

Comment on Ruth Sample's "Is the State Exploitative?"
and Matt Zwolinski's "Toward a Theory of State Exploitation"

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[Note: this turned out longer than I'll probably have time to read, so I've put in boldface the sections I intend to focus on; the others I'll probably drop.]

Libertarians typically regard the state as an agent of exploitation. Matthew MacKenzie, for example, argues that, on the one hand, "the state directly exploits its citizens" by maintaining a "coercive monopoly on legal services and security," and on the other hand, the state "intervenes in the market on behalf of privileged economic elites (often under the guise of progressive, public interest regulation) creating a distorted, cartelized economy" wherein "rents gained by the beneficiaries of state intervention constitute the extraction of social surplus from the exploited – workers, consumers, entrepreneurs, etc." (MacKenzie 2007) But is it correct to describe state action as exploitative? And if so, what is the character of the exploitation in question?

Ruth Sample and Matt Zwolinski develop rather similar accounts of exploitation, but proceed to reach rather different conclusions about exploitation by the state. Both Ruth and Matt treat exploitation as a moralised notion; both agree that a relationship can be exploitative even if it is voluntary and even if it does not make the exploited party worse off; both agree that not all exploitation should be legally prohibited; and both agree that in order for a relationship to count as exploitative, the exploiting party must benefit or seek to benefit (Matt emphasises the former, Ruth the latter). They disagree as to whether the moral feature that makes a relationship exploitative is a deficit of *respect* or a deficit of *fairness*; they also disagree as to whether the state counts as straightforwardly exploitative, though as far as I can see the latter disagreement does not derive from the former. Both their papers are quite rich and I cannot hope to address all the issues they raise, but let me try a few.

I don't have strong views as to how to choose between the respect and fairness criteria – partly because I suspect that a full exploration of either concept would end

up entailing much of the other. But I do think Ruth and Matt are right in refusing to restrict exploitation to coercive, harmful, rights-violating, or prohibition-worthy relationships.

Consider the case of sweatshops. Libertarians of the right-wing variety¹ often defend these on the grounds that they represent the workers' least bad option. This is, to be sure, a good reason for not banning sweatshops; but it does not settle the question of whether they are exploitative. We need to direct our attention to the background conditions that *make* sweatshop labour the workers' least bad option, and there we will usually find the hand of the state. Moreover, in all too many cases sweatshop employers are themselves complicit in the state policies that close off workers' other options; they lend their support to oppressive governments precisely because such oppression keeps labour costs low. And even when sweatshop employers bear no responsibility for the policies in question, their willingness to take advantage of the results of such oppression is open to moral assessment. Furthermore, in cases where the background coercion is onerous enough, the consensual nature of the employment contract will be open to challenge. Contracts under duress may not be binding, even when the other party to the contract is not the one responsible for the duress.

Matt suggests in a footnote that sweatshops might be “*pro tanto* but not all-things-considered wrong, if ... the economic benefits of the exploitation carried sufficiently great moral weight.” But this arguably depends on what the employers' alternatives are. If an employer cannot *afford* to provide employment under better conditions or at higher wages, then running sweatshops may be morally justified. But if the employer *can* afford it, then running sweatshops (in lieu of providing better conditions and higher wages) may be immoral, even if the sweatshop is better for the employees than nothing, because “nothing” is no longer the relevant alternative.

It is sometimes argued that corporations have a contractual obligation to their shareholders to maximise profits, and that refraining from exploitative practices would

¹ When I distinguish between left-wing and right-wing versions of libertarianism, I have in mind by “left libertarianism” not the neo-Georgist position defended by Peter Vallentyne, Hillel Steiner, and Michael Otsuka, but the constellation of positions (including my own) associated with the Alliance of the Libertarian Left – for which see Richman 2011, as well as the Alliance's website <all-left.net>.

violate this obligation. But as I have argued elsewhere (Long 2004): first, no such contract exists; second, if such a contract did exist, there would be a presumption against interpreting it in such a way as to require immoral behaviour; and third, if the contract did require immoral behaviour it would be immoral to sign it.

Consider another example: according to libertarian class analysis, interventionist legislation – in both its left-wing pseudo-progressive form and its right-wing pseudo-deregulatory form – tends to bolster the position of the corporate elite by cartelising the economy. As a result, economic exchange between the corporate elite on the one hand and workers, consumers, and entrepreneurs on the other hand tend to be (unilaterally) exploitative. But as MacKenzie notes, “this pervasive exploitation compatible with the continued improvement in the condition of the exploited through economic exchange.”

