Toward a Deconstruction of Utility and Welfare Economics

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Welfare Economics and Externalities in an Open-Ended Universe: A Modern Austrian Perspective. By Roy E. Cordato. Boston: Kluwer Academic Publishers, 1992.

Roy Cordato's ambitious and well-organized book addresses a central problem in economics. Standard neoclassical analysis finds fault with the unhampered free market, on a ground that Austrian economists resolutely reject. People's activities in a free market, it is claimed, may impose benefits or harms on others in a way that their decisions on production fail accurately to reflect. Some economists (the "Pigouvians") look to government to remedy these inefficiencies, termed "externalities." Others, the "Coaseans," call for much less intervention, but they too accept the underlying analysis.

Cordato, firmly in the Austrian camp, begins with a summary of the reasons Austrians dissent from the neoclassical view of externalities. His aims go far beyond this, however; he presents an alternative Austrian conception of efficiency, which he calls "catallactic efficiency."

Cordato starts with a short account of the neo-classical position and at once proceeds to the Austrian critique of that view. As he rightly notes "[t]he optimal solution [of the standard approach] is given by the price and output that is obtained under conditions that would exist in a perfectly competitive general equilibrium (PCGE) . . . This result is shown to be Pareto optimal, i.e., no one can be made better off without making someone else worse off, and social efficiency is maximized. Externalities result in a deviation from the standard" (p. 2).[1]

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[1]On p. 2, line 10, "pecuniary" should read "non-pecuniary."

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Much of Cordato's criticism of this position follows familiar lines. As he notes, constantly changing conditions rule out the use of a static PCGE as a welfare ideal (pp. 4–5). Further, no central authority could gather together the immense body of data required to calculate the PCGE solution (p. 8). But in the course of his comments, Cordato makes an astonishing statement: "In order to implement Pareto optimality as a welfare criteria [sic], an analyst must make both interpersonal and intertemporal comparisons of utility" (p. 6).

This is an elementary error. As Cordato has himself noted, a situation in which an externality is present is not Pareto optimal. If so, a Pareto superior move may be made: since this, by definition, makes no one worse off, no interpersonal comparison of utility is required.

Perhaps Cordato has been misled on the issue by the fact that Pigou himself accepted interpersonal utility comparisons, at least for practical purposes. He believed, e.g., that "it is evident that any transference of wealth from a relatively rich man to a relatively poor man of similar temperament, since it enables more intense wants to be satisfied at the expense of less intense wants, must increase the aggregate sum of satisfaction."[2] Were Cordato commenting on this, he would of course be right to object. But Pigouvian subsidies and taxes, despite their name, involve no interpersonal utility comparisons.

Or have I interpreted Cordato uncharitably? His statement begins, "In order to *implement* Pareto optimality . . ." (p. 6, emphasis added.) His claim may be, then, not that the theoretical model requires interpersonal comparisons, but rather that the attempt to put the model into practice does so. But if this is his meaning, it is once more unclear why he holds it. Or does he in fact adopt a yet more attenuated view? Perhaps by "interpersonal comparison" all he intends is that implementation of the model requires that people's utility functions be known to the policymaker. This, however, is not what the expression "interpersonal comparison of utility" normally means. I hope that on a future occasion Professor Cordato will clarify his unusual remarks.

An argument that Cordato takes over from O'Driscoll and Rizzo also seems to be incorrect. "With respect to externalities, in order for the standard tax or subsidy solution to work, the analyst must have better information concerning market conditions than is actually

[2]A. C. Pigou, *The Economics of Welfare*. 4th ed. (London: Macmillan, 1932), p. 89.

being generated in the markets themselves. If this were possible, the actual markets, and in particular the exchange relationships that comprise them, would not be needed" (p. 3).

I entirely agree that no planner can acquire the requisite information, but why need the market to be superfluous if someone could discover all the optimal conditions? What if the optimal conditions can be put into practice only through a market, regardless of whether someone knows them through other means? If so, the market is still needed and O'Driscoll's and Rizzo's argument fails. To make their case, they must show that if the optimal conditions were known, they could be put into practice without a market.

