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Preface. Libertarianism from the Philosophical Perspective

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Abstract:

This special issue of *Studia Humana* is devoted, and dedicated, to libertarianism; its promotion and its study. I am very grateful to the editors of this journal for inviting me to put together such a compilation. There are 16 contributions in all, covering most of the social science disciplines.

Keywords: economics, politics, history, philosophy, psychology.

Why is it important to offer an entire issue on this subject? It is crucial because libertarianism, the natural state of freedom, is man's last best hope for prosperity, even for his very survival.

Why so? This is because this philosophy is dedicated to peaceful interaction between people. Its non-aggression principle maintains that all human relationships should be voluntary. Thus, murder, rape, kidnapping, theft, or the threats thereof are ruled illicit. All other behavior is legal, included "capitalist acts between consenting adults" [2, 163], including sex, drugs, earning profits, etc. To prohibit or interfere with these is to legally proscribe victimless crimes. Libertarianism also provides the means through which all disputes can be resolved: self-ownership and private property rights. If this philosophy were adopted world-wide, it would mean the end of war and crime, and a radical diminution of poverty. It is my hope that this volume will make a small but significant contribution to such an eventuality.

I. Economics

We are fortunate to be able to include three essays on the School of Salamanca in this collection. However, a critic might object on the ground that this is economics, not political philosophy, and libertarianism, strictly speaking, is an aspect of the latter, not the former. Not so, no so, I aver. Any school of thought that maintains that the just rate of interest is the market rate of interest, that the just price is the market price, that the just rent is the market rent, that the just wage is the market wage, etc., cannot be considered too far apart from libertarianism. Yes, of course, there is economics involved in this. But in this School's concern for justice, it also partakes of the philosophy studied in this special issue of *Studia Humana*.

The School of Salamanca is very important since it was started in the 16th century by Jesuits and Dominicans. To say that these priests embraced laissez faire capitalism then, would be a vast

understatement. But any study of their viewpoints at present, particularly the Jesuits, would indicate a 180 degree turn away from their foundational viewpoints.¹ Not to be too blunt about it, but they have with very few honorable exceptions embraced the doctrine of social justice, or liberation theology, anathema to the Salamancans, and to libertarians. Here are the three entries in this category:

1. The School of Salamanca's Reconciliation of Economics and Religion, Anthony J. Cesario

This first one is brought to us by Anthony J. Cesario, with his "The School of Salamanca's Reconciliation of Economics and Religion." He demonstrates their opposition to usury laws, underlines their development of monetary theory and focuses on their Catholic theology.

2. Beneath the Black Robes of Ignatius and Mariana: Limited Liberty within an Interventionist Order, L. B. Edgar

The second in this category comes to us from an author who maintains there was at least one exception to the general rule that the early Jesuits all favored free enterprise. Edgar singles out the founder of the Society of Jesus, Ignatius of Loyola, "a statist interventionist turned militant religious reformer."

3. Martín de Azpilcueta: The Spanish Scholastic on Usury and Time-Preference, Pedro J. Caranti

This author focuses his attention on one of the most prominent members of the School of Salamanca. Caranti credits Azpilcueta with developing the theory of time-preference, one of the very basic building blocks of Austrian Economics, the free enterprise school of thought. However, our author sees some clay on the feet of this early economist; strangely, he did not defend the practice of usury as did his fellow Salamancans.

II. Politics

Given the non aggression principle, and private property rights based upon initial homesteading and licit (voluntary) title transfer thereafter, what follows? What are the implications for public policy? Here, we consider a full half dozen repercussions ranging from welfare to children's rights to diet, to price gouging to egalitarianism to war and peace.

1. Rethinking Welfare: The LDS Welfare Program vs Public Welfare, David R. Iglesias

What should be the libertarian position on welfare? None at all? Privatize it? In his "Rethinking Welfare: The LDS Welfare Program vs Public Welfare," David R. Iglesias adds on to the analysis of Hazlitt and Rothbard and points to the Mormon Church as one of the most successful organizations in helping the poor through voluntary contributions.

2. A Rational Theory of the Rights of Children, Ian Hersum

Children are a challenge, as any parent full well knows. The same is true for the libertarian philosophy which abjures paternalism, but necessarily applies it to youngsters. In his "A Rational Theory of the Rights of Children" Ian Hersum sheds light on child abuse, children's rights and derives them from basic libertarian principles. He sees libertarianism as a philosophy of conflict resolution, and there is no more subject in need of that benefit than children.

3. On Huemer on Ethical Veganism, Walter E. Block

Huemer (2019) argues against the killing of animals. I offer a critical libertarian analysis of his claim. Huemer is one of the leading philosophical supporters of libertarianism. He maintains that veganism, or at least vegetarianism, is a logical implication of libertarianism. I argue against this point.

4. Price gouging

In “Medical Mask Resellers Punished in Canada” Milton Kiang demonstrates that it is not greed, it is not capitalism that retarded the provision of medical masks to combat the Corona virus. Rather, the blame should be laid at the door of the Canadian government that would not allow prices based on supply and demand. Anti-gouging law and price controls were the culprit, not economic freedom.

5. A Libertarian Perspective on Peace Enforcement by the United Nations, Sukrit Sabhlok

Libertarians, at least of the Rothbardian variety, have views on foreign relations, and these are often at variance with those on the right, or conservatives, with whom we are all too often confused. Sabhlok demonstrates this unique perspective with his analysis of the United Nations.

6. In their “Nulla Libertarian Poena Sine NAP: Reexamination of Libertarian Theories of Punishment” Eduardo Blasco and David Marcos wrestle with a particularly thorny challenge to libertarianism: punishment theory. They take on such previous contributors to this literature as Murray N. Rothbard, Walter E. Block, Stephan Kinsella, Randy Barnett, David Friedman and Hans-Hermann Hoppe. Their unique contribution is that they “take time preference into consideration” something never before done as far as I know. They offer a limit and a limitation to libertarian punishment theory.

III. History

We are fortunate to have two papers focusing on the history of the libertarian movement. If we do not know where we have been, the way forward is even the more perilous, since we cannot learn from the past.

1. A Review: Digital Archeology of the Modern American Libertarian Movement, Mike Holmes

The first of these historical excursions is provided by Mike Holmes in his “A Review: Digital Archeology of the Modern American Libertarian Movement.” He dates the start of this effort to promote freedom to the mid-1960s in the United States. Holmes sees Murray N. Rothbard, and Ayn Rand, both living in New York City at the time, as integral to the start of this undertaking. The review provides descriptions of digitally accessible publications from the early American libertarian movement and where they can be found.”

2. Libertarianism: A Fifty-Year Personal Retrospective, Mark Thornton

The second is provided by Mark Thornton in a contribution that could have been entitled “A trip down libertarian memory lane.” In my own humble opinion of all the think tanks, organizations, political parties, responsible for what success libertarianism has had in the U.S., the Mises Institute stands head and shoulder over all the others. Thornton has spent virtually his entire career right there in Auburn, Alabama, in the belly not of the beast but of the opposition to statism

in all its forms. So his contribution is an especially important one to this collection. This is an important intellectual autobiography. For another such, see [1].

