

LEFT-LIBERTARIANISM, MARKET ANARCHISM, CLASS CONFLICT AND HISTORICAL THEORIES OF DISTRIBUTIVE JUSTICE

Roderick T Long*

A frequent objection to the 'historical' (in Nozick's sense) approach to distributive justice is that it serves to legitimate existing massive inequalities of wealth. It is argued that, on the contrary, the historical approach, thanks to its fit with the market anarchist theory of class conflict, represents a far more effective tool for challenging these inequalities than do relatively end-oriented approaches such as utilitarianism and Rawlsianism.

Historical vs End-state

Resolving disputes over control of resources is a central function of any legal system; indeed, for many theorists – including Cicero and Locke – the protection of legitimate property claims is the chief *raison d'être* of having a legal system in the first place.¹ Determining what principles should govern the recognition and adjudication of property claims is the province of distributive justice.

In *Anarchy, State, and Utopia*, Robert Nozick famously distinguishes between two approaches to distributive justice (or, to use his preferred terminology, justice in holdings): a present-oriented or end-oriented approach that looks at how resources are currently distributed without taking the past into account, and an historical approach that assesses the justice of present-day distributions by looking to the causal process by which they arose.²

* Professor Department of Philosophy, College of Liberal Arts, Auburn University, Alabama.

¹ 'The primary concern of any administrator of a republic must be to see that each person shall keep what belongs to him, and that private persons shall not have their goods taken by public enactment ... For it was above all for the sake of ensuring that each shall retain his own that republics and states were set up. For while [mere] human association is a natural impulse, nevertheless it was in the hope of maintaining custody of their possessions that people sought the protection of cities ... For this, as I noted above, is the special function of a state and a city: to secure to each person free and unmolested custody over his own possessions.' Cicero (1994), II. 73, 78; translation mine.

'The great and *chief end* therefore, of Men's uniting into Commonwealths, and putting themselves under Government, is the Preservation of their Property.' *Second Treatise of Government* IX. 124; Locke (1988), pp 350–51.

² Nozick (1974), Ch 7.

Of course, that's a somewhat oversimplified characterisation of the distinctions, *plural*, that Nozick is making in that section. Readers of Nozick often conflate the approaches he dubs *end-state*, *patterned* and *current-time-slice*, yet Nozick explicitly notes, first, that not all end-state theories are current-time-slice theories, and second, that some patterned theories are actually historical theories (as opposed to being *either* end-state or current-time-slice theories).³ We should also avoid conflating *historical* theories in general with the narrower class of *entitlement* theories and the still narrower specifically *neo-Lockean* theory that Nozick defends. And it is a still further mistake to assume that, for example, utilitarian and Rawlsian approaches – to mention two of Nozick's chief targets – automatically count as end-state approaches, at least in any straightforward sense; after all, a utilitarian will happily take historical considerations into account if doing so tends to maximise social welfare, and the Rawlsian will as happily take historical considerations into account if doing so tends to maximise the welfare of the least advantaged. (Indeed, just this is arguably the point of Rawls' defense of the difference principle.)

But, having pointed out these complexities, I now propose to ignore them – because there is still a useful, broad distinction between approaches to distributive justice that emphasise final patterns of holdings (a description that often applies – albeit, as we've seen, contingently – to actual utilitarian and Rawlsian theorising), and those that emphasise the process by which such patterns arise; and for the thesis I propose to defend, broad differences in emphasis are more important than the precise details of particular theories and principles. In particular, my present concern is less with what a given principle directly entails and more with the role it plays in people's way of conceptualising their social environment.

A frequent objection to – and for others, perhaps, an attractive feature of – the historical approach is that it serves to legitimate, and even exacerbate, existing massive inequalities of wealth. David James, for example, writes that 'the incremental inequalities that result over time from Nozick's theory will almost certainly lead eventually to a situation in which a few wealthy individuals (or corporations) control or own all the levers of power'.⁴ Will Kymlicka argues that Nozickian libertarianism is a bad deal for those who 'enter the market after others have appropriated all the available property' – that it 'restricts the self-determination of the propertyless worker' and 'makes her a resource for others'.⁵ Brian Barry accuses Nozick of 'proposing to starve or humiliate ten percent or so of his fellow citizens ... by eliminating all transfer payments through the state'.⁶ And in a section titled 'Nozick *contra* Equality', Jonathan Wolff writes that 'it is likely – some would say certain – that in a libertarian society massive

³ Nozick (1974), pp 155–56; cf Schmidtz (2005), p 159.

⁴ James (2011), para 11.

⁵ Kymlicka (1990), p 121.

⁶ Barry (1975), p 331.

inequalities would develop,⁷ and reports his dismay, on first reading *Anarchy, State, and Utopia*, at discovering that Nozick's 'initial commitment to liberty seemed to lead, not to equality, as I had assumed, but to inequality'.⁸

I shall argue that, on the contrary, the historical approach – thanks to its fit with the market-anarchist theory of class conflict – represents a far more effective tool for challenging these inequalities than do relatively end-oriented approaches such as utilitarianism and Rawlsianism, *even when the latter approaches would condemn the inequalities just as much as the historical approach does*.

