

MOLINARI REVIEW

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The *Molinari Review* is a peer-reviewed, open-access, print-on-demand, interdisciplinary journal of libertarian research. We publish scholarship, sympathetic or critical, in and/or on the libertarian tradition, broadly understood as including classical liberalism, individualist anarchism, social anarchism, anarcho-capitalism, anarcho-communism, anarcho-syndicalism, anarcha-feminism, panarchism, voluntaryism, mutualism, agorism, distributism, bleeding-heart libertarianism, Austrianism, Georgism, public choice, and beyond – essentially, everything from Emma Goldman to Ayn Rand, C. L. R. James to F. A. Hayek, Alexis de Tocqueville to Michel Foucault. (We see exciting affiliations among these strands of the libertarian tradition; but you don't have to agree with us about that to publish in our pages.)

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Submissions should be sent by email to Roderick T. Long at iradical@praxeology.net as Word .doc or .docx files, prepared for blind review (i.e. all author information removed), and accompanied by an abstract of around 150 words as a guide for referees. Citation style is mainly up to the author, so long as it is clear, complete, and consistent. Submissions should not (ordinarily; inquire for exceptions) be previously published, nor should they be under consideration for publication elsewhere. Articles will ordinarily be published under the Creative Commons Attribution 4.0 License. Authors will be asked to sign a publication agreement specifying these terms.

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An Interdisciplinary Journal of Libertarian Research

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Editor's Introduction

Welcome to the first issue of the *Molinari Review*, a peer-reviewed, open-access, print-on-demand, interdisciplinary journal of libertarian research published by the Molinari Institute.

The *Molinari Review* publishes scholarship, sympathetic or critical, in and/or on the libertarian tradition, broadly understood as including classical liberalism, individualist anarchism, social anarchism, anarcho-capitalism, anarcho-communism, anarcho-syndicalism, anarcha-feminism, panarchism, voluntary-ism, mutualism, agorism, distributism, bleeding-heart libertarianism, Austrianism, Georgism, public choice, and beyond – essentially, everything from Emma Goldman to Ayn Rand, C. L. R. James to F. A. Hayek, Alexis de Tocqueville to Michel Foucault. (A version of that last sentence appeared in our original call for papers; I'm pleased to see that the very first article in this issue draws links between Tocqueville and Foucault.) We see exciting affiliations among these strands of the libertarian tradition; but you don't have to agree with us about that to publish in our pages.

Many adherents of these strands, to be sure, would strenuously deny any affiliation with adherents of other strands. In particular, social anarchists routinely deny that anarcho-capitalists count as genuine anarchists, while anarcho-capitalists for their part routinely deny that social anarchists count as genuine libertarians. But as individualist anarchists in the tradition of Benjamin Tucker, Lysander Spooner, and Voltairine de Cleyre, we at the Molinari Institute stand closer to both the social anarchist and anarcho-capitalist traditions than they stand to each other, which is perhaps why we find it easier to see points of commonality, and avenues for fruitful conversation, between them.

Disciplines in which we seek to publish include philosophy, political science, economics, history, sociology, psychology, anthropology, theology, ecology, literature, and law. We aim to enhance the visibility of libertarian scholarship, to expand the boundaries of traditional libertarian discussion, and to provide a home for cutting-edge research in the theory and practice of human liberty.

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combination of censorship and protectionism, and hope to contribute to a freer culture.

The *Molinari Review*, like the Institute that publishes it, takes its name from Gustave de Molinari (1819-1912), arguably the founder of market anarchism. There were market-friendly anarchists before Molinari – Thomas Hodgskin, Josiah Warren, and Pierre-Joseph Proudhon being the most prominent examples – but Molinari was the first thinker to describe how market mechanisms might provide security functions in the absence of the state. His account is not necessarily the best, but it has at least the merit of being the earliest.

Without my previous experience (2004-2008) editing the *Journal of Libertarian Studies*, I would have had a much harder time figuring out how to put this journal together. In particular I'm grateful to Judy Thommesen, my managing editor on the *JLS*, for originally showing me the ropes. I'd also like to thank the *Molinari Review's* editorial board for the invaluable support they've given to this project, with especial mention of Per Bylund, Stephan Kinsella, and Jeffrey Tucker.

Roderick T. Long
Auburn, Alabama
May 2016

The Right to Privacy Is Tocquevillean, Not Lockean: Why It Matters

Julio Rodman

Primarily as a result of recent leaks about several large-scale NSA surveillance projects by intelligence contractor Edward Snowden, the debate over the right to privacy has experienced a new life in American public discourse. Public figures in the pro-privacy movement, such as Glenn Greenwald, Edward Snowden, and Julian Assange, often appeal to Anglo-Saxon liberal rights theory, that is, to a political tradition originating with the Levellers in the British Civil War and continuing with John Locke and the American framers, that understands the function of government as that of defending – and refraining from violating – certain legally delineated rights. “Negative” rights like these, exemplified in the American Bill of Rights, are actively infringed through coercion – preventing the publication of controversial writing, prohibiting religious expression, imprisoning citizens or seizing their property without due process – and passively neglected through a failure on the part of the state to prevent coercion by foreign and domestic aggressors. Such rights are intended to protect liberty. Although the right to privacy is often framed by its contemporary defenders as analogous to the former rights, it is telling that the right to privacy receives little explicit mention in the tradition of thought to which they appeal.

A much better context and foundation for the right to privacy, one sometimes also alluded to by the same advocates, is in the French political tradition, particularly in the political philosophies of Alexis de Tocqueville and Michel Foucault. This latter worldview views freedom not primarily as something demarcated by legalistic rights and characterized by the absence of coercion, but rather as something defined by the absence of the state in the details of life – that is, a lack of state observation and subtle state control. The right to privacy is not fundamentally concerned with the liberty to do what one wants, but with security against observation, possibly even while doing what one wants. I argue that the right to privacy should be understood as freedom from observation, but furthermore, as freedom from *accusatory* observation.

Presenting a case for the right to privacy in terms of the intellectual tools provided by this French tradition is advantageous for four closely related reasons. In the first place, such a presentation is more intellectually precise, in that it captures the intuitive repulsion many people feel toward accusatory state observation, as a phenomenon overlapping with but not identical to state coercion. In fact, a political orientation against such state observation in some contexts clashes with a traditional rights-based worldview, because, at least in theory, the more closely the state observes its subjects with an eye to preventing coercion by non-state parties, the more precisely it can protect against rights violations by foreign and domestic aggressors.

It is true both that the right to privacy can conflict fundamentally with the role of the state to precisely enforce just laws, and, as history of twentieth century totalitarianism plainly taught us, that a substantial sphere of privacy is essential to human flourishing. It is precisely this political paradox that gives a mood of unresolvability to the portraits of politics presented by Tocqueville and Foucault. This conflict is nowhere more evident than in the case of citizenship itself: the undocumented immigrant, in contrast to the registered citizen, lives an utterly under-the-radar existence, but cannot safely appeal to the state for protection or enforcement of contracts. To some extent this conflict is also exemplified in the case of government surveillance for anti-terrorism purposes.

Second, framing the argument in this way also illuminates connections between popular opposition to the mass surveillance apparatus and that toward over-policing of government housing projects inhabited by racial minorities, another current controversy which, although not typically spoken of in this way, largely concerns the right to privacy. In this case, I argue, there is not such a stark conflict between rights-enforcement and privacy, because the simple prevention of crimes against person and property would be a much less invasive approach than the currently prevailing law enforcement strategy in these neighborhoods.

Thirdly, such an intellectual packaging of the right to privacy captures an aspect of the experience of oppression by minority groups that is neglected by the traditional rights-based worldview – the experience of the oppressive gaze of the dominant majority and its institutions. Finally, such a presentation touches on a universal human need deserving of political respect which is highlighted in the minority experience: all people need spheres of their lives that are invisible to the state. The commonness and scope of such spaces determines where a society lies on a spectrum between, on the one hand, merely efficient and effective modern government, and on the other, totalitarianism.

This mischaracterization of the right to privacy – that it is a matter merely of the absence of coercion – is not just the mistake of a few recent public figures; it is also established in international law. The United Nations Special

Rapporteur, a title given by the U.N. Human Rights Council to individuals mandated to conduct fact-finding missions concerning human rights abuses, conducted a global investigation last year of state mass surveillance systems.¹ The conclusion of the investigation was that such systems as currently operated violate the individual right to privacy, as codified, most importantly, in the International Covenant on Civil and Political Rights.² This is a treaty that Security Council members and many other UN parties signed in 1966, which codifies various “negative” liberties. Both positive and negative liberties concern the ability to live one’s life as one wants, in the traditional liberal sense. But the modifier “negative” indicates that these are rights against coercion, as opposed to “positive” liberties, codified in a separate document called the International Covenant on Economic, Social, and Cultural Rights, which concern entitlements to material resources.³ In reality, the right to privacy fits neatly into neither of these categories.

The Special Rapporteur’s decision was, for obvious reasons, lauded by American privacy advocates, including *The Intercept*’s Glenn Greenwald, the well-known civil libertarian journalist and lawyer who acted as Edward Snowden’s media contact for the NSA spying leaks.⁴ Snowden, in a different context last year, depicted the right to privacy as a negative right in the same category as freedom of speech and other rights defined in terms of an absence of coercion.⁵

But people feel an intuitive repulsion toward being observed in an incriminating way, as something theoretically distinct from being coerced. It is true that state observation often either follows on the coattails of coercion (prisons closely observing the behavior of citizens arrested for non-violent drug offenses), or leads to coercion (the state using information obtained

¹ “UN Report on Human Rights and Terrorism – The Intercept.” *The Intercept*. 15 Oct. 2014. Web. 11 May 2015. <<https://firstlook.org/theintercept/document/2014/10/15/un-report-human-rights-terrorism/>>.

² “International Covenant on Civil and Political Rights.” United Nations – Office of the High Commissioner for Human Rights. Web. 11 May 2015. <<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>>.

³ “International Covenant on Economic, Social and Cultural Rights.” United Nations – Office of the High Commissioner for Human Rights. Web. 11 May 2015. <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>>.

⁴ Greenwald, Glenn. “UN Report Finds Mass Surveillance Violates International Treaties and Privacy Rights - The Intercept.” *The Intercept*. 15 Oct. 2014. Web. 11 May 2015. <<https://firstlook.org/theintercept/2014/10/15/un-investigator-report-condemns-mass-surveillance/>>.

⁵ “‘Hostile to Privacy’: Snowden Urges Internet Users to Get Rid of Dropbox.” *RT News*. 12 Oct. 2014. Web. 11 May 2015. <<http://rt.com/news/195244-snowden-rid-dropbox-privacy/>>.

through surveillance to imprison people providing indirect support to ideological enemies of the government). However, coercion and observation are still two different phenomena.

Not all cases of accusatory state observation are at the same time cases of coercion. If the police loiter in or near the lobby of a state-run apartment complex, causing residents to feel that their behavior is constantly being evaluated, this is not in itself coercion against residents, even if such observation may sometimes be accompanied by actual coercion. More generally speaking, not all cases of such objectionable observation, by the state or by non-state actors, are simultaneously coercive. A peeping Tom does not coerce his victims; nor do bigots who gawk at same-sex couples or at individuals of a different race or gender expression. In short, the human need for privacy deserves its own separate treatment in political thinking, because the oppression of observation is different from the oppression of force.

The concept of a right to privacy thus conceived, as distinct from coercion, received its first and most eloquent exposition in several works of the French philosopher and anthropologist of nineteenth century America, Alexis de Tocqueville. Tocqueville's life straddled the line between the pre- and post-revolutionary worlds; he thus witnessed the transformation of a haphazardly and intermittently regulated feudal society into a modern bureaucratic society, in which efficient, comprehensive, and equally applied law began to become the ideal of politics. Such an ideal is integral to democracy, but as he observed, it also presents the danger of an omnipresent government arising to achieve a precise enforcement of the laws. Tocqueville was a democrat, but a hesitant one; he was aware both of the profound injustices of feudalism and the inevitability of its demise, but also wary of the new dangers presented by modernization, which included the possibility of totalistic observation and control.

In Tocqueville's view, democratic society places men "shoulder to shoulder, unconnected by any common tie," thus orienting subjects in a position of vulnerability and isolation before the power of the state.⁶ This is in contrast to medieval society, where individuals found their place in socially embedded chains of authority and within a patchwork of substate communities. He argues that the Catholic Church and the aristocracy, in the course of defending their traditional privileges and immunities, prevented the uncontrolled expansion of government power and preserved a general spirit of independence and freedom from the state during the Ancient Regime.⁷ He also speaks approvingly of the widespread medieval phenomenon of local

⁶ De Tocqueville, Alexis. *Democracy in America: And Two Essays on America*. Trans. Gerald Bevan. (London: Penguin, 2003). Volume 2, Part 2, Chapter 4.

⁷ De Tocqueville, Alexis. *The Old Regime and the Revolution*. Trans John Bonner. (Mineola: Courier Corporation, 2012). Book 1, Chapter 2.

self-rule, made possible by the inattentiveness of state authority, in which villagers “held property in common ... elected their own officials and governed themselves on democratic lines.”⁸ In Tocqueville’s assessment, freedom in medieval society was extralegal, existing in certain scattered contexts as a result of the medieval state’s limited power to enforce laws and the resulting intermittent and scattered presence of the state in society. This is in sharp contrast to what he views as the politically regimented, or what we would call now the totalitarian, nature of revolutionary France.

He foretells the twentieth century phenomenon of totalitarianism, in which the dependence of asocial subjects on the governing bureaucracy rather than on a diversity of substate communities and loyalties worsens until government “remove[s] from [its subjects’ concerns] entirely the bother of thinking and the troubles of their life.”⁹ To Tocqueville, totalitarianism is an extreme to which a society with a modern bureaucratic democracy is prone, as opposed to its political opposite – an insight as prescient as it is counterintuitive to modern democrats.

Totalitarianism is an extreme of what Yale political scientist James C. Scott calls “legibility,” the state-imposed regularity and visibility of people and places that permit the efficient administration of bureaucratic tasks.¹⁰ Phenomena like social security numbers, government identification cards, and numbered streets laid out in grids are all examples of commonplace and often non-harmful instruments of legibility in modern democracies. We might say that state surveillance like that recently exposed involves an excess of legibility. Of course, as the feudal age taught us, there is also such a thing as a deficit of legibility, as oppression and violence can emerge within the gaps in the state’s visibility.

That the right to privacy tends to lie at the periphery of the state’s ability or willingness to efficiently administer law, perhaps explains why the attempt to delineate the right to privacy has such a confused history in U.S. jurisprudence: it is possible the law may simply be a poor tool for protecting a typically extralegal freedom. This might be better accomplished by trying to lessen the enforcement of existing laws, or by citizen initiative to attain anonymity, through, for instance, the online anonymous communication software, Tor.

But one more certain source of the problem is that there is no explicit guarantee of a right to privacy in the United States Constitution, which itself

⁸ *Ibid.*, Book 1, Chapter 3.

⁹ De Tocqueville, Alexis. *Democracy in America: And Two Essays on America*. Trans. Gerald Bevan. (London: Penguin, 2003). Volume 2, Part 4, Chapter 6.

¹⁰ Scott, James C. *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed*. (New Haven: Yale UP, 1998). p. 2.

hints at the inadequacy of the Anglo-Saxon, liberty-oriented political tradition in this respect. In contemporary jurisprudence, the right to privacy is regarded in some contexts as a substantive due process right – a non-procedural liberty that is supposed to be constitutionally protected despite not being enumerated in the Constitution. The modern way of handling the right to privacy both implicitly concedes the absence of a generalized right to privacy in the thoughts of the framers and leaves the right to privacy essentially undefined. Historically, this right has only been artificially inserted through creative constitutional interpretation within the last century, and has been defined, when at all, with some, but not thorough exploration of the separateness of freedom from observation and freedom from coercion.

Pro-privacy American jurisprudence's earliest attempts implausibly inferred a generalized right to privacy from tenuous analogies to other rights or from the practical requirements of other constitutional rights. Justice Brandeis, before authoring a famous dissenting opinion asserting a right to privacy in *Olmstead v. United States* in 1928, wrote a paper in which he reasoned that if such a right were to exist, it would have to be theorized as something distinct from a right against physical invasion of person or property, from a right to contract, and from a right to intellectual property.¹¹ Invasions of privacy, for example, in the case of the unpermitted publication of the contents of another's diary, do not amount to physical invasions of any sort. Violations of the right to privacy do not necessarily amount to a breach of economic agreement, because a party who has not consented to a confidentiality agreement may in various circumstances nevertheless come into possession of the personal information of another. This point is even more relevant in the age of the Internet and of metadata, where networks of third-party engagements are common and complex. And the right to privacy is not an intellectual property right, because it prohibits not the unauthorized profiteering off of already publicized information, but its publication in the first place.

But the insightfulness of this analysis extends mostly to his explication of what the right to privacy is *not*. When it came to describing the right itself, he remarked only that it ought to fall in the same legal category as already existing legal rights against psychological and emotional damage, and that it philosophically amounts to what he vaguely but not objectionably terms a "right of an inviolate personality," and a "right to be left alone." He reproduced these elements of this description in his dissenting opinion in *Olmstead*, a case concerning the constitutionality of unwarranted wiretapping

¹¹ Warren, Samuel and Louis Brandeis. "The Right to Privacy." *Harvard Law Review* 4.5 (1890): 193-220. JSTOR. The Harvard Law Review Association. Web. 20 July 2015. <<http://www.jstor.org/stable/1321160>>.

of conversations on a private telephone¹².

Jurisprudential progress for the right to privacy achieved a major milestone later with *Katz v. United States* in 1967, which ruled that the Fourth Amendment protected an individual whose arrest was based upon incriminating evidence obtained through an unwarranted wiretap of a public telephone.¹³ In *Katz*, U.S. jurisprudence made one significant and correct philosophical development concerning the right to privacy. It recognized that it does not necessarily have anything to do with the right to property: invasions of privacy can take place against a person directly. The majority ruled that the right to privacy, in the specific context of the Fourth Amendment, protects not just invasions of external property, as a narrow reading of the Fourth Amendment might suggest, but personal invasions as well, as in the case of the government listening to a phone conversation without a state agent entering the booth. However, the Supreme Court denied in this case the existence of any generalized constitutional right to privacy.

The 1965 ruling in *Griswold v. Connecticut*, a case concerning the right to purchase and use contraception, established nothing new philosophically about the right to privacy. It propounded the legal doctrine, largely abandoned since then by the courts, that because certain amendments to the Constitution require individual privacy as “peripheral” or “penumbral” rights that in various situations enable and support those specifically enumerated rights, these amendments generate “zones of privacy” that in the aggregate amount to an unwritten right to privacy in the Constitution, applying to cases outside of those particular penumbras.¹⁴ What is much more philosophically interesting for our purposes is the legal scholar Robert Bork’s well-known criticism of that ruling at the time.

In the course of his criticism of the concept of “penumbral” privacy rights, Bork notes that because these proposed “penumbras” protect rights such as those guaranteed by the First Amendment, which concern both private and public behavior, a right to privacy does not adequately characterize the emanating buffer zone supposed to couch these rights. What would better characterize these buffer zones, he argued, is a general right “to be free of regulation by law.” It is impossible, he argues, that the Constitution would stipulate, through law, a right to be free of law.¹⁵

His criticism of the particular legal argumentation in question in favor of a constitutional right to privacy, is partly correct. The penumbral right to

¹² *Olmstead v. United States*, 277 U. S. 438 (1928).

¹³ *Katz v. United States*, 389 U. S. 347 (1967).

¹⁴ *Griswold v. Connecticut*, 381 U. S. 479 (1965).

¹⁵ Bork, Robert. *The Tempting of America: The Political Seduction of the Law*. (New York: Simon and Schuster, 1990). pp. 95-100.

privacy does not apply to speech, such as that of a politician, designed to publicize the speaker. But not all public behavior should be so disqualified from privacy considerations. What of protests on public property? The decision to broadcast one's views to a citizen audience on a sidewalk or in a public park, does not amount to an invitation to police scrutiny, in person or remotely, of a demonstration as a whole or of individual participants. Constitutionality aside, there is an important philosophical difference between, on the one hand, invited observation by a citizen audience, whether that audience is in agreement or in opposition, and on the other hand, the accusatory supervision of police.

And, to stray a bit from Bork's focus, disqualification of the non-penumbral application of right to privacy in opposition to the incriminating surveillance of minority neighborhoods by police, would surely exhibit a class bias. Many of the petty drug offenses committed in and around public housing projects are identical to behavior confined to the domestic sphere of wealthy citizens who can afford to conceal this behavior in a space traditionally regarded as private.

Bork's accusation that advocacy of the right to privacy suggests a claim to the legitimacy of an unaccountable extra-legal sphere, is actually a perceptive characterization of the freedom in question, but should be complemented by specifying that this includes freedom from both state investigation and state coercion. A claim to the right to freedom from accusatory observation amounts to a claim to a right to some significant degree of unaccountability to public institutions. The pro-privacy argument in the case of NSA data collection is that the state should be less involved in sorting out the acceptable from the unacceptable in private online behavior. Surveillance should be specifically targeted rather than generalized, initiated solely in the context of particular, warranted investigations into violent crime as opposed to being characterized by the systematic scanning of bulk-collected data. This would make the behavior of the general population of internet users more opaque to accusatory observers.

The real problem with heavy-handed mass surveillance, a lesson that we learned mostly from the extreme example of twentieth century totalitarian societies, is that being observed by the state too much of the time is an intimidating and oppressive experience. This experience will be familiar to anybody who has ever felt uncomfortable as a result of the implicitly incriminating presence of police pacing in one's neighborhood or at the periphery of peaceful public assembly. It is also familiar to all citizens who are aware that the government is constantly viewing easily accessible information about their online behavior. That various means of electronic communication in modern democracies are subject to secret and arbitrary review by state authorities with vaguely defined intelligence goals is a likely cause of some anxiety, fear, and paranoia directed toward the public and private institutions

that cooperate in mass surveillance.

As a separate but also important matter, surveillance also stifles more traditional liberties by encouraging withdrawal from the expression and communication of controversial political ideas, out of wariness over the possibility of state investigation. *The Washington Post*, in reviewing the NSA data collections leaked to the paper by Edward Snowden, found that the NSA had collected private exchanges, irrelevant to anti-terrorism, that discussed “love and heartbreak, illicit sexual liaisons, mental-health crises, political and religious conversions, financial anxieties and disappointed hopes,” among non-targets whose communications happened to have been captured in the surveillance dragnet.¹⁶ Plausibly, citizens who use private means of internet communication – e-mail, Skype, instant messaging – to speak to one another candidly about matters of personal, political, and metaphysical significance, feel comfortable doing so under the assumption that their communications are invisible to political authorities scanning for suspicious behavior. The likelihood of such a response to NSA spying on internet activity is supported by early research at MIT, suggesting that, since the Snowden leaks, internet users have become less likely to Google keywords that they believe are likely to get them into the trouble with the United States government.¹⁷ A recent Pew Research poll shows that a large minority of American adults have changed their internet habits to protect their privacy from the NSA.¹⁸ A 2014 Human Rights Watch report recounted that journalists at many prominent news outlets feel a reticence unprecedented in recent history about reporting on issues of national security, intelligence or law enforcement. Journalists covering these issues have commonly radically altered professional practices to avoid government observation and report that the specter of government prosecution of whistleblowers has made securing sources much more difficult in recent years.¹⁹

¹⁶ Gellman, Barton, Julie Tate, and Ashkan Soltani. “In NSA-intercepted Data, Those Not Targeted Far Outnumber the Foreigners Who Are.” *Washington Post*. The Washington Post, 5 July 2014. Web. 11 May 2015. <http://www.washingtonpost.com/world/national-security/in-nsa-intercepted-data-those-not-targeted-far-outnumber-the-foreigners-who-are/2014/07/05/8139adf8-045a-11e4-8572-4b1b969b6322_story.html>.

