

MOLINARI REVIEW

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MOLINARI REVIEW

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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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Supplying the Demand of Liberation: Markets as a Structural Check Against Domination

Jason Lee Byas

I. Introduction: Not Your Grandfather's Anti-Communism

This essay¹ is in the unusual position of taking as completely uncontroversial that the state must be abolished, while seeking to carefully justify private property, money, and commercial exchange. This is in order to contribute to the debate between two competing forms of anarchism – individualism and communism. These terms have been used in countless different ways, but here they will be distinguished by their positive or negative outlook on private property and markets. Individualists favor them, communists oppose them. In addition to assuming that the state must be abolished, anarchist communists are also unlikely to disagree with a second assumption I make here: that anarchism entails not only resistance to the state, but also to all other forms of domination.

One last assumption I'll be making in my favor is much more controversial in anarchist circles. This is that the free market anti-capitalist economic analysis² provided by individualist anarchists is basically correct. In other words, while scattered wage labor relationships and some level of material inequality would still exist in a completely freed market, a wage *system* and *stable* material inequalities would not. These assumptions are made in order to focus specifically on whether individualism or communism better fulfills the anarchist goal of non-domination. Accordingly, many other arguments against communism – such as issues regarding whether or not ignoring alleged property rights constitutes aggression, or the possibility or

¹ Briefly, I should mention three invaluable sources for this essay that didn't end up getting directly referenced, but are partially responsible for my thinking about the divide between market and non-market societies in this way. The first two are Ken Knudson's pamphlet "A Critique of Anarchist Communism," and Neera K. Badhwar's paper "Friendship and Commercial Societies." The third is a long-running set of conversations with Grayson English, which have helped to fully develop and flesh out the claims being made here against anarchist communism.

² See Chartier & Johnson 2011.

impossibility of rational economic calculation without markets – will be bracketed aside as well.

The thrust of my argument here is that individualist anarchism better satisfies the anarchist commitment to non-domination precisely *because* it features the market process, since this leads to greater social plasticity. After briefly highlighting some communist reasons for holding that communism better satisfies the anarchist commitment to non-domination, I will explore some potential dangers with their proposed alternatives to markets. Then, I will explain how these dangers become even more serious when we factor in the dynamics of race, gender, sexuality, and other systems of privilege and oppression. Next, I will explain what it is about the market process that makes it such a powerful engine for addressing these problems. Finally, I will close with some remarks about the nature of domination, and why the non-domination point ultimately goes to individualism, despite communist worries.

II. Why Communism Seems Preferable on Non-Domination Grounds

The anarchist communist is distinguished from other anarchists by their belief that not only managerial capitalism, but *the market order itself* is fundamentally rotten, and “private property in the means of existence” (Berkman 2003 [1929], p. 156) should be abolished along with the state. There are several reasons that communists believe this, but often the most forceful is that they believe the market to be a persistent source of domination. Following the lead of Philip Pettit – who is certainly not an anarchist of any kind, but very concerned with the issue of domination – we can say that domination involves the ability for one person or group of persons to interfere arbitrarily and with impunity against the actions of another person or group of persons (Pettit 1996, p. 578).

It is not difficult to see why someone might believe the market process inherently rests on this kind of domination. The essence of property is exclusion, and if I own this pen, this paper, this field, this factory, or whatever else, I have the final say over how that thing is used, and over who can use it. In fact, I can, within certain limits, use *violence* to prevent alternative uses of that object.³

The danger behind this ability for one person to dictate the terms of use

³ For the purposes of this paper, I will not be focusing on the question of whether or not private property’s right of exclusion is in-and-of-itself inherently dominating. However, I will briefly say here why such a critique seems false. For any given object that is rivalrous and scarce, which two parties intend to use in incompatible ways, at least one will not be able to use it the way they wish. There is no situation in which everyone’s plans over scarce and rivalrous resources are allowed to fully flourish without rights of exclusion. Accordingly, property can be seen as a way to safeguard our uses of scarce and rivalrous resources without arbitrary interference from others. I thank Charles W. Johnson for drawing my attention to this concern.

for a given piece of property is even stronger when we consider the case of one individual working in a business owned by another individual. For many people, one of the clearer examples of domination in their lives comes from their boss. When one person has unilateral hiring and firing power over another, and has ultimate decision-making power over the tools that that other person uses to make a living, subordination is clearly possible. An individual wage labor relationship, even outside of the context of a wage system (a distinction I will explain in more detail soon), is at the very least *dangerous* from the perspective of non-domination.

Earlier I granted myself the assumption that individualist anarchists are right to believe that neither a wage system (as opposed to simply wage labor) nor a stable, rigid pattern of inequality with distinct, persistent classes, is likely to be viable under genuine *laissez-faire*. Yet it's still reasonable to doubt that assumption, and one might prefer communism to stay on the safe side of that doubt. To explain the difference between a wage system and mere wage labor, a wage system is a society in which particular classes of people are essentially forced by surrounding circumstances to work in a wage labor setting or suffer crippling poverty. As anarchist communist Alexander Berkman writes, "the workingman cannot work for himself ... He cannot compete with the big manufacturers. ... You must find an employer," and ultimately "the whole working class sells its labor power to the employing class" (Berkman 2003 [1929], p. 7). As individualist anarchist Kevin Carson summarizes, "workers are forced to compete for jobs in a buyer's market" (Carson 2012). Unlike simple wage labor, for reasons that will be explained later, this situation seems to be not just *in danger* of fostering domination, but actually *inherently* dominating. Similarly, *stable* inequalities in which material wealth remains consistently concentrated in a particular class's hands seem to also be *inherently* dominating, not just in danger of doing so. If the individualist is only *probably* right that such conditions would not survive a freed market, whereas a communist is *necessarily* right – since the absence of money and private property obviously means no material inequality, and no wage labor – then one might understandably prefer communism on non-domination grounds.

III. Alternatives to the Market: Gift Economies

Since anarchist communism is distinguished from individualist anarchism by its refusal to allow money, explicit trade, private property in the means of production, or other defining features of markets, it requires alternative methods for allocating and operating resources. Here we will investigate two of the primary methods of non-state, non-market social organization – gift economies and consensus deliberations – and discuss their potential dangers. It should be noted from the outset, of course, that dangers are only dangers, and the argument is not against gift-economic arrangements and consensus deliberations as such, but against totalizing forms of communism that use

them as the main form of economic organization. Gift-economic arrangements and consensus deliberations are also crucially important for the economy of an individualist anarchist society. The difference is that for individualists, these arrangements are supplements to commercial exchange, whereas for communists, they are replacements.

With regards to the distribution of goods and services, anarchist communists are typically enthusiastic proponents of gift-economies. As one popular anti-market anarchist text, “Evasion” by the CrimethInc Ex-Workers Collective tells us: “In stark contrast to exchange trading, gift-giving is its own reward. In a gift economy, which exists whenever anything is freely shared and no score is kept, the participants receive more the more they bestow. Everyone who has shared a real friendship or a morning of incredible lovemaking knows intuitively that when the opportunity presents itself, human beings return to this natural relationship” (CrimethInc 2003, p. 60).

However, even a cursory look at the anthropological literature on what a gift economy actually entails is enough to show that it is not just continuous Christmas. In observed gift economies, gifts are often given with the intent of compelling return gifts through an ethic of reciprocity (Mauss 2002 [1950], pp. 10-23). One is not typically permitted to refuse a gift (or ignore its accompanying obligation) (Counts 1990, pp. 20-22), nor to demand a particular kind of return gift (which would inch towards barter) (Counts 1990, pp. 22-24). Also, in so far as gift-economic relations happen as a replacement for (rather than supplement to) market ones, one absolutely *may not* simply purchase goods or services with money (Counts 1990, p. 19).

A major distinction between gift economies and markets is that in the former, “exchanges ... [are] not independent of the social relationship between transactors,” whereas in the latter “forces other than social relationships between the transactors (i.e., supply and demand) regulate the amount of goods or services changing hands” (Rambo 1989, p. 89).⁴ For this reason, participants in a gift economy “attempt not to maximize [their] ... economic holdings, but to maximize prestige in the community” (Rambo 1999 [1989], p. 90). A reputation of stinginess due to “long delays in returning goods can also add to hostility over other issues, such as marriage disputes and conflicting land claims, turning previous allies into warring enemies” (Rambo 1999 [1989], p. 90). Due to this crucial importance placed upon social relationships and prestige, marriages are often made strategically for the purpose of forming social alliances (Rambo 1999 [1989], p. 90).

⁴ It also seems that the gift-commodity distinction is not a particularly stable one. For example, is borrowing something from a friend with the understanding that you’ll pay them back with money if you lose it purely gift? Is giving a friend a discount on a given good or service, but still not giving it away for free, still purely commodity? For the purposes of this paper, though, we will bracket aside these ambiguities and proceed with more clear-cut examples of the two. I thank Grayson English for stressing the need to note these ambiguities.

It is not the case that gift-economies operate through people helping one another purely out of the kindness of their heart. Rather, these gifts are often made for reasons no less instrumental than the profits of an explicit trade. Contrary to CrimethInc’s understanding, scores are kept in gift-economies, just not monetary ones. Social scores are kept rigorously, and can have devastating consequences for those poor in social capital.

That this is a consequence of anarchist communism is not totally lost on its defenders. Alexander Berkman, for instance, states gleefully that under anarchist communism, rather than valuing goods and services through the price mechanism, “[p]eople will be appreciated according to their *willingness to be socially useful*” (2003 [1929], p. 161, emphasis in original). Social usefulness, here, seems to be judged according to the opinions of one’s peers, not according to prices arising out of mutually beneficial trades. Yet anarchist communists themselves are often among the last to dispute that public opinion is a danger to individual freedom. To quote Berkman at length, he writes only a few pages later:

The authority of the past and of the present dictates not only our behavior but dominates our very minds and souls, and is continuously at work to stifle every symptom of nonconformity, of independent attitude and unorthodox opinion. The whole weight of social condemnation comes down upon the head of the man or woman who dares defy conventional codes. Ruthless vengeance is wreaked upon the protestant who refuses to follow the beaten track, or upon the heretic who disbelieves in the accepted formulas. ... More vicious and deadening is compulsory compliance than the most virulent poison. Throughout the ages it has been the greatest impediment to man’s advance, hedging him in with a thousand prohibitions and taboos, weighting in his mind and heart down with outlived canons and codes, thwarting his will with imperatives of thought and feeling, with ‘thou shalt’ and ‘thou shalt not’ of behavior and action. Life, the art of living, has become a dull formula, flat and inert. ... Beneath this spirit of intolerance and persecution is the habit of authority: coercion to conform to dominant standards, compulsion ... to be and act as others, according to precedent and rule. (2003 [1929], pp. 165-166)

For these reasons given by Berkman, it seems clear that the importance placed on social capital in observed gift economies is not without danger for purposes of non-domination. The strain laborers experience to acquire financial capital can be debilitating, and the struggle to secure this source of

income can be confining. Also debilitating, and also confining, though, is the strain of strictly adhering to the rituals, traditions, and expectations necessary to acquire and secure social capital in a gift-economy. Under the existing economy of managerial capitalism, those with large concentrations of financial capital clearly dominate those with little or no financial capital. Yet in a totalizing gift-economy, those with large concentrations of social capital also clearly dominate those with little or no social capital. Those wealthy in social capital maintain the power of arbitrary interference over the lives of those without it, and the society itself confines individuals within rigid adherence to dominant cultural norms.

IV. Alternatives to the Market: Consensus Deliberations and Communal Resources

Since anarchist communists believe that “the private ownership of land, capital, and machinery has had its time,” they hold that “all requisites for production, must ... become the common property of society, and be managed in common by the producers of wealth” (Kropotkin 2009 [1927], p. 3). Anarchist communist Peter Kropotkin complains that under current conditions, production “takes no care of the needs of the community; its only aim is to increase the profits of the capitalist” (2009 [1927], p. 7). Simply removing the capitalist and making workplaces into cooperatives privately owned by the workers who work there would of course not eliminate his worry, since then *their* aim would still be to increase their material wealth. So for Kropotkin and other communists, the “means of production and of satisfaction of all needs of society, ... must be at the disposal of all” (2009 [1927], p. 8), and “common possession ... implies the common enjoyment of the fruits of the common production” (2009 [1927], p. 9).

A question arises, then, on how to regulate the use of these scarce, communally-owned resources, and how to make decisions over their use. One could imagine this being done through an elaborate system of committees, through voting-based direct democracy, or consensus deliberation. Carefully addressing all three of these would take too much time, and many anarchist communists have already done an excellent job critiquing both majoritarian (Goldman 1910) and bureaucratic solutions. For this reason, we will focus our attention on grassroots, consensus deliberations.

As the CrimethInc Ex-Workers Collective states: “In contrast to representative democracy, ... participants [in consensus deliberations] take part in the decision-making process on an ongoing basis and exercise real control over their daily lives. Unlike majority-rule democracy, consensus values the needs and concerns of each individual equally: if one person is unhappy with a resolution, it is everyone’s responsibility to find a new solution that is acceptable to all” (CrimethInc 2003, p. 84). Much like gift-economic arrangements, there is nothing inherently wrong with collectively

deliberating on a consensus basis, and it clearly has a significant role to play in any post-state society. However, also like gift-economic arrangements, it is not a panacea, and it is not without its own dangers.

One famous critique of informal, consensus-based organizations within the existing world comes from feminist Jo Freeman’s short essay “The Tyranny of Structurelessness.” There, Freeman critiques the tendency within radical feminist groups toward less formal structure, claiming that their supposed “‘structurelessness’ becomes a way of masking power” (Freeman 1972, p. 152), simply replacing visible hierarchies with invisible ones. Thus, Freeman alleges, supposed “unstructured” groups are actually ruled by elites – by which she means “a small group of people who have power over a larger group of which they are a part, usually without direct responsibility to that larger group, and often without their knowledge or consent” (1972, p. 153). These informal elites are not established by shadowy conspiracy, but naturally arise out of friendship groups among those particularly active in the group (1972, p. 154).

This is because

friendship groups function as networks of communication outside any regular channels for such communication that may have been set up by a group. If no channels are set up, they function as the only networks of communication. Because people are friends, usually sharing the same values and orientations, because they talk to each other socially and consult with each other when common decisions have to be made, the people involved in these networks have more power in the group than those who don’t. (1972, p. 154)

Given that these networks arise out of friendship groups,

the characteristic prerequisite for participating in all the informal elites of the movement, and thus for exercising power, concern one’s background, personality or allocation of time. They do not include one’s competence, dedication ..., talents or potential contribution to the ... [task at hand]. The former are the criteria one usually uses in determining one’s friends. The latter are what any movement or organization has to use if it is going to be ... effective. (1972, p. 154)

In short, Freeman states that “the informal structure of the decision-making will be ... one in which people listen to others because they like them, not because they say significant things” (1972, p. 157). As an alternative,

Freeman suggests formalizing hierarchies, which serves the function of unmasking whatever power structures exist, so that they can be more clearly accounted for, and more easily held accountable.

Unsurprisingly, anarchists and other proponents of informal, consensus-based decision-making have written plenty of responses to “The Tyranny of Structurelessness.” Cathy Levine, in “The Tyranny of Tyranny,” reminds us that in large, formally structured groups “the individual is alienated by the size, and relegated, to struggling against the obstacle created by the size of the group” (Levine 2009, p. 4). As I said earlier, I will not be directly addressing the dangers with more formal bureaucracies, but will be taking as given that the criticisms posed by those anarchist communists opposed to them are successful, and that such institutions are not without danger. Yet while good points have been raised against Freeman’s solutions, they do not change the fact that the dangers she alludes to are still present – a fact acknowledged by most of her critics (McQuinn 2009, p. 2).

In a somewhat telling string of ad hominem, anarchist Jason McQuinn states that “‘The Tyranny of Structurelessness’ primarily appeals to bookish, socially incompetent – or anti-social – people interested in politics, but unsure of themselves or unwilling (or unable) to negotiate social relationships which aren’t based on written rules of order with formal roles. The ambiguities, spontaneity and informality of mutual friendships and communal relationships tend to provoke anxieties in such people that the security, hierarchy, leadership and discipline of authoritarian organizations are designed to relieve” (2009, p. 2).

Apparently, McQuinn is completely undeterred by the obvious conclusion that more unstructured, consensus deliberations would especially enable those well-equipped for social situations to dominate those who are not. It is not difficult to imagine that this would be even further complicated by differences in neurological makeup, making the arrangement structurally ableist. The lesson to take from this appears to be that while ground-level consensus-based deliberations may be free from many of the dangers facing overt majoritarianism or formalized hierarchies, they are not as domination-free as many anarchist communists presume. Just as social capital is the hidden source of domination in gift-economic arrangements, it is also the danger in informal arrangements that have the formal designation of “consensus.”

V. How Privilege and Oppression Dynamics Add to the Problem

These potential dangers with gift-economic arrangements and informal consensus deliberations become even more troubling when we consider the role of privilege-and-oppression dynamics. By “privilege,” I refer to social forces which systematically confer dominance to those with particular traits over others without those traits (McIntosh 1989). Taking privilege and

oppression as inextricably linked, I use “oppression” to refer to those who are constrained and systematically dominated due to not having the traits shared by those in the privileged group. Some paradigmatic examples of systems of privilege and oppression are white supremacy, patriarchy, heterosexism, cissexism, and ableism – each, of course, in their systemic (rather than simply interpersonal) forms.

The reason that these forces pose a special danger for anarchist communists is because by reducing all social organization to communal and gift-economic arrangements, the communist solution ties one’s ability to live – and to live the kind of life one wants to live – to their ability to maintain good social status. Gift economies, in order to maintain stability, are tied to long-standing traditions. One’s readiness or hesitancy to give a certain person a gift will be influenced by the social acceptability of their intended use – especially given that the giving of that gift will in turn reflect on the gift-giver. With regards to communal decision-making, even when deliberations have the official designation of “consensus,” some people’s input will necessarily be more highly valued than others, and some will have their concerns taken more seriously.

There are times where these features of communist solutions are harmless, and times where they are actually positively good. It is good, for instance, if norms against overt racism make it such that a rabid white supremacist is unable to successfully argue his case for using a communal printing press to publish his racist newsletters. Yet, there are other, more troubling factors that may hinder someone’s social standing, leading to much less savory consequences – by which I refer to the dynamics of privilege and oppression.

In a given deliberation, for instance, someone who is white, able-bodied, cisgender, male, heterosexual, and neurotypical is much more likely to be seen as a reasonable person than someone who is none of those things. This wouldn’t necessarily be because of any explicit, self-aware prejudice, but could be the product of deeply-ingrained implicit biases shared by pretty much everyone in a society infected by white supremacy, patriarchy, heteronormativity, cissexism, and ableism. When anarchist communists such as Kropotkin tell us that they desire that “our productive powers were fully applied to increasing the stock of the staple necessities for life” (2009 [1927], p. 10), it is worth asking whose input will be most valued when determining just what is a genuine necessity. Due to differing social standpoints, it may be much more difficult for an oppressed individual to communicate exactly why their intended use of a given good or service is so important. It would be preferable, for example, if transgender persons did not have to justify to the dominant cisgender population – most of whom have never experienced gender dysphoria – the legitimacy of using scarce medical resources for hormone replacement therapy, gender confirmation surgery, or whatever

other specific needs that they have.

So far, I have been referring to these issues as “dangers,” rather than “problems.” This is because there is nothing about gift-economic arrangements and common ownership that makes these methods of social organization beyond repair. Once again, they will likely be an important part of any post-state society. That being said, it is worth examining some things that are not sufficient to fully escape the dangers I’ve outlined.

One cannot appeal to the explicit rejection of domination (and consequently, of systems of privilege and oppression) voiced by anarchist communists to claim that domination will not be present in an anarchist communist society. First, because if anarchy is what’s seriously desired, it will have to be an anarchy comprised of everyone, not just ideologically committed anarchists. Therefore, the transition to anarchy may come quicker than the end of racism, sexism, homophobia, etc. Thus, these are problems that a stateless society must have the resources to keep fighting. Second, even ideologically committed anarchists, feminists, anti-racists, and so on are not magically free from the influence of privilege and oppression dynamics over their own daily interactions. This is unsurprising, given the subtle, background nature of implicit biases. That, along with the silencing power of stereotype threat, allows for situations that may look perfectly mindful of privilege-oppression dynamics, and perfectly consensus in nature, but which are actually still subject to domination.

Another non-solution comes from claims that the disappearance of the state and managerial capitalism is enough to lead to the disappearance of all domination. While statism and managerial capitalism are forms of domination that others interact with and build off of, it is excessively reductionist to pretend that without one form of domination, others will just fade away. What is needed is a mechanism within the structure of the society for checking and pushing back against other forms of domination.

Furthermore, these non-solutions fail to consider the extent to which we suffer radical ignorance about privilege and oppression – which is to say that there are, almost certainly, vectors of privilege and oppression of which we aren’t even aware. Not only are we not aware of them, we are probably not even aware that we aren’t aware of them. That they might be a site of oppression is not something we have ever considered.

That’s at least the case under the assumption that we are not uniquely omniscient in ways that past radicals were not. For some classical liberals during the emergence of capitalism, they could clearly see the obvious ways in which monarchs oppressed subjects, but were blind to the new domination coming about with managerial capitalism. Many early anarchists were men who spoke loudly of oppression from both capitalist and king, but were silent or worse about the oppression of women by men. Plenty of twentieth-century radical feminists who boldly unmasked the way patriarchy shaped our lives

were totally unaware of the way their paradigms centered white women's experience. The common thread in these radicals' failures is an inability to see privilege and oppression precisely because of how commonplace it was in their everyday lives. Any strategy for fighting oppression *as such*, then, must not operate under the assumption that we're already aware of all its sources.

Finally, while the point of this section is to emphasize the way in which privilege and oppression dynamics worsen the problem, we should remember that the problem is not exclusively one of privilege and oppression dynamics. In-group tendencies, concentrations of social capital, and the like are serious problems all on their own. Especially when there's no exit.

VI. The Market Process as an Engine of Liberation

A more reliable check can come from the reintroduction of markets – private property, money, explicit exchange, the whole thing. In a market setting, a person who is either unable or simply unwilling to convince someone else of the inherent goodness of whatever they want to do with a given resource can simply purchase it. When you're buying pens and paper, the person you're buying from doesn't have to approve of what you're going to write – they usually don't even know. You just have to be able to provide value for value in explicit trade.

As individuals pursue their private interests, even against the current of social disapproval, this in turn affects the price. Resources are then socially created, saved, and distributed in such a way that must account for each and every use desired by all individuals actually willing to purchase them, rather than just whatever the dominant culture sees as most significant. When discussing the importance of the information-gathering function of markets for efficiency, Hayek notes that producers don't actually need to know why the price of tin has gone up to reorganize production accordingly, they just have to know that it's gone up (Hayek 1945, p. 526). We could add to this that they don't have to *agree* with the reason that they have to reorganize production, either. If the needs or desires of a given group are under-served, this creates a profit opportunity to fulfill that need or desire. While having the right incentives in place does not mean that they will be mechanically followed, it is miles away better than a system where there is *no* incentive, and in fact a strong incentive *against* bucking cultural norms. There is more than ample empirical evidence to suggest that this dynamic leads the market process to serve as an engine of liberatory social change in just the way I describe. Introducing elements of market-like competition to legal systems appears to render greater respect in those legal systems for the rights of women (Lemke 2016, Peden 1977 pp. 91-93). Dalits – India's "untouchable" caste – have seen unprecedented freedom and mobility as a result of market liberalization (Aiyar 2015).

At the risk of excess repetition, it must be stressed one last time that the point of this paper is not to argue that gift-economic and communal arrangements are bad and should be opposed, only that they are not panaceas, and should not be totalizing.⁵ This brings us to another benefit of markets. At the intersection of commerce and collective action, there lies a kind of *entrepreneurial activism*, which can be especially forceful in fighting off lingering forms of domination. A good historical example of this comes from the mutual aid societies of the past, which were able to acquire goods collectively on the market that their members could not have as easily acquired individually (Beito 2000). It is instructive that many of these mutual aid societies were made up of minority populations tied together by their shared needs. Similarly, there are cases where for-profit ventures can be sources of community empowerment. While this is a claim far beyond the scope of this paper, it seems reasonable to suggest that defending the private property rights of queer-owned and queer-oriented establishments – most dramatically at events like Stonewall – did much more for gay liberation than any explicit campaign against homophobia.

What is important about markets is that they provide exit. They serve as an escape hatch from the potentially toxic cultural norms of one's community, and away from the grueling experience of having to publicly justify your concerns to those in an epistemic position that makes communicating those concerns excruciatingly difficult. By providing those avenues for escape, the market process pulls society in directions determined by individuals genuinely seeking to better their own lives, rather than simply trying to make due with the roles assigned to them. This rapidly accelerating ebb and flow of social change is a part of what market anarchist Dyer Lum identified as a major feature of a free society: social plasticity. In contrast to the rigidity of either the existing state-dominated world, or of a proposed anarchist communism, the anarchy of production found in full *laissez-faire* creates a social environment ripe for the production of anarchy.

VII. Conclusion: The Nature of Domination

Finally, this brings us to a reflection on the nature of domination, and a greater understanding of why the proposed institutions of individualist

⁵ If, for the most part, *all* that were available were commercial relationships and market exchange, this would of course have its own set of problems. For instance, such a society might be structurally ableist, essentially leaving many who cannot produce marketable goods or services out to die. This luckily is not a problem for individualist anarchism, which does not eliminate the non-state social safety net of mutual aid, but vigorously welcomes it. There is no reason that the resources available to anarchist communists in treating these problems would not also be available to individualist anarchists. Individualist anarchists do not wish to reduce all of life to a series of money-mediated exchanges; they just want the freedom to engage in money-mediated exchanges. I thank Astrid Wilde for raising concerns about disability.

anarchism are less in danger of fostering it than those of anarchist communism. While a given wage labor relationship and/or the presence of material inequality at any given time are certainly dangerous things worth holding in check, they are not as dangerous as the dangers of communist institutions left out of check. Without stabilization into a wage system, or persistent material inequalities between distinct classes, these scenarios are escapable when they approach domination. The reason that “if you don’t like your job, you can just quit” is such an unhelpful response under managerial capitalism is that often the things one finds distasteful about their job are present in virtually all available alternatives. Once one can reasonably expect to escape that sort of job into alternative employment in a cooperative or self-employed setting, this reply actually becomes meaningful. Meanwhile, if one does not have the check of a healthy market, then the dangerous aspects of communal and gift-economic life are inescapable. This is compounded by the fact that toxic cultural factors like white supremacy, patriarchy, heteronormativity, and so on, are by their very nature present throughout the entire society.

This bolsters Philip Pettit’s definition of domination that I endorsed near the beginning of the paper, which hones in on a general power of arbitrary interference and control. Also following Pettit, it appears that the best guarantee of fighting domination is to provide structural checks and balances, or domains of *anti-power*, forces that repel back against the power of potential sources of domination (589).⁶ On the importance of structure, it is useful to consider Marilyn Frye’s analogy between oppression and a bird cage (Frye 1983). The bars of a bird cage, taken individually, could clearly never constrict even a bird’s movement. Yet in the context of all the other bars, it becomes impossible for the bird to leave. So too is the case with oppression, and domination – the particular instances of social norms or commands are not what creates true oppression and domination all on their own, but, rather, those norms or commands within the larger context of other oppressive and dominating factors (Frye 1983). If we are able to change the context by providing checks, much of what may be dangerous on non-domination grounds actually becomes harmless. Gift-economic arrangements and common property, in the context of a market society, can be de-clawed and no longer punishingly restrictive against individuals who buck cultural norms. The material inequalities that may occur at any given time in a market setting, or employment in a wage labor setting, when in the context of healthy mutual aid and fierce labor unionism (Carson 2010), are no longer the source of domination we see in our existing world.

⁶ Pettit later drops the “anti-power” strategy for one of constitutional guarantees. However, it seems that for those who want to take his framework to radically anti-statist conclusions, the anti-power strategy is still preferable.

In conclusion, I want to say something in favor of the spirit of anarchist communism. In response to those who tell them that their dream of total freedom is impossible, they defiantly proclaim that they demand the impossible. Far from foolish, this attitude is admirable. Where the communist goes wrong is in their proposals for how to get there. A program of abolishing private property, money, explicit exchange, and the market order, would not bring liberation. It would bring a deeply entrenched, stagnant conservatism. What the individualist anarchist seeks is fundamentally that same dream of total freedom, coupled with institutions that can bring about and protect that vision of autonomy. Where anarchist communism only demands the impossible, individualist anarchism goes a step further, and finds a way to supply it.

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The War on Kolko

Joseph R. Stromberg

Part I: Practice

“Mona tried to tell me, ‘Stay away from the train line.’
She said that all the railroad men just drink up your blood like wine.”
– Bob Dylan

In an ongoing war against the late radical historian Gabriel Kolko (1932-2014), economists Robert L. Bradley and Roger Donway have attacked on two fronts.¹ They claim that Kolko was short on correct theory and failed (as a Marxist) to understand “capitalism” – laissez-faire or otherwise. Further, they charge Kolko with selecting bad evidence and misreading or knowingly distorting his sources. Their conclusion: given such recklessness, no one² should depend on Kolko in any way whatsoever. Since these critics mean their accusations to be damning, we begin by examining in detail their most important claims about evidence. (For theory or ideology, see Part II.) Throughout, Bradley and Donway contest Kolko’s main thesis, namely, that late 19th-century industrial capitalists gradually learned how to turn Progressive reform to their own self-interested advantage, ultimately creating a system of “political capitalism.”³

The Weak Citation of Gerald Nash and Mr. Nobody

Describing Kolko’s account of the first proposed federal railroad legislation, they write:

¹ Robert L. Bradley Jr. and Roger Donway, “Reconsidering Gabriel Kolko: A Half-Century Perspective,” *Independent Review*, 17:4 (Spring 2013), 561-576, and “Gabriel Kolko’s ‘Political Capitalism’: Bad Theory, Bad History,” November 2, 2015: <http://econlib.org/library/Columns/y2015/BradleyDonwayKolko.html>

² They are especially eager to divorce libertarians from Kolko.

³ Gabriel Kolko, *The Triumph of Conservatism* (Chicago: Quadrangle, 1967 [1963]), “Introduction,” esp. 3.

Yet we know that the drive for federal railroad regulation began in 1876, when independent oil producers persuaded a Pennsylvania congressman to introduce a bill banning rebates and rate discrimination. Kolko's explanation? "The bill ... was apparently written by the attorney for the Philadelphia and Reading Railroad." His evidence for the railroad's involvement is a passage in Gerald Nash's "Origins of the Interstate Commerce Act of 1887." But why cite a secondary source? Perhaps because Nash's primary source was an anonymous newspaper column, published four years after the 1876 bill in Chicago, not Pennsylvania, and rife with factual inaccuracies.

Specifically, the article by the *Chicago Daily Tribune's* anonymous Washington correspondent mentioned the supposed drafting of the 1876 bill by a P&R attorney only in order to explain why it was "not strange" that the House Commerce Committee testimony given in January 1880 by "Mr. Gowan, representative of the Philadelphia & Reading Railroad" advocated "the general principles of the Reagan bill" on railroad regulation. But Gowen (not Gowan) was president of the Philadelphia & Reading, not just a "representative," and according to the *Philadelphia Inquirer's* story of the same day: "Mr. Gowen, of the Reading Railroad, followed [Charles Francis Adams], and gave the bill one of the severest poundings it has yet had." The Associated Press story from that day said: "Mr. Gowen doubted the power of Congress, under the Constitution, to interfere with the management of railways." Pounding a bill is not exactly an endorsement.⁴

But Gowen had many concerns. He complained of "excessive competition" between trunk-line roads, which made distant businesses competitive with local ones; he complained that railroads often charged double rates for local shipments. Further, the bill did not "cover the evil which exists," yet forbade things "which should not be forbidden." He doubted "the propriety of interfering" with "the pooling system and contracts with reference to earnings" The "real difficulty" was discriminatory rates for the same service. These arrangements hurt oil producers and railroad

⁴ Bradley and Donway, "Gabriel Kolko's 'Political Capitalism'" (2015). Cf. "Reconsidering Gabriel Kolko" (2013), 572, and Gabriel Kolko, *Railroads and Regulation, 1877-1916* (New York: W.W. Norton, 1970 [1965]), 21 (hereafter *R&R*).

stockholders, while “a special rate of about one-fourth of the actual cost of transportation” aided the Standard Oil Company.⁵

State legislatures could legally provide a remedy, if they would, but Gowen doubted that Congress had the same power. But if it did, Congress should “create by statute the same form of remedy that I would ask the State Legislature to adopt, and that is to *authorize the Courts to issue writs of mandamus to railway companies and railway officials to compel the performance of their obligations as common carriers.*” In short, the best answer was “to compel everybody to be served alike.” He had “no objection whatever to a congressional commission” or “a State railway commission, always provided that it be composed of *proper material.*”⁶

So Gowen “pounded” the bill in its *later* version because he had his own ideas about railroad regulation and was, therefore, more interesting than Kolko’s critics let on. Admittedly, his alliance with independent oil men against Rockefeller won’t endear him to those who imagine that time (and one essay⁷) has rendered Rockefeller spotless. Still, Gowen’s larger views undermine any strict separation between oil men and railroad men.⁸

Bradley and Donway quoted Kolko as follows: “The bill ... was apparently written by the attorney for the Philadelphia and Reading Railroad.” *Their* ellipsis (shown in bold) leaves out the following: “, which provided for enforcement by the courts rather than by a commission,” – in other words, the bill contained, in an early draft, *precisely the mechanism* that Gowen endorsed in his testimony. *Kolko does not look so inaccurate now* (see below: “Judges vs. Commissions”); in any case, he already addressed one of the critics’ problems on his next page: “The oil producers were not anti-railroad, but anti-Standard Oil, and this explains why a railroad attorney could have written the first basic draft of a railroad bill for them.”⁹

⁵ *Argument of Mr. Franklin B. Gowen, President of the Philadelphia & Reading R. R. Co., Before the Committee on Commerce of the House of Representatives, Upon House of Representatives Bill No. 1028, to Regulate Inter-State Commerce, and to Prohibit Unjust Discrimination by Common Carriers.* Washington, D. C., January 27th, 1880 (<http://www.ebooksread.com/authors-eng/franklin-b-franklin-benjamin-gowen/argument-of-mr-franklin-b-gowen--before-the-committee-on-commerce-of-the-ho-hci/1-argument-of-mr-franklin-b-gowen--before-the-committee-on-commerce-of-the-ho-hci.shtml>).

⁶ *Ibid.* (My italics)

⁷ John S. McGee, “Predatory Price Cutting: The Standard Oil (N. J.) Case,” *Journal of Law and Economics*, I (October 1958), 137-169.

⁸ See Chester MacArthur Destler, *Roger Sherman and the Independent Oil Men* (Ithaca: Cornell University Press, 1967), 76, 80-81, 111 ff, 145, 171, 199-200, 239, 241.

⁹ Kolko, *R&R*, 22. The best candidate for the mystery attorney is George F. Baer, who became counsel to the P&R in 1870 and later succeeded Gowen as director of the railroad. Baer did much legal work for J.P. Morgan, a fact likely related to the P&R’s anti-Rockefeller orientation. See “George F. Baer,” *Railway Age Gazette*, 56:18 (May 1, 1914), 990.

Thus the whole thing was indeed “*not strange*.” Historian George E. Mowry notes that when the Elkins Act of 1903 “forbidding railroads from giving rebates to large industrial companies” (to the competitive advantage of the latter) was debated, Senator Augustus O. Bacon (D., Ga.) charged “that the Elkins Act was first drawn up by *an attorney for the Pennsylvania Railroad*.” Senator Joseph R. Foraker (R., Ohio) claimed that was only true of the first Elkins bill, but (Mowry adds) “both proposals were substantially the same,” indicating (he says) that railroads no longer cared to give rebates to big shippers.¹⁰

But why would Kolko, or any historian, cite a secondary source? Perhaps its writer had dug through all sources likely to be found. Maybe the point at hand was too small to warrant six further months of research. As for historian Gerald Nash’s source, “rife with factual inaccuracies” (per Bradley and Donway), that is what we must expect from 19th-century American newspapers (along with political partisanship and outright lying). It is odd that Nash, as historian,¹¹ does not share the blame reserved for Kolko.

As for Kolko’s *ellipses*, we shall soon hear a lot about those.

Late in Life Chauncey Depew Recalls 1877

Kolko quoted Chauncey M. Depew, attorney for the New York Central Railroad, as writing in 1922 that circa 1877 he (Depew) had come to believe that government commissions were needed “for protection of both the public and the railroads.” Bradley and Donway quote Kolko as follows: “In 1877, the main danger posed to the railroad was ... from cutthroat competition, rate wars and the manipulators of stock.” The point about competition, they note, is Kolko’s.¹²

Bradley and Donway present a recurring claim: that Kolko deceives his readers by leaving out some obvious context. They offer to “restore” the *real* context of Depew’s remarks by quoting a longer passage from his 1922 memoir: “I became convinced of their necessity. The rapidly growing importance of railway transportation had created the public opinion that railway management should be under the control and supervision of some public body. ... It seemed to me that it was either a commission or government ownership”¹³ [...].

¹⁰ George E. Mowry, *The Era of Theodore Roosevelt and the Birth of Modern America, 1900-1912* (New York: Harper & Row, 1958), 123-124 (my italics).

¹¹ Gerald D. Nash, “Origins of the Interstate Commerce Act of 1887,” *Pennsylvania History*, 24 (July 1957), 181-190.

¹² Bradley and Donway, 2013, 571-572. Kolko, *Re&R*, 16-17.

¹³ Depew, quoted in Bradley and Donway, 2013, 571.

And here Bradley and Donway bring in the theme of “the gun behind the door,”¹⁴ a construct that reproduces Gilded Age magnates’ oft-spoken fear that the American masses, led by demagogues, hoped to reenact the Paris Commune by violently despoiling the tycoons’ self-made fortunes. Making this a key part of their context, the critics accuse Kolko of choosing among publicly expressed opinions of railroad bosses, which varied wildly (it seems) with how threatened each felt, of a day, by the rabble’s metaphorical gun.¹⁵

Since Bradley and Donway repeatedly imply that every time Kolko used ellipses he was up to something, let us then try filling in *their* ellipses in a sentence quoted from Depew:

The rapidly growing importance of railway transportation had created the public opinion that railway management should be under the control and supervision of some public body; **that all passengers or shippers, or those whose land was taken for construction and development, should have an appeal from the decision of the railroad managers to the government through a government commission.**¹⁶

I have put in bold and italics language that might concern fervent friends of laissez-faire (if such there be) and also supply added context. Further, Bradley and Donway’s dots between “some public body” and “It seemed to me” also leave out two sentences in which Depew describes how he convinced Vanderbilt to support commissions; and more importantly, most of the sentence beginning, “It seemed to me that it was either a commission or government ownership” – which concludes: **“and that the commission, if strengthened as a judicial body, would be as much of a protection to the bond and stock holders and the investing public as to the general public and the employees.”**¹⁷

More context! Anyone familiar with the work of Morton Horwitz and Martin J. Sklar¹⁸ will know that regulation by courts or by *quasi-judicial* federal

¹⁴ Bradley and Donway, 2013, 568.