My aim here is relatively limited. I am not concerned primarily to show that (a) the historical approach is correct (although, as will be evident, I think it is); nor am I primarily concerned to show that (b) existing inequalities of wealth are to be condemned (although, as will again be evident, I think they are). My aim is rather to show that egalitarian thesis (b), far from being an objection to libertarian thesis (a), is actually supported by (a), and indeed is more effectually supported by (a) than it is by the sorts of reasons usually advanced on (b)'s behalf by critics of (a). Of course, for those who already accept thesis (a), my arguments will provide reason to accept thesis (b); and conversely, for those who already accept (b), my arguments will provide reason to accept (a). So, in that sense, I am after all providing positive arguments on behalf of *each* thesis – but these arguments are not designed to move anyone who has no prior attachment to *either* thesis. Providing arguments that might do *that* is a task beyond the scope of the present article.

I will proceed in three stages. First, I will show how, in the light of market-anarchist class theory, an historical approach condemns existing inequalities rather than legitimating them. Second, I will argue that its condemnation is more effective – in a sense of 'more effective' to be explained – than that of its end-oriented rivals. Finally, I will address a common objection to the feasibility of implementing this conception of distributive justice in the context of a market-anarchist legal system.⁹

Market-Anarchist Class Theory

Let's first consider the charge that the historical approach serves to legitimate existing massive inequalities of wealth. It is true, of course, that the historical approach *would* legitimate these inequalities *if* they had emerged by a series of just transfers from just original appropriations (or else

⁷ Wolff (1991), p 123.

⁸ Wolff (1991), p vii.

⁹ By 'market anarchism', I mean the view that all legitimate functions of the state can and should instead be provided via a competitive market. Early defenses include Molinari (2009), Tandy (1867) and Tucker (1897); more recent defenses include Barnett (1998), Benson (2011), Chartier (2013), Friedman (1989), Rothbard (1998, 2006) and Skoble (2008); a famous critique is Nozick (1974). Anthologies on the subject include Stringham (2006, 2007), and Long and Machan (2008).

from a series of transfers and appropriations whose injustices had all been properly rectified). But then, it is equally true that the utilitarian and Rawlsian approaches would legitimate such inequalities, *if* the inequalities promoted social advantage (aggregate or mutual, respectively). So why is this hypothetical urged more strongly against the historical approach than against the utilitarian and Rawlsian approaches – especially since few people believe that the antecedent is satisfied in *any* of the three cases?

I suspect it is because of the widespread assumption that the historical approach, if strictly adhered to, would be likely to eventuate in a distribution of holdings *broadly comparable* to existing inequalities (even if the specific holdings would in many cases belong to different people from those to whom they currently belong), whereas such an assumption is less commonly made concerning utilitarianism, and still less commonly concerning Rawlsianism.

Even Nozick himself seems to think of his arguments as legitimating an economic landscape broadly comparable to our own, for while he insists that applying his historical principles of justice would probably require a radical redistribution of existing holdings – a point seldom stressed by either his defenders or his critics – he does not appear to envision its entailing any radical change in the overall *structure* of wealth distribution.¹⁰ For example, he takes for granted that the implementation of his neo-Lockean entitlement theory will involve the dominance of traditional ‘capitalist’ firms (as opposed to, say, workers’ cooperatives).¹¹ More on this anon.

Kevin Carson has coined the terms ‘vulgar libertarianism’ and ‘vulgar liberalism’ for the tendencies, respectively, to treat the benefits of the free market as though they legitimated various dubious features of actually existing ‘capitalist’ society (vulgar libertarianism), and to treat the drawbacks of actually existing ‘capitalist’ society as though they constituted an objection to the free market (vulgar liberalism).¹² Vulgar libertarianism and vulgar liberalism share a common assumption: that the present (or, sometimes, the past) economic realities of Western ‘capitalist’ countries constitute at least an approximate stand-in for a genuine free market, so that the two stand or fall as a package, but vulgar libertarianism and vulgar liberalism are opposed in their evaluations, with one endorsing and the other rejecting the package in question.

By contrast, left-libertarianism denies the shared assumption, holding instead that the differences between actually existing ‘capitalism’ and a genuine free market are so great that a defence of the latter provides not a legitimation but rather a radical condemnation of the basic structure of the former.

¹⁰ Nozick (1974), pp 230–31.

¹¹ Nozick (1974), pp 250–53. For my reasons for placing the terms ‘capitalist’ and ‘capitalism’ (in their ideological sense) in scare-quotes throughout, see Long (2006a), where I argue that the term as ordinarily used essentially presupposes an identification of free markets with corporate privilege, and so cannot coherently be used (except in scare-quotes or with some other qualifier) by those who deny this presupposition. For further criticism of prevailing usage, see Chartier (2010) and Johnson (2011).

¹² Carson (2005a, 2005b, 2006b).