¹⁷ Marthews, Alex and Catherine Tucker. “Government Surveillance and Internet Search Behavior,” unpublished paper. March 24, 2014. <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2412564 (accessed July 9, 2014)>.

¹⁸ Rainie, Lee and Mary Madden. “Americans’ Privacy Strategies Post-Snowden.” Pew Research Centers Internet American Life Project RSS. Pew Research Center, 16 Mar. 2015. Web. 18 May 2015. <<http://www.pewinternet.org/2015/03/16/Americans-Privacy-Strategies-Post-Snowden/>>.

¹⁹ “With Liberty to Monitor All: How Large-Scale US Surveillance Is Harming Journalism, Law, and American Democracy.” Human Rights Watch. 28 July 2014. Web. 11 May 2015. <http://www.hrw.org/sites/default/files/reports/usnsa0714_ForUpload_0.pdf>.

The tendency of state surveillance to violate a different sort of freedom than that against coercion has been noted by Greenwald and alluded to in a different way by Assange. Although Greenwald's public advocacy typically portrays the right to privacy as a constitutional right and groups it with negative rights secured in the Constitution, he does not always depict it in this way. To an audience at a book tour, Greenwald presented the case for Tocquevillean privacy, remarking, "We all need places where we can go to explore without the judgmental eyes of other people being cast upon us. Only in a realm where we're not being watched can we really test the limits of who we want to be. It's really in the private realm where dissent, creativity and personal exploration lie."²⁰ In other words, to use Scott's terminology, we need spheres of our lives that are "illegible" to the state. Citing Orwell, Assange also elaborates the unique status of the right to privacy:

It is not, as we are asked to believe, that privacy is inherently valuable. It is not. The real reason lies in the calculus of power: the destruction of privacy widens the existing power imbalance between the ruling factions and everyone else, leaving "the outlook for subject peoples and oppressed classes," as Orwell wrote, "still more hopeless."²¹

Public insights like these from the movement's most prominent figures indicate that the pro-privacy movement could go two ways: it might retain a legalistic, anti-coercion-based worldview, or it might focus more on the positive, creative side of a life more opaque to state observation.

An ideological shift toward an anti-observation worldview would enable a connection in political advocacy between criticism of the unwieldy mass surveillance state and the over-policing of state housing projects. The latter is conducted in pursuit of a panoply of minor criminal infractions and has resulted in a police culture of frequent bad arrests and intrusive over-enforcement of trivial laws, largely pertaining to drug use. One cause of popular opposition to New York's Stop-and-Frisk policy, and to policies like it in other American cities, is surely the large-scale coercion entailed. However, part of the controversy is also over the police omnipresence itself,

²⁰ Miles, Kathleen. "Glenn Greenwald On Why Privacy Is Vital, Even If You 'Have Nothing To Hide'." The Huffington Post. TheHuffingtonPost.com, 19 Dec. 2014. Web. 11 May 2015. <http://www.huffingtonpost.com/2014/06/20/glenn-greenwald-privacy_n_5509704.html>.

²¹ Assange, Julian. "Who Should Own the Internet?" The New York Times. The New York Times, 3 Dec. 2014. Web. 11 May 2015. <http://www.nytimes.com/2014/12/04/opinion/julian-assange-on-living-in-a-surveillance-society.html?_r=0>.

and the oppressive effect of being made constantly aware of the watchful eyes of the suspicious state. The burden of such constant surveillance is exacerbated in some cities by the existence of “stop-and-identify” laws, which, in stipulating penalties for not displaying government identification to a police officer, combine the oppression of force with the oppression of surveillance.²²

The police need to be less present in certain minority urban neighborhoods. Police intervention should be focused on preventing serious crimes of violence against person and property. The same minority neighborhoods notorious for constant police surveillance are also well-known for low homicide-clearance rates. A Scripps study found that clearance rates in some cities with poor black enclaves are as low as 20, 30, or 40%, significantly lower than the clearance rate for cases with white victims.²³ This finding suggests that the accusatory gaze of the state upon these urban neighborhoods primarily serves to aid the punishment of petty, non-violent offenses, many related to drug use. And the distrust that this forced comprehensive lifestyle transparency breeds may in fact hinder investigations of more serious crimes by fostering a culture of non-cooperation with police. In this case, respect for privacy does not conflict significantly with the enforcement of negative rights, because it is likely that a strictly rights-based law enforcement approach would be less intrusive and more effective.

Generally speaking, the incriminating gaze of the dominant majority is a perpetual issue for any marginalized minority group. The twentieth century French philosopher Michel Foucault saw that in the modern world, this accusatory watchfulness is the essence of minority groups’ experience of oppression. Foucault noticed that the dominant majority marginalizes certain groups through the subtle act of creating labels and classifications for people, imposing identities on the basis of behavior and characteristics that would otherwise be incidental.²⁴ Oppressed groups can find themselves trapped in these categories, appealing to them even in attempting to oppose their own marginalization – people who are attracted to others of the same sex advocate for “gay rights,” even though before the gaze of modern psychiatry, there was no such identity as “homosexual” that one was pressured to wear as an alienating badge. Such is the condition of other groups marginalized on the

²² Riggs, Mike. “Yes, Police Can Arrest You for Failing to Identify Yourself.” City Lab – From The Atlantic. 25 Feb. 2014. Web. 11 May 2015. <<http://www.citylab.com/crime/2014/02/yes-police-can-arrest-you-refusing-identify-yourself/8485/>>.

²³ Hargrove, Thomas. “Murder Mysteries.” *Scripps Howard News Service*. 2010. Web. 20 July 2015. <<http://projects.scrippsnews.com/magazine/murder-mysteries/>>.

²⁴ Foucault, Michel. *The History of Sexuality*, Vol. 1. Trans. Robert Hurley. (New York: Pantheon Books, 1978). p. 48.

basis of, for instance, gender or race categories invented to serve the powerful.

Foucault believed that such manipulation through observation by dominant institutions is, more generally, the condition of the modern individual, and that the modern phenomenon of state observation is closely related to the state's task of enforcing rights. He noticed, like Tocqueville, that the unregulated freedom that arose intermittently in the medieval world as a result of the gaps in the overlapping and uncoordinated enforcement of various localities was replaced in the modern world by a much more precise and detailed manner of state control demanded by the task of enforcing individual rights, particularly, he thought, the right to property. Ironically, he argued, our very conception of ourselves as autonomous individuals is a creature of modern law, which aspires to monitor and control the behavior of all individual subjects, as opposed to monitoring in a less comprehensive way the conduct of families, fiefdoms or localities as a whole.²⁵ Foucault also believed that surveillance was poorly captured by a legalistic model, and tended to persist in the form of a "discursive" power, maintained through complex networks of interaction that obscured the distinction between oppressed and oppressor.²⁶ Operating within the framework of Foucaultian sociology, the modern field of surveillance studies, and, most prominently, David Lyon, has done important work establishing implications of modern surveillance beyond the mere violation of privacy, concerning various intricate means of social control.²⁷

In demonstration of Tocqueville and Foucault's analysis regarding the conflict between privacy and negative rights, defenders of NSA surveillance tend to frame its purpose as that of defending individual citizens' rights against coercion by terrorists. In doing so, they invoke a calculus of security of rights, a conflict between the state's responsibility to abstain from actively violating rights and to adhere to its duty to defend its subjects' rights against domestic and foreign aggressors. This presents a conundrum that a privacy advocate with the traditional negative rights worldview cannot easily resolve in a way that does justice to our intuitive repulsion toward constant and intrusive observation. Contemporary privacy advocates often try to resolve this dilemma by arguing that state surveillance, in fact, does not catch terrorists, and thus does not serve our rights against coercion. This is certainly an arguable position – as former senior intelligence official and NSA

²⁵ Foucault, Michel. *Discipline and Punish*. Trans. Alan Sheridan. (New York: Random House: 1977). pp 82-87.

²⁶ Foucault, Michel. *The History of Sexuality*, Vol. 1, *op. cit.* pp. 11, 48.

²⁷ Lyon, David. *The Electronic Eye: The Rise of Surveillance Society*. (Minneapolis: U of Minnesota, 1994). pp. 179-198.

whistleblower William Binney has contended, too much intelligence can be a hindrance because it gives the state too much information to sort through.²⁸ The call for more targeted surveillance is also a compelling evasion of this conflict of values. And as we further noted, surveillance may stifle the traditional negative right of freedom of expression, suggesting that the right to privacy may be compatible with negative liberty in the manner of what the Supreme Court has called a “penumbral right.” But even if an intrusive surveillance measure happens also to yield some anti-terrorism gains, it can still be an instance of the oppression of observation. Justice in cases like these is not a matter of balancing state violations and protections of rights against coercion, but of balancing our freedom from observation and our right against coercion by non-state parties.

To avoid the pointless difficulty of balancing a vague calculus of negative rights, privacy advocates would do well to invoke Tocquevillean freedom. This particular intellectual contextualization of the right to privacy clarifies the true depth of this debate. The debate is not fundamentally about locating the correct proportion between the defense of people’s rights through protection from non-state coercion and through abstention from state coercion. Rather, this debate is one instance of a larger and less easily resolvable divergence at the heart of the clash between statist and libertarian worldviews – a disagreement over whether we should have lives of monitored, controlled predictability, or more loosely regulated lives of spontaneous and sometimes risky creativity.

In short, framing the right to privacy as a problem of incriminating supervision, rather than simply a problem of coercion, is not just more intellectually precise and compelling. Such an understanding also has the potential to illuminate our common cause, across race, gender, and other categories, in the struggle for freedom to think, create, and interact in unwatched spaces, whether those spaces be city neighborhoods or online communications. Important connections can be drawn between those extreme cases of oppressive observation of minority groups and the general condition of the individual at the hands of the modern bureaucratic state, in both totalitarian and democratic forms. Framing the right to privacy in this way also broaches a deeper inquiry regarding the possibility of a philosophical framework for systematically ordering the value of negative rights and of privacy.

²⁸ Angwin, Julia. “NSA Struggles to Make Sense of Flood of Surveillance Data.” *WSJ. Wall Street Journal*, 25 Dec. 2013. Web. 11 May 2015.
<<http://www.wsj.com/articles/SB10001424052702304202204579252022823658850>>.

Libertarianism and Privilege¹

Billy Christmas

Introduction

Libertarians are usually unconcerned with the existence of privilege where it is not clearly derived from state power. The privilege respectively enjoyed by capitalist employers relative to wage workers, and by men relative to women, is normally viewed as outside of the concerns of libertarian justice.² Here I will argue that what I refer to as the *right-libertarian*³ analysis of privilege is a mistaken one yielded by an overly narrow application of the two pillars of libertarian thought: the non-aggression principle and spontaneous order. In order to show where right-libertarianism goes wrong, I will contrast it against a more enriched libertarian analysis of two social forms that are constitutive of privilege: wage-labour and rape culture. I limit discussion to these two forms of privilege because of the degree of analogy between the two which highlights the shortcomings of right-libertarianism, and where libertarianism can do better.⁴ In both cases right-libertarianism fails to see where aggression

¹ I am thankful to Roderick T. Long and Charles W. Johnson, and other attendees of the Molinari Society symposium on Libertarianism and Privilege at the 2014 meeting of the Eastern Division of the American Philosophical Association to which an earlier version of this paper was presented. I also thank Stephanie Collins for her helpful comments on an earlier draft.

² For example see Block (2010, 128-140), and Rothbard (2000a).

³ I use 'right-libertarian' as an ideal type; there are not necessarily any libertarians who perfectly conform to the type, but nonetheless it is a theme partially embodied in much of the right-wing libertarian commentary and literature. Libertarians who partially instantiate this type would not necessarily even consider themselves to be on the right; however, they reveal moral commitments beyond the 'thin' requirements of the non-aggression principle in failing to apply it consistently across the board. I say *right-libertarian* because such moral commitments are likely to be associated with right-wing politics, given the fact they are not critical of capitalist labour market relations, or of patriarchy.

⁴ It ought not therefore be implied that these are the only forms of privilege, or the only forms of privilege that libertarians ought to be critical of.

against persons and property has pervasive social effects beyond the proximities of such acts, and mistakenly defends both forms of privilege as perfectly just. However, state intervention and rape (both explicitly unjust in libertarian terms) have a strong causal role in creating the conditions under which capitalists occupy a privileged position in the political economy, and men are able to take advantage of women in society more broadly.

What is libertarianism?

The central axiom of libertarian political philosophy is something like the non-aggression principle, which says any action is permissible as long as it does not simultaneously initiate aggression against the person or property of another. The violation of property rights, including those in the person, is viewed as aggressive and *only* legitimate as a defensive response to the initiation of aggression by another (Long Unpublished [a]; Rothbard 1973, 27-30; 2000b, 154; cf. Zwolinski 2016). Aggression is understood as the non-consensual crossing of a property border, including those in persons. It could be parking your car on someone else's lawn, or stabbing someone to death – though these things are different severities of injustice, they are both unjust insofar as they are non-consensual uses of the property of another; they initiate aggression. Threats of such non-consensual border crossings are also instances of initiatory aggression (Rothbard 1982, 127-135). Hence libertarians criticise the state because its very existence is premised upon threats of violence against the taxpayer – at a minimum.

This is often viewed as a very narrow construal of the requirements of justice, and leaves aside many important questions which one might think to be legitimate concerns of justice. Indeed right-libertarianism's application of this principle *is* very narrow: right-libertarians only condemn actions as unjust when they involve proximate aggression, that is, those actions which directly involve aggression against persons and property and cannot be logically separated therefrom, for example, theft, murder, and taxation. One could be forgiven for thinking that the parsimony of the libertarian principles of justice is to blame. However it is not narrowness of principles but narrowness of application which is the problem. A libertarian critique of social forms that do not instantiate aggression but nonetheless depend upon aggression at other times and in other places becomes possible when we broaden our lens of enquiry. Many personal interactions, though logically separable from acts of aggression, are made possible because of acts of aggression elsewhere and at other times.⁵ Aggression plays a role in creating the conditions under which

⁵ One can accurately re-describe privileged interactions between capitalists and their employees, and between men and women, in isolation from acts of aggression, unlike theft, murder, and taxation, for example. Acts of aggression causally maintain the former types of interactions but are nonetheless logically separable.

workers and women are exploited; therefore these forms of privilege can be normatively analysed in terms of the non-aggression principle.

That brings us to the central tenet of libertarian political economy: spontaneous order. This is the idea that when individuals are left free of centralised or external direction,⁶ they tend to engage in mutually beneficial cooperation without any of the individuals at the micro-level intending to create such an order at the macro-level (Smith 1993; Hayek 1945; 1964). When the state coerces individuals in order to bring about some contrived socioeconomic end, the benefits brought by spontaneous order can be expected to diminish, not to mention the potential for actively malign effects – so-called *unexpected consequences*. The use of state coercion is rightly heavily criticised by right-libertarians; however, they have only narrowly construed the application of their own conceptual tools. They fail to see the most *pervasive*, and *systematic* forms of coercion that not only have effects on, for instance, unemployment, commodity prices, or crime, but also fundamentally shape the political economy (indeed perhaps even *creating* its defining institutions, such as wage-labour and global commodity exchange). To use the terminology of Kevin Carson, right-libertarians perceive only *secondary* intervention and not the more fundamental *primary* intervention that creates capitalist privilege (2008, 275-276). This blindness is the central weakness of the right-libertarian analysis of wage-labour.

Right-libertarians not only fail to perceive the coercion that is most pervasive, but also fail to fully take into account the pervasiveness of the coercion they *do* perceive. In condemning rape as a deeply unjust but nonetheless private or discrete act (in other words, not having any broader, significant effects on the rest of society), right-libertarians fail to see how such violations of the non-aggression principle create the circumstances under which men wield a greater degree of power over women; that is, they fail to see its *political* character: that it privileges all men. While they treat (some) of the coercive actions of governments as systematically harmful to society, when the coercion comes from non-governmental institutions, they fail to see its wider impact (cf. Long forthcoming).

What I intend to show is wrong with the right-libertarians analyses is not that they have inappropriate conceptual tools; the problem is rather the ‘atomistic’ way in which they use these tools (Silber 2003). Libertarianism is in fact uniquely suited to analysing privilege because of its insistence that *all* aggression is *always* unjust, and has negative effects when generalised across society; we just need to be thoroughgoing in understanding such effects.

⁶ This kind of direction is understood in terms of aggression against property, where forcing someone to do something with their property that they would not otherwise choose to do is aggressive against their person or property or both (depending on the kind of threat that backs up the directive).

The Capitalist Labour Market

Capitalism is a system of privilege insofar as it is characterised by differential access to the means of production resulting in uneven distributions of wealth. Those that have formal access to the means of production are privileged because they, as opposed to those without such access, have a greater amount of bargaining power in negotiating the terms upon which those without such access can earn a living. This bargaining power enables them to pay wages below the value of the output of production, creating profit. Without making any social scientific claims about value creation or normative claims about exploitation, it seems one can nonetheless say that the ability to be a profit maker as opposed to wage earner is a privilege enjoyed on the part of the potential profiteer.

For right-libertarians, the fact that differential access to the means of production exists in actual society means it must be a spontaneous trend resulting from the voluntary interactions of individuals (Block 2006). Since the government does not explicitly mandate the division of access to the means of production, there must be some other reason for it. Some individuals have a higher propensity to take risk, and prefer consumption in the future to consumption in the present; therefore they delay gratification by investing what they have into productive capital for a bigger pay-off down the road. Those who are less inclined to take risks, and prefer consumption in the present to consumption in the future, are able to satisfy their appetites by obtaining employment by the former class, whose capital is put to work by the latter in exchange for regular payment. In the labour market, employers benefit by having people make their capital productive who are willing to take a proportionally smaller cut of the end product in exchange for receiving payment before the product is sold, thus helping the employer to achieve her more high-risk, high-pay-off goals. The employee benefits from avoiding the risk of investing her time and money into entrepreneurial planning and fixed capital, which she ex hypothesi would prefer not to do. According to this view, then, the worker-capitalist relationship is mutually beneficial;⁷ it enables

⁷ Indeed where some libertarians either cannot, or omit to, provide a deontological justification for wage-labour, they fall back on the “it *must* be mutually beneficial since it *does in fact* take place” claim. This is one of the main problems identified by Friedman (1997) with the way in which libertarians justify their case; oscillation between consequentialist and deontological considerations when one or the other fails to justify the (right-) libertarian view. For example the welfare state will be denounced as glorified theft (deontological consideration) even when it may be the case that it is good for overall prosperity (consequentialist consideration), whereas wage-labour will be defended on the basis of overall prosperity (consequentialist consideration), even if it may be degrading to human dignity (deontological consideration). (Cf. Long 2002.)

both parties to satisfy their own preferences, given the options laid out before them. The fact that workers *prefer* receiving regular wages to investing in productive capital themselves and profiting off it is evidenced by the fact that workers (who remain workers) do not save up their wages by lowering consumption, pooling their resources, and making capital purchases.⁸ 'Labor is always free to set up shop on its own' (Block 2006, 39); there are no barriers to their doing this other than their own preferences and capabilities.⁹ The right-libertarian does not necessarily deny that ultimately the employer may gain more from the contract than the employee.¹⁰ For example, Ludwig von Mises said that

The factory owners did not have the power to compel anybody to take a factory job. They could only hire people who were ready to work for the wages they offered to them. *Low as these wages were*, they were nonetheless much more than these paupers could earn in any other field open to them. (1949, 619-620. Emphasis mine.)

And likewise Matt Zwolinski says, in the narrower context of sweatshop wage-labour, that

The compensation sweatshop workers receive for their labor is generally no higher than the amount they contribute to the firm (their marginal revenue product), and no lower than the value they place on their next best alternative employment. *Their compensation is low because these upper and lower constraints are low ...*¹¹ (2012, 166. Emphasis mine.)

Even though the right-libertarian might acknowledge the relatively low value

⁸ A problem with this argument that will not be discussed here is that it assumes that wage labour is the *only* way for a worker to lower exposure to entrepreneurial risk. However, sans legal barriers to doing so, workers could *mutually* pool their resources so as to form either productive capital, or a mutual aid fund, or both.

⁹ But see Cohen (1979).

¹⁰ At least in nominal monetary terms, but in terms of marginal utility this is a larger question.

¹¹ Zwolinski does not believe this to be the full story however (particularly with sweatshops). In the article quoted he details some of the extra-market factors that negatively affect the bargaining power of sweatshop workers, such as union suppression, land seizure, protectionism, and legal protection of intellectual property rights (2012, 169-170).

of the typical wage, she will deny that it is the result of anything more than differential skills and preferences manifesting themselves on an open market place, i.e. the outcome of individuals' non-coerced choices. If wages being offered were so low that workers thought them not worth their time, then they would do something else with their time. Wage-labour is existentially tied up with its beneficial effects. *Or so the right-libertarian would have us think.*

Contrary to this right-libertarian 'fairy-tale' (Marx 1990, 873-874; Oppenheimer 1926, 7; Carson 2007, 114), it is not the case that differential access to the means of production is *only* the result of differential time-preference and propensity to take risk; but it is to a larger extent explainable by reference to pervasive state coercion. It is trivially true that wage-labour contracts are entered into because both parties expect to gain some benefit from them: an analysis of capitalist privilege must look at how privilege operates *through* individuals' nominally voluntary interactions. As much as right-libertarians may try to explain away wage-labour by reference to its mutual benefit,¹² viewing 'discrete transactions' as the locus of the exercise of privilege ignores the context in which these individuals voluntarily act, and, crucially, that it may be the result of coercive institutions (Zwolinski 2012, 158). 'The question remains: how did those who control access to the means of production come to be in this position?' (Carson 2007, 113.)

Differential access to the means of production is traceable to differential access to, and the differential impacts of, state assistance. The state directly coerces individuals in various ways (in violation of the non-aggression principle) so as to artificially decrease the range of options workers have for making a living, and therefore drive down their bargaining power. Through its legal monopoly, the state issues lingering threats of violence against those who might otherwise 'set up shop' on their own, or otherwise take economic initiatives that would compete with the power of established capitalists (Tucker 1888; Carson 2007, 89-135; 165-204; Chartier 2011, 25-52; Johnson 2010a; 2011). Therefore the privilege enjoyed by an individual employer occurs because she is a beneficiary of state coercion that protects her from competition, and is not dependent upon *her* execution of any coercive acts whatsoever.

While right-libertarians are quick to identify government intervention in the market both as illegitimately coercive, and as the cause of socio-economic ills¹³ such as unemployment, high commodity prices, or crime, their failure to see the pervasive nature of government intervention makes them blind to its effects. In general the right-libertarian critique of the state focuses on what

¹² See Carson (2007, 115-116) for a 'number of boilerplate articles' that attempt just this.

¹³ For example see Rothbard (2009, 875- 1356).

Carson calls *secondary* forms of intervention. These ‘include welfare-state measures, Keynesian demand management, and the like’ that are generally ‘stabilizing, or ameliorative’ of the effects of *primary* forms of intervention (2008, 275-276). Primary forms of intervention are the structural bases of privilege which benefit a certain class of people; they result from the exercise of the state’s monopoly on land titles, money production, tariffs, patents, subsidies, et al., which we will come to shortly. Primary intervention is structural insofar as it is sufficiently constant to condition behaviour so that a certain pattern of wealth and power emerges. Secondary intervention is an extra layer of coercion that is intended to target the effects of primary interventions.¹⁴ For example, if the state frequently handed out guns to one percent of the population, and confiscated whatever weapons the other ninety-nine percent were able to acquire, this could be considered primary intervention since it ex hypothesi both violates the property rights of gun-owners (the *intervention* part) and structures the distribution of power (and presumably wealth¹⁵) in society (the *primary* part). If the state then prohibited highway robbery on certain roads, or prohibited highway robbers from taking more than eighty per cent of their victims’ money (assuming for a moment that robbery itself is not an injustice), insofar as such policies are intended to modify the effects of the primary intervention, by either making them less harmful or more sustainable, they are *secondary* interventions.

