an infectious disease. And if spreading illnesses is not a rights violation, then nothing is. What I am saying is that “central planning” and “libertarianism” are not always, not necessarily, incompatible with one another, Epstein to the contrary notwithstanding. The orchestra conductor engages in “central planning” of a sort, and efforts to prevent murder, rape, theft, are central to the entire community.

## II. HAWKS

### OLSON

Walter Olson (2020) calls himself “a bit of a COVID-19 hawk.” To him “being exposed to a fatal load of virus particles by some well-meaning stranger in a shared public space seems to me a kind of physical aggression.” If this is his prudential judgement, well and good. We are all entitled to our opinions, and to expressing them.

But Olson is yet another leader of the libertarian movement. As such, it is apropos to interpret this statement through that prism. In this vein I launch the same criticism of this at least implicit supporter of quarantines that I did of the three opponents of that policy: this is an empirical claim, and libertarians qua libertarians have no comparative advantage in commenting upon issues of this sort. This author’s many and serious contributions to libertarian theory avail him nothing in terms of accuracy of his assessment. For all any of us know, he may well be right, dead right. But we know no such thing, certainly not in our role as libertarians.

### SHAPIRO

Ilya Shapiro (2020) holds forth as follows:

In the last month, I’ve found myself in the awkward position of defending all sorts of outlandish government actions. Yes, the president really can requisition ventilators and masks from manufacturers that can produce them, under the Defense Production Act, but he has to pay for them....

Yes, governors really can require travelers from coronavirus hotspots to self-quarantine, provided this also applies to returning residents, not just visitors. And yes, mayors can force businesses to close and stop people from congregating, assuming they don't contradict what their governors are doing and otherwise follow applicable state law.

But how can I say that? Isn't the Cato Institute a libertarian think tank dedicated to individual liberty, free markets, and limited government? And don't I run Cato's constitutional studies shop, which rails against government excess of all kinds?

It takes no great intelligence to see the ambivalence in this statement. On the one hand, Shapiro, yet another important libertarian leader, would almost always be a bitter opponent of such statist incursions, and explicit rights violations. On the other hand, he is making an (not altogether happy) exception in the case of this pandemic. On the basis of which libertarian principle does he do so?

Shapiro (2020) explains:

in a pandemic when we don't know who's infected and infections are often asymptomatic, these sorts of restrictions end up maximizing freedom. The traditional libertarian principle that one has a right to swing one's fists, but that right ends at the tip of someone else's nose, means government can restrict our movements and activities, because we're all fist-swingers now.

This isn't like seatbelt mandates or soda restrictions, where the government regulates your behavior for our own good, because—setting aside the issue of publicly borne health care costs—the only person you hurt by not wearing a seatbelt or drinking too much sugar is yourself. With communicable diseases, you violate others' rights just by being around them.

Here is a minor criticism, and this is no more than a typographical error on the part of this eminent libertarian theoretician: the right to swing one's fist ends quite a bit before "the tip of someone else's nose." That is because the NAP of libertarianism proscribes not only the initiation of violence against other people's property, or persons, but also the threat thereof. And the threat occurs before actual contact between fist and proboscis takes place.

But the major criticism is the same that has been applied to all the other commentaries in this essay: Shapiro, qua libertarian, does not know, cannot know, that the asymptomatic carrier of COVID-19 is akin to the fist swinger. His statement that "we're all fist-swingers now" is an empirical claim. It is not part and parcel of libertarian theory.

## TENREIRO

Daniel Tenreiro (2020) makes “The Libertarian Case for Masks.” In so doing, he strongly asserts that “masks are effective.”<sup>11</sup> He may well be correct, for all I know. My objection is that he is relying on the libertarian philosophy to make his case, and there is nothing in this entire political philosophy from which it can be deduced that masks are indeed effective. Nor, of course, does the very opposite claim stem, logically, from the NAP or private property rights based on homesteading. Whether masks are effective or not is purely an empirical claim, and libertarianism is anything but that. Rather, this philosophy is a deontological assertion, and never the twain shall meet.

Nothing daunted, Tenreiro (2020) continues in this vein:

surgical masks and respirators, while imperfect, reduce the spread of pathogens transmitted through droplets. An infected individual wearing a mask is less likely to shed the virus onto other people or surfaces, and even if droplets penetrate a mask, the viral load will be lower than it would have been otherwise, reducing the severity of an attendant infection.

Were he writing as an epidemiologist, or even as a layman, I would have no objection to the foregoing. But he is not. Instead, he speaks out here as a libertarian. Suppose he is incorrect in this claim. Then, to that extent, the freedom philosophy has been undermined. This constitutes a category error in philosophy.

## III. A LIBERTARIAN ANALYSIS

The libertarian analysis must start out with the question of who is initiating violence against whom.

Consider this claim by Steve Hall (2020):

We were never going to stop this virus, because it is so contagious; they told us that from the beginning. The bottom line is this: if someone is afraid, has underlying health issues—in fact for any reason at all—they have the option of self-isolating. If they do, and if they sanitize incoming, wash their hands, and don’t touch their face, then they will not get the virus! (Or at least the chances are so slim as to be statistically negligible.) No one is stopping them!

---

<sup>11</sup> Writing for *National Review*, one has to wonder whether Tenreiro is really a libertarian, rather than a conservative. But the title of his paper indicates, at least, how he views his own position on political economy.