By left-libertarianism, I mean the position that Carson has described as agreeing ‘with the Greens and other left-wing decentralists on the evils to which they object in current society and on their general view of a good society,’ but ‘with free market libertarians on their analysis of the cause of such evils and how to get from here to there’ or, in summary form, ‘green ends with libertarian means’.¹³ In historical terms, I mean the movement that, while having its roots in the individualist anarchism of the nineteenth century (particularly such figures as Thomas Hodgskin, Lysander Spooner, Benjamin Tucker and Voltairine de Cleyre), emerged or re-emerged in the 1960s through the rapprochement between free-market libertarianism and the New Left (as represented by Murray Rothbard’s journal *Left & Right*, as well as the early years of its successor, *Libertarian Forum*), was continued in the 1970s by Samuel Konkin’s ‘Movement of the Libertarian Left’ and broadened in recent years into the Alliance of the Libertarian Left.¹⁴ Left-libertarianism in this sense should not be confused with the more recent use of the term to describe the neo-Georgist position of such theorists as Peter Vallentyne, Hillel Steiner and Michael Otsuka (though overlap between these two forms of left-libertarianism is certainly possible).

Left-libertarianism relies on what has come to be called libertarian class theory or market-anarchist class theory.¹⁵ This theory originates with the circle of liberal, near-anarchist French social theorists – most notably Charles Dunoyer, Charles Comte (son-in-law of Jean-Baptiste Say) and Augustin Thierry – who published in the journal *Le Censeur* (1814–15) and its successor *Le Censeur Européen* (1817–19).¹⁶ When Marx wrote, ‘No credit is due to me for discovering the existence of classes in modern society or the struggle between them; long before me, bourgeois historians had described the historical development of this class struggle and bourgeois economists the economic anatomy of the classes’,¹⁷ it was primarily to the *Censeur* group that he was referring. The theory received further development by the English market-anarchist economist Thomas Hodgskin (most notably in his 1832 essay *The Natural and Artificial Right of Property*

¹³ Carson (2009a), pp 1–2.

¹⁴ For the historical movement, see Brooks (1994); for the contemporary movement, see Chartier and Johnson (2011).

¹⁵ For the historical origins of libertarian or market-anarchist class theory, see especially Hart (1994), but also Liggio (1977); Raico (1977, 1993); Stedman-Jones (2006); Weinburg (1978); Long (2008f); and Hart (1979). For more recent treatments, see Conger (2006); Carson (2004, 2006a, 2007, 2009a); Chartier and Johnson (2011); Grinder and Hagel (1977); Hoppe (1990); Long (1998, 2007, 2008a, 2008b); and Richman (2006). Although most market anarchists accept some version of libertarian class theory, this does *not* mean that most market anarchists are left-libertarians (although the converse seems to hold); it is fair to say, though, that market-anarchist class theory tends to be *especially* central to those versions of market anarchism that are also left-libertarian.

¹⁶ For the near-anarchism of the *Censeur* group, see Raico (1993) and Hart (1994); cf Gabriel (2006).

¹⁷ Letter to J Weydemeyer, 5 March 1952, p 69; in Marx and Engels (1965), pp 67–70.

Contrasted), and still later by the contributors to *Liberty*, Benjamin Tucker's 1881–1908 American journal of market anarchism.¹⁸ Unlike later and more familiar theories that identify classes in terms of their possession of economic resources – for example, control, or lack of control, over the means of production – the market-anarchist theory identifies classes in terms of their *means of acquiring* such resources – so an historical element is built in from the start.

In its primordial formulation, market-anarchist class theory distinguishes two principal classes. One is the productive or 'industrial' class, composed of those who earn their living through production and voluntary exchange; this traditionally included both workers and capitalists, though different versions of the theory would emphasise one or the other according to the radicalism or conservatism of the author. The other is the parasitic (or as Herbert Spencer would later call it, the 'militant') class: those who earn their living by plundering the producers; while this class includes freelance criminals such as highway robbers, it finds its primary embodiment in the holders and beneficiaries of political power. The core of this class was originally the military aristocracy, who simply continued the practices of their bandit ancestors under the cloak of law; but in the eyes of market-anarchist class theorists, the passing of political authority from nobles to commoners did not change the fundamental nature of the state as an engine for advancing the interests of the politically favoured at the expense of the general populace. When Marx called the July Monarchy 'a joint-stock company for the exploitation of France's national wealth' on behalf of the bourgeois elite, and at the expense of production and commerce, he was only echoing what free-marketers had been saying for decades.¹⁹

¹⁸ Hodgskin (1832); Tucker (1897); Brooks (1994). One can find similar ideas in John Calhoun's 1849 *Disquisition on Government* (Calhoun (1992), pp 3–78) – although this is somewhat ironic, as Calhoun was a proponent of slavery, whereas virtually every adherent of this theory *other* than Calhoun took it to entail a straightforward condemnation of slavery. Calhoun's idiosyncratic emphasis, as the marker of differentiation between productive and parasitic classes, on whether one is a net payer or a net receiver of *tax revenue*, to the exclusion of any consideration of other forms of privileged parasitism, may well have been motivated by the need to find some semi-plausible way of shoehorning slaveholders into the productive or industrial category, rather than into the parasitic category to which libertarian class theorists customarily assigned them.

