

A LIBERTARIAN ANALYSIS OF THE COVID-19 PANDEMIC

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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

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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.¹ 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;² rather, the essence of libertarianism concerns rights, obligations, duties, the nonaggression principle (NAP), and private property rights. This

¹ 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.

² 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)³ “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...”⁴

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

³ Unless otherwise specified, all citations of this scholar are of this one article of his.

⁴ 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.⁵

⁵ 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)⁶ 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:

⁶ 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.⁷ 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.

⁷ 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)⁸ 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.⁹

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.¹⁰ Bagus is taking the position

⁸ Unless otherwise specified, references to Bagus are to his 2020 article.

⁹ For further support of private streets, see Block (2009).

¹⁰ 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.”¹¹ 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!

¹¹ 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.¹²

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 dread¹³ 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.¹⁴ 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:

¹² 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).

¹³ Only to *some*.

¹⁴ 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?¹⁵

¹⁵ 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,¹⁶ 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:¹⁷

LETTER 1

On Thu, Apr 30, 2020 at 5:20 PM Walter Block <wblock@loyno.edu> wrote:

¹⁶ 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.

¹⁷ 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 <wblock@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,^[18] 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;^[19] that is, that these

¹⁸ Private property rights based on homesteading and the nonaggression principle

¹⁹ 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 the 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.²⁰ But if this

²⁰ 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.²¹ 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

²¹ 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); Schrage, 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.

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