IV. Philosophy

Libertarianism is, foremost, an aspect of philosophy. Philosophy is the mother of all sciences, and libertarianism is, at least in my opinion, the mother of one of its branches, political philosophy. In this section we present three important contributions to that discipline.

1. Hoppe's Argumentation Ethics, Lucas Maciel Bueno

An Interpretative Model of the Evolution of Hoppe's Argumentation Ethics, Lucas Maciel

Libertarianism resembles the sticks of an Indian teepee. They all cross about 15 feet high in the air. Where they intersect is akin to the non-aggression principle and private property rights based on homesteading, the twin foundations of libertarianism. Below that point are the implications of this philosophy. What do the bits of stick protruding upwards signify? The various justifications of the free enterprise system. Among them are utilitarianism, natural law and religion. Ayn Rand claims it stems from "A is A." In my view the most powerful of these validations is Hoppe's "argument from argument." Maciel's contribution to this compilation is to further elaborate upon this crucially important building block of our philosophy.

2. Is statism an amoral philosophy? Jakub Bożydar Wiśniewski

One would expect a contributor to this volume to claim not that statism, the polar opposite of libertarianism, is immoral, not amoral. Thus, we shall all have to sit up and take notice as this gifted philosopher makes an unexpected argument. On the other hand, not at all unexpectedly, he demonstrates that only libertarianism deserves the honorific "moral."

3. Problems with the Notion of Freedom and Voluntariness in Right Libertarianism, Igor Wysocki

In this third paper in the philosophy category Igor Wysocki wrestles with the relationship between freedom and voluntariness. He takes on the person who might well be considered the most eminent libertarian philosopher who ever made his mark in this discipline. No, not Murray Rothbard, the person who deserves this appellation, but rather Robert Nozick. Wysocki takes the position that voluntariness (or freedom) is logically prior to the notion of rights.

4. Peter Singer's "Famine, Affluence, and Morality": Three Libertarian Refutations, J. C. Lester

Peter Singer is widely known as an eloquent supporter of egalitarianism. He maintains that those in the wealthy West are morally obligated to donate far more than at present to the poverty stricken in the third world. J. C. Lester takes issue with these claims of Singer in his contribution.

V. Psychology

Last but far from least comes psychology. Indeed I have saved the best for last. This is because I think that to the extent we libertarians make any headway in promoting our beloved philosophy, it will not be mainly through economics, law, history, philosophy or any of these others. Rather, it will be on the basis of this discipline, because this is the one that most closely approaches where we live our mental lives.

A Proletariat of One: Libertarianism and the Psychosis of Authority David L. Fisher

What are the difficulties libertarians face in their effort to promote this philosophy? David L. Fisher locates them not in economics, not in philosophy, not in law, not in politics, the usual focus of members of this group, but, rather in psychology and religion. In his “A Proletariat of One: Libertarianism and the Psychosis of Authority” locates the roadblocks facing libertarian in terms of the authoritarianism wielded by the intellectual and political elites of the West.

Acknowledgements

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Notes

1. Ok, ok, a 179 degree turn.

The School of Salamanca’s Reconciliation of Economics and Religion

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Abstract:

Many years before Adam Smith, numerous theologians associated with the School of Salamanca, such as Domingo de Soto, Juan de Lugo, Juan de Mariana, Luís Saravia de la Calle, Martin de Azpilcueta, Luis de Molina, Leonard Lessius, Thomas Cajetan, and Francisco Garcia had made great strides in the development of economics. Specifically, these theologians, otherwise known as the “Scholastics,” analyzed and argued against price and wage controls by explaining that the only “just” prices and wages are those that are set by the market, examined and pushed back against prohibitions on usury, understood the concept of time preference, and helped develop monetary theory in multiple ways. They also demonstrated that all of this was consistent with the Catholic religion. This paper analyzes the ways in which these early theologians contributed to the development of economics and reconciled it with their Catholicism.

Keywords: economics, economic history, the School of Salamanca, scholastics, catholicism.

Although Adam Smith is widely considered to be the founder of modern economics, economic thought had already been in development many years prior to Smith. Most notably, a massive amount of economic thought, specifically regarding price and wage controls, usury, time preference, and monetary theory, had been developed in Spain starting in the 16th century by a group of theologians from the School of Salamanca, who based their reasoning on Aristotle as well as St. Thomas Aquinas and were known as the “Scholastics” [10, pp. 99-100].

One of the main economic ideas associated with the theologians from the School of Salamanca is their view about what constitutes a “just” price [10, p. x]. Domingo de Soto [12], for instance, pushed back against the idea that there is a “just” price that is different from the market price and argued instead that the only just price is the market price. For a long time prior to the Scholastics, “it was assumed that the so-called just price was a price distinct from the price reached on the free market,

and reflected either the cost of production or the good's alleged intrinsic value" [13, p. 44]. Contrary to this view, however, Soto explained that

in examining the problem of the just price...we must first take into account the demand which exists for the article, and its abundance or scarcity. Next we must bear in mind the labour, trouble, and risk which the transaction involves. Finally, we must consider whether...buyers are scarce or numerous [3, pp. 84-85].

Soto reinforced this point by adding that prices should be set by the merchants themselves and not anyone else. Specifically, the theologian made three arguments in favor of letting merchants set the prices of their goods themselves. First, he pointed out that among juris-consultants, something is worth whatever someone can sell it for, so merchants should be free to set the prices as they see fit because if it's worth that price it will sell and if it won't, then it won't sell. Second, he highlighted the importance of taking the word of experts and noted that merchants are experts in merchandise so their opinion on the price of their goods is what should be deferred to. Third, he argued that people are allowed to do what they wish with their own property, which means that they are allowed to ask for whatever price they want since it's their property.

Despite this Soto also believed that prices should be controlled. Specifically, he stated,

to see why it is necessary for prices to be controlled, we must realize that the matter is a primary concern of the republic and its governors, who, in spite of the arguments repeated above, ought really to fix the price of every article. But since they cannot possibly do so in all cases, the task is left to the discretion of buyers and sellers [3, p. 85].¹

Additionally, Soto claimed that the natural price set by the market is not determined by an individual merchant, but by "prudent and fair-minded men" [3, p. 86]. Soto stated that much like how a merchant who buys something at a higher price than what it is currently selling for cannot expect people to compensate him for his loss, the same goes for someone who buys something at a lower price than it is currently selling for. The price someone should sell things for is the price that fair-minded people will accept rather than whatever price anyone is willing to pay.