But the question immediately arises: who should be made to stay away from whom. In Hall's view, it is up to the victims to self-isolate, not those who are "throwing their fists around." This is anomalous. Should women be compelled to refrain from miniskirts and tight blouses on the ground that men might become so aroused that this would lead to rape? Or should the onus be placed upon men to either control their passions or avert their eyes? Clearly, the libertarian answer is that females should have the right to clothe themselves in any manner they choose, and that if men cannot control themselves they should cool down for a spell in the hoosegow. After all, it is the men, not the women, who are engaging in the "fisticuffs."

Ronald H. Coase (1960) would have none of this. For him the question would turn on the issue of maximization of wealth, or its proxy, GDP. But this is hardly a libertarian solution.<sup>12</sup>

Does libertarianism, then, compel us to conclude that the elderly and sick people who are vulnerable to the coronavirus should have freedom of movement while the able-bodied should be subject to house arrest, since it is the fists of the latter that are a-flying? Not a bit of it. First of all, merely from a pragmatic point of view, this would lead to mass starvation, and libertarianism is not a suicide pact. Second, *everyone's* fists are in the punching mode. Anyone can infect anyone else with this dread<sup>13</sup> disease. Under the regime of full private enterprise, the streets would all be in private hands (Block 2009), and there is little doubt as to whom the owners would prefer.<sup>14</sup> Hint: the elderly and sick would be the ones cooped up.

Let me make the best case for forced vaccinations. Assume a minarchist libertarian government. Should it compel people to be vaccinated against the XYZ disease? Here are its characteristics:

---

<sup>12</sup> For a critique of Coasean law and economics, see Barnett and Block (2005, 2007, 2009); Block (1977, 1995, 1996, 2000, 2003, 2006, 2010a, 2010b, 2010c, 2011); Block, Barnett, and Callahan (2005); Cordato (1989, 1992a, 1992b, 1997, 1998, 2000); DiLorenzo (2014); Fox (2007); Hoppe (2004); Krause (1999); Krecke (1996); Lewin (1982); North (1990, 1992, 2002); Rothbard ([1982] 1990, 1997); Stringham (2001); Stringham and White (2004); Terrell (1999).

<sup>13</sup> Only to *some*.

<sup>14</sup> To return to our miniskirt versus out of control males example, my prediction is that the overwhelming proportion of thoroughfares would allow women to dress as they pleased. But, there might well be a few where this would not occur. It would depend, as in all such cases, on relative consumer demand.

If you contract XYZ, there is a 100 percent chance you will die a painful death. 40 percent of the people on the planet cannot tolerate the vaccination against it. We know who they are, through a test which is 100 percent reliable. The vaccine will not in any way harm the other 60 percent of the people. This majority will, all with 100 percent probability, contract this disease. They will die from it unless they are vaccinated. Also, again with 100 percent certainty (there is no doubt in this example, none) the 60 percent will spread the disease to the 40 percent vulnerables. The drug costs nothing, works perfectly in preventing the XYZ disease and there are no side effects of it whatsoever, again for sure.

Would I compel the 60 percent to get the vaccination on libertarian grounds? You're darn tootin' I would. Not so much to save them. That would be paternalism. But, rather, in order to save the lives of the 40 percent who are vulnerable. If any member of this 60 percent refused this vaccination, I would execute him as threatening mass murder of 40 percent of the population.

Now, you can change the percentages around a bit. Then, you run into what I call the continuum problem (Block and Barnett 2008), and I suggest that there is then no clear libertarian answer.

Why do we libertarians have to nail every question? Yes, this would be nice, but, I don't think it is proper to deduce a conclusion not justified by the premises. In my view, the NAP of libertarianism answers many, many questions. But not all of them. We also need (hopefully private) courts to adjudicate these continuum problems, such as the proper statutory rape age, what counts as a threat, etc. There's no greater fan of the NAP than I. But it is not the be all and end all of libertarianism (and, no, I'm not a thick libertarian!). There are continuum challenges it cannot answer.

Right now the percentage of planes that crash and kill people on the ground is very, very small. But suppose this doubled, and doubled again, and then doubled some more. At some point, we would justifiably ban air travel even if this percentage was way lower than 50 percent. My guess is that 5 percent would do it. Isn't the risk of dying of COVID above 5 percent?<sup>15</sup>

---

<sup>15</sup> Airplane crashes that only kill passengers and crew are irrelevant to our considerations. There are no "externalities" there.

Suppose that the danger of COVID-19 were way overblown. This is somehow proven (don't ask). We stipulate this. We now hold a Nuremberg Trial for those cops who beat people with sticks for not wearing a mask,<sup>16</sup> or subjected them to house arrest, not for their own protection, but so that they would not infect others. How do we members of the jury vote on their guilt? In my view, the analogous case would be: A pushes B out of the path of an onrushing truck, breaking B's ribs. Later, it is proven that the truck would not have hit B. I say that at most we give A a slap on the wrist. He is nothing like the person who assaults and batters someone, breaking his ribs. There's that little matter of the lack of *mens rea* on the part of A.

Consider the following statement:

Evidence must be probative in demonstrating a strict causal chain of acts of invasion of person or property. Evidence must be constructed to demonstrate that aggressor A in fact initiated an overt physical act invading the person or property of victim B....

"What the plaintiff must prove, then, beyond a reasonable doubt is a strict causal connection between the defendant and his aggression against the plaintiff. He must prove, in short, that A actually "caused" an invasion of the person or property of B.... To establish guilt and liability, strict causality of aggression leading to harm must meet the rigid test of proof beyond a reasonable doubt. Hunch, conjecture, plausibility, even mere probability are not enough.... Statistical correlation... cannot establish causation. (Rothbard [1982] 1990).