After disposing of the standard view, Cordato next summarizes the Austrian approach to externalities. He very usefully contrasts the position of Mises and Rothbard, on the one hand, with that of Hayek on the other. Mises and Rothbard distinguish sharply between positive and negative externalities. The former (Mises's Type 1 externalities) presents no problem at all: since these authors do not adopt the PCGE as a welfare standard, it is irrelevant to them whether these externalities are generated in an "optimal" amount. Negative externalities (Mises's Type 2) are a problem only if property rights have not been exactly defined. Given a precise delineation of property rights, no external standard may properly be used to challenge the outcome of the free market.

Cordato's discussion of Mises's and Rothbard's views on externalities is largely accurate and well put, but he is badly amiss on one issue. He correctly notes that Mises displays more sympathy than Rothbard for patents (p. 21), but he unaccountably suggests that Rothbard opposes copyright as well. "From his [Rothbard's] perspective, intellectual property rights cannot be derived from principles of natural law and therefore the state has no moral 'right' to impose these through the institution of patent and copyright laws" (p. 22; see also p. 80).

In support of his claim, Cordato quotes a passage from Rothbard condemning patents. Why does Cordato feel free to extend Rothbard's criticism, on Rothbard's behalf, to copyright? Perhaps Cordato assumes that patents and copyrights must be dealt with identically; if Rothbard denounces patents, his remarks apply equally to copyright.

Rothbard's actual position, many times expressed, differs entirely from Cordato's summary of it. Rothbard states: "Yet this bracketing of patents and copyrights is wholly fallacious; the two are completely different in relation to the free market . . . On the free market, there would therefore be no such thing as patents. There would, however, be copyright for every inventor or creator who made use of it, and this copyright would be *perpetual* . . ."[3]

Although most economists group Hayek and Mises together, Cordato rightly points out that they differ on externalities. Hayek did not adopt Mises's position but instead adhered to the "standard" view of both positive and negative externalities.

Hayek's position is not to Cordato's liking, and he endeavors to show that Hayek's adoption of it leads him to self-contradiction. Cordato locates a passage from Hayek critical of welfare economics and pounces on the apparent incongruity. "On the one hand he rejects the welfare standard used in neoclassical externalities analysis but embraces much of the analysis that is derived from it. His assessment of welfare economics leaves little room for the policy prescriptions that he suggests are appropriate" (p. 25).

Cordato's criticism of Hayek misfires, since it rests on the mistake already discussed. In the passage Cordato cites, Hayek criticizes "the whole of the so-called 'welfare economics', which pretends to base its arguments on the interpersonal comparisons of ascertainable utilities . . ." (p. 29). Hayek contradicts himself only if the standard analysis of externalities involves interpersonal comparisons of utility. It is Cordato, not Hayek, who errs in thinking that it does.

Hayek's target becomes ever clearer if one looks at his remarks just before the passage Cordato quotes: "The childish attempts to provide a basis for 'just' action by measuring the relative utilities or satisfaction of different persons simply cannot be taken seriously. . . . But most economists seem to begin to see that the whole of the so-called 'welfare economics' . . . [here follows the passage Cordato quotes, as cited in the preceding paragraph]."[4] Since most economists do *not* reject the standard analysis of externalities, it is apparent that Hayek's attack is directed elsewhere.

Cordato now prepares the way for his principal task, the construction of an Austrian welfare standard. He does so by an assessment of two earlier proposals of an Austrian standard, one by Murray Rothbard and the other by Israel Kirzner.

Rothbard's proposal has the virtue of simplicity. Economists in his view cannot exceed the bounds of demonstrated preference when they analyze choices on the market. An economist cannot legitimately

[3]Murray N. Rothbard, *Man, Economy, and State* (Princeton: D. Van Nostrand, 1962) II, pp. 653, 656.

[4]F. A. Hayek, *Law, Legislation, and Liberty*; vol. 3: *The Political Order of a Free People* (London: Routledge and Kegan Paul, 1979), p. 201.

speak of hypothetical preferences—what people would have chosen in situations other than the actual world; the assessment of choice apart from action depends upon conjectures inadmissible into praxeology. Given this restriction, the welfare criterion at once follows. People who engage in an exchange in the free market do so because they expect to benefit. Every free exchange, then, increases utility *ex ante*—and this is all the economist may properly identify as a rise in social welfare: "the rest is silence."