Insofar as secondary intervention meddles with the legally recognised property rights that right-libertarians believe ought to be protected as a matter of justice, they oppose it. However, they fail to see the primary interventions that give rise to the legal rights they mistakenly believe are deserving of protection. Of course many right-libertarians might admit that if state intervention (although they will only have secondary intervention in mind) were abolished there might be higher wages (from the decreased costs of hiring labour and a slightly more competitive labour market), but wage-labour would nonetheless be a persisting institution in a free market due to reasons of time-preference and the necessity of high overhead capital as a factor of production (cf. Massimino 2014). Understanding primary intervention illuminates the cause of the employer’s structural privilege, and reveals it to lie, at root, in aggression.

Through its ‘many monopolies’ (Johnson 2011) the state pre-empts the

¹⁴ Although legislators will almost certainly not view the issues they seek to combat as effects of prior, more structural, intervention, it is the effects of primary intervention that motivate and/or legitimate the secondary. I thank Stephanie Collins for noting the importance of the intention of the intervening body in distinguishing primary from secondary intervention.

¹⁵ Cohen likens the probable economic results of an unequal distribution of guns to the unequal distribution of means of production (1995, 197-299).

economic initiative of individuals by legally prohibiting – by threats of violence – various activities that might otherwise undermine the privilege of capitalists. The state’s land monopoly (Tucker 1888, 12; Carson 2007, 89-130; 166-185; Chartier 2011, 36; Johnson 2010a; 2011) coercively keeps unused land vacant, prohibiting productive use by homesteaders.¹⁶ This keeps land and house prices artificially high and protects agricultural and other industrial producers from the pressures of competition that might otherwise force them to lower prices, and downsize productive scale. The land monopoly also offers opportunity for those with enough political and/or financial pull to get the state to grant them access to land and natural resources, which is prohibited for anyone else. The knock-on effect of all this is that established economic actors face far less competition than they otherwise would, both from other capitalists, and from workers themselves. This in turn means they can pay lower wages, charge higher prices, and maintain higher profit margins at lower levels of efficiency, which funds salaried management hierarchies that become ever more insulated from the day-to-day goings on of actual production. The costs of the inefficiencies that grow out of this insulation are absorbed through artificially high profit streams and paying artificially low wages: the costs are socialised. (Carson 2008, 197-224)¹⁷ The land monopoly is explicitly coercive because it is sustained by the state’s aggression against persons who attempt to homestead vacant land.¹⁸

The state’s exercise of the money monopoly means they grant a protected banking cartel the exclusive right to issue currency, and prohibit all others from doing so (Tucker 1888, 11-12; Carson 2007, 185-189; Chartier 2011, 32; Johnson 2010, 68-69; 2011). Since they are the only ones allowed to supply money, they are able to maintain artificially high interest rates. This not only benefits them at the expense of borrowers, but also in turn benefits

¹⁶ Note that the forcible prevention of the appropriation of unowned property is also an act of aggression. One may forcibly prevent others from entering one’s own property, but not unowned property. Therefore to interfere with someone’s appropriation of unowned property is to aggress against their person. (Rothbard 2009, 170; Block 2013, 276-280)

¹⁷ One may object that the land monopoly cannot lower wages as such, because as long as there is competition in the labour market, workers tend to receive their marginal revenue product. However, without denying this claim, it is still the case that were the land monopoly to be abolished, established employers would not be able to compete with independent entrepreneurs and co-operatives; thus these latter producers would take over the market share of the former, and since they own their own capital, would earn the full value of the output, since they own all the inputs – so their “wages” would increase because their marginal revenue product would increase due to their ownership of capital.

¹⁸ See note 16 above.

incumbent market actors who can afford the higher costs of borrowing money, at the expense of would-be entrepreneurs in need of start-up capital. The money monopoly is, like the others, explicitly coercive because it is sustained by the state's aggression against the property of those who otherwise would issue money and credit against the value of their holdings.¹⁹

Other ways in which the state coercively structures the political economy to privilege incumbent market actors are tariffs (which protect large-scale domestic producers from more competitive international producers, inflating their profit margins and increasing the cost of living for the average domestic citizen, which disproportionately affects the working class), and intellectual property rights (which protect firms whose products could easily be mimicked by competitors, allowing them to keep their prices artificially high). Those who attempt to make international exchanges will have their property seized by the state and may be prosecuted, and those who produce merchandise that mimics other designs and technologies out of their own property will have their rights in that property denied in accordance with copyright and patent law, respectively.²⁰ There are also the interventions in workers' unionisation which damage workers' ability to pool their bargaining power (Johnson 2004; Carson 2008; Zwolinski Forthcoming, 8-12).

The state could not wield these monopoly powers without the threat of (and ultimately, the execution of) aggression against persons and their property. If one were to consistently defy the state's claim to any of these monopoly powers one would eventually be prosecuted, resulting in the forcible seizure of one's wealth or assets, or imprisonment against one's will, or some other violation of the non-aggression principle. In one sense, this does not mean that all wage-labourers are aggressed against, since they do not all attempt to economically compete with capital. In another sense however, the threats of violence against them are real: if they were to homestead unowned resources, or start mutual credit associations, for example, these activities would be brought to a violent end by agents of the state, as anyone involved in the urban drug industry will know too well.²¹ Therefore these options are coercively prohibited for them.

¹⁹ On the prospects of banking without the legal privileges of central banking systems, see Greene (1974) and Dowd (1992).

²⁰ For the libertarian case against protection of intellectual property rights see Long (1995) and Kinsella (2008).

²¹ Libertarians have long identified threats of violence as on a moral par with violence itself. Hence their opposition to taxation: just because one pays taxes without a gun to one's head, that does not make such payment voluntary in the morally relevant way. Indeed, even if one were forced at gunpoint to pay taxes, the injustice would be of the violence threatened, not of the violence executed.

The structure of capitalistic privilege therefore is a coercive one, since it depends at root upon threats of violence that condition socioeconomic relations in wider society. The privilege that an employer has in securing an employment contract that allows her to benefit more than the employee, though it does not involve *proximate* coercion (that is, the capitalist herself does not directly coerce the worker), is dependent upon a coercive system that prohibits certain kinds of market competition. One need not deny that given the set of options before the prospective employee, agreeing to wage-labour employment is her best course of action; however, *why* these options are the only ones open to her is not (at least not *only* or even *mostly*) the result of differential skills and preferences manifesting themselves on an open marketplace. The threats of force made against those who would defy the state's monopolies have strong ripple effects on society at large. As with the enforcement of any other law, there only needs to be knowledge that force could be used against oneself if one acted in such-and-such a way in order to shape one's actions (and therefore social institutions) around avoiding the threat of violence.²² Therefore although the employer does not need to coerce her employee in order to cash out her privilege, the nominally voluntary interaction that takes place comes about on the basis of coercion elsewhere. The privilege of one class to impose costs upon another does not depend upon the execution of force in every interaction, but only on a pattern of behaviour that is pervasively caused and sustained by the actual execution, and residual threat, of force. The spontaneous order of individuals achieving their ends by the means available to them is sufficient to sustain a system of privilege. Capitalism is a spontaneous order in the sense that the exchanges that occur within it are unplanned, but it is coercive and should therefore be condemned by libertarians.

Libertarianism is not only well-equipped to provide an analysis of capitalist privilege by tracing the privilege of nominally voluntary interactions to acts of coercion elsewhere in the social order, but out of this it is uniquely situated to provide solutions to end capitalist privilege. By viewing capitalist privilege as an outgrowth of state coercion, we can clearly see how such privilege must be brought to an end – by abolishing the state's monopolies. Indeed its historical view of justice²³ reveals libertarianism to be uniquely

²² It should be noted here that even right-libertarians condemn threats of violence, even when that violence is not executed. Threats of violence are coercive insofar as they illegitimately compel someone to do something they otherwise would not have, in order to avoid the illegitimate violence of another. Therefore this constitutes no deviation from the principles of mainstream libertarianism, since their critique of the state is not only that its actual violence is unjust, but also that its laws which constitute threats of illegitimate violence are also unjust.

²³ Nozick famously contrasted the libertarian historical entitlement theory of

suites to analysing privilege and condemning it (Long 2012). Theories of privilege that only look for features *proximate* to discrete transactions, rather than their history, in order to explain them, will (if they condemn them) recommend restrictions on how these interactions may proceed. For example, if one explained capitalist privilege merely by reference to the employer's unfair use of her superior bargaining power, this might lead to viewing the only solution as placing restrictions upon the way in which employers and employees may bargain, which in Carson's terminology would be a *secondary* intervention to remedy the effect of a *primary* intervention, while leaving the overall structure that gives the employer her superior bargaining power intact. In the sense that egalitarian principles of justice dictate "rules of the game" to achieve a certain range of outcomes, libertarian principles reshape the game itself.²⁴ In analysing capitalist privilege as being emergent from explicit acts of unjust coercion elsewhere in society, libertarians are able to show how the superior bargaining power of the employer can be removed altogether, rather than merely checked.

Abolishing the state's monopolies would remove the employers' superior bargaining power altogether, rather than *remedying* its effects. There is a sense in which it is not enough to simply abolish monopoly, however; the spontaneous order that ensues has to be the result of individuals taking initiative, responding to information, solving problems, and taking opportunities.

We should remember, when we say "the market will take care of it," that *we are the market*, that its successful operation depends on the alertness of Kirznerian entrepreneurs, and that we who have noticed a problem are in the best position to fill that entrepreneurial role.²⁵ (Long 1997, 13.)

Coercion shapes institutions, and therefore after the coercion disappears, institutions must be accordingly reshaped. Unless individuals take the new opportunities that the removal of monopoly would offer, no real change will be achieved. Indeed, *we are market forces* (Johnson 2009); therefore a call to action is implied. I will

distributive justice to egalitarian patterned or end-state theories of distributive justice (1974, 150-164).

²⁴ This is often cited as the Rawlsian response to, in particular, Cohen's (2000) criticism that Rawlsian principles of justice do not proscribe behaviour that exhibits sufficiently anti-capitalist convictions. There are similar important criticisms not answered directly by this claim, e.g. Wolff (1977).

²⁵ See Kirzner (1973; 1978; 1995).

return to this issue at the end.

Rape culture

The right-libertarian position on patriarchal privilege is analogous to its position on capitalist privilege.²⁶ As long as social interactions are voluntary, they are mutually beneficial and just; therefore patriarchal relations that do not involve any proximate coercion are mutually beneficial and just. Right-libertarianism is well-equipped for condemning violence against women as unjust and harmful; however, where interactions between men and women do not involve any proximate coercion, they assume them to be always entirely just. This ignores the possibility that such interactions may occur only on the basis of actual aggression against women elsewhere and at other times. The assumption that there is no systematic aggression against women by men is wrong, and understanding the political nature of rape enables one to see its relationship to male privilege, even as it is manifested in nominally voluntary interactions.

The lingering threat of rape that exists in patriarchal society means men are privileged insofar as they can exert leverage over women in many of their interactions due to the latter's felt need for physical protection of men (from other men). Men can restrict women's behaviour through '[p]aternalistic double binds' that on the one hand tell women to avoid placing themselves within dangerous situations vis-à-vis being raped by men, and at the same time tell them to seek the physical protection of men (Johnson 2010b, 12). The effect of these double binds is that men are not held responsible for their violence against women because it is seen as women's responsibility to avoid dangerous situations, and/or seek male protection.²⁷ The simultaneously felt need for women to secure men's protection and their fear of men's violence 'simply means that women's freedom is systematically constrained by fear of men', and this, whether men want it or not, allows them to benefit at women's expense – benefit by generally being able to treat women relatively badly while receiving relatively good treatment in return. Because of the

²⁶ Where capitalist privilege and patriarchal privilege become disanalogous is that capitalist-worker relations typically do not involve proximate coercion (where they do, we would be inclined to call it a master-slave relation instead); however, many interactions that involve the use of patriarchal privilege do involve proximate coercion. Domestic violence, sexual assault, and most forms of violence against women are all coercive and patriarchal acts; we are not inclined to call them something else *rather* than patriarchal when they directly involve violence, but coercive in *addition* to being patriarchal, contra the case with capitalist privilege.

²⁷ Often of course these are one and the same thing: the very men that abuse women are the ones whose protection is antecedently sought. This is, in part, owed to the myth that all rape is committed by strangers; see Brownmiller (1975), especially ch. 6.

danger men present to women, women stand in *need* of male protection.²⁸ This has ‘*ripple effects* for *all* women’s social freedom and material well-being’ (Johnson 2010, 3), from domestic relationships to professional ones.

The negative effects upon women (and the privilege enjoyed by men) that are entailed by this state of affairs are not restricted to those interactions that involve coercion or aggression. Just as capitalists do not need to force workers into employment, all men do not need to coerce women in order to have material leverage over them. As I said, according to the right-libertarian, instances of actual violence against women are condemnable as unjust and harmful, but interactions that occur between men and women, where the men in question do not coerce the women in question, are voluntary and mutually beneficial. And since these interactions are not (proximately) coerced, they are perfectly just. Just as the right-libertarian is inclined to view (secondary) state interventions as one-off injustices creating localised distortions in the political economy which is otherwise characterisable as *laissez faire*, rather than as part of pervasive state coercion, the right-libertarian is equally inclined to view violence against women as deeply unjust but nonetheless *random* and *discrete* acts of private injustice – in other words, not ‘*structural* or *political*’ (Johnson 2010, 2). However, we must view the nominally voluntary interactions between men and women that instantiate patriarchal privilege in light of explicit acts of coercion that exist in wider society, particularly, rape.²⁹ Such acts of coercion in wider society explain why women’s options are such that it can be in their best interests to act in such a way as to give more than they get from men.

The rape of *some* women by *some* men is the process ‘by which *all* men keep *all* women in a state of fear’ (Brownmiller 1974, 15), whether or not the male beneficiary in each case is himself a rapist. Just as with the threats of force issued by the law that keep competition out of the capitalist market

²⁸ Analogously, because of the monopolisation of economic activity by capitalists (at the behest of the state), the working class stand in need of employment by capitalists, or in need of welfare payments from the state.

²⁹ In the case of wage-labour, it is fairly easy to say that employment contracts constitute privilege on the side of the capitalist because it is fairly easy to make an ordinal valuation of what is being exchanged. However, the state’s primary intervention creates privilege elsewhere within the capitalistic market, where it may be less obvious due to difficulties in making ordinal valuations of items of exchange. Equally with social interactions between men and women, it is difficult to say which ones are afflicted with privilege and which are not. However, what I intend to say is that whatever interactions do take place, we should expect women to be able to derive more of a benefit than they in fact do, if there existed no fear of male aggression. Therefore, *prima facie* at least, we can say that in those interactions where it looks like men benefit more than women, privilege may exist.

place, it is the threat of rape and other forms of violence against women that enforces the ‘unwritten law of patriarchy’ (Johnson 2010).³⁰

Johnson identifies three, potentially overlapping, Hayekian notions of ‘spontaneous order’. A spontaneous order can be a benign social order that emerges consensually (where ‘spontaneous’ means uncoerced), and/or is polycentric or participatory (where ‘spontaneous’ means unprompted), and/or is emergent rather than consciously designed (where ‘spontaneous’ means unplanned) (Johnson 2010, 8; Hayek 1964). Johnson points out that patriarchal privilege qua the structural result of rape ought to be understood as a malign, polycentric order emerging from coercive actions. The fact that some men rape some women conditions behaviour in wider society by keeping women in fear. This is analogous to how the state’s use of violence against those who violate the laws that underwrite monopoly keeps the poorer members of society looking for wage-labour.

The use of coercion under capitalism is political because the force in question is wielded by the state, but also because it has systematic effects on the distribution of socioeconomic power. It is part of the legal system: so prominent that it creates regularities of behaviour that characterise society generally, not just those against whom the state actually executes aggression. Rape is political for this same latter reason: it is not (normally) executed by the state, but it is executed widely enough by non-state actors to create regularities of behaviour that characterise the distribution of power in society generally, not just of those who are raped. Johnson’s Hayekian analysis of rape culture (2010) not only shows how libertarianism is well equipped to analyse and offer solutions to end the patriarchal privilege that emerges out of rape culture (which I will come to shortly) but also makes clearer the feminist concept that is usually rather opaque to liberals and libertarians: structural violence. Recall that capitalism ought to be viewed not as a social order brought about through the uncoerced choices of free (but differentially endowed) agents, but rather as a structurally coercive order insofar as certain kinds of non-aggressive behaviour are coercively prohibited. Equally patriarchy ought to be viewed not as a social order brought about through the uncoerced choices of free (but differentially endowed) agents, but rather as a

³⁰ Block’s claim (2010, 129) that all states are coercive whereas not all men are coercive is true but entirely irrelevant to the libertarian and feminist claim. The actions of two men M_1 and M_2 can condition behaviour of a woman, W , in relation to a man, M_3 , such that M_3 can (with or without intention) exploit the fear in W caused by the actions of M_1 and M_2 . One can analogously imagine someone refraining from lighting a joint because they see a police officer (or anyone in a high visibility jacket, for that matter) without that officer ever having made an arrest or issued any threats of violence against anyone, let alone the smoker in question. Such interactions are not to be viewed as uncoerced, since they are conditioned by threats of violence.

structurally coercive order insofar as there remains the threat of real violence. The violence is structural, because the threat is so systemic that it does not need to be executed against everyone it has an effect upon. Just as all men enjoy privilege due to the actions of rapists, all capitalists enjoy privilege due to the actions of the state against those who might compete with them.

This analysis is a more naturally libertarian one because it does not make special exemptions for those who commit violence based upon affiliation with a government office. What makes libertarianism distinct from other political philosophies is its application of principles of justice to all individuals, including agents of the state. This leads to the conclusion that the state may not do anything that is impermissible for anyone else to do. Individuals cannot initiate violence; therefore states cannot initiate violence. As Rothbard said:

While opposing any and all private or group aggression against the rights of person and property, the libertarian sees that throughout history and into the present day, there has been one central, dominant, and overriding aggressor upon all of these rights: the State. In contrast to all other thinkers, left, right, or in-between, the libertarian refuses to give the State the moral sanction to commit actions that almost everyone agrees would be immoral, illegal, and criminal if committed by any person or group in society. The libertarian, in short, insists on applying the general moral law to everyone, and makes no special exemptions for any person or group in society. (1973, 1-2.)

Where right-libertarianism's view of coercion as the *be-all-and-end-all* of injustice is a weakness in analysing privilege, the same feature is a strength in a more complete libertarianism. Where right-libertarians only look for proximate coercion in analysing the justice of a particular social relation, a more complete libertarian analysis applies the non-aggression principle more broadly and sees many forms of coercion as structuring society, thus delegitimising those relations that are characterised by it. Structural violence is constituted by those acts of violence that the right-libertarian condemns but mistakenly views as abnormal, as having only localised effects, or otherwise as not a characterising feature of society. They in fact are 'interlocking components in a system of class power' (Johnson 2010, 1), just as acts of buying and selling at certain prices are interlocking components in a free market system, and ought not be analysed in isolation from their causes and effects in wider society.

Just as states cannot initiate violence in the same way it is impermissible for non-state actors to initiate violence, non-state violence can dominate

society in the same way that state violence can dominate society.

Conclusion and Prospect

There are two different approaches to eradicating capitalist and patriarchal privilege that the libertarian analysis might lend itself to. One approach is electoral politics; the ballot box is often the first port of call when political reform is sought. Seeking to abolish the state's monopolies incrementally by electing libertarian politicians, if successful, would eradicate capitalism and free the market. If the state's monopolies were to be abolished, individuals would begin to compete with incumbent market actors on *truly competitive* terms, driving down the socioeconomic power of capitalists and dissolving the privilege they enjoy. It is exceedingly unlikely that a truly libertarian party that campaigned on the abolition of state monopolies could ever get elected; furthermore, empowering a government on the premise that it disempower itself goes against our most basic intuitions about power.³¹

This method of eradicating capitalism does have a corollary with patriarchy, though even harder to make sense of in the latter instance. Since the state's causal role in capitalist privilege entails the abolition of the state, rape's causal role in patriarchal privilege entails the abolition of rape. The abolition of rape is obviously the answer: if rape were to be abolished, men would no longer be both feared and sought for protection, and women could face men on more equal terms. But what does it mean to abolish rape? To abolish the state, one can fantasise about electing a self-destructing government; the law is something that an appropriately situated group of appropriately motivated people could radically change. Rape, however, is – seemingly – thoroughly more decentralised and unofficial than the state; therefore it is even more fantastic to claim that its abolition is something one conscientious individual or organised group could achieve. Furthermore, rape is already illegal, and the non-enforcement of such laws is again something deeply decentralised and engrained in the bureaucratic and patriarchal culture of our society. How then can decentralised, unplanned patterns of behaviour be changed? Here is another place in which right-libertarianism has gone wrong:

When the collective action in question is something good or desirable, [right-libertarians] are confident that market incentives and natural human sympathies will unite to bring the collective action about without the need for coercive

³¹ Indeed the peculiarity of this notion is what made Tucker identify with anarchism over state-socialism. The way he saw it, the problem with capitalism was too much monopoly; therefore electing an all-powerful monopoly to solve the social ills caused by the former would be self-defeating (1888).

coordination from government. But when it comes to harmful or unpleasant collective action (including the formation of a plutocratic ruling class [or rape culture]), this, [right-libertarians] are sure, can flourish only with the help of state intervention and will quickly wither and die when exposed to the light of freedom and economic rationality. (Long 1998, 341-342.)

The reason for this is that the right-libertarian cannot see what kind of ‘coercive coordination’ there could be other than (secondary) state intervention. We need to look not only past the more modern forms of (secondary) state intervention to the more historical and more pervasive (primary) forms of state intervention, but be aware that systematic (if *unconsciously* coordinated) coercion can be present without the state coordinating it, as is constituted by rape culture. Indeed, even the state itself is not *causa sui*; it was created, and is sustained, by the actions of private individuals. We can blame capitalism on the state, but we cannot blame the state on itself, just as we can blame male privilege on rape, but we cannot blame rape on itself.³² It is human actions that underpin institutions; it is because people think the state is legitimate that the state is able to survive. And it is because people think rape is legitimate (or at least, not a pervasive or political issue) that rape is able to survive as an institution. Although the individual cannot change the behaviour of everyone, she can delegitimise and denounce both the political violence of the state and that of rape. This brings me to the second and more plausible kind of solution for eradication that libertarianism lends itself to: the creation of a countervailing order through direct, conscious action.

Many libertarians believe in engaging in innovative business enterprise because this is what makes up the spontaneous order of the market place, and all the benefits that flow from it. Equally libertarians should believe in engaging in ‘counter-economic’ activities, since we do not live in a free market. By consciously flouting existing state institutions that protect capital from competition, individuals defy those behavioural norms that underpin capitalist privilege. Through the development of rival socioeconomic institutions a social order can be generated that makes the state redundant and/or toothless; ‘forming the structure of the new society within the shell of

³² In assigning blame I do not mean assigning moral responsibility, but causal responsibility. The state is itself unjust, as is rape, and those who execute violence as rapists or on behalf of the state (or both) are morally accountable for their actions even if there are sociological causal explanations for them.

the old.³³ Agoristic practices (Conger 1973; Konkin 1983; 1995, 2008) can range from one-off economic transactions to building vast social and support networks and black- or grey-market businesses. Unofficial workers' unions, drug trafficking, illegal immigration, occupying vacant land, mining cryptocurrencies, boycotts, civil disobedience (or even civil militias), tax avoidance, unlicensed taxi driving and child-minding, are all ways in which one can defy the structural coercion of capitalism, and drive it towards redundancy. Agorism is a necessary condition for the removal of privilege. Saying "the free market will take care of it" just means "individuals will need to take certain kinds of initiative and it will be in their interest to do so," but it's important that they become aware that it is in their interest to do so.