Is this a definitive statement that can help us out of our morass? No. Because what is "reasonable" has not yet been established insofar as COVID-19 and its effects are concerned.

Here is a discussion I had with a good friend of mine, who also happens to be an eminent libertarian theoretician:<sup>17</sup>

#### LETTER 1

On Thu, Apr 30, 2020 at 5:20 PM Walter Block <wblock@loyno.edu> wrote:

---

<sup>16</sup> Gabrielle Reyes, "Philippine Police Beat a Man with a Stick for Not Wearing Mask, Breitbart, May 1, 2020, [https://www.breitbart.com/asia/2020/05/01/video-philippine-police-beat-a-man-with-a-stick-for-not-wearing-mask/?utm\\_source=newsletter&utm\\_medium=email&utm\\_term=daily&utm\\_campaign=20200501](https://www.breitbart.com/asia/2020/05/01/video-philippine-police-beat-a-man-with-a-stick-for-not-wearing-mask/?utm_source=newsletter&utm_medium=email&utm_term=daily&utm_campaign=20200501).

<sup>17</sup> And who shall remain anonymous. I will call him X for short.

Dear X:

Please consider co-authoring something with me on the virus. I attach what I've done so far. The beginning is semi coherent. After the biblio, there are just random notes of mine.

Best regards,

Walter

LETTER 2

From: XSent: Friday, May 01, 2020 8:11 PM

To: Walter Block <wblock@loyno.edu>

Subject: Re: virus?

Dear Walter,

I enjoyed reading your COVID-19 paper. You make some excellent points, as I expected..

I'd like to raise two objections: First, you rightly say that the libertarian skeptics about the lockdown like Guido are not experts on the disease. How then can they argue with confidence that opening up the economy would be beneficial? However good the arguments for the harms caused by the lockdown, don't these have to be weighed against the lives saved by the lockdown? But by their own admission Guido and those who argue like him are in no position to estimate the effects of the disease.

I believe that the skeptics have an escape from this argument. They could say, "Let's accept the figures given by the mainstream experts about the lives saved by the lockdown. More lives than this would be saved by ending the lockdown. In claiming this, we are arguing on the basis of our expert knowledge as economists on the effects of shutting down the economy"

Second, I think that your objection to Lew Rockwell and Philipp Bagus on their use of Murray's work on risk is incorrect. You offer the case of someone who is sneezed on by a COVID-19 carrier and dies 2 to 3 days later. If you say, against Murray, that this is still an immediate threat that may warrant preventive measures, isn't that just a prudential difference from Murray, rather than a difference of principle? Why does the death have to occur within a few seconds to warrant preventive action?

I think you are right that if a COVID-19 victim's sneezing on someone would with very high probability cause the person to

die within a few days, this would constitute a direct threat. But this sort of case isn't the subject of Murray's principles of risk. The situation, again assuming the facts are as stated by the mainstream experts, is that if a COVID-19 victim sneezes on you, there is some chance, though far short of high probability, that you will get COVID-19. If that happens, there is a chance that you will die, although the chances of this are below 15 percent. Murray's argument is that risks at this level don't justify violations of rights. If you think they are justified, not because you think the risk of death is substantially higher but because you think that rights-violating preventive measures are acceptable at these risk levels, you are rejecting Murray's view. It isn't simply that you have a different prudential judgment from him on where to draw the line. You are accepting, and he is rejecting, the principle that small risks of great harms justify rights violations.

Best wishes,

X

### LETTER 3

On Fri, May 1, 2020 at 6:26 PM Walter Block <wbblock@loyno.edu> wrote:

Dear X:

Thanks. Very helpful.

What are your views on this situation?

Do you think government (assuming we're now minarchists, not anarchists) is justified in compelling people to isolate, to wear a mask while outside? (Or, if we're anarchists, then a private defense agency does this.)

I take it that you don't agree?

Suppose I had a gun with many chambers, but only 15 percent of them with a bullet in it. I started shooting at random people. I'd be violating rights, correct? Even if they were only rubber bullets, and would only wound, not kill people. Well, 0.001 percent of the people would die. Still, I would be a criminal for shooting this gun, no?

Best regards,

Walter



LETTER 4

From: X  
Sent: Friday, May 01, 2020 9:50 PM  
To: Walter Block <wblock@loyno.edu>  
Subject: Re: virus?

Dear Walter,

I'm inclined to think that most people would voluntarily wear masks, etc., and that compulsion for those who refuse isn't all right.

Suppose I had a gun with many chambers, but only 15 percent of them with a bullet in it. I started shooting at random people. I'd be violating rights, correct? Even if they were only rubber bullets, and would only wound, not kill people. Well, 0.001 percent of the people would die. Still, I'd be a criminal for shooting this gun, no?

This is an excellent example, and of course you are right that you shouldn't shoot the gun. But applied to the COVID-19 crisis, it would only cover those deliberately trying to injure others, e.g., by spitting or coughing on them, when you had the virus.

Best wishes,

X

LETTER 5

On Fri, May 1, 2020 at 8:01 PM Walter Block <wblock@loyno.edu> wrote:

Dear X:

But everyone sneezes, sweats. The wind can take an infected person's contagious liquid on to the body of an innocent victim.