¹⁹ *Class Struggles in France*, I; Marx (2003), p 38. The relation of the Marxist theory of classes to its libertarian predecessor is complex. The official Marxist doctrine – at least according to Engels – is that a private-property economy is sufficient to generate a capitalist ruling class without the need for state patronage. Yet Marx's own account of 'primitive accumulation' stresses the role of state violence and privilege in *establishing* the power of the *bourgeoisie*, just as his own case studies of contemporary class conflict stress the role of state violence and privilege in *maintaining* it – thus giving Marx's theory an historical/causal, state-oriented dimension that brings it more closely into alignment with the libertarian one. For Engels' implicit disagreement with Marx on these points, see Carson (2004).

Early versions of the theory vacillated as to whether the criterion of membership in the parasitic class was *living by forcibly expropriating others' labour* or simply *living off others' labour*, thus leaving ambiguous the status of people who live off voluntary charity; the French liberals in particular sometimes assigned beggars and priests (whether state-funded or not) to the parasitic class. But modern versions of market-anarchist class theory generally distinguish the two classes according to Franz Oppenheimer's distinction between economic and political means:

There are two fundamentally opposed means whereby man, requiring sustenance, is impelled to obtain the necessary means for satisfying his desires. These are work and robbery, one's own labor and the forcible appropriation of the labor of others ... I propose ... to call one's own labor and the equivalent exchange of one's own labor for the labor of others, the 'economic means' for the satisfaction of needs, while the unrequited appropriation of the labor of others will be called the 'political means'.²⁰

Hence the industrial class lives by the economic means and the parasitic class by the political. By Oppenheimer's definitions, charity recipients would not count as belonging to either class; but if one defines the economic means more broadly as the method of *voluntary* transactions, then charity recipients would belong to the industrial class. Recipients of tax-funded welfare won't be assigned to the parasitic class either, so long as the extent to which they benefit from governmental handouts is exceeded – as left-libertarians think it generally is – by the extent to which they are immiserated by governmental regulations.

Marx claimed that the chief advance of his version of class theory over that of the 'bourgeois economists' was that he foresaw an end to class conflict, but in fact he was anticipated here too.²¹ Unlike Saint-Simon and Auguste Comte, sometime fellow travellers of the *Censeur* group, who proposed maintaining a powerful state apparatus but with a change of personnel (kicking out the nobility and replacing them with representatives of the industrial class), the main *Censeur* contributors rejected the state apparatus itself as a fundamentally militant or parasitic institution incompatible with industrial life, and one that was destined to be eroded by economic forces and ultimately replaced by a society without privilege – a stateless, classless, free-market utopia.²²

Dunoyer, for example, described states as 'monstrous aggregations ... formed and made necessary by the spirit of domination', and prophesied that the 'spirit of industry will dissolve them' and thereby 'municipalise the world',

²⁰ Oppenheimer (1975), Ch 1.

²¹ Letter to J Weydemeyer, 5 March 1952, p 69; in Marx and Engels (1965), pp 67–70.

²² This more famous Comte does not appear to have been related to Charles Comte of the *Censeur*; at any rate, John Stuart Mill, writing to Auguste Comte (26 April 1845), refers to Charles Comte as 'your homonym' rather than, for example, 'your kinsman'. Lévy-Bruhl (1899), pp 412–16.

as ‘centers of actions ... multiply’ until the entire human race constitutes ‘a single people composed of an infinite number of homogeneous groups bound together without confusion and without violence by ... the most peaceful and the most profitable of relationships’.²³ Thierry likewise predicted that industry would ‘deprive power of its income, by offering at less cost the services which power makes people pay for’, with the result that ‘the loose but indissoluble chains of interest will replace the despotism of men and of laws; the tendency towards government, the first passion of the human race, will cede to the free community. The era of empire is over, the era of association begins.’²⁴ This vision of the militant mode of social organisation yielding to the industrial would inspire both Molinari’s phrase ‘the diffusion of the state within society’ and Proudhon’s ‘the dissolution of the state within the economic organism’.²⁵

In its modern form, market-anarchist class theory identifies the ruling class in Western democracies as a partnership between the state on the one hand and the private, mostly corporate, beneficiaries of state privilege on the other – big government and big business, or statocrats and plutocrats – and the dominant form of economic and political organisation as one of corporatism. Given the concentrated character of corporate interests and the dispersed character of the broader public interest, corporatism is regarded as a virtually inevitable result of democratic institutions, as per Butler Shaffer’s definition of democracy as ‘the illusion that my wife and I, combined, have twice the political influence of David Rockefeller’.²⁶ (Hence market-anarchist class theorists’ scepticism toward all forms of monopoly government, not just undemocratic ones.) Vast inequalities of wealth are difficult to achieve or maintain in a free market, since successful ventures are quickly imitated; competition serves as a levelling factor. But such inequalities can most definitely be achieved and maintained when competition is restricted by regulation.²⁷

Like the alliance between church and state in the Middle Ages, the parties to the present ruling alliance do not have identical interests, and there is some jockeying for power as each side strives to become the dominant partner (with political parties of the establishment ‘left’ and establishment ‘right’ tending to promote the economic interests of statocracy and plutocracy respectively); hence the appearance of conflict between government and business is not wholly illusory.