The coercive order of patriarchy can also be countered through activities that generate a social order that makes patriarchal power redundant and/or toothless. Johnson writes:

Grassroots women's movements to counter diffuse male violence formed outside, or *beyond*, the sphere of government and conventional political lobbying – c.r. groups, speak-outs, dispersed networks of women's shelters, rape crisis centers, and other feminist spaces – originally with little or no connections to hierarchical power-politics or the male-dominated State. All could productively be understood as *voluntarily-coordinated, polycentric, but consciously organized* political resistance to a *polycentric, emergent, coercive* order of violent oppression. (Johnson 2010, 14.)

Through the taking of voluntarily coordinated and conscious action, an order can be created that protects against the coercively coordinated and unconscious order of patriarchal capitalism, so as to diminish the damage of such coercion and check or remove the privilege of its beneficiaries.³⁴

³³ Repeated phrase of the Wobblies; see *Industrial Workers of the World*: <http://www.iww.org/culture/official/preamble.shtml>

³⁴ In saying that each individual's behaviour is what underpins capitalism and patriarchy, and that therefore this behaviour must be changed in order to change the social order, I do not mean in any sense that it is the moral responsibility of those that are made worst off by the state, plutocracy, and sexism to improve their condition (if what I've said is correct, it is the agents of the state and rapists who are morally responsible for changing their behaviour). However, in fighting against the state, plutocracy, and sexism (while these things *unjustly* exist), some action does need to be taken, even by those made worst off by it. With regard to rape, it is certainly true that there needs to be more telling men not to rape people rather than telling women to avoid being raped. However, telling men not to rape people is *itself* (albeit, fairly minimal) conscious social activism, that no one in a just world would need to

However, “leaving it” to the market is not sufficient; ‘the alertness of human beings’ must be harnessed in order for opportunities to be consciously seized (Kirzner 1995, 39).

The approach defended here takes the core pillars of libertarianism, spontaneous order and non-aggression, and shows both how unconscious spontaneous orders shaped by aggression are unjust, and how they are rectifiable through direct, conscious action. Viewing individual interactions as the locus of the exercise of privilege, as right-libertarians do, is ineffective both at identifying the real origins of privilege in aggression, and in condemning it. The atomistic approach does not sit well with the rest of libertarian social theory, which has always viewed patterns of social interaction (whether optimal and cooperative, or suboptimal and conflicting) as natural human tendencies, not necessarily in need of a force-wielding leviathan to guide or counter them. ‘Indeed, radical individualists have hardly ever been social atomists.’ (Long Unpublished [b]). Furthermore, the radical feminist mantra that ‘the private is political’³⁵ is a vital part of libertarianism too (Long & Johnson 2005). It lends itself to the feminist critique of patriarchy and rape culture as much as it does to the libertarian critique of the state and the privilege it affords to capitalists. Just as we should view the systematic and political violence of the state as on a moral par with the private violence of a criminal gang, we should view the private violence of the rapist as on a structural par with the systematic and political violence of a state. Violence is violence no matter whom it is executed by, and when this violence becomes so prevalent that it conditions behaviour throughout society so as to affect the distribution of socioeconomic burdens and benefits, it is political.

A fully enriched libertarianism comes out as a staunch critic of both the privilege of employers in the capitalist labour market, and that of men in patriarchal rape culture. What is often viewed as a weakness of libertarianism (being concerned with only a narrow notion of injustice as aggression), when fully fleshed out becomes a strength.³⁶

take. While we are in an unjust world and want to make it better, there are certain things we need to proactively do, as opposed to those things the perpetrators of injustice need *not* to do.

³⁵ Or as Carol Hanisch put it, ‘the personal is political’ (1969).

³⁶ I have not labeled the libertarianism I defend here as ‘thick-libertarianism’ (Johnson 2008), ‘left-libertarianism’ (Long Unpublished[b]), or ‘dialectical libertarianism’ (Sciabarra 2000), because I intend to show that what I have labeled ‘right-libertarianism’ falls short of the requirements of even the thinnest libertarianism. Right-libertarianism fails to follow the central tenets of mainstream libertarianism to their logical conclusion, and therefore needs to explain why. Whether there is some additional methodological or moral principle that compels them to apply libertarian principles selectively needs to be made clear. It is those who

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Capitalism, Free Enterprise, and Progress: Partners or Adversaries?

Darian Nayfeld Worden

Foundation

The Industrial Revolution is typically regarded as a story of capitalism, free enterprise, and progress in technology and living standards. This article attempts to disentangle the threads of capitalism, free enterprise, and progress, in the context of the Industrial Revolution, with a focus on Britain and the United States. It aims to bring some historical perspectives into the current discourse.

The paper will explore the nature of progress, the controversy of living standards, the coercion that existed at the birth of the industrial revolution, and potential alternative points of departure for historical progress. What is the relation between capitalism, free enterprise, and progress? Who benefits from them? Was the specific form that industrialism took the most beneficial of plausible alternatives?

Capitalism, free enterprise, and technological and social progress need to be unbundled from the package idea of the Industrial Revolution. A rough definition of capitalism for this purpose would be: a social system typified by 1) the control of workplaces by owners who are not laborers in the firm, 2) the direction of work to profit these owners, and 3) social hierarchies produced by these economic relations. Free enterprise could be defined as: a state of affairs in which goods and services are produced and exchanged according to consensual agreements between producers and traders. Technological and social progress means: The improvement of general living conditions and the advance of technology.

Of course all of these definitions are themselves at least somewhat contentious. Capitalism has a number of definitions, and some would contend that the mere accumulation of capital implies or even necessitates a certain social relationship. Free enterprise is also problematic. It suggests either “relatively free enterprise,” some kind of gradation, or an abstraction that is useful as a model but not fully achievable. And determining whether

specific examples of activity do or do not constitute free enterprise can also be tricky. The relationship between technological progress and social progress is not always so clear, as will be shown below. But the concepts are sufficiently clear for a useful study.

Progress

The Enlightenment was a historical movement well suited to foster a culture of innovation. Enlightenment principles can be characterized by a belief in reason, and an emphasis on human capability and earthly dignity. These principles combined with the printing press and the fracturing of religious and political authority, to accelerate the progress of science and ethics in Western Europe.

Coercion

It is of prime importance to examine the political context in which a socio-economic system operates. If the market functions on “higgling and bargaining” and coercion exerts significant pressure on the “higgling and bargaining,” then is the term “free market” really appropriate? And how free is enterprise in such a market?

British industrialization took place at a time in which the rulers of Europe were terrified of the French Revolution, an event whose proclamation of liberty, equality, and fraternity resonated widely among individuals who labored under the old order. Because access to land and resources was distributed according to political privilege and not occupancy and use, the masters of the productive process were able to prevent industrial and agricultural labor from living autonomous and prosperous lives.

E.P. Thompson, in his classic text *The Making of the English Working Class*, characterizes the years 1760 to 1820 as “years of wholesale enclosure, in which, in village after village, common rights are lost, and the landless and – in the south – pauperized labourer is left to support the tenant-farmer, the landowner, and the tithes of the Church.”¹ Enclosure of the commons severely restricted opportunities for personal autonomy, creating a more controllable workforce. This phenomenon was not unrecognized at the time. An article in *Commercial and Agricultural Magazine* in the year 1800 cautioned against distributing too much land to the laborer because,

When a labourer becomes possessed of more land than he and his family can cultivate in the evenings ... the farmer can no longer depend on him for constant work ...

Possessing the means of subsistence could “transform the labourer into a

¹ Thompson, *The Making of the English Working Class*, 198.

petty farmer; from the most beneficial to the most useless of all the applications of industry.”² Though this primarily concerns agricultural, not industrial workers, the principle remains that potential employees who are well off will likely demand more compensation for their labor than those who have few other options.

The worker’s options were further restricted by legal inequities. At a time when combination acts targeted trade unions and reform organizations, large manufactures colluded with each other to cut off the power of exit from the workers’ bargaining chips.³

Such a state of affairs did not pass without resistance. Reform societies sprung up to agitate for more liberty for commoners. Jacobins and other radicals circulated subversive literature, including the works of Thomas Paine. An influential book was Volney’s *Ruins of Empire*, excerpts of which were circulated as a Jacobin tract during the 1790s. *Ruins* contains a segment dividing society among two classes of people. The majority of people “by useful labours contribute to the support and maintenance of society.” They were “labourers, artisans, tradesmen, and every profession useful to society,” and they were exploited by “a petty group, a valueless fraction,” who were “none but priests, courtiers, public accountants, commanders of troops, in short, the civil, military, or religious agents of government.”⁴

The state resorted to all sorts of measures to suppress radical threats to the established order. E.P. Thompson describes legal decrees breaking up reform societies, police spies, executions, and paying of mobs to terrorize reformers. Despite the repression, they continued to hold widespread public support and were admired at their trials.

Industrialization emerged from a context of coercion and social conflict.

The Standard of Living Controversy

Although industrialization resulted in a tremendous increase in aggregate wealth, the benefits did not immediately reach those on the bottom of the social hierarchy. Technological improvement should lead to widespread improvements in the quality of life. However, the social structure of capitalism impeded the general improvement in living conditions.

Evidence of unequal benefits is seen in Robert Fogel’s study, *The Escape from Hunger and Premature Death, 1700-2100*. In his examination of statistics of height, mortality, and nutrition, he concludes that the great advances of the eighteenth and nineteenth centuries “brought only modest and uneven improvements in the health, nutritional status, and longevity of the lower

² *Ibid.* 219-220.

³ *Ibid.* 200.

⁴ *Ibid.* 98-99.

classes before 1890.”⁵ An example of his findings is that:

Data on life expectancy in Great Britain reveal that although the life expectancy of the lower classes remained constant or declined in some localities during much of the nineteenth century, the life expectancy of the upper classes rose quite sharply. From the beginning of the Industrial Revolution to the end of the nineteenth century, the gap in life expectancy between the upper and lower classes increased by about 10 years.⁶

Clearly the benefits of industrialization did not reach all the English people equally. As shown by examining the extensive political conflict and regime of coercion, such inequality was not a given, but a consequence of choice.

The influence of increased population density and migration on disease could be noted to explain the lack of longevity increase. But this is just another way of saying that the living conditions of the poor tended to be dangerous and unsanitary. The elimination of laboring in rural commons as a viable option meant that more people would be exposed to these conditions with less ability to improve them.

By the start of the twentieth century, longevity began to increase. By this time labor movements, increased social consciousness and valuation of production over command, a gradual accumulation of capital in lower classes, returns on previous investments in health and medicine, mutual aid organizations (including friendly societies), and accessible technological improvements allowed the benefits of industrialization to reach the lower classes to a greater extent.

It is also necessary to consider the subjective nature of living standards. Even if the factory worker could afford to consume more calories and work fewer hours than his ancestors who were agricultural workers, he might prefer working in the fresh air without foremen and stopwatches. However, the onslaught of the land monopoly and the brutal suppression of working class combination made this a less viable option.

While industrialization eventually raised living standards, it took many years for the benefits to reach those who were forced to the bottom of the social hierarchy.

⁵ Fogel, *The Escape from Hunger and Premature Death, 1700-2100: Europe, America, and the Third World*. 8.

⁶ *Ibid.* 36.

Capitalism Versus Free Exchange

Capitalism as a social relation can be characterized as a parasite on free exchange and scientific progress as they emerged from under the domination of state and church, a cause of distorting technological change to serve the ends of economic and political domination, and an obstacle that prevented the benefits of production from reaching everyone as evenly as they would in a comparatively undistorted free market.

John Thelwall, a prominent English Jacobin, denounced laws against the association of workers, as well as the “land monopoly,” enclosures, and “accumulation of capital,” declaring that “a small quantity of labour would be sufficient to supply necessities and comforts, if property was well distributed.” He envisioned a society based on independent manufacturers, smallholders, and small traders, in which there existed protections for laborers.⁷ (It would be interesting to examine the extent to which combination acts prevented the rise of co-operative business organization as an egalitarian method of scaling up independent artisan enterprises to better compete with capitalist industry.)

Because coercion left workers with few means of subsistence besides hiring out their labor for long hours, they were unable to compete against the privileged. The closing of opportunities to labor worked to the advantage of the capitalist. In order to reclaim the ability to engage in some measure of free enterprise themselves, workers had to limit the control of capitalists; in other words they had to stifle the advance of capitalism. Because investments in new technology were made by the wealthy, research and implementation of new technology largely responded to the demands of the wealthy and prioritized profitability for owners over improved labor conditions.

Alternative Points of Departure for the Course of History

While it is difficult to make convincing counterfactual arguments, it is useful to discuss other possible courses of history in order to undermine arguments of historical necessity and demonstrate the relevance of the historical experience to current critiques of capitalist society.

The suppression of anti-scientific superstition and the enhancement of individual sovereignty could have provided incentives to labor freely for a better world. The technology and production methods produced by a free society would have been produced in a cultural atmosphere of comparative solidarity and an economic atmosphere of comparative egalitarianism. Instead of serfdom, starvation, and dark satanic mills, the worker could have produced in a freer workplace and lived in a freer society. A more equal rise in living standards combined with the more widespread investment in resources could have brought environmental concerns to prominence earlier.

⁷ Thompson, 157-160.

Commercial customs involving pre-industrial craftsmen reveal a preference for fairness and quality. E.P. Thompson describes how wages were regulated by local custom. The social prestige of the worker or notions of fair prices, just wages, or standards of craftsmanship influenced prices. Profit and value was not measured only in monetary units. However, this state of affairs should not be idealized: custom and guild associations created social hierarchies and cartelization by artisans, entrenching the privilege of some workers and limiting the mobility of others.⁸

But customs in pre-industrial society are valuable as alternative points of departure, as the basis for a direction of improvement, instead of an inconvenience to be replaced with more brutal hierarchy. The rise of capitalism didn't destroy a free market, but it prevented one from emerging.

Political revolutions suppressed or recuperated by authoritarian elements in Europe and the United States during the period of industrialization failed to firmly establish the liberty that could have resulted in a more egalitarian technological flourishing. While libertarian and egalitarian ideas were developing during the period of industrialization, various elites managed to keep control of society and continue its operation along hierarchical and authoritarian lines.

An emphasis on liberty, equality, and fraternity, which was popular in radicalism of the period, would have been beneficial to the commons had they been allowed to take root. In her article "Reformulating the Commons," Elinor Ostrom lists a series of factors that increase the likelihood of successful self-governing of commons by their users. Among these are trust and reciprocity among appropriators, and autonomy from external authorities. The prevalence of radical ideology could have increased trust and decreased enforcement costs, thus increasing the feasibility of self-governing commons with a minimal amount of hierarchy. Agriculture could then have been under stable control by laborers, benefitting food production, increasing the options for laborers, and enhancing the ability of workers to accumulate capital. But as it happened, the commons were stolen, laborers were left with little land, and the authoritarian political structure of the day would have regarded cooperative associations with suspicion at the very least.

Applicability to Modern Times

A disentangling of the threads of capitalism, free enterprise, and technological and social progress enables one to better separate good and ill in history. A lot of the evil that people endured for the goods delivered by technology was not necessary to suffer. This opens questions about industrialization in the abstract, as well as the direction of technology. Another area that could be examined is the improvement of agricultural

⁸ Thompson, 235-237.

techniques in the 18th and 19th centuries, and the extent to which monopoly prevented its gains from reaching most people.

Finding alternative points of departure in the voluntary associations and common customs of history can lead to an improved ability to find alternative points of departure in today's associations and customs that can lead to a future of greater freedom.

Prosperity and progress did not require privilege. A sacrifice in living standards accompanied a sacrifice in freedom, and standards and freedom rose as the power of the master classes was upset and the benefits of technological progress were made more accessible.

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Turning the Tables: The Pathologies and Unrealized Promise of Libertarianism

Gus diZerega

Author's note: As a scholar and former libertarian, I have been disappointed at libertarians' general failure to engage in serious debate with their critics, but I have also been disappointed with most critics' relatively simplistic attacks on libertarian ideology. I wrote this chapter for a book of essays criticizing libertarianism. Some are among the best critiques written, but none but mine are written "from the inside" so to speak. It demonstrates how libertarian ideology does not understand its own key concepts, such as individuals, freedom, coercion, power, property, contracts, and democracy. Not only does this failure undermine their policy conclusions, it also prevents them from seeing the real possibilities opened up by taking individual freedom as the major value.

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Chip Py, a longtime resident of Silver Spring, Maryland, was walking downtown after eating lunch there. He took out his camera and started to photograph the contrast between the tops of the office buildings and the blue sky.

Within seconds, a private security guard informed Py that picture-taking is not permitted. In his report of this episode Marc Fisher of the *Washington Post* quoted Py: "I am on a city street, in a public place Taking pictures is a right that I have, protected by the First Amendment."¹

¹ Marc Fisher, Public or Private Space? Line Blurs in Silver Spring. *Washington Post*, June 21, 2007:
<http://www.washingtonpost.com/wp-dyn/content/article/2007/06/20/AR2007062002354.html>

The guard informed him he was on private property and sent Py to the office of the developer. “There, marketing official Stacy Horan told Py that although Ellsworth Drive – where many of the downtown’s shops and eateries are located – may look like a public street, it is actually treated as private property, controlled by Peterson.” It had in fact been a public street, until the county ‘privatized’ it.

From a libertarian perspective Py’s experience is an example of “freedom” at work, and public places where the First Amendment applies are areas of governmental exploitation and oppression. How could an ideology of freedom end up with a world where, if libertarians had their way, the First Amendment would not apply *anywhere* because all public spaces will have been privatized under the arbitrary control of an owner?

What is Libertarianism?

In a time when American politics has become largely a morass of nihilism, corruption, and debased public debate, libertarian candidates such as Ron Paul stand out seductively. They speak claiming a strong moral foundation, they believe ideas matter, and they are willing to say the would-be emperors within both parties are without the virtues they claim to embody. It is hard not to be drawn into sympathy with these libertarians even when we find ourselves at odds over important political issues. These people at least stand for something. In a world where few people of public importance stand for anything beyond enlarging their pocketbooks and power, that is indeed something. But is it enough? What about the rest?

The rest is both much less and much more than libertarians claim.

At its core libertarianism is the belief that “free markets” provide the optimal framework within which all human interaction should take place. Some grant a small additional role for government as a “night watchman state” to enforce contracts and deal with violent crime and defense. Others think markets can do even those tasks.

Very importantly, most libertarians draw their conclusions from a radically individualistic moral philosophy and argue that no peaceful individuals can be justifiably aggressed against. As Ayn Rand put it, “No man has the right to initiate the use of physical force against others.”² It is this moral foundation that makes them such staunch defenders of civil liberties for individuals and critics of war. Their additional defense of the ‘free market’ arises from their belief that markets simply reflect the choices peaceful people make when they cooperate with one another.

Yet, for many of us, something seems deeply inadequate to the libertarian claims that their nonaggression principle justifies *laissez faire* capitalism and relegates government to a purely supportive role for maintaining a good

² Ayn Rand, *For the New Intellectual* (NY: New American Library, 1961). 55.

business environment. We are attracted by their paeans to individualism, their praise of responsibility and individual initiative, and their opposition to those eager to force us to live the way they demand. And yet *something* seems to be lacking, even if we have a hard time putting our finger on it.

We skeptics are right. Their terminology uses common words in uncommonly narrow ways. Their faulty idea of an individual, combined with their narrow interpretation of “nonaggression,” leads libertarians to misunderstand what private property is. Along with ‘nonaggression’ and the ‘individual,’ ‘private property’ is *the* core principle underlying libertarianism’s solutions to all of society’s major problems.

Once libertarian framing of what constitutes individuals and aggression are accepted, arbitrary assumptions embedded within their arguments take away our ability to conceptualize what bothers us. Political theory becomes a source of blindness rather than insight. Libertarians give terms such as “individual,” “aggression,” and “property,” arbitrarily narrow meanings. Starting with a fragmentary understanding of their key concepts, their arguments ultimately provide cover for oppressing individuals and masking many forms of aggression. An ideology of freedom becomes in practice something quite different.

Growing out of these misunderstandings of the terms “individual,” “aggression,” and “private property,” another problem arises that renders libertarians unable to comprehend the nature and value of political democracy. These are serious shortcomings for an ideology claiming to respect individuals, honor property rights, and criticize government abuses.

And yet, if genuinely understood, the libertarians’ principle of nonaggression helps guide us towards a revival in the quality of American public life and public debate from its present debased form. In other words, my critique does not reject their principles; it argues that libertarians *do not understand them*. When properly understood, their principles do outline a vision of a genuinely free and prosperous society.

I have made very serious charges against a political and philosophical perspective that prides itself on its rationality and rootedness in American traditions. I will now prove them.

Individuals

Libertarians consider individuals to be a kind of social atom, the basic building blocks from which more complex social institutions arise. All of our complex institutions, from language and custom to governments and corporations, can ultimately be traced back to the actions of individuals. Therefore, if individuals are not aggressed against, the institutions arising from their cooperation will also be beneficent.

This view distinguishes libertarians from traditional conservatives who, from Edmund Burke to William Buckley, emphasize that we are embedded

within networks of tradition and custom that require honoring our ancestors, respecting what survived from the past, and protecting our cultural inheritance for future generations. It also distinguishes libertarians from most liberals and progressives, who argue that because our cultural and social relations so powerfully shape who we are – either inhibiting or expanding human well-being – we should seek to overcome and eventually replace all institutions of domination and arbitrary power.

Both genuine conservatives and progressives view people as embedded within a thick context of social relations. What distinguishes them from one another is that conservatives emphasize that what has survived has stood the test of time and should be changed only slowly, and progressives believe that as we better understand this context, we can abolish institutions that perpetuate or create new forms of oppression and domination.

Libertarians sometimes pay lip service to insights from both perspectives, but they focus overwhelmingly on the individual as an isolated entity. They assert that through voluntary cooperation with one another, individuals can create a prosperous, free, and creative society where all people are free to live, so long as they do not violate another. There is obviously considerable truth to this libertarian claim *in some contexts*. The libertarian error comes from seeking to include all relevant dimensions of human life within these partial contexts.

It Usually Begins With Ayn Rand

While the libertarian tradition has a number of key intellectual ancestors, today Ayn Rand towers over the others in influence and in number of readers. This section's heading repeats the title of Jerome Tuccille's history of the libertarian movement,³ written during the time of its initial expansion from small groups able to meet in the private homes of people like Rand and Murray Rothbard, to its present nation-wide scale.⁴ Today, more than fifty years after her books first emerged, Rand's writings continue to sell in the hundreds of thousands, with over 12,000,000 of her books in print.⁵

Ayn Rand's influence extends well beyond self-consciously libertarian Americans and, in the process, magnifies libertarianism's influence far beyond those who adopted the term to define themselves. A 1991 survey conducted

³ Jerome Tuccille, *It Usually Begins With Ayn Rand: 25th Anniversary Edition*, (Fox and Wilkes, 1997).

⁴ These statistics come from two excellent biographies of Rand: Anne C. Heller, *Ayn Rand and the World She Made*. (NY: Doubleday, 2009) and Jennifer Burns, *Goddess of the Market: Ayn Rand and the American Right*, (Oxford: Oxford University Press, 2009).

⁵ Heller, *op. cit.*, xii.

by the Library of Congress and Book-of-the-Month Club discovered more Americans reported *Atlas Shrugged* had influenced their lives than any other title except for the Bible.⁶ Many of those now calling themselves “conservatives” owe more to Ayn Rand than to traditional conservative thinkers. Alan Greenspan and Paul Ryan admit to having been significantly influenced by Rand. Glenn Beck, and other so-called Christian conservatives, sound more like Ayn Rand when it comes to the poor and unfortunate than anything written in the Gospels.

Ayn Rand has long been popular among young people struggling to define themselves in a society that increasingly seeks to narrow their horizons and diminish control over their own lives. Rand’s depiction of strong creative individuals standing firm in their visions of how life should be lived can be inspiring reading for young people discovering the many hypocrisies in our society. She exposes how the lust for power hides behind supposedly noble motives, and skewers the claims of those wielding power that they only act for the good of others. When many of us first encountered her, we were just beginning to suspect these truths and recognize that many people’s actions had little connection to their words. Rand’s fiction gave us a framework for understanding this reality and encouraged us to vow not to do such things ourselves.