It seems to me that if the infected person doesn't have to wear a mask, I can shoot my gun, or let my hands punch in the air, where they might, with a 15 percent chance, impact someone else's nose.

I don't see the disanalogy between my gun shooting and going out in public without a mask given an equal 15 percent chance of violating the NAP.

What's your view on typhoid Mary? Should she have been subject to compulsory quarantine?

Best regards,

Walter

LETTER 6

From: X  
Sent: Friday, May 01, 2020 10:14 PM  
To: Walter Block <wblock@loyno.edu>  
Subject: Re: virus?

Dear Walter,

I think there is a good case that if you know you're infected, then you should have to wear a mask. But why would this justify forcing those who aren't known to be infected to wear masks, because of the chance that if they were infected, they might infect others at a higher rate than they would if they didn't wear the mask?

By the way, personally I'm cautious. I stay at home except for brief walks to go shopping, and I wear a mask when I do go out.

Best wishes,

X

LETTER 7

On Sat, May 2, 2020 at 10:19 AM Walter Block <wblock@loyno.edu> wrote:

Dear X:

There's a 15 percent chance of two things: I'll hurt or kill someone with my gun which has 15 percent bullets in the chambers, and the same 15 percent chance that a non symptomatic person infected with the virus will spread it around. Assume no tests to determine who's got COVID and who doesn't have it, or that tests have not yet been given to everyone, or that the tests are unreliable.

What's the difference? Why does my analogy fail?

Let's be safe. Let's live thru this.

Best regards,

Walter

LETTER 8

From: X  
Sent: Saturday, May 02, 2020 7:08 PM  
To: Walter Block <wblock@loyno.edu>  
Subject: Re: virus?

Dear Walter;

Thanks very much for your question and for making me think more about this.

Someone who has COVID-19 has not intentionally done something wrong. (There are exceptions, but let's put them aside[.]) If a person has to be quarantined because of COVID-19, that's an unfortunate situation. We would say to the person, "it's too bad that you have to be restricted, but the safety of other people makes this necessary." The case of the rubber bullet shooter seems different, even if the risks of death or injury are the same, as we can stipulate them to be. Here I want to say, the person has no right at all to shoot the rubber bullets. It isn't that he's in an unfortunate situation that to our regret requires restrictions on what he can do. In sum, I think that restricting the potential COVID-19 victim must meet tougher standards than restricting the rubber bullet shooter. My view rests on no more than my intuitive judgment about the cases, and it doesn't tell us which restrictions would pass the test. In support of my intuition, though, there is some chance that, in a regular flu season, being exposed to a flu victim will give you flu, and you might die from this. But we ordinarily don't impose very severe restrictions on flu victims, let alone potential flu victims.

Best wishes,

X

LETTER 9

Dear X:

I hear you. I commiserate with you, because I'm also in a bit of a morass here.

I take it you don't think a co-authorship between us on this issue is in the cards. I greatly regret that.

Best regards,

Walter

LETTER 10

From: X

Sent: Sunday, May 10, 2020 8:25 AM

To: Walter Block <wblock@loyno.edu>

Subject: Re: my paper

Dear Walter;

How would you handle this point? Suppose there had never been a COVID-19 virus. People often get ordinary flu and infect others. Some of those infected will die. Further, almost anyone can get the flu. Therefore, nearly everyone is a potential aggressor against everyone else and everyone should be required to take preventive action against the chance that they will cause someone to have a fatal infection. Measures like the ones now in place for COVID-19, such as no crowds, social distancing, wearing masks, etc., should always be in place.... Do you accept this argument? If not, why not--how does this case differ from the COVID-19 case?

Best wishes,

X

#### LETTER 11

Dear X:

I would handle this as a continuum challenge (Block and Barnett, 2008). The flu, in my prudential judgement, lies on one side of the divide in terms of using violence to stop contagion. The COVID-19, on the other side. Just as there is no precise cut off age for statutory rape that emanates from the foundations of libertarianism,<sup>[18]</sup> just as this philosophy of ours cannot precisely specify how intense must the homesteading be in order to justify land ownership, so is it in this case. Now, I might well be wrong in thinking that the spread of the coronavirus constitutes an invasion, and thus justifies house arrest for at least for those who are or might be contagious, but, surely, there are *some* diseases, much more serious and infectious than this one, that would qualify. All I am saying is that there is nothing in libertarian *principle* that would prohibit forced vaccinations or house arrest on NAP grounds;<sup>[19]</sup> that is, that these

---

<sup>18</sup> Private property rights based on homesteading and the nonaggression principle

<sup>19</sup> There are accusations from American sources that a Wuhan laboratory was the inadvertent cause of the spread of COVID-19. Chinese spokesmen have returned the accusation regarding US biowar efforts. What is the proper libertarian analysis of bioweapons? Should they be shut down as a per se rights violation? Murray Rothbard to the best of my knowledge never spoke out on this issue. But he did analyze nuclear armaments from this perspective. His conclusion was that nuclear bombs were a per se violation of rights, since their power affected

people, although lacking *mens rea*, still constitute an unwarranted invasion, or the threat thereof.

LETTER 12

From: X  
Sent: Sunday, May 10, 2020 1:35 PM  
To: Walter Block <wblock@loyno.edu>  
Subject: Re: my paper

Dear Walter,

This is fun!

Your position is a reasonable prudential judgment, but now there's a problem for your article.