In contrast to this, Rothbard noted that other Scholastics, such as Cardinal Juan de Lugo, properly acknowledged that "the 'estimation' or valuation is going to be conducted by 'imprudent' as well as 'prudent' men" [10, p. 127]. He added, "if the consumers are foolish or judge differently than we do, then so be it. The market price is a just price all the same" [10, p. 127].

In summary of de Soto's views on price controls, Rothbard concluded [10, p. 103],

De Soto was not content to concede the propriety of government fixing the price of goods and letting it go at that. Instead, he declared flatly that a fixed price is always superior to the market price, and that ideally all prices should be fixed by the state. And even lacking such control, prices, for de Soto, should be set 'by the opinion of prudent and fair-minded men' (whoever they might be!) who have nothing to do with any transactions. They should not be determined by the free bargaining of the buyers and sellers involved. Thus de Soto, more than any other scholastic thinker, called for statism rather than market determination of price.

Soto's views on the just price being the market price were further developed by Juan de Mariana, who stated [10, p. 120],

Only a fool would try to separate these values in such a way that the legal price should differ from the natural. Foolish, nay, wicked the ruler who orders that a thing the common people value, let us say, at five should be sold for ten. Men are guided in this matter by common estimation founded on considerations of the quality of things, and their abundance or scarcity. It would be vain for a Prince to seek to undermine these principles of commerce. 'This best to leave them intact instead of assailing them by force to the public detriment.'

By saying this, the theologian appears to be highlighting that even if someone, such as Soto, supported price controls, the price control should be set at whatever the market price is, rendering it effectively useless. This is because the market price is based on people's estimations about the quality of goods as well as their scarcity or abundance and diverging from these estimations will leave the public worse off than they otherwise would be.

Luís Saravia de la Calle likewise argued that the just price is the market price. According to Saravia de la Calle [3, p. 79],

The just price of a thing is the price which it commonly fetches at the time and place of the deal, in cash, and bearing in mind the particular circumstances and manner of the sale, the abundance of goods and money, the number of buyers and sellers, the difficulty of procuring the goods, and the benefit to be enjoyed by their use, according to the judgement of an honest man.

He also reasoned that the just price "arises from the abundance or scarcity of goods, merchants, and money...and not from costs, labor and risk. If we had to consider labor and risk in order to assess the just price, no merchant would ever suffer loss, nor would abundance or scarcity of goods and money enter into the question" [3, p. 82].

Similarly, Martin de Azpilcueta pointed out that price controls are "imprudent and unwise" because "when goods are abundant...there is no need for maximum price control, and when goods are scarce, controls would do the community more harm than good" [10, p. 105]. This is due to the fact that market activity is largely based around incentives that are ultimately sent by prices. Prices influence both the supply of products as well as the demand for those products. High prices not only discourage consumption of a particular product, they also encourage others to produce more of the product. Prices that are low, on the other hand, not only fail to discourage consumption, they also fail to stimulate production. When a price of a product is kept low through the enforcement of just price legislation, then, all things being equal, the demand for that product will be high but the supply of that product will be low, resulting in a shortage that leaves the community worse off than its members otherwise would be.

Consider a situation where the prices of umbrellas are sharply increased during a sudden unexpected storm. According to Woods [13, p. 47], "the higher prices...serve a salutary purpose: they encourage people to economize on those items that are in greatest demand at the time." Underscoring this, he added [13, p. 47],

Had the umbrella price been forced by law to remain fixed, a household of six may have purchased six umbrellas. But if the price is allowed to rise-even dramatically – in the wake of these sudden and unexpected circumstances, the family is much more likely to economize: to purchase, say, three umbrellas, covering two heads each. The three they end up not purchasing are now available for another household to acquire. This is how a market economy encourages sharing and cooperation during crises: not by central planning,

reeducation camps, and slavery, but by a price system that is free to fluctuate in response to changing conditions.

When prices, and ultimately profits, are allowed to rise beyond what is considered “just” in response to an increase in demand for a particular good, signals are simultaneously sent to consumers and suppliers encouraging the consumers to consume less and encouraging the suppliers to supply more. When these signals fail to be sent due to the enforcement of a just price, all other things being equal, the increase in demand doesn’t get met with a similar increase in supply. This not only results in a shortage but also a misallocation of resources.²

The enforcement of just prices through price controls not only fails to encourage an increase in supply, it also tends to prevent products in a shortage from being allocated to those who value them the most. Instead, the products have a tendency to end up being misallocated, on a first come first serve basis, to those who are the closest and quickest. Reinforcing this point, Woods explained [13, p. 47],

The fact is, scarce resources must be rationed somehow. A market economy with freely fluctuating prices constitutes one form of rationing. Those who condemn the ‘greed’ of those who charge what the market will bear appear to believe that the rationing that price controls bring is somehow morally superior. But price controls simply reward those who, in effect, can run fast. Put that way, how can such a system be considered morally superior to its market alternative? Why, from a moral point of view, should the limber and sprightly win out over the slow or handicapped? Price controls not only decrease the quantity of a good that producers are willing to sell, but without the discipline imposed by higher prices, the limited supply of goods will be acquired only by those who arrive first – and these buyers will have no incentive to economize on them.³

In addition to the just price, the theologians associated with the School of Salamanca likewise argued that the only “just” wage is the wage that is agreed upon by the employer and employee [3]. For example, Soto argued that “if they freely accepted this salary for their job, it must be just” [13, p. 51]. To clarify, he wrote that “no injury is done to those who gave their consent” and mentioned that if the workers “do not want to serve for that salary, leave!” [13, p. 51]. To put it differently, Soto opposed the idea of a minimum wage since he believed that any wage, including very low wages, is just as long as it was agreed to voluntarily.

This was contrary to the idea, which Pope Leo XIII later articulated quite clearly [4, para. 46], that the wages people earn should be “sufficient to enable [the laborer] comfortably to support himself, his wife, and his children.” Specifically, he stated [4, par. 45],

There underlies a dictate of natural justice more imperious and ancient than any bargain between man and man, namely, that wages ought not to be insufficient to support a frugal and well-behaved wage-earner. If through necessity or fear of a worse evil the workman accept harder conditions because an employer or contractor will afford him no better, he is made the victim of force and injustice.

Luis de Molina pushed back against the belief that employers must pay a living wage as well. Specifically, he claimed that employers are “only obliged to pay [the laborer] the just wage for his services considering all the attendant circumstances, not what is sufficient for his sustenance and much less for the maintenance of his children and family” [13, pp. 50-51].

Although some people may mistakenly consider this view on wages to be “a case of callous disregard for the well-being of workers,” their views actually demonstrate a profound care for workers [13, p. 51]. In the words of Chafuen [1, pp. 130-131],

Their condemnation of monopolies, frauds, force and high taxes are all directed toward the protection and benefit of the working people. Nonetheless, they never proposed the determination of a minimum wage sufficient to maintain the laborer and his family. In the belief that fixing a wage above the common estimation level would only cause unemployment, they recommended other means.