As an older teenager, I certainly enjoyed *The Fountainhead* and *Atlas Shrugged*. These novels served as a kind of bracing literary tonic to help me say “no” as best I could to such pressures. I was hardly alone. She helped some of us overcome the fear of not fitting in and gave us permission to walk in tune with our own drummer. In that way, she assisted us in living life with greater integrity. This is Ayn Rand’s positive side, and I think it is very important.

If this were all there were to Rand’s celebration of the individual she would rightly be praised as one of the greatest Twentieth Century literary forces for defending human freedom. Unfortunately, it was not.

Rand’s striking fictional characters exhibit her theory of what human beings truly are. This is a theory with many of its roots based on her early fascination with the German philosopher Friedrich Nietzsche, and in particular with his division of humanity into “supermen,” an aristocracy of virtue and ability, and the inferior people who resented their excellence. In varying degrees, this basic dichotomy stayed with her to the end. For example, in *Atlas Shrugged* her ideal man, John Galt, said:⁷

⁶ Times Wire Services, Bible Ranks 1 of Books That Changed Lives, Los Angeles Times, Dec. 2, 1991: http://articles.latimes.com/1991-12-02/entertainment/ca-746_1_book-titles

⁷ Ayn Rand, *Atlas Shrugged* (NY: Penguin, 1992). 989.

The man at the top of the intellectual pyramid contributes the most to all below him, but gets nothing except his material payment, receiving no intellectual bonus from others to add to the value of his time. The man at the bottom who, left to himself, would starve in his hopeless ineptitude, contributes nothing to those above him, but receives the bonus of all their brains. Such is the nature of the “competition” between the strong and weak of intellect.

Beyond his praise of creativity, Galt’s description of superior and inferior human beings carries four additional characteristics that remained part of Rand’s outlook, and have powerfully influenced subsequent libertarian thinking.

First, the individual is radically atomistic. Superiority arises from those with better intellect, and intellect is self-contained. In explaining her concept of man, Rand wrote “man is a heroic being, with his own happiness as the moral purpose of his life, with productive achievement as his noblest activity, and his reason as his only absolute.”⁸ Essentially, John Galt is treated as completely autonomous throughout the novel. Like a Greek God he is a force of nature, albeit a mortal one.

Second, virtue and excellence ultimately exist along a single continuum. As Galt explained, “Thinking is man’s only basic virtue, from which all others proceed.”⁹ For Rand, ideally every dimension of a person’s life was evaluated by, and subordinated to, reason.

Third, the greatest number of people is incompetent to live their lives unassisted by the creativity and ability of the elite. As Ludwig von Mises, the economist who did the most to strengthen libertarianism’s grounding in free market economics, wrote to her: “You have the courage to tell the masses what no politician told them: you are inferior and all the improvements in your conditions which you simply take for granted you owe to the effort of men who are better than you.”¹⁰ She is describing a human *pyramid* and pyramids are biggest along their bottom. Absent this pyramid, the entire premise of *Atlas Shrugged* dissolves into absurdity.

Fourth and finally, the pay-off from the less rational to the more rational is measured only in “material payment.” The market is therefore the proper way to evaluate the relative worth of a person’s contribution to society. In this last point, Rand has amalgamated the Nietzschean superman with the

⁸ *Atlas Shrugged* (NY: Plume, 1999). 1070.

⁹ *Atlas Shrugged*, op. cit. (1992). 944.

¹⁰ Von Mises quoted in *Goddess of the Market: Ayn Rand and the American Right*, 177.

successful businessman and rendered it the most perfect exemplar, a theme absent in *The Fountainhead*. To be sure those who “shrugged” in her novel included artists and inventors, but they are vital primarily to a society’s future, not its present.

No individual resembles Rand’s image of complete self-sufficiency. As Rand’s own biographies demonstrate, she was powerfully impacted during her childhood by a vastly less than loving mother. Her youth in viciously anti-Semitic Czarist Russia and her young adult years lived during the horrors of the Russian Revolution had a powerful impact on her views of human beings. At the same time she often benefited in crucial ways from the kindness of others both in Russia and during the years of her emigration and gradual rise to success in the United States. Later in life, she remained powerfully impacted emotionally by critics’ and the reactions of others to her works. Ayn Rand cared, even when she said she didn’t. Like every person, Ayn Rand’s life reflected the complex interweaving of her own abilities, the people she met, the times in which she lived, and the unpredictable play of luck and fate, all coming together in an act of co-creation. Rand created a world and in turn was created by it.

Her image of a few supermen and women surrounded by vast numbers of the less competent and even more of the truly incompetent is not true. If her biographers are correct, her intense elitism likely came from growing up Jewish in the Czarist autocracy with its state sponsored pogroms, followed by the mob actions of the Russian Revolution. Under Czarist autocracy, hundreds of years of despotism had left most Russians incapable of acting responsibly outside their most intimate circles. Rand’s view of coercion as physical force represents the experience of a person raised in such violent societies. It left her relatively numb to the other forms aggression could take.

Disappearing Individualism

There is a fatal tension between Rand’s emphasis in *The Fountainhead* on independence, initiative, and love of one’s work as determining a person’s worth, (like the architect Howard Roark), and John Galt’s later claim in *Atlas Shrugged* that reason is the ultimate standard of human excellence.

The *Fountainhead* suggests a multiplicity of excellences based on internal standards of creativity whereas the second suggests a single scalar. Roark is first and foremost an artistic creator, and hardly financially successful or even financially motivated. There are innumerable possible artistic creators, each following their own visions. But reason is a single scale, and as Rand’s philosophy developed, there appeared to be only one rational way to live a life, her way. Over time, individual creativity became subordinate to her concept of rationality, proceeding from supposedly universally correct premises.

After his encounter with Rand and her closest students, Murray

Rothbard, another major figure in the history of libertarian thought, identified the biggest problem at the core of Rand's idea of individualism. Rothbard concluded that Rand's philosophy did not lead to valuing the individual. Quite the contrary. As he put it "she actually denies all individuality whatsoever." Rand's exaltation of reason as man's highest and most definitive characteristic meant that she regarded emotion as subject to reason. Men were only "bundles of premises" and their virtue or vice depended on whether they had the right premises. To be rational, people's choices had to rest on rational premises, of which there was only one set, those Rand taught. She told Rothbard "I could be just as good in music as in economics if I applied myself." Rothbard concluded that for Rand the perfect society "would be a place where all men were identical, in their souls if not their personal appearance."¹¹ As he wrote, "Since [her followers] all have the same premises, they are all ... individual parts in a machine."¹² (As we shall see, Rothbard did not free himself from another version of this problem.)

Jennifer Burns and Anne Heller's excellent biographies emphasize the extraordinary conformity in dress, manners, hairstyles, and even smoking habits of Rand's inner circle. Rachmaninoff's romantic music was good, but composers such as Beethoven or Brahms were bad. Because he depicted everything in stark black and white terms, Mickey Spillane's mysteries were examples of the best literature. Books by people with whom Rand had a falling out were actually prohibited from being read by students who wanted to be close to her. Even advocates of individualism and free markets were judged so unacceptable that her students were forbidden to socialize with them. After their falling out, Nathaniel Branden, long Rand's right hand man, described the pressures for absolute conformity he imposed on those who wished to study with her.¹³ At one point, Rand decreed that only she and Nathaniel and Barbara Branden could legitimately be termed "Objectivists." Everyone else who followed her teachings could at most be termed a "student of Objectivism."

This is in remarkable contrast with the message she taught in *The Fountainhead*, where she distinguished between those who followed their own ideas and values, and those she labeled "second-handers."¹⁴ Howard Roark describes them: "Their ability is not within them, but somewhere in that space which divides one human body from another. Not an entity but a relation.

¹¹ Rothbard's perceptive criticism is discussed in both biographies of Ayn Rand: Burns, op. cit., 153; Heller, op. cit., 253.

¹² Heller, op. cit., 298.

¹³ Ibid., 302-3.

¹⁴ See the discussion in Burns, op. cit., 40-41.

The second-hander acts, but the source of his actions is scattered in every other living person.”¹⁵ There are two ironies here. First, every person, even Ayn Rand, is who they are because of their relations with others. But second, all those she accepted for study had to endorse being “second-handers” to the point where they *gave up* their independent stance to think for themselves. Rand *required* that those who came to study with her be *and remain* second-handers. Perhaps this is why she once observed “I thought that my fans disappointed and depressed me worse than my enemies.”¹⁶ No one with a mind securely their own could stay in such an environment.

Not all libertarians are so slavishly devoted to Rand’s ideas. But to my knowledge, all have internalized some version of this failure to understand the very individuality they praise. If they have internalized a model of the individual that cannot appreciate individuality, they internalize a model of the market that subordinates individuality to the dictates of the price mechanism. This was Murray Rothbard’s failing, for he regarded the free market as a perfect reflection of the choices free men and women made when choosing to interact voluntarily. Therefore, interventions by government that changed the rules or injected values the market did not serve were always a sign of violence and oppression.

Coercion by the market

To understand Rothbard’s unknowing rejection of individuality, we need to look briefly at how markets work. The market does not simply reflect the free choices of human beings. The market effectively coordinates a worldwide network of exchange because it radically simplifies every exchange into monetary terms. Supposedly, I do not need to know anything but a product’s price to decide whether I am better or worse off by buying it. This quality can empower individuals and/or subordinate them, as surely as the most detailed governmental regulations, depending on context.

When free men and women look at prices, they serve as signals, telling them what they must part with in order to obtain something they want. It remains their choice whether they do so or not. Prices are one factor among many when we decide what to do. Individual business people, partnerships, and families all operate within such an environment. So do many who work for others. At this level markets can empower both producers and consumers. But, this is not the only level at which the market operates.

Consider a corporation. Here strangers buy shares in a common enterprise, hoping to gain returns on their investment. Sometimes, there are millions of shareholders. Today shareholders might own shares of mutual

¹⁵ Ayn Rand, *Fountainhead* (NY: Signet, 1993). 606.

¹⁶ Heller, *op. cit.*, 303.

funds, and these funds invest in companies from which they expect good returns. Under such circumstances no one has much individual influence on how a corporation acts, and because many invest in mutual funds, often they do not know what corporations they “own.”

Another prominent libertarian economist, Milton Friedman, famously argued that corporate managers do not own their companies. They are employees of those who do. Consequently, if they act in any way that reduces returns to owners in order to serve other values, they are stealing from their employers.¹⁷

But who are their employers? Friedman argued the shareholders were. But we have already seen that most shareholders do not exercise any power over the use of their resources by a firm, and often do not even know what firms they “own.” Let’s imagine that one of these shareholder “owners” notices that the company in which they hold shares is acting unethically. They will be unable to change its actions because they “own” such a tiny portion of the whole, and so perhaps they decide to sell their shares in protest.

Shares sold by people objecting to what they regarded as unethical behavior would be purchased by others who are either ignorant of what was happening or who did not care. The more shares are sold in protest, the bigger the financial gains for those who then buy them. Knowledgeable buyers with fewer scruples will buy additional shares, anticipating an even greater return for themselves from the unethical behavior than would have been the case had no one sold. When apartheid prevailed, many progressive groups urged divestment from companies doing business in South Africa. One argument given against this strategy was that the shares would simply be purchased by others with fewer scruples.

If unethical behavior is profitable, selling shares exacts a financial loss on ethical shareholders while enabling less ethical or knowledgeable shareholders to make a greater financial gain! Selling a share for ethical reasons does not increase the pressure to change the objectionable behavior and can even strengthen its continuance if it is bought by a less ethical investor. This kind of ‘ownership’ *penalizes* ethical behavior and rewards the opposite so long as it is profitable. It is the *opposite* of what we normally mean when we say someone “owns” something.

If, despite Milton Friedman’s admonitions, a CEO decides to sacrifice profits for some ethical goal, that decision will be reflected in a lower share price than would otherwise be the case. If it is low enough to be noticed, the

¹⁷ Milton Friedman, The Social Responsibility of Business Is to Increase Its Profits, *New York Times Magazine*, Sept. 13, 1970: <http://www.colorado.edu/studentgroups/libertarians/issues/friedman-soc-resp-business.html>

CEO is likely to be ousted in an unfriendly takeover bid by others less ethically motivated. So the CEO does not really control corporate property any more than the shareholders do.

A primary characteristic of ownership is control over what is owned. Neither shareholders nor CEOs ultimately control a corporation. No human being does. Theoretically a corporation, like the market, is immortal while individual shareholders and corporate and investment managers come and go. *In capitalism individual ownership has been replaced by market ownership.*

Corporations are as responsive to market dictates as a human-created institution can be. The market dominates what companies do on pain of their being taken over by other companies operating in even greater harmony with market incentives. Like CEOs, shareholders work for the capitalist system. Their job is to shift capital to where it will bring the greatest money profit, and their fee for doing their job well is the profit they make in their stock. Managers who serve other values are ejected, and so are shareholders who put values other than profit first. “Ownership” has shifted from individuals to the capitalist system, and rather than enhancing individual freedom, the system now requires individuals to serve its values on pain of gradually or quickly losing their fee for managing its assets, to be replaced by “better” employees. The profits shareholders make for investing wisely are the fee the market provides so that its property is well managed, just as corporate managers obtain a fee for competently managing property they do not own. Whereas individual ownership is used in myriad ways, reflecting the richness, strengths, and weaknesses of the human character, market “ownership” serves much narrower values. In capitalism organizations respond to prices, real and anticipated, and to nothing else. In the process, the concept of moral responsibility traditionally entailed in the concept of ownership has disappeared.

Economists have internalized libertarian ideas about individuals and the market more than in any other profession. This is because if every individual acted like a rational sociopath the market would operate as it now does. Individuals do not usually act this way, but the market creates a context that narrows the power of human values to influence anything but the final product. So “sociopathic” models of “rational choice” work in economic theory even if not in human life.

Our present wholesale collapse in business ethics illustrates this dehumanizing process. Today many corporations have pretty much freed themselves from the world of human values whereas privately held companies remain a part of civil society, still existing within the realm of freedom. Koch Industries is privately held, and as a consequence Charles and David Koch can legitimately be considered responsible for its actions, good and bad alike. They committed massive fraud against Native Americans and

these actions are a permanent blot on their character.¹⁸ On the other hand, if GE does something good or bad, as a tiny owner of GE stock I can reap neither praise nor blame, even when that praise or blame is attenuated to reflect the percentage of shares I own. I have as much influence over GE as I do over Apple, where to my knowledge I own no shares at all.

The libertarian equation of the market as the vehicle for expressing individual freedom sacrifices all individuality that does not serve corporate profit. Neither shareholders nor management are truly free. Prices have become commands. What does not make a profit does not get done. Even Murray Rothbard, who perceptively saw problems in Ayn Rand's vision of the individual, ultimately was no more a defender of individuality than she.

But how, then, are we to think about individuals and why they are so important?

Thinking about individuals as they are

In some sense we are unique individuals. Clearly, we are also beings decisively shaped by time, place, and the key experiences of our lives. How do we make sense of how these seemingly disparate characteristics relate to one another? And why are individuals so uniquely valuable? I think sociologists Peter Berger and Thomas Luckmann give a good start for answering these questions. As they explain it, to understand what an individual is we need to keep at least three perspectives simultaneously in mind. These perspectives *cannot* be reduced to one or the other.¹⁹

1. *Society is created by the actions of individuals.* Ayn Rand's model fits easily here and, in fact, this is the almost universal libertarian view. Individuals are social atoms whose combinations create society. The best society is one where these combinations are voluntary. As Rand put it, "The principle of trade is the only rational ethical principle for all human relationships, personal and social, private and public, spiritual and material. It is the principle of justice."²⁰ This point is important and true as far as it goes, but it does not go nearly as far as Rand or other libertarians think it does.
2. *Individuals are social creations.* We reflect our place and time. We even think with concepts we inherit and only slightly

¹⁸ On the Kochs and Indians see:

http://webarchives.net/december_1999/koch_loses_oil_fraud_case.htm

¹⁹ Peter Berger and Thomas Luckmann, *The Social Construction of Reality: A Treatise on the Sociology of Knowledge* (NY: Anchor, 1967).

²⁰ Ayn Rand, *The Virtue of Selfishness* (NY: Signet, 1964). 34.

modify. Albert Einstein could never have arisen on the Lakota Reservation, nor could Lakota medicine person Black Elk have become the man he was in late 19th century central Europe. Even intensely personal behavior, such as suicide, varies in frequency from society to society. I suspect we can all name encounters with others that decisively shaped who we have become.

3. *Society is encountered by individuals as an objective reality.* This third point is a little more difficult to grasp. We are born knowing nothing or next to nothing about our world. Newborns become fully-fledged members of their society by learning how members of that society make sense of things, and adopting all or most of it for themselves. Their consciousness reflects that social world of meanings within which they live as surely as it reflects knowledge about the physical world. Initially, we take as unquestionably true both the things we learn about the material world – rocks are hard, stoves are hot – and the things we learn about the social world – marriage is between a man and a woman, or in other societies that marriage is between one man and many women. Today some children are learning that their parents can share the same gender.

Beginning in infancy the child encounters a socially mediated reality, we are not simply the products of our environment. To some degree we can stand outside and question what we once took as simply natural. The child notices how two messages it receives do not fit together, and so he separates himself to some degree from both in order to evaluate this contradiction. This process continues into adulthood. But there is no place where we can stand outside all of our socially acquired knowledge and evaluate it all at once. No matter how sophisticated our questions, we always ask them within a social context that remains largely taken for granted.

In this important sense a human life is a creative discovery process where we continually encounter that which we do not know from within a context of what we think we do know. If we are honest and not afraid, we will recognize that the edges of what we think we know blends into what we know we do not know. The lines are blurred and how we ultimately interpret them can potentially send unexpected shock waves deep into our taken-for-granted world of certainty. But we can never doubt everything.

Berger and Luckmann argued, and I think correctly, “Society is a human product. Society is an objective reality. Man is a social product. An analysis that leaves out any one of these three moments will be distortive. Only with the transmission of the social world to a new generation (that is, internalization as effectuated by socialization) does the fundamental social dialectic appear in its totality.”²¹ These three dimensions do not exist in a linear causal relationship to one another. *They are always simultaneous*, creating an enduring and dynamic pattern of relationships out of which both individuals and societies emerge.²²

The Centrality of Relationship

This insight tells us that *individuals cannot be separated from their relationships* because our relationships are fundamental in determining who we are. As we make sense of our relationships and encounters within the world we inherited we must interpret what happens to us. We are unavoidably creative as we give them a meaning that is always at least to some degree unique to ourselves. I believe another Russian, Yevgeny Yevtushenko, captured a core insight about what an individual is far better than has Rand or any libertarian I have ever read.²³

In any man who dies there dies with him
his first snow and kiss and fight.
It goes with him.

There are left books and bridges
and painted canvas and machinery.
Whose fate is to survive.

But what has gone is also not nothing:
by the rule of the game something has gone.
Not people die but worlds die in them.

In a word, individuals are creative gestalts formed from interacting relationships, and every relationship involves at least two parties. Think of the well-known image of two faces, which, looked at differently, reveals a vase. The vase is dependent on the faces, the faces dependent on the vase.

²¹ Ibid., 61.

²² Paul Lewis, Peter Berger and his critics: The Significance of Emergence, *Society*, 47: 3, 2010. 207-213.

²³ Yevgeny Yevtushenko, *People*, *Selected Poems* (NY: Penguin, 1979). 85.

Different faces manifest different vases, and vice versa.

Every such gestalt is a unique center of consciousness, a self, one constituting the only real center of moral action. We are unique selves *because* of our relationships. If there are no relationships, there are no individuals.

This observation is paradoxical, but it is not nonsensical. Physicists deal with a somewhat similar paradox at the core of their knowledge. Consider the photon, a genuinely quantum phenomenon. In quantum mechanics a photon is a single quantum, and as such it is far more paradoxical than any comparatively gigantic atom. Atoms are things in ways that photons are not. Thinking about quanta helps us think more clearly about individuals than does using the libertarian image of an atom.

Ask certain experimental questions about the nature of light, and photons act as if they were particles (individuals). Ask other questions, and they act as if they were waves (certainly not individuals). *A photon is at least both* even though our minds cannot conceive clearly how this can be. The math works and exceedingly exact predictions can be made, but a clear mental image of what a photon really is eludes us.

Individuals only resemble atoms (particles) in some contexts and when some questions are asked of us. Ask an individual one set of questions and you get answers in keeping with libertarian beliefs, where individuals to some degree resemble irreducible units of social and moral reality. Do you want to be an engineer or a physicist or an artist? Are you gay or straight? Do you prefer meat or fish or are you vegetarian?

But if you ask *other* questions about individuals you get very different results, for we are also social beings reflecting the time and place we were born and our experiences with others, particularly as children, even down to the most basic levels of who we are. Why is suicide more prevalent in some societies than others? Why are marriages more egalitarian in some societies than others? Marriage and suicide are individual choices, yet they clearly are choices reflecting patterns that include and extend beyond individuals. I think we can assume individuals are at least as complex as photons.

The Centrality of Empathy

There is another glaring absence in Ayn Rand's concept of the ideal individual, one that also helps explain why her characters, memorable as they are, were so unlike real human beings and why genuine individuality was discouraged among her closest followers. That missing quality is empathy. "Self-interest" turns out to be a very interesting concept. It turns out that in the absence of the capacity for empathy the ability to act in rational self-interest is also absent.

What is "self-interest?" Rand and the libertarian tradition generally take the "self" for granted. The self is contrasted to other selves, and these selves gain when they cooperate, and at least one loses when one coerces another. In

Rand's formulation, coercing another makes the coercing self-dependent on its victim, and so not truly autonomous. Even the coercing self is not really free. As is so often the case, a partial truth is confused with the whole story.

There is nothing new about the argument that men and women act in their self-interest. If we go back to the time of David Hume and Adam Smith, many argued that in the end all human action is self-interested. As Hume described this point, no "passion is or can be disinterested; . . . even unknown to ourselves, we seek only our own gratification while we appear the most deeply engaged in schemes for the liberty and happiness of mankind."²⁴

However, both he and Adam Smith emphasized that such an egoistic analysis fails to describe our actual experience. For example, Smith observes that when we are pleased by observing or displeased by not observing something in others, "fellow-feeling with all the emotions of our own breast – both the pleasure and the pain – are always felt so instantaneously, and often upon such frivolous occasions, that it seems evident that neither of them can be derived from any such self-interested consideration."²⁵

When we rigorously examine it, egoism defeats itself. To act in our self-interest beyond the spur of the moment we need to anticipate our future situation. To do this, we imaginatively project ourselves into our anticipated future circumstances, and on that basis choose a course of action we believe will lead to a desirable outcome. This hypothetical future self of ours does not yet exist. It is a projection of who we think we will be at some future time.

Our ability to project our imagination into possible future anticipated circumstances arises from what Hume and Smith termed our *sympathetic* capabilities. By sympathy they refer to what we would call empathy today. We identify with another being. Regardless of what we call it, sympathy, empathy, or identification, this trait is not simply a passion or feeling. Hume emphasizes that "we must be assisted by relations of resemblance and contiguity in order to feel the sympathy in its full perfection."²⁶

The effective power of sympathy (empathy) cannot be simply taken for granted. Smith observes that "Men, though naturally sympathetic, feel ... little for another, with whom they have no particular connection, in comparison of

²⁴ David Hume, *An Inquiry Concerning the Principles of Morals*, appendix II., in David Hume, *Moral and Political Philosophy*, Henry D. Aiken (ed.) (New York: Hafner, 1948). 270.

²⁵ Adam Smith, *The Theory of Moral Sentiments*, (New Rochelle, NY: Arlington House, 1969), 10; Hume, "Of Self Love," *Moral and Political Philosophy*. 270-275.