¹⁵ “... mobs or expropriatory voters” (2013, 565), referring apparently to most people not related to railroad moguls.

¹⁶ Chauncey M. Depew, *My Memoirs of Eighty Years* (New York: Charles Scribner’s Sons, 1922), 241-242. My italics, bold.

¹⁷ Depew, *My Memoirs*, 242 (my italics, bold).

¹⁸ Morton Horwitz, *The Transformation of American Law, 1870-1960* (New York: Oxford University Press, 1992); Martin J. Sklar, *The Corporate Reconstruction of American Capitalism, 1890-1916* (Cambridge, UK: Cambridge University Press, 1988).

commissions was a much-favored model in big business circles, if made of Mr. Gowen's "proper material." (Ordinary federal courts sometimes played that role but were insufficiently acquainted with railroad problems.) If Kolko erred here, it was in leaving out material favorable (or neutral) to his case. Perhaps it is a case of whose ox is elided.

(I will add that the metaphorical door-sheltered gun that seemingly drove industrial titans into constant waffle and concealment, hardly seems as big a historical-causal force in those years as the real guns of the U.S. Army, state militias, local police, Pinkertons, etc., quickly available whenever captains of industry suffered the least difficulty.)

The Curious Case of Mr. Fink Who Did Not Bark (1882)

Bradley and Donway assert that "Kolko even doctored quotations to change their meaning. Consider this opening to his four-paragraph quotation from railroad man Albert Fink, which suggests that Fink favored immediate legislative interference in his industry." They quote Kolko: "In early 1882, during House hearings on the Reagan Bill, Fink, while claiming he would prefer an investigative committee of Congress first, made specific suggestions to the Committee on Congress: 'The first step ... should be to legalize the management of the railroad property under this [pool] plan.'"¹⁹

They continue: "Fink ran the railroads' voluntary pooling arrangements, under which the lines agreed to divide business according to historical percentages and then modify those percentages according to changes achieved by 'fair competition.' Fink believed fervently that such pooling could address all public complaints against the railroads, and he hoped that Congress would someday make pool contracts enforceable in the courts (as they were not under common law)."

Moving in for the kill, they write: "Enforcement of pooling contracts was compatible with free markets, despite Kolko's belief to the contrary. But that is not what Fink was saying in Kolko's quotation, although Kolko made the quotation sound that way. Fink was saying that *if* all voluntary efforts to end the complaints against the railroads failed, and *if* it became necessary for the government to act, then government ought to act in assistance of the railroads' *voluntary* efforts to address popular complaints. And *if* government did, at that point, act to assist the railroads' *voluntary* efforts, then '[t]he first step *to that end* should be to legalize the management of the railroad property under this [pool] plan.' (Emphasis added.) By means of an ellipsis, Kolko transformed the entire significance of four key paragraphs of quotation. He turned Fink's speculation about the 'first step' in a pro-free market process

¹⁹ Bradley and Donway, 2015. Kolko, *ReR*, 27.

that might, hypothetically, take place on some future day into an urgent plea for an immediate ‘first step’ by Congress.”²⁰

Let us look into Fink’s famous four paragraphs (actually *five*) as presented by Kolko, as well as the original text,²¹ to see if Kolko’s nefarious ellipses did them any bodily harm. As noted by Bradley and Donway, Kolko has left *three words* out of the first paragraph quoted (= “to this end”) in the sentence beginning with “The first step.” As they tell us, these words refer to Fink’s immediately prior discussion of settling railroad issues (if necessary) through government “interference” that *would back* “the general plan adopted by the railroads.” But, *alas*, the three missing words allude to material that would have reinforced Kolko’s thesis.²² Thus this elision does not seem to have been especially crafty; nor did it overturn the meaning of the following paragraphs.

In paragraph two Fink calls on the federal government to force railroad companies to honor cartel agreements *if* they have entered into them. Kolko quotes him thus: “to comply with the terms of their agreements. ... This step alone I think would be sufficient to accomplish the purpose, because the self-interest of the railroads requires the adoption of this plan, and it is only the absence of authority to compel them to adhere to it that leads to disruption. ...”²³

Two sets of ellipses! What is Kolko up to? Well, between “agreements” and “This step alone,” he has left out a comma and these words: “and carry them out as they would be obliged to carry out any other contract” (not a terribly cunning omission). The second ellipsis (after “disruption.”) replaces this sentence: “Among so many railroad companies there may always be a few who think they can enrich themselves by the violation of compacts, at the expense of the others, and it is, unfortunately, in the nature of the railroad

²⁰ Bradley and Donway, 2015 (their italics), cf. 2013, 572. Kolko, *R&R*, 27-28. Bradley and Donway have “to that end” as the words left out by Kolko; the 1882 GPO printing of Fink’s testimony, taken separately (see note 21, below), has “to this end.” As the point is not especially material, I merely note it.

²¹ *Committee on Commerce, Argument of Albert Fink*, March 17-18, 1882 (Washington: Government Printing Office, 1882), 30. (This is a pamphlet-sized government publication taken from the longer Committee report, *Arguments and Statements before the Committee on Commerce, U.S. House of Representatives, 47th Congress, 1st Session*, Misc. Doc. No. 55 [February 21-March 28, 1882] (Washington: Government Printing Office, 1882). Page 30 in the short version = 189 in the longer one, 31 = 190, and so forth.)

²² That is, the thesis that the railroads wanted to have their cartel, one way or another. Our authors think Kolko should have adopted a *different* thesis, but that is another matter. As Kolko puts it, Fink wanted “legalized pooling and a permanent federal commission with powers to determine rates in the event of disputes among railroads, and to enforce their decisions in the courts” (*R&R*, 27).

²³ Kolko, *R&R*, 27-28 (my bold).

transportation business that one of these can destroy the good results of the cooperation of all the others.”²⁴ This suggests that competition *was* a concern for the magnates – something our critics tend to deny.

The third paragraph reads: “Another method that could be adopted by the government is to enforce the tariffs established by the railroads and approved of as reasonable and just by the government. ...”²⁵ Here Kolko’s nefarious ellipsis (shown in bold) indicates the *omission of nothing*, or to put it another way, shows the empty space between one paragraph and the next one, beginning with “Some.”

In the balance of the paragraph Fink suggests that the Reagan bill might, with a few changes, help the railroads “in carrying out their plans,” but that its provisions “could not be effectively applied without the cooperation of the railroads.” Here Kolko’s ellipsis has spared his readers some tedious railroad prose.²⁶ Once again, Kolko seems to have left out material that might have strengthened his argument.

Mr. Fink Barks at Congress, March 17 & 18, 1882

Our critics may have quit too soon. Reading farther, we find that Fink served Congress a large helping of railroad capitalist ideology. The details are rather interesting. Sneering at imagined railroad abuses, Fink accused merchants and “demagogues” of maligning the efficient American railroads. All pending railroad bills should be shelved. Railroads were not mere common carriers, but *legally owned* the roads and collected “tolls” on them, as interest on investment. Here he interjected some mystification justifying higher rates for short hauls. Like the thirteen states in 1787-1789, railroads must “subordinate separate interests.” Congress should act, but *could* it? He noted that at least 1,200 railroad shipping agents had direct knowledge that government commissions could never obtain, absent which, legislation and regulation could not succeed.²⁷ (Here Fink anticipates F.A. Hayek a bit, albeit in service to his narrow cause.)

Equitable rates would require railroad cooperation – voluntary or compulsory. The Reagan bill failed to make the railroads’ voluntary agreements into contracts enforceable at law. If that could not be done:

²⁴ Fink, 30.

²⁵ Fink, 30; Kolko, *R&R*, 28. The paragraph consists of one sentence.

²⁶ “Thus the roads that are entirely located in one State and the roads in adjoining foreign countries should first be made parties to the agreement to establish and maintain tariffs (which they could relied upon to do from motives of self-interest), and then the law could be applied to even those roads.” Fink, *Argument*, 30.

²⁷ Fink, *Argument*, 4-7, 10, 16-19, 23-25. I do not know if Fink ever developed his proto-Hayekian insight about dispersed knowledge, nor can I say whether or not it would prove the value of contractual cartels, had he done so.

“then, and not until then, may it become necessary for the government to interfere. But this interference can only be effective when it is in aid of the general plan adopted by the railroads.”²⁸

After the several paragraphs allegedly assassinated by Kolko, Fink called again for general, enforceable pooling agreements (*his* door-shaded gun for *coercing* defectors from the agreements). He admitted such arrangements might be imperfect: pooling alone could not set rates, which were (it seemed) partly *objective*. Surveying legalized cartels in England, Germany, and Austria, he thought that Americans should not have *that much* direct government interference (or perhaps only someday).²⁹

Wicked producers, middlemen, and Grangers opposed the railroads’ cartel plan out of self-interest. Asked about the powers proper to a railroad commission, Fink suggested those of investigating and reporting only. What of the commission on which Fink himself sat? That one was entirely honest and true. But since it could not enforce cartel agreements, it too was disappointing (so far). “If you want to regulate the railroads just give us power to punish any railroad man who violates his agreement” Fink thought that Charles Francis Adams’ bill looked pretty good. A *good* commission – made up of the *right sort* – would be good.³⁰

So far, Kolko’s ellipses have not changed much, despite assertions about his “quackery.” The complaint that Kolko characterized Fink as wanting *immediate* federal action merely reflects the critics’ molehill-gathering approach to mountain building. The question of *timing* (“immediate legislative interference”) seems to be a matter of the critics’ own choice – easily done, since railroad magnates could equivocate massively about *timing*, while entertaining numerous hypothetical policies and their possible sequences.

A Descendant of Yankee Presidents Goes Railroading (1885)

Bradley and Donway write: “For example, Charles Francis Adams Jr., president of the Union Pacific Railroad, began his 1885 testimony before a U.S. Senate Committee by staunchly recommending a sunshine commission for railroads, such as he had headed in Massachusetts. Given that everyone saw a need to respond to the growing public complaints against the railroads, the question was one of theoretical approach: rules and maybe even rates set down by commissions? laws enforced by the courts? In the view of Adams, ‘The true theory of legislative dealing with this question’ was an approach close to *laissez-faire*, which would allow a commission, but one with only investigative powers. He went on to explain that ‘all the [Massachusetts]

²⁸ Ibid., 29-30.

²⁹ Ibid., 30-31 (complete with equivocation about time).

³⁰ Ibid., 32-35, 37-38.

commissioners could do was to examine, report, and recommend, thus having recourse to public opinion.’ When senators made it clear that so powerless a commission was out of the question, Adams tried to save what he could by agreeing to some minor regulations (for example, a ban on free passes), but he concluded by recommending to the senators an ‘easy does it’ commission with inchoate powers.”

They continue: “Adams had described such a fallback position – knowledgeable experts learning and tinkering – a year earlier in his correspondence with Congressman John D. Long (R-MA). Kolko quoted that letter from Adams to Long: ‘If you only get an efficient Board of Commissioners, they could work out of it whatever was necessary.’ Yet, on that basis, Kolko called Adams a ‘cynic,’ implying that -- even before the ICC existed – Adams had worked out the theory of regulatory capture and its uses for crony capitalism. Kolko ignored both the strong recommendation for a pure ‘sunshine commission,’ with which Adams began his testimony, and the significance of his earlier explanation to Long that acceptance of a somewhat more powerful commission could head off ‘a demand for extreme legislation.’”³¹

The Real Adams

Alas, quotes from Kolko, remarks from Adams and summaries of his views hardly suffice to sort out Adams’ politics – much less his relationship to “laissez-faire” – that elusive outlook to which he was so “near.” Since neither the critics nor Kolko have discussed Adams in detail, we must bring in some additional material.

Historians often refer to Adams as a *cynic*, because they generally agree that he was one – this is even less controversial than calling Justice Oliver Wendell Holmes a *nihilist*. Kolko hardly needed to call Adams a cynic *in order* to reach some other objective. Like Holmes, Adams had served in the Union Army (a great manufactory of cynics and nihilists). After years in business, Adams described the capitalists he had known: “A set of mere money-getters, unattractive and uninteresting.” As for railroading: “Gambling is now a business” Even worse, as historian Richard White writes, railroad managers were not good bureaucrats and were quite crooked, but in a manly way (given the Civil War background). Poor Adams tried to organize and control these men on the model (once more) of the Union Army. His failures in this endeavor doubtless increased his cynicism.³² (We shall return to the *capture theory*, which Kolko allegedly fathered on Adams, in Part II.)

³¹ Bradley and Donway, 2015. Kolko, *Re&R*, 37.

³² Adams quoted in Michael Perelman, *Railroading Economics: The Creation of Free-Market Mythology* (New York: Monthly Review Press, 2006), 80-81; Richard White, *Railroaded: The*

Historian Jeffrey Lustig writes that Adams was a Comtean, for whom society was an “organic unity.” He thought the railroads’ sheer scale put them into “favored zones” of non-competition, outside the normal laws of supply and demand. Textbook competition would never return; regulation and state support for industrial concentration would replace it. Lustig calls Adams’s outlook an incipient corporate liberalism. White sees Adams as a Comtean liberal and modernizer whose ideal was efficiency.³³

Historian Nancy Cohen writes that, for Adams, railroads represented Progress and their consolidation was the wave of the future. Rational, state-led development was needed, resting on statistics, state bureaus, and greater capital accumulation – capital now being the source of value. (This does not seem a great theoretical advance.) Evolutionary rhetoric rounded out Adams’s system.³⁴

Economist Michael Perelman notes that as a railroad critic and eventual executive, Adams helped create (and served on) the Massachusetts Board of Railroad Commissioners and was its most influential member. He presided over a voluntary rate-setting body, the Board of Arbitration of the Eastern Trunk Lines Association. Experience undermined his belief in existing economic theory: competition did not give the results that conventional economics promised, but instead yielded monopoly across the whole economy.³⁵

Finally, there is Adams’s frank statement in his book *Railroads: Their Origin and Problems* (1878, 1886) that “so far from being necessarily against public policy, a *properly regulated combination* of railroad companies, *for the avowed purpose of controlling competition*, might prove a most useful public agency.”³⁶ All in all, Adams seems a leader in the movement *away* from laissez-faire, however loosely understood, which tends to undermine his *nearness* to it. (Part II will revisit the theoretical trends in which Adams participated.)

Transcontinentals and the Making of Modern America (New York: W. W. Norton, 2011), 245-246, 252, 281-282.

³³ R. Jeffrey Lustig, *Corporate Liberalism: The Origins of Modern American Political Theory, 1890-1920* (Berkeley: University of California Press, 1982), 83, 55, 99-101, 105; White, *Railroaded*, 188, 279 ff.

³⁴ Nancy Cohen, *The Reconstruction of American Liberalism, 1865-1914* (Chapel Hill: University of North Carolina Press, 2002), 102-105.

³⁵ Michael Perelman, *The Invention of Capitalism* (Durham, NC: Duke University Press, 2000), 81-83.

³⁶ Charles Francis Adams, Jr., *Railroads: Their Origin and Problems* (New York: G.P. Putnam’s Sons, 1886 [1878]), 186 (my italics). Historian Elizabeth Sanders quotes exactly the same sentence from Adams’ 1878 edition: *Roots of Reform: Farmers, Workers, and the American State, 1877-1917* (Chicago: University of Chicago Press, 1999), 188, 456 note.

James J. Hill's Streetwise Blues (1901)

Bradley and Donway assert that Kolko deliberately distorted a quote from railroad magnate James J. Hill's contribution to a 1901 symposium on Industrial and Railroad Consolidations in the *North American Review*.³⁷ Kolko had written: "... the 'trust,' wrote James J. Hill in 1901, 'came into being as the result of an effort to obviate the ruinous competition.'"³⁸

Bradley and Donway inform us that "it" was the real subject (wickedly suppressed) of the sentence partially quoted by Kolko, and that this *it* referred to "a general feeling of hostility towards the railroads" which Hill had noted earlier – and indeed it did. That sentence read: "There is in the community a general feeling of hostility towards the railroads and industrial consolidations that have been effectuated and towards those that are now under way."³⁹

With original subject restored to its place, our critics give us the following: "*It began* when the 'trust' came into being *and* as the result of an effort to obviate ruinous competition."⁴⁰ But this reading creates a second clause in which the *feeling of hostility* came about "as the result of an effort to obviate ruinous competition." This makes little sense, but even worse, the two critics' "and" (italicized or otherwise) is not in Hill's essay. Without it, the sentence⁴¹ means that trusts *did* arise to restrict competition, and someone lies self-shot in the exegetical foot.

If the critics can mangle the source while accusing Kolko of mangling it, our confidence in their de-mangling skills must plummet. Meanwhile, however, they have added a "Correction" to their 2013 essay touching just this point: "In our essay 'Reconsidering Gabriel Kolko,' we alleged (on p. 573) that Gabriel Kolko's *Triumph of Conservatism* had doctored a quotation from J. J. Hill. We have since learned that this is false, and we regret the error."⁴² The error arose (they explain) from consulting a different version of Hill's essay published in 1902. Unrepentant, they add: "We have examples of

³⁷ James J. Hill, "Industrial and Railroad Consolidations: Their Advantages to the Community," *North American Review*, May 6-15, 1901, 646-655. [This was online at <http://www.unz.org>.]

³⁸ Kolko, *Triumph of Conservatism*, 13.

³⁹ Hill, "Industrial and Railroad Consolidations," 646-647.

⁴⁰ Bradley and Donway, 2013, 572-573; their italics.

⁴¹ "It began when the 'trust' came into being as the result of an effort to obviate ruinous competition." Hill, 647.

⁴² Bradley and Donway, "Correction": <http://www.independent.org/publications/tir/article.asp?a=928>, (undated).

quotations that Kolko doctored to change their meaning, but Hill’s is not one of them.”

You might think the matter settled (perhaps arrogantly), but, no. Bradley and Donway now claim that while the wicked Kolko did not quite *doctor* Hill’s sentence, his nefarious ellipsis did the self-same work: “That said, Kolko did delete the subject and verb of Hill’s sentence with an ellipsis and thereby altered the implication of the clause in question. Hill was not saying, as Kolko suggested, that the trust had been a valuable institution because it obviated ‘ruinous competition.’ As we wrote: ‘Hill’s contention instead is that the “general feeling of hostility” toward industrial consolidation is understandable because the old-fashioned trust ‘was not on its face a healthy arrangement.’”⁴³ And yet, re-assembling Hill’s clauses, we get this: “A general feeling of hostility towards the railroads and industrial consolidations” [subject] + “*began* when the ‘trust’ came into being *as the result* of an effort to obviate ruinous competition” [predicate] (my italics). This and several surrounding paragraphs of railroad prose do not persuade me that the critics’ reading (see above) is especially natural. Kolko never *says* the trust was “a valuable institution,” but simply takes Hill’s word that they came about “as the result of an effort,” etc. It is, after all, part of Kolko’s larger argument that trusts had *not successfully rationalized* the railroad sector. It follows that trusts had not been as valuable as sundry moguls had hoped they would be. After doing the math, they increasingly turned to political capitalism. In time they got quite good at it.

Carnegie Was a Steel-Drivin’ Man (1909)

Bradley and Donway show Kolko quoting Andrew Carnegie as follows: “So far as the price competition plaguing the steel industry was concerned, however, ‘it always comes back to me that Government control, and that alone, will properly solve the problem.’”⁴⁴ They continue: “Carnegie appears to support Kolko’s thesis that leaders of the early twentieth-century steel industry preferred government regulation to market-driven competition. This is what Carnegie actually wrote:

It is not alone in steel that there is to-day [sic] a practical monopoly: tobacco, thread, sugar, oil, even if there be different manufacturers in all of these, have that ‘sort of an understanding’ which creates monopoly.... A monopoly could not be permitted to make its own price.... Some remedy must be found; I have thought over the subject and considered substitutes, but without success: it always comes

⁴³ “Correction.”

⁴⁴ Bradley and Donway, 2015; Kolko, *Triumph*, 173. Kolko cited Andrew Carnegie, “Control of Monopolies,” *New York Times*, February 16, 1909.

back to me that government control, and that alone, will properly solve the problem. There is nothing alarming in this; capital is perfectly safe in the gas company, although it is under court control. So will all capital be, although under Government control.”^{45, 46}

“In short,” they write, “Carnegie’s statement has *nothing* to do with ‘the price competition plaguing the steel industry.’ Quite the reverse. It expresses Carnegie’s belief that monopolies or pools dominating steel and other industries might have the power to set monopoly prices. His solution was one that many were urging for so-called natural monopolies (such as the gas company): empowering ‘expert’ government commissions to oversee prices. Whether such commissions are wise or unwise is not the point here. The point, rather, is that Carnegie was advocating government regulation to restrain monopoly, not to restrain competition.”⁴⁷

But Kolko thought he had already established the persistence of price competition “plaguing the steel industry” (see *Triumph*, 30-39). Since it *had* existed, Kolko could assume Carnegie knew about it, since Carnegie himself had sometimes contributed to it by *breaking existing voluntary cartel understandings*. This becomes clear on page 174, where Kolko writes: “The reason Gary and Carnegie were offering the powers of price control to the federal government was not known to the Congressmen, who were quite unaware of the existing price anarchy in steel.” The Congressmen thought the proposal too “socialistic.”⁴⁸

Twenty years earlier, in February 1889, Carnegie had written about the “Bugaboo of Trusts” in the *North American Review*.⁴⁹ There he laid out his famous law: “The condition of cheap manufacture is running full.”⁵⁰ This meant that in heavily capitalized industries, Say’s Law of Markets did not

⁴⁵ Carnegie did *actually* write those words. The first sentence comes from his fourth paragraph and the next sentence from his sixth paragraph (summarizing the court’s conclusion in the New York Gas Company case). The last several sentences combine Carnegie’s seventh and eighth paragraphs.

⁴⁶ B&D’s ellipsis here, 2015, omits two paragraphs discussing Judge Gary and the New York Gas Company case, and the first sentence of a third paragraph.

⁴⁷ Bradley and Donway, 2015. It is odd that our critics do not ask, in the manner of Rothbard: What’s wrong with monopoly if it can arise without obvious state support? (One need not endorse Rothbard’s view here.)

⁴⁸ Kolko, *Triumph*, 174.

⁴⁹ Andrew Carnegie, “The Bugaboo of Trusts,” *North American Review*, CCCLXXXVII [387] (February 1889), 141-150.

⁵⁰ Carnegie, “Bugaboo,” 142.

apply – in the short or medium run. In some longer period (he said) things would right themselves (after enough business failures). Carnegie seemed rather complacent about it.

In 1912, roughly three years after his letter to the *Times*, Carnegie testified before the House Committee on Investigation of United States Steel. After much friendly joshing about hypothetical cases, Congressman John J. Gardner (R., New Jersey) asked Carnegie what would happen if large steel combinations were dissolved in the absence of Carnegie’s proposed industrial court:

Mr. Carnegie: Why my dear sir, if you dissolve them into small parts they will do as they did before when they were small parts.

Mr. Gardner: Of course they will. Will that, in the long run, make cheaper steel products or more expensive products?

Mr. Carnegie: No; because they would have understandings. They would be driven to understandings against destructive competition which would ruin them all.⁵¹

If Carnegie believed that competition inevitably drove enterprisers into various schemes of cooperation or consolidation, legal or not, then his statement in 1909 said *something* about continued price competition in the steel industry. And he might well have referred to the results as “monopoly” in 1909, especially if adopting that term helped to promote his preferred top-down solution, the industrial court. (The court – presumably of the *right sort* – would reassure the better capitalists by disciplining the others.) Unable to think in *class terms*, even when the specific historical frame demands it, Bradley and Donway see right past an emerging upper-class consensus hiding in plain sight.

On Bradley and Donway’s reading, Carnegie – having forgotten all about ruinous competition in 1909 – suddenly remembered, in 1912, his own definite views on the subject, already expressed in 1889. One can hardly fault Kolko for crediting Carnegie with some lasting inner consistency.

Mr. Gary’s Quest for Certainty (1911)

In their 2015 article, Bradley and Donway write: “Kolko also did not grasp that, to businessmen, uniformity and clarity of regulation might be

⁵¹ No. 36, *Hearings before the Committee on Investigation of United States Steel Corporation, House of Representatives* (Washington: Government Printing Office, 1912), 2484 (Friday, January 12, 1912).

more important than the degree of regulation. Thus, after railroads became continental, their owners sought consistent national regulation at the price of greater regulation. Likewise, after the Sherman Antitrust Act created a legal standard that was hopelessly vague, businessmen petitioned Congress for clarifying legislation simply because they sought intelligibility.”⁵²

Reacting to two unclear U.S. Supreme Court antitrust rulings (*Standard Oil* and *American Tobacco*, both in 1911), they continue, the head of U.S. Steel, Judge Elbert H. Gary, “spoke with exasperation to a House investigation of his company: ‘I would be glad if we knew exactly where we stand, if we could be freed from danger, trouble, and criticism by the public, and if we had some place where we could go, to a responsible government authority, and say to them, “Here are our facts and figures, here is our property, here our costs of production; now you tell us what we have the right to do and what prices we have the right to charge.”’”

But, naturally, they say: “Kolko thoroughly misinterpreted Gary’s words, saying that he sought federal price controls to obviate ‘the existing price anarchy in steel.’ In fact, as Gary made clear, although U.S. Steel could not set prices in the market, it had achieved ‘a very great result in securing reasonable stability.’ What Gary wanted to avoid was not price ‘anarchy’ but endless and incomprehensible trust-busting aimed at dominant firms.”⁵³

It seems possible, however, that Gary wanted to be free of *both* “excessive” competition and unclear legal boundaries. Kolko’s account of late 19th-century political capitalism directly addresses businessmen’s wish (noted by Bradley and Donway) for *predictability and stability*, that is, “rationalization” in Max Weber’s sense. If Kolko overlooked that desire, it is odd that the first chapter of *Railroads and Regulation* should be entitled “In Quest of Stability, 1877-1883.” But apparently it is one thing for large-scale capitalists, seconded by Bradley and Donway, to call for stability, but quite another for Kolko to *say* that they did so.

Tentative Conclusion

The critics’ top seven charges have left Kolko quite unscathed. For them, it is at best a draw. We have learned that Kolko took certain sentences in his sources to mean one thing, while Bradley and Donway insist they *must* mean something else. The dispute shrinks down to the critics’ claim (among others) that Kolko *ought to have believed* that cartels were just fine in the truly free market, and their assertion that somehow, *since he didn’t*, his presentation was both wrong and dishonest. Our critics have done little harm (or justice), to

⁵² Bradley and Donway, 2015. On “uniformity and clarity of regulation,” see below.

⁵³ Bradley and Donway, 2015. Kolko, *Triumph of Conservatism*, 174.

either Kolko's historical account or to his theoretical category of political capitalism.

Part II: Theory

“Now the rain man gave me two cures, and he said, ‘Jump right in.’
The one was Texas medicine and the other was just railroad gin.”
– Bob Dylan

Part I concluded that Robert L. Bradley and Roger Donway have done little harm (or justice), to either Kolko's historical account or to his theoretical category of political capitalism. We may add here that it remains far from established that Kolko had any *habitus* “of changing the meaning of quotations.”⁵⁴ In this section the focus is mainly on these critics' 2013 essay, chockfull of theoretical-sounding complaints about Kolko's works and deeds. Indeed their critique regularly retreats into ideological categories, including economics-as-ideology,⁵⁵ and wrenches history and theory apart in atomistic liberal fashion. We shall survey some highlights here.

Marxism, Class, and Kolko

Bradley and Donway try to fit Kolko up as a scarecrow Marxist. But Kolko already made serious criticisms of Marx at the end of *Triumph of Conservatism* and further criticisms came in his later works.⁵⁶ Neither does the critics' whole “who/whom” discussion – meant (apparently) to turn Kolko into Lenin – work very well.⁵⁷ One influence on Kolko was the German Marxist economist Paul Mattick of the Council Communists, who traced their sectarian descent from Dutch theorist Anton Pannekoek, an anti-statist Marxist and severe critic of Lenin. Kolko was involved with the social-democratic Student League for Industrial Democracy (SLID), which later became Students for a Democratic Society (SDS). He corresponded with Norman Thomas, veteran leader of the Socialist Party of America. He was

⁵⁴ As claimed by Bradley and Donway, 2015.

⁵⁵ I won't say much here on libertarianism as such, since I am trying to give up ideology.

⁵⁶ Kolko concluded that conservative, Weberian, and Marxist theories of bureaucracy “gravely distort much of mankind's past experiences,” leaving researchers unable “to fathom the consummately self-destructive irresponsibility of leaders playing with the lives of their subjects and gambling on the very future of their social and political orders.” *Century of War: Politics, Conflicts, and Society Since 1914* (New York: The New Press, 1994), 455.

⁵⁷ Bradley and Donway, 2013, 566.

involved in anti-nuclear activity, attended peace demonstrations, and, yes, he never liked any American wars.⁵⁸

Not much *Leninism* in all that. As for the narrow point that politics is about “Who does what to whom,” anyone might agree with that. Consider historian Charles A. Beard, who sought the main origin of Western European states in conquest:

A military leader and his war band, in search of plunder and sources of steady income, conquer and fuse settled communities loosely united by kinship, and settle down upon the population as the ruling authority, absorbing surrounding areas by divers processes.⁵⁹

There is certainly a lot of “who/whom” analysis to be done in such cases, but Lenin is hardly needed.

Special State Duties to Deserving Capitalists

Bradley and Donway accuse Kolko of blurring the distinction between mere defense of private property (which, oddly enough, seems to require *enormous exertions* by the state, where capitalists’ properties are concerned) and use of the state to rig market outcomes prospectively. Surely, they imply, the state has a duty to do the first.

They write: “Seeking government protection of one’s property from mobs or expropriatory voters⁶⁰ differs categorically from seeking legal protection against economic competition, and therefore the two cannot be coherently combined into a single syndrome called ‘political capitalism.’”⁶¹ But they could certainly *coexist in a concrete historical situation*, if not perhaps as a tidy ideological *system*. Mr. Rockefeller, for example, might – with his own money – put expensive locks on his keep, or hire armed head-bashers to resolve human-resource problems. But he also might (and did) call upon the U.S. Army, state militias, and irregular deputies to beat or shoot disaffected workers.⁶²

⁵⁸ See Gary Roth, *Marxism in a Lost Century: A Biography of Paul Mattick* (Leiden: Brill, 2015), where letters from Kolko are regularly cited between pages 263 and 301, and Melanie A. Yolles, *Norman Thomas Papers Guide* (Alexandria, VA: Chadwyck Healey, 1985), 72, listing Kolko under “Prominent Correspondents in Series I.”

⁵⁹ Charles A. Beard, *Politics* (New York: Columbia University Press, 1908), 17.

⁶⁰ This seems incoherent, since *voters*, “expropriatory” or otherwise, are supposed to have some say over what the state does.

⁶¹ Bradley and Donway, 2013, 565.

⁶² Howard Zinn, *A People’s History of the United States* (New York: HarperPerennial, 2003), 354-356 (Ludlow [Colorado] Massacre, April 1914).

Questions might arise as to whether the taxpayers really *owed him quite so much help, or indeed any*, but we needn't begrudge him the locks. Yet, here *three* "forms of activity *are united*"⁶³ in Rockefeller's (hypothetical) actions without clearly getting him off the hook as a possible agent of political capitalism.

Methodological Individualism

Putting Kolko's supposed blindness on various matters down to class analysis, Bradley and Donway pronounce in favor of methodological individualism.⁶⁴ Legal historian Wythe Holt, who was a bit of a Marxist, writes that "class is not a deterministic way of predicting precise individual behavior by extrapolating from characteristics of wealth, status, or occupation that they may have. Rather, class is a way of understanding and expressing the tendencies and interactions of human life and human history as it has been and is lived in social groups, dynamic, ever-changing, full of conflict, full of possibility, full of both pain and hope."⁶⁵ And non-Marxists like philosophers Maurice Mandelbaum and Michael Simon agree that methodological individualism, extended beyond its small area of usefulness, results in an inability to spot patterns, much less explain ongoing social facts, institutions, and practices. Mandelbaum and Simon hold that institutions "really exist as entities,"⁶⁶ while Bradley and Donway apparently invoke methodological individualism merely to ward off all conceivable "collectivist" error. But such reductionism eliminates much of the subject matter of economics and sociology, and is thus a step too far.

For Competition and Against It Too

Bradley and Donway manage to be both for and against "competition," writing: "But capitalism involves only the *right* to compete – that is, the absence of legal monopolies. Nothing in capitalism requires the existence of actual competition" ending in "survival of the fittest."⁶⁷ They offer these thoughts in refutation of Kolko, to whom they attribute the view that a railroad man he quoted (*R&R*, 38-39) thought that was how things worked, but didn't like it.

This move is tricky in that competition was long a selling point in defense of free economic activity, one put forward by Adam Smith and a legion of

⁶³ Bradley and Donway, 2013, 565.

⁶⁴ Bradley and Donway, 2013, 566.

⁶⁵ Wythe Holt, "'To Establish Justice': Politics, the Judiciary Act of 1789, and the Invention of the Federal Courts," *Duke Law Journal*, 1989:6 (December 1989), 1525.

⁶⁶ Maurice Mandelbaum, "Societal Facts," in Patrick Gardiner, ed., *Theories of History* (Glencoe, IL: Free Press, 1959), 476-488, and Michael A. Simon, *Understanding Human Action* (Albany: State University Press of New York, 1982), Ch. 3, and 50.

⁶⁷ Bradley and Donway, 2013, 570 (also 573).

later Smith popularizers. The rationale was that competition stimulated production and so lowered prices, benefiting society as a whole. On this basis, it was good policy to leave the capitalists free to act and not begrudge them their profits.

But the railroad president quoted *did say* what he said, and Kolko hardly violates Bradley and Donway's methodological individualist strictures by quoting the man's actual words.

Bradley and Donway further complain that Kolko did not understand that cartel arrangements are compatible with an ideal (hypothetical) free market. But the common law did not agree, and that fact was an important part of the historical context. As for the claim that cartel agreements are, or *should be*, enforceable contracts, no less than Murray Rothbard disagrees: "What of a cartel agreement? Would that be enforceable in a free society? If there has been no exchange of property, and A, B, C ... firms agree among themselves to set quotas on their production of a good, this agreement would surely not be illegal, but neither would it be enforceable. It could be only a simple promise and not an enforceable case of implicit theft." In the related note, Rothbard states that this conclusion, adopted by an English court in the *Mogul Steamship Case* (1892), did *not* rest on the older English common law doctrine.⁶⁸

Kolko did not take up such questions. His view was that big businessmen tried one way after another to stabilize markets to their liking. When pooling or cartel agreements did not work out, they developed more directly *political* means.⁶⁹ Bradley and Donway show little awareness that Kolko's thought changed over time, or that he was sketching out an historical process in which the programmatic ends (and means) of big business changed over time. They seem minimally interested in knowing that Kolko carried his analysis into the mid-20th century (and later), and found both continuity and change in American political capitalism; or that he carried the analysis into his account of U.S. foreign policy.

Capitalist Subjectivities

Near the end of their 2013 essay,⁷⁰ Bradley and Donway go in for considerable agonizing over how, when, or whether, any late nineteenth-century railroad capitalist ever acted in an "anticapitalist" fashion or had an "anticapitalist" thought. It is hard to see who would find this inquiry interesting and unclear how illuminating the demonstration would be. Let us

⁶⁸ Murray N. Rothbard, *Man, Economy, and State*, I (Los Angeles: Nash Publishing, 1970 [1962]), 156, 443 note.

⁶⁹ As understood by Franz Oppenheimer, A.J. Nock, and Murray Rothbard.

⁷⁰ Bradley and Donway, 2013, 573-574.

suggest instead a minimal working definition of capitalism as a political economy characterized by private ownership of large-scale means of production, production for profit, price mechanisms, full-scale monetization, free waged labor, and rational accounting.⁷¹ Of course “political” is here to remind us that all economies are embedded in states, and that therefore, capitalism is always political in one way or another. (See below.) The *cronies* have been there from the beginning and in itself the fashionable phrase “crony capitalism” adds little to analysis.

It is on such a definition that economist Andre Gunder-Frank can argue, persuasively, that that “It is the cash nexus and the hard economic reality behind it, and not principally aristocratic or feudal traditions, which ruled in Latin America from the very beginning.”⁷²

Mysteries of Rent Seeking

Referring to “Kolko’s evidence for Gilded Age corporatism” (Kolko *never* uses the term “corporatism”), Bradley and Donway allow that rent-seeking has run all through American economic history, but that no one, including its perpetrators, could have properly understood what they were doing before Gordon Tullock found its abstract concept in 1967 and Anne Kreuger “named” it in 1974.⁷³ Evidently, historically existing rent-seekers worked in a debilitating pre-Public Choice fog and it’s a wonder they ever got any rents.

But England – the major source of American ideas, law, political institutions, etc. – was, after all, the classic *home* of an especially aggressive class of rent-seekers (nobility, gentry, and London merchants), whether under “feudalism,” feudal absolutism, agrarian capitalism, or (finally) industrial capitalism. One would expect English writers to have noticed rent seeking centuries ago, either to praise it or damn it. And indeed they did. Opposition poet John Gay wrote around 1732: “If schemes of lucre haunt his brain, projectors swell his greedy train; vile brokers ply his private ear with jobs of plunder for the year” So, too, opposition poet Alexander Pope in the late 1730s: “Who makes a Trust or Charity a Job, and gets an Act of Parliament to rob”; “No cheek is known to blush, no heart to throb, Save when they lose a Question, or a Job....”⁷⁴

⁷¹ Cf. Max Weber, *The Theory of Social and Economic Organization*, Talcott Parson, ed. (New York: The Free Press, 1964 [1947]), 279-280.

⁷² Andre Gunder Frank, *Capitalism and Underdevelopment in Latin America* (New York: Monthly Review Press, 1969), 24.