The thrust of your article is that a number of libertarians, on both the anti and pro lockdown sides, are mistaken because they make assumptions about COVID-19 that they don't have the scientific background to evaluate properly. But then the question arises, why can't they say they are just making their best prudential judgments about what to do? Why are you in a better position than they are? Or is your problem with them not in their recommendations, but with the confidence with which they make them?

Best wishes,

X

LETTER 13

Dear X:

You've hit the nail on the head! This touches on my very point. My prudential judgement is no better than anyone else's; worse, probably. But I don't drag libertarianism [into] this this [sic]

---

all of us, guilty and innocent, not just the former. Rothbard (1998, 190–91) wrote: "while the bow and arrow, and even the rifle, can be pinpointed, if they will be there, against actual criminals, modern nuclear weapons cannot. Here is a crucial difference in kind. Of course, the bow and arrow could be used for aggressive purposes, but it could also be pinpointed to use only against aggressors. Nuclear weapons, even 'conventional' aerial bombs, cannot be. These weapons are *ipso facto* engines of indiscriminate mass destruction. (The only exception would be the extremely rare case where a mass of people who were criminals inhabited a vast geographical area.)" The same, it would appear, applies to laboratories conducting experiments on biological or chemical ordnances. See also on this Block and Block (2000).

debate, kicking and screaming. Rather, I divorce myself from libertarianism when I offer my empirical assessments. These others do not. They do not at all do so. Rather, they explicitly bring libertarianism to bear. They write as if libertarian theory is on their side. They cite Rothbard, Hayek, other well[-]know[n] libertarians to support what I can only consider their prudential judgements. To do this is to besmirch libertarianism. It is to misunderstand libertarianism. Our philosophy is a normative one, not a positive one. The people I criticize are confusing oughts and is-es.

The correct stand for libertarians who want to write about this, I contend, is one of agnosticism about the facts. They can say, IF the COVID is thus and such, then libertarianism supports policy A. On the other hand, IF the COVID is something else, then libertarianism supports policy B. But they do not do that. They say[,] the facts are as follows; the first 4 of the eminent libertarians I criticize say that the coronavirus is akin to the flu. It is no big deal. The second set say, no, COVID is way more serious. It is like a punch in the nose, or way worse.

The only correct analyses, besides the one I offer, are those forthcoming from those I have labelled as my fellow agnostics. It is not for nothing that I am known, far and wide, at least in my own mind, as Walter “Moderate” Block.

Best regards,

Walter

## V. CONCLUSION

Olson and Shapiro staunchly claim that we are now all in effect “fist swingers.” Hülsmann, Rockwell and Bagus vigorously deny this. All are staunch libertarians. Both sets of commentators cannot be totally correct.

My own conclusion from these considerations is that we can only pursue this matter *arguendo*, as libertarians. *If* all of us, symptomatic or not, constitute threats of what is in effect physical violence against innocent people, *then* quarantines are justified.<sup>20</sup> But if this

---

<sup>20</sup> I abstract from the fact that a full quarantine of pretty much everyone will eventually spell mass starvation, which can also be construed as a rights violation.

is not true, then they are not justified.<sup>21</sup> And since we cannot know, qua libertarians, especially at the time of this writing, which is true, the most rational, and not for the first time, libertarian stance is that of agnosticism. My thought is that we really don't know the facts. Therefore agnosticism is the correct libertarian position; at least members of our movement should aim at a certain reticence, which is sorely lacking on the part of the libertarians whom I cite in this paper who have written about this matter.

If the coronavirus is contagious and very serious, then a quarantine may be justified, or at least compulsory wearing of masks, abstracting from who owns the streets. But we don't know the answer to that. Therefore, we don't know, we can't know, whether these incursions on liberty are justified on the ground that spreading this virus constitutes an invasion of property rights.

The quintessential libertarian question is not how to save the most lives; that is secondary and emanates, in any case, from getting the deontology correct. Rights, not pragmatism/utilitarianism, are the libertarian's comparative advantage.

If I had to choose sides, I would choose the side that says that COVID is relatively harmless. Why? That is the view opposite that of most governments. My suspicion of this institution would lead me in the very opposite direction of theirs. But I have no more than that to incline me on this side of the debate, certainly no expertise in epidemiology. My gut feeling is that the quarantine has gone on long enough. I would open things up if I were governing. But this article of mine is a critique of those who think that this conclusion of mine emanates from libertarian theory; qua libertarian, I think I should take an agnostic position. A little humility goes a long way, and there was not enough of it exhibited by the targets of my criticism in this paper.

My bottom line is that I think there could be circumstances in which compulsory vaccination would be required by law (let's forget about who imposes them; well, governments for minarchists, private defense agencies for anarcho-capitalists) and parents

---

<sup>21</sup> There are not too many libertarian publications which support the agnostic position put forth herein. Huemer (2020) is one such, although he veers, very slightly, in the direction of Shapiro (2020) and Olson (2020). Others include Block (2020); Goad (2020); Wallace-Wells (2020); Warzel (2020); Gallagher (2020); Hotez (2020); Marks and Pour (2020); Losinski (2020); Harmon (2020); Schrager, 2020

should be required to vaccinate their kids. After all, people who do not vaccinate endanger not only themselves, but also the people they communicate with and thus break the NAP and should be punished accordingly.

Legitimate threats may be met with force, even if it hurts the threatener. If you're drunk and waving a knife at me, I am justified in using violence against you, even if that hurts you. The crime committed by the person who spreads disease should be manslaughter, not murder, unless it is purposeful. My use of the hypothetical 100 percent safe vaccine was meant to starkly undermine the claim, on the part of many, many libertarians, that compulsory vaccination is never justified, since it invades someone's body.