Relative to a no-transaction baseline, market exchange is mutually beneficial, even in a cartelized market economy. However, the beneficiaries of cartelization are able to capture more of the surplus of social cooperation than they would be able to in a more just and competitive economy.

Hence it would be a mistake to respond to the existence of exploitative exchanges under corporatist capitalism either by banning them (as left-wing statist sometimes seek to do, e.g. in the case of minimum wage legislation) or else by maintaining (as conservatives and some right-wing libertarians do) that since the exchanges are mutually beneficial there must not be anything wrong with them.

Incidentally, as a libertarian I have to take issue with what seems to me a conflation on Ruth’s part between genuine free trade on the one hand, and globalisation driven by government patronage on the other. It is certainly true that what is *called* free trade “enjoys broad bipartisan support”; but there is nothing remotely libertarian about the policies of corporate privilege that actually underlie much of so-called globalisation. (For details, see Carson 2007.)

While I’m largely sympathetic to Ruth’s and Matt’s accounts of exploitation, I’m less convinced by their insistence that exploitation must involve benefit (or, perhaps, intended benefit) to the exploiter. Is paternalistic exploitation really impossible? Suppose I refuse to rescue you from drowning unless you promise to give up smoking. In this case I am seeking to benefit you rather than myself; but the transaction still seems exploitative. Although I am not subordinating your *welfare* to

mine, I am subordinating your *ends* to mine, and taking advantage of your weak bargaining position to do so.

Ruth and Matt rightly reject the claim that all exploitative relationships are prohibition-worthy rights-violations. A different question is whether all prohibition-worthy rights-violations are exploitative. I'm inclined to think they are; on a libertarian view, rights-violations involve the forcible subordination of other people to one's own ends or the forcible expropriation of the fruits of others' labour, and such actions seem paradigmatically both disrespectful and unfair.

One objection might be that rights-violations are often undertaken with the intention of benefiting not the violator but either a third party or the very person who has had her rights violated. But this assumes what I've tried to call into question – the impossibility of paternalistic exploitation.

A different objection would be that the standards for respectful and/or fair treatment are determined by something like a Rawlsian choice procedure, and that in such a procedure, agents would agree to some policy such as the difference principle, which would then license policies that libertarians regard as rights-violations. My reply to this would be that even if one accepts the difference principle or something like it, the most effective way of satisfying the principle will be to *refrain* from violating libertarian rights. But to substantiate this claim would involve appeals to libertarian economic and social theory that time does not permit.

Ruth herself raises worries about the Rawlsian difference principle. On the one hand, since it compensates for chosen as well as unchosen inequalities, it appears to exploit those who suffer unchosen inequalities in order to benefit those who “suffer” chosen ones. On the other hand, if we revise the difference principle to place greater weight on choice, the result might be exploitation in reverse.

It might seem that this is not a problem libertarians need to worry about, since they presumably reject the difference principle. But if one accepts a unity-of-virtue account of the foundations of justice (cf. Long 2002b), considerations of benevolence, fairness, and the like will play a role, even if not the sole role, in determining the contours of libertarian rights; so libertarians do have reason to be responsive to these concerns. If the economic and social theories defended by libertarians (and especially by the left wing of the libertarian movement) are correct, however, a system of libertarian *laissez-faire* will actually come closer

to achieving *both* the choice-focused and the non-choice-focused versions of the difference principle than any government regulation could hope to do, so there is no real conflict in practice; though again, I lack time to defend this claim here.

If violations of libertarian rights are exploitative, and the state by its nature violates libertarian rights, then the state will be exploitative too. But Ruth questions this – not so much because she rejects a libertarian account of rights (although I take it that she does) as because she worries about whether it is possible for the state to exploit, given that it is not “an agent seeking to advance its own interests.” While of course *agents* of the state can use their position to benefit the state is exploitative actions, she is reluctant to count this as a case where the state itself intends to benefit.

I suspect that this case against the possibility of state exploitation would apply equally to most historical claims of exploitation; we could no longer speak of the capitalist class exploiting the proletariat, or of the aristocracy exploiting the peasantry, etc., since there does not seem to be any obvious sense on which a class can intend to benefit, over and above what members of that class may intend. And this result seems like a reason to resist the argument.