Cordato rejects Rothbard's short and sure treatment of welfare economics. "Rothbard's conclusions concerning welfare and social utility can be taken to task on several crucial points" (p. 41). First, "Rothbard does not allow for any consideration of harm that is not demonstrated, i.e., psychic harm. The welfare effects of envy, trauma, etc. are ruled out of his model" (pp. 42–43). Contrary to Rothbard's view, one cannot avoid interpersonal comparisons of utility when one assesses social utility. The effects of an exchange cannot be confined to the exchangers: one needs to ask how others benefit or lose, a fact Rothbard himself seems elsewhere to recognize.

"But there are even more damaging criticisms to be made of Rothbard's approach" (p. 43). Cost, as Austrians conceive of it, is subjective: the cost of an action is the highest ranking alternative foregone. "By definition costs cannot be demonstrated. Therefore, in Rothbard's model only benefits, that is, utility gains, are recognized." Further, Rothbard errs by considering only *ex ante* utility. People often regret the choices they have made: "Rothbard's welfare economics . . . ignores the fact that preferences are expressed sequentially through time, as part of a general set of goal oriented activities" (p. 43).

Cordato's final verdict on Rothbard's criterion is a severe one: "Rothbard's welfare economics does not offer much promise as a general guide for externalities theory or policy" (p. 44). Before moving with our author to the Kirznerian climes he finds more congenial, let us pause to evaluate Cordato's assault.

Cordato's misses completely the point of Rothbard's article. The piece in question, a veritable *tour de force*, attempts to overturn the conclusions of mainstream welfare economics. In the standard view, economists can neither make interpersonal comparisons of utility nor introduce controversial normative premises into their analyses. Given these restrictions, many practitioners of welfare economics still endeavor to find imperfections in the free market. Rothbard convincingly shows that these attempts end in failure. This, however, does not entail the collapse of welfare economics: given the restrictions under which economic science operates, one can arrive at a welfare economics that supports the free market.

Crucial to understanding the article is, to reiterate, a simple point. Rothbard is offering an internal criticism of welfare economics, not a complete presentation of his own views on social philosophy. A brief glance at the article suffices to show this. He remarks, e.g.: "The fact that the free market maximizes social utility, or that state action cannot be considered voluntary . . . in itself implies no plea for *laissez faire* or for any other social system. What welfare economics does is to present these conclusions to the framer of ethical judgments as part of the data for his ethical system."[5]

If the limited intent of Rothbard's welfare criterion is borne in mind, Cordato's criticisms of it fall to the ground. Thus, it is quite true, as Cordato says, that the criterion takes no account of effects of exchanges on third parties or of utility *ex post*. It is entirely in order for Cordato to argue that, from the point of view of a complete social philosophy, these need to be considered. But, it does not follow that the economist, speaking in his professional capacity, can deal with them. Rothbard contends that the economist cannot do so: demonstrated preference forbids it.

He notes, e.g., about the envious: "We are not interested in his opinion about the exchanges made by *others*, since his preferences are not demonstrated through action and are therefore irrelevant."[6] In saying this, Rothbard begs no questions: he would do so only if he concluded that, because a matter is irrelevant to the economist, it is of no importance to the social philosopher. And of course he does not do so. If he wishes to overthrow Rothbard's criterion, Cordato must either arrive at a scientifically acceptable notion of preference to replace demonstrated preference, or else deny that demonstrated preference involves the limitations Rothbard draws from it. Cordato might also claim that given its limitations, Rothbard's criterion has little importance; but this again is a philosophical point that leaves the criterion untouched within economics.

The fundamental flaw of Cordato's criticism is his failure to heed the sage advice of R. G. Collingwood: "I began by observing that you cannot find out what a man means by simply studying his spoken or written statements . . . In order to find out his meaning you must also

[5]Murray N. Rothbard, "Toward a Reconstruction of Utility and Welfare Economics" in Mary Sennholz, ed. *On Freedom and Free Enterprise: Essays in Honor of Ludwig von Mises* (Princeton: D. Van Nostrand, 1956), pp. 261–62. The printing of the essay cited here differs from that used by Cordato, so the pagination does not correspond to his citations.