⁷³ Bradley & Donway, 2013, 561-564.

⁷⁴ Isaac Kramnick, *Bolingbroke and His Circle* (Ithaca, NY: Cornell University Press, 1992 [1968]), 225 (italics added). William K. Wimsatt, Jr., ed., *Alexander Pope: Selected Poetry and Prose* (New York: Holt, Rinehart & Winston, 1967 [1951]), 285, 294.

Adam Smith famously wrote of the tendency of merchants and employers to meet together to rig their markets. Similarly, from the 1770s forward, the French *philosophe* Condorcet was very concerned that the wealthy might gain undue political influence and tailor the law and regulatory bodies to their narrow economic interests.⁷⁵

Virginia planter John Taylor of Caroline declared in 1822 that while a “property-transferring policy” reduced general prosperity, merchants could “evade its oppression ... by blending the capitalist with the mercantile character; and becoming bankers, lenders to government, or factory owners. So far also, as the agricultural and mechanical classes, are interspersed with individuals endowed with pecuniary privileges, such individuals derive emolument ... not as mechanicks or agriculturists, but in their privileged characters.” They won more than they lost by “property-transferring” measures.⁷⁶

It begins to seem willful of Bradley and Donway to imply that Kolko could not, in works written in 1963 and 1965, have understood the central point of rent-seeking (= prospectively controlling market conditions to ensure a greater share of potential profits) or that his historical actors could not have understood or *done* any of it, pending the rise of correct *theory* in 1967 or 1974.

Capitalist Ideological Reformation, 1860-1890

Bradley and Donway make much of William Graham Sumner.⁷⁷ Historian Jeffrey Lustig notes Sumner’s definite “corporatist impulse” and his appeal to impersonal forces, in a kind of Godless Calvinism.⁷⁸ Historian James E. Block remarks that Sumner could argue that the late 19th-century American economy was “free” by pretending that “feudal command economies” were the *only* alternative to Gilded Age corporate capitalism.⁷⁹

If Sumner was the best “laissez-faire” proponent of the age, something wasn’t right. *It wasn’t*: A massive (and partly unseen) theoretical/ideological shift had taken place. Block recounts how the work of Amasa Walker, Arthur L. Perry, and Simon Newcomb, who served as *official* laissez-faire economists, minimized Jeffersonian ideals and dismissed self-sufficiency and decentralization as “outmoded,” belittled “antebellum Jeffersonian society

⁷⁵ Anna Rothschild, *Economic Sentiments: Adam Smith, Condorcet, and the Enlightenment* (Harvard University Press, 2001), 166, 189, 219.

⁷⁶ John Taylor of Caroline, *Tyranny Unmasked* (Indianapolis: Liberty Fund, 1992 [1822]), 267.

⁷⁷ Bradley and Donway, 2013, 574.

⁷⁸ R. Jeffrey Lustig, *Corporate Liberalism: The Origins of Modern American Political Theory, 1890-1920* (Berkeley: University of California Press, 1982), 82, 86-87.

⁷⁹ James E. Block, *A Nation of Agents* (Cambridge, Mass.: Harvard University Press, 2002), 464.

rooted in proprietary independence and self-reliance,” and endorsed the new corporate economy. Participation in this new economic order – “neither natural nor inevitable” and which had excluded “other possibilities” – was all the freedom there was. Here, Block comments, these friends of laissez-faire created a problem for themselves “by claiming sector autonomy *for a product of systematic legislation and adjudication*”⁸⁰ In the end, this ideological adjustment succeeded so well that few can now distinguish the earlier laissez-faire from its substitute. (But Sumner had another side, as shown by his attacks on plutocrats, lobbyists, and those who buy legislatures, seen as corrupt individuals betraying a system otherwise sound.⁸¹)

Oddly, Bradley and Donway made a similar point in 2010: “Following the Civil War, the American political-economic system began to drift farther from the model of laissez-faire capitalism, as governments at the state and federal level passed laws to regulate the market.”⁸² Unfortunately, their critique does not go much beyond the usual right-wing complaint about the follies of lawmakers and (perhaps) the bad motives of envy-ridden voting blocs. Actually, it was the political and military successes of Mr. Lincoln’s developmental coalition that set the stage for the second kind of laissez-faire, just when the new theorists were theorizing it.⁸³

Not surprisingly, the official laissez-faire economists’ approval of large-scale industry easily coexisted with the practical businessmen’s view that ruinous competition led inexorably to monopoly (“survival of the fittest”). This Social Darwinist view was taking hold precisely in the period treated by Kolko. He did not have to impose it on anyone.

Kolko’s ‘Political Capitalism’ Disputed

Bradley and Donway complain that “it becomes difficult to say, even in principle, what the appropriate short-term political goals of a free-market businessman should have been once the Interstate Commerce Commission was in existence and its distortion of the free market had created new vested interests.”⁸⁴ It almost seems as if Bradley and Donway are redefining political capitalism so narrowly as to exclude most of Kolko’s (or anyone’s) evidence.

⁸⁰ Block, *Nation of Agents*, 459, 462-463, 478, 490.

⁸¹ Historian H.A. Scott Trask emphasizes this side of Sumner’s work in “William Graham Sumner: Against Democracy, Plutocracy, and Imperialism,” *Journal of Libertarian Studies*, 18:4 (Fall 2004), esp. 10-19.

⁸² Robert L. Bradley Jr. and Roger Donway, “Capitalism, Socialism, and ‘the Middle Way’: A Taxonomy,” *Independent Review*, 15:1 (summer 2010), 75.

⁸³ Richard Franklin Bensel, *Yankee Leviathan: The Origins of Central State Authority in America, 1859-1877* (New York: Cambridge University Press, 1990).

⁸⁴ Bradley & Donway, 2013, 563.

For Bradley and Donway, Kolko's theses on political capitalism commit him⁸⁵ to the following practical syllogism: *Real-true capitalist executives opposed regulation of any kind. But in fact they supported some kinds of regulation. Therefore they did not believe their own ideology.* Our critics add some complaints about "feudal" survivals in Anglo-American law, under which railroad men can't be held to any high standard of free-market belief or behavior.⁸⁶ The only cost (to us) has been the unrewarding effort of imagining a 19th-century businessman as a proper free-market ideologue (easier to find a unicorn).

Now there is another view, a rather well grounded one, historically speaking: namely, that in this great land of Herman Melville's *confidence men* the real point was making lots of money, full stop, with formal American ideology remaining rather flexible. Gilded Age entrepreneurs (mainly derived from Greater New England) were happy to have state handouts for themselves, now, and to set up legal barriers for their rivals and foes, later, when and where they could.⁸⁷ Many writers praise this reality as nothing more than applied American pragmatism or creative destruction.

Kolko's Political Capitalism

As Kolko saw things, the Progressive Era's ultimately conservative consensus made it possible to raise political capitalism to new levels. Political and business leaders basically agreed on a federal role in reform. Industry wanted and usually got a veto power over regulatory agencies.⁸⁸ Given a predominant capitalist bloc, the upshot was political capitalism: "the functional unity of major political and business leaders," i.e. an "Establishment," or "interlocking social, economic, and political elite."⁸⁹ Big business wished to short-circuit local (state) reformers and occasionally redirected radical rhetoric to their own ends. The key was *stabilization* and World War One economic planning *fulfilled* this (Eastern) Progressive program.⁹⁰

⁸⁵ Bradley and Donway, 2013, 564.

⁸⁶ Bradley & Donway, 2013, 564-565.

⁸⁷ The pious Mr. Rockefeller (or his proxies) spent more time in court than in church.

⁸⁸ Kolko, *Triumph*, "Conclusion," 282-283. Cf. Philip L. Beardsley, "Toward a Synthesis of Conflicting Ideological Views Regarding the Political and Economic Dimensions of the American Political Economy: The Current System," *Peace and Change*, 5 (Fall 1978), 12-33 (assessing the work of republican theorist Walter Karp).

⁸⁹ Kolko, *Triumph*, "Conclusion," 284.

⁹⁰ Murray N. Rothbard, "World War I as Fulfillment: Power and the Intellectuals," *Journal of Libertarian Studies*, 9 (Winter 1989), 81-125.

In Kolko's view, European social *theory* shed little light on this episode. Taking the state as merely the capitalists' rent-a-cop, Marx failed to see how it could help capitalist accumulation through regulation. Max Weber saw political capitalism very narrowly, as "opportunities provided by political bodies, colonialism, or tax farming." Mistaking Hegel's nice painting for reality, he thought bureaucracies were neutral, rational, and classless institutions fostering predictability; but (Kolko adds) in the United States, bureaucracies could "make economic decisions and profits predictable and secure through *political means*." Since 1887 U.S. bureaucracies have typically protected the profits of established businesses from chaotic competition and democracy alike. Stabilization was the key; business titans wished to short-circuit local (state) progressives, and redirected radical rhetoric. But while he used the term "political capitalism," Weber did not see how such a thing could become a functioning system. *Political means* [to wealth], when noted, were all in the past for Weber, as they were for Marx.⁹¹

Elsewhere, Kolko also criticized Weber for being completely unaware of how things worked in the American colonies: "In the American colonial period we can discern of a pattern of development in which the role of political capitalism, as in China, is decisive in the economic process." The odd result was that "refutation of the Protestant Ethic, as Weber understood it, also leads to a validation of the concept of political capitalism, which Weber limited to China, as a central element in any analysis of early American history."⁹²

More on Political Capitalism

John A. Hobson (1902), discussing the sources of monopoly, laid bare the interpenetration of capital and state, citing tariffs, patents, franchises, licenses, and railroad subsidies as prime examples.⁹³ As Ida Tarbell put it in 1936, corporate consolidators "based their operations usually on exclusive privileges which competitors ... were unable to get," including tariff protection, large grants of land (with mineral rights) to railroads, "perpetual franchises and rights of way to builders of utilities."⁹⁴ Economist Adolf A. Berle (1938) adduced "direct government subsidies, for instance, to aviation and the merchant marine; indirect subsidies – low mail rates to newspapers; government purchases; special privileges – patents, copyrights, and licenses;

⁹¹ Kolko, *Triumph*, "Conclusion," 280, 282-285, 292, 294-299.

⁹² Gabriel Kolko, "Max Weber on America: Theory and Evidence," in George H. Nadel, ed., *Studies in the Philosophy of History* (New York: Harper & Row, 1965), 194, 197.

⁹³ John A. Hobson, *The Evolution of Modern Capitalism* (London: George Allen & Unwin, 1926), 192-201.

⁹⁴ Ida Tarbell, *The Nationalizing of Business, 1878-1898* (New York: Macmillan, 1936), 5, 6-7).

tariffs; protection against price fluctuations; collateral subsidies – to the automobile industry through highway construction; public relief to take care of industry’s unemployed in unprofitable seasons; direct loans; credits and banking facilities; regulation of rates; privileges to organized labor.”⁹⁵ And Oskar Lange (of market socialist fame) wrote in 1937 that in recent times “the best businessman is he who best knows how to influence in his interest the decisions of the organs of the state (in regard to tariffs, government subsidies or orders, advantageous import quotas, etc.). (...) What formerly was regarded as a special trait of the munitions industry becomes in interventionist capitalism the general rule.”⁹⁶

Judges vs. Commissions

Bradley and Donway imply⁹⁷ that big businessmen who endorsed some kind of commission invariably had in mind a tame PR agency – a kind of weak Roman censor, occasionally condemning some business decisions and praising others. In fact, magnate thinking ran from having federal courts issue orders to their competitors to having federal commissions (or agencies) with judicial powers issue the orders. It also ran from having these judicial bodies (or commissions) merely enforce *voluntary* cartel agreements to wanting them to enforce *compulsory* cartelization. Kolko never said the earth stood still and he never said the moguls’ thinking did. But our two critics decline to see that leading capitalists could shift over time from “voluntary” cartels to compulsory ones, enforced by whatever direct or indirect legal or legal-bureaucratic means became available.

All through the magnates’ discourse runs the theme of having the *right sort* on commissions, whatever their form, suggesting that the railroad lords pretty much did *anticipate* or invent “capture” *practice*. Formal capture *theory* could wait⁹⁸ and was hardly something Kolko had to father on poor Charles Francis Adams. Adams already had a pretty good idea how it worked.

⁹⁵ As paraphrased by Charles A. Beard and Mary R. Beard, *America in Midpassage*, II (New York: Macmillan, 1939), 879 (citing Adolf A. Berle, “Investigation of Business Organizations and Practices,” *Plan Age*, 4, 7 (September 1938), 185-206 [see esp. 189-191]).

⁹⁶ Oskar Lange, “On the Economic Theory of Socialism, Part Two: The Economist’s Case for Socialism,” *Review of Economic Studies*, 4:2 (February 1937), 131 n.

⁹⁷ Bradley and Donway, 2013, 568-569.

⁹⁸ For more on this topic, see William J. Novak, “A Revisionist History of Regulatory Capture” in Daniel Carpenter and David A. Moss, *Preventing Regulatory Capture: Special Interest Influence and How to Limit It* (New York: Cambridge University Press, 2013), 25-48. On the emergence of quasi-judicial permanent bureaucracies, see Hiroshi Okayama, “The Interstate Commerce Commission and the Genesis of America’s Justicialized Administrative State,” *Journal of the Gilded Age and Progressive Era*, 15:2 (April 2016), 129-148.

Other Historians on Kolko

Writing in the *American Economic Review* in March 1965, economic historian George Hilton called himself “lamentably well qualified” to review *Railroads and Regulation*. He had begun the very same project but dropped it when he realized Kolko had done a good job. “Kolko’s history of the early behavior of the ICC,” he wrote, “is a devastating demonstration that the Commission looked upon itself as a cartelizing body from the outset.” Its practice of “cartelizing the railroad industry without pooling” reflected its origins in 1887. But Kolko’s book was not perfect, and Kolko had made “no use of the theory of cartels,” nor had he realized that “charging more for a short haul than for a long one was both a form of discrimination against areas without water transport and a means of rate cutting to points at which the railroads were competitive with one another.”⁹⁹ This last point throws some light on Mr. Fink’s haulage mystifications of 1882.

Bradley and Donway put forward historian Robert H. Wiebe as an opponent of Kolko, citing his review of *Railroads and Regulation* in the *Journal of American History* (June 1964), which chided Kolko for thinking that “a handful of big businessmen monopolized national political power during the progressive era.”¹⁰⁰ Rather boldly they also assert that Wiebe’s view that “the business community was the most important single factor – or set of factors – in the development of economic regulation”¹⁰¹ gives no aid to Kolko. One can only suppose that the same is true of Wiebe’s very next sentence: “And a significant portion of this influence supported reform.” Since Wiebe focused on the new, bureaucratic middle class whose career prospects rested on reform, he tended to treat big business as a background fact.¹⁰² Perhaps, as sociologist Frederick R. Lynch writes, the underlying dispute was between Wiebe’s functionalist, Cold War pluralist assumptions about power, and Kolko’s (and C. Wright Mills’) conflict sociology founded on class power. In Lynch’s view, big business had preponderant power and the reforms it favored largely coincided with the interests of the new bureaucratic middle class.¹⁰³

⁹⁹ George W. Hilton, “Review of Gabriel Kolko, *Railroads and Regulation*,” *American Economic Review*, 56:1/2 (March 1965), 271-272. Hilton also wrote: “Being so familiar with the author’s sources, I have found the historical record so unambiguous that I have difficulty conceiving how a long line of scholars can have avoided the conclusions of this volume” (272).

¹⁰⁰ As quoted in Bradley and Donway, 2013, 567.

¹⁰¹ Robert H. Wiebe, *Businessmen and Reform* (Chicago: Ivan R. Dee, 1962), 217.

¹⁰² This focus drew Kolko’s criticism in *Rebels*, 94n. Wiebe responded in his *Search for Order, 1877-1920* (New York: Hill & Wang, 1967), 305n, with a rather dismissive summary of Kolko’s work.

¹⁰³ Lynch, “Social Theory and the Progressive Era,” 178-182, 189-190.

Lynch concludes: “After purely economic means to control and rationalize the market failed, the corporate rich co-opted both the reform measures and the new middle class.” Further: “With the expansion of American economic and military power abroad, the technocrats have been able to engineer the expansion of the power and scope of *both* the monopoly-capitalist (or ‘corporate’) sector of the private economy and the state (or ‘public’) sector. The victims of this alliance have been those in the competitive-capitalist sector.”¹⁰⁴

Historian Elizabeth Sanders covers some of the same ground as Kolko, but sees the reform process as more dialectical: big business set definite *limits* to what was possible, but did not get everything it wanted.¹⁰⁵ (Sanders’s subject is organized farmers’ contribution to Progressive reform.) Railroad men did not completely control the legislative process and Congressman John Reagan (D., Tex.), sponsor of the House Bill through various versions, was a conscious agrarian enemy of the railroads. (As an ex-Confederate,¹⁰⁶ his views owed something to the pre-corporate, Jeffersonian version of *laissez-faire*.)

Once more George Hilton sheds light on the problem. He points out that excessive railroad investment produced duplicate routes, additional competition, and falling rates, and thus increased incentives to violate (unenforceable) collusive agreements. “If the cartels were to be stabilized, the federal government had to undertake the task.” The Interstate Commerce Act (1887) made that possible, but the provision outlawing pooling forced the Commission “to use its ratemaking authority to distribute traffic among the cartel members.” (The anti-pooling rule survived from Congressman Reagan’s House version.) In the 1920s, new legislation gave the Commission improved means of enforcing cartelization.¹⁰⁷

Final Word

Throughout, Bradley and Donway are greatly vexed by Kolko’s disdain for the free market. His related heresy that all capitalism is politically imposed troubles them greatly. And yet there is much evidence for this claim. Paul Baran writes that “the state everywhere had an important hand in determining the course and speed of economic development in the capitalist age.” Baran

¹⁰⁴ Ibid., 196, 191. Cf. James O’Connor, *The Fiscal Crisis of the State* (New York: St. Martin’s Press, 1973), 13-15.

¹⁰⁵ Sanders, *Roots of Reform*, 257, 275, and Ch. 11, “Farmers, Workers, and the Administrative State.”

¹⁰⁶ CS Postmaster General.

¹⁰⁷ George W. Hilton, *The Northeast Railroad Problem* (Washington: American Enterprise Institute for Public Policy Research, 1975), 7-8. On Reagan, see Sanders, *Roots of Reform*, 187. See also George Hilton, “Reconciling Classical Objections to Laissez-Faire in Railways,” *Economic Notes No. 24* (London: Libertarian Alliance, Occasional Paper, 1990).

and Paul Sweezy observe elsewhere that “the effect of government intervention into the market mechanisms of the economy, whatever its ostensible purpose, is to make the system work more, not less, like one made up exclusively of giant corporations” Sociologist Robert Nisbet notes that “*Laissez faire*, as the economic historian, Polanyi, among others, has emphasized, was *brought* into existence by the planned destruction of old customs, associations, villages, and other securities; by the force of the state throwing the weight of its fast-developing administrative system in favor of new economic elements of the population.” Michael E. Tigar and Madeleine R. Levy have surveyed the way in which rising bourgeois oligarchies, allied with consolidating European monarchs, remodeled the older Law Merchant in detail and in their own favor.¹⁰⁸

Finally, economist Wilhelm Röpke has described how the “feudal-absolutist heritage” of European states allowed “immense accretions of capital and economic positions of power which endow capitalism with that plutocratic taint which clings to it ... and has given it a false start from the very beginning.” (As for the most popular 19th-century investment – railroads – they were entirely premature and inflationary.) But how did the United States obtain *much the same results* as seen in Europe? Röpke reasoned that American democracy had allowed “vested interests to flourish unchecked” for far too long. In fact, the interpenetration of interests and bureaucracies had “probably reached its highest degree in the United States.”¹⁰⁹

Early 20th-century reformer Herbert Croly hoped to rebuild American life by deploying Hamiltonian means for Jeffersonian ends. But taking a longer view, one might well agree with Jeffrey Lustig that “Hamiltonian means were precisely what had brought America to the pass Croly lamented.”¹¹⁰

Big business and its allies were all about *laissez-faire*, when it came to hiring, firing, cutting wages, and having tariffs and a favorable credit regime provided by the feds. But then again, it wasn’t exactly strict *laissez-faire* with respect to labor. When faced with a large-scale strike, they wanted governments, state or federal, to protect their extensive properties and imperiled profits with massive armed violence paid for by the taxpayers.

What was at stake were: 1) government activity useful to business and 2) government activity not useful to business, but perhaps useful to someone

¹⁰⁸ Paul Baran, *The Political Economy of Growth* (New York: Monthly Review Press, 1957), 92-93; Paul Baran and Paul Sweezy, *Monopoly Capital* (New York: Monthly Review Press, 1968), 66; Robert A. Nisbet, *The Quest for Community* (London: Oxford University Press, 1969 [1953]), 279; Karl Polanyi, *The Great Transformation* (New York: Rinehart & Co., 1944); Michael E. Tigar and Madeleine R. Levy, *Law and the Rise of Capitalism* (New York: Monthly Review Press, 1977).

¹⁰⁹ Wilhelm Röpke, *The Social Crisis of Our Time* (London: William Hodge & Co., 1979 [1950]), 115 (feudal absolutism), 122 (railroads), 132, 145 n, 147-148 n (United States).

¹¹⁰ Lustig, *Corporate Liberalism*, 147.

else (including the state itself). The latter kind of “intervention” drew forth much complaint from business. But the hypothetical purely free market was seldom a serious distraction for busy capitalist moguls, but merely an abstraction to throw into the argument as needed. Non-ideological businessmen (i.e. most of them) could therefore be on both sides of laissez-faire simultaneously. Pragmatically, this *was* the content of laissez-faire (the second one) – the original formulation of vulgar libertarianism. Accordingly, laissez-faire is basically a rather empty category for at least the last four decades of the nineteenth century.

(It only remains now to mention the deleterious impact of railroading on American popular music. Historian J.C. Furnas quotes the famous song collectors, the Lomaxes, as saying, “in our estimation the distinctive feeling of American hot music comes from the railroad.”¹¹¹ But then again there is this¹¹²)

¹¹¹ J. C. Furnas, *The Americans: A Social History of the United States, 1587-1914* (New York: G. P. Putnam’s Sons, 1969), 355.

¹¹² Henry Flynt, “Lonesome Train Dreams”:
<https://www.youtube.com/watch?v=X4TiSXSOgCk>

Libertarianism and Hard Determinism¹

Thomas Lafayette Bateman III and Walter E. Block

Can one identify as both a hard determinist and a political libertarian? Not on this one issue, we shall argue. Can the hard determinists logically reconcile their anthropology with a libertarian political ideology? That is in grave doubt. We intend to demonstrate that the two are not compatible.

In section I we define terms. Section II is given over to dealing with the absurdities of hard determinism. We examine the harm of hard determinism in section III. Section IV is given over to considering, and rejecting, a well-written criticism of our viewpoint. We conclude in section V.

I. Libertarianism and Hard Determinism Defined

In the debate over free will and determinism there are many camps. There are those who argue for libertarianism and free will, and reject determinism. There are the soft determinists and compatibilists, who believe the concepts of free will and determinism are compatible. Then there are the hard determinists.

Hard determinism posits that all human action is determined by the physical law of cause and effect. This viewpoint was first coined by William James, who put the matter in this way: “Old-fashioned determinism was what we may call *hard* determinism. It did not shrink from such words as fatality, bondage of the will, necessitation, and the like (James, 1884, p. 197).” In other words, all human action is determined to happen without any possibility of alternative events taking place.^{2, 3}

¹ We will not thank a very helpful referee for each of his many and important suggestions for the improvement of this paper. There are so many of them, that such a practice would heavily clutter up this paper. We will content ourselves with this mention of our appreciation. The usual considerations of course apply: we the authors, alone, are responsible for all remaining errors and infelicities.

² First, we defined determinism as the view that “all human action is determined by the physical law of cause and effect.” Now, we define it as the view that “all human action is determined to happen without any possibility of alternative events taking place.” In the view of our referee, “these two definitions are not equivalent. One can believe that all events are determined by causes without believing that all events are determined by material causes. (One

The libertarian political philosophy has room for people from all walks of life. Indeed, this philosophy has in it the elements for peace between disparate cultures. Its principle is simple. According to Rothbard, “[t]he libertarian creed rests upon one central axiom: that no man or group of men may aggress against the person or property of anyone else. This may be called the ‘nonaggression axiom’ (Rothbard, 2006, p. 27).” All topics, challenges and questions are settled using this moral absolute.

A cursory look at these definitions should give pause. We do not write today to argue the merits of either libertarianism (although we believe it to be the zenith of social organization) or hard determinism (although we believe it to be intellectual suicide). Instead, we simply ask, “Can these two concepts rest harmoniously in the same mind?” We respond, most certainly not.

II. The Absurdities of Hard Determinism⁴

When we speak of hard determinism in human action, we imagine a human body’s total molecular and physical structure (to include the chemical arrangement of thoughts and memories) and that body’s interaction with the molecular makeup of the environment. Chemistry and physics are entirely deterministic. If hard determinism is true, then our thoughts, experiences, memory, and action are absolutely determined by the laws of the sciences – not subject at all to our volition. We are moist robots. Volition itself is an illusion – the sensation of having a will is just molecules dancing to the tune of the laws of science. Also illusory are the human acts of reason, human demands, human objectives, the concept of the self, and morality. How is this not the case? How can one trust that the molecular reactions between body and environment yield truth and reason?

Illusory reason and choice

The argument for hard determinism takes for granted that a human being’s empirical observations and logic actually match reality. One is able to describe the process of reasoning and empirical observation from his

might believe, for example, that our actions are the result of our immaterial souls being manipulated by a controlling deity.)” We thus abstract from this God-like creature.

³ Might it be argued that the first definition (“all human action is determined by the physical law of cause and effect”) in the words of our referee: “says nothing directly implying incompatibility with free will. After all, a soft determinist could likewise believe (and many do) that all human action is determined by the physical law of cause and effect”? We maintain, to the contrary, that if it is really true “that all human action is determined by the physical law of cause and effect,” without exception, then there is indeed no room for free will. In our view, there is something called “free will” that does not fall under “the physical law of cause and effect.”

⁴ For further readings in this vein, see Block, 2015; Van Schoelandt, Jankovic and Block 2016.

subjective viewpoint, but he cannot justify how the reasoning and observation of a purely determined being can be trusted to be what they are claiming to be. Under hard determinism, the sensation of logic, the sensation of observation matching reality, and the sensation of being correct are only that: sensations dictated by molecular mashing.

The brain is an unforeseen and unintended by-product of years and years of moving mindless matter; yet we trust this thing to yield us universal and absolute reason, and true inference into reality? The hard determinist is forced to say human reason and choice are illusory. Choice requires the ability and human capacity to actually direct decisions; however, for the hard determinist, the result was a *fait accompli*.⁵ Of course, if the hard determinist is correct, then the reasoning to deduce such a conclusion lacks trustworthiness itself. We call that intellectual suicide.

Non-existence of morality

Without choice, morality is an illusion. Any moral position, such as the non-aggression principle, requires moral agency. Any creature who acts without being able to choose lacks moral agency.

If an epileptic hits someone during a seizure, we do not hold him guilty of a crime; however, if a non-epileptic engages in precisely the same physical act, we consider him guilty of assault and battery. Why? The reason is that we do not think that the action of the epileptic is based on his moral volition. He was hitting someone due to an uncontrollable seizure. However, in sharp contrast, we hold the non-epileptic morally responsible, as he willed his assaultive behavior into action. This would be nonsense in the world of hard determinism, as, there, neither of these two people has the capacity to choose to do otherwise; neither should be held morally responsible.

This is a very powerful *reductio ad absurdum*. According to hard determinism, no one, no one at all, should be punished for a crime; indeed, none should be considered a criminal. The epileptic can say in his own defense, “I couldn’t help it; I was caused by the makeup of my brain, and by my past experiences, to hit that person.” But according to the hard determinist,⁶ that precise explanation is open to each and every one of us,

⁵ We are here, in the words of our referee, “assuming that if an action is ultimately determined by some factor prior to the agent’s choice, then it is determined by that factor *rather than* the agent’s choice. But most hard determinists respond that the action is determined via a causal chain that runs *through* the agent’s choice rather than bypassing it.” In our view, if a philosopher takes this position, he favors free will, not determinism, for this is precisely our thesis.

⁶ This is true at least for the one who supports a retributive theory of punishment as we do, not one based on deterrence. In the view of Rothbard (1998, p. 88, n. 6): “It should be evident that our theory of proportional punishment – that people may be punished by losing their rights to the extent that they have invaded the rights of others – is frankly a *retributive* theory of

without exception. We are *all* caused, compelled, determined, in *all* of our actions.⁷

The assumptions of causation and physicalism

A core precept of hard determinism is that all existence is subject to the law of causation. Every effect is subject to a cause, so says the law; but is everything an effect? There must be a first cause, uncaused itself. It can't be turtles all the way down; can it?

Modern science has yielded the discovery of the Big Bang, with evidence showing the likelihood of nothing physical occurring or existing prior to it. If there was such a thing as a first uncaused cause from which all other effects flow, there must have been a condition in which an uncaused cause was possible in the first place. Yet the hard determinist insists that all things are subject to cause and effect, despite clear evidence that an uncaused cause is possible. As Aristotle (trans. 1981) noted long before we knew anything close to modern astrophysics, there has to be an unmoved mover (or uncaused cause). The reason for the cause's existence lies within itself, being a necessary thing. The law of causation partnered with the irrationality of infinite regression points unmistakably towards it. Hard determinism cannot be true if there exists the possibility of uncaused causes.⁸ Why not, then, the uncaused cause of volition?⁹

Also consider the laws of logic, the laws of science, and the laws of mathematics. Is their existence contingent on humans knowing them? Are they material? No, of course not, on both counts! They existed and had an effect pre-mankind. For hard determinism to be absolutely true, all existence

punishment, a 'tooth (or two teeth) for a tooth' theory. Retribution is in bad repute among philosophers, who generally dismiss the concept quickly as 'primitive' or 'barbaric' and then race on to a discussion of the two other major theories of punishment: deterrence and rehabilitation. But simply to dismiss a concept as 'barbaric' can hardly suffice; after all, it is possible that in this case, the 'barbarians' hit on a concept that was superior to the more modern creeds." For more in this vein see Block, 2009A, 2009B.

⁷ If no one can properly be blamed for criminal behavior in this philosophy, then it is equally true that no one can be properly praised either. For in both cases, regarding each and every of our "good" actions and our "bad" ones too, no credit or blame can be assigned to us, since we could not have possibly done anything other than what we actually did.

⁸ We now shift our target from *hard* determinism to determinism as such

⁹ We may well be guilty at this point of maintaining that "X causes Y" is equivalent to "X causally *necessitates* Y." We acknowledge that there is a counterexample available. In the words of our referee, there is the "example of causing someone's death by planting an indeterministic bomb with a high (but less than 100%) probability of going off." We here abstract from that possibility.

must reside within the material.¹⁰ Yet here we have three examples of abstract, immaterial, powers; their existence is known by their effects.

III. The Harm of Hard Determinism

Praxeology and methodological naturalism

While not all libertarian economists endorse Austrian economic theory, it is safe to assert that virtually all Austrian economists do endorse this political philosophy.¹¹ In 1933, Ludwig von Mises proposed a more proper methodology for the study of human action: praxeology. Mises rejected the use of methodological naturalism (i.e. the scientific method of the physical sciences) prevalent in economics and the social sciences. Hard determinism makes this rejection a difficult, if not impossible, sell. If hard determinism were true, and humans were mere automata chained to material cause and effect, then a stronger case could be made that the best corresponding method would indeed be methodological naturalism.

The scientific community's ability to predict human conduct will naturally increase, possibly to a point comparable to the physical sciences. We would, with little reason for doubt, come to know the behavior congruent with happiness and flourishing. With such powerful knowledge, why would the authorities allow for any behavior other than those that accurately lead to human flourishing? Freedom of choice would no longer be a virtue, since living outside of those highly predictive modes of action would be seen as damaging to self and others. Can humanity be shaped like clay using the methods of the physical sciences? Perhaps it can, if the precepts of hard determinism are true. In history, we have seen the work of governments that have tried. What a frightening concept.¹²

Moreover, if determinism were true in economics, one would think the methodology of the physical sciences would be more fruitful and precise than

¹⁰ We agree with our referee that "Determinism (whether hard or soft) and materialism (whether eliminative, reductive, or nonreductive) are *two distinct theses*. Neither implies the other." However, hopefully we may be forgiven for thinking that these two are not totally unrelated, either. It is our contention that the determinist, of whatever variety or sub-category, relies on materialism, at least if we abstract from a deity pushing us around, as we do in this paper. See on this fn. 2.

¹¹ There are of course exceptions. Austrian economics started with Menger (1871). During the Nazi period, there were supporters of his in both Germany and Austria who also endorsed National Socialism.

¹² This is a problem only in principle at least at the present epoch. However, totalitarian governments (are there any other kind?) could one day in the far future engage in pre-emptive punishment for crimes not yet committed. Could they do so accurately. Maybe, but only in the far future. But, to the extent that the virus of determinism takes hold, they would be more likely to try even at present.

they've shown themselves to be.¹³ Central planning would also be preferable if humanity consisted of determined automata. Yet this hasn't been demonstrated; in fact, it's been quite the opposite. Social scientists need more leeway in p-values to support "significance" in their studies and central planners are always wrong.

Irrationality

Where do the laws of logic and mathematics lie? Physically speaking, where are they? Where do they exist in a philosophy which sees only matter, not mind? For the non-hard determinist, the answer is clear. They are concepts which have no physical manifestation whatsoever. But this is a serious challenge for the hard determinist, since his viewpoint acknowledges only the physical, only the empirical, which can fall into the cause and effect nexus. One possibility is that these ineffable concepts do not exist at all, since they do not take place in the purely physical world. But this would open up supporters to irrationality, for it is hardly rational to deny the existence of logic and mathematics. Another option is to claim that they exist only in man's brain. There are difficulties here, too. For, even when science becomes far more developed than at present, it is extremely doubtful that anyone can delve into the brain and find $2+2=4$ or the Pythagorean Theorem just sitting there. Another problem with this response is that, contrary to fact conditional coming up, suppose all mankind were to perish at one fell swoop. Would this mean that $2+2=4$ and the Pythagorean Theorem would then become invalid? Hardly.

The hard determinist must dismiss the existence of abstract, immaterial laws. He must also reject other such abstract concepts at the core of libertarianism. Where does the concept of private property lie? Is there a physical characteristic of a thing that determines whether it was privately owned and not just a thing? No. What is the geographical location of the non-aggression principle? The only qualitative difference between something privately owned and an object not privately owned is the abstract, immaterial concept of ownership. How about the right not to be murdered? Again, hard determinism not only has no say but logically *cannot* weigh in on this issue. What is a right but yet another abstract object? Does it physically exist? Can it be touched? No. The hard determinist, bound to the material, must deny their existence. Of course, to disregard the existence of the right to self-defense and the concept of private ownership is to deny libertarianism itself. If those two things are not absolutely true, then these libertarian rights are

¹³ For an Austrian critique of applying the methods of the empirical sciences to economics, see Gordon, 1996, 2011; Hoppe, 1991, 1992, 1995; Long, Undated; Mises, 1978; Richards, 2009; Rothbard, 1992

simply a subjective preference. Preferences are hardly grounds on which a political philosophy is firmly founded.

Amorality

Earlier in this article, we defined libertarianism as the position that no one may initiate force on others' property or person. This is a statement of morality, with libertarianism hinging on its truth. Hard determinism leaves no room for morality, since, in its philosophy there is no such thing as genuine human volition. The sensations of choice, reason, and the will are determined by¹⁴ the chemical reactions between the corpus of molecules commonly referred to as "the self" and the environment where that corpus exists. There is no room for morality where, much like the assaultive epileptic, there is no room for choice. Without the possibility of moral principles, the non-aggression axiom has, as its basis, thin air.

IV. Two Objections

A. Sapolsky

It ill behooves us to write a polemic against hard determinism without considering an objection to its prime alternative: free will. Nor do we wish to attack a weak straw man argument. Therefore, we fasten onto Sapolsky (2017, pp. 587-589) who writes what we consider to be a substantive, spirited and important attack on our thesis:

Here's how I've always pictured mitigated¹⁵ free will:
There's the brain – neurons, synapses, neurotransmitters, receptors, brain-specific transcription factors, epigenetic effects, gene transpositions during neurogenesis. Aspects of brain function can be influenced by someone's prenatal environment, genes and hormones, whether their parents were authoritative or their culture egalitarian, whether they witness violence in childhood, when they had breakfast. It is the whole shebang
And then, separate from that, in a concrete bunker tucked away in the brain, sits a little man ... a homunculus at a

¹⁴ Not only "determined by." Also, consist of nothing but. That is, there is no such thing as the sensations of choice, reason, and the will. Strictly speaking, there are *only* "chemical reactions."

¹⁵ By this that author (p. 586) means "compatibilism ... that we have something resembling a spirit, a soul, an essence that embodies our free will, from which emanates behavioral intent; and that this spirit coexists with biology that can sometimes constrain it. ... It's encapsulated in the idea that a well-intentioned spirit, while willing, can be thwarted by flesh that is sufficiently weak."

control panel. The homunculus is made of a mixture of nanochips, old vacuum tubes, crinkly ancient parchment, stalactites of your mother's admonishing voice, streaks of brimstone, rivets made out of gumption. In other words, not squishy biological brain yuck.

And the homunculus sits there controlling behavior. There are some things outside its purview – seizures blow the homunculus's fuses, requiring it to reboot the system and check for damaged files. Same with alcohol, Alzheimer's disease, a severed spinal cord, hypoglycemic shock.

There are domains where the homunculus and that brain biology stuff have worked out a *détente* – for example, biology is usually automatically regulating your respiration, unless you must take a deep breath before singing an aria, in which case the homunculus briefly overrides the automatic pilot.

But other than that, the homunculus makes decisions. Sure, it takes careful note of all the inputs and information from the brain, checks your hormone levels, skims the neurobiology journals, takes it all under advisement, and then, after reflecting and deliberating, decides what you do. A homunculus in your brain, but not of it, operating independently of the material rules of the universe that constitute modern science.