Nevertheless, again as with church and state, the partners’ commitment to the long-term success of the partnership – that is, to maintaining power – ordinarily takes precedence over their commitment to the issues that divide

²³ Dunoyer (1825), pp 366–67, translation mine.

²⁴ Quoted in Raico (1993), pp 208–9.

²⁵ Molinari (1884), p 393; Proudhon (1923).

²⁶ Shaffer (2011).

²⁷ One way of legally blocking imitators is the mechanism of ‘intellectual property’. For arguments that intellectual property constitutes a form of plutocratic privilege incompatible with free-market principles (and of no great benefit to intellectual innovators themselves), see Kinsella (2008); Boldrin and Levine (2008); Carson (2007, 2009a); Long (2008e).

them. Big government needs big business – as a source of financial backing. And big business needs big government – to protect it from market competition. As libertarian and New Left historians alike have documented with regard to the United States in particular, most of the major regulatory interventions in that country’s history, including those most trumpeted and/or vilified as ‘anti-business’ – most notably those of the ‘Progressive Era’ and the ‘New Deal’ – were not only welcomed by, but vigorously lobbied for and in many cases actually drafted by, the corporate elite as a means of eliminating smaller competitors (who were less able to handle the regulatory burdens) or as a means of regimenting workers and consumers.²⁸

It should thus be no surprise that the tobacco company Philip Morris has embraced restrictions on cigarette advertising, or that corporate giant Walmart has embraced government-funded health care, to select two examples from the recent North American news; both laws will have a greater impact on these firms’ smaller competitors than on the firms themselves.

Most of my examples come from the North American context, with which I am most familiar, but such examples are easily duplicated in other countries. In Australia, for example, in November 2011, the national accounting firm BDO projected that a new mining tax, the Mineral Resources Rents Tax, which had been negotiated between the government and the country’s three largest mining companies (BHP Billiton, Rio Tinto and Xstrata) without participation from smaller mining companies, was ‘entirely weighted in favour of the mining companies central to its formulation’ inasmuch as it ‘allowed the largest mining companies a deduction on their overall MRRT tax liability’, a deduction ‘not available to smaller or intending producers’.²⁹ Thus, ‘despite an assumed revenue of \$7.46 billion per annum, Rio Tinto would have zero net MRRT liability in the first five years’, while ‘a \$480m emerging iron ore miner would pay \$13m in the second year, and \$54m in the third’ and ‘the small miner would have an effective tax rate of 40.18 per cent’.³⁰

Big business is no fan of free-market competition, which tends to exert downward pressure on prices and upward pressure on salaries; hence it actively lobbies for, and generally gets, government privileges.³¹ Sometimes these are direct and overt, taking the form of subsidies, bailouts, protectionist

²⁸ Kolko (1963), (1965); Weinstein (1976); Shaffer (1997); Childs (1971); Grinder and Hagel (1977); Radosh and Rothbard (1972); Stromberg (1972); Ruwart (2003); Johnson (2004, 2005); Buhle (1999). This doesn’t mean that business hostility to President Franklin D Roosevelt and his administration was illusory, but what hostility there was concerned much smaller stakes than is ordinarily assumed. The Roosevelt administration was giving the corporate elite cartelisation on the state’s terms rather than cartelisation on their own; still, the recipients vastly preferred either mode of cartelisation to the free-market alternative.

²⁹ Swanepoel (2011).

³⁰ Thornton (2011). I thank an anonymous referee for bringing the MRRT example to my attention.

³¹ For some of the ways that Walmart, for example, owes its success to government privilege rather than market competition, see Mattera and Purinton (2004). The benefit to Philip Morris from tobacco subsidies is obvious.

tariffs, grants of monopoly privilege and seizures of private property for corporate use via eminent domain – as well, of course, as military interventions to protect corporate interests. But many of the business lobby's greatest government privileges are much less direct. Regulatory imposition of uniform quality standards, for example, relieves firms from having to compete in terms of quality, thus granting them the benefits of cartelisation without the costs of policing the cartel agreement or the risk of having the cartel undermined by upstart competitors. (And when the quality standards thus imposed are high, lower-quality but cheaper competitors are priced out of the market – an additional boon to the beneficiaries.) Inflationary monetary policies on the part of central banks also tend to benefit those businesses that receive the newly created money first in the form of loans and investments, when they are still facing the old, lower prices, while those to whom the new money trickles down later, only after they have already begun facing higher prices, systematically lose out.