Reason allows us to distinguish between goals and means. One of the goals of the Schoolmen’s economic policy recommendations, as of any other school of thought, is the betterment of the worker’s condition. Nonetheless, they understood that tampering with the market would be inconsistent with their goals. These reasons, and not a lack of charity, were the basis of their proposals. Those who criticize Late Scholastic wage theory for a so-called ‘lack of compassion’ demonstrate their lack of understanding of the market.

This means that the Scholastics opposed a minimum wage not because they hated the workers, but because such a minimum wage would actually make the workers worse off than they otherwise would be. Such a situation is due to the fact that the minimum wage acts as an obstacle that must be jumped over rather than a tide that raises all boats.

The wages that workers earn tend to be based around the discounted marginal revenue product, otherwise known as discounted marginal value product, that they will add to the company [9]. For example, if a worker will only add an additional \$5,000 to the company each year for two years, then their marginal revenue product is \$10,000. However, if the interest rate is 10%, then that means that the present value of the \$10,000 gets discounted to \$9,000. Consequently, if there is a minimum wage above \$4,500, which is the workers’ discounted marginal revenue product per year, then the employer would ultimately be losing money if they hired them. This means that they will tend to not hire that person. Instead, a prospective employer would be better off loaning that money out to someone at 10% and getting a greater return. As a result, the worker is left off in a worse position than they otherwise would be without the minimum wage law because they could have been hired on for at most \$4,500 per year, but instead they weren’t hired at all and aren’t making any money.⁴

Leonard Lessius likewise “advanced the view that workers are hired by the employer because of the benefits gained by the latter, and those benefits will be gauged by the worker’s productivity” [10, p. 124]. Additionally, the theologian also highlighted that low wages may also be a result of the worker receiving some other form of non-monetary compensation, such as “psychic income” [10, p. 123]. To clarify, he noted that the psychic income, which is included as part of the pay, may be things like “social status and emoluments” [2, p. 264].

In addition to opposing the idea that just prices and wages are different from market prices and wages, the Scholastics also largely defended the practice of usury, which has to do with charging high, or unjust, interest rates on loans. Cardinal Thomas Cajetan made one of the first great strides in defending usury by using the idea of *lucrum cessans*, which has to do with paying interest to someone for profits that were lost due to not being able to use a piece of property.⁵ To clarify, he argued that, at least when it comes to businessmen, all loans were justified.

According to Rothbard, Cajetan was one of the first people to ever justify money lending as a business. Specifically, Rothbard noted [10, p. 101],

[Cajetan] vindicate[d], not indeed all of *lucrum cessans*, but any loan to businessmen. Thus a lender may charge interest on any loan as payment for profit foregone on other

investments, provided that loan be to a businessman. This untenable split between loans to businessmen and to consumers was made for the first time - as a means of justifying all business loans. The rationale was that money retained its high profit-foregone value in the hands of business, but not of consumer borrowers. Thus for the very first time in the Christian era, Cardinal Cajetan justified the business of money lending, provided they were loans to business.

Soto also helped to undermine the prohibition against usury even though he technically spoke out against *lucrum cessans* and usury in general.⁶ While discussing a quote from the Bible about lending freely, he claimed that the statement actually has no relevance to lending at interest and that usury is not against natural law. This means that, at least on a theological level, usury is not a problem.

Lessius also argued in defense of usury. According to the theologian [10, pp. 124-125],

Although no particular loan, separately considered, be the cause, all, however, collectively considered, are the cause of the whole *lucrum cessans*: for in order to lend indiscriminately to those coming by, you abstain from business and you undergo the loss of the profit which would come from this. Therefore, since all collectively are the cause, the burden of compensation for this profit can be distributed to single loans, according to the proportion of each.

Furthermore, the Scholastics also helped to develop the theory of time preference. Azpilcueta, for instance, pointed out that “a claim on something is worth less than the thing itself, and...it is plain that that which is not usable for a year is less valuable than something of the same quality which is usable at once” [2, p. 215]. This means that present goods are worth more than future goods. A house which will not be ready for a year, for example, is worth less than a house that is available at once.⁷

Another economic issue that the Scholastics largely focused on was the monetary theory. For instance, Cajetan “can be considered the founder of expectations theory in economics” due to the fact that he “pointed out that the value of money depends not only on existing demand and supply conditions, but also on present expectations of the future state of the market” [10, pp. 100-101]. In other words, Cajetan noted the expectations of future changes in the supply of money as well things like wars and famines will have an effect on the current value of money.⁸

Additionally, Cajetan explained that there’s two kinds of “value of money” [10, p. 101]. He made a distinction between the value that money has regarding “its purchasing power in terms of goods...and the value of one coin or currency in terms of another on the foreign exchange market” [10, p. 101]. Money not only has value when it comes to exchanging it with particular goods such as wheat or rice, it also has value when it comes to exchanging it with money from other countries.

Another scholastic who spoke extensively about monetary theory was Azpilcueta, who reasoned, “all merchandise becomes dearer when it is in great demand and short supply, and...money, in so far as it may be sold, bartered, or exchanged by some other form of contract, is merchandise and therefore also becomes dearer when it is in great demand and short supply” [3, p. 94].⁹

To clarify, Azpilcueta pointed out that “in countries where there is a great scarcity of money, all other saleable goods, and even the hands and labour of men, are given for less money than where it is abundant” [3, p. 95]. As a caveat, Azpilcueta made sure to add, “other things being equal” to underscore the fact that there could potentially be other variables that cause goods in a particular country to cost more in a country where there is a great scarcity of money [3, p. 95].¹⁰ When money in a country becomes scarce, the purchasing power of that money increases, *ceteris paribus*, due to the fact that people would be willing to accept less money in exchange for their goods.¹¹

To better illustrate this, Azpilcueta used Spain and France as an example, stating, "we see by experience that in France, where money is scarcer than in Spain, bread, wine, cloth, and labour are worth much less" [3, p. 95]. Furthermore, he added, "what some men say, that a scarcity of money brings down other things, arises from the fact that its excessive rise makes other things seem lower, just as a short man standing beside a very tall one looks shorter than when he is beside a man of his own height" [3, p. 95]. This means that the greater the amount of money, the lower the purchasing power since a greater quantity of money will be necessary to buy the same kinds of goods.

Moreover, Azpilcueta also ardently defended the exchange market for money, which has to do with trading currency from one country for a currency from another country rather than trading currency for other goods or services. Specifically, he stated [3, pp. 90-91],

Aristotle disapproved of this art of exchange and of trading in money: it seemed to him both unnatural and unprofitable to the republic, and to have no end other than gain, which is an end without end. St. Thomas, too, condemned all business whose main object is gain for gain's sake. But even St. Thomas allows that the merchant's trade is lawful so long as he undertakes it for a moderate profit in order to maintain himself and his family. After all, the art of exchange benefits the republic to some extent. I myself hold it to be lawful, provided it is conducted as it should be, in order to earn a moderate living. Nor is it true that to use money by changing it at a profit is against nature. Although this is not the first and principal use for which money was invented, it is none the less an important secondary use. To deal in shoes for profit is not the chief use for which they were invented, which is to protect our feet: but this is not to say that to trade in shoes is against nature.