[6]Ibid., p. 250.

know what the question was . . . to which the thing he has said or written was meant as an answer."[7]

Beyond this general failing, one of Cordato's points misfires on its own terms. He has rightly noted that an actor's opportunity cost cannot be demonstrated in action. But it does not follow from this that "in Rothbard's model only benefits, that is utility gains, are *recognized*" (p. 43, emphasis added). No one but the actor himself can specify his opportunity cost: but to take account of cost does not require this knowledge. Whatever the cost, we know that, *ex ante*, the expected gains exceed it. This is precisely the recognition of cost.

But this response leads Cordato to a related criticism. Is not Rothbard's point trivially true? "By definition, though, people always expect to benefit, relative to the alternatives, from every action that is undertaken. This is true under any institutional arrangement. An action taken at the point of a gun is expected to result in an increase in utility relative to the available alternatives" (p. 43). True enough; but has Cordato forgotten that two pages earlier, he had pointed out that Rothbard's criterion depends on the definition of a voluntary act? As he there rightly remarked, Rothbard's approach to coercion is clear from his other writings (p. 41). Is it too much to ask Cordato to bear in mind his own statements? Once one offers a definition of "voluntary," it is not at all trivial to say that voluntary actors expect to raise their utility, relatively to their baseline. No doubt the victim of a threat endeavors to maximize his utility "relative to the alternatives." But he hardly can anticipate a rise in utility relative to his starting point.[8]

One more issue and then we can have done with this unfortunate section of the book. Although it is true that Rothbard's welfare criterion does not take account of *ex post* utility, Rothbard does have something to say about it. He contends that the free market tends to maximize *ex post* utility; "in sum, the free market always benefits every participant, and it maximizes social utility *ex ante*; it also tends to be so *ex post*, since it works for the rapid conversion of anticipations into realizations."[9] Adhering strictly to demonstrated preference, Rothbard cannot prove the latter contention; but he is free to argue in a common sense way about tendencies.

[7]R. G. Collingwood, *An Autobiography* (Oxford: Oxford University Press, 1939), p. 31.

[8]I sidestep complications in setting the baseline, arising e.g., from so-called "non-productive" exchanges.

[9]Murray N. Rothbard, *Power and Market* (Menlo Park, Calif.: Institute for Humane Studies, 1978) p. 10.

Cordato's comments on Kirzner's view of efficiency are best taken together with his presentation of his own notion of "catallactic efficiency." He begins, reasonably enough, by setting forward some requirements for a sound Austrian concept of efficiency. But two of these requirements will make any alert reader gasp in amazement: "any analysis of people's preferences must be based on a recognition and acceptance of the guiding principle behind Rothbard's theory of social utility, revealed or 'demonstrated' preference . . . preferences can only be deduced by observing activities. Furthermore, since states of knowledge can and do change with the passage of time, preferences that are revealed at a point in time cannot be assumed to remain constant over time. Again, this is an important part of Rothbard's analysis that can and should be used as a building block for the theory presented here" (p. 59).

I have no quarrel with these requirements—quite the contrary. But Cordato has here taken for his own exactly the doctrines of Rothbard that he earlier condemned. Cordato, it will be recalled, criticized Rothbard's use of demonstrated preference because it led to the neglect of effects on third parties. He rose in protest against Rothbard's failure to consider plans carried out over time. Now, demonstrated preference, exactly as Rothbard uses it, has become a requirement. Apparently, a radical conversion has taken place somewhere on the road between the end of chapter 2 and the onset of Chapter 3. "The stone that the builders rejected has become the chief cornerstone of the temple."

But enough of preliminary: what exactly is Cordato's catallactic efficiency? To understand it, we must return to Chapter 2 and Israel Kirzner. In a section of his early book *Market Theory and the Price System* (1963), Kirzner suggested a criterion of efficiency that rested on the coordination of the plans of market participants. Coordination of plans depends on knowledge; therefore "Kirzner reasons that an economic system can be judged efficient to the extent that it generates knowledge of mutually beneficial exchange possibilities" (p. 47).