I started writing this paper a month ago from the present date (May 10, 2020). As new evidence piles up, I am more and more convinced that X is correct and that COVID greatly resembles the flu. (This is a mere speculation on my part; I am an economist, and a libertarian, not an epidemiologist.) But all that is very much beside the point of the present paper. I am now making a theoretical point. My only claim is that the spread of disease could possibly constitute a physical invasion, justifying the use of violence in defense against it. My original choice of title for this paper was "A Libertarian Analysis of the COVID-19 Pandemic." I for a while I changed this to "A Libertarian Analysis of Pandemics." But on further consideration, I'm going with my original title. It is more germane to present considerations.

## REFERENCES:

- Bagus, Philipp. 2020. "What Would Rothbard Say about the COVID-19 Panic?" *Mises Wire*, Mar. 30, 2020. <https://mises.org/wire/what-would-rothbard-say-about-COVID-19-panic>.
- Barnett, William, II, and Walter E. Block. 2005. "Professor Tullock on Austrian Business Cycle Theory." *Advances in Austrian Economics* 8: 431–43.
- . 2007. "Coase and Van Zandt on Lighthouses." *Public Finance Review* 35, no. 6: 710–33. <http://pfr.sagepub.com/content/35/6/710>.
- Barnett, William, and Walter E. Block. 2009. "Coase and Bertrand on Lighthouses." *Public Choice* 140, no. 1–2: 1–13. <http://dx.doi.org/10.1007/s11127-008-9375-x>.
- Block, Walter E. 1977. "Coase and Demsetz on Private Property Rights." *Journal of Libertarian Studies* I, no. 2: 111–15.



- . 1995. "Ethics, Efficiency, Coasean Property Rights, and Psychic Income: A Reply to Demsetz." *Review of Austrian Economics* 8, no. 2: 61–125.
  - . 1996. "O.J.'s Defense: A Reductio Ad Absurdum of the Economics of Ronald Coase and Richard Posner." *European Journal of Law and Economics* 3: 265–86
  - . 2000. "Private Property Rights, Erroneous Interpretations, Morality and Economics: Reply to Demsetz." *Quarterly Journal of Austrian Economics* 3, no. 1: 63–78.
  - . 2003. "Private Property Rights, Economic Freedom, and Professor Coase: A Critique of Friedman, McCloskey, Medema, and Zorn." *Harvard Journal of Law and Public Policy* 26, no. 3: 923–51.
  - . 2006. "Coase and Kelo: Ominous Parallels and Reply to Lott on Rothbard on Coase." *Whittier Law Review* 27, no. 4: 997–1022.
  - . 2009. *The Privatization of Roads and Highways: Human and Economic Factors*. Auburn, Ala.: Ludwig von Mises Institute.
  - . 2010a. "A Response to Brooks' Support of Demsetz on the Coase Theorem." *Dialogue* 2: 65–80.
  - . 2010b. "Rejoinder to Brooks on Coase and Demsetz." *Quarterly Journal of Austrian Economics* 13, no. 4: 56–73.
  - . 2010c. "Rejoinder to Boettke on Coasean Economics and Communism." *Romanian Economic and Business Review* 5, no. 3: 9.
  - . 2011. "Rejoinder to Bertrand on Lighthouses." *Romanian Economic and Business Review* 6, no. 3: 49–67.
  - . 2013a. "Libertarianism and Compulsory Vaccinations." LewRockwell.com, Jan. 19, 2013. <http://archive.lewrockwell.com/blog/lewrw/archives/130928.html>.
  - . 2013b. "Forced Vaccinations." LewRockwell.com, Feb. 4, 2013. <http://archive.lewrockwell.com/block/block217.html>.
  - . 2020. "Quarantines." Target Liberty, Mar. 10, 2020. [https://www.targetliberty.com/2020/03/walter-block-on-quarantines-because-of.html?utm\\_source=feedburner&utm\\_medium=email&utm\\_campaign=Feed%3ATargetLiberty%2FTargetLiberty](https://www.targetliberty.com/2020/03/walter-block-on-quarantines-because-of.html?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3ATargetLiberty%2FTargetLiberty).
- Block, Walter E., William Barnett II, and Gene Callahan. 2005. "The Paradox of Coase as a Defender of Free Markets." *NYU Journal of Law and Liberty* 1, no. 3: 1075–95.
- Block, Walter E., and William Barnett II. 2008. "Continuums." *Ethics and Politics* 10, no. 1: 151–66.
- Block, Walter E., and Matthew A. Block. 2000. "Toward a Universal Libertarian Theory of Gun (Weapon) Control." *Ethics, Place and Environment* 3, no. 3: 289–98.