In other words, Azpilcueta defended the exchange market for money by comparing it to trading other goods like shoes and arguing that trading money should be allowed as long as long as a moderate profit is earned just like with shoes or any other good.¹²

In addition to Cajetan and Azpilcueta, Francisco Garcia also discussed the value of money, which he claimed usually comes from three causes. "The first and most important" cause is "whether money is scarce or abundant" [3, p. 105]. To clarify, Garcia added, "just as merchandise is little esteemed when it is plentiful, and highly valued and esteemed when it is scarce" [3, p. 105]. Much like how goods are highly valued when there is not a lot of them and not highly valued when there is a lot of them, money is valued more when there is less of it and less when there is more of it.

Regarding the second cause, Garcia explained that it has to do with "whether there are many or few who wish to give or take money in exchange, just as in the sale or purchase of goods the price of the merchandise rises or falls according to whether there are many or few buyers and sellers" [3, p. 105]. By saying this, Garcia appears to be pointing out that the value of money is no different from other commodities, and consequently, it rises and falls depending on how many people are willing to offer or accept the money.

Regarding the third cause, Garcia noted that it involves whether or not it is in a safe place or a risky place. "If in Flanders a city is in danger of being sacked (as Antwerp was sacked a few years ago)," he reasoned [3, p. 105], "then money would be worth less in that city, quite apart from other considerations."¹³

Molina likewise wrote in depth about monetary theory. Much like Garcia, Molina pointed out that "just as an abundance of goods causes prices to fall (the quantity of money and number of merchants being equal), so does an abundance of money cause them to rise (the quantity of goods and number of merchants being equal)" due to the fact that "the money itself becomes less valuable for the purpose of buying and comparing goods" [3, p. 113]. Additionally, he explained that "wherever the demand for money is greatest, whether for buying or carrying goods, conducting other business,

waging war, holding the royal court, or for any other reason, there will its value be [the] highest” [3, p. 113]. By saying this, the theologian is making it clear that the supply and demand for money is similar to the supply and demand for other commodities.

Furthermore, Mariana also discussed monetary theory. For instance, he asserted that the king may not “take away arbitrarily any part of [the people’s] possessions for this or any other reason or any ploy. Such seizure occurs whenever money is debased: For what is declared to be more is worth less” [5, p. 544]. To clarify, he added,

if a prince is not empowered to levy taxes on unwilling subjects and cannot set up monopolies for merchandise, he is not empowered to make fresh profit from debased money. These strategies aim at the same thing: cleaning out the pockets of the people and piling up money in the provincial treasury [5, p. 544].

When a money is debased and the amount of money in circulation increases as a consequence, the resulting inflation is ultimately similar to theft due to the increase in the supply of money lowering its value.¹⁴

In conclusion, although some, like Schumpeter, may claim that the Scholastics “hardly went at all into the specifically economic problems of public finance” and “produced nothing that qualifies as economic analysis” on the topic, it’s clear that the Scholastics made great strides in the general development of economics [11, pp. 92-93]. Not only did they analyze and argue against price and wage controls, they also examined and pushed back against prohibitions on usury, understood the concept of time preference, helped develop monetary theory, and demonstrated that all of this was consistent with Catholicism. In other words, the Scholastics had begun laying the foundation of modern economics long before Adam Smith, the so-called “father of economics,” had explored the topic [8].

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Notes

1. Soto appears to be suggesting that if the government could fix the price of products in every case, then the government should actually do so rather than letting the prices be left to market forces.
2. This is especially important in times of crisis, such as a hurricane, which is something that Woods has likewise pointed out. Specifically, he stated [13, p. 48], “Suppose a hurricane does serious damage to homes in Florida. The price of lumber rises immediately, to reflect the scarcities brought into effect by the sudden, overwhelming rise in demand. Seizing upon this opportunity for profit, lumber suppliers from across the country rush to make their products available to Floridians in need. This pressure on lumber supplies in the rest of the country raises lumber prices there as well (although not as severely). These price increases encourage all Americans to economize on lumber, thereby releasing additional supplies for use in Florida. A man in Cincinnati intending to build a doghouse, finding the price of lumber unexpectedly high, may well decide not to build one at all, or at least to forego the project for now. The unfettered ability to bid up prices thus allows Floridians to draw lumber supplies away from less urgent uses throughout the country and toward the more urgent uses of those who have lost their homes in the disaster.”
3. In summarizing the case against the just price being something different than the market price, Woods explained that since people are left worse off by shortages that result and perpetuate as a consequence of enforcing “just price” laws and other price controls due to failing to discourage consumption and encourage production, such legislation cannot be considered moral according to Catholicism. Specifically, Woods stated [13, p. 50], “It would be to stretch the idea of morality beyond all recognition to claim that a measure that creates ill will between buyers and sellers, provides no incentive to economize on the rationed good (or to subordinate less urgent uses to more urgent ones), and actively prevents the alleviation of a shortage could in any way be described as morally superior to the free market, whose price system possesses none of these disadvantages. To the contrary, the foregoing analysis points to one conclusion only: that the demands of morality can be satisfied only by means of the price that is reached through the voluntary agreements between buyer and seller. The market price, therefore, may with good reason be viewed as the only just price.”
4. By requiring employers to pay whatever wage is legislated rather than pay wages based on discounted marginal revenue product, minimum wage legislation results in disemployment effects for uneducated and unskilled workers since the employers will tend to reduce the hours of employees whose discounted marginal revenue product is below the minimum wage and they could even end up replacing workers with more affordable machines. For an extensive review on the economic effects of minimum wage, see [7].
5. *Lucrum cessans* is Latin for “ceasing gain.”
6. Soto went so far “as to declare the standard guaranteed or insured investment contract as sinful and usurious, on the old discredited medieval ground that risk and ownership must never be separated” [10, p. 104].
7. Rothbard has also pointed out, quite thoughtfully, that “if a future good is naturally less valuable than a present good on the market, then this insight should automatically justify ‘usury’ as the charging of interest not on ‘time’ but on the exchange of present goods (money) for a future claim on that money (an IOU)” [10, p. 106]. Azpilcueta, however, did not make this connection.
8. If a country is in danger of being attacked or likely to get into a war in the near future, then the value of that country’s money will be less than a country that isn’t likely to get in a war or be attacked. The same applies to countries where an increase in the supply of currency is expected.
9. Rothbard has called this analysis of the purchasing power of money “splendid and concise” and pointed out that Azpilcueta “does not make the mistake of later ‘quantity theorists’ in stressing the

quantity or supply of money while ignoring the demand. On the contrary, demand and supply analysis was applied correctly to the monetary sphere” [10, pp. 105-106].