Cordato has been greatly influenced by Kirzner's analysis; and his own criterion, as we shall see, bears more than a passing resemblance to Kirzner's prescriptions. But in Kirzner's argument, Cordato finds a crucial flaw. Following Jack High, he points out that an increase in information need not result in the coordination of plans. An entrepreneur, taking advantage of new information, may drive his rivals out of business. By doing so, he upsets their plans as well as those of their customers (p. 52).

If coordination of plans is not the key to the mystery, what can replace it? Catallactic efficiency, Cordato tells us. In this view, the efficiency of a catallaxy "is to be judged by the extent to which the catallaxy encourages individuals existing in a social context to pursue their own goals as consistently as possible" (p. 62). What institutional setting will best promote this end?

Since "without access to physical resources all the knowledge in the world would be useless" (p. 63), a stable system of property rights must be established. In it, each person will know what resources he may use in his plans. "In a social setting, where different individuals are pursuing different ends, efficient resource use can only occur when conflicts in the use of resources are minimized" (p. 63).

But if knowledge without property is empty, property without knowledge is blind. Individuals' pursuit of goals depends on the acquisition of knowledge about favorable opportunities for exchange. Here once more a stable system of private property is vital. In it, entrepreneurs will have a financial incentive to bring new information to light through the exploitation of discrepancies in prices (p. 63). Cordato's catallactic efficiency, then, recommends exactly the same institutional setting as does Kirzner: one of private property, in which individuals may use their resources to pursue their own ends, so long as they do not invade the property rights of others (p. 66). This system Cordato terms the Ideal Institutional Setting (IIS).

I entirely agree with Cordato that a system of private property is desirable. With the rationale he advances for the IIS, I am much less satisfied. No doubt each person wishes, other things being equal, to acquire information about profitable exchanges. But it is very far from the case that each individual benefits from the general dissemination of information. This should come as no surprise to Cordato, since he makes this point himself in his discussion of discoordination. (Has he had another memory lapse between Chapter 2 and 3?) Surely if someone's gain in information enables him to overthrow my business, I have not benefited through the spread of more information.

And the point is of much wider application than to the discoordination effects that High and Cordato cite. Consumers may be affected adversely by the spread of information in other ways than through the misfortunes of displaced entrepreneurs. It hardly helps me if others discover my favorite restaurant and crowd me out or if someone else locates the bargain antique I wished to purchase.

If it need not be the case that each individual benefits from an increase in information, why should the maximum spread of information be taken as a criterion of welfare? Whose welfare is advanced by it? Perhaps the contention is that under a system in which the spread of information is maximized, each individual will gain more from knowledge of advantageous exchanges than he will lose through the acquisition of information by rivals. But why believe this? No reason has been given to accept it. And to justify the criterion, one needs to add that the net gain to each individual exceeds that of any other workable system. Or should it be the probability of net gain to each individual that is maximized?

Some of the problems of catallactic efficiency stem from one of Cordato's insights. As discussed earlier, he correctly argues against Kirzner that the increase of information need not lead to plan coordination. But, while dropping Kirzner's reason for using the growth of information as a welfare ideal, he retains the standard. "This [Cordato's] view of catallactic efficiency is, in a fundamental sense, Kirzner's standard of welfare economics without invoking interpersonal plan coordination as the normative goal" (p. 70). It is indeed; but, absent Kirzner's justification, he needs to provide some other reason that the general spread of information is to the advantage of each market participant, or at least to no one's disadvantage. Incidentally, even if Kirzner were right that increased information always leads to plan coordination, he would still not have justified his criterion. What if someone lost more by the general coordination of plans than he gained through the coordination of his plans with others? Some people may lose out by the end of a chaotic state of affairs. Why should they support Kirzner's criterion?

But Cordato has another reason besides the spread of information to support catallactic efficiency. Whatever the benefits of maximizing the growth of information, do not the manifest advantages of lack of conflict in the use of resources justify the stable system of property rights of the IIS?