The widespread assumption that big business and big government are fundamentally at odds, and that big business supports a free market, serves to maintain the ruling partnership in power; indeed, 'vulgar liberalism' and 'vulgar libertarianism' (in Carson's sense) represent the dominant ideologies of the establishment left and establishment right, respectively. The establishment left disguises its government intervention on behalf of the rich as government intervention on behalf of the poor, while the right disguises its government intervention on behalf of the rich as an opposition to government intervention *per se* – and each side has an interest in maintaining the myth propagated by its nominal opponent. For those who are repelled by the realities of corporate capitalism are lured into becoming opponents of the free market and foot soldiers for the left wing of the ruling class, while those who are attracted by free-market ideals are lured into becoming defenders of corporate capitalism and foot soldiers for the right wing of the ruling class. Either way, the partnership as a whole has its power reinforced.

Thus, for example, in the recent debate in the United States over health care, both sides benefited by portraying the choice as one between a free-market *status quo* and a proposal for government intervention (as opposed to what it really has been: a debate between two different styles of *equally* intrusive government intervention – the 'right-wing' status quo of massive government intervention on behalf of insurance companies and the medical establishment, *versus* a 'left-wing' scheme to shift the balance of power a few notches away from the plutocracy and toward the statocracy). This renders invisible and inaudible any proposal for an *actual* free-market health-care program, such as the turn-of-the-century mutual-aid system that was beginning to put working-class patients in charge of their own health-care decisions before government regulators and the American Medical Association joined forces to dismantle it. This also explains why the establishment right in the United States has been so weak in challenging the establishment left's factually ludicrous claim that the policies that led to the recent economic crisis were *laissez-faire* and involved 'too little regulation'; the only way the right could successfully rebut this charge was by admitting that they had been

pursuing a thoroughgoing campaign of monetary manipulation on behalf of the financial elite, thus blowing their cover as free-market advocates. This may explain why they decided to focus their energies on the health-care debate instead.³²

It is often assumed that the domination of the economic landscape by large firms is to be explained simply by their successful exploitation of economies of scale. But, as Carson has stressed, in addition to economies of scale there are *diseconomies* of scale, which beyond a certain point will offset the economies and put a limit to the firm's growth – unless the firm can make use of governmental privilege.

For example, the augmentation of productive capacity associated with larger size requires a wider area of distribution for the increased product; thus, as production costs fall, distribution costs rise, until the latter overtake the former. But this check on firm growth can be overcome once the government enables the firm to socialise its distribution costs. At the extreme, such socialisation can take the form of opening foreign markets via gunboat, but its many milder forms include public funding for highways. As is well known, long-distance shipping via heavy trucks is responsible for the vast majority of wear and tear on the public highways, yet firms that rely on such shipping typically do not bear a proportionate share of the tax burden for building and maintaining highways. Hence such firms are able to grow beyond their natural size by getting taxpayers to pick up the tab for their transportation costs – while the more economical alternative of local production for local use is rendered artificially expensive, inasmuch as it is compelled to subsidise its competition.³³ And such artificial incentives for excessive firm size are exacerbated by the fact that the state generally taxes transactions between, but not within, firms – thus encouraging firms to move more functions within rather than contracting them out.³⁴

Moreover, as firms grow artificially larger and more hierarchical, the separation between those who give the orders and those who do the work increases, thus making it harder for any of the firm's participants to know what is actually going on; moreover, the increasing insulation of decisions from market feedback not only makes information harder to obtain but also lowers the cost of abusive or inane behaviour by managers, thus giving us the corporate wonderland familiar to readers of the comic strip *Dilbert*. Thus the lowering of transaction costs associated with firm centralisation is offset by the costs of the growing informational chaos within, rendering such firms unable to compete against smaller, flatter rivals – unless competition from such rivals can be curtailed, as it quite effectively is, by government regulations such as licensing fees, zoning, uniform quality standards, capitalisation requirements and so on – all of which place a disproportionate burden on smaller companies and

³² On health care, see Long (1994, 2008a); Beito (1999). On the causes of the economic crisis see Long (2008a); Woods (2009).

³³ For further details, see Carson (2007, 2009a).

³⁴ Arthur (2010).

independent entrepreneurs.³⁵ In particular, the establishment of workers' cooperatives as an alternative to the hierarchical firm has been rendered artificially difficult both by these regulations and by ostensibly pro-union regulations whose real – and successful – intent has been to divert the labour movement's goals away from worker control of industry and towards the mere pottage of higher wages within the existing 'capitalist' framework.³⁶

In his arguments against workers' cooperatives, Nozick himself seems to slide into a bit of vulgar libertarianism, taking their scarcity on the prevailing corporatist market as evidence of their inefficiency – as though the prevailing corporatist market were a reasonable proxy for *laissez-faire*. Nozick discusses some genuine incentival problems faced by worker-owned firms, but does not address the incentival (and informational) problems faced by traditional hierarchical firms.³⁷ If worker-owned firms are efficient, he asks, why don't we see more of them? He seems not to consider one obvious answer: as Carson reminds us, 'The state subsidizes the large, hierarchical, capitalist enterprises against which cooperatives compete, thus rendering them artificially profitable and competitive against alternative forms of organization.'³⁸