10. “Holding other things equal” is also commonly referred to in Latin as *ceteris paribus*.

11. This idea was further developed by Mises, who stated [6, pp. 398-399], “Media of exchange are economic goods. They are scarce; there is a demand for them. There are on the market people who desire to acquire them and are ready to exchange goods and services against them. Media of exchange have value in exchange. People make sacrifices for their acquisition; they pay “prices” for them. The peculiarity of these prices lies merely in the fact that they cannot be expressed in terms of money. In reference to the vendible goods and services we speak of prices or of money prices. In reference to money we speak of its purchasing power with regard to various vendible goods.”

12. By making this comparison, Azpilcueta highlighted that the money market is similar to the market for any other good or service.

13. Interestingly, this was the first time that someone attempted to apply marginalism to the value of money. Specifically, Rothbard mentioned [10, p. 112], “Garcia, for the first time, rested his ‘macro’ analysis on a ‘micro’ insight: that a very rich man, a man with an abundant personal supply of money, will tend to evaluate each unit of currency less than when he was poor, or than another poor man. Here Garcia actually grasped, though sketchily, the concept of the diminishing marginal utility of money. Marginalism, in this area at least, was actually reached rather than simply approached.”

14. In addition to debasing coins, this would also apply to causing inflation by increasing the amount of fiat money in circulation.

**Beneath the Black Robes of Ignatius and Mariana:
Limited Liberty within an Interventionist Order**

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Abstract:

The Society of Jesus sprang from the devout faith of a sidelined soldier who traded in his weapons to form a militant order of Catholic Reformers sworn to serve the Papacy as missionary soldiers of Christ. Specialization in education led Jesuits to roles as theologians of the 16th Century, including as members of the School of Salamanca, whose Jesuit members mostly took pro-market positions on free enterprise. One learned Jesuit in particular deviated from his order's default position of papal dirigisme to become an enemy of the state.

Keywords: Jesuits, libertarian, economics, capitalism, history.

If all interventionist laws were really to be observed they would soon lead to absurdity.
– Austrian economist Dr. Ludwig von Mises [19, p 12].

He who goes about to reform the world must begin with himself, or he loses his labor. – St. Ignatius of Loyola¹ [20, p 1].

1. Introduction

The present paper will attempt to document the origin of the default interventionist philosophy of the Society of Jesus from the order's founding by Ignatius of Loyola, a statist interventionist turned militant religious reformer, to the School of Salamanca, whose Jesuit members largely championed the free enterprise system of commerce as the most moral means of social relations among men without the state's molestation by means of market interventions. The Roman Catholic Church's inherent statism during the 16th Century mandated downward by the ruling Popes through the hierarchical structure of the Society of Jesus and the interventionist order's propensity to serve its papal master according to the

tradition of the founder, Ignatius, account for the free market minority of Jesuits in history. Section II is devoted to tracing the origins of a saintly interventionist. In section III we discuss the educationist missionaries of the Vicar of Christ on Earth. The origin of the militancy of the order are the subject of Section IV. Section V is a historical description of how the uncertain conditions primed the pump for some of the earliest economic explanations of market phenomena made by Salamancan Jesuits. Section VI connects the Salamancans' subjectivism to the Austrian school of economists. In Section VII we account for what made the pro-market Salamancan Jesuits differ from the economically less liberal. Section VIII summarizes the relatively rapid shift within a century from the founding of the Society of Jesus in a military tradition to some Jesuits mutating into proto Austrian libertarian economists.

2. Origins of a Saintly Interventionist²

An aristocrat born with a chip on his shoulder, Ignatius³ entered late feudal Spain as the youngest of 13 children in 1492. At 18 the would-be knight of Basque descent exercised his bodily means to achieve his desired ends of reaching stately greatness by enlisting to battle the French for a fee⁴ [26]. Allegedly a dualist who killed a Moor⁵ over a spirited spiritual debate,⁶ Ignatius made his living as a purveyor of force for hire under the auspices of his state in the army of the Spanish Crown.

Warring as a means to his earthly ends led an already battle-tested Ignatius to the capital of the Kingdom of Navarre: Pamplona. There Ignatius defended⁷ the Spanish garrison from a Franco-Navarrese force set on recapturing the strategic city, which Spain had annexed in 1512 [5]. During the Battle of Pamplona an enemy cannonball ripped through the legs of the veteran Ignatius on May 20, 1521. These wounds prompted a shift in the focus of his interventionism – from statist to missionary interventionist⁸ – and would have far reaching consequences for the religious order he would go on to command as the Jesuits'⁹ founder and first Superior General. After being wounded purely military interventionism was off the professional table of Ignatius. During a lengthy convalescence, the wounded warrior entertained with books depicting the mortal lives of Catholic saints. Moved by the spiritual exemplars of Catholic faith in action, in particular the life of Jesus Christ, the future patron saint of soldiers resolved to transition from his previous means, the sword, into a life dedicated to the conversions of non-believers: contemporary non-Catholics.¹⁰

Ignatius set out to save his fellows from the mortal sin of heresy. Instead of military interventionism, the future saint resolved to intervene in the spiritual matters of men on earth. The conversion of hearts and minds became his *raison d'être* – persuasion through preaching and teaching Catholic doctrine his means with the conversion of humans to Catholicism his chosen ends. The new interventionist mission: salvations [14].

Ignatius eventually founded the Society of Jesus officially September 27, 1540, when Pope Paul III approved the Society of Jesus [33], which was a militant order of Catholic Reformers who swore oaths of chastity, poverty, obedience, and fidelity to the Pope of the Roman Catholic Church. Thereafter the Jesuits employed what may be termed Ignatian interventionism: the performance of missions by Jesuits all over the world aimed at the recruitment of new believers to the Roman Catholic Church. The means of persuasion usually took the form of education.¹¹

The idea of Ignatius, the Society of Jesus or the Roman Catholic Church as interventionist in nature may seem far-fetched to people today whose conception of the religious order follows from that which is seen: currently Jesuits educate people the world over. But the oaths Jesuits took were not only to their almighty – they swore fidelity to their leader on earth: his holiness the Pope. What goes unseen in the present, and perhaps often forgotten, is that the popes of the 16th Century were more than spiritual leaders: they ruled over more than one state, namely the Papal States. In other words, the Roman Catholic Church was a church and a state simultaneously, or more precisely put, a church with multiple states for more than 1,000 years,¹² including the period in which the Jesuits came into their own as the loyal servants of the Pope.

Shifting in number over time though always managed by “Christ on earth,” the Papal States were known by various names such as “... the Republic of Saint Peter, Church States, and the Pontifical States; in Italian, *Stati Pontifici* or *Stati della Chiesa*” [29, p. 1]. Therefore, spiritual and temporal matters concerned the Papacy and by proxy the Jesuit order formally in the state form until 1870.