²⁶ David Hume, *Treatise on Human Nature*, Bk. II, sec. ii, in Hume, *Moral and Political Philosophy*. 7.

what they feel for themselves.”²⁷ For empathy to develop, our intellect is needed to grasp or deny relevant similarities. Our predisposition to empathy can be cultivated and strengthened, or it can be inhibited.

The *same* capacities, which enable us to put ourselves into our own future shoes, also enable us to put ourselves into the shoes of another. In both cases we project our present self into the imagined mind of another self. Rational self-interest, which depends upon being able to anticipate the probable future consequences arising for us from something we do now, requires that we have the same capacity to sympathize with others. In both cases the capacity depends on our ability to recognize similarities in beings other than our immediate self.²⁸ As we put ourselves in others’ minds, based on their similarities with our own, we *care* about them.

Self-consciousness along with reason creates the capacity to care for others. Were we unaware of ourselves, we would have no basis for understanding a mind. Without our reason we would have no basis for understanding experience other than our own at the time we have the experience. *The greater our sense of self as a being extending over time, the greater becomes our capacity to empathize with other beings.* This is because the farther into the future our self-interest extends, the more developed our capacity for empathy must become, since our present situation, and the temptations and pains it presents, is ever farther removed from that imagined being for whom we can effectively care.

The more a being seems to resemble ourselves, the more easily we can empathize with it. Because we believe our own self is largely unchanging, when pursuing our rational self-interest, we usually extrapolate our present self into our future. When the future arrives we often discover we were wrong. We will often be closer to the mark in our empathy for a close friend today than for our imagined self ten years hence.

Sympathy (empathy), Hume observed, “extends itself beyond our own species.”²⁹ Some species are more like ourselves than are others. We can more easily sympathize with chimpanzees than with fish and fish more easily than with earthworms. But it is not the case that sympathy, even towards earthworms, is impossible. We have a gradation of similarities, and therefore a gradation of the possibilities for sympathy, which never fall to zero. Even

²⁷ Smith, *op. cit.*, 125.

²⁸ Hume, *Treatise on Human Understanding*, Pt. II, sec. vi; Sec. ix, In Aiken (ed.) pp. 227, 258. See Henry Aiken’s introductory essay, xxiii. I am uncertain whether Aiken clarified what is implicit in Hume, as it certainly is, or whether Hume fully grasped this point himself, for in Pt. II, Sec. v he noted “It is needless to push our researches so far as to ask why we have humanity or a fellow feeling with others.” 212.

²⁹ Hume, *Treatise on Human Nature*, Bk. III, Part. II, sec. i., in Aiken (ed.), 52.

the simplest forms of life can flourish or not, react to stimuli that are harmful or beneficial, and enjoy good or suffer ill health.³⁰

An observation by Aldo Leopold helps us better appreciate these implications of empathy. Leopold wrote that while we can mourn the demise of the passenger pigeon, which none of us has ever seen, no passenger pigeon would have mourned our own passing. He concluded, “For one species to mourn the death of another is a new thing under the sun.”³¹

All life is related. The more closely the physical nervous system of an animal approaches our own, the stronger the burden of proof must be on those who say its experience is wholly unlike our own. It makes far more sense to say that we have important similarities with other forms of life than to wall our experience off from everything else in the world. Descartes could attempt this latter move because he believed in a traditional, literal, way in *Genesis* and allowed “doubt” to overwhelm common sense. But what excuse does a post-Darwinian have?

Once we admit to sharing significant traits with chimpanzees, we enter on to a continuum extending indefinitely far. The implications of this point were not lost on Charles Darwin, who wrote, “I have all my life been a strong advocate for humanity to animals, and have done what I could in my writings to enforce this duty.”³² Darwin believed that ultimately ethics would evolve to include all sentient beings, gradually expanding its scope as people came to see their similarities with ever more distant forms of life.³³ Like Hume and Smith, Darwin believed natural sympathy provided the *foundation* of moral action. On this basis, the theory of evolution expanded moral consideration to encompass all life, for we can no longer hold ourselves as truly separate from others.

Here is a contrasting definition as to what is valuable about human beings. Hume and Smith’s analysis of sympathy explains why people would

³⁰ John A. Fisher, *Taking Sympathy Seriously: A Defense of Our Moral Psychology Toward Animals*, *The Animal Rights/Environmental Ethics Debate*, ed. Eugene Hargrove, (Albany: State University of New York Press, 1992), 227-248; J. Baird Callicott, *Animal Liberation and Environmental Ethics: Back Together Again*, *In Defense of the Land Ethic: Essays in Environmental Philosophy* (Albany: State University of New York Press, 1989). 49-59.

³¹ Aldo Leopold, *Sand County Almanac* (New York: Ballantine Books, 1970). 117.

³² Quoted by Donald Worster, *The Economy of Nature: A History of Ecological Ideas*, (Cambridge: Cambridge University Press, 1977). 181.

³³ Charles Darwin, *The Descent of Man*, New York: Modern Library, 471-511, esp. 492. See also Callicott, *In Defense of the Land Ethic*, p. 119; Donald Worster, *Nature’s Economy*, op. cit., 180-184; Roderick Nash *The Rights of Nature: A History of Environmental Ethics* (Madison: University of Wisconsin Press, 1989). 42-45.

want to act ethically not through self-sacrifice but through an ever-richer experience of self. We are not qualitatively unique among living species in rationality (crows, chimpanzees, and even some fish and mollusks make tools to accomplish intended ends). We are, as Leopold observed, unique in our capacity to care for other beings of no utility to us and whom we have never seen. This capacity has nothing to do with self-interest the way Rand and libertarians in general define it, and requires instead the existence of a self that can grow to embrace ever more of the world. Empathy inclines us to wish well-being on at least all not actively injuring us. Which brings us to groups.

Groups: “I am because we are”

If individuals are more complex than atoms, groups are more complex than simple threats to individual freedom or collections of individuals pursuing mutually advantageous trade, as in the libertarian outlook. Relationships always occur in the context of groups. Since there cannot be individuals without relationships, so there cannot be individuals without groups

Initially a libertarian might reply, “But the real issue is whether or not the groups are voluntary.” This is not true.

Beginning with our families, we are born into and live within groups we do not choose. For better or worse our parents’ job of loving and raising us powerfully influences our beliefs, emotional security, self-image, tendency towards anger or love, and other dimensions in a list that goes on and on. If our families are wealthy, greater opportunities open up for than if they are poor. On the other hand, too sheltered an upbringing can render us a kind of hothouse plant feeling at great risk if ever placed outside. We do not choose our families and for most of us our families are where we first learn about reality. So, they influence us at levels far deeper than where we make deliberate choices, at least without benefiting from input by friends or therapists who see patterns in our behavior we cannot.

The society we are born into is another group we do not choose. It also powerfully influences our life possibilities. It provides us with our initial language, customs, awareness of our place in the world, and much more. For Ayn Rand, once the Russian Revolution ended Tsarist discrimination against women and Jews, she could attend a university. When the Bolsheviks began discriminating against the children of the “bourgeoisie” she was forced out. Both events powerfully influenced her subsequent career and outlook on life. Many a banker or venture capitalist would live a far different life in a different society. Some of these people would die young if they were born into an overpopulated agricultural society. Others might become mediocre farmers or respected village headmen. The manipulative skills of a hedge fund billionaire would be of little value in most societies. Yet none of these people

chose their place of birth nor did they do anything to earn their initial place in the society in which they were born. Similarly, poor children did nothing to “earn” their place living with parents just scraping by.

Even after they attained adulthood and set off on their own, people attained success in most cases not simply through their unique abilities, real as they may be. First, they benefited from a social inheritance going back hundreds and even thousands of years, an inheritance they were lucky enough to acquire. Second, they lived in an environment where they had the good fortune to meet the right people at the right time, people who recognized their qualities and were in a position to reward them. Rand’s immigration to the US was made possible by loans from relatives already in America. People she subsequently met provided her crucial help at crucial times

Of course hard work is also important especially for those not born to wealth, but many poor Mexican laborers work far harder than many Americans who are comparatively wealthy. Many people who rose from poverty to wealth worked hard, but many people work hard who do not rise from poverty to wealth. Creativity can also play a role in economic success, but creativity, even when honored long after the creator’s death, is often not rewarded. Vincent Van Gogh’s paintings have made millions of dollars for people who collected his work but he himself lived and died in poverty. To make their millions all they did was recognize Van Gogh’s work as worth more than the pittance he charged for it, or perhaps they simply acted from charity. A similar charitable act to another artist would have led to no fortune. This brings us to the role of luck.

Along with individual ability and the environment into which they were born, luck is a vital part of economic success, especially big success. First there is the luck of being born in the right society at the right time, and then there is the luck involved in meeting the right people. The wisest free market thinkers are very clear about this. Nobel Laureate F. A. Hayek emphasized, “The element of luck is as inseparable from the operation of the market as the element of skill.”³⁴ Luck and undeserved good fortune count for a lot in enabling material success in a market society. The market does *not* simply reward hard work and creativity. Again, think of Vincent Van Gogh.

Collectivism, individuals, and groups

A libertarian might respond that I am advocating “collectivism.” Libertarians continually contrast individualism to collectivism. This was a major theme in Ayn Rand’s work and is present in the work of nearly all other libertarians I have read. There is an important historical basis for this. Libertarianism’s seminal thinkers lived during the time when Communism

³⁴ F. A. Hayek, *Law, Legislation and Liberty, Vol. 2: The Mirage of Social Justice* (Chicago: University of Chicago 1976). 117.

seemed to many people a viable political and economic system, and fascism, a collectivism on the right, had only been defeated through a long and bloody war. As an alternative to free societies, collectivism burned its image deeply into the consciousness of many who lived during this time.

Libertarian thinkers such as von Mises and F. A. Hayek were among the most powerful intellectual opponents of collectivist views. And ultimately their arguments prevailed just as collectivist societies proved less prosperous, less sustainable, and immeasurably more vicious than Western liberal democratic ones. Had von Mises and Hayek been better understood many idealists would not have wasted their lives counting on Communism to bring humanity a better life. Today, communism is gone and collectivism has few explicit defenders except for the excesses of virulent nationalism and the perpetual scourges of racism and theocracy.

The problem is that like victorious generals, victorious thinkers always seem prepared to wage the last war and never notice when their priorities and outlooks depart from new challenges. They see collectivism everywhere even when it isn't present. They view the present through the patterns they discerned in the past. Of course we all do this to some extent, but creative and perceptive minds are aware that these patterns change as the world changes. For the most part, libertarians today remain mired in intellectual outlooks rooted in the problems people faced during the 1930s and 40s.

So what is collectivism?

Collectivism is a modern form of tribalism, writ big. The idea behind collectivism is that one group is so important, so decisive in determining who we are, that our individuality and everything else fades into relative unimportance. Some on the left said this was true for economic classes. Some on the right claim it is true for races. Others make a similar claim on behalf of their religion. Perhaps the most effective collectivists have claimed as much for the nation or "the people." In all of these cases individual rights wither away when they stand in opposition to whatever group is regarded as all important.

Great crimes have been committed in the name of different collectivist identities, both internally and between different countries. Because collectivists have never agreed on which group is all-important, many wars have occurred between different collectivist nations. Nazi Germany's attack on Communist Russia is the bloodiest example. But collectivism has *nothing* to do with the argument that individuals are inextricably immersed in society.

There is no single-most-basic group. In practice we belong to many different groups, including culture, family, nation, economic class, race, gender, generation, religion, or lack thereof, and on and on and on, down to our most subtle identifications with even transitory groups of friends and brief acquaintances. Some groups we belong to by choice, some by fate, and in our individuality we create a unique self that stands in both support and

tension with all these various groups because we cannot be reduced to any one of them. Even if you and I belong to the same groups, the worlds we create will be different. But this hardly means groups are secondary to individuals. Groups are as constitutive of our individuality as individuals are constitutive of groups.

Because individuals can never be separated from groups and many are attached to us by fate not choice, the real issue is not simply keeping groups “voluntary,” but rather *what are the most appropriate relations* between an individual and a group? Often they are simply voluntary, as when we join a club or a church. But in other contexts, the issue is that you are a member whether you want to be or not. What kinds of influence should you have in the group? And, what kinds of influence should the group have on you?

A New Collectivism

Collectivism is the exaltation of a group and its well-being over the moral status of any individual within or without the group. Individuals can be sacrificed for the benefit of the group. Once we understand both what collectivism is *and* the failure of Rothbard and other economic libertarians to grasp the tension between individuals and markets, we come to a disturbing insight. Much libertarian thought leads to a new collectivism. It is not intended to do so, but we know how the road to Hell is paved.

I explained above that as the market shifts from being dominated by individuals and family producers, towards becoming ever more thoroughly comprised of corporations, the range of free choices within which individuals have to act gets more constrained. Prices shift from being signals indicating how individuals can make more informed choices about means to their ends, to becoming commands which, if not followed, will lead to their progressive elimination. A new group, one that responds only to a small fraction of what we regard as human values, has become a major arbiter of human fate, one that is limited only by people’s capacity to not be subjected to corporate logic. In a sense it is not even a human group.

For all their talk about the sanctity of an individual, libertarians do not know what an individual is and so cannot really appreciate what is necessary to preserve individual freedom. Not knowing this, they also misunderstand their own nonaggression principle.

Nonaggression and property

Using physical violence or its threat against another person is a pretty clear example of aggression. This image makes the libertarian nonaggression principle persuasive. But once we understand that individuals only exist within a context of relationships, other kinds of aggression become possible, the kinds libertarians cannot see. They believe we are distinct from our relationships and ultimately autonomous from them. Our experiences *happen*

to the self rather than helping to constitute it.

This blindness plays out in a fascinating way when we examine the core libertarian concept of property. Libertarians claim that taking property against our will constitutes theft or robbery. Because they are not voluntary, taxes are a reason for their hatred of government. However, this reason is incoherent.

Where did *property* come from? Why is it legitimate for me to own something and only allow others to use it with my permission? The classic libertarian explanation is some variation of John Locke’s argument that something unowned becomes ours when we “mix” our labor with it. Locke’s initial example was picking up an acorn or apple to eat. This description seems reasonable, for hardly anyone would doubt that if I picked up an apple or acorn, it would make it mine.³⁵

Owning an acorn or apple is reasonably derived from a Lockean argument because they have boundaries that for most purposes are clear to everyone. But for the most part, our world is not made up of neat bundles forming discrete units we can appropriate and exchange as our property. Further, if it is to be useful in a market economy, we must all agree as to what constitutes a unit of “property.” Otherwise we cannot agree on what it is we are exchanging. Property rights need to be respected by all concerned.

Agreement about what constitutes property is necessary because without it there can be no market economy. But how do we reach this agreement? We cannot “let the market decide” because without defined property there cannot be a market to decide anything. Both historically and logically, property exists *prior* to the market.

So long as we consider property a “thing,” using the acorn or apple as our universal example, we cannot answer our question. There are too many possible ways to define property. We encounter another version of the dilemma libertarians are impaled on, we see that they treat individuals as isolated units that can cooperate together, or not, depending on how they choose. Property is not an isolated thing existing distinct from the world in which it is found. *Property is a locus of rights to enter into relationships*, both with what is owned and with others.

There are two steps in attaining a better understanding of property.

First, think about what it means to own a house. In most cases I have complete control over it. I can remodel it, tear it down, live in it, let it stand vacant, or rent it out. Let’s assume I decide to rent it out. I still own my house but I sell the right to its exclusive temporary use to another person so long as a mutually agreeable rent is paid. In doing so I lose the right to enter my house whenever I want, whereas the renter, a non-owner, now has this right. But I still have other rights to the house, including raising the rent, selling it,

³⁵ John Locke, *Two Treatises on Government*, Peter Laslett, ed. (NY: Mentor, 1960). 327-44.

remodeling it or moving the renter out and moving in myself. This example leads to our first clarification about “property:” property is not a thing; it is a *bundle* of rights to be employed in certain ways if the owner so chooses. The owner can rent out some of the rights in that bundle and still retain the others.

Another example expands this point. Many land trusts preserve open space by encouraging property owners to sell their development rights to the trust, which has no intention of developing the property. The landowner still lives there and cannot be forced out by the owner of the development rights. The owner can still sell or bequeath the land, minus its development rights. He or she still has “private property,” but the bundle of rights his ownership includes is smaller now.

The land trust example demonstrates that not only can some of the rights in a bundle of rights be temporarily rented or leased; some can also be sold while the others remain under separate ownership by the original seller. To own property is to own rights to enter into relationships, not to own a thing, for neither the rancher nor the trust own “the land.” This observation leads us to a second clarification in how we normally think about “property.”

Bundles of property rights vary with the property. I can chop up my chair into kindling any time I want. In most societies I cannot chop up my living dog or cat any time I want. No one thinks it wrong to chop up a chair but all normal people think it is wrong to chop up a living pet dog or cat. I can sell someone the right to chop up my chair. I cannot sell someone the right to chop up my pet. Yet I own my pet.

Consider a much less extreme example. In most cities I can play my music louder during the day than I can late at night. Why? Because making noise is more appropriate during the day than late at night. Different times of day determine different contents to my bundle of rights to use my drums. As a physical object my drums remain the same, but considered as my property, the rights in my bundle of uses varies over time and in relationship to others. Nor does anyone find this at all strange.

Bundles of discrete property rights vary with what is considered an *appropriate relation* with the property and its environment. What is appropriate differs with regard to chairs and to cats and dogs. They also vary depending on what are considered appropriate relations with others such as my neighbors. We are back to that concept so irritating for libertarians: relationships. The “thingness” of property manifests in being the physical referent for our bundle of rights that give us some sphere of control over it. But the rights in that bundle are defined in terms of appropriate relationships into which I can enter with and through my property. Property therefore implies a concept of what constitutes appropriate relations both with what is owned and with others.

From this perspective a world of private property is a world where a wide

number of cooperative relationships can be entered into with others, depending only on mutual agreement. So far Ayn Rand and other libertarians might remain happy, if uneasy with the unaccustomed terminology. But their smiles fade when we ask the next question.

Who Decides?

Who determines what relationships involving property are appropriate? Let's return to the issue of noise. In terms of either its volume or the time of day, there is no clear point identifying when we should shift from the greater permissiveness for loud noises during the day to the greater restrictions of night. Yet somehow a point and volume must be determined, and normally it must apply equally to everyone within a given area.

Traditionally, a libertarian will say property is misused when someone's boundary is involuntarily crossed. That constitutes aggression. At first this standard sounds reasonable and as usual, it masks a deeper reality. Noise *always* crosses boundaries and no one would argue that all noise should be eliminated unless it is expressly allowed by all who hear it. That would be absurd. The same point holds for auto exhaust, barbeque smoke, cigarette smoke, bright light, and many other things. We are immersed in relationships where acts by others cross our boundaries without our permission and we do the same in return, and it is obviously absurd to call all such phenomena aggression.

It is also obviously absurd to say that no such boundary crossings are inappropriate. Some easily can be considered aggression. Very few libertarians, and no sane ones, would say my setting firecrackers off in my back yard at 3 a.m., just to wake you up, is not some kind of aggression on my part. Yet based on their principles libertarians cannot answer how to make such a determination. At what point can you legitimately shift from wearing earplugs and running a white noise machine to calling the cops?

Libertarian theorist Murray Rothbard once argued that no one should be able to pollute another person without his or her consent. From this perspective no one was "greener" than Rothbard on pollution. Then someone pointed out to him that if that were the case no one could run an internal combustion engine without the consent of all who could breathe its fumes, at least if they found it interfered with their enjoyment of their property. Rothbard then went from too stringent a standard to effectively none at all, arguing the individual polluter had to be identified so he or she could be held personally responsible. "The guilty polluter should be each individual car owner and not the automobile manufacturer, who is not responsible for the actual tort and the actual emission."³⁶

³⁶ Murray N. Rothbard, *Law, Property Rights and Air Pollution* (Ludwig von Mises Institute, 2006). <http://mises.org/daily/2120>

As a practical matter that is often impossible. Rothbard did suggest that in a pure ‘stateless’ libertarian society the roads would be privately owned and the owner of the road could then be held liable for pollution. But even a moment’s thought demonstrates the absurdity of his argument. Think of Beijing and the smog it produces, smog that mixes pollution from cars and industry. This smog kills people.

A comprehensive study of the health and economic costs of smog in the Los Angeles basin as well as California’s San Joaquin Valley, concluded that attaining the ideal federal standard for clean air “would save more lives than reducing the number of motor vehicle fatalities to zero in most of the counties in this study.”³⁷ People could be dropping dead from poisoned air within a Rothbardian society without having any legal resource so long as enough separate sources contributed to the poison. No one could now be browner than Rothbard.

Advocating these ridiculous extremes arises because treating property as a thing with objective boundaries misidentifies it. Property always exists in and through relationships. Some relationships are legitimate, some are illegitimate, and in some cases a line must be drawn that could be drawn in many possible places. Libertarianism has nothing to offer us as guidance in such important cases. It cannot even understand the problem.

There is still another complication in determining what constitutes appropriate property rights, and pollution helps us see it clearly. Many cities develop serious air pollution when they grow large enough that practices once entirely harmless begin to adversely impact more and more people, beginning with those who are the most sensitive. In other words, not only can responsibility for pollution not be laid at the foot of individual polluters, in time what was once not pollution can become pollution.

Missoula, Montana had to face an air quality problem when its population growth plus normal air inversions during the winter trapped increasingly dangerous quantities of wood smoke in the air. What was once entirely acceptable for everyone became lethal for increasing numbers of people unless something was done about it. What was clearly an allowable right at one point might become a prohibited use at another, meaning that one right in a bundle concerning heating my home and perhaps enjoying a wintertime fire in my fireplace might be removed from it.

Who decides what the allowable boundaries will be? Who decides when conditions have changed? Ayn Rand’s vision of completely independent people owning discrete properties and contracting with one another over them is only a part of human reality, and as we become ever more numerous

³⁷ Janet Hall, Victor Brajer, Frederick W. Lurmann, *The Benefits of Meeting Federal Clean Air Standards in the South Coast and San Joaquin Valley Air Basins* (California State University, Fullerton, 2008). 84.

and interconnected, it becomes increasingly misleading when considered by itself. But how can change or lack of change be justified to those with different ideas as to what should be done?

Things bleed out into the world and interpenetrate at least through some combination of sound, photons, and smell. We need to come to agreement about how much of this bleeding out is acceptable and what is beyond the pale. I cannot detonate firecrackers in my neighborhood at 3 am, but I can talk with a friend while on the sidewalk at that time. Both create noise that might disturb someone. I can have an outdoor light by my front door and leave it on all night, but it is a different matter entirely were I to buy a searchlight and aim it at your bedroom window. Both examples create photons that cross your property boundaries. Where between these extremes do we draw the line?

There are *no* clear lines between acceptable and unacceptable pollution by chemicals, noise, odors, or light yet we need to have one if we are to have a system where contractual agreements work for the ultimate benefit of all and where no one is aggressed upon. This is true even if all we want are useful engines and breathable air. An atomistic view of property *cannot* solve this problem either.

The only way to define rights when people disagree so that the inevitable losers will recognize the outcome as legitimate is to be fair to all sides, *and the only way to be considered fair is if everyone affected by the decision gets some opportunity for input, and at some crucial point equal input, into the decision.* If you have more input than me at every point, and my view fails to make a difference while yours prevails, I will reasonably regard the outcome as unfair. I will rightfully feel coerced. *Absent fairness over these decisions even the seriously inadequate libertarian view of the nonaggression principle is violated.*

Property rights cannot be derived without some prior collective means for making decisions. Further, these rights will need a way to be changed from time to time should the need arise, as with our examples of air pollution in Missoula. Deciding when the need arises should also be done fairly. Because boundaries are never completely clear, different people can and most certainly will sincerely disagree on where they should be drawn. A principle of fairness in determining property rights is necessary for any kind of nonaggression principle to be honored. Only when they believe they have lost their case fairly will losers accept a decision as legitimately decided even when they disagree with it. *Yet libertarians have no such principle.* They first assume property and then worry about coercion. In the most basic sense, this position is incoherent.