Now in response to the argument we could appeal to my earlier case for the possibility of paternalistic exploitation as a reason to drop the intention-to-benefit requirement. But leaving that aside, let me suggest that we distinguish between, on the one hand, cases where agents of some group or institution occasionally *abuse* their position in an exploitative way – so that the group or institution itself is not necessarily implicated in the exploitation – and, on the other hand, cases where the exploitation is carried on by agents of the group or institution *qua* agents of that group or institution. When either the privileged position or the very existence of a group or institution depends on the systematically exploitative actions of its agents – as is arguably the case, by libertarian standards (or at least by left-libertarian standards), with aristocracy, the capitalist class, and the state alike – it does not seem so much of a stretch to call the group or institution itself exploitative.

In defense of the idea of state exploitation, Matt appeals to libertarian class theory as developed by the French liberals of the Restoration period, an approach which as Matt notes influenced Marx’s analysis of the subsequent July Monarchy (quoted by

both Matt and Ruth). **But Matt criticises this theory's division of society into productive and unproductive classes, and the identification of the state with the latter. As Matt points out, states produce "roads, canals, monuments ... protection against foreign and domestic aggression ... a legal system for the enforcement of property rights and contract, old age insurance, and so on."** Doesn't this show that states are productive?

I think this is a bit too quick. Suppose I steal from you some bricks that you have bought or made. Then I also steal some money from you, which I use to pay some private workers to build a house out of your bricks. Then I sell the house (back?) to you – while making clear that if anyone else tries to sell you a different house at a cheaper price, I will shoot them. Does this sequence of activities count as productive? Well, *given* the background of all the rights violations that I have committed or threatened to commit, you owe to me the fact that you have this house. But it was your bricks and your money that I used to “produce” the house; and your dependence on me for the house is the result of my having forcibly prevented other avenues to its production. Thus my so-called “productive” activity turns out to be largely a matter of parasitism on the productive activities of others. Hence I cannot see that pointing to roads and legal systems and such does anything to refute Comte's claim, quoted by Matt, that “a public functionary, in his capacity as functionary, produces absolutely nothing” because “he exists only on the products of the industrious class.” (Of course matters might be different if it could be shown that these “products” of the state could not be produced otherwise than via state activity; but we have ample evidence to the contrary; see, e.g. Benson 1990, Bell 1992, and Stringham 2007.) **Nevertheless, I certainly agree with Matt that mere unproductivity is not essential to exploitation, and that a focus on the coercive means of acquisition is more helpful.**

The French liberals tended to identify recipients of charity – even voluntary charity – as part of the parasitic class, whereas the approach of their contemporary Thomas Hodgskin, which more recent libertarian class theory tends to follow on this point, made parasitism a matter of obtaining revenue by *force*. John Calhoun famously tried to divide the exploitative from the exploited classes according to whether their members were net taxpayers or net tax recipients. This narrow focus on taxes should be unattractive to us for the same reason that

it was attractive to Calhoun – namely because it allowed him to treat slaveowners as exploited rather than exploitative. Moreover, welfare recipients have so little control over the political process and are so victimised by the existing system that it makes little sense to assign them to the ruling class – especially by comparison with, say, the recipients of *corporate* welfare. Nevertheless, there remain some tricky aspects to identifying the ruling or parasitic class; see my exchange with David Friedman (Long 2011).

Matt contrasts the Marxist theory of exploitation with the libertarian one; and of course by and large that's fair enough. All the same, by libertarian standards *most* of what Marx had to say about exploitation under "capitalism" is broadly correct. As Marx himself pointed out, the capitalist class's monopoly over the means of production was achieved and maintained as a result, in the main, not of market competition but of government privilege. Of course there is room for debate as to whether such a monopoly *could* have arisen by market means, and whether it would be legitimate if it did; but as a matter of fact it did not so arise, and so the workers might well have been justified, on impeccably *libertarian* grounds, in "expropriating the expropriators" by seizing control of the commons that had been illicitly enclosed, and the factories that had been rendered the "least bad option" as a result of such enclosure. In other words, although later Marxists would deemphasise the fact, *by Marx's own account* the state's role in enabling capitalist exploitation was less a matter of *enforcing* libertarian property rights than of *violating* them. (cf. Carson 2007.)