The Papal States were territories in central Italy that were directly governed by the papacy – not only spiritually but in a temporal, secular sense. The extent of papal control, which officially began in 756 and lasted until 1870, varied over the centuries, as did the geographical boundaries of the region, [29, p. 1].

A Jesuit was more than a recruiter of Roman Catholicism, more than a mere mendicant and more than an enthusiastic educator. A Jesuit was a sworn member of a nation-state ruled by his sworn sovereign: whoever was seated on the throne of St. Peter.

In addition to the Jesuits the Pope ruled over the Republic of Saint Peter similarly to the contemporary royals of the given age. In this respect the Pope performed double duty as a ruler of men on earth within his limited kingdom, and simultaneously as the earthly intermediary to the celestial deity in heaven dating back to the genesis of the Roman Catholic Church though the scope and authorities of the Papacy varied widely over the period as the area controlled fluctuated.¹³

Less this line of reasoning be dismissed as an unwarranted claim or sheer exaggeration of history consider that the Papacy commanded an army up until the Second Great War¹⁴ and continues to employ a much smaller military force to protect the Vatican’s city, the last lands of the Papal States, which is today the world’s smallest nation state [23]. Hundreds of years after the interventionist order’s founding in 1540, its superior in command, the Roman Catholic Church, remains a sovereign state albeit merely holding the land the size of a city today. Jesuits carry on as the Vatican’s recruiters and financiers *par excellence*.

3. Educationist Missionaries of the Vicar of Christ on Earth

The means of acquiring new recruits, converted Catholics, for the Church involved Ignatian-led interventions¹⁵ into the celestial beliefs of willing men on earth. Jesuit missionaries intervened from South America to Asia. Indeed, the missionary order’s members specialized in proselytizing as the earthly means of achieving their individual spiritual ends of furthering the greater glory of their Roman Catholic god, or in Latin, *Ad Maiorem Dei Gloriam*.

Jesuits of the Ignatian order of the Roman Catholic Church continue to abide by the teachings of their namesake more than 400 years later. While the once considerable power of the Pontiff has significantly subsided since the founding of the Black Robes¹⁶ during the Catholic Reformation, the considerable influence of the Jesuits in the formation of whole persons persists the world over.

4. Thorough Fear Bred: The World’s First Black Robe, a Sexless Servant

Some phrases take on lives of their own and transcend their parental speaker. The phrase “...And the life of man, solitary, poore (sic), nasty, brutish, and short”¹⁷ [9, p. 78] lives on since first gifted to the English language by the English philosopher Thomas Hobbes in *Leviathan*.¹⁸ Hobbes employed the memorable phrase in describing humans living through periods of warfare brought on by the absence of a ruler. Such a turn of phrase fits the years in which Ignatius inhabited Iberia and Europe: 1491-1556.¹⁹

Once rendered more vulnerable by war, Ignatius ceased his military interventionism, reflected on his past life and took to sharing his newfound religious zeal with any potential converts to the Roman Catholic cause. The former soldier of Spain turned soldier of Christ in saintly fashion and brought his past career into the new religious order. A former Jesuit, Malachi Martin, wrote of the military ethic Ignatius imbued into the Society of Jesus.

Many including early Jesuits, have used military metaphors to describe the nature and mode of operation that Ignatius designed for his Society. The pyramidal chain of command, the division of Jesuits into grades, the idea of Jesuit obedience, these elements are reproduced certainly in military groups. The very name Ignatius used to designate his group, *Compañía de Jesus*, seemed to many to be derived from army structure [16, p. 199].

For Martin the militancy of the Jesuits could not easily be understated. The ex-Jesuit suggested Vladimir Lenin could have used the early Jesuits' formation as his template for his revolutionary pamphlet *What Is to Be Done!* (1901). "A single organization; absolute obedience to a central authority; military discipline. These too had the organizational elements Iñigo (Ignatius) had adopted so brilliantly to a Religious Order, centuries before" [16, p. 185].

But the comparison between Lenin and Ignatius is finite since the dictator sought material gain while Ignatius sought to spread heaven on earth.²⁰ The future saint took to the lifestyle of an aesthetic like the saints he read about when bedridden following his final physical battle at Pamplona. By channeling his military acumen into a new mission, Ignatius found his divine calling and sparked the formation of an enduring religious order [16]. The dramatic shift the life of Ignatius took at the Battle of Pamplona continues to ripple through world history.

5. Uncertain Times Demand Non-Interventionist Free Inquiries

Not every member of the Jesuit order herded so completely toward cuckolding for the greater good of the Catholic Church though. Within the Jesuits a minority zigzagged from their nascent order's culture by adopting non-interventionism – a free enterprise approach to economics involving a *de minimus* role for the state, whether papal or not. On the contrary, the majority of Jesuits followed in the footsteps of their founder, Ignatius, adapting his statist militarism into traditional Roman Catholic spiritual planning for everyone, a form of interventionism. Instead of an emphasis on joining the proverbial tribe of the Roman Catholic Church, a select few of the early Jesuits eschewed the implicit collectivism, state-led economic planning and philosophical conformity of the militant Society of Jesus for the love of the mother of order: Lady Liberty.²¹

According to the Jesuits' North American website [4] "the Society of Jesus is the largest order of priests and brothers in the Roman Catholic Church" though a precise headcount of the Black Robes is not provided on the order's website [1] as of this writing.²²

Evidence of Jesuit influence in contemporary education abounds. The Jesuit Schools Network [17] based in Washington, D.C., boasts 55 all-boy and 29 co-educational member schools worldwide. The Association of Jesuit Colleges and Universities [4] unites 27 Ignatian institutions across 17 US states and the District of Columbia with "a network of approximately 188 Jesuit institutions of higher learning throughout the world."

Finally, Pope Francis I (*née* Jorge Mario Bergoglio) started his ongoing reign as the first Jesuit Pontiff and sovereign of the Vatican City State in 2013. However many its headcount, the Jesuit order enjoys one of its own at the helm of the Roman Catholic Church today.

The initial rise of the Jesuit order coincided with the increase in power of the Spanish Crown, which enjoyed a golden age, capturing gold and silver from across the world. The proverbial sun of a global empire was far from setting on the Spanish Crown in the early 16th Century; the sun was rising, along with the wealth of many metallurgically enriched citizens on the Iberian Peninsula.

Putting aside whether the means of acquisition were just, the ends of the influx of hard metals were effectively a historical increase of the European economy's money supply. Spain being the head *honcho* of mercantilist nation states at the time, a natural demand for an economic explanation of the rising prices coupled with the newly imported metals arose. Inflation – an increasing money supply raising the general prices of goods and services across the economy – was the answer.