That's what mitigated free will is about. I see incredibly smart people recoil from this and attempt to argue against the extremity of this picture rather than accept its basic validity: "You're setting up a straw homunculus, suggesting that I think that other than the likes of seizure or brain injuries, we are making all our decisions freely. No, no, my free will is much softer and lurks around the edges of biology, like when I freely decide which socks to wear." But the frequency or significance with which free will exerts itself doesn't matter. Even if 99.99 percent of your actions are biologically determined (in the broadest sense ...), and it is only once a decade that you claim to have chosen out of "free will" to floss your teeth from left to right instead of the reverse, you've tacitly invoked a homunculus operating outside the rules of science.

This is how most people accommodate the supposed coexistence of free will and biological influences on behavior. For them, nearly all discussions come down to

figuring what our putative homunculus should and shouldn't be expected to be capable of.

Sapolsky (2017) then goes on to consider a series of cases, concepts, including the M'Naghten rule, the *Roper v. Simmons* decision of 2005, *Graham v. Florida* of 2010, *Miller v. Alabama* of 2012, and several brain damage cases. The burden of all of this exegesis it along the following lines. Once upon a time, we persecuted, and, also, legally prosecuted, witches, the elderly, epileptics, youngsters, schizophrenics, the mentally handicapped, etc. But, as science advanced, we learned more and more that these people were really not responsible for their actions. In the future, we can rely on such continued progress, until we realize that *no one* is really fully responsible for *any* of his actions. All behavior fits into this cause and effect nexus. Therefore no one should be held guilty, or praiseworthy, for anything.

Before engaging more deeply in our refutation of this highly problematic screed, let us acknowledge the beauty of the writing of this man, his wonderful sense of humor, his erudition. None of this, however, will save him from our critique.

Yes, it sounds somewhat silly to say that the "homunculus makes decisions." But this emanates, purely, from that awkward way of putting the manner. If we said that "we make decisions" or "I make decisions" or "you make decisions" or "he makes decisions" it sounds quite a bit more reasonable. But two can play this silly game. Let us try these on for size: "the brain makes decisions," "neurons make decisions," "synapses make decisions," "neurotransmitters make decisions," "receptors make decisions," "brain-specific transcription factors make decisions," "epigenetic effects make decisions," "gene transpositions during neurogenesis make decisions."¹⁶ These phrases roll off the tongue as inelegantly as this author's "the homunculus makes decisions."

That crack about the straw homunculus is of course, precious. But how does Sapolsky explain the fact that we all think, even he, that we can "decide which socks to wear" and that we do this pretty much every day? Alright, most people floss automatically, without thinking about it, cutting out the middleman of the homunculus. But, once we focus on this, does anyone doubt that we can indeed determine its order, without any by-your-leave of our heredity and past environment? Does Sapolsky really think that one day "science" will override our decisions in these regards? Well, maybe he does. But, does he offer a scintilla of evidence for any such contention? He does not.

¹⁶ Whatever this last one means.

B. Frankfurt

According to Danaher (2011):

Black wants Jones to perform a certain action A. Suppose Black is an amazingly [*sic*] reader of body language cues such that he can tell, in advance, what Jones has decided to do. If Jones decides to perform A, then Black will do nothing; If Jones does not decide to perform A, then Black will intervene and force him to do A. Now imagine that, as it happens, Jones decides to perform A and Black never has to intervene.

Question: Is Jones responsible for A?

In our view, it all depends if Jones is responsible. If he does it on his own, he is clearly responsible. If Jones will not do the act, and Black intervenes and compels Jones to engage in it, it is equally clear that Black, not Jones, is responsible.

Pruss (2008) puts the matter in slightly different terms:

Frankfurt counterexamples to the Principle of Alternate Possibilities (PAP) have worried libertarians. However, they should have also worried compatibilists. Traditionally, compatibilists have accepted PAP, but given it a counterfactual spin Suppose Jones freely chooses to push button *A*. On the standard Humean analysis, this implies that were Jones to have chosen not to push *A*, he would not have pushed *A*. But a fairly crude Frankfurt case will provide a counterexample to this. Imagine Black stands by with his neuroscope and has a firm plan that if he sees Jones choosing not to push *A*, he will make Jones push *A*. Then it is true that were Jones to have chosen not to push *A*, he would still have pushed *A*.

But we the present authors reject this analysis for similar reasons: It is simply not the case that if “... it is true that were Jones to have chosen not to push *A*, he would still have pushed *A*.” Au contraire, if Jones chose not to push the button, the super duper Black would have done so, utilizing the body of Jones. Black, say could have pushed the button with his nose, with his chin, with his hands or feet. Instead, he used a different “appendage” of his: Jones!¹⁷

¹⁷ There is a gigantic philosophical literature on this issue, stemming from the work of Frankfurt. For a small part of it, see the following: Alvarez, 2009; Bennett, 1984; Blumenfeld,

V. Conclusion

If you are determined to promote libertarianism despite endorsing a hard determinist's philosophy, we will not stop you. However, we will point out that your adherence to libertarianism is on the precipice; you are in danger of becoming quite the totalitarian. How so? When one agrees that a human being is nothing more than a moist robot, subject completely to nature's laws, one loses the logical footing for freedom. Morality, genuine choice, and the value of freedom are illusory to hard determinists. Choose (if you can) a worldview that allows for human volition; your politics and philosophy can only be reconciled in this way.

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Liberty vs. Welfare Rights – Continued

Jan Narveson

There has been a long-running discussion between me and Jim Sterba on the subject of liberty and equality, and more narrowly, liberty versus welfare rights. I have taken what I suppose is the more “natural” view that the two pairs are opposites, but Jim argues that it’s not so, and indeed that if we uphold a general format of liberty, then we will find ourselves perforce driven to welfare rights after all. In the present development of our discussion, I begin by restating my earlier case, which is at, as we may call it, the fundamental theoretical level.

To this end, Jim especially presses one basic argument. He accepts, generally speaking, the analysis of (social) liberty as the absence of interpersonal (imposed) harm. That is to say: our liberty consists in others’ not intervening to prevent us doing as we like, or coercing us into doing what we don’t like. Where someone is guilty of a violation of that, then we may use force in defense, but not otherwise. This, I argue, leaves the poor who insist on succor in the position of having to *ask*, rather than to having the right to *take*, from those who might be able to afford to assist them.

But in his favored confrontation between wealthy and poverty-stricken, where what is in question is the former’s status, his argument is that “harm cuts both ways,” as he puts it, and therefore we must decide between the two on the basis of which is the greater harm – what the poor do by taking from the rich, or what the rich do by denying, perhaps forcibly, access of the poor to their largess? Does the wealthy person have the right to defend himself against the attacks of the poor on what he claims is his property? Or must he stand aside and let the poor despoil him, and to do so just because they are poor? Jim claims the latter. I insist that if there is a basis for that, it evidently isn’t Libertarianism; and our question, let us remember, is whether, as Jim claims, Libertarianism upholds the welfare state.

I argue, contrary to Jim, that in his confrontation, it is the “rich” who are in the right. That is because I see the status of property to be properly awarded to *innocent possession*. And innocent possession is utilization of items, natural or artificial as may be, in situations in which prior use by others either hasn’t happened at all, or is such as to create no claims by the prior user,

normally because they are acquired by voluntary purchase or other voluntary transfer. Here we will ignore the second case and consider only the first, which of course is basic: we take the cases of voluntary transfer – which are the source of virtually all actual wealth, of course – to be nonproblematic. In the specified circumstances of “original acquisition,” then, I hold that no one, whether antecedently “rich” or “poor” or sick or needy or whatever, has any right to lay hands on those possessions without the consent (explicit or understood) of those possessors. That is because to do so is to interfere with the activities of those who brought about the circumstances in which that possession takes place, and thus to violate their liberty – to which, as he agrees, they have a right.

We can take the two Lockean standards: getting there first, and settling into open-ended future use, as our guide, tabling the numerous problems that would be involved in working out in detail the common-law principles of ownership in tricky or obscure cases. Why these two? They are not axiomatic or dogmatic, but explicable. Firstness has the crucial feature that others, who come later, would be *interfering* with the activities of the first comers – which, just because they were literally “first,” must have been harmless to others, there having been at the time no “others” around to do harm to. (It is precisely because of the obviousness of that point, I suggest, that defenders of Jim’s position, like Jim himself, insist on bringing in “harm to future generations” – which would make the lack of others around at the time basically irrelevant.)

Open-ended future use, however, is also essential. If Jones simply throws out his ottoman on the street, he can’t complain if someone comes along and takes possession. And what if he neglects his property? This creates a presumption that he *doesn’t care*, in which case squatters have a case. Again, we assume that in the Sterba arguments, neither applies. I often point out, and will reiterate where relevant, that few real cases of the kind of conflict he finds so basic will arise in practice – in wealthy countries – because most of us will gladly help out the starving if occasion arises. Most of us care about each other enough to take care of real needs voluntarily. (Let us, though only for the sake of argument, grant the supposition – though actually quite contestable – that somehow government “guarantees” of provision would in fact result in *provision* whereas leaving it to charity would make provision “uncertain.” That supposition would provide edge to this discussion, because it would leave the would-be libertarian in the position of having to defend the rich in the face of actual starvation against the socialist hordes who, whatever their other faults, would presumably keep the very poor away from death’s door. Would those of us – like myself – who defend the “rich” in such suppositious cases, stick to our last in the face of actual starvation? We live in a world in which, we are told, there still is a certain amount of starvation – though none of it, so far as I know, occurs in the rich countries of northern

North America; and welfare states in those rich countries do nothing to prevent that, thus suggesting that the certainty on the part of the socialists that socialism would prevent starvation should be pretty shaky. If they can reply that those governments *ought* to be doing something about it, our reply is that private agencies, such as Oxfam, actually *are* doing something about it – whenever the governments of the unfortunate areas in which the starvation is occurring will *let* them!)

So, back to theory. According to libertarianism, our sole right is to act as we will, without interference, so long as our action is not such as to invade and despoil any further persons – unless, of course, those persons are already non-innocent, such as to justify some kind of exacted compensation or punishment. So what this all depends on is whether, in defending themselves against invasions by the needy, better-off persons would *thereby* be violating the rights of those needy. It seems to me a stretch to argue, as Jim does, that they would. After all, it is surely quite clear that Jim’s poor *do* thus invade and despoil, and extremely *unclear* that his rich do.

Roderick Long has pointed out that in contemporary circumstances, it may be that owing to government intervention, at least many of the rich are in fact benefiting from what amounts to the state despoliation of the poor. That is plausible, and of course shifts the empirical argument greatly. But it is not Jim’s case – Long’s is a very different conceptual complaint than the one Jim is making. Jim’s case is, essentially, *a priori*: it is the sheer fact that A *could* provide B with the necessities of life (assuming we can appropriately define those), and that B does need them (same caveat) that entails the right of B to take what he needs from A – *not* further facts about contemporary societies, mismanaged government programs or laws, and so on. All these latter are extremely important, of course, and in contemporary political circumstances make the application of basic principles extremely difficult. But Jim is talking about those basic principles, as am I. And it is at that level that I don’t see that he makes his case.

Jim insists that we have in such cases a “pure conflict of liberties,” and thus that we need to choose between them on a nonlibertarian basis such as supposed utility maximization or sympathy for the poor or whatever. I deny that, too. Prior settlement plus open-ended pattern of further use, as explained above, settles the matter so far as liberty-regardingness is concerned. The poor, in short, are not morally at liberty to help themselves to the “excess” resources of the better off.

Ought and Can

Jim appeals heavily to an “ought implies can” principle, the idea being that the very poor “cannot” refrain from attempting to avail themselves of others’ properties if they are to survive, and thus that it cannot be credible to insist that they *ought* so to refrain. But I argue that it is a misuse of the “ought

implies can” principle to argue as Jim does. If we are to appeal to that principle, it has to be in the abstract way that moral philosophers have always recognized: if somebody ought to do x, it of course is required that he be *able* to do x – that x is an action (or inaction) it is possible for him to voluntarily choose. And there is no question that it is *possible* for people, however poor, to refrain from theft.

It is, to be sure, *unsurprising* that some people do resort to theft in those circumstances. (Sample remark, from a recent article¹ about terrorism in Europe: “With an unemployment rate as high as 30 percent, it should not be surprising that the vast majority of Belgian recruits to the Islamic State are small-time criminals.”) But is the theft in question then *not even wrong*, as Jim apparently thinks, and as St. Thomas seems to have held? On this, the libertarian will have to be hard-hearted: Yes, it’s wrong. Perhaps it is personally excusable, in many cases anyway. Should we, the rest of us, try to do something about it? Sure: but that’s out of the goodness of our hearts, and not a requirement of justice. The bishop declares that he *gave* the candlesticks to Jean Valjean. That’s his business, and we can and should – in some cases, including that one – commend him for his humanity. (There are also more self-interested motives, to be discussed further below. A good way of warding off the danger of attacks by the very poor – as Thomas Hobbes argues – may be to buy them off. But possibly not, in other cases.) However (contra Hobbes, in my view) what we should do about that is to give of our own wealth, and to appeal to likeminded others – not to dip into the resources of those others against their wishes, as the welfare state does. (Of course, the state does not *ask* – it simply *takes*. Now it is always logically possible that 100% of those thus taken from do not in fact mind, if it’s used for good purposes. Does that, on the libertarian view, figure as a justification for taxation? It might, in a way. If all agree, and roughly agree to the right set of amounts, then the state’s actions might be viewed as purely administrative, just as the agents of a charitable organization would be. But all this is not really relevant to our subject, for what Jim is claiming is that the poor have the *right* to our resources, which of course *would* justify taking them against our wills.)

First-Comers and the Rights of Others

Jim has another argument, however, or rather, another aspect of his main one: does not the first-comer *deny the right* of others to the use of the occupied territory? And the answer, certainly, is that he does – of course! That’s what property *is* – the right to exclude. But does he thereby deny their libertarian

¹ Valentina Pop, “Islamic State Terror Cell Found Refuge in Brussels District, *Wall Street Journal*, 22 March 2016: <https://www.wsj.com/articles/islamic-state-terror-cell-found-refuge-in-brussels-district-1458694455>

rights? No. On the contrary: he exemplifies and affirms them. Those are rights to appropriate *what there is to appropriate* – *not* rights to appropriate what has *already been* appropriated by somebody else. If you think people have a right of the latter kind, then you deny property rights at the root. And you thereby deny human freedom – and undermine the basis of human progress, which depends on society’s becoming a positive-sum game, rather than one in which gainers can only gain at the expense of losers.

There is a tendency to talk nonsense on this matter. With respect to any particular item, one and only one person can wholly possess it. In some cases, it is possible for two or more to engage in joint ownership, sure – by agreement among them. But unless the joint possessors are literally *everybody*, the point stands that ownership is exclusive: others, those not amongst the set of joint owners or individual owners, are thereby enjoined to refrain from attempting to take possession themselves. It is *logically* impossible for all to wholly own any given consumable thing. The peach goes down a given throat, and that’s that. The soil is turned over by a given person, to raise a particular crop, and if others turn it again for other crops, the first person’s actions are thwarted. Etc. A major social rationale for recognizing the right of private property follows: if we don’t effectively have such rights, it is basically impossible for anything to be accomplished. “Second-comers” who try to take possession of what has already been taken are not just persons who happen to “come second”: they are invaders and despoilers of those who are already there and who have produced what the second-comers propose to take, thus reducing the society’s available product. In the most serious cases, they reduce it to zero and cause universal misery.

Jim draws up a scenario in which my enterprising ancestors “fence off the entire state of Kansas.” Sterba’s ancestors arrive later, with nothing but the shirts on their backs. They then “occupy a relatively small piece of the land that the Narveson clan had initially appropriated,” and turn it to good use, growing wheat and maintaining themselves. What next?

But given Jim’s description, a question now arises, whether the newcomers aren’t actually first possessors, first users, of previously *unowned* resources. If my ancestors do nothing, Sterba says that his ancestors in that case have done mine no harm. And that may be so: whether it is depends, for one thing, on the nature of my ancestors’ claims: are they just verbal, or was there substance to them? (You don’t acquire vast acreages by just *saying* they’re yours. In a state of nature, use is everything.) If the latter, then *prima facie* the newcomers *would* have done mine some harm – but also, given Jim’s description, it appears that my ancestors do not in fact mind just giving them the land. And if not, there’s no problem. So I don’t see how much argumentative weight is gained from that hypothetical example.

The more interesting question is, what if they *have* done more than just declare, and what if they *do* mind and then proceed to try to drive the

squatters off? Now Sterba says, “Under this second and more likely possibility, harm would cut both ways: either the rich Narvesons would be harming the poor Sterbas or the poor Sterbas would be harming the rich Narvesons.” But there’s the mistake again: is Jim denying that the land *belonged* by virtue of their prior occupation, to my ancestors? If not, how can he claim that his ancestors’ actions are *innocent* – since it seems pretty clear that they are not? Jim wants to classify it as a case of “conflicting harms” which is, in one clear sense, perfectly true, to be sure. But since the harms his ancestors inflict on mine go contrary to the liberties of my ancestors, whereas the ones the latter inflict on his do not – being instead cases of self-defense, there would seem to be no in-principle issue here. Not, that is, if we are sticking to the libertarian premises that frame this discussion.

Here we have to distinguish two aspects of the developing scenario:

(a) Suppose that in the process of ejection, some of the Sterbas resist, and are roughly used by my ancestors? Of course that harms them, so far as it goes: it makes them worse off than the situation in which they get up and move elsewhere. (We will not take up the Socratic view that the only “true harm” is harm done to the moral souls of the subjects. Physical damage will do just fine, so far as we are concerned.) However, the question is whether the “harm” in question is of the type prohibited by the liberty principle. Or is it instead the type that is *sanctioned* by that principle, namely, whatever harms might need to be inflicted in the defense of people’s rights? Violation of rights always opens the door to some extent to defensive actions that would otherwise be wrongful invasions: when we jail thieves, we of course harm them, but we are entitled to do so because of what they have done, namely violated *our* antecedent rights.

(b) But suppose that upon our doing so, they complain, Sterba-like, that I have now harmed them by “depriving them of an opportunity.” It is true that the Narvesons have deprived them of it, but it is not true that they are *thereby* harmed. For what they are “deprived” of is not an opportunity they *actually have*, since my people did get there first (ex hypothesi), and so the Sterbas were in fact invaders. They “have” that opportunity, then, only in the usual sense that robbers and murderers have opportunities to deprive their victims of their properties or lives. Is that the kind of opportunity Jim wants to argue we should all have the right to take advantage of?

Of course, there is the question of just what constitutes occupancy and use. Certainly building a fence, in and of itself, does not necessarily settle the matter. Newcomers setting out in the, as they supposed, Kansas wilderness and coming upon a fence may be astonished, but they will only be (morally) impressed if there is a lot more to it than that. The sheer existence of a fence-like construction doesn’t settle the matter. But if my ancestors come and install the fences as part of schemes to actually use the newly fenced-in land, so that they fence with meaning and purpose, then that creates a very strong

prima facie claim of those whose lands are thus enclosed to be recognized as the owners, and, therefore, entitled to exclude the newcomers.

Jim then considers a new scenario, in which the already wealthy cattle ranchers in Colorado and Nebraska encroach on my ancestors' property, with a view to an even greater increase in their incomes. And perhaps they get away with it. But Jim agrees that this would be wrong – only *his* reason for agreeing is that the Coloradans didn't *need* this extra profit, any more than the Narveson ancestors did. And thus the ought-implies-can principle, he wants to say, doesn't allow the Coloradans to encroach. I have already rejected his first application of that principle, and while this second application doesn't have the force he attributes to the first one, I again insist that the obvious solution is simply to say that the Coloradans are guilty of theft whereas my ancestors (in this scenario) are not, and consequently they act with right in attempting to ward off the Coloradans – any decent legal system would uphold their right, and any decent government would act to protect them.

Jim presumably does not – surely – want to award ownership rights to whoever wins a war between claimants. What a moral/legal system is *about* is precisely to avoid that – to provide a better way of resolving or forestalling human conflicts than war. Whether you *succeed* in doing X is therefore irrelevant to whether it is *right* to do or to try to do X. Neither the already-wealthy cattle ranchers nor the previously somehow impoverished wannabe Kansans are acting rightly in his envisaged scenario, and that seems wholly obvious, does it not? What remains is that the Narveson ancestors acted rightly throughout, while both sets of invaders do in fact invade, depriving the Narvesons of their liberty, which is to do whatever they innocently can, including occupying tracts of land as large as they are able effectively to occupy, with the resulting implication that others must now keep off until invited.

We should, therefore, simply deny that, in his words, “there is a clear difference between supporting the liberty of the poor against the liberty of the rich and supporting the liberty of the rich against the liberty of the poor.” Well – there is, as Bishop Butler would put it, as much difference between them as there is! But there is no difference vis-a-vis the *rights* of those concerned: the first-come Kansans are in the right, and the others in the wrong. We are not in the business of cataloguing differences, but in assessing their relevance to matters of justice. And there, the situation is remarkably clear and simple, if libertarianism is our guide. So far as I can see, it isn't Jim's guide – but he's claiming it is, and I don't see that he has made out his claim.

On the Real World: Universalism and Resources

I have advanced, against most versions of welfarism, that its proponents seek to justify welfare systems that exclude most of the earth's people, namely all those who are not citizens (or legally recognized occupants, anyway) of the state in question. Such welfare-staters – the normal kind – have a hard time

declaring welfare to be a universal right. But Jim is not guilty of that: he declares that his own attitude toward welfarism is that we all do actually owe *everybody in the world, and in the future too*, whatever it takes to “meet their basic needs” insofar as we are able. Most defenders of welfare states would not go along with that – they like their bourgeois pleasures too much, as apparently Jim does not. Fine: to each his own. But the claim that we all *owe* this to everybody, including all future people, whatever their parents may or may not have done to try to secure a decent existence for their children, is outlandish – an enormous and unjustified invasion of their lives.

Many have explained elsewhere² why resource limitation arguments are all completely wrong as they are so airily applied to these matters by philosophers, and we presumably don’t have time to go into that again here, at any length. Suffice to say that it is a total misunderstanding of “resources” to suppose that humans are necessarily dependent on the existence of almost any specific material things for their survival. People create the goods they need, and as they get more ingenious, we have more and better goods, for more and more of us. We do make gold from the baser metals; or rather, we make more important things from all sorts of less important things (my favorite example being computer chips made from silicon). Insisting that we must steal from the supposedly wealthy in order to feed the inevitable poor is simple-minded Malthusianism. Realizing that wealth comes, overwhelmingly, from human activity and not from nature, carries with it also the implication that proper recognition for contribution to that wealth is a fundamental requirement for progress. It’s not that “we” need to “reward” the creators. It’s that we need to *allow* them to create, and thus to be the agents of their creations, and then to recognize them as having the right to use and, as may be, exchange those creations. That way lies progress.

The preceding is not empirical speculation, but commonsense analysis. Humans use various things in the course of their lives. In order to use them they need to have some idea *what you can do* with things of various kinds – technology – and there is no limit to the possible ideas we can have about those things, nor, in consequence, of the possible kinds of things we can have those ideas about. All these ideas are human-made. Nature “provides” materials, but what we use are materials that have been either made suitable for use, or found to be suitable for uses we have; and how we use them is to make new things that are in one or another way better.

Perhaps it is necessary also to mention here, at the inevitable risk of not going into the matter as deeply as required – no doubt a book-length project at least – that Jim’s cavalier talk of supposed harms to future persons is insufficiently considered. Future persons, to begin with, are there because *we*,

² Recommended: Matt Ridley, *The Rational Optimist : How Prosperity Evolves* (NY: Harper Collins, 2010).

present people, *put* them there. They don't come from thin air. Responsible parents care for their children, and their children's children, just as responsible people in general do not poison the wells of their neighbors. If irresponsible people produce more children than they or anyone can handle, it's their *fault* – it's *not* a matter of imposing further duties on the rest of us with each new ill-advised birth.

And in addition, the progress of technology is unforeseeable. We simply don't know what the future holds, because how the future is depends on what people think up in the way of methods for dealing with resources. Yet these are continually increasing, of course: knowledge is cumulative – barring total barbarism – and wealth is a function of knowledge. And so, just as Malthus has been proven wrong about resources, down the line – the world contains far more and yet far better-off people now than it ever did, due entirely to human production – so claims that we are “harming future people” by what we do now are almost entirely without sense. Best, then – because it's the only sensible option – is to talk about the people we have now, and the small bit of the future that we can foresee, which is a generation or so. After that, the advance of knowledge among much else makes it impossible to talk reasonably about what we need to do *now* to prevent this or that catastrophe much later on.

It is interesting, speaking of ought-implies-can, that Jim concedes that his draconian-sounding principle would not, after all, leave us with no right to *our own* basic minimum of need-fulfillment if that meant there would *not* be enough and as good left for others. So he admits that a supposed right to the fulfillment of our basic needs is *not* necessarily in principle possible for all, always, to respect. It is, then, not universalizable, in one clear sense of that rather ambiguous expression. We can generalize: so long as the ratio of necessary goods to persons is less than 1:1, it is *logically impossible* for his principle to be fulfilled. Can its status as a fundamental right survive that? I don't think so. Our *basic* rights must be compatible.

And then, next, we must ask why should it survive in the particular form he's got? (Namely: first, enough for me – and then, as much for others as remains possible.) How about this instead: those who prudently, industriously, and ingeniously make excellent use of what there is to create lives that are far beyond the basic minimum have the right to do so even if it meant that millions of other would-be appropriators starve (or, not be born in the first place) – so long as the big appropriators do not appropriate *from* the assets created by others. We can agree that it would be too bad if such choices had to be made. And we can also see, in view of the preceding points, that such choices do *not* have to be made. But why should we have to accept Sterba's effectively communist system instead?

But then, again – once more: they do *not* have to be made. The high-end goods of the wealthy are made by people less wealthy who make their livings

by making and selling them to those well-off people; which in turn enable those not-as-wealthy to buy things from the still-less wealthy who make their livings selling *those* things to those people; and so on and so on. The idea that each thing used somehow creates a reduction in total available goods is a pure fallacy, and one long exposed by economics. Why keep trying to reinstate it?

Jim distinguishes negative welfare rights from positive ones, agreeing that he really wants to push the positive ones that cannot be justified in pure libertarian terms. But his supposedly negative ones can't either, as I have explained above. Universality requires that all *fundamental* rights are negative – indeed, there is but one – as Kant lays it down, it's recognizably our principle of liberty. The basic right is the right that others not act to make us worse off than we are in a status quo of innocence upon encountering others. This applies not only to minimum welfare but also to Andrew Carnegie-level welfare. What matters, as libertarians insist, is not how much we've got but how we got it – in particular, whether we got it by forcibly extracting it from others who got it without such extraction. In short, then, the question is only whether our acquisitive actions thereby worsen the innocently achieved situations of others.

To repeat: the point is that so long as we get what we do by freely made arrangements with voluntarily acting others, it cannot be true that we get what we do *by* worsening the lives of others. It can certainly be true that we have what we have when others *could have had more*, but it does *not* follow that we have thereby *taken* from those others.

Now, agreed, there are still the incompetent to be concerned about. Do *they* have the (positive) right against the rest of us that we feed, house, and clothe them to some minimal degree? No. *Should* we do this? Sure: simple humanity impels us to do so. But that's not the same as enforceable rights.

Why?

Why insist on the libertarian idea rather than a welfarist/egalitarian/socialist one? There is a good answer to this question – it's not just a matter of taking a stand, with any old stand being as good as any other. There are foundations of morals, and those foundations lie in the classical sources: (a) the Nature of Man, and (b) our environment. Neither of them works as Jim seems to think.

Starting with the first, the Nature of Man. We need here to use common sense observation. If this can be supplemented with science, fine. But morality begins, as it were, at home – or, as we might say, in our gardens. Morality consists of socially reinforced norms, principles intended to direct the behavior of all. They can *direct* our behavior only if they appeal to our practical reasons. And since there are a lot of us, and we are different, we need to find out both what we have in common and how we can accommodate the differences. We “need” to do this, that is, *if we are interested*

in avoiding conflict. And why would we be thus interested? The brief answer is that we have so much (*viz.*, everything) to lose from it. Our fellows are about as tough as we, and certainly as interested as we in getting on. If all of us stand ready to try to get our way regardless, conflict is expected, and it can be expected to be perilous and costly. And if for some it seems not so, then the others whom they seek to prey upon have an interest in increasing the cost and the peril.

But people are not just fighting machines. They're not that stupid! They can see also the potential of cooperation, and cooperation requires lack of conflict. All of this makes for a general human situation of Prisoners' Dilemma: we can get (local) advantages at the expense of others, or they of us; but if we all try, we all come out worse off than if we had remained at peace. Peace requires agreement; it requires a bit of trust. But it can be hugely promoted by social devices, among which moral norms, inculcated in all, are arguably the most important of all.

So strong and so important are those devices that if they are misused – as they often are – we can expect dismal results. What, then, is the *rational* morality, the morality in which we *all* have an interest, given the general nature of man (and one important point about the environment, which we'll discuss next)? The answer is clear. We all want the best from our fellows, as they from us. But those “bests” differ enormously, and meanwhile, we want to avoid the worst, and even the merely bad if possible. The obvious conclusion is to adopt as a principle Respect for our Fellows, in the sense of refraining from inflicting losses on them as a means of making gains for ourselves. That is to say, we are to declare peace on them, provided (and expecting that) they reciprocate. Peace is the supreme Public Good: we can *only* get it from others, and they from us, and it is possible *only* by agreement – by agreeing, in particular, to refrain from inflicting evils on others provided they similarly refrain in relation to us.

As soon as we go for more – insisting, say, on minimum welfare from others, exacted by force if need be – we have lost the advantages of universal peace. And we can then expect to do much less well, both collectively and, by and large, individually. (“By and large” is an important qualification. Keeping an eye out for those who seek loopholes, to gain at our expense, becomes an important preoccupation as society goes on.) A welfare state is bound to be non-universal. Some will live at the expense of others, who would prefer not to play the roles imposed on them.

Advocates of “more” make many mistakes, among them being an imputation of omnipotence and omniscience to social “leaders” – none of whom, ever, remotely qualify in those respects. Yet more than the minimum is not only available, but actually certain. It is the part of wisdom to help others in need, and to arrange effective and efficient systems for providing that help when possible. These systems include insurance and philanthropy,

both of which are extremely helpful in keeping us all in reasonable health – especially the former, however, since most of us are not hopeless incompetents. The insurance motive is, of course, an interest in our secure futures, while the philanthropic motive is human fellow feeling, plus, importantly, the awareness that Things Happen and we too could become one of the needy.

Then there is the other component, our environment. About this there is a level of misunderstanding – especially among philosophers who should surely know better – that is all but beyond rectification. But we must try. We humans live on a planet happily endowed with a large supply of free air and a very good supply of basically free water, among various other things. Nature supplied our remote ancestors with a modest sufficiency of food – for some, anyway – and the rest starved. But ere long, people began finding ways to increase supply, and those ways have increased by leaps and bounds, especially in the past couple of centuries. The fact that we can *increase supply* – improve on what Nature provides on its own – is crucial, and basic to civilization. We do *not* live by “extraction”: we live by improving on what can be extracted or found. We live by our brains and not, mostly, by our muscles. And thus we learn how to get much from little. For example, talk of “water shortages” is confronted with technologies enabling us to recycle it – indefinitely. Thus astronauts remain aloft for weeks with minuscule amounts of water, used and reused without end. Edible vegetation, likewise, can be improved, so that diets today, for virtually everyone, are incomparably superior to what they once were. Likewise with homes, which are no longer just places to keep the elements out, but places of beauty, of interest, of entertainment. And so on. There is no problem of running out of land (most new urban houses uses no new land – just more levels on tall buildings), or building materials.

To achieve all this what is needed is incentives, and incentives are individual: the desire of each to live well, to do better. This motivates trade and cooperative production. Today’s high standards of living for much of mankind, and much better standards for all than a few centuries ago, are due to just those things – trade and cooperation. We need to ask why we don’t have more of it, and why we still have so much of the familiar scourges of war and poverty. Unfortunately, the general answer is clear: it’s due to the desire of too many people to exert power over others instead of sticking to cooperation – mainly by seizing political power and using it to despoil others. And this is impelled, in considerable part, by a history in which political arrangements have been supposed to be valuable and necessary – with consequent wars and social misallocations of so many kinds.

It is easy to argue that we should extend the Social Agreement to include a reciprocal disposition to help each other when in need. I have indeed

subscribed to just that.³ However, to make it an *enforceable* disposition is another matter. Many will think they have more to lose than to gain from the arrangement if it is imposed. After all, we can locally arrange agreements with each other of this kind if we wish. But Sterba wants to extend it to all of mankind, including future mankind. Life, for most of us, is too short for that!

There may be reasons special to contemporary life that make the welfare state as popular as it politically is (democracies everywhere have welfare states of one level or another.) Is this, as I think, a mistake, or is it a rational reaction to real features of contemporary life? I will leave that question dangling here. If we affix enough minor premises to the Principle of Liberty, we can get remarkable results. Whether those premises are actually true is the issue. I won't pursue that farther here.

Waterloo, Ontario
July 2016; somewhat revised, July 2017

³ Jan Narveson, "We Don't Owe Them a Thing! – a Tough-Minded but Soft-Hearted View of Aid to the Faraway Needy," in *Monist*, July 2003, vol. 86.3, 419-433. Reprinted in: *Global Justice*, ed. by Christian Barry and Holly Lawford-Smith (Ashgate 2012), pp 23-36.

A Response to Narveson: Why Liberty Leads to Welfare and Beyond

James P. Sterba

For many years now, going back at least to my 1988 book, *How to Make People Just*, I have been arguing that the libertarian ideal of liberty leads to welfare and beyond. And all along, Jan Narveson has been usefully offering critiques of my argument. For example, Narveson contributed to a special journal issue on my 1988 book. In the present exchange, while my argument has remained basically the same, Narveson not only offers some new critiques but also new arguments for his own view. But before I turn to those new critiques and arguments, let me first lay out the basic elements of my own view that Narveson opposes.

My argument from liberty to welfare and beyond maintains that in idealized conflict situations between the rich and poor, it can be shown that harm and interference cut both ways, that is, if the rich successfully pursue their interests, they will be harming and interfering with the poor, and if the poor successfully pursue their interests, they will be harming and interfering with the rich. Such an outcome is fatal to Narveson's version of libertarianism because he needs it to be the case that, in idealized conflict situations, the poor harm and interfere with the rich, but the rich do not harm and interfere with the poor. With that outcome, Narveson could then go on to employ a Hobbesian social contract theory, which can be interpreted to support a do-no-harm-or-interference solution, to justify his favored version of libertarianism. So if Narveson is wrong about his claim that harm or interference does not cut both ways, his whole argument collapses because then he can no longer use a Hobbesian social contract theory to support the form of libertarianism he wants.

By contrast, I maintain that there are two normative standards, the "ought" implies "can" principle, which is explicitly moral, and the standard of non-question-beggingness, which is not explicitly moral, that can readily be used where harm and interference do cut both ways. These standards applied to conflicts between the rich and the poor, once it is recognized that harm and interference cut both ways, lead to a right to welfare and beyond. As a consequence, libertarianism, with its conflicting harms and interferences

resolved in this way, as I have put it before, falls over the brink into the waiting arms of welfare liberals and socialists.¹

So how does Narveson attempt to critique this argument in his paper?² Basically, he offers two normative rules for how conflicts between the rich and the poor are to be adjudicated. The first and most important is what he calls Innocent Possession. According to this rule, the status of property is to be properly awarded initially to those who are first to take possession and use the items at issue. A second rule is that of Open-Ended Use. By this rule, property rights are guaranteed indefinitely as long as the person who acquires them by the first rule continues to use what was initially acquired.³ Now to better understand how these two rules relate to my view, it is useful to consider the following example I used in our earlier discussion to which Narveson refers in his paper.

Imagine that Narveson's ancestors in the U.S. have just entered the territory that later became the state of Kansas. Suppose that this territory when they first encountered it was unoccupied by anyone, no other European settlers, no Indians, no other living beings except nonhuman ones, both sentient and nonsentient whose moral relevance I will abstract from here. Now further suppose that the Narveson clan are very industrious and within a few days they manage to fence off what today we call the entire state of Kansas and that in no time at all they begin to grow corn on virtually all of it. Suppose that by raising corn and selling it to cattle ranchers in Colorado and Nebraska, the Narveson clan becomes very wealthy and they use their wealth to erect Corn Palaces all over the state.

Now suppose that some of my ancestors, the Sterba clan, who are down and out through no fault of their own, happen upon the scene. Imagine that my ancestors ask the Narvesons for work, but the Narvesons turn them down, claiming that their own clan supplies all the workers they need. Next my ancestors ask for charity, but again, the Narvesons turns them down, preferring to embellish their Corn Palaces to providing for my down-and-out ancestors. Imagine that what happens next is that my ancestors occupy a relatively small piece of the land that the Narveson clan had initially appropriated. My clan thus begins to grow wheat and a variety of vegetables on this land, just what they require to meet their basic needs for a decent life.

¹ "Libertarianism on the Brink," *Analyse & Kritik* (2015): 189-201.

² "A Response to Jan Narveson: Why Libertarians Are and Are Not Like Turnips," *Analyse & Kritik* (2015): 223-232..

³ Jan Narveson, "Liberty vs. Welfare Rights – Continued," *Molinari Review* I.2 (Autumn 2019): 71-83.

³ Narveson also mentions a rule of voluntary transfer, but sets it aside as nonproblematic, and I agree given completely voluntary conditions.

What happens next is crucial. One possibility is that the Narveson clan does nothing to stop my clan. Imagine that they are no longer in any sense using that piece of the land they had initially appropriated. If this occurs, then I want to claim that my clan is not actually interfering with the Narveson clan, and so, in libertarian terms, my clan has not harmed them either. Hence, no wrong has been done. Of course, the more likely possibility is that the Narveson clan will attempt to dislodge my clan from their beloved Kansas. Now if the Narveson clan were successful at this, they would be stopping, thus successfully interfering with, my clan's attempt to appropriate the land they require to meet their basic needs for a decent life. Alternatively, if the Narveson clan were not successful, then my clan would have successfully interfered with the Narveson clan, interfered, that is, with the Narveson clan's attempt to use this piece of land to add to the surplus of corn that they are selling to further embellish their Corn Palaces.

Now how should we evaluate this second and more likely possibility? Well, according to my analysis, it is a situation where harm would cut both ways: either the rich Narvesons would be harming the poor Sterbas or the poor Sterbas would be harming the rich Narvesons. Hence we need some way to resolve the conflict and here I employ either the "ought" implies "can" principle or the principle of non-question-beggingness. These principles, I claim, would favor the liberty of the poor (the Sterba clan) over the liberty of the rich (the Narveson clan).