I fear that I must once again dissent. First, in many other systems than the free market, people know what resources are available to them. Suppose, e.g., that the state takes 80 percent of the income of anyone who earns $5,000 or more. Someone who earns $20,000 will know exactly what resources are available to him. Further, while it is surely desirable, for the reasons Cordato states, to know what resources one may use, must this knowledge not be weighed against other goods? Imagine one had a choice between the tax system just described and one in which the government randomly decided each year on a tax rate between 1 percent and 10 percent. Would the former system be preferable, simply because in it one knew exactly the resources that would be available?[10]

[10]It might be objected to the example that in the second case, one always knows one will retain at least 90 percent of one's income: therefore, this is preferable, both on grounds of stability and control of resources, to the 80 percent tax. Although I think this response changes the criterion at issue—stability—to a combination of stability

Again, granted that each person prefers, other things being equal, that he know the resources he may without conflict use, why is it to each person's advantage that everyone have stable property rights? Perhaps some would benefit from instability in the property rights of their rivals.

One might object in this way to the line of criticism against catallactic efficiency that I have been pursuing. Why does Cordato need to show that the spread of information and a stable set of property rights are to the advantage of each person? Why is it not sufficient that the IIS benefit most people? Here one needs to recall the purpose of a criterion of welfare within economics. Since economics is a value-free science, the criterion must appeal only to non-controversial normative principles (if, indeed, there are such). Otherwise, one is straightaway in the midst of philosophy. It is for exactly this reason that both the neoclassicals and Rothbard use the Unanimity Principle in their respective criteria. As Rothbard puts the point: "Generally, even the most rigorously *Wertfrei* economists have been willing to allow themselves one ethical judgment; they feel free to recommend any change or process that increases social utility under the Unanimity Rule"[11] (Cordato apparently agrees that economics is value free; see p. 90, n. 13).

It may well be that the Unanimity Rule is not so free from controversy as its advocates imagine. But no principle more controversial than it can be used in scientific economics. If, then, Cordato rejects my criticisms on the ground that his criterion need not follow the Unanimity Rule, he confronts a daunting task: he must produce some other normative rule, equally uncontroversial, which supports his criterion. I wish him well in the attempt to do so.

Catallactic efficiency faces yet another difficulty; the problem, however, is not intrinsic to the idea but arises from an earlier section of *Welfare Economics and Externalities*. Before presenting his criterion, Cordato set forward various requirements for an acceptable standard, among them demonstrated preference. He agreed with Rothbard that one cannot assume that people's preferences are consistent over time.

How does catallactic efficiency stand up, measured by Cordato's own requirements? The question answers itself. To say that someone

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and amount of resources under one's control, the example can be modified to accommodate those who find this response persuasive. Suppose that in the latter system, there is a 1 percent chance that the state will tax 81 percent of total income and a 99 percent chance it will randomly select a tax of 1 to 10 percent. Which system is preferable?

[11]Rothbard, "Toward a Reconstruction," p. 20.

will better fulfill his preferences given more information or a stable system of property rights seems *prima facie* to require reference to more than the preferences he indicates by his action at a particular time. To assess Cordato's criterion, one needs to use judgments of this kind: "If A had known a, b, and c, he would have chosen x instead of y, raising his level of utility." How can one show, adhering strictly to demonstrated preference, that someone benefits from an increase in information? And even more obviously, increased information and stable property rights are in part desirable because they help people carry out their plans over time, as Cordato himself mentions (p. 61). But to take account of this contradicts his stipulation that preferences not be assumed consistent over time.

The situation then is this. Cordato in Chapter 2 criticized Rothbard's welfare criterion. In Chapter 3, he advanced as requirements for a criterion exactly the features that led to his criticisms of Rothbard in the previous chapter. And when he at last presents his own criterion, it turns out to fail these requirements. Cordato's inability to pursue a consistent line of argument brings to mind Samuel Johnson's observation on conversation with the Highlanders: "the inquirer is kept in continual suspense, and by a kind of intellectual retrogradation, knows less as he hears more."[12]

After presenting his criterion, Cordato discusses its application to externalities and to tort liability. On the whole, his treatment is insightful: he in particular makes valuable criticisms of the Coasean approach to externalities (pp. 92ff). Rather than discuss his analysis in detail in an already long review, I shall select for discussion a few points in his torts liability chapter.