Understanding Democracy

By uncovering what has been assumed regarding the most basic concepts in most libertarian theorizing we have arrived at several insights. First, far

from being independent of society, individuals are only comprehensible as members of society and in any *human* sense are impossible in its absence. Second, the property rights libertarians rightly identify as necessary for individuals to exercise freedom are socially determined and must exist prior to the market. Third, those rights can often be delineated along different lines, none more objectively real or just than another. As a consequence, if decisions about property rights are to be made without aggression and when sincere disagreements exist as to their content and boundaries, the rules leading to those decisions must be perceived as fair to all sides. Fourth, for those rules to be fair they must at some important point treat everyone equally. Given the nonaggression principle libertarians say they hold dear, some kind of democracy is the unavoidable result.

We can see this issue clearly by examining a controversy arising from the contemporary libertarian strategy to dominate New Hampshire. Because New Hampshire is a small state many libertarians have moved there in hopes of eventually controlling its politics. The results have been interesting.

A libertarian activist was recently sentenced to 100 days in jail for refusing to remove a couch from his back yard in Keene, New Hampshire, and for a series of problems that escalated from his response to the initial charges.³⁸ Libertarians see him as a victim of “tyranny.” Whether or not the fellow is getting treated fairly, there is another issue to explore: the right of democratic government to regulate how property is used.

From a libertarian perspective, why is Keene in the wrong? Let’s consider another example to help clarify the issue. For libertarians, a homeowners’ association can legitimately make similar rules about what is and is not acceptable outside a member’s home. I know outdoor clotheslines are often not acceptable in such associations, so it is easy to imagine them also not accepting a couch. From a libertarian standpoint they are in the right. So why would libertarians think Keene is in the wrong?

Usually, libertarians answer that the two cases are different because the association is contractually based and no one had to buy a home there, whereas Keene has a town government making decisions for its approximately 23,400 citizens. For them, the problem is that Keene is a democratic town.

There are two devastating answers to this argument. First, and least penetrating, libertarians have chosen to move to New Hampshire and to Keene. They did not have to do so. But, having done so, they voluntarily accepted its decisions over property use as much as if Keene had been a homeowners’ association. I think this is a good response but some libertarians

³⁸ Steve Watson, Libertarian Talk Radio Activist jailed for 100 Days for Having a Couch in his Yard, *Alex Jones Infowars.net*. Nov. 17, 2008: <http://infowars.net/articles/november2008/171108Freeman.htm>

will argue that governments have monopolized all land so they have no choice but to live somewhere. The next response is more fatal to their argument.

If the principle of nonaggression is to be honored, democratic procedures are the only way decisions can be made when establishing a community's basic framework of property rights. Further, it must be able to alter those bundles when the community deems it necessary, as in Missoula. The contractual homeowners' association is itself dependent upon there first being democratic decision-making to decide what rights should accompany ownership of private property. Only then can property owners form an association.

The hypothetical homeowners' association as well as Keene's town council objected to couches because they could be seen off the property. Photons depicting these objects crossed boundaries and invaded the vision of un-consenting others. There is no objective line to determine when a photonic trespass has occurred and when it has not. Some will think couches qualify, others will disagree. The issue must therefore be determined by some decision-making authority, be it governmental or contractual. Whatever the decision, it remains a matter of human judgment.

I have already argued that short of a decision-making process that at some important point treats all involved in the issue equally, even with a narrow libertarian interpretation of aggression, there is no non-aggressive means for making the decision. Therefore, a democratic body has the right to make the decisions Keene's town government made. Keene's government may or may not have acted wisely in making the ordinance, but it certainly acted legitimately.

Keene's decision could be criticized by libertarians on two other grounds. First, perhaps the process was not democratic enough. It was not fair to all voters. Second, it was a mistake and should be revisited. Democratic principles provide a way to think clearly about both issues whereas libertarian principles do not.

The first objection can easily be met by improving the democratic quality of Keene's government. Give all citizens a significant point where their views are treated equally. Make it *more democratic*.

The principle of democracy solves the second objection. Citizens unhappy with the initial decision can argue in public to change the council's mind and, failing that, run for election. If they have convinced a majority of residents that they are right and the issue is important, they will win and the incumbents be ousted. Perhaps under current circumstances, reforms need to be made to better enable these processes to take place, but that is arguing while accepting the legitimacy of democracy. Libertarians cannot coherently criticize Keene's decision as illegitimate just because a democratic government made it.

Democracy and Games

Libertarians continually speak of democracies as “states,” and states have a long history of being oppressive, violent, and corrupt. But this is a flawed framing of democratic reality.³⁹ We need a better framework, one that can separate the essential things a democracy must do if a society is to meet standards for nonaggression. This would be different from the issues of starting wars and killing dissidents that states have specialized in.

If this cannot be done the nonaggression principle is itself radically flawed because we have seen that the democratic principle is essential for private property to justly exist. The principle of a state is sovereign power over subjects. States rule over people. The principle of democracy is self-government. Both states and democracies make rules, but different people with very different statuses in society make the rules and different standards justify them. If we refuse to distinguish between democracies and states because both make rules we may end up doing the equivalent of equating the moon with a grapefruit because both are round.

In important respects the democratic process is analogous to a game. Both democracies and games establish rules that strive to be free from bias, enabling us to determine fair winners in contests where incompatible goals are pursued. Only one side can win a game, and politics often has winners and losers. Importantly, in a game or in a democracy the ultimate loser plays by rules agreed upon in advance. At the outset no one knows who will win. The requirement for fair procedures is necessary because everyone knows they will not agree on all particular outcomes, yet decisions are still essential. No one would accord a heavier weight to another when by doing so they increase their likelihood of losing on future decisions of importance to them. It is easy to imagine a community of people who know that decisions will need to be made where they will sometimes disagree and still *unanimously* adopt rules enabling these decisions to be made.

The claim that democratic government is “rule by a tyrannical majority” is almost always absurd. In almost every case it is akin to saying that the winners of a chess or baseball game have oppressed the losers. Bills of rights, regular elections, recalls, and similar measures are often agreed to unanimously or nearly so in order to minimize cases where a temporary majority will establish rule over others while still enabling work to get done. The importance of these measures is clear when we reflect that during times when a powerful and monolithic majority exists, democracies act *most undemocratically*. The issue is fairness and equality, not majority rule.

Democracy is always a balancing act between the desirability of universal agreement and the reality of inevitable disagreement over decisions that must

³⁹ See in particular Gus diZerega, Spontaneous Order and Liberalism’s Complex Relation to Democracy, *The Independent Review*, 16:2, Fall, 2011.

be made. It need not always lead to rules allowing majority decision. Sometimes what we call a “super majority” is preferred. When people know that decisions must be made where people will sincerely disagree, what often emerges is that day-to-day affairs are decided by majorities, but changes in the basic rules (constitutional amendments) require super-majorities.

In *The Federalist Papers*, James Madison disposed of the libertarian argument against majority rule over 150 years before there were libertarians around to make it. The constitution’s advocates had been asked whether allowing majorities to pass laws might lead to abuses. Might super-majorities of over 50% be better safeguards to our liberty? Madison replied:⁴⁰

That some advantages might have resulted from such a precaution cannot be denied. ... But these considerations are outweighed by ... all cases where justice or the general good might require new laws to be passed, or active measures to be pursued. ... It would be no longer the majority that would rule: the power would be transferred to the minority.

In *Federalist 51*, Madison had already argued that by requiring agreement from the House, Senate, and Executive the potential abuses of majority rule had been much reduced. Three majorities elected in three different ways would serve to protect the nation against partial factions with temporary majorities seeking their own advantage at everyone else’s expense. The House was elected for short terms based on population, the Senate for longer terms, and staggered so it could never be replaced all at once. Senators were also elected by state. The president was elected by an electoral college that equaled the total of House and Senate members from each state. They then elected the President. Though differently constituted, majorities worked fairly well except for the Civil War, at least until the rise of huge fortunes undercut the independence of all branches of government.

Today all branches of government are subordinated to the power of great wealth protected by corrupt judicial rulings as well as bought and paid for politicians. Madison’s warnings about blackmail and rule by minorities have been ignored, and we have repeatedly experienced the kinds of damage small, even tiny, Senate minorities have done to our country by preventing even routine actions to be accomplished by majority vote. Again, libertarians have nothing of interest to say about these problems.

⁴⁰ Publius (James Madison), *Federalist 58*, *Federalist*, Clinton Rossiter, ed. (NY: Penguin 1961). 361.

Equality cannot be separated from freedom

We can now see why the democratic principle of one-person-one-vote is central to a fair political process. It may not be enough, but it must be a part of the process. This principle helps establish fair procedures for discovering the rules applying to all of us. As part of a discovery process neither this principle nor any other can guarantee success in any given instance, but no discovery process – be it in the market or science or anywhere else – can make this guarantee. That is why we call it a discovery process. That is why we seek fair rules for participating. We seek to discover what we do not know. In its absence we have only the oppression of the powerless for the benefit of the powerful, something libertarians claim they oppose.

Democracies exist primarily to discover and establish *public values*. A public value is a value people believe should apply within their society as a whole. It is different from a private value because its advocates believe that it should apply more broadly than would be the case if left to the independent decisions of individuals. Of course proposed public values can be contradictory, as with contemporary claims that gays should be able to marry and receive the legal privileges currently going to married couples, and that gay marriage should be constitutionally banned. Every society has public values, and what they are and how they might be changed is an issue within every community. But not every society has such values decided justly. *Finding, preserving, and modifying public values as determined by equal members of the community is the core of a democratic conception of politics.*

As an economy develops people are linked together with greater intensity into increasingly complex networks. New boundary issues continue to arise (no one wanted to put a muffler on a horse), and new rules must be made while others fall into disuse. This explains another contradiction between libertarian dogma and human reality

There are many more limitations on some kinds of behavior in cities than in the countryside. Taxes are also higher. Yet for most people cities allow for a richer life with more choices than does the countryside. Living alone on a desert island is a libertarian utopia: complete self-sufficiency and no coercion at all. Yet, almost anyone would give up this freedom in order to live in even a poorly governed city. There is no correlation between the amount of liberty a person enjoys and governmentally enforced rules that limit some kinds of actions.

Ayn Rand herself famously chose to live as much of her life as she could in New York City. She had no interest in living in Bird City, Kansas, which is much more lightly regulated. Millions of Americans agree with her. Property values in New York and Bird City reflect people's contrasting desires to live in these places. I just checked real estate values in Bird City, and a three bedroom two bath home is on the market there for \$149,500. In New York City three bedroom two bath homes started at just under \$2,000,000. A lot

more people want to live in New York than in the “freer” environment of Bird City. For some reason more businesses want to locate in New York as well. Are all these people simply passive subjects willing to live as slaves? Does this describe Ayn Rand, who because her income came from royalties, could live anywhere in the U.S.?

Because libertarianism treats democracy as simply one more organized means by which some people coerce others it has no way of solving the most basic issues that need addressing if a society based on nonaggression is to exist beyond the scale of a small tribe. Nor can it understand why most people, including nearly all libertarians, prefer more regulated large cities to the greater “freedom” of small rural communities, as their “dollar votes” abundantly and almost universally confirm.

Blindness to Consequences: the issue of Right Relationships Between People

Ron Paul is probably the best-known libertarian in America. When he stops speaking in broad generalities about why aggression is bad and gets into specifics, and when the individual-as-distinct side of who we are is most relevant, he is often insightful. On the other hand, when our relational side is more important, Paul’s views are often deeply unjust, illuminating the practical and moral disasters justified by the libertarian misunderstanding of the nonaggression principle. For example, while critiquing the idea of enforceable employee rights, Ron Paul said:⁴¹

Employee rights are said to be valid when employers pressure employees into sexual activity. Why don’t they quit once the so-called harassment starts? Obviously the morals of the harasser can’t be defended, but how can the harassee escape some responsibility for the problem? Seeking protection under civil rights legislation is hardly acceptable.

There are many levels of theoretical and moral blindness in Paul’s statement. These weaknesses are found in libertarian arguments in general.

Blindness 1: All exchanges are not equal

Paul writes as if finding jobs is as simple as deciding to buy a toothbrush. The market offers jobs as it offers toothbrushes and we pick the one we like most at a mutually agreeable price. Like toothbrushes, lots of choices are out

⁴¹ Meteor Blades, Got AIDs? Your fault, says Ron Paul. Boss can’t keep his hands off you? Switch jobs, says Ron Paul. *Daily Kos*, Dec. 10, 2011. http://www.dailykos.com/story/2011/12/30/1049973/-Got-AIDs-Your-fault,-says-Ron-Paul-Boss-cant-keep-his-hands-off-you-Switch-jobs,-says-Ron-Paul?via=blog_1

there. If a boss is a jerk just get another one.

But for almost everyone, quitting a job to find another is neither easy nor pleasant. Needed income is abandoned in the hope of getting replacement income before savings run out. If the harassee supports a family, other people, often including children, are dependent on the income. To quit a job threatens their well-being. We also know what can happen when someone falls behind in paying a mortgage. A new job often requires a letter of recommendation from the old employer, and he can use that need to pressure his employees for sexual favors even if they are taking Ron Paul's advice. All of these issues can make it very risky and stressful for a person dissatisfied with current job conditions to seek another one. In all these instances, individuals' relationships with other individuals beyond just the boss are powerful influences in how they choose. This is not like buying a toothbrush.

As it happens even as I write this there is a very concrete illustration of my point happening within the libertarian community. CATO is the most prominent libertarian think tank in the United States. The Koch brothers, Charles and David, who helped start it many years ago, are now seeking to take it over completely. The Kochs have contributed nothing to the organization for years. CATO has survived and prospered on its own. The libertarians who now populate it are fighting back in the name of freedom of thought. One of them, Julian Sanchez, is threatening to quit if the Kochs prevail. Sanchez writes, "I'm in no great hurry to leave a job I enjoy a lot – so I'm glad this will probably take a while to play out either way. But since I'm relatively young, and unencumbered by responsibility for a mortgage or kids, I figure I may as well say up front that if the Kochs win this one, I will."⁴² No better rebuttal to Ron Paul's complete inability to understand people different from himself could have been penned by a liberal. If Sanchez were older, with a family and mortgage, it would be much riskier for him to quit and innocent others could suffer greatly from his choice.

These issues are rendered invisible within the libertarians' impoverished understanding of what it is to be an individual. They cannot distinguish between deciding how much to pay for a toothbrush and getting and keeping a job. A framework that cannot see these differences, so important to us in our daily lives, is pretty useless as a guide to understanding human life.

Blindness 2: All exchanges are not between equals

But there is a still deeper blindness. In many economic texts, exchanges and contracts are described as purchasing "widgets." Widgets are left

⁴² Julian Sanchez, *Cato and the Kochs: A Presignation Letter*, *Julian Sanchez*, March 5, 2012:

<http://www.juliansanchez.com/2012/03/05/cato-and-the-kochs-a-presignation-letter/>

undefined, so that the student can pay attention to the pure logic of exchange. If something concrete is specified, it is usually akin to trading so much wheat for so many chickens. The text then announces that after the exchange both parties are better off than they were before the exchange. Libertarians inevitably emphasize this aspect of voluntary exchange: when both parties are formally free, all exchanges leave both better off than if they had not made the exchange.

But formal equality does not come close to comprehending the many differences possible in human contractual exchanges. Let's pause a moment to envision an exchange between people who are roughly equal. It would resemble the basic economics text example of my having more wheat than I can use and your having more chickens than you can use. By trading some chickens for some wheat, we are both better off. If our exchange does not happen, neither of us is made worse off. We just do not benefit as we could have had we been able to agree. In a fair exchange, both parties are also honest and have all relevant information about the other's item in order to evaluate the desirability of their offer. Under such circumstances, all voluntary exchanges will indeed leave both parties better off than they were before the transaction.

But, to the extent that these concretely equal conditions disappear, even while the parties' formal equality remains a purely formal description becomes inadequate to understand the relations between them. The classic case is that you are lost in a desert and dying of thirst. I happen upon you and offer you water if you sign your house and car over to me. Your option is to die, and so you sign. We are both better off. You are continuing to live and I have acquired a house and a car in exchange for a gallon of water. But, is it an exchange between equals? No normal person would say it was. Formal equality can conceal a yawning inequality. No sane social order would countenance such a contract. In decent places property rights do not include that particular bundle, they do not honor that particular kind of relationship. Once this point is understood, the adequacy of formal equality as sufficient for judging all "voluntary" contractual exchanges falls apart.

Employer/employee relations are almost never equal ones. Usually, many workers are seeking a few jobs and so a few employers have their choice among many workers. For all too many people, exercising power over subordinates is enjoyable. Were it the other way around, working conditions would be very different. There would be next to no sexual harassment because either it would be very expensive to hire a replacement employee, or leaving would be easy. We see this happening today with movie and music stars and the best professional athletes. These examples of substantial employee power are rare and always will be, and they prove the rule.

Power indeed tends to corrupt, and unequal bargaining power in contracts tends to lead to corrupt contracts; the greater the inequality, the

greater the tendency. The enormously wealthy David and Charles Koch, have funded a great many of libertarianism's most visible organizations. They also defrauded an Indian tribe in a contract over an oil pipeline. Fortunately, the Indians had a reasonably honest government to which they could take their case. The Kochs were fined \$200 million. Appalled by Charles and David's dishonest methods, a younger brother, Bill Koch, agreed with the verdict, observing it "shows they are the biggest crooks in the oil industry."⁴³ Little guys are treated far more harshly than the powerful. Yet, libertarians claim government is the enemy of business. More democracy is the cure, not less.

Blindness 3: What constitutes a contract?

Property rights and relatively free markets arose within societies long dominated by rigid legal hierarchies between the privileged and the rest of us. This legal framework defined relations between "superior" and "subordinate." Many linguistic terms survive to remind us of this past, terms such as "boss," "my employee," "my man," "my subordinate," and so on. Those on top shaped how wage relations evolved to make sure they evolved in their favor. It is not immediately obvious how much authority a purchaser of another's labor gets over the employee, particularly rightful authority. The powerful want it to be everything.

I have heard slavery defended four times in my life. Once was by a drunk Southern Republican, but the other three times were by libertarians. Two of these defenses were made to my face; the other was in print, by the prominent libertarian philosopher, Robert Nozick.⁴⁴ Except for the Republican, their reasoning always went along the same line: so long as one *voluntarily* sold oneself into slavery, no harm was done. They were blind to the circumstances that might lead someone to do that.

In the *Huffington Post* I read of Monique Zimmerman-Stein, who has a rare genetic eye disease that if left untreated, causes blindness. Her daughters also have it. She has decided to forgo treatments that can preserve her sight so she can put those funds into saving her daughters' sight. The injections that might help cost \$380 after insurance, and she needs one every six weeks. If she sold herself into slavery (or perhaps only prostitution) to achieve the same goal she could probably save her vision as well. Her purchaser likely would not want a blind slave. I suspect more than a few libertarians would praise the 'freedom' that made her choice possible.⁴⁵

⁴³ Koch loses oil fraud case:

http://webarchives.net/december_1999/koch_loses_oil_fraud_case.htm

⁴⁴ Robert Nozick, *Anarchy, State, and Utopia*, (Wiley-Blackwell, 2001). 290-2.

⁴⁵ http://www.huffingtonpost.com/2009/09/28/mom-goes-blind-so-her-dau_n_301947.html

These libertarians were also blind to the corrupting influence having slaves would have on the person doing the buying, a point Thomas Jefferson had made long ago, and later echoed in Lord Acton's adage that "power tends to corrupt and absolute power corrupts absolutely." So obsessed were they by the delights of abstract theorizing that they did not oppose arbitrary despotic power of one person over another unless it was by "The State" or by a common criminal. That libertarianism can be so easily and not unfairly linked to such possibilities is a sad commentary on its inability to comprehend the value of freedom, despite its posturing to the contrary.

But there is worse still. Adopting a theory that elevates abstract contract above concrete human beings made it impossible to understand our own founding document. The Declaration of Independence spoke of "inalienable" rights not as a rhetorical flourish, but to make the point that slavery could never be legitimate under any circumstances because a person could not give another responsibility for their life choices and the use they made of their freedom. There were some things that one simply could not do, even if all involved acted in some sense voluntarily.⁴⁶ Libertarians too often honor contract over people. As they do they also honor the arbitrary authority of concrete people over other, weaker, people, and call it freedom. George Orwell would understand.

In 1911, at the Triangle Shirtwaist Factory seamstresses were locked in to their place of work so they could not leave till the workday was done.⁴⁷ The building caught fire and 146 girls and women, most aged from 16 to 23, died horrible deaths. The fire escape was inadequate and collapsed. There were only 27 buckets of water to put out the fire. The owners were not convicted of manslaughter, as they should have been. They did ultimately lose a civil suit in which plaintiffs won \$75 compensation per deceased victim. The company's insurance paid the owners about \$400 per casualty. One owner was later arrested for again locking the door in his factory during working hours. He was fined \$20. Except for the \$20 fine, this outcome, involving as it did insurance companies and financial recompense, seems in perfect keeping with libertarian principles but hardly with humane or even minimally decent ones.

This kind of abuse of employer power was only effectively pushed back against with the rise of unions and the regulations Ron Paul and other libertarians denounce as diminishing their "freedom." Today, among the

⁴⁶ Murray Rothbard grasped this point quite clearly. See his *Ethics of Liberty*, chapter 19: Property Rights and the Theory of Contracts: <https://web.archive.org/web/20140712044415/http://mises.org/rothbard/ethics/nineteen.asp>

⁴⁷ http://en.wikipedia.org/wiki/Triangle_Shirtwaist_Factory_fire
<http://www.ilr.cornell.edu/trianglefire/>

bundle of rights an employer purchases when hiring labor, imprisoning workers during working hours is not included. Today, in large part through libertarian influence, there is a move to return to the good old days of 1911. The laws of contract that are so equal when viewed abstractly can be lethally unequal when actually applied to human beings in the complexity of life as it is really lived.

These problems are rendered *invisible* with the libertarians' very selective interpretation of the non-coercion principle. After all, they might say, those dead employees had the option of quitting. They did not have to agree to the contract.

Blindness 4: Immorality in the name of morality

In the passage from Ron Paul I quoted above, he refers to “so-called” sexual harassment. In Paul’s statement he admits that the harasser is morally wrong, but the harassment is “so-called.” This is very strange. The only way I can see any coherence at all in it is to assume that, in Paul’s view, harassing a subordinate for sexual favors counts as being rude, of being bad manners, and nothing more. Apparently, this is because the harasser did not threaten physical violence if he did not get his way. Paul simply cannot recognize power that cannot easily be reduced to the use or threat of physical violence. As such, he can neither condemn the immorality of those who abuse many kinds of power, nor can he truly appreciate the situations of those subjected to it.

This is a clear example of what I regard as the chief moral weakness of many libertarians. They appear unable to imaginatively place themselves in the shoes of people unlike themselves. They have a failure in empathy. Paul, a very well-to-do doctor, can easily end connections with annoying or abusive people, so apparently for him, anyone can. Ron Paul has power a waitress or a maid does not, ironically power made all the stronger because of his government protected privileges as a licensed physician. This power prevents him from appreciating what it is like to be relatively powerless.

The failure to recognize the importance of empathy in what makes us human spills over in a failure to recognize the true richness of human relationships in the world. Caught in a kind of theoretical autism, libertarians fall back on abstractions incapable of appreciating basic moral principles. In the process they end up being blind to immorality.

Blindness 5: Missing Possibilities

When people have blinded themselves to concrete problems due to abstract reasoning they also blind themselves to possible solutions to those problems, even solutions in harmony with their abstract reasoning. I will give one example, but there are many. We have seen above that there is a genuine problem in libertarians’ failure to recognize the reality of concrete power

differences between people who are abstractly equal. We have also seen that this theoretical assumption on their part is arbitrary and guarantees their failure to understand their own nonaggression principle.