As expected, Narveson treats the conflict differently. Employing his Innocent Possession Rule, he determines that the Narveson clan has acquired a normative property right to all of Kansas, and employing his Open-Ended Use rule, he determines that their property right continues through their conflict with the Sterba clan. So while the conflict between the rich Narveson clan and the poor Sterba clan can still occur as I described it, on Narveson's construal, the Narveson clan comes to that conflict with continuing property rights, and Sterba clan seems to come to it with no counterbalancing rights, but only with their need for help, which, in the imagined case, the Narveson clan refuses to act upon.⁴

So if we give Narveson his two rules, it might seem that the rich Narveson clan do not harm the poor Sterba. But why even give Narveson his two rules?

Let me take a step toward accommodation and grant that we do need rules of Innocent Possession and Open-Ended Use, but then offer my own versions of those rules. First, my Innocent Possession Rule gives first appropriators the right to what they appropriate provided it is required to meet their basic needs for a decent life as well as to any other goods they can so appropriate that are not required by others to meet their basic needs for a

⁴ As will be clear from my subsequent argument, appearances are deceiving here.

decent life. Then my Open-Ended Use Rule further gives first appropriators the right to continued possession as long as what they have acquired is required for meeting their basic needs for a decent life as well as a right to the continued possession of anything else they acquired that is not needed for meeting anyone else's requirements for a decent life.

So there are my rules of Innocent Possession and Open-Ending Use. So far, I have done no more than state them, analogous to the way Narveson has stated his alternative rules. However, in earlier work to which Narveson refers, I tried to more neutrally argue for my view by appealing to the "ought" implies "can" and the principle of non-question-beggingness. In his paper, Narveson interprets the "ought" implies "can" principle as simply requiring that we be capable of doing what we ought to do. He doesn't consider the interpretation that I give the principle such that it requires that the demands of morality not make unreasonable impositions on anyone. This is a requirement that he should accept whether or not he allows that it is an interpretation of the "ought" implies "can" principle. Nor does Narveson discuss at all my use of the principle of non-question-beggingness to support my view. I will come back to these two principles later.

Let me now slightly modify my Narveson clan/Sterba clan example. Suppose the Sterba clan, after having made their requests to the Narveson clan for work and charity and having been turned down, are not able to appropriate any of the land the Narveson clan had been cultivating for a surplus to support luxury consumption. Suppose that the Narveson clan have, in fact, built an impregnable glass wall around their beloved Kansas, calling it for some inexplicable reason the Wall of Trump. Imagine that the Sterba clan on the other side of that wall have nowhere else to go. Imagine that they crossed over a scorching desert to get to Kansas, hearing that it was an agriculturally rich place and resting their hopes on the possibility of appropriating land there for themselves or working for anyone who happened to be there. What they had now met up with is the Narveson clan and their impregnable Wall of Trump. So as they begin to waste away from lack of food, let us ask the question what justice requires or permits here. Narveson apparently thinks that the Narveson clan, as I have depicted them, are behaving perfectly justly as they stand by and watch members of the Sterba clan die. Why is that? The claim is that the Narveson clan got to this uninhabited land first and were the first to put the land into productive use, thus satisfying Narveson's two rules. But in so acting aren't the Narveson clan depriving any second-comers, like the Sterba clan, of the opportunity to appropriate the land themselves and similarly put it into productive use? Narveson says in his paper that late-comers do not have a right to such an opportunity. But that would only be the case if first-comers, like the Narveson clan, who clearly did have such an opportunity, are able to deny a comparable opportunity to all those who came later. But that would clearly

make those who come later worse off, unless, that is, according to the well-known Lockean proviso, there is enough and as good left in common for them. Now, in our example, the Sterba clan, unless they are able to appropriate at least some of the land that the Narveson clan have appropriated, are stuck between the Wall of Trump and a scorching desert, surely not in a place where enough and as good is left in common even for themselves. So in our example, the Sterba clan are clearly being harmed by the Narveson clan, and Narveson should grant that justice demands an appropriate corrective.

Let me now indicate how the rights of distant peoples and future generations enter my argument and how they expose a similar problem for Narveson's view to the one we have just seen with the Narveson and Sterba clan example. Recently, Peter Singer has proposed a graduated tax on the incomes of the top 10 percent of U.S. families, netting \$404 billion annually, with an equal sum coming from the family incomes of people living in other industrialized countries to meet the nutritional and other basic need of distant peoples. Singer is confident that his proposal would go a long way toward meeting basic human needs worldwide. In fact, Singer remarks that before coming up with his recent proposal, he never "fully understood how easy it would be for the world's rich to eliminate, or virtually eliminate, global poverty."⁵ Yet, while Singer's proposal would doubtless do much to secure a right to welfare for existing people, unfortunately, it does not speak very well to the needs of future generations.

How then do we best ensure that future generations are not deprived of the goods and resources that they will need to meet their basic needs? In the U.S., currently more than one million acres of arable land are lost from cultivation each year due to urbanization, multiplying transport networks, and industrial expansion. In addition, another two million acres of farmland are lost each year due to erosion, salinization, and water logging. The state of Iowa alone has lost one-half of its fertile topsoil from farming in the last one hundred years. That loss is about thirty times faster than what is sustainable. According to one estimate, only 0.6 of an acre of arable land per person will be available in the U.S. in 2050, whereas more than 1.2 acres per person are needed to provide a diverse diet (currently 1.6 acres of arable land are available). Similar, or even more threatening, estimates of the loss of arable land have been made for other regions of the world. How then are we going to preserve farmland and other food related natural resources so that future generations are not deprived of what they require to meet their basic needs? And what about other resources as well? It has been estimated that presently a North American uses seventy-five times more resources than a resident of

⁵ See Peter Singer, "What Should a Billionaire Give – And What Should You?" *New York Times* (Dec. 17, 2006): <https://www.nytimes.com/2006/12/17/magazine/17charity.t.html>

India. This means that in terms of resource consumption the North American continent's population is the equivalent of 22.5 billion Indians. So unless we assume that basic resources such as arable land, iron, coal, and oil are in unlimited supply, this unequal consumption will have to be radically altered if the basic needs of future generations are to be met. I submit, therefore, that recognizing a universal right to welfare applicable both to existing and future people requires us, absent a technological fix, to use up no more resources than are necessary for meeting our own basic needs, thus securing for ourselves a decent life but no more. For us to use up more resources than this, we would be guilty of depriving at least some future generations of the resources they would require to meet their own basic needs, thereby violating their libertarian-based right to welfare. Obviously, this would impose a significant sacrifice on existing generations, particularly those in the developed world, clearly a far greater sacrifice than Singer maintains is required for meeting the basic needs of existing generations. Nevertheless, these demands do follow from a libertarian-based right to welfare. In effect, recognizing a right to welfare, applicable to all existing and future people, leads to an equal utilization of resources over place and time.

Now it might be objected that if we did limit ourselves to simply meeting our basic needs – a decent life, but no more – we would still be harming future generations at some more distant point of time, leaving those generations without the resources required for meeting their basic needs. While our present non-conserving way of living would begin to harm future generations in, let's say, two hundred years, our conserving way of living, should we adopt it, and should it be continued by subsequent generations, would, let's assume, lead to that same result in two thousand years. So either way, we would be harming future generations.

There is a difference, however. While both courses of action would ultimately harm future generations, if we do limit ourselves to simply meeting our basic needs, a decent life but no more, and other generations do the same, then many generations of future people would benefit from this course of action who would not benefit from our alternative, non-conserving course of action. Even more importantly, for us to sacrifice further for the sake of future generations would require us to give up meeting our own basic needs, and this normally we cannot be morally required to do, as the "ought" implies "can" principle and the principle of non-question-beggingness make clear. We can be required to give up the satisfaction of our nonbasic needs so that others can meet their basic needs, but, normally, without our consent, we cannot be required to sacrifice the satisfaction of our own basic needs so that others can meet their basic needs. So while future generations may still be harmed in the distant future as a result of our behavior, no one can justifiably blame us, or take action against us, for using no more resources than we require for meeting our basic needs.

So how does Narveson attempt to counter my argument for the rights of distant peoples and further generations? He raises the following objections.

First, he objects that the rights I defend are not universalizable and that universalizability requires that all fundamental rights be negative and that there is but one such right and it is a right to liberty. The problem with this objection is that I too hold that the fundamental right is a right to negative liberty, and that what my view guarantees each person, like Narveson's view, is a certain bundle of negative liberties. It is just that there are different negative liberties in each of our bundles. Moreover, the rights I defend are just as universalizable as the rights that Narveson defends given that both (negative) welfare rights and (negative) property rights are conditional upon there being something to which they apply.

Now Narveson claims my view is not universalizable because he thinks that it doesn't permit anyone to meet their basic needs unless everyone can do so. So under conditions where you could only meet your own basic needs and not the needs of others, my theory would have no application. But this conclusion is unfounded. Under conditions where you only have enough resources to meet your own basic needs, you are not required to do more. It is here that the weaker formulation of the "ought" implies "can" principle that Narveson likes so much, comes into its own, eliminating any effective obligation to help others under those circumstances.

Narveson's second objection is to claim that to talk of harm to future generations, as I do, is cavalier because it is we, the present people, who put them there and who could choose not to put them there. The idea seems to be that if it ever becomes clear that the overuse of resources has made the planet unlivable for another generation of humans then the last generation of humans could just choose to not procreate with the result that no future generations would be harmed.

Yet what about the last generations? Suppose the principal overuse of resources happened in our times, and then by 2075 it had become abundantly clear that we had overheated the planet and that it was becoming more and more unlivable. Suppose subsequent generations reined in their consumption, but by then it was too late. So the last generation made the decision no longer to procreate to avoid bringing people into what would be a truly horrible existence. What then about that last generation and the maybe the ones immediately preceded it? Have they not been harmed by the generations from our times that overused resources and overheated the planet without having a technological fix? I claim that these future generations have indeed been harmed by the generations from our times. Just as in my example, the Narveson clan would be harming the Sterba clan by violating the Lockean proviso and not leaving enough and as good in common for the Sterba claim, so the generations from our times would be harming future generations, particularly the last generation, by also violating the Lockean proviso and not

leaving enough and as good in common for them.

Yet maybe this is not a problem for Narveson's view because he seems to embrace such disasters with no sense of injustice. For example, Narveson imagines one part of the human population living well beyond what they required for a decent life while millions of others starve to death as involving no injustice, provided that the well-to-do appropriators did not appropriate from the assets created by the starving would-be appropriators. Surely, this too would be in violation of the Lockean proviso to leave enough and as good in common for others.

So is there any reason why we should accept Narveson's rules of Innocent Possession and Open-Ended Use over alternative formulations of those rules, such as the ones I proposed? At one point in his paper, Narveson offers the following defense:

So long as we get what we do by freely made arrangement with voluntarily acting others, it cannot be true that we get what we do by worsening the lives of others.

Now I agree with Narveson's claim here, but it in no way supports his two rules. This is because in my example the arrangement that exists between the Narveson clan and the Sterba clan is anything but one that is voluntarily arrived at. Likewise, in Narveson's example, the arrangement that exists between generations from our times and what would have to be bona fide representatives of future generations is anything but a voluntary one.

A related way of arguing against Narveson's rules of Innocent Possession and Open-Ended Use and in favor of my formulations of those rules is to show that Narveson's rules cannot meet the standard of the "ought" implies "can" principle and so they cannot be reasonably required of both the rich and the poor. Nor can they be given a non-question-begging defense in the way my formulation of those rules can so defended. Still, further argument for this conclusion can be found in my book *From Rationality to Equality*,⁶ and further debate between Narveson and myself can be found in our jointly-authored book, *Are Liberty and Equality Compatible?*,⁷ and in a videoed debate with the same title that can be found on the website of the Cato Institute.⁸

⁶ Oxford 2015, paper.

⁷ Cambridge 2010, paper.

⁸ <https://www.libertarianism.org/media/around-web/are-liberty-equality-compatible>

Reply to Gus diZerega on His Essay, “Turning the Tables: The Pathologies and Unrealized Promise of Libertarianism”

Chris Matthew Sciabarra

I have always empathized with Gus diZerega as a maverick thinker who has absorbed the contributions of the classical liberal and libertarian paradigm, while appreciating the importance of other traditions, which has led him to question certain fundamental issues and/or thinkers who have been key to the genesis of that paradigm. My own “dialectical libertarian” project – which emerged from a trilogy of books that began in 1995 with *Marx, Hayek and Utopia* (SUNY) and *Ayn Rand: The Russian Radical* (Penn State Press; second edition, 2013), and concluded with *Total Freedom: Toward a Dialectical Libertarianism* – has certainly challenged key aspects of that paradigm as well. The dialectical libertarian approach is the basis of a new anthology I’ve coedited, *The Dialectics of Liberty: Exploring the Context of Human Freedom* (2019), which features essays by nineteen contributors.¹ So I am very impressed with Gus’s provocative and challenging engagement of libertarianism with the principles of democracy.

My own view of a “dialectical libertarianism” is one that does not disconnect politics from the broader context in which it is embedded. Part of that context includes the culture; a politics-only approach that promises Nirvana by lopping off the state as if that is the only institution of social repression will swiftly discover that the political is reciprocally related to the cultural, and that any culture that is inimical to the principles of freedom will undermine its achievement. This emphasis on the broader context cuts both ways on the political map – for if it is a warning to libertarians, it is just as much a warning to those neoconservatives who embraced the ideal of “nation-building” by the imposition of Western political institutions on tribalist cultures in the Middle East that have had neither the historical lineage nor the propensity toward a society of individual rights.

¹ Roger E. Bissell, Chris Matthew Sciabarra, and Edward W. Younkins, eds. *The Dialectics of Liberty: Exploring the Context of Human Freedom* (Lanham, Maryland: Lexington Books, 2019).

Gus raises significant criticisms² of a certain strain in libertarianism, which I would consider of the “nondialectical” sort – that is, something which tends to view individuals as social atoms not embedded in a broader social, historical and cultural context. (Social atomism is certainly rejected by some of the best in the libertarian tradition from F. A Hayek to Douglas Den Uyl and Douglas Rasmussen.)

However, my most fundamental disagreement with Gus arises from our very different views of the work of Ayn Rand. My own study of Rand, *Ayn Rand: The Russian Radical*, challenges the view of her as a social atomist. She came to intellectual maturity, educated in a Silver Age Russian culture, which embraced some of the best elements of dialectical thinking from the Aristotelian, Hegelian and even Marxian traditions, all of which viewed the individual in a more enhanced, complex way, as a social being embedded within a complexity of institutions, from language to customs, from cultural habits of mind to pedagogical practices, and so forth.

I think that at her best, Rand embraces precisely the view that Gus ascribes to progressives: “that as we better understand this [larger social and historical] context, we can abolish institutions that perpetuate or create new forms of oppression and domination.” As I argue in Chapter 10 of my book, Rand was most definitely not an atomist, despite some of her more stark claims made in polemical talks she gave at various forums. I reconstruct her understanding of the social relations of power on three levels (see part three of my book): the personal, the cultural, and the structural (political-economic). Her criticism of libertarian anarchists is that they tend to focus on the elimination of the state, without paying attention to the personal and cultural dimensions of power, which are manifested in nonpolitical ways. In this manner, she is most definitely not “numb to the other forms of aggression” that take place in our society.

For example, just a cursory look at her essay on “The Comprachicos” (republished in *The New Left: The Anti-Industrial Revolution*) shows a radical indictment of child-rearing and pedagogical practices within the family and especially within contemporary education, practices that cripple children cognitively, placing them on “unequal” footing in their interactions with others.

Now the chief problem with understanding Rand’s views is that she was both a novelist and a philosopher. As Nathaniel Branden maintains, I think correctly, in his lecture, “The Benefits and Hazards of the Philosophy of Ayn Rand,” Rand created in her fiction a vision of her own ideal man, and of a world in which ideal men and women would flourish and fully actualize their potential, whether they be giants like John Galt or men of more modest gifts, such as Eddie Willers in *Atlas Shrugged*. But, in my experience, people who

² Gus diZerega, “Turning the Tables: The Pathologies and Unrealized Promise of Libertarianism,” *Molinari Review* I.1 (Spring 2016): 55-98.

come to her work from that fictional world, and who delve no further into her wider corpus, tend to view the real world in less complex ways.

Rand, after all, emerged from a tradition of Russian novelists, in the mold of Dostoyevsky, constructing her characters as expressions of philosophical principles, of ideas. It is through her characters that these ideas come into conflict with one another. So these characters are not as “fleshed out” in terms of the complexity of human personality, emotional, psychological, and cultural underpinnings, and so forth, to which her formal philosophical and social analysis is much more attuned. The problem was compounded, however, by the “sociology of the Rand cult” as Rothbard named it: most of the culture that surrounded Rand’s inner circle “lived” in the universe of *Atlas Shrugged*, and hence, tended to create a cult of personality and groupthink around her; it is no accident that they called this inner circle “The Collective.”

But Rand the philosopher is much more aware of the complex underpinnings of individuals as social beings than one might think at first blush; I focus enormous attention on this much more multidimensional Rand in my book.

Turning to a few specific points raised by Gus:

First, Gus writes, that for Rand “[t]he market is the proper way to evaluate the relative worth of a person’s contribution to society.” But this is not quite true. She distinguishes between those things that she claims are “philosophically objective” values versus those things that are “socially objective” values – something that enabled her to claim that Einstein may have provided the world with more “philosophically objective” values (in terms of the knowledge he shared with the world), even if folks made Elvis Presley richer (in a “socially objective” way). Neither was a threat to the other, and the relatively higher wealth of Presley was not a detriment to the relatively lower wealth of Einstein. In most cases, I suspect, she would say that what individuals find worthy might be a comment on the culture-in-general, and she most definitely had views on what was a sign of cultural uplift and what was a sign of cultural degeneration.

But it definitely placed Rand in a position where she could never say that just because people got wealthy in a relatively free market, they were necessarily of greater worth to the society in general; that would rip her understanding of value out of the much more complex cultural context that she emphasized in her various essays. For Rand, markets are social relations that reflect the personal, cultural and structural context within which they are embedded; if the context is corrupted, no “free” market is going to make human life *less* corrupted. This is crucial, because I don’t think that in her overall conception, she “reduce[s] human freedom to the market” (as Gus states toward the end of his paper).

With regard to her focus on reason, I think Rand provides a much more complex view of human consciousness than what Murray Rothbard criticizes

as a singular emphasis on the rational faculty. On this point, I emphasize Rand's expansive view of consciousness in three consecutive chapters of my book; check out especially chapters 6 ("Knowing"), 7 ("Reason and Emotion"), and 8 ("Art, Philosophy, and Efficacy").

Gus states: "Clearly, we are also beings decisively shaped by time, place, and the key experiences of our lives." I found irony in this statement; with regard to *Russian Radical's* historical thesis, that is precisely how I analyze Rand's own evolution as a thinker: emerging out of the Russian-Soviet context of her youth, educated in the methods of dialectical inquiry at Petrograd University, and severely affected by the "collectivism" of its culture, Rand emerged, like any other thinker, as a person whose thinking was shaped by the context of her particular place and time. If we keep that context in mind, I think we come to understand her thought as much more enriched; we also get to understand why she often stated things rhetorically, in starkly "black-and-white" terms. So I think, for example, Rand actually did believe that individuals are social creations, in a certain sense. This is precisely why she focused on changing society in terms of the personal, cultural, and structural dynamics of its social relations. It makes her "revolution" far more complex and all-encompassing than simply a focus on the "state" as the central threat to human survival. A threat it is, she would claim, but there were personal, social and cultural practices that reproduced exploitative relations in nonpolitical ways. I examine this comprehensively in part 3 of *Russian Radical*, and I also discuss it in the final chapter of my book, *Total Freedom: Toward a Dialectical Libertarianism*.

Gus makes a good point about "individuals [as] creative gestalts." On this issue, I heartily recommend the work of Nathaniel Branden, who took Rand's dialectical insights even further. I should note that *The Journal of Ayn Rand Studies* published in December 2016 a double-issue anthology of essays on "Nathaniel Branden: His Work and Legacy," where some of the contributors delve more extensively into the issue of individuals as a cluster of social relationships. I deal with Branden's indispensable work in *Russian Radical*, which has been the only work in *fifty years* that has sought to reintegrate his enormous contributions back into the corpus of Objectivist philosophy. No book before mine and no book since has done this. Without taking account of his work in psychology and social relations, I believe that some Objectivists often veer off into "stick-figure" individualism. They despise Branden so much – still playing out the personal and professional 1968 break between Rand and Nathaniel and Barbara Branden – that few of them wish to even acknowledge his contributions to Objectivism, which Rand herself said were still a part of the canon: that is, all the work he published in *The Objectivist Newsletter* and *The Objectivist* and all of the pathbreaking lectures and lecture courses he presented on everything from "Basic Principles" to "Psycho-Epistemology." (And on "psycho-epistemology," I should empha-

size too the important work contributed by Barbara Branden in her lectures series “Principles of Efficient Thinking,” which has recently been published as *Think as If Your Life Depends on It: Principles of Efficient Thinking and Other Lectures*.)

I would argue that those followers of Ayn Rand who have bracketed out the Brandenian contribution are the ones who seem to be singularly lacking in the capacity for empathy that Gus so rightly emphasizes.

On this issue of empathy, Branden is especially good on social relations and how they nourish the human requirement for psychological visibility, which can only happen in a social context. It enriches the Randian concept of individualism and takes it completely out of the atomistic universe in which too many libertarians have lived. Just two quotes from Branden and his importance to Objectivism illustrate the points I’ve made (the first about how mind is more than reason, the second concerning the breadth of relations in which all humans are involved):

Mind is more than immediate explicit awareness. It is a complex architecture of structures and processes. It includes more than the verbal, linear, analytic processes popularly if misleadingly described sometimes as “left-brain” activity. It includes the totality of mental life, including the subconscious, the intuitive, the symbolic, all that which sometimes is associated with the “right brain.” Mind is all that by means of which we reach out to and apprehend the world. ...³

There are a thousand respects in which we are not alone. ... As human beings, we are linked to all other members of the human community. As living beings, we are linked to all other forms of life. As inhabitants of the universe, we are linked to everything that exists. We stand within an endless network of relationships. Separation and connectedness are polarities, with each entailing the other.⁴

Because of what I’ve said above, I think the dialectical Rand would therefore endorse completely Gus’s statement: “But once we understand that individuals only exist within a context of relationships, other kinds of aggression become possible, the kinds libertarians cannot see.” I think Rand *does* see these other forms of aggression, some of which are cognitive, some

³ Nathaniel Branden. “What Is Self-Esteem?” Paper presented at the First International Conference on Self-Esteem, Asker/Oslo, Norway (9 August 1990): 15.

⁴ Nathaniel Branden. *The Psychology of Romantic Love*. New York: Bantam (1980): 61.

of which are “psycho-epistemological,” some of which are deeply embedded in the different cultures within which we live, and even the subcultures within those cultures, some of which are part of a whole array of “tacit” habitual practices that undermine human flourishing in a social context. (Her various discussions of religious, “mystical,” and pedagogical practices as various means of stultifying the individual’s cognitive development are only the tip of the iceberg in her arsenal of social critique.)

Gus does raise significant points concerning Rand’s negative view of Native American cultures. But I should note that there have been Objectivists who have raised similar criticisms of Rand’s views; the late Objectivist legal scholar, Murray Franck, for example, has argued that Rand was completely incorrect in her view of certain Native American cultures, and he indicts the Spaniard devastation of indigenous American cultures as an example of outright aggression. Even Nathaniel Branden, who took the typical Lockean “mixing your labor with the land” view of ownership, stated that “there were terrible things that we did in our treatment of American Indians ...”⁵ So there has been spirited disagreement within Objectivism over the treatment of Native Americans.

For me, however, the points that Gus makes about American Indians are *factual* issues that Rand and some of her followers have never taken into account; from where I stand, this is more an instance of making facts transparent that do not *undercut* the Objectivist take on Native Americans; they just show that there are factual errors that some Objectivists (especially Rand) have made, and that, if they were correctly identified, could (and should) be reconciled with a more humane understanding of what happened and what *should have happened* with regard to the engagement of European colonialists and Native American cultures.

Now, Gus might argue that Rand’s view of Native American culture as “savage” in contrast to her view of businessmen as the “fountainheads” of human progress is something that is endemic to her quasi-Nietzschean repudiation of anything less-than-genius as a reflection of the human ideal. But Rand’s ethics were constructed in such a way that one’s intelligence or level of “civilized” development did not and should not matter in the practice of certain rational virtues to achieve certain rational values.

And regardless of Rand’s celebration of the American businessman, one thing is very clear even in the context of her fiction: business has been at the forefront of the move toward statism in the United States from the very beginning. In *Atlas Shrugged*, for example, Rand writes of an “aristocracy of pull,” in which businessmen of a certain type slurp at the public trough in their attempts to use the levers of the state to their own advantage at the

⁵ Nathaniel Branden. “Objectivism: Past and Future: Lecture and Question and Answer Session,” *The Journal of Ayn Rand Studies* 16, nos. 1-2 (December): 82.

expense of those who are not as well “connected” to institutionalized power. Like Hayek, she understands that a society in which coercion becomes the predominating principle of social life, it is political coercion that becomes the only power worth having – and this is why, as Hayek maintained, the worst get on top.

Interestingly, for all her arguments about “Big Business” being America’s most “persecuted minority,” Rand actually argued in her essays⁶ that she trusted labor unions as a bulwark against statism more than she trusted big business, which historically had led the way toward the destruction of rivalrous competition and toward the formation of regulatory agencies and central banking, both designed to bolster the positions of the powerful (on this, she is closer to the New Left and the Misesian-Rothbardian-Liggio “Left-and-Right” revisionist wing of historical interpretation).

Switching to a completely different topic, I was particularly interested in Gus’s discussion of the issue of pollution. I wonder: Is it necessary for principles to be so detailed and articulated in order to understand what constitutes “aggression” in the context of pollution? That is, won’t some of these principles emerge from class action suits and be produced by a process of trial-and-error within courts of justice? In places where property is totally socialized, pollution, as we know, is an expression of the “tragedy of the commons.” Its toxic character is typified in Lake Baikal, a product of the state-guided “industrialization” of the former Soviet Union. And without things like the Price-Anderson Act, which socializes the risk of nuclear power, would nuclear power plants even exist? We debated these points back in the days when I was a member of Students for a Libertarian Society. We often raised the question: How many companies would be producing potentially devastating forms of energy if the risks of producing such energy could potentially destroy the company – and millions of lives, leading to trillions of dollars in negligence suits, or perhaps outright criminal charges?

I agree substantially with Gus’s views expressed in the first paragraph of his section on “Understanding Democracy.” I think he makes some crucial points that libertarians must grapple with. But I do question how we reconcile these notions of democracy or individual rights in cultures that have no such conceptions. There are still cultures in this world today that have no desire for, or understanding of, what the principles of democracy are, or what individual rights entail. And we certainly can’t “nation-build” in such countries that lack this understanding; one can’t graft onto any culture conceptions that are, for lack of a better word, *alien* to its implicit view of human relations.

Finally, I heartily agree with Gus’s conclusion that “When libertarians choose to broaden their understanding of what an individual really is and

⁶ Ayn Rand, “A Preview: Part II,” *The Ayn Rand Letter* 1, no. 23 (14 August 1972): 100.

what property really is, they will be in a position to contribute importantly to [the] vital task” of understanding the broader nature of “authoritarian relations” in areas of social interaction outside of the political sphere. I, myself, have seen those authoritarian relations on display in the business world in my own brief foray into a 9 to 5 job in midtown Manhattan back in the early 1980s. But I have been arguing against such authoritarianism since my days as an undergraduate history student, when I wrote a senior honors thesis on the Pullman strike, which made transparent the paternalistic authoritarianism on display in the Pullman company town.⁷

Clearly, something is wrong with any libertarian conception that is so socially atomistic that it cannot integrate the human reality of social embeddedness and the importance of human empathy. On these points, I think folks can draw many lessons from the work of Gus diZerega. But others have contributed to this project, including such scholars as Peter Boettke, Steven Horwitz, many of those among “libertarians on the left,” as well as the late Don Lavoie (see a recent essay on “Anarchism as Radical Liberalism: Radicalizing Markets, Radicalizing Democracy,” by Nathan Goodman, on the site of the Center for a Stateless Society),⁸ who was an early supporter of my “dialectical-libertarian” project.

I’m happy to have had the opportunity to read Gus’s important essay, and wish him well in his continuing project.

⁷ The essay was later republished by the Libertarian Alliance and is available here: <http://www.libertarian.co.uk/lapubs/histn/histn046.htm>.

⁸ <https://c4ss.org/content/49379>

Response to Chris Matthew Sciabarra

Gus diZerega

I am grateful to Chris for his comments.¹ Yes, we differ in our reading of Ayn Rand, and his knowledge of her work is far greater than mine. I will not challenge his understanding of the depths of her thought.

But I was not seeking to explore Rand's philosophy in much depth in this essay.

I was using her to the degree her work was a powerful impetus for the rising *libertarian* movement, a term which she herself disliked. It was Rand as understood by libertarians that I criticized as my jumping off point to challenge the coherence of libertarian thought as a whole. As Chris acknowledges, most of her followers never got much beyond *Atlas Shrugged* in their thinking – and I remind him now that another lodestar in the libertarian firmament, Ludwig von Mises, wrote her that he loved the book for putting inferior people in their place with respect to the superior. So this level of reading and comprehension was what mattered most in her political impact, from college students to a brilliant economist.

The same holds regarding her comments about Indians. She was factually mistaken, but in terms of my interpretation of her philosophy, I think it was significant that she had no problem with killing “savages” who fought to preserve their access to land which she said could be better used by European invaders. This supports my less charitable interpretation of her as a kind of Nietzschean who, while opposing robbing from the weaker because that made you a mere parasite, had no trouble with walking over the weaker to achieve plans where they were simply in the way. That some of her followers rejected her position is all to the good, but she never did.

I like Chris's interpretation of Rand, and hope it is true, though I think it reflects Chris's character at least as much as it reflects hers. Alternatively, it may be that there is a deep inconsistency in Rand's thinking. Deep principles

¹ Chris Matthew Sciabarra, “Reply to Gus diZerega on His Essay, “Turning the Tables: The Pathologies and Unrealized Promise of Libertarianism,”” *Molinari Review* 1.2 (Autumn 2019): 93-100.

can take on a life of their own distinct from an author's intent. Or perhaps there was a failure on her part adequately to link her more subtle philosophical points with her extremely popular novels. I think Chris would be sympathetic to this interpretation. But again, my use of her work focused on how she influenced libertarian thinking – and how this influence runs like a thread through many other people associated with libertarianism, such as Mises, Murray Rothbard, Milton Friedman, Ron Paul, and many others.

I recently came across an essay on the FEE (Foundation for Economic Education – a long time free market outfit) website suggesting millennials choose Ayn Rand over Karl Marx.² For me, it was an odd piece, since I suspect hardly any millennials read Marx. But when I got to the comments section, I discovered her advocates had read plenty of her novels and apparently nothing by Chris. I engaged a little bit, receiving the usual insults, and in one case dishing it back, but hopefully sparking some deeper thinking among some readers. The issues I discussed in my essay are still very much embedded in libertarian and free market thinking.

Regarding pollution, class action suits and such have long been possible in this country, but it took legislation to clean our rivers and air to the degree they have been. And when conditions change, and existing principles no longer work, as in Missoula, Montana's air pollution problems, I think legislation is better than waiting till enough people have been harmed so a class action might theoretically work. When I first visited the SF Bay area years ago, in the Fall it was often difficult to see San Francisco from Berkeley, and if I drove down the Peninsula to San Jose, my eyes would burn. Today, with a much larger population and many more cars, the city was always easily visible when I was there in the Fall and my eyes no longer burned driving to San Jose. Cars were much cleaner, and this was a direct result of regulations. Yes, legislation can be captured by industry, as in the nuclear case, but that is not an argument against legislation as such, it is an argument against business having more influence than people.

I am in substantial, even enthusiastic, agreement with Chris's last three paragraphs.

² Leisa Miller, "3 Reasons Millennials Should Ditch Karl Marx for Ayn Rand," Foundation for Economic Education (December 18, 2017): <https://fee.org/articles/3-reasons-millennials-should-ditch-karl-marx-for-ayn-rand/>

It Ain't Necessarily So: A Response to Gus diZerega

Roderick T. Long

1. When Your Whole World Is Black

I share Gus diZerega's frustration, as expressed in his essay "Turning the Tables,"¹ with many aspects of the libertarian² movement in which we have both spent the bulk of our respective careers; and I agree with him that contemporary libertarians have to a great extent misunderstood the implications of their own value commitments. In that sense, he and I can both be seen as embarked on a project of internal criticism. Moreover, many of our criticisms are similar in spirit – somewhat simplistically put, we are left-wing critics of the movement's right-wing aspects.³

Nevertheless, our visions are crucially different. In essence, Gus is dismissive of far more aspects of the libertarian movement and intellectual tradition than I am, to the point that he often strikes me as prepared to throw the libertarian baby out the window with the right-wing bathwater.

Overall, I think Gus has too one-sided, too monochrome a view of the libertarian movement. First, he often treats as applicable to the movement as a whole commitments that are actually a matter of intense controversy among different factions within that movement (which is rather like saying that all Christians accept the authority of the Pope, when only Catholics do). And second, even within those factions that are the appropriate target of Gus's criticisms, he tends to treat whatever negative tendency he's concerned about as though it were pervasive to an equal extent throughout that faction (which is analogous to taking the most extreme view of papal authority and attributing it to all Catholics).

¹ diZerega 2016.

² For the purposes of this article I shall, like Gus, use the term "libertarian" to apply specifically to the *free-market* libertarian movement, although this journal's editorial policy countenances a broader definition that embraces not only free-marketers but also, e.g., social anarchists.

³ See, e.g., Long 2019a.

Moreover, while many of Gus's charges are fairly applicable to large sectors of the libertarian movement (though not to the movement as a whole), and he is performing a welcome service in pointing them out, other charges he makes strike me as having far less merit – either because they attribute to libertarians views that, while indeed genuinely wrong, virtually no libertarian holds (such as a hermit-like conception of what it means to be “self-sufficient”), or else because they attribute to libertarians views that, while indeed widespread among libertarians, are not in fact wrong (such as skepticism toward what Gus calls “political democracy”).⁴

2. Oppression, I Won't Let You Near Me

Gus charges that libertarians give “arbitrarily narrow meanings” to terms like *individual*, *property*, and *aggression*; in particular, libertarians' unduly restricted understanding of “aggression” gives libertarian cover to forms of aggression that fall outside of the definition – by contrast with “most liberals and progressives,” who, given that “cultural and social relations so powerfully shape who we are,” accordingly “seek to overcome and eventually replace all institutions of domination and arbitrary power.”⁵

In response: first, this pays “most liberals and progressives” much too high a compliment; they generally seem perfectly willing to make their peace with “institutions of domination and arbitrary power” (including but not limited to the state) so long as they can get right-minded people in charge of those institutions. (If Gus were talking about social anarchists that would be another matter, but he holds no brief for their position.)

Second, it's misleading to say that the progressive definition of aggression is *broader* than the libertarian one, since while progressives may count some sorts of thing as aggression that most libertarians do not, they also fail to count as aggression various sorts of thing that libertarians generally *do* so count (e.g., most or all of what governments do). Indeed this seems inevitable, since for any X, if libertarians don't count X as aggression, then they will *ipso facto* count any forcible interference with X as aggression.⁶

Third, what libertarianism says is that aggression in the “narrow” libertarian sense is the only form of domination that should be combated by *force* – but *not* that it is the only form of domination that should be combated, period. Non-libertarians tend not to take this distinction seriously because they regard forcible, governmental solutions as the only effective means of

⁴ diZerega 2106, p. 57. For the purposes of this article I'm following diZerega's lead in the use of the term “politics,” though in fact I favour a broader usage; see Long and Johnson 2005, §2; Lavoie 1993.

⁵ diZerega 2016, pp. 57-58.

⁶ On this point see Long 2014a.

combating domination. But if there's any truth to libertarian social analysis (and as a libertarian I obviously think there is), then non-libertarians are greatly overestimating the effectiveness of forcible, governmental solutions, and likewise greatly underestimating the effectiveness of voluntary, non-governmental solutions.

Fourth, it is true that many libertarians talk as though if something bad does not violate the non-aggression principle (NAP) then it cannot represent a serious form of domination or oppression, and so should not be considered a matter of major concern. And I agree that this is deeply mistaken view, and a genuine and pervasive problem within the libertarian movement.⁷ However, this attitude is by no means universal among libertarians. Many libertarians – including Gus's *bête noire*, Ayn Rand – have insisted on the importance of recognising harmful power relationships that do not necessarily involve literal aggression.

Gus claims that “Rand's view of coercion as physical force represents the experience of a person raised in such violent societies” as first Czarist and the Soviet Russia, leaving her “numb to the other forms aggression could take.”⁸ But first, this psychologising explanation leaves unexplained how so many other thinkers with very different backgrounds (e.g., Herbert Spencer, Lysander Spooner, Benjamin Tucker) could converge on essentially the same view of aggression as Rand's. And second, Rand was by no means unconcerned with power relationships beyond aggression in the narrow libertarian sense. As Charles Johnson and I have written:

The Fountainhead pays relatively little attention to governmental oppression per se; its main focus is on social pressures that encourage conformity and penalize independence. Rand traces how such pressures operate through predominantly *non-governmental* and (in the libertarian sense) *non-coercive* means, in the business world, the media, and society generally. Some of the novel's characters give in, swiftly or slowly, and sell their souls for social advancement; others resist but end up marginalized, impoverished, and psychologically debilitated as a result. Only the novel's hero succeeds, eventually, in achieving worldly success without sacrificing his integrity – but only after a painful and *superhuman* struggle.⁹

⁷ Again, see Long 2019a.

⁸ diZerega 2016, p. 61.

⁹ Long and Johnson 2005, §2.

Gus seems to be assuming that if someone doesn't regard a given form of domination as a rights-violation, then she doesn't regard it as problematic. Now that does arguably seem to be true of some libertarians; but it's not remotely true of Rand (and many others).