- Chait, Jonathan. 2020. "Richard Epstein Can't Stop Being Wrong about the Coronavirus." *Intelligencer*, Apr. 21, 2020. <https://nymag.com/intelligencer/2020/04/richard-epstein-coronavirus-500-5000-deaths.html>.
- Chotiner, Isaac. 2020. "The Contrarian Coronavirus Theory That Informed the Trump Administration." *New Yorker*, Mar. 30, 2020. <https://www.newyorker.com/news/q-and-a/the-contrarian-coronavirus-theory-that-informed-the-trump-administration>.
- Coase, Ronald H. 1960. "The Problem of Social Cost." *Journal of Law and Economics*, 3: 1–44. <http://www.econ.ucsb.edu/~tedb/Courses/UCSBpf/readings/coase.pdf>.
- Coaston, Jane. 2020. "The Legal Scholar Who Shaped Trump's Coronavirus Response Defends His Theory." *Vox*, Mar. 31, 2020. <https://www.vox.com/2020/3/31/21195449/richard-epstein-trump-coronavirus-theory-pandemic>.
- Cordato, Roy E. 1989. "Subjective Value, Time Passage, and the Economics of Harmful Effects." *Hamline Law Review* 12, no. 2: 229–44.
- . 1992a. "Knowledge Problems and the Problem of Social Cost" *Journal of the History of Economic Thought* 14: 209–24.
- . 1992b. *Welfare Economics and Externalities in an Open-Ended Universe: A Modern Austrian Perspective*. Boston: Kluwer.
- . 1997. "Market-Based Environmentalism and the Free Market: They're Not the Same." *Independent Review* 1, no. 3: 371–86.
- . 1998. "Time Passage and the Economics of Coming to the Nuisance: Reassessing the Coasean Perspective." *Campbell Law Review* 20, no. 2: 273–92.
- . 2000. "Chasing Phantoms in a Hollow Defense of Coase." *Review of Austrian Economics* 13, no. 2: 193–208.
- DiLorenzo, Tom. 2014. "When Did Ronald Coase Become the Ayatollah of Economic Theory?" *LewRockwell.com*. Jan. 2, 2014. <http://www.lewrockwell.com/2014/01/thomas-dilorenzo/the-beltarian-cult/>.
- Epstein, Richard. 2020a. "Coronavirus Perspective." *Defining Ideas*, Mar. 16, 2020; <https://www.hoover.org/research/coronavirus-pandemic>.
- . 2020b. "Coronavirus Overreaction." *Defining Ideas*, Mar. 23, 2020. <https://www.hoover.org/research/coronavirus-overreaction>.
- . 2020c. "The Grim Costs of Total Lockdowns." *Defining Ideas*, Mar. 30, 2020. <https://www.hoover.org/research/grim-costs-total-lockdowns>.
- . 2020d. "Coronavirus Perspective—Revised." *Defining Ideas*, Apr. 6, 2020. <https://www.hoover.org/research/coronavirus-perspective-revised>.
- Fox, Glenn. 2007. "The Real Coase Theorems." *Cato Journal* 27, no. 3: 373–96.

- Gallagher, James. 2020. "Coronavirus: What We Still Don't Know about COVID-19." BBC (website), Mar. 29, 2020. <https://www.bbc.com/news/health-52006988>.
- Giubilini, Alberto, Thomas Douglas, Hannah Maslen, and Julian Savulescu. 2018. "Quarantine, Isolation and the Duty of Easy Rescue in Public Health." *Developing World Bioethics* 18: 182–89. <https://doi.org/10.1111/dewb.12165>.
- Goad, Jim. 2020. "A Plague of Know-It-Alls." *Taki's Magazine*, May 4, 2020. <https://www.takimag.com/article/a-plague-of-know-it-all/>.
- Hall, Steve. 2020. "Climate Change at Fox News." LewRockwell.com. Apr. 25, 2020. [https://www.lewrockwell.com/2020/04/no\\_author/climate-change-at-fox-news/](https://www.lewrockwell.com/2020/04/no_author/climate-change-at-fox-news/).
- Harmon, Amy. 2020. "Why We Don't Know the True Death Rate for COVID-19." *New York Times*, Apr. 18, 2020. <https://www.nytimes.com/2020/04/17/us/coronavirus-death-rate.html>.
- Hoppe, Hans-Hermann. 2004. "The Ethics and Economics of Private Property." LewRockwell.com, Oct. 11, 2004. <http://www.lewrockwell.com/hoppe/hoppe11.html>.
- . 2004. "Property, Causality, and Liability." *Quarterly Journal of Austrian Economics* 7, no. 4: 87–95. [http://mises.org/journals/qjae/pdf/qjae7\\_4\\_6.pdf](http://mises.org/journals/qjae/pdf/qjae7_4_6.pdf); [https://cdn.mises.org/qjae7\\_4\\_6.pdf](https://cdn.mises.org/qjae7_4_6.pdf).
- . 2015. "On Democracy, De-civilization, and the Quest for a New Counterculture." LewRockwell.com, Sept. 28, 2015. <https://www.lewrockwell.com/2015/09/hans-hermann-hoppe/are-you-a-cultural-neanderthal/>.
- Hotez, Peter. 2020. "What Don't We Know about COVID-19 Severity, Seasonality." MedPage Today, Apr. 20, 2020. <https://www.medpagetoday.com/infectiousdisease/COVID19/86049>.
- Huemer, Michael. 2020. "Libertarian Pandemic Policy." *Fake Nous* (blog), Mar. 14, 2020. <https://fakenous.net/?p=1439>.
- Hülsmann, Jörg Guido. 2020. "A Protest from France." LewRockwell.com, Apr. 23, 2020. <https://www.lewrockwell.com/2020/04/jrg-guido-hlsmann/a-protest-from-france/>.
- Krauss, Michael. 1999. "Tort Law, Moral Accountability, and Efficiency: Reflections on the Current Crisis." *Journal of Markets and Morality* 2, no. 1: 114–24. [http://www.acton.org/publicat/m\\_and\\_m/1999\\_spr/krauss.html](http://www.acton.org/publicat/m_and_m/1999_spr/krauss.html).
- Krecke, Elisabeth. 1996. "Law and the Market Order: An Austrian Critique of the Economic Analysis of Law." *Journal des économistes et des études humaines* 7, no. 1: 19–37.
- Lewin, Peter. 1982. "Pollution Externalities: Social Cost and Strict Liability." *Cato Journal* 2, no. 1: 205–29.