Ironically, their nonaggression principle combined with free contract and a market economy can effectively address these issues. And, it has already done so spectacularly for over 50 years. But libertarians have been completely uninterested in these developments all the while arguing for greater arbitrary power on behalf of employers.

Consider for example the Mondragon Cooperatives in Spain. They are worker-owned, market based, contractual, and voluntary. They lack the hierarchical and often abusive relationships that forced workers to organize unions in self-defense in the United States and elsewhere. They are also quite profitable and have thrived and expanded for more than 50 years.

The Mondragon co-operatives in Spain have solved or substantially improved upon many of the problems that libertarians are blind to seeing. They have also been a major factor in turning one of Spain's poorest regions into one of its most prosperous, with an unusually low unemployment rate. Further, they have done so within a framework that does not violate libertarian principles! Yet, not a single libertarian to my knowledge has given them any informed attention. The most recent study of the Mondragon co-operatives is by the socialist Carl Davidson. That Davidson can define as socialism what is completely in harmony with libertarian principles is ironic evidence of libertarians not being able to comprehend their own principles and from their not appreciating what constitutes human beings as individuals.⁴⁸

This glaring absence of interest illustrates a breathtaking lack of awareness of the possibilities that can be achieved within the context of voluntary contract and freedom, values libertarians believe in. I suspect this is because the issue of relationships is invisible to them beyond the obvious case of whether or not I point a gun at you. *Their defective understanding of their own principles has caused them to miss some of the most exciting examples of wonderful and sustainable innovations growing from those same principles of respecting individuals, contractual property rights, and the nonaggression principle.*

Returning to Rand

As I bring this discussion to a close I wish to return to Ayn Rand. I have shown that the Rothbardian and Friedmanite versions of libertarianism cannot protect individual freedom. But Rand has always been billed as an absolute defender of individual rights. Many passages in Rand's work seem to

⁴⁸ Carl Davidson, *New Paths to Socialism: Essays on the Mondragon Cooperatives and Workplace Democracy, Green Manufacturing, Structural Reform, and the Politics of Transition* (Pittsburgh, PA: Changemaker Publications, 2011).

support the view that she takes rights as absolute, as in *The Virtue of Selfishness* where she writes:⁴⁹

When one speaks of man's right to exist for his own sake, for his own rational self-interest, most people assume automatically that this means his right to sacrifice others. Such an assumption is a confession of their own belief that to injure, enslave, rob or murder others is in man's self-interest – which he must selflessly renounce. The idea that man's self-interest can be served only by a non-sacrificial relationship with others has never occurred to those humanitarian apostles of unselfishness, who proclaim their desire to achieve the brotherhood of men. And it will not occur to them, or to anyone, so long as the concept "rational" is omitted from the context of "values," "desires," "self-interest" and ethics."

This statement would seem to make Rand a powerful advocate for unalienable rights to individual freedom from coercion by others. Might she be immune to the kinds of criticisms I have given of Rothbard and Friedman? Consider this passage.

The Question of American Indians

During her 1974 address at West Point when a Native American cadet asked her what she thought of earlier aggression against American Indians, Rand said:⁵⁰

They had no right to a country merely because they were born here and then acted like savages. The white man did not conquer this country. And you're a racist if you object, because it means you believe that certain men are entitled to something because of their race. You believe that if someone is born in a magnificent country and doesn't know what to do with it, he still has a property right to it. He does not. Since the Indians did not have the concept of property or property rights – they didn't have a settled society, they had predominantly nomadic tribal "cultures" – they didn't have rights to the land, and there was no reason for anyone to grant them rights that they had not conceived of and were

⁴⁹ Ayn Rand, *The Virtue of Selfishness* (NY: Signet, 1964). 30.

⁵⁰ Ayn Rand, *Ayn Rand Answers: The Best of Her Q & A*. (NAL Trade, 2005). 103-4.

not using. It's wrong to attack a country that respects (or even tries to respect) individual rights. If you do, you're an aggressor and are morally wrong. But if a "country" does not protect rights – if a group of tribesmen are the slaves of their tribal chief – why should you respect the "rights" that they don't have or respect? The same is true for a dictatorship. The citizens in it have individual rights, but the country has no rights and so anyone has the right to invade it, because rights are not recognized in that country; and no individual or country can have its cake and eat it too – that is, you can't claim one should respect the "rights" of Indians, when they had no concept of rights and no respect for rights. But let's suppose they were all beautifully innocent savages – which they certainly were not. What were they fighting for, in opposing the white man on this continent? For their wish to continue a primitive existence; for their "right" to keep part of the earth untouched – to keep everybody out so they could live like animals or cavemen. Any European who brought with him an element of civilization had the right to take over this continent, and it's great that some of them did. The racist Indians today – those who condemn America – do not respect individual rights.

These sentiments were not a minor part of her thinking. They were republished in 2005 in *Ayn Rand Answers: The Best of Her Q & A*.⁵¹

When push came to shove Rand rejected universal rights. Some people deserve rights and others do not, based on choices they have made regarding the lives they live. Indians made the wrong choices. Rand in the most literal sense did not know what she was talking about regarding Indians, but her error was deeper than ignorance. As with those who reduce human freedom to the market, Rand ultimately had no understanding of human rights.

Factual errors

A great many Indian tribes were in fact agricultural, and private property in resources was hardly unknown among them. Even among hunting tribes, families sometimes owned specific territories or favored positions along a river. The land Europeans thought was unmodified had in fact often been extensively modified by Indians for thousands of years. Even now the extent

⁵¹ Ironically a libertarian think tank offers a telling rebuttal to Rand. See Carlos Rodriguez, Craig Galbraith, and Curt Stiles, *American Indian Collectivism: Past Myth Present Reality*. *Property and Environment Research Center*. Bozeman, MT. 2006. <http://www.perc.org/articles/article802.php>

and genius of those modifications is still being discovered, as with the recent uncovering of the human origins for good topsoil in the Amazon and the importance of biochar in building up good soil.

Far from the picture of Indians living “like animals or cavemen,” many of the world’s most important crops were first domesticated by Indians. A partial list includes corn, squash, tomatoes, potatoes, chocolate, peppers, avocados, blueberries, cranberries, pineapples, peanuts, and many varieties of beans, quinoa, pecans and turkeys. Imagine Italian food without tomatoes, Irish food without potatoes, Valentine’s Day without chocolate, or Halloween without pumpkins.

Indians also often treated one another better than did the European colonists of the time. Missionaries were often shocked (and disturbed) at the respect Indians showed women compared to how Europeans acted. In the Mohawk Confederacy, the most powerful Northeastern tribe, women exercised considerable political power while they were completely excluded from doing so by Europeans. In no tribe of my knowledge was there anything remotely like tribal members being “slaves of their tribal chiefs,” a view more closely resembling European arguments defending absolute monarchy.

There were hundreds of different tribes from hunter-gatherers in the subarctic where agriculture was impossible to cities, sometimes large ones, surrounded by farmland in the southern US and Meso and South America. Some were brutal empires ultimately replaced by brutal European empires, as the Aztecs were by Spain. Others were societies so free and open that European colonies had to pass laws forbidding their members from leaving to join the neighboring Indians. In reality thousands of Europeans voluntarily joined neighboring tribes whereas so far as I know no Indians voluntarily joined Europeans, a fact much commented on at the time. As with the Communists outlawing immigration to the West, English colonies finally had to outlaw Europeans joining the Indians.

In a careful study of America’s early “White Indians,” James Axtell concludes:⁵²

The great majority of white Indians left no explanations for their choice. Forgetting their original language and their past, they simply disappeared into their adopted society. But those captives who returned to write narratives of their experiences left several clues to the motives of those who chose to stay behind. They stayed because they found Indian life to possess a strong sense of community, abundant love, and un-common integrity – values that the English colonists also

⁵² James Axtell, *The White Indians of Colonial America*, *The William and Mary Quarterly*, Third Series, Vol. 32, No. 1 (Jan., 1975), 88.

honored, if less successfully. But Indian life was attractive for other values – for social equality, mobility, adventure, and, as two adult converts acknowledged, ‘the most perfect freedom, the ease of living, [and] the absence of those cares and corroding solitudes which so often prevail with us.’ [A]s Crèvecoeur said, there must have been in the Indians’ ‘social bond something singularly captivating.’ Whatever it was, its power had no better measure than the large number of English colonists who became, contrary to the civilized assumptions of their countrymen, white Indians.

Rand’s statement reveals a powerful if hidden continuity between the Rand libertarians adore and the Nietzschean praise of the strong sacrificing the weaker to fulfill their desires that she had carried with her to America. In the first edition of *We the Living*, her first American novel, Rand presents an argument between Kira, her heroine, and a communist. Kira denounces the communist sacrifice of the distinguished for the good of the “masses.” Her own view is different: “What are your masses but mud to be ground under foot, fuel to be burned for those who deserve it? What is the people but *millions of puny, shriveled, helpless souls* that have no thoughts of their own, no dreams of their own, no will of their own, who eat and sleep and chew helplessly the words others put into their mildewed brains. ... *I know of no worse injustice that justice for all.*”⁵³ These disturbing passages were excised from her second edition, and are almost unknown today. Many think she overcame her Nietzschean contempt for most people. Rand’s ‘reasoning’ about Indians demonstrates this contempt colored her thought throughout her life in America.

Rand erred on the side of the powerful dominating the less powerful. A true friend of rights would have erred in the other direction. Rand justified theft and murder to create *Lebensraum* against people she knew nothing about. (This word is fair as the Nazis cited America’s example of killing Indians in justifying their own policies)

For a woman who claimed all moral issues were “a code of black and white” and “objective,” how can this be?⁵⁴ What could be more relativistic than recognizing rights only when people acted in a way she approved, and had proven it to her? Clearly, Rand was blinded by confusions that lurked at the heart of her philosophy. Those confusions were her inability to recognize the central importance of empathy and relationships in making the individuals

⁵³ Ayn Rand, *We the Living*, quoted in Chris Matthew Sciabarra, *Ayn Rand: The Russian Radical*. (University Park, PA: University of Pennsylvania Press 1995). 101.

⁵⁴ Ayn Rand, *The Cult of Moral Grayness*, *The Virtue of Selfishness*, op. cit., 92.

she admired possible and in sustaining them. Had she fully integrated this she would have recognized the weakness of building a moral philosophy on abstractions far removed from human beings, abstractions to which she could then sacrifice real human beings if she judged them not sufficiently “rational.” Small wonder that libertarianism in its many forms has had such a mixed and often extraordinarily negative impact upon our country and upon the individuals and freedom it claims to honor.

Conclusion

We have reversed the libertarians’ criticisms of many progressives being ‘collectivists’ who support aggression against peaceful people. We argue it is they who do not understand what an individual is. It is they who do not understand many truly terrible forms of coercion, and can only perceive it when a gun is pointed at them. And, as Ayn Rand showed, not always even then. Apparently, it is also they who do not understand what it is to be a human being of moderate to low income and subordinate to another, anywhere in the United States, now or in the past. In the name of individualism and freedom they would subordinate real individuals and concrete freedoms to the collective power of capitalism. Libertarianism has become an apology for a form of collectivism that reflects only a portion of what it is to be a human being, and sacrifices the rest of who we are to it.

We agree with libertarians that the United States’ corrupt collusions of government and wealth, of the military and defense industries, is bad and should end. But that does not mean the government’s tasks should not be performed at all. Tasks such as civil rights protection, including protection against sexual harassment or bad employment conditions, are means for ending or reducing coercion in relationships brought about by systemically unequal power. There are many such examples with respect to both people and the environment. We need more than slogans and vague promises about the “magic of the market” when the entire past history of the market in real societies suggests our worries are very well founded.

When libertarians choose to broaden their understanding of what an individual really is and what property really is, they will be in a position to contribute importantly to this vital task. Until then, libertarianism in theory praises what is voluntary while in practice defends authoritarian relations in business, praises enormous inequalities between people seeking to enter into equal relationships, demonstrates blindness to ecological questions not easily reduced to property rights and money profit, and demonstrates still more blindness to abuses of the powerless by the powerful through their greater ability to twist society’s rules and practices in their favor.

Book Review:

Queering Anarchism: Addressing and Undressing Power and Desire

Nathan Goodman

Queering Anarchism: Addressing and Undressing Power and Desire
C. B. Daring, J. Rogue, Deric Shannon, and Abbey Volcano,
eds.
Oakland CA: AK Press, 2012

In *Queering Anarchism: Addressing and Undressing Power and Desire*, a diverse group of authors explore the connections between anarchism and queer radicalism. While anarchism can refer to a broad spectrum of anti-statist political theories and movements, *Queering Anarchism* primarily represents collectivist and communist forms of anarchism. In her introduction to the book, Martha Ackelsberg describes these traditions as valuing “freedom *and* equality, individuality *and* community, and ... freedom as a *social product*, rather than as a value/goal that is necessarily in tension with community.” But this synthesis of individualism and community is not exclusive to anarcho-communist and social anarchist thought. Left-wing market anarchists such as Roderick Long, Charles W. Johnson, Sheldon Richman, Anna Morgenstern, Gary Chartier, and Kevin Carson seek to bridge these gaps regularly. Even outside of anarchist discourse, political economist Elinor Ostrom has challenged the false dichotomy between markets and states, exploring the wide range of bottom-up forms of community. These approaches are not engaged within the book, although that is not a particularly glaring flaw given the richness of the social anarchist tradition. The term “queer” is just as contested as anarchism, and the volume grapples with a wider range of definitions of queerness. The term has a long history as a slur directed at members of the LGBTQ (Lesbian, Gay, Bisexual, Transgender, Questioning and Queer) community. It has since been reclaimed, in part as an identity label that is more fluid and open than specific labels such as gay or bisexual. It has also been reclaimed as a term related to subversion, challenging of dominant norms, and the academic discipline of queer theory, which challenges reified and rigid categories of gender, sexuality, and social

normativity. *Queering Anarchism* is an exciting, accessible, and diverse exploration of the connections between queerness and social anarchism.

Queering Anarchism is part of a long history of queer and anarchist solidarity, and the book offers some fascinating exposition on this history. For example, Jerimarie Liesegang's "Tyranny of the State and Trans Liberation" offers an insightful history of the movement for sexual liberation, dividing it into four "waves." The first wave of the movement consists of anarchist sex radicals who wrote and lectured on same-sex love. Emma Goldman, Alexander Berkman, Benjamin Tucker, Leonard Abbott, and John William Lloyd are significant figures in this period. By analyzing the history of the movement, Liesegang explores the ongoing tension between reformist LGBTQ movements that seek inclusion within hierarchical institutions and anti-authoritarian queer and trans radicals who seek to dismantle oppressive institutions.

Many essays in the anthology present a powerful critique of the state, particularly state-sanctioned marriage and the prison industrial complex. In "Gay Marriage and Queer Love," Ryan Conrad offers an excellent anarchist critique of the gay marriage movement. Conrad draws on Emma Goldman and Voltairine de Cleyre's critiques of marriage as a patriarchal and state-sanctioned institution, and he also explores how a single-minded focus on marriage has prioritized those who are relatively privileged within the LGBTQ community, ignoring the impacts of poverty and state violence on queer and trans people. Perhaps my favorite essay in the book is Jason Lydon's "Tearing Down the Walls: Queerness, Anarchism, and the Prison Industrial Complex." Lydon is a founding member of Black and Pink, a prison abolitionist group that builds solidarity with queer and trans prisoners. Building upon his experience at Black and Pink, Lydon offers a detailed analysis of the prison industrial complex and practical strategies for the prison abolitionist movement. Lydon's essay exemplifies anarchist scholarship that artfully blends theory and praxis, offering a powerful exposé on state violence and concrete suggestions for social change.

Another intriguing essay discussing anarchist praxis is Benjamin Shepard's "Harm Reduction as Pleasure Activism." Shepard discusses how harm reduction, both in relation to safe sex and to drug use, challenges conservative ideologies that stigmatize pleasure. He also explores how harm reduction is a form of direct action, in which individuals and communities act in defiance of social and legal prohibitions in order to make prohibited actions safer. Some harm reduction projects have been integrated into state apparatuses through grants and other governmental initiatives, but harm reduction began and has been advanced through voluntary associations acting in defiance of the law. In this sense, it is a radical prefigurative politics that directly solves social and health problems by routing around the state and "building the new world in the shell of the old," to use an old slogan of the

Industrial Workers of the World.

Many authors in the collection extend their analysis of power to the interpersonal realm and explore identity and intimate relationships as sites of resistance to power. This means mounting powerful critiques of heteronormative culture, compulsory monogamy, and institutionalized cissexism. However, it also means exploring how queer and anarchist communities can reinforce oppression, whether by inverting conventional hierarchies or by creating our own forms of machismo. One essay, “Police at the Borders” by Abbey Volcano, critiques the reified borders between identities and how queer communities can pressure their members in ways that would be recognized as coercive if implemented by dominant groups. For example, Volcano points out that in many queer communities queerness has been conflated with non-monogamy, with polyamorous heterosexuals challenging the legitimacy of the queer identities of queer people in monogamous relationships. By exploring how power is reproduced in interpersonal relationships, both in the name of upholding dominant culture and challenging it, the anthology offers many important additions to anarchist theory.

The collection is admirably intersectional, and engages with oppression related to race, class, gender, sexuality, disability, and political power. “Queer-Crippling Anarchism: Intersections and Reflections on Anarchism, Queerness, and Dis-ability” offers particularly intriguing intersectional analysis. The authors discuss how disability studies can also be understood as “normalcy studies.” They also explore how queerness and disability have been defined in relation to each other. “Compulsory heterosexuality only operates as it does because of presumed able-bodiedness of its subjects, and vice versa,” they explain. Queerness has historically been defined as a disability, and disabled individuals are generally perceived as asexual rather than heterosexual. Disability has been largely ignored by anarchist theorists, and this essay offers a compelling anarchist approach to disability studies, which is a welcome contribution. Another essay offers a revolutionary intersectional feminist critique of *Sex and the City*, pointing out how the show conflates women’s liberation with the success of wealthy white women. Diana C.S. Becerra argues that instead of embracing this liberal feminism, we ought to advance a revolutionary feminist praxis that challenges power and state violence and advances liberation for queer women, women of color, and working class women.

Perhaps the least compelling aspect of the book is the approach contributors take towards political economy. Sometimes this appears in short remarks that betray dubious premises. For example, Jerimarie Liesegang refers to “the predominant gay liberation movement” advanced through non-profits and liberal political organizations as “a hierarchical, identity-based, single issue, gender conforming, free market, and state/electoral based movement.”

Most of that description rings true to me, but “free market” sticks out. It is true that the mainstream gay rights movement uses reformist electoral strategies to seek inclusion within our society’s prevailing hierarchical systems of power. But the prevailing system of power in our society is not characterized by a “free market.” The state taxes, subsidizes, and regulates relentlessly, radically distorting markets in the process. Subsidies tend to flow towards politically connected concentrated interest groups, which then have more incentives to engage in rent seeking than to satisfy consumers on the market. Regulations often serve not to restrain predation by corporate capitalists, but instead to raise costs for their competitors, thus protecting them from the competition that would discipline them within a free market. Hierarchical power in our society, including the power of corporate capitalists, is secured not through a “free market” but through state granted privilege. Mainstream gay rights organizations rarely challenge these privileges. If any LGBTQ organizations can be described as advancing a free market economic agenda, it is the radical queers in organizations such as ACT UP, who challenge protectionist patent privileges that restrict competition and raise the prices of AIDS medication. The radical queer and trans liberation movements that Liesegang rightly praises are in many ways pushing for more free market policies than the “predominant gay liberation movement” Liesegang rightly criticizes.

Where political economy is explicitly engaged in *Queering Anarchism*, authors tend to rely solely on Marxist theory. In “Radical Queers and Class Struggle: A Match to Be Made,” Gayge Operaista applies a standard Marxist class analysis and argues that radical queers ought to integrate our struggles for liberation within class struggle that seeks to overthrow the bourgeoisie. One particularly glaring flaw with the essay is the repeated contrast of Marxist class theory with “liberal” and “sociological” class analysis. Sociologists generally consider Marx one of the founders of their discipline, so the insinuation that sociologists ignore Marxist insights regarding class seems dubious.

Marxists define class in relation to property rights over the means of production. By defining employers and workers as inherently antagonistic to each other, this ignores the possibility of mutually beneficial exchanges between workers and employers and obscures the complementary relationship between labor and capital as factors of production. My rejection of Marxist class theory does not mean that I reject class theory as such. Marx’s class analysis largely derived from classical liberal theories of class, which focused on exploitation as enacted through legal privileges. Rather than denying the harmony of interests that occurs when individuals freely exchange with one another, classical liberal class theory emphasizes the exploitation that occurs when privileged classes use the political means to coercively extract resources from others. The literature within public choice

theory, which applies conventional economic analysis to politics, offers extensive analysis of the rent seeking and monopoly privileges that concentrated interest groups secure through the state. New institutional economists Daron Acemoglu and James Robinson make a distinction between “inclusive” and “extractive” institutions that can also be helpful for analyzing how ruling classes extract wealth from the masses.

Regardless of its flaws, *Queering Anarchism* is an illuminating, exciting, and engaging book. The book includes diverse styles of writing, ranging from academic analysis to personal narrative to even one chapter presented in the form of a comic. While queer theory is often characterized by impenetrable academic prose, this book is eminently accessible and readable. *Queering Anarchism* offers radical analysis of contemporary social problems and compelling strategies for social change. Anyone interested in LGBTQ rights, queer theory, anarchism, feminism, or social change would benefit enormously from reading this book.

Contributor Biographies

Billy Christmas is a PhD candidate and teaching assistant in philosophy and politics at the University of Manchester, with research interests in theories of property rights, and various aspects of Aristotelian and radical liberal thought. Billy is also an occasional writer for the Center for a Stateless Society.

Gus diZerega holds a PhD in Political Theory. His first book, *Persuasion, Power and Polity: A Theory of Democratic Self-Organization* (Hampton Press, Cresskill, NJ and Institute of Contemporary Studies, Oakland, CA 2000) applied Hayek's theory of spontaneous orders to political democracy and alternative institutions for achieving its values. Much of his scholarly work has continued developing these insights. For many years he was on the Academic Advisory Board of *Critical Review*. Later he worked closely with Richard Cornuelle exploring the role of emergent order throughout society. He founded *Studies in Emergent Order* and, after being expelled from it by orthodox libertarians, along with other scholars founded the international journal *Cosmos and Taxis*: <http://www.sfu.ca/cosmosandtaxis.html>

DiZerega has organized international conferences on emergent order in the social sciences and in 2004 received a \$10,000 award from the Fund for the Study of Spontaneous Orders for work applying the concept to disciplines outside economics.

DiZerega has also given workshops and talks on Pagan spirituality and shamanic healing in the United States and Canada. His most recent book, *Faultlines: The Sixties, Culture War and the Return of the Divine Feminine*, was published in 2013.

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Darian Nayfeld Worden is a historian, writer, and mapping professional. His areas of study include American social movements, the Cold War, and 20th century Europe. His current research is focused on exploration and mapping from the 18th century to the present. Previous publications include op-eds and articles published with the Center for a Stateless Society (c4ss.org), as well as contributions to *ALLiance Journal* and *The Industrial Radical*. Darian is the creator of the digital history projects *The Modern Schools: An Educational Experiment in America, 1910-1958* and *Head First Adventures* (themodernschools.wordpress.com, headfirstadventures.com).

Julio Rodman is a student at Columbia Law School and a graduate of Pomona College, where he studied political philosophy. He has written for Pax Christi, Truth-Out, and Center for a Stateless Society.

The Molinari Institute is a 501(c)(3) market anarchist think tank dedicated to exploring the ideal of vibrant social cooperation without aggression, oppression, or centralized authority.

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