Moreover, there is a long libertarian tradition – to which the dreaded Rand again belongs – of seeing economic, cultural, and governmental power relations as reciprocally reinforcing parts of an overall system, so that combating one requires combating them all (with the qualification that the parts not involving force must be combated by non-forcible means). Chris Matthew Sciabarra, for example, has published three books and an anthology devoted to exploring this “dialectical” theme within libertarian thought.¹⁰ The individualist anarchists – both historically and in the present day – have generally taken a similar line.¹¹

Indeed, as Charles Johnson and I have noted, the standard libertarian analysis of state power is straightforwardly committed to recognising the existence of problematic forms of power beyond state coercion:

As libertarians from La Boétie to Rothbard have rightly insisted, since rulers are generally outnumbered by those they rule, the state itself cannot survive *except* through popular acceptance which the state lacks the power to compel; hence state power is always part of an interlocking system of mutually reinforcing social practices and structures, not all of which are violations of the nonaggression axiom. There is nothing un-libertarian, then, in recognizing the existence of economic and/or cultural forms of oppression which, while they may draw *sustenance* from the state (and vice versa), are not *reducible* to state power.¹²

Charles, in particular, has developed the idea of “libertarian thickness,” according to which there are certain values and commitments that, while not strictly entailed by libertarian principle, are so connected with libertarianism that libertarians *qua* libertarians have special reason to adopt them as part of a package along with libertarianism.¹³

¹⁰ Sciabarra 1995, 2000, 2013; Bissell, Sciabarra, and Younkins 2019.

¹¹ Brooks 2017; Chartier 2011, 2012, 2014; Chartier and Johnson 2011; Tuttle and Massimino 2016; Carson 2007a, 2008a, 2013a; Johnson 2013; Long and Johnson 2005; Long 2006b, 2019a.

¹² Long and Johnson 2005, §2.

¹³ Right-libertarian critics of libertarian thickness often retort by arguing that these additional commitments, whatever their merits, are not “part of” libertarianism. This is an *ignoratio elenchi*, since the thickness thesis says nothing about these commitments being “part of”

For example:

There might be some commitments that a libertarian can reject without formally *contradicting* the non-aggression principle, but which she cannot reject without *in fact* interfering with its proper application. Principles beyond libertarianism alone may be necessary for determining where my rights end and yours begin, or stripping away conceptual blinders that prevent certain violations of liberty from being recognized as such. ...

[Or] there may be cases in which certain beliefs or commitments could be rejected without contradicting the non-aggression principle *per se*, but could not be rejected without logically undermining or contradicting the *deeper reasons* that justify the non-aggression principle. Although you could *consistently* accept libertarianism without accepting these commitments or beliefs, you could not do so *reasonably*: rejecting the commitments means rejecting the proper grounds for libertarianism. ...

There may be also cases in which certain ideas, practices, or projects are entailed by neither the non-aggression principle nor the best reasons for it, and are not logically necessary for its correct application, either, but are *causal preconditions* for *implementing* the non-aggression principle in the real world. Although rejecting these ideas, practices, or projects would be *logically compatible* with libertarianism, their success might be important or even causally necessary for libertarianism to get much purchase in an existing statist society, or for a future free society to emerge from statism without widespread poverty or social conflict, or for a future free society to sustain itself against aggressive statist neighbors, the threat of civil war, or an internal collapse back into statism. To the extent that other ideas, practices, or projects are causal preconditions for a flourishing free society, libertarians have *strategic* reasons to endorse them, even if they are conceptually independent of libertarian principles. ...

Finally, there may be social practices or outcomes that libertarians should (in some sense) be committed to opposing, even though they are not themselves coercive,

libertarianism. The thickness claim is rather that libertarianism and the other commitments are themselves both “part of” a larger program that is unified by these various thickness relations.

because (1) background acts of government coercion are a causal precondition for them to be carried out or sustained over time; and (2) there are *independent* reasons for regarding them as social evils. If aggression is morally illegitimate, then libertarians are entitled not only to condemn it, but also to condemn the destructive results that flow from it – even if those results are, in some important sense, external to the actual coercion.¹⁴

Charles further argues, in the spirit of the 19th-century individualist anarchists, that it is actually left-wing economic and cultural values to which libertarianism is bound by these various affiliations of thickness.¹⁵

3. Here in My Car I Feel Safest of All

Gus also resurrects the old charge traditionally raised against libertarianism (and classical liberalism before it) – that of *atomism*: “Libertarians consider individuals to be a kind of social atom.”¹⁶ I think the conflation of radical individualism with atomism is a serious mistake. I’ve distinguished elsewhere between atomistic and organic conceptions of individualism, and argued that the major thinkers in the libertarian tradition, despite their sometimes resorting to atomistic language, belong mainly to the organic camp. Both camps tend to be *motivational* individualists, in that they “emphasize, often to the point of psychological egoism, the need to explain action in terms of the pursuit of individual interests,” and also “endorse, often to the point of ethical egoism, the legitimacy of such pursuit.”

But the atomistic individualists view such pursuit as leading to inevitable conflicts, which only forcible constraint can resolve, while the organic individualists, with their greater emphasis on sociality, are led to embrace, often to the point of anarchism, a minimization of all coercive constraints on individual activity.¹⁷

Organic individualists are thus the more thoroughgoing in their individualism; since they “see human interests as harmonious and social cooperation as natural,” they are therefore “also social individualists, encouraging autonomy and independence, and economic and political individualists, trusting

¹⁴ Johnson 2008; cf. Johnson 2016a, Long 2008b.

¹⁵ Johnson 2016a; cf. Chartier 2012.

¹⁶ diZerega 2016, p. 57.

¹⁷ Long 2007b, pp. 263-265.

individuals to pursue their goals without coercive control.” By contrast, since atomistic individualists typically “see human interests as naturally conflictual,” they accordingly “do not expect social order to emerge unless it is imposed on society by coercive authority,” and so are inclined to be hostile to social economic, and political individualism (Thomas Hobbes being a salient instance of how atomism undermines individualism).

Libertarian thinkers also tend to be organic rather than atomistic in a further sense: namely, they view social phenomena as “organically interconnected across political, economic, and cultural spheres – so that addressing social problems calls for system-wide change rather than local fixes.” These two dimensions of organicity are connected, since “a focus on interconnectedness leads the organic individualists to view sociality as constitutive of human identity, and thus *not* as something which must be imposed by coercive government or conformist social pressure.”¹⁸ I, Chris Sciabarra, and others have argued that such major libertarian and classical liberal thinkers as Herbert Spencer, Benjamin Tucker, Ludwig von Mises, Friedrich A. Hayek, and Ayn Rand belong primarily to the organic rather than the atomistic camp.¹⁹

Take, for example, the following passage by Frédéric Bastiat:

It was ... Daniel Defoe’s original plan to cast Robinson Crusoe ashore on the Isle of Despair alone, naked, deprived of all that can be added to one man’s strength by united effort, specialized skills, exchange, and society.

Nevertheless ... Defoe would have deprived his novel of every trace of verisimilitude if, overfaithful to the thought he wished to develop, he had not made necessary social concessions by allowing his hero to save from the shipwreck a few indispensable objects, such as provisions, gunpowder, a rifle, an ax, a knife, rope, boards, iron, etc. – decisive evidence that society is man’s necessary milieu, since even a novelist cannot make him live outside it.

And note that Robinson Crusoe took with him into solitude another *social* treasure worth a thousand times more, one that the waves could not swallow up: I mean his ideas, his memories, his experience, and especially his language,

¹⁸ Ibid., pp. 263-265.

¹⁹ Ibid.; cf. Sciabarra 1995, 1999, 2000, 2013; Bissell, Sciabarra, and Younkens 2019; Long and Johnson 2005. (Note that I use the term “organic” somewhat differently from the way Chris does.)

without which he could not have communicated with himself or formed his thoughts.²⁰

Because we are born into groups that we do not choose (families, societies, etc.), and because these groups play a crucial role in determining our identities, Gus concludes that libertarians are wrong to insist that “the real issue is whether or not the groups are voluntary.”²¹ Well, real issue for what question? If the question is whether our unchosen group memberships can saddle us with unchosen moral obligations, I agree with Gus that they can (though within limits); but it does not follow that these obligations are legitimately *enforceable*.

Gus contrasts libertarians unfavourably with conservatives and progressives, both of whom, on Gus’s account, differ from libertarians in viewing people as embedded within a thick context of social relations.²² But this is not the difference at all; libertarians can happily view people as embedded selves of the sort Gus describes, and many do. What differentiates the libertarian from both the progressive and the conservative is that the latter two affirm, while the libertarian denies, that these thick social relations can justify the forcible subordination of some people to other people.

If you want to see what thick social embeddedness looks like *without* that crucial libertarian constraint, just consider the traditional doctrine of coverture, according to which a wife’s legal personality was absorbed into that of her husband, giving him the right to, for example, control her property or rape her with impunity – or the still older Roman view that the male head of household had the legal right to put his wife and children to death for any reason or none. Thick social embeddedness becomes toxic unless social relations are understood in libertarian fashion, in terms of free and voluntary cooperation among equals. Not for nothing did the classical liberals celebrate the “movement of the progressive societies ... from Status to Contract.”²³

4. This Land Is Your Land, This Land Is My Land

Libertarians, Gus charges, seek a world where all property is private, and regard this as the acme of liberation; for Gus, by contrast, the crucial value of public space is that certain freedoms (such as those enshrined in the First Amendment) can be guaranteed there, whereas on private property the rules are set by the arbitrary whims of individual owners.²⁴

²⁰ Bastiat 1964, p. 64.

²¹ diZerega 2016, p. 73.

²² *Ibid.*, p.58.

²³ Maine 2012, pp. 168-170, 368-369; Spencer 1897, 1978, 1982; Paterson 2017, ch. 5.

²⁴ diZerega 2016, pp. 55-56.

But first, while the view that all property should be private is admittedly widespread among libertarians, it is by no means universal. The ideal of a mix of public (though not necessarily *governmental*) and private spaces has been defended, on both economic and moral grounds, by many libertarians, both anarchist²⁵ and otherwise,²⁶ including myself;²⁷ and we at the Center for a Stateless Society have recently published an entire volume, *The Anatomy of Escape: Defending the Commons*,²⁸ devoted to the idea. (And that's not even to mention the Georgist current that has been part of the libertarian movement from the start.)

And second, even if we put libertarian defenses of the commons aside, a world where private space *was* all-pervasive would arguably not be as oppressive as Gus envisions, so long as private spaces were generally decentralised and competitive – which is what free-market economics²⁹ leads us to expect. When there are many private spaces competing for customers, and it is easy for such customers to move from one private space to another – and likewise easy for them to start up private spaces of their own – then private owners will have an economic incentive not to restrict visitors' freedom arbitrarily.³⁰

Perhaps Gus will worry that a mere economic incentive is less reliable than a legal *guarantee*. But legal guarantees do not magically enforce themselves;³¹ they too depend on human beings following incentives. And if we are to compare private provision with *likely* rather than with *idealised* state provision,³² then we must observe that while the state may do a decent job of protecting the freedom of affluent white people in public spaces frequented by other affluent white people, its record protecting the freedom of minorities and the poor in public spaces – whether those frequented by affluent white

²⁵ See, e.g., Holcombe 2005; Carson 2010a, 2013b, 2014; Hobbs 2003; and Mincy 2015.

²⁶ See, e.g., Schmidt 1994.

²⁷ Long 1996a, 1998a, 2006a.

²⁸ Tuttle 2019.

²⁹ Particularly in its left-libertarian form; see, e.g., Chartier and Johnson 2011; Tuttle and Massimino 2016; Carson 2007a, 2008a.

³⁰ A related point: Gus also claims (p. 78) that the notion of property as a decomposable bundle of rights is alien to libertarians; but in my experience it's the position most libertarians hold (cf. Kelley 1984), though of course they don't think the contents of the bundle are arbitrary or purely socially contingent. (Indeed, if anything, many libertarians are *too* willing to view property rights in terms of decomposable bundles, as excessive indulgence in this way of thinking opens the door to the alienability of personal services, which Gus and I agree is a bad thing; see below.)

³¹ Long 2006c, 2014c, 2016.

³² Cf. Demsetz 1969 on the Nirvana Fallacy.

people or those frequented by minorities and the poor themselves – is rather abysmal. (To be sure, Gus does not regard the political order he favours as a “state,” but it seems to me to be exactly that; more on this below.)

5. The Suits Are Picking Up the Bill

Gus complains that “libertarians claim that government is the enemy of business,” when in fact “[l]ittle guys are treated far more harshly than the powerful.”³³ He’s right that many libertarians regard themselves as champions of big business against the rapacious state; Rand herself notoriously went so far as to call big business a “persecuted minority”³⁴ (though she could also be more nuanced, as when for example she noted that “attempts to obtain special economic privileges from the government were begun by businessmen, not by workers”).³⁵ But Gus pays scant attention to the extensive libertarian recognition and discussion of the alliance between big business and the state.

Left-libertarians are especially obviously not guilty of ignoring the business-state alliance, since it is one of the points we most frequently stress. This has been true since the modern revival of left-libertarianism in the 1970s. Here, for example, is Roy Childs in 1971:

To a large degree it has been and remains big businessmen who are the fountainheads of American statism. If libertarians are seeking allies in the struggle for liberty, then I suggest that they look elsewhere ... and begin to see big business as a destroyer, not a unit, of the free market.³⁶

And here’s Karl Hess four years later:

1.6 percent of the adult population owns 82 percent of all stock, and thus actually owns American business and industry. In a very real sense, that tiny 1 percent of the population faces the other 99 percent across a barrier of very real self-interest. That tiny 1 percent has been accumulating more as the years go on, not less. The key to that accumulation is assuring that the people who make up the

³³ diZerega 2016, p. 90.

³⁴ Rand 1967, p. 40.

³⁵ Rand 1990b, p. 96. For more on Rand’s complex attitude toward the role of big business, see Sciabarra 2013, ch. 12; Block 2005.

³⁶ Childs 1994, p. 45.

other 99 percent are sharply restricted in what power and privilege they accumulate.³⁷

And Samuel Konkin, founder of the Movement of the Libertarian Left, noted that “plutocrats run all the ... political parties in capitalist states.”³⁸

The business-state alliance continues to be a central theme in contemporary left-libertarianism. Kevin Carson, for example, writes:

The current structure of capital ownership and organization of production in our so-called “market” economy ... reflects coercive state intervention prior to and extraneous to the market. From the outset of the industrial revolution, what is nostalgically called “laissez-faire” was in fact a system of continuing state intervention to subsidize accumulation, guarantee privilege, and maintain work discipline.³⁹

In the same vein, Gary Chartier writes:

The state is actively involved in all aspects of economic life. And ... the practical result of its involvement – contrary to the impression you might get from the mainstream media – is that *the scales are consistently tipped in favor of privileged elites*. ... [T]he state tends to consolidate the power of the wealthy and to help them exploit others. It fosters poverty by securing privileges for the wealthy and well connected. It promotes hierarchical models of business organization and the centralization of power in the workplace. It creates and encourages the persistence of monopolies and other cartels that increase the power of privileged elites at the expense of everyone else. And it sanctions and perpetuates the violence that has been and continues to be used to dispossess poor, working class, and middle class people in favor of large land owners and wealthy business leaders.⁴⁰

³⁷ Hess 1975, p. 173. Tkacik 2012 suggests that Hess is the originator of Occupy Wall Street’s contrast between the one percent and the 99 percent.

³⁸ Konkin 1983, p. 7.

³⁹ Kevin A. Carson, “The Iron Fist Behind the Invisible Hand,” pp. 51-52; in Tuttle and Massimino 2016, 51-101.

⁴⁰ Chartier 2011, p. 25.

And Charles Johnson explains how left-libertarians often differ from right-libertarians in this regard:

The interventions that 20th century market libertarians were most likely to identify and oppose – progressive taxes, welfare programs, environmental regulations – are more politically controversial, but (really, *because*) they are *surface* interventions, economically speaking. While aiming to *reform* or *restrain* the corporate capitalist economy, each of these political interventions took the basic structural features of that economy – concentration, insulation, ratcheted costs and corporate power – bosses, banks, landlords and massive, entrenched firms – for granted, attempting only to contain their most unsightly downstream effects. Countervailing “progressive” regulations are like a *belt* put on capitalism. A man may need a belt or he may look better without, but he has the same body, for good or for ill, without the restraint.

But political means that consolidate the Many Monopolies do something more than just interfering further in the outcomes of preexisting market structures. State capitalist privileges shape basic patterns of ownership, access, and cost for essential goods and factors of production. They fundamentally *restructure* markets, inventing the class structures of ownership, ratcheted costs, and inhibited competition that produce wage-labor, rent, and the corporate economy we face. These primary interventions are no belt for capitalism to wear or take off; they are its very bones. Without them, what’s left is not a different look for the same body – but a totally different organism. ...

The Monopolies that create capitalists, landlords and financiers, and uphold corporate power, are so deeply embedded in the existing economy, so entrenched in consensus politics, it is easy to mistake them for an economic given, business as usual in a market society. ... Because you wear a belt on the surface, it’s easy to see, and easy to imagine how you might look without it. Because the belt is hitched by government coercion, 20th century libertarians rightly condemned it – but rarely noticed that however much the anti-business belt constrains the capitalist economy’s natural shape, capitalism without the belt is still a

political creature, shaped by intervention down to its pro-business bones.⁴¹

But while analysing the business-state alliance may be a left-libertarian specialty, it's not as though other libertarians have paid the issue no attention. Suspicion of business has a long pedigree in classical liberalism, running back at least as far as Adam Smith's observation that "[p]eople of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public," along with his warning against the use of the law "to facilitate such assemblies."⁴² And many contemporary libertarian thinkers not especially associated with the movement's left wing have made a case similar to (albeit often more moderate than) the left-libertarian one.

Here, for example, we have Milton Friedman in a public Q&A in 1978:

You must distinguish sharply between being pro-free-enterprise, which I am, and being pro-business, which I am not. Those are two different things. The reason I am pro-free-enterprise ... is primarily because I believe the problem in this world is to avoid a concentration of power, to have a dispersal of power. ...

Now Jane Fonda is right that if we have a system under which government is in a position to give ... and does give large favors, it's human nature for people to try to get those favors, whether those people are large enterprises such as the oil industry or the automobile industry or the steel industry, or whether they are small people like the farmers So that she is right insofar as she says there is a great danger of having large, small, and in-between corporations exert undue influence on government. Where people like Jane Fonda go wrong is in not recognizing what the answer is. ... But in my opinion the only effective cure is to reduce the scope of government, to get government out of the business.⁴³

Here's Murray Rothbard:

It was precisely in reaction to their impending *defeat* at the hands of the competitive storms of the market that business

⁴¹ Johnson 2016b, p. 47; cf. Christmas 2016.

⁴² Smith 1904, p. 130.

⁴³ M. Friedman 2012.

turned, increasingly after the 1900's, to the federal government for aid and protection. In short, the intervention by the federal government was designed, not to curb big business monopoly for the sake of the public weal, but to *create* monopolies that big business (as well as trade associations smaller business) had not been able to establish amidst the competitive gales of the free market. Both Left and Right have been persistently misled by the notion that intervention by the government is *ipso facto* leftist and anti-business.⁴⁴

David Friedman:

In the United States in this [20th] century the predominant form of monopoly has not been natural monopoly, artificial monopoly, or direct state monopoly, but state monopoly in private hands. Private firms, unable to establish monopolies or cartels because they had no way of keeping out competitors, turned to the government.⁴⁵

The decidedly non-lefty Hans Hoppe:

The more successful a business, the larger the potential danger of governmental exploitation, but the larger also the potential gains that can be achieved if it can come under government's special protection and is exempt from the full weight of capitalist competition. This is why the business establishment is interested in the state and its infiltration. The ruling elite in turn is interested in close cooperation with the business establishment because of its financial powers.⁴⁶

And more recently, Randall Holcombe:

When the government can deliver favors to businesses, the latter have an incentive to devote resources to acquiring the favors, which may take many forms. ... Firms increase their profits through government favors, and in exchange they support the politicians who provide the favors. That

⁴⁴ Rothbard 1965a, p. 13.

⁴⁵ D. Friedman 1989, p. 39.

⁴⁶ Hoppe 1990, p. 87.

relationship is cronyism. The profits that arise from rent seeking benefit the firm, but rather than adding value to the economy, as is the case when profits come from productive activity, these profits subtract value. ...

[A]lthough regulation may be introduced to promote the general public interest, once regulatory agencies have been established, they tend to be captured by the industries they were established to regulate and tend to work for the benefit of those who are regulated. ... [F]irms in the regulated industry constitute a concentrated interest group better able to organize to further its interests than is the populace in general, whom regulations are nominally designed to benefit. The general public will be rationally ignorant of government regulatory agencies' activities ... because its members realize they have almost no chance of influencing regulations, and even if one individual has influence, his benefit from wielding it is small because the benefit of his action is spread across a large population. Small costs per capita, imposed on members of the general public, can add up to large gains for concentrated interests, however, so the latter interests have an incentive to become informed and active in trying to influence the regulatory process. ...

When the government looms large in the economy through its regulatory power, taxing authority, and expenditures on transfers and subsidies, business profitability depends on the degree to which businesses can get subsidies, tax breaks, and regulations that work in their favor. This situation induces businesses to turn their attention toward the quest for favorable government treatment and away from entrepreneurial activity that adds to the economy's productivity. Insiders with political connections get those benefits; outsiders do not. This setup is crony capitalism. Cronies support their partners in government in exchange for the benefits they receive from government.⁴⁷

And earlier this year, Michael Munger and Mario Villarreal-Diaz:

Why would rational politicians eschew using their office to sell valuable services that are entirely within their legal power to provide? ... [I]n a system that sells legal protection and bottlenecking, why would a rational manager or stockholder

⁴⁷ Holcombe 2013, pp. 544-545, 556.

eschew cronyism? You're expecting investors to leave money on the table because at some point it is nearly certain that it becomes more profitable, at the margin, to invest in lobbying for protection than to invest in engineers for innovation. ...

The distinction between “economic” and “political” arenas is no longer sustainable. As Marx often claimed, “capitalists” recognize that their self-interest encourages co-optation of the state apparatus. The fact that the agents of the state *want* to be co-opted and even demand to be co-opted to serve their own self-interest does not improve matters.⁴⁸

And Munger and Villarreal-Diaz go on to quote favourably Marx's view that “the executive of the modern state is but a committee for managing affairs of the whole bourgeoisie” and “when commercial capital occupies a position of unquestioned ascendancy, it everywhere constitutes a system of plunder.”

Moreover, a wide range of libertarian writers, including Roy Childs,⁴⁹ Murray Rothbard,⁵⁰ David Friedman,⁵¹ Butler Shaffer,⁵² Paul Weaver,⁵³ Hans Hoppe,⁵⁴ Walter Block,⁵⁵ and of course Kevin Carson⁵⁶ have enthusiastically promoted the findings of Gabriel Kolko⁵⁷ and other New Left historians showing that the corporate elite have been the chief lobbyists for and beneficiaries of economic regulation. (Some Rand-influenced libertarians have been a bit less welcoming of Kolko's thesis;⁵⁸ for a recent defense of Kolko against their criticisms, see Joseph Stromberg's article elsewhere in this issue.)⁵⁹

⁴⁸ Munger and Villarreal-Diaz 2019, pp. 335-337.

⁴⁹ Childs 1994.

⁵⁰ Rothbard 2007, pp. 185-6; cf., e.g., Rothbard 1965a; Radosh and Rothbard 1972.

⁵¹ D. Friedman 1989.

⁵² Shaffer 2008.

⁵³ Weaver 1989.

⁵⁴ Hoppe 1990.

⁵⁵ Block 2005.

⁵⁶ Carson 2007a, 2008a, 2010d, 2016.

⁵⁷ Kolko 1963, 1965.

⁵⁸ Bradley and Donway 2013, 2015.

⁵⁹ Stromberg 2019.

It is true that not all right-libertarians take the business-state alliance as seriously as left-libertarians do. Kevin Carson complains about a tendency he calls “vulgar libertarianism”:

Vulgar libertarian apologists for capitalism use the term “free market” in an equivocal sense: they seem to have trouble remembering, from one moment to the next, whether they’re defending actually existing capitalism or free market principles. So we get the standard boilerplate article in *The Freeman* arguing that the rich can’t get rich at the expense of the poor, because “that’s not how the free market works” – implicitly assuming that this is a free market. When prodded, they’ll grudgingly admit that the present system is not a free market, and that it includes a lot of state intervention on behalf of the rich. But as soon as they think they can get away with it, they go right back to defending the wealth of existing corporations on the basis of “free market principles.”⁶⁰

On the same topic, I’ve written elsewhere:

Left-libertarians and right-libertarians ... often get frustrated with each other. Left-libertarians pull their hair out when right-libertarians at one moment acknowledge the existence of pervasive government favouritism to big business, and then at the next moment lapse back into treating criticisms of big business as criticisms of the free market. ... Right-libertarians, for their part, can’t see why left-libertarians keep harping about corporatist intervention when the right-libertarians have already acknowledged its existence and badness. ...

[R]ight-libertarians and left-libertarians see different things when they look at the existing economy. ... Of course ... they both notice (at some level of abstraction) the same facts: there’s a lot of more or less corporatist policies and there’s a lot of more or less free exchange. But for the right-libertarian, free exchange is what essentially characterises the existing economy, while the corporatist policies are so much friction; and just as you don’t constantly mention friction when talking about how a mechanism works, right-libertarians don’t constantly mention corporatism when

⁶⁰ Carson 2007a, p. 116.

talking about how the economy works. For the left-libertarian, by contrast, corporatism is a far more essential feature of the existing economy. ...Thus left-libertarians and right-libertarians are frustrated with each other because they're arguing from opposite sides of a Gestalt shift, where what looks essential to one side looks accidental to the other.⁶¹

All the same, it's clear that the problems to which Gus points have long been matters of serious discussion in the libertarian movement – particularly on the movement's left wing, but on the center and right as well. Munger and Villarreal-Diaz even worry that “capitalism” (by which they mean a free-market economy) *inevitably* transforms into cronyism or corporatism:

Paradoxically, if you believe that the pure form of capitalism is sustainable, you must claim that either corporate leaders or politicians, and probably both, are morally better than the rest of us. But that is just what most market enthusiasts would deny. Because, by the logic of the public-choice model, politicians are *not* better than the rest of us, [and so] pure capitalism is unsustainable. Pure capitalism requires politicians to forego [*sic*, for “forgo”] their own self-interest for the public good. ...

First, no one person alone can save capitalism from cronyism by acting virtuously. If one producer refuses government protection but competitors embrace it, in fact virtue is *punished* rather than rewarded. ... Second, no one person alone acting badly does much harm to the system. Even if all my competitors act virtuously, I can make still more money by buying government protection. And all it takes is a few people buying protection to force the issue.⁶²

But most left-libertarians would reply that what drives this dynamic is the continued existence of the monopoly itself, whose potential abolition Munger and Villarreal-Diaz fail to address.

Gus notes (more or less correctly, in my view) that nowadays “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,” but then adds – bizarrely, incredibly, jaw-droppingly – that

⁶¹ Long 2010b.

⁶² Munger and Villarreal-Diaz 2019, pp. 335-336.

“libertarians have nothing of interest to say about these problems.”⁶³ Gus thereby summarily sweeps aside, *inter alia*, the **entire public-choice tradition**,⁶⁴ the **entire tradition of libertarian class analysis**,⁶⁵ and the **entire tradition of left-libertarianism**.⁶⁶

Is Gus unaware of these traditions? That’s hard to believe, given his longtime involvement with the libertarian movement. Is it that he’s aware of them but regards them of containing “nothing of interest”? If so, it seems to me that he needs to make a stronger case for such a claim, and to engage those traditions’ actual arguments.

6. Working for the Man

Gus criticises widespread libertarian attitudes toward employment, which he sees as continuous with dubious views about contractual slavery.⁶⁷ I think he’s right about that; indeed, we on the libertarian left have been combating both contractual-slavery theories and right-libertarian views on employment for a while now. But in fairness, contractual slavery is not a popular position even among right-libertarians. Indeed, I can think of only two well-known libertarian thinkers who have defended it – Robert Nozick⁶⁸ and Walter Block.⁶⁹ Walter even notes explicitly: “The position on voluntary slavery which I support ... is not well-accepted by libertarians.”⁷⁰ The inalienability approach that Gus favours is in fact the dominant one among libertarian theorists – including Murray Rothbard, who writes:

[T]here are certain vital things which, in natural fact and in the nature of man, are inalienable, i.e., they *cannot* in fact be alienated, even voluntarily. Specifically, a person cannot alienate his *will*, more particularly his control over his own mind and body. ... Each man has control over his own will and person, and he is, if you wish, “stuck” with that inherent

⁶³ diZerega 2016, p. 85.

⁶⁴ See in particular the problem of concentrated vs. dispersed interests, in Boettke and Leeson 2004.

⁶⁵ See, e.g., Grinder and Hagel 1977; Hart 1997; Raico 2006; Long 1998c, 2012; and the various works collected in Hart, Chartier, Kenyon, and Long 2017.

⁶⁶ See, e.g., Chartier and Johnson 2011; Tuttle and Massimino 2016; Brooks 2017; Carson 2007a, 2008a.

⁶⁷ diZerega 2016, p. 90.

⁶⁸ Nozick 1974.

⁶⁹ Block 2003.

⁷⁰ *Ibid.*, p. 41, n. 4.

and inalienable ownership. Since his will and control over his own person are inalienable, then so also are his *rights to control that person and will*.⁷¹

This was likewise the dominant view in the classical liberal and individualist anarchist movements from which the modern libertarian movement grew. See, e.g., Lysander Spooner:

It is a natural impossibility for any man to make a *binding* contract, by which he shall surrender to others a single one of what are commonly called his ‘natural, inherent, *inalienable* rights.’” ... It is a natural impossibility for any man to make a *binding* contract, that shall invest others with any right whatever of arbitrary, irresponsible dominion over him.⁷²

And Benjamin Tucker:

Now, no man can make himself so much a slave as to forfeit the right to issue his own emancipation proclamation. Individuality and its right of assertion are indestructible except by death.⁷³

The most defensible libertarian theory of contractual obligation I know of is the title-transfer theory developed by Williamson Evers and Murray Rothbard, which rules out not only contractual slavery but all enforcement of specific performance (as opposed to material restitution) in the case of contracts for personal services.⁷⁴ Admittedly, and regrettably, the contractual-slavery view nowadays seems to have wider acceptance among rank-and-file libertarians than among libertarian theorists. All the same, from my experience teaching business ethics students for the past twenty years, I would say that non-libertarians are far more likely than libertarians to embrace the alienability of personal services. The difference is that when libertarians do embrace such alienability they take it all the way to its logical conclusion of full contractual slavery, whereas non-libertarians stop arbitrarily at some intermediate point. One might say that among those who accept the premise

⁷¹ Rothbard 1998, p. 135.

⁷² Spooner 1886, p. 11.

⁷³ Tucker 1893, p. 84.

⁷⁴ Evers 1977; Rothbard 1998, ch. 19; cf. Kinsella 2003, Barnett 1986, Hoppe 2010, pp. 28-29, and Hoppe 2018, p. 24. (Yes, even Hoppe rejects contractual slavery!) For my own defense of the inalienability of self-ownership, see Long 2019b.

of the alienability of personal services, the libertarians tend to choose the rational (logical consistency) over the reasonable (avoiding the odious outcome of justified slavery), while the non-libertarians tend to choose the reasonable over the rational. Happily, it is possible to embrace both the rational and the reasonable by rejecting the offending common premise.

Gus takes the inadmissibility of slavery contracts to impugn common libertarian assumptions about ordinary employment contracts. But again, this is something that those on the left wing of libertarianism have already been saying. Consider the following features of employment contracts:

While the employer's promise to pay the wage is legally enforceable, the worker's promise to bestow an adequate level of effort and care upon the tasks assigned, even if offered, is not. Work is subjectively costly for the worker to provide, valuable to the employer, and costly to measure. The manager-worker relationship is thus a contested exchange.⁷⁵

Conflict is inherent in the employment relation because the employer does not purchase a specified quantity of performed labor, but rather control over the worker's capacity to work over a given time period, and because the workers' goals differ from those of the employer. The amount of labor actually done is determined by a struggle between workers and capitalists.⁷⁶

On the basis of these features, plus the inalienability of the labourer's own agency, left-libertarian Kevin Carson draws the following conclusions:

Those who object morally to on-the-job direct actions like slowdowns and working-to-rule ... fail to consider the logical implications of a free contract in labor. ... The possibilities for such forms of resistance result from the fact ... that human will and moral agency are inalienable. ... "Voluntarily" selling oneself into slavery ... is a lot like selling a car and then remaining in the driver's seat. It is impossible to alienate moral agency. ... But the same is true of the wage labor contract. Unlike sellers of capital equipment and land, the seller of labor-power remains in the driver's seat at all times.

⁷⁵ Bowles and Gintis 1996, pp. 69-70.

⁷⁶ Reich and Devine 1981, pp. 27-28.

...

The agency problems of labor follow directly from the incompleteness of the labor contract That means that all its terms cannot be established *ex ante*, or ahead of time. ... The very term “adequate effort” is meaningless, aside from whatever way its definition is worked out in practice based on the comparative bargaining power of worker and employer. Since it’s impossible to design a contract that specifies exact levels of effort and standards of performance ahead of time, or for employers to reliably monitor performance after the fact, the workplace is contested terrain. Workers are justified entirely as much as employers in attempting to maximize their own interests within the leeway left by an incomplete contract. How much effort is “normal” to expend is determined by the informal outcome of the social contest within the workplace, given the *de facto* balance of power at any given time. And that includes slowdowns, “going canny,” and the like. The “normal” effort that an employer is entitled to, when he buys labor-power, is entirely a matter of convention – much like the “reasonable man” standards for implied warranties and fraud in a given community. If libertarians like to think of “a fair day’s wage” as an open-ended concept, they should bear in mind that “a fair day’s work” is equally open-ended.

The employer and employee, under free market principles, are equal parties to the employment contract. As things normally work now, and as mainstream libertarianism unfortunately take[s] for granted, the employer is expected as a normal matter of course to take advantage of the incomplete nature of the employment contract. One can hardly go to Cato or Mises.Org on any given day without stumbling across an article lionizing the employer’s right to extract maximum effort in return for minimum pay, if he can get away with it. His rights to change the terms of the employment relation, to speed up the work process, to maximize work per dollar of wages, are his by the grace of God.

Well, if the worker and employer really are equal parties to a voluntary contract, as free market theory says they are, then it works both ways. The worker’s attempts to maximize his own utility, under the contested terms of an incomplete contract, are every bit as morally legitimate as those of the boss. The worker has every bit as much of a right to attempt

to minimize his effort per dollar of wages as the boss has to attempt to maximize it. What constitutes a fair level of effort is entirely a subjective cultural norm, that can only be determined by the real-world bargaining strength of bosses and workers in a particular workplace.⁷⁷

Gus regards the libertarian movement as inadequately committed to worker empowerment; and we left-libertarians agree with him about that. But once again, Gus gives the impression that concern with worker empowerment is pretty much *nonexistent* in the movement, a claim that's hard to sustain.

Gus points out the inequality in bargaining power between employers and employees, as though no libertarian has ever said anything similar:

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. ... 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.⁷⁸

Well, yes. That's why left-libertarians offer the following type of analysis:

Every marginalized worker viscerally *knows* wage slavery to be a very real phenomenon – yet libertarians typically bury their heads in the sand and leftists typically fundamentally misunderstand the problem.

Most libertarians deny the existence of wage slavery, seeing only the voluntaristic nature of the *concept* of wages in principle rather than the real world of state-tainted injustice in practice.

Most radical leftists attack the voluntaristic nature of the concept of wages, assuming there is something inherently evil about wages for reasons that are mirror images of the intellectual errors commonly committed by libertarians.

⁷⁷ Carson 2007b, pp. 33-36.

⁷⁸ diZerega 2016, pp. 89-90.

They're both right and both wrong.

A *deeper* libertarian analysis, a *left libertarian* analysis, points to the role of the state in artificially concentrating capital in the hands of state-allied big business – giving statist plutocrats far more bargaining power in the labor market than is their natural due. Injustice happens to play out in the marketplace, but the cause is the state. ...

[T]he government-induced cartelization of industry creates oligopsony conditions in the labor market. It does this by artificially reducing the number of buyers of labor (businesses), thereby granting the existing ones an unnatural degree of bargaining power.

Austrian economics is quite clear on the cartelizing effects in the business world of statism. By pointing to statism as the cause of resulting oligopsony conditions in the labor market, a compelling case can be made that the completely free market (i.e. anarchy) truly is the proletarian revolution.⁷⁹

On the left-libertarian view, it is a background of government regulation that makes possible the inequality in bargaining power between employers and workers, and so any attempt to fix the problem that leaves the background framework untouched is doomed to fail. As Billy Christmas explains:

The structure of capitalistic privilege ... 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. ...

Libertarianism is not only well-equipped to provide an

⁷⁹ Spangler 2012.

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. ... 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 [Kevin] 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 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.⁸⁰

Left-libertarians thus tend to envision an economy in which the wage system, no longer sustained by government privilege, withers away. That’s not to say that wage labour would necessarily become nonexistent;⁸¹ but it would have to compete on a level playing field with less hierarchical alternatives such as independent contractorships and workers’ cooperatives, thereby limiting both its extent and its abuses.

On behalf of independent contractorships, Sam Konkin, for example, writes:

In an agorist society, division of labor and self-respect of each worker-capitalist-entrepreneur will probably eliminate the traditional business organization – especially the corpo-

⁸⁰ Christmas 2016, pp. 34-35.

⁸¹ See Massimino 2014.

rate hierarchy, an imitation of the State and not the Market. Most companies will be associations of independent contractors, consultants, and other companies.” ...⁸² Whether or not “wage workers” would exist instead of “independent contractors” for all steps of production is arguable, but this author feels that the whole concept of “worker-boss” is a holdover from feudalism.”⁸³

David Friedman once held similar views, rejecting “giant, hierarchical corporations ... as either an attractive way for people to live or an efficient way of producing goods,” and instead favouring the “sort of economic institutions” under which “almost everyone is self-employed.” In David’s vision: “Instead of corporations there are large groups of entrepreneurs related by trade, not by authority. Each sells, not his time, but what his time produces.”⁸⁴

On behalf of workers’ cooperatives, Gary Chartier argues:

A worker-controlled firm can avoid the principal-agent problem that besets the typical corporate firm. Difficulties associated with knowing what others were doing would obviously be reduced in a smaller firm. More than that, however, in a firm controlled by workers able to reap the rewards of their own productivity, most workers would be principals, rather than agents, with the result that there would be built-in incentives for workers to cooperate with each other in boosting firm performance and to encourage each other to behave productively. This could be expected to increase productivity and economic viability directly, while also dramatically reducing expenses on monitoring and supervision and the conflict associated with these activities.