- Losinski, Tara. 2020. "COVID-19 Primer: What We Know and What We Don't Know." *EverythingZoomer.com*, May 3, 2020. <https://www.everythingzoomer.com/health/2020/05/03/coronavirus-primer-what-we-know-and-what-we-dont-know-about-the-epidemic/>.
- Marks, Clifford, and Trevor Pour. 2020. "What We Don't Know about the Coronavirus." *New Yorker*, Apr. 29, 2020. <https://www.newyorker.com/science/medical-dispatch/what-we-dont-know-about-COVID-19>.
- North, Gary. 1990. *Tools of Dominion: The Case Laws of Exodus*. Tyler, Tex.: Institute for Christian Economics.
- . 1992. *The Coase Theorem*. Tyler, Tex.: Institute for Christian Economics.
- . 2002. "Undermining Property Rights: Coase and Becker." *The Journal of Libertarian Studies* 16, no. 4: 75–100. [http://www.mises.org/journals/jls/16\\_4/16\\_4\\_5.pdf](http://www.mises.org/journals/jls/16_4/16_4_5.pdf).
- Olson, Walter. 2020. "Pandemics and Power: A Notebook." *Cato at Liberty* (blog), Apr. 2, 2020. <https://www.cato.org/blog/pandemics-power-notebook>.
- Rockwell, Llewellyn H., Jr. 2020. "What Would Murray Say about the Coronavirus?" *LewRockwell.com*, Mar. 4, 2020. <https://www.lewrockwell.com/2020/03/lew-rockwell/what-would-murray-say-about-the-coronavirus/>.
- Rothbard, Murray N. [1982] 1990. "Law, Property Rights, and Air Pollution." Pp. 233–79 in *Economics and the Environment: A Reconciliation*, ed. Walter E. Block. Vancouver: Fraser Institute.
- . 1997. "Value Implications of Economic Theory." Pp. 255–65 in *The Logic of Action One: Method, Money, and the Austrian School*. Cheltenham, UK: Edward Elgar.
- . 1998. *The Ethics of Liberty*. New York: New York University Press. <http://www.mises.org/rothbard/ethics/ethics.asp>.
- Schrager, Allison. 2020. "Risk, Uncertainty and Coronavirus." *Wall Street Journal*, Mar. 23, 2020. <https://www.wsj.com/articles/risk-uncertainty-and-coronavirus-11584975787>.
- Stringham, Edward P., and Mark White. 2004. "Economic Analysis of Tort Law: Austrian and Kantian Perspectives." Pp. 374–92 in *Law and Economics: Alternative Economic Approaches to Legal and Regulatory Issues*, ed. Margaret Oppenheimer and Nicholas Mercuro. New York: M. E. Sharpe. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1676271](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1676271).
- Stringham, Edward P. 2001. "Kaldor-Hicks Efficiency and the Problem of Central Planning." *Quarterly Journal of Austrian Economics* 4, no. 2, Summer, 41–50; [http://www.mises.org/journals/qjae/pdf/qjae4\\_2\\_3.pdf](http://www.mises.org/journals/qjae/pdf/qjae4_2_3.pdf)
- Shapiro, Ilya. 2020. "The Government Has a Lot More Emergency Powers Than Libertarians Like, but It Still Can't Control Everything." *Federalist*, Apr. 15, 2020. <https://thefederalist.com/2020/04/15/>

the-government-has-a-lot-more-emergency-powers-than-libertarians-like-but-it-still-cant-control-everything/.

- Tenreiro, Daniel. 2020. "The Libertarian Case for Masks." *National Review*, May 15, 2020. [https://www.nationalreview.com/2020/05/the-libertarian-case-for-masks/?fbclid=IwAR1Pr4NdpWxQ4dZDuAT6mG7J-dDxxCBoNBL\\_RBuYcAjXdyTxufW8VscuO0](https://www.nationalreview.com/2020/05/the-libertarian-case-for-masks/?fbclid=IwAR1Pr4NdpWxQ4dZDuAT6mG7J-dDxxCBoNBL_RBuYcAjXdyTxufW8VscuO0).
- Upshur, Ross. 2003. "The Ethics of Quarantine." *Virtual Mentor* 5, no. 11: 393–95. <https://journalofethics.ama-assn.org/article/ethics-quarantine/2003-11>
- Terrell, Timothy D. 1999. "Property Rights and Externality: The Ethics of the Austrian School." *Journal of Markets and Morality* 2, no. 2: [http://www.acton.org/publications/mandm/mandm\\_article\\_114.php](http://www.acton.org/publications/mandm/mandm_article_114.php).
- Wallace-Wells, David. 2020. "We Still Don't Know How the Coronavirus Is Killing Us." *Intelligencer*, Apr. 26, 2020. <https://nymag.com/intelligencer/2020/04/we-still-dont-know-how-the-coronavirus-is-killing-us.html>.
- Warzel, Charlie. 2020. "When Will Life Be Normal Again? We Just Don't Know." *New York Times*, Apr. 13, 2020. <https://www.nytimes.com/2020/04/13/opinion/coronavirus-what-we-know.html>.