Konkin, by contrast, is of the opinion that 'the whole concept of "worker-boss" is a holdover from feudalism' rather than a natural outgrowth of the free market, and speculates that 'independent contractors' might replace 'wage workers' for 'all steps of production', an idea that goes back to Herbert Spencer.³⁹ David Friedman, though not usually considered a *left-libertarian*, has expressed similar sentiments.⁴⁰ More recently, Carson has devoted two lengthy books to an attempt to show that workers' cooperatives would tend to displace traditional 'capitalist' firms under a free market.⁴¹ Moreover, both Rothbard (during his left-libertarian phase) and Karl Hess have argued that by strict neo-Lockean standards of land ownership, most of the property claims of the corporate elite are illegitimate and might justifiably be homesteaded by their employees to form workers' cooperatives.⁴² In any case, the historical approach to justice in holdings leads naturally toward a presumption in favour of worker control of industry; as David Schmidtz puts it, 'Nozickians tend to see rewards (ie products) as created by workers, and thus as presumptively belonging to workers.'⁴³

³⁵ Long (2008a, 2008c); Carson (2007, 2009a).

³⁶ Johnson (2004, 2005).

³⁷ Nozick (1974), pp 250–53.

³⁸ Carson 2009a, p 518.

³⁹ Konkin (1983), p 25, n 8; Spencer (1912), Book VIII, Chs 20–21.

⁴⁰ Friedman (1989), pp 144–45.

⁴¹ Carson (2007, 2009a).

⁴² Hess (1969); Rothbard (1965, 1969a, 1969b); Rothbard (1998), Chs 9–11. For those left-libertarians (eg Carson) whose views on land ownership are neo-Proudhonian rather than neo-Lockean, the extent to which existing corporate property claims are illegitimate is, of course, still greater.

⁴³ Schmidtz (2005), p 170. I don't mean to suggest that Schmidtz himself, in this passage, was intending to draw a connection to worker control of industry.

What is distinctive about historical theories of a broadly Nozickian sort is not so much that they focus on the *past* as that they focus on *means* of acquisition, including not just past but ongoing acquisition. Given the extensive involvement of state violence in the process by which the corporate elite not only achieved its wealth in the past but continues to maintain and augment it in the present, it is clear that the massive inequalities of wealth that characterise present-day ‘capitalist’ society are radically inconsistent with any approach to justice in holdings that is even remotely Nozickian. The charge that Nozick-style historical theories serve to legitimate the existing pattern of wealth distribution is thus shown to be even more baseless than Nozick himself was prepared to realise.

Historical vs End-state, Revisited

However, the claim that I have undertaken to defend is not merely that such inequalities can be challenged using an historical approach, but that the historical approach represents a *more* effective tool for challenging them than do relatively end-oriented approaches such as utilitarianism and Rawlsianism. Of course, such inequalities can presumably be challenged on utilitarian and Rawlsian grounds too. So in what do I take the greater effectiveness of the historical critique to consist?

The historical critique might be judged superior on the grounds that it is *correct* while its end-oriented rivals are mistaken. In fact, I do regard the historical approach to justice as correct, on independent, mostly non-consequentialist grounds; however, as explained above, I am not making that argument here. For those who regard the results of voluntary interaction as a proxy for either aggregate or mutual advantage or both, the fact that present distribution fails the historical test might be taken as *evidence* that it fails the utilitarian or Rawlsian tests as well – but that is not my argument either.⁴⁴

Rather, the advantage, as I see it, of the historical challenge to existing inequalities – that is, what makes it serve more effectively *the very ends that egalitarians take to be a reason to reject it* – is that it lays bare the class structure of society, and the roots of such inequalities in state violence. Merely pointing to the fact that some people have a lot more than others is less compelling as a critique; it invites the response, ‘So what? Those who have more aren’t hurting anybody; you’re just appealing to envy.’ By contrast, being able to show that those who enjoy a higher socio-economic status have to a considerable extent achieved and maintained that status by forcibly expropriating and oppressing the less affluent provides for a far more effective indictment.

I don’t mean to be claiming merely that appeal to the historical approach is more *rhetorically* effective; that would be a weak defence, since strategies can, after all, be rhetorically effective for all sorts of dubious reasons. I am aiming at a stronger claim than one of greater rhetorical effectiveness – yet at a weaker claim than one of simply being the correct theory.

⁴⁴ For an argument for regarding the results of voluntary interaction as a proxy for mutual advantage (one I do not necessarily endorse), see Rothbard (1956).