...

State-secured privilege and state-perpetrated and state-tolerated dispossession simultaneously boost the wealth of the ruling class and its cronies and reduce the resources and options available to ordinary people. Thus, they dramatically impact the structure of work-life, fostering hierarchy and

⁸² Konkin 1983, p. 27.

⁸³ *Ibid.*, p. 25, n. 8.

⁸⁴ D. Friedman 1989, pp. 144-45. David tells me he’s since retreated from this position, on the basis of the arguments in Williamson 1975. I’m not persuaded by Williamson’s arguments, which I don’t think take into account the sorts of considerations raised by, e.g., Carson 2008a.

wealth concentration, in at least three interlocking ways: (i) by minimizing pressures to reduce corporate size and replace divisions and departments within large organizations with small firms related by agreement, firms in which it would be easier for workers to manage themselves; (ii) by dramatically limiting the bargaining leverage of ordinary workers and thus their ability to secure opportunities to participate in workplace governance; and (iii) by increasing the costs to people of working for themselves and of creating partnerships and cooperatives, and ensuring that, when they do choose to work for others, they have little opportunity to work for smaller, more nimble, more human-scale, more participatory firms.⁸⁵

During his New Left period, Rothbard likewise defended similar views:

The crucial contribution to both ends and means by the New Left as well as its most direct form of confrontation with the Old Left is the concept of “participatory democracy.” In the broadest sense, the idea of “participatory democracy” is profoundly individualist and libertarian: for it means that each individual, even the poorest and the most humble, should have the right to full control over the decisions that affect his own life. Participatory democracy is at the same time, (here again bringing a profoundly new dimension to social thought), a theory of *politics* and a theory of *organization*, an approach to political affairs and to the way New Left organizations (*or any organizations, for that matter*) should function.⁸⁶

Rothbard even suggested that it might be appropriate for any corporation that owed more than 50% of its revenue to governmental privilege to be taken over by its workers.⁸⁷

The goal of worker empowerment was also a major (though certainly not exceptionlessly present) feature of the classical liberal and individualist anarchist traditions from which modern libertarianism arose⁸⁸ – and so again

⁸⁵ Chartier 2014, pp. 361-362.

⁸⁶ Rothbard 1965b, p. 38; last emphasis added.

⁸⁷ Rothbard 1969, pp. 3-4.

⁸⁸ For worker-empowerment ideas in these traditions, see, e.g., Hodgskin 1825; Bastiat 2012; Andrews 1852; Heywood 1868; Spooner 1846, 1886; Donisthorpe 1887; Lum 1890; Molinari 1893; Tucker 1893; Tandy 1896; Spencer 1897, vol. 3, part VIII, chs. 20-21.

not something as alien to libertarianism as Gus implies.

But can worker empowerment actually be achieved by free-market means? Here Gus seems of two minds. At one point in his article he apparently answers no, claiming that the abusive power of employers over employees was “only effectively pushed back against with the rise of unions and the regulations [that] libertarians denounce.”⁸⁹ Here left-libertarians must demur; while we are certainly friendlier to *unions* than is the libertarian mainstream, when it comes to *labour regulations*, both left-libertarians and New Left historians have convincingly shown⁹⁰ that those regulations, taken as a whole, actually had the effect (and aim) of defanging the labour movement and co-opting it into becoming a subservient junior partner in the business-state alliance. Hence Kevin Carson issues the following left-libertarian challenge to the capitalist class:

We'll gladly forgo federal certification of unions, and legal protections against punitive firing of union organizers, if you'll forgo the court injunctions and cooling-off periods and arbitration. We'll leave you free to fire organizers at will, to bring back the yellow dog contract, if you leave us free to engage in sympathy and boycott strikes all the way up and down the production chain, to boycott retailers, and to strike against the hauling of scab cargo, etc., effectively turning every strike into a general strike. We give up Wagner (such as it is), and you give up Taft-Hartley and the Railway Labor Relations Act. Instead of hiding behind the skirts of state bureaucrats, we'll embrace the potential of on-the-job direct action, and exploit all the possibilities of the Internet in exposing the filth of you cockroaches to the light of day.⁹¹

While Gus initially hails governmental regulation as the saviour of the worker, a couple of pages later he suddenly seems more optimistic about the capacity of free markets to solve the problems of labour exploitation and hierarchical workplaces. Gus offers workers' cooperatives in general, and Spain's Mondragon Cooperatives in particular, as an example of how the “nonaggression principle combined with free contract and a market economy can effectively address these issues”; but he complains that “not a single libertarian to my knowledge has given them any informed attention.”⁹² But in

⁸⁹ diZerega 2016, p. 91.

⁹⁰ Buhle 1999, Johnson 2004, Carson 2010c.

⁹¹ Carson 2010c pp59-60.

⁹² diZerega 2016, p. 93.

fact a fair bit of favourable libertarian analysis has been written about cooperatives in general and Mondragon in particular.⁹³ Once again Gus's analysis seems to be suffering from a one-sided diet of examples.

7. Maleficent, Mistress of Evil

Much of Gus's article is devoted specifically to a critique of Ayn Rand and her baleful influence on the libertarian movement. I agree that there is much to criticise in Rand, but I also see far more value in her ideas than Gus does;⁹⁴ and I find many of Gus's criticisms, again, unfairly one-sided. I'm also baffled by Gus's claim that even if not all libertarians are "slavishly devoted to Rand's ideas," nevertheless "*all* [emphasis mine] have internalized some version of [Rand's] failure to understand the very individuality they praise."⁹⁵ *All?* Seriously? In light of the enormous philosophical diversity of the libertarian movement, this is a bold claim.

Gus complains, reasonably enough, of Rand's modeling of society as a "pyramid" with an "aristocracy of virtue and ability" at the top on whose efforts the vaster number of "inferior people" depend – a vision Gus sees as deriving ultimately from Nietzsche.⁹⁶ I've argued elsewhere that Rand's "vision of titans of industry heroically striding across the economic landscape, their pyramid-shaped companies of the less-talented dangling from their pockets like watch fobs," is "an artefact of competition-strangling regulations that prevent the flattening of corporate structures, the proliferation of small businesses, and the emergence of workers' cooperatives."⁹⁷

Or, as Charles Johnson puts it, Rand's "aesthetic and affectional imagination were engaged on behalf of actually existing *capitalists*, i.e., "the grand bourgeoisie – big industrialists, business-owners, money-men, the top tier of entrepreneurial inventors, and ultimately the wealthy broadly – as the heroic prime movers in business, and thus as the 'world's motor,' driving the production of the material means of survival and human flourishing," whereas in fact "the bosses are the chief *beneficiaries* of the predatory state," and "the archetypical boss is a busybodying mediocrity, a cunning predator, or a petulant grafter, and ... their role in the workplace is a drag on the productive labor on the shop floor rather than the animating force behind it."⁹⁸

⁹³ On cooperatives in general, see Prychitko 1991; Johnson 2006a; Carson 2008a; Chartier 2014, pp. 351-362; Hess 1969, 1975; Morris and Hess 1975. On Mondragon in particular see especially Carson 2010d, 2016; but also Taylor 2012, Stern 2013, Shaw 2017.

⁹⁴ Long 2010a.

⁹⁵ diZerega 2016, 63.

⁹⁶ *Ibid.*, pp. 59-60.

⁹⁷ Long 2010a.

⁹⁸ Johnson 2006b.

But it's important to see that this elitist strand in Rand's thinking coexisted with decidedly anti-elitist strands. As I've written elsewhere:

Consider the architectural firm of Francon & Heyer, later Francon & Keating, in *The Fountainhead*. The head of the company, Guy Francon, is a gladhanding fraud who takes credit for work actually done by his draftsmen, and who cares more about the colour of his employees' neckties than about the quality of their work. And most of the businesses portrayed in the novel are similar. There are exceptions, most notably the case of the self-made millionaire Roger Enright; but most of the admirable characters are working-class.⁹⁹

One of Rand's biographers, Jennifer Burns, describes how Rand's early Nietzsche-influenced elitism was eroded by her experience working in Wendell Willkie's 1940 presidential campaign:

[Rand] visited theaters where Willkie newsreels were shown, staying afterward to field questions from the audience. ... These spontaneous sessions began to shake Rand loose from her pre-conceived notions about American voters. Before campaigning, Rad has been suspicious of American democracy. Instead of a government of, for, and by the people, she thought the state should be "a means for the convenience of the higher type of man." ... Now she found herself impressed by the questions her working-class audience asked ... She said of her time in the theaters, "It supported my impression of the common man, that they really were much better to deal with than the office and the Madison Avenue Republicans. ... Working on the Willkie campaign helped shake Rand out of her reflexive elitism."¹⁰⁰

Moreover, the character of Gail Wynand in *The Fountainhead* represents Rand engagement with and, in large part, her transcendence of the Nietzschean elitism that had previously attracted her. The whole point of Wynand's arc is to show that

⁹⁹ Long 2007a.

¹⁰⁰ Burns 2009, pp. 55-56, 65; cf. Barbara Branden (1987): "The experience further confirmed her in her respect for the American public, in her conviction that the so-called 'common man' is singularly *uncommon*. The most intelligent and rational questions she heard anywhere were asked by the audiences from the working-class area of the theater." (p. 61)

domination of others represents a *false* form of individualism; I particularly recommend Lester Hunt's excellent work on this subject.¹⁰¹

Moving on to *Atlas Shrugged*, and quoting myself again:

Atlas Shrugged of course has heroic capitalists at its center ... But even here, for every heroic entrepreneur like Dagny Taggart or Hank Rearden, there's a slimy rent-seeking plutocrat like James Taggart or Orren Boyle. Indeed James Taggart is, let it be remembered, Dagny's *boss*, who takes credit for all her achievements while blaming her for all his mistakes. ... And interestingly, the labour organiser Fred Kinnan, though technically a villain, is presented far more sympathetically than are the businessmen and bureaucrats with whom he colludes. ...

Atlas is torn between two different readings of the "strike" that forms its central plot device. On one reading, it's the exact reverse of the standard Marxist ideal: it's a strike by industrious capitalists against parasitic labourers. On another reading, it's a strike by the industrious of *all* economic classes against parasites of *all* economic classes, in the style of the French *industriels*. Now the second, more left-wing reading is clearly the "official" one, both because the novel draws its heroes and villains from capital and labour alike (and even the über-hero John Galt is a proletarian of sorts) and because in her nonfiction works Rand always insisted that the greatest conflicts between producers and parasites occur not between but within economic classes. But the novel is nonetheless heavily and unmistakably *flavoured* with the first, more right-wing reading.¹⁰²

Rand's anti-elitist strand also shows up in the following notes for *Atlas*:

Man being a rational creature, the only good possible to him is that which he himself has accepted rationally; his primary evil is to do *anything* without his own independent rational acceptance and understanding. ...

¹⁰¹ Hunt 2006; cf. Hunt 2015. And see also David Kelley's account (1993) of the ways in which Rand's mature ethics moderates its aristocratic elements by introducing mercantile and Christian elements.

¹⁰² Long 2007a.

[The] crucial error in thinking ... that one man can decide what is right (or good) for another the forcing of his ideas on those who, by his own definition, are inferior and cannot achieve or know what's good for them ... [is] worse than futile – it's a positive evil – putting them into a subhuman position, whereas they can exist or be happy only on the basis of whatever rationality they possess. ... This forcing of his ideas on others is monstrously destructive of the best among them ...

If he argues like this: “Well, those lesser people work and struggle on their own, but stupidly; let them have the benefit of my superior intelligence and direction; let them be forced to accept my directives whether they agree or not, whether they understand or not; the result will be to their own benefit” – the answer is: To accept or obey blindly is the only original sin for a man and the basic source of his destruction. Within *the specific sphere* of his own action, his job, his life, his active concerns, he must understand what he is doing to the best of his own intelligence ...

If a very stupid type of unskilled laborer takes a job turning a crank in a factory, without understanding or concern for what the factory is manufacturing or why – *that is quite proper* and safe; there is no obligation on man to venture beyond the limits of his intelligence; in fact, it is his moral law and the essence of his nature *not to touch* that which he cannot judge first-hand, *not to act without intelligence*. ...

Such a laborer knows his own reasons for taking the job – need of money, ease of the work, or whatever – and that is his proper and *only possible* motive. To force him against his wishes or understanding into some wonderful atomic factory where his limited skill can be used to best advantage (by the master's decision) will not do him, the factory, or the master any good. It is forcing him into a subhuman state. ... Who, then, sets a man's purpose here? Another creature, a master. By what right? It is the nature of man's intelligence, of survival by means of rationality, to function through purpose. But *he* himself must set the purpose.¹⁰³

¹⁰³ Rand 1997, pp. 495-497. Here and throughout, Rand's posthumously published writings are quoted subject to the caveat that Rand's estate has a well-documented, regrettable habit of silently editing and rewriting such material, sometimes substantially, and so Rand's posthumous work must be used with caution; see Sciabarra 1998; Campbell 2011; Burns 2009, pp. 291-293; cf. Campbell 2017, Bissell 2000, 2002.

These notes became the blueprint for the character of Robert Stadler in *Atlas*, who represents the idea that the ignorant masses should subordinate themselves to the guidance of the superior mind. Stadler is one of the book's villains, not one of the heroes. (And the novel's hero, John Galt, of course submits to torture rather than accept the role of benevolent leader.)

8. I Am a Rock, I Am an Island

Gus charges Rand, and – owing to her influence – libertarians generally, with holding to an exaggerated and unrealistic ideal of self-sufficiency and independence. But it seems to me that Gus has an exaggerated and unrealistic conception of what Rand (and other libertarians) *mean* by self-sufficiency and independence. For example, Gus claims that on Rand's view intellect is “self-contained.”¹⁰⁴ But Rand seems to have thought otherwise, when she wrote:

Man is the only species that can transmit and expand his store of knowledge from generation to generation; the knowledge potentially available to man is greater than any one man could begin to acquire in his own lifespan; every man gains an incalculable benefit from the knowledge discovered by others.¹⁰⁵

Gus also criticises Rand's supposed “image of complete self-sufficiency,” noting that Rand herself in fact “benefited in crucial ways from the kindness of others.”¹⁰⁶ But Rand makes clear that her conception of self-sufficiency does not preclude interdependence; indeed, she makes fun of the notion that “in order to be an individual, Thomas A. Edison would have had to appear in the jungle by parthenogenesis, as an infant without human parents, then rediscover, all by himself, the entire course of the science of physics, from the first fire to the electric light bulb.”¹⁰⁷ For Rand, it is precisely when the interdependence is voluntary and reciprocal that each party to the transaction is self-sufficient.

So Rand has no brief against *reciprocal* dependence; but what about *one-way* dependence, as in charity? Rand's answer is that charity, when it is proper, is not truly one-way, because Rand's conception of self-interest is much broader and more Aristotelean than Gus recognises; when we help somebody we *value*, we *do* receive a payment in return:

¹⁰⁴ diZerega 2016, p. 60.

¹⁰⁵ Rand 1964, pp. 35-36.

¹⁰⁶ diZerega 2016, p. 61.

¹⁰⁷ Rand 1982, pp. 145-146; cf. Palmer 1996.

In spiritual issues ... the currency or medium of exchange is different, but the principle is the same. Love, friendship, respect, admiration are the emotional response of one man to the virtues of another, the spiritual *payment* given in exchange for the personal, selfish pleasure which one man derives from the virtues of another man's character. ... [I]f one's friend is starving, it is not a sacrifice, but an act of integrity to give him money for food rather than buy some insignificant gadget for oneself, because his welfare is important in the scale of one's personal values¹⁰⁸

This applies to helping friends, but what about helping strangers? Rand holds that there is a certain level of benevolence that we owe to *every* human being "until and unless he forfeits it," and that it is "on the ground of that generalized good will and respect for the value of human life that one helps strangers in an emergency";¹⁰⁹ but as Darryl Wright notes, the details are less than clear:

At two points in "The Ethics of Emergencies" (*VOS* ch. 3), Rand says that one should only help strangers in an emergency (see 54-55). But she also says that it can be proper to help someone who is "ill and penniless," although illness is a normal occurrence rather than what she calls a "metaphysical emergency," such as a flood. Thus, her position on the scope of proper aid to strangers is somewhat unclear here. She writes, "It is only in emergency situations that one should volunteer to help strangers" (54-55). This could be read either as saying that in non-emergencies one should not help, though in emergencies one may; or, alternatively, as saying that in emergencies, but only then, one *should* help. If it has the latter sense, then Rand's view might be that in non-emergency cases of distress, such as that of illness, one *may* properly help, although it is not the case that one *should* do so (as in an emergency). Or perhaps she is distinguishing between different categories of emergency.¹¹⁰

¹⁰⁸ Rand 1964, pp. 31, 52.

¹⁰⁹ *Ibid.*, pp. 52-54.

¹¹⁰ Wright 2016, p. 179, n. 20. On issues of casuistry Rand could often be impatient and contradictory; see, e.g., Long 2005.

Wright thus offers Rand a choice between saying that a) help to others is *permissible* in emergencies and *impermissible* otherwise, and saying that b) help to others is *obligatory* in emergencies and *non-obligatory* otherwise. I'm not sure that those are the only two interpretive options; but in any case, the following passage from Rand seems to tell against (a), since it does not seem in any way limited to emergencies:

The fact that a man has no claim on others (i.e., that it is not their moral duty to help him and that he cannot demand their help as his right) does not preclude or prohibit good will among men and does not make it immoral to offer or to accept voluntary, non-sacrificial assistance. ... It is morally proper to accept help, when it is offered, not as a moral duty, but as an act of good will and generosity, when the giver can afford it (i.e., when it does not involve self-sacrifice on his part), and when it is offered in response to the receiver's virtues, not in response to his flaws, weaknesses or moral failures, and not on the ground of his need as such.¹¹¹

Elsewhere, in a 1936 letter on behalf of the Hollywood Studio Club, Rand offers an even stronger defense of charity, maintaining that an institution offering help to others (in what seem to be non-emergency situations) is “worthy of everyone’s support”; and in the same passage she explicitly rejects the unrealistic ideals of self-sufficiency that Gus takes her to champion:

That idea of hardships being good for character and of talent always being able to break through is an old fallacy. Talent alone is helpless today. Any success requires both talent and luck. And the “luck” has to be helped along and provided by someone. ... Talent *does not* survive all obstacles. In fact, in the face of hardships, talent is the first one to perish; the rarest plants are usually the most fragile. Our present-day struggle for existence is the coarsest and ugliest phenomenon that has ever appeared on earth. It takes a tough skin to face it, a very tough one. Are talented people born with tough skins? Hardly. In fact, the more talent one possesses the more sensitive one is, as a rule. And if there is a more tragic figure than a sensitive, worthwhile person facing life without money – I don't know where it can be found. ...

¹¹¹ Rand 1990b, p. 41.

[H]elp for young talent not only provides human, decent living conditions which a poor beginner could not afford anywhere else, but it provides that other great necessity of life: understanding. It makes a beginner feel that he is not, after all, an intruder with all the world laughing at him and rejecting him at very step, but that there are people who consider it worthwhile to dedicate their work to helping and encouraging him. Isn't such an organization worthy of everyone's support? ... So many gamble on roulette, and slot machines, and horses. Why not gamble for a change on human beings and human futures?¹¹²

And other thinkers in the Randian tradition, such as David Kelley and Tibor Machan, have defended a more robust virtue of charity than Rand did, *but* on specifically Randian grounds.¹¹³

Gus also complains of the “glaring absence” of the notion of *empathy* both from Rand and from the broader libertarian tradition.¹¹⁴ But it's *not* absent from Rand; the notion of “psychological visibility” (developed by Rand's associate Nathaniel Branden, but endorsed by Rand) plays essentially the same role.¹¹⁵ And it's certainly not absent from the libertarian tradition, as it's the centerpiece of the ethical systems of, e.g., Adam Smith (as Gus himself notes) and Herbert Spencer (as he doesn't).¹¹⁶

¹¹² Letter to Marjorie Williams (18 June 1936); in Rand 1995, pp. 31-33. Although this was a personal letter and not a published piece, Rand explicitly gives the recipient permission to reproduce the letter, in whole or in part, for the purposes of raising money for the Studio Club, so I think we can treat Rand's claims here as intended for publication and not merely as tentative musings. On the other hand, the letter's early date means that it cannot necessarily be expected to be consistent with her mature views – though it does not strike me as significantly out of line with them.

¹¹³ Kelley 2003, Machan 1998; cf. Silk 2011.

¹¹⁴ diZerega 2016, p. 69.

¹¹⁵ Branden defended the concept of psychological visibility in, e.g., Branden 1967, which appeared in the Rand-edited, Rand-approved journal *The Objectivist* and so presumably enjoyed her blessing. (See also Branden 1968a and 1968b.) Rand also made use of the concept in her private journals (see Valliant 2005); and although she later broke with Branden, she noted that all of his “writings and lectures up to this time were valid and consonant with Objectivism” (Rand 1968, p. 5), presumably including the material on visibility. So it seems safe to infer Rand's endorsement of the concept. For further elaboration of the concept of psychological visibility, see Branden 2001, pp. 194-204, and Branden 2008, pp. 58-66.

¹¹⁶ See, e.g., Spencer 1954, 1978. Empathy also plays a crucial *epistemological* role for Friedrich Hayek: “in discussing what we regard as other people's conscious actions, we invariably interpret their action on the analogy of our own mind: that is, that we group their actions, and the objects of their actions, into classes or categories which we know solely from the knowledge of our own mind.” (Hayek 1948, p. 63)

It's certainly true that many of the versions of libertarianism that prevail today, whether Randian or otherwise, *are* deeply deficient in empathy. But this is a fact that has been frequently pointed out and decried within the libertarian movement,¹¹⁷ and so *ipso facto* cannot be straightforwardly applied to libertarianism as a whole. And I would commend to Gus's attention Mary Ruwart's book *Healing Our World: The Compassion of Libertarianism: How to Enrich the Poor, Protect the Environment, Deter Crime, and Defuse Terrorism*¹¹⁸ as evidence that versions of libertarianism that place empathy at the center of their approach are no strangers to our movement.¹¹⁹

As evidence of libertarians' lack of empathy, Gus points to some libertarians' remarks trivialising sexual harassment in the workplace, which he takes to evince an inability to "imaginatively place themselves in the shoes of people unlike themselves"¹²⁰ or to "understand what it is to be a human being of moderate to low income and subordinate to another."¹²¹ Gus is right that this sort of failure of empathy is widespread within the libertarian movement and deserves to be vigorously combated. But this problem is hardly confined to libertarians. Conservatives tend to show very little empathy toward, e.g., immigrants; progressives tend to show very little empathy toward, e.g., gun owners.¹²²

Moreover, there are many libertarians who deploy distinctively libertarian resources – such as Hayekian epistemology – *against* such trivialisation (thus showing that the problem does not lie within libertarian principle as such). Left-libertarian Nathan Goodman, for example, writes:

Hayek's point about distributed knowledge applies to more than just economic issues. It also applies to social issues. Take issues of gender. Women experience misogyny in their day to day lives. Many individual women know things about sexual harassment, casual sexism, and a wide range of other gender issues that I will never know, because I am not a woman, and I do not experience them. Recognizing that this distributed knowledge exists has consequences. It means that

¹¹⁷ See, e.g., Tucker 2014.

¹¹⁸ Ruwart 2015 (a revision of a work popular in libertarian circles since 1992).

¹¹⁹ Also, for a history of the libertarian movement that stresses its bleeding-heart side, even in figures ordinarily regarded as anything but bleeding hearts, see Zwolinski and Tomasi (forthcoming 2020).

¹²⁰ diZerega 2016, p. 92.

¹²¹ *Ibid.*, p. 98.

¹²² cf. Long 2017.

I should not dismiss women’s experiences of sexism or presume I know more about sexism than they. It means that within the realm of feminist activism, I should not always have as important a decision making role as the women who actually experience the oppression caused by patriarchy.¹²³

It’s also worth noting that on a left-libertarian analysis, the asymmetries of power between employers and employees that facilitate workplace sexual harassment are in large part a byproduct of state actions;¹²⁴ and further, that right-libertarians’ frequent reluctance to see workplace sexual harassment as a violation of the employment contract must be viewed in the context of the unjustified right-libertarian tendency to interpret employee obligations broadly and employer obligations narrowly.¹²⁵

Gus also sees libertarians’ lack of moral concern for nonhuman animals as further evidence of empathy failure. But many libertarians believe in animal rights, and even those who do not, often believe in moral obligations (albeit not legitimately enforceable by legal institutions) toward nonhuman animals.¹²⁶

9. The Man in the Mirror

One of Gus’s oddest claims is that “Rand and the libertarian tradition generally take the ‘self’ for granted.”¹²⁷ In the case of Rand, at least, nothing could be further from the truth. Gus plugs Rand into traditional debates about psychological and ethical egoism without noticing that her neo-Aristotelean conception of self-interest is boldly revisionary and simply does not fit into the prefab categories that Gus marshals.

As an example, consider the scene in *The Fountainhead* where a financially

¹²³ Goodman 2013.

¹²⁴ More about this below.

¹²⁵ See Carson 2007b, 2010c.

¹²⁶ For libertarian arguments for a strong moral status for nonhuman animals – some rising to the level of enforceable rights, some not – see, e.g., Chartier 2010, 2014; Clark 1987; Graham 2004; Huemer 2019; Milburn 2018; Nozick 1974, pp. 35-42; and Wissenburg 2019.

In passing: while it’s true that Descartes attributed to human beings a special faculty of consciousness that transcended the material world and thus divided us sharply from other animals, it is surely overstating the case to say that he did so because, as Gus says (p. 72), he “believed in a traditional, literal way in *Genesis*.” In his *Treatise on the World and on Light*, Descartes describes the formation of the earth as the spontaneous result of physical particles interacting in accordance with natural laws – hardly the theory of a *Genesis* literalist. (In any case, it’s a matter of scholarly controversy how sharp a line Descartes really draws between human and nonhuman animals; see, e.g., Harrison 1992.)

¹²⁷ diZerega 2016, p. 69.

desperate Howard Roark turns down a lucrative contract rather than compromise his artistic principles, even knowing that losing the contract means having to close his architectural business and take up work as a manual labourer:

“Good God!” Weidler cried suddenly. “Don’t you know how big a commission this is? You’re a young man, you won’t get another chance like this. And ... all right, damn it, I’ll say it! You need this! I know how badly you need it! ... It’s sheer insanity! ... Do you have to be quite so fanatical and selfless about it?”

“What?” Roark asked incredulously.

“Fanatical and selfless.”

Roark smiled. He looked down at his drawings. His elbow moved a little, pressing them to his body. He said:

“That was the most selfish thing you’ve ever seen a man do.”¹²⁸

Lester Hunt, commenting on this scene, writes:

Typically, one’s ideals are thought to be for the most part antithetical to one’s interests while money is treated as if it were infallibly conducive to it, and this is clearly not what Rand and Roark think. Obviously, there is a heterodox theory about the nature of self-interest involved here.¹²⁹

Clearly Rand is not taking the self “for granted.” Not for nothing is her book *The Virtue of Selfishness* subtitled “A *New* Concept of Egoism.”

It’s true that Rand does not regard the self as socially constituted, a view that Gus favours.¹³⁰ But social constitution of the self is hardly unknown in libertarian circles. Hayek, for example, argues:

Mind is as much the product of the social environment in which it has grown up and which it has not made as something that has in turn acted upon and altered these institutions. ... The cultural heritage into which man is born consists of a complex of practices or rules of conduct The

¹²⁸ Rand 1994, p. 196.

¹²⁹ Hunt 1999, p. 79.

¹³⁰ diZerega 2016, p. 67.

mind does not so much make rules as consist of rules of action, a complex of rules¹³¹

And Crispin Sartwell has argued that there is no conflict between the self's having libertarian autonomy and its being socially constituted: "a person consists of a web or knot of relations," and an "anarchism that emphasizes the connections of the individual to other persons as constitutive of individuality" must also involve an "affirmation of individuality [as] the first moment in re-establishing this connection."¹³² Or, as I have written elsewhere, the libertarian conception of the self

does seem to depend on a basic *distinctness* of persons; but to say that my identity *depends* in part on my relations to other people does not imply that other people are literally part of me or vice versa. To treat mutual distinctness as inconsistent with mutual dependence is an atomist mistake, not an individualist one.¹³³

10. They Took the Whole Cherokee Nation

Gus devotes a fair bit of space to Rand's views on the European conquest of the American Indians.¹³⁴ And fair enough, her statements on this topic are dreadful – and easily refuted. In response to her claim that Indians societies had no concept of property rights, I've noted elsewhere:

Native American society comprised a wide variety of different nations, tribes, and cultures. Some were nomadic; others, sedentary and agricultural. Some practiced collective or communal property, others – many¹³⁵ – private property, and others a mix. So even if it were true that nomadic and communal societies have no just land claims, that would justify dispossessing only some Indian communities, not all of them. ... In any case, there is nothing inherently illegitimate ... about communal or collective property As for nomadic cultures, even when habitual use is not transformative enough to secure an exclusive property right,

¹³¹ Hayek 2012, p. 18.

¹³² Sartwell 2008, p. 110.

¹³³ Long 2019b.

¹³⁴ diZerega 2016, pp. 94-98.

¹³⁵ See Anderson 1992.

it at least grounds easement rights, which European settlers had no right to violate.¹³⁶

In answer to Rand's claim that anyone who "brought with him an element of civilization had the right to take over this continent"¹³⁷ – what happened to Rand's previously-cited claim that to "force [someone] against his wishes or understanding into some wonderful atomic factory where his limited skill can be used to best advantage (by the master's decision) is forcing him into a subhuman state"?¹³⁸ Rand points out that many Indian tribes practiced slavery, torture, and human sacrifice. Okay, yes, very bad. But Europeans also practiced slavery, torture, and human sacrifice.¹³⁹ Would it have been okay for Indians to invade and loot, say, Spain, and massacre children and other innocents, because of the Spanish practice of *auto-da-fé*? It's not clear why Europeans get a pass on such things but Indians don't. Rand asserts, in addition, that Indians had no rights deserving of respect because their societies were constantly making war on one another. What were European countries doing at this period?

So okay, Rand had terrible views on the colonisation of the Americas. We can add her to the long line of thinkers who failed to apply their own principles consistently when their prejudices were at stake. But for Gus this somehow points a broader moral against *libertarianism as such*. On his view, Rand's remarks on Indians explain why libertarianism has (allegedly) had an "extraordinarily negative impact upon our country."¹⁴⁰ Why? Because all libertarians march in lock-step to Rand's every pronouncement? That's news to me.

Gus himself notes¹⁴¹ that "[i]ronically a libertarian think tank offers a telling rebuttal to Rand." But if there is irony here, it cuts against Gus's position. He offers Rand's view of Indians as evidence of a general problem with libertarians, but – "ironically" – provides evidence that the problem is not so general.

If Rand's remarks on Indians are representative of libertarian thought in

¹³⁶ Long 2014b; cf. Long 2003, 2018. See also William Finnegan (2018): "Native Americans had used seasonal burning for many purposes, including hunting, clearing trails, managing crops, stimulating new plant growth, and fireproofing areas around their settlements. The North American 'wilderness' encountered by white explorers and early settlers was in many cases already a heavily managed, deliberately diversified landscape."

¹³⁷ Rand 2005, p. 104.

¹³⁸ Rand 1997, p. 497.

¹³⁹ I take executions for heresy or witchcraft to be essentially equivalent to human sacrifice.

¹⁴⁰ diZerega 2016, p. 98.

¹⁴¹ *Ibid.*, p. 95, n. 51, citing Rodriguez, Galbraith, and Stiles (2006).

general, then what should we make of Leonard Liggio's¹⁴² or Rosalie Nichols'¹⁴³ or Carl Watner's¹⁴⁴ defense of Indian land claims? Or Rothbard's argument that land in Latin America seized by the Spanish *conquistadors* should be returned to the peasants from whom ancestors it was taken?¹⁴⁵ Or Ilana Mercer's Hoppe-inspired (of all things) takedown of Rand's arguments on Indians?¹⁴⁶ Or Indian rights activist and AIM national director Russell Means's losing the Libertarian Party presidential nomination to Ron Paul in 1987 by only 196-120?¹⁴⁷ Is all this just more "irony"? Like a black fly in your Chardonnay?

Just this year, writing in *Reason* magazine – the most prominent libertarian periodical – Amy Sturgis documents how the U.S. government bullied the Creek nation into exchanging its “decentralized, adaptable framework of predominantly local decision making” for a “far bloodier” hierarchical system in which “stick-bearing warriors delivered the new state justice to their fellow Creeks via beatings, mutilations, and executions.”¹⁴⁸ It's hard to make the argument that the mind of the libertarian movement as a whole is in captivity to Rand on this issue.

11. Free to Be You and Me

Continuing his crusade against Rand (apparently, and inexplicably, as a proxy for libertarianism *per se*), Gus maintains that Rand's outlook deteriorated from a focus, in *The Fountainhead*, on artistic creation and thus on a “multiplicity of excellences based on internal standards of creativity,” to a focus, in *Atlas Shrugged*, on reason, which for Gus implies a “single scalar” and thus “only one rational way to live a life.”¹⁴⁹

But while Gus may think of reason implies a single value scalar, there is little evidence that Rand does so, in *Atlas* or elsewhere. On the contrary, Dagny's commitment to her work is clearly to *railroad* work, as Rearden's is to metallurgy and Halley's is to music and the unnamed bakery owner's is to childrearing.

It is true that a much narrower conception of rational modes of living, amounting to a stifling and cultish conformity, famously came to prevail in

¹⁴² Liggio 1971.

¹⁴³ Nichols 1968, 1970a, 1970b, 1971.

¹⁴⁴ Watner 1983.

¹⁴⁵ Rothbard 1998, chs. 9-11.

¹⁴⁶ Mercer 2017.

¹⁴⁷ Turner 1987.

¹⁴⁸ Sturgis 2019, p. 66.

¹⁴⁹ diZerega 2016, p. 61. Gus's arguments here are reminiscent of Greenberg 1977.

the intellectual circle of friends and disciples that later grew up around Rand; but the question is whether this was the expression of a natural reading of *Atlas's* conception of reason, and I don't see that it was.

Gus notes that according to Rothbard, Rand's view implies that he "could be just as good in music as in economics if I applied myself."¹⁵⁰ But nowhere does Rand herself say anything like this; Gus seems to be taking a dubious Rothbardian interpretation as a Randian *hadith*. Instead, Rand stresses the role, in determining one's personality and one's artistic and romantic choices (and likewise, I should think, one's career choices), of a unique "sense of life" not identical with (though closely bound up with) a list of codified intellectual commitments:

A given person's sense of life is hard to identify conceptually, because it is hard to isolate: it is involved in everything about that person, in his every thought, emotion, action, in his every response, in his every choice and value, in his every spontaneous gesture, in his manner of moving, talking, smiling, in the total of his personality. It is that which makes him a "personality."¹⁵¹

If Gus's interpretation were correct, then Rand would have to hold that everyone should have the same sense of life. Does she? One might think so, if one focused on the following passage in isolation:

Philosophy does not replace a man's sense of life, which continues to function as the automatically integrated sum of his values. But philosophy sets the criteria of his emotional integrations according to a fully defined and consistent view of reality (if and to the extent that a philosophy is rational). Instead of deriving, subconsciously, an implicit metaphysics from his value-judgments, he now derives, conceptually, his value-judgments from an explicit metaphysics. His emotions proceed from his *fully convinced* judgments. The mind leads, the emotions follow.¹⁵²

There are two ways of reading this passage. On the narrow reading, Rand is saying that every implicit value-judgment within one's sense of life should be logically deducible from one's rational philosophical judgments. Since

¹⁵⁰ diZerega 2016, p. 62.

¹⁵¹ Rand 1971, p. 31.

¹⁵² *Ibid.*, pp. 29-30.

there can be only one philosophically correct view of the world, the narrow reading would seem to imply that the senses of life of all rational people should coincide completely. On the broader reading, Rand is instead saying only that our rational philosophical judgments should set the *constraints* or *parameters* that determine which sets of value-judgments are permissible, while allowing variation from person to person within those constraints. While Rand's claim that "philosophy sets the criteria of his emotional integrations" is compatible with either reading, her further claim that a rational person "*derives, conceptually, his value-judgments from an explicit metaphysics*" (emphasis mine) might seem to favour the narrow reading.

Against the narrow reading, however, is nearly everything else she says about the sense of life. For example, Rand speaks of "the embodiment of the values that formed a person's character, which are reflected in his widest goals or smallest gestures, which create the *style* of his soul – the individual style of a unique, unrepeatable, irreplaceable consciousness."¹⁵³ If she thinks the style of a person's soul is "unique" and "unrepeatable," Rand can hardly be expecting everyone to strive to adopt the *same* style, like inmates of some bleak orphanage all dressed in the same uniforms (to borrow an image from *We the Living*).

Rand also repeatedly affirms that individuals can differ from one another in sense-of-life judgments without any of them being objectively mistaken. For example, she says:

*You have no way of knowing my sense of life, even though ... you've read my books [N]obody except my husband actually can give me paintings or records and know infallibly, as he does, what I would or would not like. ... It's no reflection on you, nor on me. [Emphasis added. – RTL] It's just that sense of life is enormously private.*¹⁵⁴

Likewise, in her writing seminar, Rand notes that if an editor's suggested title "grates on you, *even though it is good*" (emphasis added), that is because it is not "consistent with your style," which is "a sense of life issue."¹⁵⁵

I think it's clear, then, that Rand regards multiple styles of living as consistent with rationality, in contrast to Gus's claim that for Rand reason reduces the good life to a single scalar. One might say that on Rand's view, a sense of life represents an evaluation of existence in relation (not just to

¹⁵³ Ibid., p. 32.

¹⁵⁴ Q&A session for Leonard Peikoff's *Philosophy of Objectivism*, Lecture 12, 1976, quoted in Campbell 2011, p. 120.

¹⁵⁵ Rand 2001, p. 172.

humanity as such but) to *oneself*, with one's own particular history, talents, and proclivities.¹⁵⁶ (And this likewise suggests that when Rand distinguishes between an “abstract principle” and a “concrete, specific purpose,” holding that the former is a “measurement or gauge” to “guide a man's choices” in achieving the latter¹⁵⁷— or, again, when she says that a “moral code is a set of abstract principles” which “an individual must translate ... into the appropriate concretes” by defining “his particular hierarchy of values,”¹⁵⁸ a broad rather than a narrow readings is indicated in those passages too.)