He draws a valuable contrast between the Coasean approach to externalities (particularly as Richard Posner applies it) and his own catallactic efficiency view. Confronted with a legal case in which positive transactions costs prevent the parties concerned from bargaining their way to a solution, "the task of the [Posnerian] judge is to decide *who should* have the property rights, not *who does* have the property rights" (p. 100). The catallactic efficiency position takes just the reverse stand: property rights cannot be taken away by the judge's belief that someone other than the owner will use the disputed property more "efficiently."

Cordato's conclusion is entirely commendable, but a few details arouse misgiving. For one thing, he claims "[T]he theory presented

[12]Samuel Johnson, *A Journey to the Western Islands of Scotland*, R. W. Chapman, ed. (Oxford: Oxford University Press, 1970), p. 45.

here leads to a non-Pigouvian efficiency defense of strict liability" (p. 100). While I share Cordato's admiration for the work of Richard Epstein on strict liability, I cannot find any argument in the book defending strict liability. Cordato has argued that tort cases should be settled by reference to property titles, rather than on grounds of economic efficiency; but this by itself does not entail strict liability. Epstein succinctly characterizes strict liability in this way: "[the theory] holds the defendant *prima facie* liable whether or not either of the two further conditions relating to negligence and intent is satisfied."[13]

Suppose one agrees with Cordato that judges should decide tort cases on the basis of property rights. How does this by itself settle whether intent or negligence should play a role in assessing damages? Of course, Cordato is right that to use an economic standard as the exclusive criterion of decision is inconsistent with strict liability, and he has criticized doing so. But this is the sum and substance of his "argument" for strict liability.

Cordato rightly points out that the Coasean framework rejects causation; and his instincts are sound in combatting this. But his execution is faulty. He endorses an analysis of causality which he claims his view of strict liability supports. "The notion of strict liability that is derived from that [Austrian] view of property rights casts up a 'but for' test of causality that subverts these conceptual ambiguities. Causality is established, at least *prima facie*, if, but for the fact that the plaintiff (*P*) invaded the property rights of the defendant (*D*), the harm would not have occurred" (p. 102).

He presents on the same page an objection to the "but for" analysis of causation that so far as I can see is perfectly correct. In essence, the objection is this; any necessary condition of an event fulfills the "but for" requirement. If a violation of rights would not have happened "but for" someone's invasion, it would also not have happened "but for" the fact that the property was there. This objection, it should be clear, if correct overthrows neither causation nor strict liability. It is an objection to one particular conception of causality.

Cordato's reply to this objection is: "it is as if all property lines had been erased, or never existed" (p. 102). Not at all! The objection has nothing to do with property rights. Far from responding adequately to the objection, Cordato appears not to have understood it.

[13]Richard A. Epstein, *A Theory of Strict Liability* (San Francisco: Cato Institute, 1980), p. 5.

As to Cordato's claim that strict liability leads to 'but for' causation, let us hope it is false. Otherwise, one would have an excellent argument against strict liability. Perhaps Cordato, rightly thinking that strict liability requires acceptance of causation, believes that this is why he must accept 'but for' causation. This line of thought would work—but for the existence of other conceptions of causation.

Epstein's view of the issue differs from that of our author. He states: "Its affinity for absurd hypotheticals should suggest that the 'but for' test . . . be abandoned as even a tentative account of the concept of causation."[14] Epstein's analysis of causation depends on certain paradigms, not 'but for'. After presenting one of these paradigms, "*A* hit *B*," he remarks: "No question of 'but for' is ever raised, much less answered."[15] Is Epstein wrong about the implications of strict liability for causation? If so, one would like to know why.

Professor Cordato has obviously read very widely in the literature, and he has the ability to present the essence of a theory simply and clearly. But his many mistakes and inconsistences, along with the failure of his catallactic efficiency standard, make his book largely a missed opportunity. Rigor in argument cannot be abandoned—even if we inhabit an "open-ended universe."

[14]Ibid., p. 16.
[15]Ibid., p. 24.