My point is that the historical critique correctly identifies what is surely a *morally relevant fact*, and one that end-oriented critiques tend to ignore: namely, that in many cases those who have more are getting it *at the expense* of those who have less. Now, of course, utilitarian and Rawlsian approaches may also make the claim that, in some sense, those who have more have it at the expense of those who have less, but in order to substantiate that claim without appealing to historical – that is, causal – considerations, they have to defend a baseline of equality. My present argument is not that such a defence is impossible, but only that the need to defend it places an additional and somewhat recondite burden on end-oriented challenges to inequalities, whereas the historical challenge, by identifying past and ongoing acts of violent expropriation rather than merely pointing to the existence of differential shares, provides a much more straightforward, intuitive and unambiguous basis for condemning the present structure of wealth distribution in ‘capitalist’ society. Thus the need to ground critiques of inequality, far from being a reason to reject historical theories of distributive justice in favour of end-oriented ones, is actually a reason to do precisely the opposite.

In other words, my critique of Nozick’s critics is an internal one: my argument is that the historical approach is superior not because it makes a better case against inequalities I happen to oppose, but because it makes a better case against inequalities that *Nozick’s critics* oppose.

Anarchy and Historical Justice

Most market anarchists accept both market-anarchist class theory and a historical, broadly neo-Lockean theory of distributive justice.⁴⁵ We have seen how these two commitments are a good fit with each other; but how do they relate to the commitment to market anarchism itself?

Market-anarchist class theory is taken to support market anarchism inasmuch as it shows that at least some of the evils that people turn to states to prevent are actually enabled – virtually inevitably so – by the state, while the sources of productivity lie in market rather than state mechanisms. And neo-Lockean theories of distributive justice are taken to support market anarchism in two ways. On the one hand, the ideal of equality built into such theories clashes with the monopolistic rights claimed by the state (for where all are equal, how can members of a particular institution claim rights to exercise exclusive authority over the rest of society?). On the other, it is argued that, thanks to the incentival and informational advantages of competition over monopoly, markets are likelier than states to produce outcomes in line with neo-Lockean justice.⁴⁶

But here a potential difficulty arises. The task of a market-anarchist legal system is to adjudicate disputes and secure compliance in accordance with neo-Lockean principles of private property and free exchange. Yet the economic

⁴⁵ Not all market anarchists accept market-anarchist class theory (for an exception, see Friedman (1989), pp 152–55); nor are all proponents of this variety of class theory market anarchists (Calhoun obviously isn’t). But the overlap is great enough to make the label appropriate.

⁴⁶ For the neo-Lockean ideal of equality, see Long (2005); for the other arguments, see the sources cited in n 4.

mechanisms on which such a legal system relies are themselves characterised by private property and free exchange. Doesn't this mean that a market anarchist legal system has to create its own preconditions? Mustn't private property and free exchange *already* be protected and secure in order for there to be a competitive market in rights-protection – the market from which the protection and security of property and exchange are meant to *arise*?

Any practical anxiety attendant on this bootstrapping problem may be assuaged by consideration of the fact that in a variety of historical cases, stateless legal systems fairly similar to those advocated by market anarchists have been relatively successful in protecting private property and free exchange, but the theoretical puzzle remains.⁴⁷

We may begin to shed some light on this puzzle by noticing that it arises just as much for state legal systems as for stateless ones. After all, the building and maintenance of states constitute an expensive project; this presupposes a society with a fair degree of productivity and prosperity already – which in turn requires the sort of social order and secure expectations associated with a successful property system (whether neo-Lockean or otherwise).

Thus *any* legal system to protect property claims (of any sort) depends on a background level of property protection not dependent on law.⁴⁸ And indeed, inasmuch as those in charge of enforcing the decisions of a legal system are nearly always vastly outnumbered by the populace they are supposed to be controlling, such enforcement can never be the principal source of social order in any case.⁴⁹ Legal systems at their best only reinforce, and at their worst subvert and attack, forms of social order arising from informal conventions and understandings.⁵⁰ Not just as a normative judgment but also as an explanatory and methodological counsel do market anarchists proclaim that the era of empire is over and the era of association begins.

⁴⁷ See Bell (1992), Friedman (1979), Anderson and Hill (2004), and Benson (2011).

⁴⁸ For empirical confirmation of the same point, see Ellickson (1994).

⁴⁹ For elaboration, see Long (2006b, 2008d).

⁵⁰ Compare Thomas Paine – not himself an anarchist, but certainly an inspirer of anarchists (reading *The Rights of Man* was what convinced William Godwin of the desirability and viability of a stateless society) and a forerunner of market-anarchist class theory: 'Great part of that order which reigns among mankind is not the effect of government. It has its origin in the principles of society and the natural constitution of man. It existed prior to government, and would exist if the formality of government was abolished. The mutual dependence and reciprocal interest which man has upon man, and all the parts of civilised community upon each other, create that great chain of connection which holds it together. The landholder, the farmer, the manufacturer, the merchant, the tradesman, and every occupation, prospers by the aid which each receives from the other, and from the whole. Common interest regulates their concerns, and forms their law; and the laws which common usage ordains, have a greater influence than the laws of government. In fine, society performs for itself almost everything which is ascribed to government.' (*Rights of Man*, Part 2, Ch 1)

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