12. Imperial, Mysterious, in Amorous Array

Many of Gus's criticisms of libertarianism involve cases where he has identified a genuinely mistaken view, but erroneously treated that view as more prevalent in the libertarian movement than it is. Thus the bulk of my responses have been broadly eirenic: “Yes, we (or many of us) do after all make the points you're wishing we would make; come back in, the water's fine.”

But with regard to Gus's defense of “political democracy,”¹⁵⁹ I have to disappoint him. Here I have far less agreement to offer.

For Gus, political democracy offers what libertarians falsely claim that markets offer: namely, control not only over the immediate and individual results of one's actions, but also over their long-run and aggregate results.

Starting with a lesser point first – do libertarians really hold, as Gus claims, that free-market outcomes are “a perfect reflection of the choices free men and women made when choosing to interact voluntarily”?¹⁶⁰ I'm not convinced that many libertarians actually believe this. After all, the idea that free choices will have unintended consequences in the aggregate is not exactly news to libertarians, given their frequent citation of Adam Smith's famous remark that market participants are “led by an invisible hand to promote an end which was no part of [their] intention.”¹⁶¹ Hayek's idea that “the chief kind of order on which the working of society rests” belongs to a class of “orders ... which have not been designed by men but have resulted from the action of individuals without their intending to create such an order”¹⁶² is

¹⁵⁶ cf. Cicero (2008), pp. 37-41, on the role of universal human nature, individual nature, social circumstances, and free choice in determining the content of one's final end.

¹⁵⁷ Rand 1964, p. 25.

¹⁵⁸ Rand 1990a, p. 33.

¹⁵⁹ diZerega 2016, p. 57.

¹⁶⁰ Ibid., p. 63.

¹⁶¹ Smith (1904), p. 421.

¹⁶² Hayek 1964, pp. 4-5.

likewise popular in the movement. And Austrian economists in particular are fond of quoting Ludwig Lachmann's dictum: "Economics has two tasks. The first is to make the world around us intelligible in terms of human action and the pursuit of plans. The second is to trace the unintended consequences of such action."¹⁶³

So the idea that actions we desire may have consequences we don't desire is a familiar one to libertarians. Admittedly, most of the examples that come first to a libertarian's mind are a) those in which *government* actors inadvertently produce outcomes *worse* than what they (purportedly) intended, and b) those in which *market* actors inadvertently produce outcomes *better* than what they intended. (With regard to the latter category, think of the ways in which price incentives lead to breaking up cartels, overcoming discrimination, and the like.) But nothing in libertarianism rules out the possibility of cases where c) *market* actors inadvertently produce outcomes *worse* than what they intended. An example would be the impact on independent booksellers of the aggregated choices of consumers to shop online. Probably the millions of consumers who repeatedly chose, at the margin, the convenience of buying a book online had no desire to drive independent bookstores out of business.

The question is (well, questions are): how pervasive are such cases in a free(d) market, and are they best addressed through market or through non-market means? (And by "market means" I mean any and all free exchanges, not just the "cash nexus" – though of course including it.)¹⁶⁴ My bookseller example is a case in point. First, massive online retailers like Amazon depend heavily on a variety of direct and indirect forms of government assistance, from tax-funded highways (where long-distance shippers cause the lion's share of wear and tear on the roads but do not bear a proportionate share of the tax burden for their maintenance) to competition-suppressing regulations that allow big box stores to benefit from economies of scale while socialising diseconomies of scale¹⁶⁵ – so their victory over local, independent retailers has not exactly been won on a level free-market playing field. And second, despite the cards stacked against them, independent bookstores have been making a steady comeback, by specialising in face-to-face services that the likes of Amazon can't provide.¹⁶⁶ So what might look like a market-driven problem needing a governmental solution turns out to be an at least partly government-driven problem that's beginning to get a market solution. (And

¹⁶³ Lachmann 1977, pp. 261-262.

¹⁶⁴ Johnson 2011; cf. Johnson 2013, Carson 2014, 2015.

¹⁶⁵ Carson 2007a, 2008a.

¹⁶⁶ Rosenberg 2019; cf. Farrow 2019, Kraker 2019, Griner 2019.

of course the exploration of market solutions to public-goods problems is a standard part of libertarian social analysis.)¹⁶⁷

As an example of how the market purportedly deprives people of desirable control over the long-run aggregate outcomes of their actions, Gus points to the fact that individual shareholders in a corporation have minimal voice in its activities, since each share controls “such a tiny portion of the whole”; nor can they successfully penalise a corporation by exiting, since other, less scrupulous investors may simply buy up their shares. Thus “no one has much individual influence on how a corporation acts.”¹⁶⁸

This is a somewhat odd argument to offer in the context of making an argument for political democracy, since the minimal impact that any individual voter has on the outcome is one of the standard libertarian criticisms democratic voting as a vehicle of consent.

Gus’s suggestion that the shareholders’ relationship to the corporation does not rise to the level of control necessary to count as ownership is also a familiar one within libertarianism. Gus offers no hint of awareness that the status of the corporation is a matter of controversy in libertarian circles; but many libertarians have argued that the corporate form does not satisfy libertarian standards of ownership,¹⁶⁹ or else – even leaving that aside – that massive corporations of the sort Gus has in mind would be exceptions in a free(d) market.¹⁷⁰

Yet of course it’s true that in any market system there will be unintended long-range aggregate consequences of individual actions. But to say that true freedom involves the right to control these unintended consequences (except when those consequences constitute a rights-violation)¹⁷¹ is both tyrannical (since it would require micromanaging everyone’s actions) and incoherent (since it would involve destroying freedom in order to save it). Gus writes as though he is offering, *in addition* to control over our direct choices, control over indirect outcomes *as well* – not just basic-package liberty but expanded-packs liberty. But attempts to extend forcible control over indirect outcomes necessarily involves the suppression of freedom at the level of individual actions. As I’ve written elsewhere:

¹⁶⁷ See, e.g., Cowen 1999.

¹⁶⁸ diZerega 2016, p. 64.

¹⁶⁹ van Dun 2003; van Eeghen 2005a, 2005b; Carson 2008b; cf. Konkin 1983, p. 31, n. 3.

¹⁷⁰ Chartier and Johnson 2011; Tuttle and Massimino 2016; Carson 2007a, 2008a; Chartier 2011, ch 3; Chartier 2014, pp.351-362.

¹⁷¹ In Long 2008a, I argue for the legitimacy, in certain circumstances, of holding individuals legally responsible for their contributions to malign aggregate outcomes.

Since every right carries with it a permissibility of enforcement, to introduce a new right is always to introduce a new permissible use of force to restrict people's activities, and thus to close off forcibly certain choices that were previously open to them. If I gain a right to be treated in manner M, you must correspondingly lose the right *not* to treat me in manner M. Hence every time we add a right here, we *ipso facto* subtract a right there; the total quantity of rights can thus be rearranged, but not increased. Perhaps libertarians recognize the *wrong* rights; but it makes no sense to complain that they recognize too *few*.¹⁷²

Shall liberalism be immanent, realizing contract values directly at the level of society, or vicarious, realizing such values only indirectly and fictively through the intermediary of the state[?] ... The danger to liberalism is that, in focusing on the role of consent *to* the ... framework, liberals may lose sight of consent, or its absence, *within* that framework – bartering, in Benjamin Constant's terms, the liberty of the moderns for the liberty of the ancients.¹⁷³

Gus seems all too willing to make that barter. Thus he happily embraces the notorious misuse of the concept of *tacit consent* so common to many (not all) social-contract theories. By voluntarily moving to a locality, diZerega tells us, one has thereby “voluntarily accepted its decisions over property use.”¹⁷⁴ Let's consider what this means.

Let me begin by noting that, as I've argued previously, land can legitimately come to be owned by a community at large rather than by individuals, so long as this is done by Lockean means such as collective (even if not consciously coordinated) homesteading.¹⁷⁵ In a case like that, if one joins the community, then certainly one is bound by community norms for land use; where common property is legitimate, collective governance can be legitimate too (although in real life, when people are left free to manage a commons, they tend to choose institutions that bear little resemblance to the sort of blunt-instrument majoritarian democracy that Gus favours).¹⁷⁶ But

¹⁷² Long 2014a.

¹⁷³ Long 1995, pp. 10-11.

¹⁷⁴ diZerega 2016, p. 82.

¹⁷⁵ Long 1996a, 1998a, 2006a.

¹⁷⁶ See Ostrom 2015, Carson 2013b.

when a community has not done anything to gain legitimate title to land in its environs, then for it to claim the right to impose its property norms on newcomers (beyond what's involved in sharpening the fuzzy edges of the Lockean core) seems rather more suspect. Surely it is circular reasoning to say that moving to a given territory counts as consent to certain people's authority over that territory, when their authority over that territory is precisely what you're trying to justify in the first place.

How might Gus's principle work in practice? Well, suppose you're an entrepreneur in 1955, and you move to Montgomery, Alabama, with the intent of starting a bus company. If you're black, you might have trouble obtaining a license for such an enterprise. If you're white, maybe you'll obtain a license, but you'll be told that under a city ordinance you'll be legally required to segregate your buses along racial lines. In either case, if you object, the authorities might explain: "well, according to this here article by Gus di ... Gus something ... that landed in our office through a wormhole from the future, by choosing to move to our fine community and go into business here, you have voluntarily accepted our community's decisions over property use, and this city ordinance of which you complain is one of those decisions." What recourse does Gus's argument allow you?

Admittedly, black voters in Alabama communities did not generally enjoy full and equal access to the voting process; but suppose they had? Whites still outnumbered blacks in 1955 Montgomery – according to census data anyway¹⁷⁷ (which I'll accept for the sake of argument) – so a fairly administered one-person-one-vote system might easily have produced the same outcome.

As I have written elsewhere:

The beneficent power of greed in overcoming harmful cooperative ventures lies not so much in its ability to undermine the venture from within, as in its ability to attract rival cooperative ventures to outcompete the bad ones. The white racist who has lived all his life in Kluxville may prefer social conformity to profit, but if the resulting low wages for blacks in the Kluxville area serve as a cheap-labor magnet motivating Amalgamated Widgets to open a new plant in Kluxville, the folks who run Amalgamated Widgets may not care that much of the whites in Kluxville shun them; they already have their own peer group, after all.

The ease with which the greed of outsiders can defeat the hate of the exclusive group (or, switching to the cartel situation, the ease with which the short-term greed of outsiders can defeat the long-term greed of the exclusive

¹⁷⁷ Gibson and Jung 2005, p. 26.

group) depends on the degree of competition. If regulations make it extremely difficult to start new ventures or expand old ones, then there will be a smaller number of long-established players, insulated from competition and therefore free to try their hand at harmful cooperation. (It is in this sense that governmental regulation may be described as *subsidizing* racism and cartelization.) The easier it is for a new venture to start up, the easier it is for harmful cooperative ventures to be undermined from without.¹⁷⁸

In short, then Gus's proposal that communities be able to impose their unearned property rules on newcomers short-circuits the very process by which the market undermines discrimination, cartels, and the like.

Gus charges that libertarian complaints of majority tyranny are "akin to saying that the winners of a chess or baseball game have oppressed the losers."¹⁷⁹ Gus's no-means-yes position here is chillingly reminiscent of Albert Carr's notoriously callous argument that by merely participating in the market, economic actors have agreed to a set of rules that make it legitimate for others to deceive and manipulate them, in the same way that poker players have consented to the practice of bluffing.¹⁸⁰ (Of course, it's also reminiscent of Socrates' argument in Plato's *Crito* that by voluntarily residing in democratic Athens he has committed himself to allowing the state to execute him for practicing philosophic inquiry.)¹⁸¹ This is unsettling company to be keeping.

In Herbert Spencer's words:

Perhaps it will be said that [a citizen's] consent is not a specific, but a general one, and that the citizen is understood to have assented to everything his representative may do, when he voted for him.

But suppose he did not vote for him; and on the contrary did all in his power to get elected some one holding opposite views – what then?

The reply will probably be that, by taking part in such an election, he tacitly agreed to abide by the decision of the majority.

And how if he did not vote at all?

¹⁷⁸ Long 1998c, pp. 345-346.

¹⁷⁹ diZerega 2016, p. 84.

¹⁸⁰ Carr 1968.

¹⁸¹ *Crito*, trans. G. M. A. Grube; in Plato 1997, pp. 37-48.

Why then he cannot justly complain of any tax, seeing that he made no protest against its imposition.

So, curiously enough, it seems that he gave his consent in whatever way he acted – whether he said yes, whether he said no, or whether he remained neuter!

A rather awkward doctrine this.¹⁸²

In repudiating a community's right to control the long-run aggregate outcomes of the individual actions of its individual members, am I thereby granting Gus's contention that the market "narrows the power of human values to influence anything" beyond the goods and services that individuals buy directly?¹⁸³ I don't think so. There is nothing in libertarianism that rules out the option of collectively combating widespread and systematic non-rights-violating social evils, *so long as these are combated in non-rights-violating ways*. Non-libertarians tend to be skeptical of claims to replace government regulation with market-driven regulation – but that's because they have, from a libertarian perspective, both an exaggeratedly high estimation of the effectiveness of governmental solutions and an exaggeratedly low appreciation of the effectiveness of market solutions.

As Charles Johnson writes:

[A] freed market includes not only individual buyers and sellers, looking to increase a bottom line, but also our shared projects, when people choose to work together, by means of *conscious but non-coercive* activism, alongside, indeed as a part of, the undesigned forms of spontaneous self-organization that emerge. We are "market forces," and the regulating in a self-regulating market is done not only by us equilibrating our prices and bids, but also by deliberately working to *shift* the equilibrium point, by means of conscious entrepreneurial action — and one thing that libertarian principles clearly imply, even though actually-existing libertarians may not stress it often enough, is that entrepreneurship includes *social* entrepreneurship, working to achieve non-monetary social goals.

¹⁸² Spencer 1954, p. 190; cf. Claudia Card (1991): "These rules confer the value, or part of the value, of consent upon a woman's status, appearance, behavior, or situation. ... No matter what the men do to them, it is not really rape, because *the rules give the women's status itself the value of consent.*" (pp. 309-310)

¹⁸³ diZerega 2016, p. 65.

So when self-regulating workers rely on themselves and not on the state, abusive or exploitative or irresponsible bosses can be checked or plain run out of the market, by the threat or the practice of strikes, of boycotts, of divestiture, and of *competition*

When liberals or “Progressives” wonder who will check the power of the capitalists and the bureaucratic corporations, their answer is – a politically-appointed, even less accountable bureaucracy. The libertarian answer is – the power of the people, organized with our fellow workers into fighting unions, strikes and slow-downs, organized boycotts, and working to develop alternative institutions like union hiring halls, grassroots mutual aid associations, free clinics, or worker and consumer co-ops. In other words, if you want regulations that check destructive corporate power, that put a stop to abuse or exploitation or the trashing of the environment, don’t lobby – organize!¹⁸⁴

And Kevin Carson has written a 400-page book, with the self-explanatory title *The Desktop Regulatory State: The Countervailing Power of Individuals and Networks*,¹⁸⁵ in which he details the advantages of market-driven network democracy over clunky political democracy. (Has Gus read it? Has Gus given left-libertarian literature in general his, to borrow a phrase, “informed attention”? Of course he is under no obligation to do so; but without having done so he is poorly placed to make sweeping claims about what libertarians do and do not believe, or about what sorts of problems libertarians do and do not have solutions for.)

In Carson’s words:

Thanks to desktop computers and the Internet ... we don’t have to rely on Tweedledum to monitor Tweedledee. ... [N]etworked organization drastically lowers the transaction costs entailed in a single node of committed activists leveraging support through the network, and drastically increases the size of the larger coalition which the committed activists can leverage from the less committed. ... [T]he entry barrier to being a watchdog has fallen to virtually zero. ... The network revolution may mean the final realization of ...

¹⁸⁴ Johnson 2009; cf Johnson 2013, 2016a, 2016b, Carson 2007b, 2010c.

¹⁸⁵ Carson 2016.

genuine democratic self-rule, not through the representative state, but through voluntary association.¹⁸⁶

A central part of Gus's defense of the democratic state (he doesn't want to call it a state, but come on, it's a state) over free-market anarchism, even of the left-wing variety, is his contention that, first, markets presuppose property rights and so cannot determine them ("without defined property there cannot be a market to decide anything")¹⁸⁷ – while, second, Lockean rights theory cannot establish precise boundaries to property rights either, so therefore a system of rights must instead be the product of a (politically) democratic process:

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 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 rights¹⁸⁸

So in Gus's view, to complain that taxation is theft is to ignore the fact that the democratic process is the legitimate way to determine what your property rights are; so if the democratic process favours taxation, then paying up is simply paying what is due.¹⁸⁹

Here I have many objections. First, although I agree with Gus that basic Lockean principles are consistent with more than one way of implementing those principles, so that social conventions may well need to play a role in shaping their precise contours, nevertheless they are not infinitely elastic; there is still a Lockean core that convention may only make more specific and may not contradict – namely, that any putative property right must be reasonably conceivable as an extension of the right of self-ownership.¹⁹⁰

Gus is at great lengths to point out that what counts as an impermissible crossing of one's property boundaries is context-dependent.¹⁹¹ Of course this

¹⁸⁶ Ibid., pp. 101-104.

¹⁸⁷ diZerega 2016, p. 77.

¹⁸⁸ Ibid., pp. 81-83.

¹⁸⁹ Gus's argument here is reminiscent of Murphy and Nagel 2004, and seem to me vulnerable to many of the criticisms that Gordon 2002 raises against that work.

¹⁹⁰ For my case for this claim, see Long 2006a, 2014a, 2019b.

¹⁹¹ diZerega 2016, p. 79.

is not news to libertarians.¹⁹² But as I have argued elsewhere:

There are two ways one can go wrong with regard to the non-aggression principle (NAP). ... One way to go wrong is to treat the NAP as a rigid, out-of-context principle that can be applied fairly mechanically with little attention to other values or to the details of the situation. ... The other way to go wrong is to reject the NAP, or to downgrade it to the status of a defeasible presumption or rule of thumb. ...

From the eudaimonist perspective I favour ... the content of justice stands in reciprocal determination with the content of the other virtues. That means that virtues like prudence and benevolence play a role in determining the content of justice, but also – via a process of mutual adjustment – that justice plays a role in determining the content of virtues like prudence and benevolence. ...

Since rights are a matter of justice, one upshot of the eudaimonist approach is that any defensible theory of rights will have to be informed by considerations of prudence and benevolence. And this means that consequence-oriented considerations will have to play a role in determining the content of rights. But inasmuch as reciprocal determination is a two-way street, rights will also play a role in determining what count as a better or worse consequence.¹⁹³

Of course Gus will insist that the process of specifying Lockean rights must be carried out by some non-market institution (since markets presuppose property rights and so cannot determine them), and that the only institution that fits the bill is political democracy (for reasons of fairness, considering fairness both as a value its own right and as a means to conflict-resolution).

But regarding the first point, Gus seems to think the only two possible options are “no rights specified yet” and “all rights specified in their full detail.” With this kind of all-or-nothing thinking, one could just as easily “prove” that legal institutions presuppose property rights, since setting up legal institutions and their necessary tools (courthouses, meeting halls, lawbooks, cudgels with spikes, whatever) requires use of contested material resources, and so cannot be legitimate unless those uses are legitimate. But in such chicken-and-egg relationships, it’s generally not the case that one side of

¹⁹² See, e.g., D. Friedman 1989, pp. 167-176.

¹⁹³ Long 2013.

the relation must be fully established before anything can at all be accomplished on the other side. Rather, there's a back-and-forth process; reciprocal determination applies to causal relationships, not just to conceptual ones. In Wittgenstein's words: "Light dawns gradually over the whole."¹⁹⁴

As for Gus's praise of one-person-one-vote political democracy, the idea that everyone affected by a decision has a right to a say over it would enthrone bigotry, as noted above. What weight should we give to the desires of a majority of residents in a given neighbourhood not to share that neighbourhood with a black or gay or Mexican or Muslim minority? On the libertarian view, if a family representing a disliked minority buys a home in that neighbourhood, or rents it from a private owner, that home is their castle, and the neighbours' bigoted preferences must be dismissed – unless the bigots are willing to put their money where their mouths are and buy the minorities out, or bear the costs of setting up and policing their own bigoted housing cartel. But once the bigots are armed with this supposed right to have a say over any decisions that affect them, then whenever they happen to be in the majority, political democracy makes it relatively *costless* for such a bigoted majority to enact its preferences; standard democratic choice procedures are in effect a way for majorities to externalise the costs of their choices onto unconsenting minorities.

That is why we need *both* a *principle* and an *institutional mechanism* for distinguishing which kinds of "affectings" are legitimately actionable and which are not. For libertarians, NAP fulfills the function of the principle. Is it the only way to fulfill that function? Probably not. I think it's the best way; but in any case we need *some* way. As for the institutional mechanism, courts, many libertarian thinkers have argued, persuasively to my mind, that *courts*, particularly *competitive* courts, are superior to political democracy – better at marshaling dispersed information, better at defusing conflicts rather than creating them, and better (because they can only respond when there is a specific complaint) at avoiding the risk of over-legislation.¹⁹⁵

Gus, by contrast, champions legislation over law (in Hayek's senses of those terms), and instances pollution as an example favourable to his case. In his original article, he says that treating pollution as a collection of individual torts, as he takes libertarianism to require, is too unwieldy to be workable.¹⁹⁶ In his contribution to the present issue, in responding to Chris Sciabarra's suggestion that such tort cases could instead be combined into a single class-action suit,¹⁹⁷ Gus opines that "legislation is better than waiting till enough

¹⁹⁴ Wittgenstein 1972, §141.

¹⁹⁵ Hayek 2012; Leoni 1991; Hasnas 2005; Barnett 2014.

¹⁹⁶ diZerega 2016, pp. 79-80.

¹⁹⁷ Sciabarra 2019, p. 99; cf. Long 2008a.

people have been harmed so a class action might theoretically work.”¹⁹⁸ But on standard libertarian theories of rights, if a given harm would be rights-violating, a credible *threat* of such harm will also ordinarily be rights-violating;¹⁹⁹ so Gus’s worry about waiting for harm seems a red herring.

But Gus thinks the verdict of history is on his side: “Regarding pollution, class action suits and such have long been possible in this country, but it took legislation to clean our rivers and air to the degree they have been.”²⁰⁰ But governments have long protected corporations from full legal liability for the harms they cause,²⁰¹ so the tort solution has hardly had a fair chance to prove itself. Gus acknowledges that “legislation can be captured by industry,” but thinks this is “not an argument against legislation as such” but is rather “an argument against business having more influence than people.”²⁰² But given the inherent informational and incentival perversities to which monopoly power, democratic or otherwise, is notoriously subject²⁰³ – including in particular the problem of dispersed costs and concentrated interests,²⁰⁴ thoroughly explored in the public-choice literature that Gus so blithely treats as nonexistent – it’s hard to see how regulatory capture is not virtually *inevitable* in the sort of democratic monopoly that Gus favours. As I’ve written elsewhere:

[E]ven if we were to imagine that the government issues its legislation and regulations *at random*, with no bias on behalf of big business, the result would still be much as it is now. Imagine that half of the government’s regulations run contrary to the interests of the rich and the other half run contrary to the interests of the poor; what will be the result? The rich are a concentrated interest with the resources to hire lawyers and lobbyists (or make campaign contributions) in order to combat these laws; the poor are not. So when these (for the sake of argument) randomly chosen laws hit the filter of socioeconomic inequality, the laws that hurt the rich face pressure for repeal or lax enforcement while the

¹⁹⁸ diZerega 2019, p. 102.

¹⁹⁹ See, e.g., Rothbard 1982; and cf. Christmas 2016, p. 26; Long 1999, p. 126.

²⁰⁰ diZerega 2019, p. 102.

²⁰¹ Carson 2010b, 2011; Ruwart 2015.

²⁰² diZerega 2019, p. 102.

²⁰³ Barnett 2014.

²⁰⁴ See, again, Boettke and Leeson 2004.

laws that hurt the poor do not; thus the “fit” regulations are selected for and the “unfit” regulations are weeded out.

Moreover, government actors are disproportionately responsive to bribes because the funds they expend on behalf of the bribers are not their own; if you want to motivate me to direct a million dollars of my own money to your favoured project, you’ll need to offer me more than a million, but if you want to motivate me to direct a million dollars of someone else’s money to your favoured project, you’ll only need to offer me a few thousand. Thus the government’s taxing power and territorial monopoly status magnify the power of the wealthy (thus enhancing their ability to bribe, thus magnifying their power still further, in a self-reinforcing cycle).²⁰⁵

If one wants to break the power of plutocracy, there is no substitute for *full* competition, that is, free-market anarchy. By contrast, relying on political democracy to rein in the plutocrats is a like tying up a dog with a leash made of sausages.

Gus complains about the limited control that market actors have over the consequences of their choices; but when compared with markets, political democracy comes off rather worse. As David Friedman points out:

When a consumer buys a product on the market, he can compare alternative brands. ... When you elect a politician, you buy nothing but promises. ... You can compare 1968 Fords, Chryslers, and Volkswagens, but nobody will ever be able to compare the Nixon administration of 1968 with the Humphrey and Wallace administrations of the same year. It is as if we had only Fords from 1920 to 1928, Chryslers from 1928 to 1936, and then had to decide what firm would make a better car for the next four years. ...

Not only does a consumer have better information than a voter, it is of more use to him. If I investigate alternative brands of cars decide which is best for me, and buy it, I get it. If I investigate alternative politicians and vote accordingly, I get what the majority votes for. ...

Imagine buying cars the way we buy governments. Ten thousand people would get together and agree to vote, each for the car he preferred. Whichever car won, each of the ten thousand would have to buy it. It would not pay any of us to

²⁰⁵ Long 2010c, pp. 7-8.

make any serious effort to find out which car was best; whatever I decide, my car is being picked for me by the other members of the group. ... This is how I must buy products on the political marketplace. I not only cannot compare the alternative products, it would not be worth my while to do so even if I could.²⁰⁶

I don't mean to deny that there is room for a kind of democratic vision within libertarianism; but it must be a *distributed* market democracy, not a *unified* political democracy. As Don Lavoie writes:

The force of public opinion, like that of markets, is not best conceived as a concentrated will representing the public, but as the *distributed* influence of political discourses throughout society. These open discourses are our eyes on the polity, and the attempt to resolve their differences into a single political will embodied in a monopoly institution destroys our political vision.²⁰⁷

(I note in passing that a conversation that is destined to end with the stronger party *forcing* its judgment on the weaker seems a poor model for public deliberation.)

Gus cites James Madison to the effect that allowing minorities to veto the decisions of majorities would unfairly place minorities rather than majorities in charge of the political process.²⁰⁸ But surely it matters whether what is being blocked is an increase or a decrease in oppressive control.²⁰⁹ If Montgomery's black minority had had the ability to veto Jim Crow legislation, would that not have been an increase in freedom?²¹⁰

²⁰⁶ D. Friedman 1989, pp. 131-132.

²⁰⁷ Lavoie 1993, p. 110.

²⁰⁸ diZerega 2016, p. 85.

²⁰⁹ cf. Robert Heinlein's suggestion: "[T]he more impediments to legislation the better I suggest one house of legislators, another whose single duty is to repeal laws. Let the legislators *pass laws only with a two-thirds majority* ... while the repealers are able to *cancel any law through a mere one-third minority*. [Emphasis added. – RTL] ... What I fear most are affirmative actions of sober and well-intentioned men, granting to government powers to *do* something that appears to need doing." (Heinlein 1997, pp. 301-302.)

²¹⁰ John C. Calhoun (1851) seems to have had the right idea in proposing the idea of a generalised minority veto. Of course the cunning old bastard was proposing it largely in order to protect slavery; but if he had applied the idea of minority veto *consistently* instead of hypocritically, he would have had to extend the power of veto to slaves as well – in which case, farewell slavery.

For Gus, a central purpose of political democracy is to decide on “public values,” where a public value is one that in its adherents’ view “should apply within their society as a whole,” and more specifically “should apply more broadly than would be the case if left to the independent decisions of individuals.”

There are two ways to interpret this. If we read “independent” as “uncompelled” (in the libertarian understanding of that term), then it seems to mean simply the enthroning of the desire, on the part of some people, to promote their own values by forcibly imposing negative externalities on the unconsenting. Wasn’t the city ordinance on bus segregation in 1955 Montgomery an expression of a “public value” that, in its adherents’ eyes, should have applied more broadly than would be the case if left to the independent decisions of individuals? The less ominous way to interpret Gus’s notion of “public values” is to read “independent” as “not intentionally coordinated.” In that case, as I’ve already noted, libertarianism can (and should) happily accommodate intentionally coordinated activities in pursuit of public values, so long as they are voluntary.²¹¹ But to all evidence, Gus intends the more ominous meaning.

Gus notes that “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,” but what matters is that such disputes be “decided justly,” which Gus equates with deciding them by the method of “one-person-one-vote.”²¹² But “one-person-one-vote” seems an odd way of achieving justice in such a case. What if the straight majority votes to ban same-sex relationships entirely, as up until recently they usually have? Surely the fairest procedure is the one most likely to *protect* gays from straight oppression, not one that facilitates it. And that means that the fairest procedure is the *market*, which requires bigots to *bear the costs of their bigotry*, rather than being able to externalise it on others with a simple pull of a lever in a voting booth. Gus’s approach, it seems to me, sacrifices substantive fairness in the name of a simplistic procedural fairness.

How will civil liberties, such as freedom of speech and press, fare in the sort of democratic society Gus favours, where property norms are imposed on dissenters in the name of whatever “public values” the majority happens to favour? As Jason Lee Byas writes elsewhere in this issue:

²¹¹ cf. Johnson 2013, Christmas 2016.

²¹² diZerega 2016, p. 86. Incidentally it seems to me that by any reasonable conception of equality, it is unjust for the law to treat married and unmarried couples differently, as the first option requires, and *also* unjust for the law to treat gays and straights differently, as the second option requires. So what GD offers is by my lights a false alternative. I do think, however, that the second option involves *greater* injustice than the first.

In a market setting, a person who is either unable or simply unwilling to convince someone else of the inherent goodness of whatever they want to do with a given resource can simply purchase it. When you're buying pens and paper, the person you're buying from doesn't have to approve of what you're going to write – they usually don't even know. You just have to be able to provide value for value in explicit trade.²¹³

Thus, contrary to Gus's contentions, majoritarian democracy (as opposed to the distributed democracy that Lavoie and Carson favour) would not be legitimate *even if it were possible*. But in most cases it *isn't* possible; for in fact, given the public-choice considerations pointed out above, attempts to implement majoritarian rule reliably lead instead to *oligarchic rule by concentrated interests*. Gustave de Molinari's description of the functioning of political democracy seems more recognisable than Gus's rose-tinted vision:

[T]he national representatives are nominally chosen by the nation ... but in point of fact they are no more than the nominees of associations, or *parties*, who contend for the position of "State-conductors" on account of the material and moral benefits which accompany the position.

These associations, or political parties, are actual armies which have been trained to pursue power; their immediate objective is to so increase the number of their adherents as to control an electoral majority. Influential electors are for this purpose promised such or such share in the profits which will follow success, but such promises – generally place or privilege – are redeemable only by a multiplication of "places," which involves a corresponding increase of national enterprises, whether of war or of peace. It is nothing to a politician that the result is increased charges and heavier drains on the vital energy of the people. The unceasing competition under which they labour, first in their efforts to secure office, and next to maintain their position, compels them to make party interest their sole care, and they are in no position to consider whether this personal and immediate interest is in harmony with the general and permanent good of the nation.²¹⁴

²¹³ Byas 2019, p. 19.

²¹⁴ Molinari 1904, pp. 25-27.

Or, in Butler Shaffer's more succinct formulation, "democracy is the illusion that my wife and I, combined, have twice the political influence of David Rockefeller."²¹⁵

Gus cites James Madison on behalf of his position, but I can cite him equally well on behalf of mine. Madison writes:

The internal effects of a mutable policy are still more calamitous. It poisons the blessing of liberty itself. It will be of little avail to the people, that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is to-day, can guess what it will be to-morrow. Law is defined to be a rule of action; but how can that be a rule, which is little known, and less fixed? Another effect of public instability is *the unreasonable advantage it gives to the sagacious, the enterprising, and the moneyed few over the industrious and uninformed mass of the people*. Every new regulation concerning commerce or revenue, or in any way affecting the value of the different species of property, presents a new harvest *to those who watch the change, and can trace its consequences*; a harvest, reared not by themselves, but by the toils and cares of the great body of their fellow-citizens. This is a state of things in which it may be said with some truth that laws are made for the FEW, not for the MANY.²¹⁶

Madison understood the problem of dispersed versus concentrated interests long before the rise of the public-choice school. His proposed solution – as history has proven – was woefully inadequate;²¹⁷ but his statement of the problem was exact. Those with the leisure to keep up with new legislation, or the money to hire lawyers and lobbyists to do so on their behalf, systematically benefit at the expense of ordinary people.

This is true not only in representative democracies like those that prevail in today's western world and/or global north, but even of direct democracies

²¹⁵ Shaffer 2009.

²¹⁶ Madison, Federalist §62; in Hamilton, Madison, and Jay 2014, pp. 305-306; emphasis added.

²¹⁷ cf. Lysander Spooner (1870): "But whether the Constitution really be one thing, or another, this much is certain – that it has either authorized such a government as we have had, or has been powerless to prevent it. In either case, it is unfit to exist." (p. 55.)

like that of ancient Athens, which, despite its many advantages over representative democracy, was never fully able to restrain plutocratic power and patronage.²¹⁸ And constitutional checks and balances to address the problem are unstable, with a tendency toward mutual aggrandisement of power via logrolling, *unless there is free entry into the checks-and-balances business*, or in other words, free-market anarchy rather than the state.²¹⁹

Gus claims, of course, that a political democracy, despites its coercive monopoly over the legal system, is *not* a state: “The principle of a state is sovereign power over subjects. States rule over people. The principle of democracy is self-government.”²²⁰ But it seems to me that Gus is illegitimately transferring the concept of self-government from the individual to the collective, without acknowledging that when it comes to decisions over which members of the collective disagree, collective self-government can only mean the government of some people over other people. To elide the difference between the two is to commit the error of, in Rawls’s famous formulation, “extending to society the principle of choice for one man,” a procedure that “does not take seriously the distinction between persons.”²²¹

Even in Gus’s ideal scenario, where the majority prevails, political democracy would not be true self-government; still less is it self-government in the real world, where the informational and incentival perversities that afflict every monopoly institution virtually guarantee that political democracy will reliably channel power and privilege to the few, the happy few, the band of looters.

Gus tells us that as an “economy develops,” its members are “linked together with greater intensity into increasingly complex networks,” and “boundary issues continue to arise,” with the result that “new rules must be made while others fall into disuse.” So long as libertarianism “treats democracy as simply one more organized means by which some people coerce others,” Gus continues, it will have “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.”²²² I should think it’s far more the other way around: political democracy might be workable at the level of a small tribe, but once a community begins to scale up, public-choice problems of dispersed costs and concentrated benefits come to the fore. Moreover, Gus oddly writes as though the workings of competing court systems, and rule-

²¹⁸ Long 1996b, 1998b.

²¹⁹ Long 2016.

²²⁰ diZerega 2016, p. 84.

²²¹ Rawls 1971, p. 24; cf. Nozick 1974, p. 34.

²²² diZerega 2016, pp. 86-87.

formation under polycentric law, were something that libertarians hadn't been discussing at length, for decades.²²³ Maybe Gus finds their theoretical and historical analyses inadequate; but if so, he doesn't say why.

Gus also says that for libertarians it must be a mystery why “most people, including nearly all libertarians, prefer more regulated large cities to the greater ‘freedom’ of small rural communities.”²²⁴ But first, I certainly know many libertarians (though I confess I'm not one of them) who prefer rural to urban life. Second, I'm not convinced that small rural communities necessarily have many fewer regulations than big cities,²²⁵ as opposed to having *different* regulations (e.g., blue laws).²²⁶ Third, even if big cities are more regulated than small communities, that doesn't mean a preference for living in big cities is a preference for more regulation – any more than it is a preference for more smog or more traffic jams. Surely people who prefer big cities do so *despite* smog and the like, not because of them. I reckon the main reason so many people prefer big cities is the greater range of opportunities (both economic and cultural) – and government regulations generally work to decrease that range, not increase it. And fourth, as for those regulations that are beneficial rather than harmful, Gus needs to show why – against the considerable evidence to the contrary offered in libertarian literature – we should expect political democracy to be a more reliable producer of them than freed markets.

13. None of Us Are Free But Some of Us Are Brave

I fear that some of my responses to Gus in this piece may come across as a libertarian analogue of #NotAllMen. But I think there's a difference. The problem with #NotAllMen is that it falsely treats feminist criticisms of men as though they *were* intended to apply to all men, and thus serves to deflect criticism of actual male misbehaviour.²²⁷ Gus, however, really does seem to think that the issues he points to are problems with libertarianism as such, and not just problems that are widespread among libertarians; and he treats various major currents within libertarian thought (such as public-choice theory, libertarian class theory, and left-libertarianism) as though they were nonexistent. So the #NotAllLibertarians response seems apt.

²²³ See, e.g., Bell 1992; Friedman 1989; Anderson and Hill 2004; Hasnas 2005, 2016; Stringham 2007, 2015; Benson 2011; Leeson 2014; Barnett 2014; Chartier 2014; Tucker and de Bellis 2015; cf. Ellickson 1994; Axelrod 2006; Beito, Gordon, and Tabarrok 2009.

²²⁴ diZerega 2016, p. 86.

²²⁵ See Bolick 1993 on the intense proliferation of regulations at the local level.

²²⁶ On the different styles of control that apply at differently scaled communities, see Levy 2015, Long 2015.

²²⁷ Stricklan 2017.

Moreover, given my (some would say notorious) record of criticising right-libertarianism from the libertarian left, I don't think I can fairly be suspected of seeking to downplay right-libertarian failings.

As I've written elsewhere:

Part of being a left-libertarian is that on the one hand you're constantly trying to prod fellow libertarians into moving farther left, while on the other hand you're constantly trying to show fellow leftists that libertarianism is already farther left than they realise. ... Thus I close with the ringing slogan, proudly inscribed on the streaming banners of the left-libertarian vanguard: *Libertarianism: Less Left Than It Should Be, But Lefter Than You Think.*²²⁸

And therewith I close here also.

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²²⁸ Long 2006d.

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