Libertarians of the right-wing variety sometimes argue: "yes, it's a shame about the enclosures, but thank goodness the factory owners came to rescue the displaced workers." But as Kevin Carson reminds us, in many cases the factory owners had themselves lobbied for the enclosure laws, and so were complicit in constricting the workers' options, indeed in *creating* the proletariat. And even when the employers were not complicit, our earlier worries about taking advantage of the effects of others' injustice may still apply.

Ruth raises the question of the moral status of *tolerating* exploitation by not banning discrimination. She notes that libertarians oppose anti-discrimination laws, and cites Rand Paul's recent comments on the relevant portions of the Civil Rights Act as an example. Of course Rand Paul is not a libertarian, but libertarians tend to have similar views. Are libertarians indeed committed to tolerating discrimination in

general, and the sort of discrimination the Civil Rights Act purports to address in particular? And if so, is this a moral problem for libertarianism?

Let's consider the general case first, and let's clarify what is to be meant by "toleration." Ruth herself notes that "it may be wrong for an individual, the state, or a state agent to interfere with some forms of exploitation," either because doing so "might make the exploited persons even worse off" or else because it "might violate some important considerations of autonomy." But does that mean that Ruth favours "tolerating" such exploitation? This conclusion would follow if the only effective means of combating exploitation were by means of violence; but libertarians, in addition to their moral objections to initiatory force, question the widespread assumption of its efficacy, and certainly of its unique efficacy. A central theme of libertarian social thought is that nonlibertarians tend to exaggerate the effectiveness of violent remedies (especially governmental ones) and to underestimate the effectiveness of peaceful ones.

In his aforementioned paper on libertarian exploitation theory, Matthew MacKenzie invokes Alan Wertheimer's distinction between the *moral weight* and *moral force* of exploitation – where the former concerns how bad the exploitation is, and the latter concerns what reasons for action its badness gives us. MacKenzie writes:

The connections between moral weight and moral force are complex and any adequate account of exploitation must keep the distinction clearly in mind. We cannot simply assume that because some type or instance of exploitation is seriously morally wrong, the moral upshot of this is that it should be illegal. Nor can we assume that because certain forms of exploitation should be legal, they are not seriously morally wrong.

Some forms of exploitation are violations of libertarian rights-violations; and those that are not, are usually to a significant degree enabled by a background of rights-violations, governmental or otherwise. Of course this claim about enablement is controversial, even among libertarians; and again, time forbids offering a full defense of it here. But for some ways in which governmental rights-violations enable private exploitation, see Carson 2007; and for some ways in which non-governmental rights-violations enable private exploitation, see Johnson 2010a.

MacKenzie offers three reasons for not interfering via coercive legislation with those forms of exploitation that do not involve violations of libertarian rights:

First, freedom of association and exchange are fundamental rights and to interfere with them is unjust. Second ... in cases of voluntary exploitation, prohibiting the transaction can actually make the exploited party worse off by taking away that person's least bad option. Third, it is unlikely that the state will have either the knowledge or the incentive to properly mitigate voluntary exploitation. Indeed, since statist intervention is at the heart of the problem, more state intervention is not what is needed.

MacKenzie nevertheless does not advocate "tolerating" such exploitation, if that means refraining from taking action against it. Instead, he defends a "political response" to non-rights-violating forms of exploitation. Since these forms of exploitation depend *in part*, but *not entirely*, on a background of state violence, MacKenzie's political response is two-pronged: on the one hand, "working to identify and roll back those forms of state intervention that make exploitation possible," and on the other hand "supporting efforts to challenge and develop alternatives to exploitative institutions and social relations." Thus it is possible to oppose anti-discrimination laws without being in the least inclined to *tolerate* discrimination. This would of course be small comfort to those who see governmental opposition to discrimination as more effective than private action; but libertarians have long argued for the reverse judgment.

With regard to the specific case of discrimination that the Civil Rights Act purports to address, matters are still more complicated; for there are grounds to deny that the kind of discrimination that prevailed in the American South can really claim the protection of freedom of association and exchange. The historic sit-ins by blacks at lunch counters and so on are sometimes criticised by libertarians of the right-wing variety as violations of the property rights of white store owners. But just how secure were the store-owners' property claims? The lions' share of initial appropriation in the South was performed by blacks; it was by blacks that most of the land was cultivated, that most of the buildings and roads were constructed, and so on. If the mixing of labour is the basis of property rights, then most of the South – both land and infrastructure – was by libertarian standards their property.

Of course blacks carried on most of this homesteading under the direction of whites; and as Locke famously claims in the *Second Treatise*, “the turfs my servant has cut ... become my property.” But that is presumably because the employer has a contract with his employees whereby they agree to surrender the products of their labour in exchange for pay. But during this country’s first century, blacks were mainly slaves rather than contract employees, and so had made no such agreement with their “employers”; as a result, they retained natural title to this property. The call for freed slaves to receive “forty acres and a mule” after emancipation was actually a quite modest demand in comparison to their rightful claims.

During this country’s second century, blacks continued to be the South’s chief builders of roads and buildings, and chief cultivators of the soil (as of course they continue to be to this day). Now of course they were nominally free, and their employment relations nominally contractual; but in the South in particular, they were often subject to such severe legal disabilities under the regime of Jim Crow that the consensual nature of their employment contracts is open to question. (Remember that in the period prior to civil rights legislation, discrimination was more often legally mandatory than it was legally optional.) Hence white store owners in the South should perhaps count themselves lucky that blacks were demanding only to sit at lunch counters rather than expropriating the entire store, as they would arguably have been within their rights to do.

It may be objected that such rectification of antebellum injustice would violate a statute-of-limitations principle. But even if one grants a statute of limitations, it is doubtful that it would apply when the antebellum injustice was *continuing* well into the postbellum period. It may also be objected that a specific line of title is required, so that an individual black person would be entitled to expropriate only the products of his or her own ancestors. (For a version of libertarian rectificatory justice that rejects statutes of limitations but requires specific lines of title, see Rothbard 1998, chapters 10-11, as well as Rothbard 1969.) But while specific lines of title seem like a fair requirement in most circumstances where rectification is called for, when a group of people has been systematically oppressed and expropriated *as a group*, and when that very process of oppression and expropriation has rendered the tracing of specific titles virtually impossible (as slaves’ families were split up and

sold far afield), considerations of justice militate in favour of relaxing the line-of-title requirement.

But if blacks were justified in using forcible occupation to combat private discrimination in the South, it does not follow that anti-discrimination legislation was also justified. As Charles Johnson and Sheldon Richman have recently argued (Johnson 2010b; Richman 2010a, 2010b), the primary victories for desegregation were accomplished in the South primarily by private grass-roots activism rather than by law, and the chief function of civil rights law was to *co-opt*, and thereby defang, the civil rights movement, in the same way that New Deal labour legislation co-opted and defanged the labour movement (Johnson 2004, Carson 2010).

Incidentally, I worry that Ruth may be giving the u.s. federal government a bit of a pass when she writes only that “southern states defended slavery before the civil war.” The Fugitive Slave Act, a major bulwark of the slave system, was of course a federal law, not a state one. And today, governments at all levels – federal, state, and local – promote exploitation through laws that make it more difficult for lower-income groups, frequently including women and minorities, to compete with more established and privileged economic players. (Cf. Johnson 2007b.)

Finally, Matt proposes four methods for addressing the problem of state exploitation: to eliminate the state via anarchist revolution; to eliminate the state by altering economic structures so that it gradually withers away on its own; to keep state power in check through constitutional restraints; and to keep state power in check through cultural norms. Obviously I cannot take time to defend the anarchist position here (though I and others have written a fair bit about it elsewhere); I would simply like to note that the anarchist approach actually partakes of all four of these options.

When Matt considers the possibility of altering economic structures so that the state withers away, he thinks of these alterations as occurring from the top down, Marxist style; but most anarchists, whether of the free-market or the communistic variety, favour producing these alterations from the bottom up, by building alternative institutions and gradually winning people’s allegiance to these and away from the state, until the state collapses for lack of support. In the words of Paul Goodman: “A free society cannot be the substitution of a ‘new order’ for the old

order; it is the extension of spheres of free action until they make up most of social life.” (quoted in Ward 1992, p 14.) Thus understood, the first two options are identical. As for the third option, many anarchists – and those in the individualist or free-market tradition in particular – see anarchism as the embodiment of, rather than an alternative to, the checks-and-balances approach; indeed, in their view the fatal flaw of the monopolistic state version of constitutionalism is the absence of free entry into the provision of checks and balances. (cf. Long 1994, 2002a, 2008b.) Finally, most anarchists favour the promotion of various moral and cultural norms as part of the process of building alternative institutions, so anarchist revolution encompasses the fourth option as well.

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