Centuries earlier the Papacy had weighed in on the movement of metals across the world by intervening to the detriment of international free trade. During the 13th Century²³ Europeans traded silver to Arabs for gold as an outgrowth of trade from the Crusades. The exchange of precious metals is known as the Bimetallic Flows. Europeans, mostly French and Italian merchants, minted counterfeit silver *millares* with the legend “There is no God but Allah; Mohammed is his apostle; the Mahdi is our Imam,” to exchange for gold in the Levant [22, p. 206]. The blasphemous coins elicited action by the pious Louis IX, who “...prodded a reluctant pope, Innocent IV, into banning (Papal monetary intervention) the practice during the 1260s, but it continued underground” [22, p. 206].

Little wonder then that European understanding of the benefits of free trade evolved little from the 13th to 16th Century when Ignatius founded the Jesuits as a religious order beholden to an economically interventionist Papacy.

Allegedly the godfather of economics as a social science, in the 17th Century Adam Smith would write about the Invisible Hand and the wealth of nations by explaining much of what the European economy encountered when the ships of precious metals docked to unload the newly acquired money in the 12th through 16th Centuries. As the eminent economist and *protégé* of Mises, Murray N. Rothbard, pointed out in *An Austrian Perspective on the History of Economic Thought*, before the Scot, the moral philosophers of the School of Salamanca answered many of the vexing economic questions of their day [24, p. vii] including inflation of the money supply causing price inflation of goods and services. More than just a few of the members of the School of Salamanca, also known as the Late Scholastics and Spanish Catholic philosophers, belonged to the Society of Jesus.²⁴

The free-market Jesuit Salamancans broke ranks with their sworn rulers on earth: the contemporary Popes on account of serving their customers, often the emerging merchant class of the 16th Century. Jesuit Salamancans sought to reconcile the morality of trade with the Church’s less than free market approach to economics – the Papal States being predicated upon a medieval command and control model of monarchs over physical territories and the inhabitants. Trade was anything but free under the Papacy.

One of the later Salamancans and therefore exemplar of the school of thought Jesuit Juan de Mariana broke with his order’s hierarchy on the topic of trade as a natural human behavior.

He knew that the Fathers of the Church had denounced commerce in general as a trade which could hardly be carried on without sin. On the other hand, he was convinced that the world of his day could not do without exchange of goods; that without it human society would perish and men be reduced to a solitary life [12, p. 93].

Rather than adhere to the Papacy’s economic model governing the Papal States, many of the Jesuit Salamancans like Mariana advocated free trade as the moral means of ordering a freer society. A growing merchant class of Catholic Spaniards pressed their confessors for absolution from the sin of profiting from trade, a sin by Papal standards. Thus, demand of absolution met supply of moral justification.

Some of the tendency toward anti-trade statism, religious socialism and the interventionism of the Roman Catholic Church, was baked into the Jesuit tradition by St. Ignatius whose militant background imbued the Jesuit order with a philosophy at odds with the free-market Salamancans who nonetheless carried on as Black Robes.

Importantly, Mariana’s insight into the necessity of trade for men to flourish stood squarely at odds with the minds of many men inside and outside the Church who favored rule by the wise at the helm of the state. For example, the governmental models that existed with monarchs and popes as the ideal central planners of their kingdoms. Simply put, Mariana and others’ *laissez faire* mindset was the minority position in the 16th and 17th Centuries. And the position remains so.

Scholastic inquiry into the origins of trade is uncovering compelling evidence that humans' sociobiological drive disproportionately leans toward forms of benevolent collectivism across societies. Yet seemingly contradictorily, documentation of trade between primitive peoples dates back thousands of years. One group of scholars from multiple disciplines only recently (2019) reconciled the paradox of the human drive to treat fellow humans benevolently with the evolving human embrace of free trade's benefits.

Biologically speaking, explicit benevolence triumphs the implicit trade variety. We as a species are predisposed not to accept the findings of economists to the effect that the "invisible hand" of Smith (1776) can function at all, let alone to the degree necessary to embrace laissez-faire capitalism as the predominant social and economic order. Yes, some of us, sometimes, support free enterprise, but this acceptance is shallowly rooted, and limited to a few. Much more deeply embedded in us is a rejection of this economic philosophy and support for its very opposite [13, p. 85].

The antithesis of free enterprise, central planning, requires an authoritarian statist structure of some sort to oversee the distribution of resources in an allegedly egalitarian manner in accordance with the values of the ruling class and citizenry.²⁵

According to this analysis of the sociobiology of trade as an ongoing and still evolving human behavior, pro-market people are in effect the early adopters – one might call them adaptationists or maybe mutants – in the unfolding history of mankind. The majority of people continue to favor a more-than-less egalitarian economic ordering overseen by an ideally just state governing the society in which a minority of men embrace an unbridled market.

Applied to Mariana *vis-à-vis* his brethren in Christ, the recent sociobiological insight into free traders being the minority position among humans comports with the strident dissident's lived-out conflicts with his order, monarchs and most of the contemporaries of his life. Succinctly, Mariana deviated markedly from Ignatius. Black robed though they were, the Jesuits who joined the School of Salamanca predominantly parted ways with their interventionist order's first leader, Ignatius, the minion of the Pope. For example, the "learned extremist"²⁶ Juan de Mariana defied the temporal powers of his time repeatedly though they were Catholic monarchs. In fact his vanguard works on monetary policy were burned by multiple monarchies who deemed his writings as threatening to their rulership over their uninformed subjects.²⁷ Tenuous at best describes Mariana's obedience to the Spanish Crown.

His intellectual power is one of synthesis; his work, in essence, is a bitter preview of the cynicism of the Austrian economists, who regard much of recorded history as a series of misguided economic interventions arising from, and leading to, all sorts of travail and misery. To put it another way, Mariana's true genius, his most original discovery of all, is that statist monetary policy and authoritarianism are one and the same [7, pp. 457].

The evidence of Mariana's anti-statist, anti-authoritarian nature includes his writings, which prompted King Phillip III to imprison Mariana at age 73 for "the high crime of *lese-majesté* (A French term meaning "to do wrong to majesty") [24, pp. 121].

6. Spanish Subjectivists Preceded Austrian Economists

Arguably some of the world's first theoretical economists, many of the Jesuit Late Scholastics defied their order's maker by laying a robust foundation of economic freedom rooted in a libertarian philosophy of natural rights and proto-Austrian economics in concert with their likeminded Dominican contemporaries. As noted by Rothbard [24, p. vii], the theologians of the Spanish Renaissance wrote

more than one hundred years before Smith's Invisible Hand would appear in print with most, if not all, of its adherents non-interventionist Jesuits.²⁸

Hundreds of years later in her seminal, pioneering and elucidative book, scholar of Spain Grice-Hutchinson [8] undermined the conventional history of economic thought. Previous to her published work, few economists appreciated the contributions of the Catholic continental Spanish scholastics, especially their keen analysis of money. Grice-Hutchinson focused on the influx of precious metals as the impetus for the Spanish scholastics accurate understanding of the two sides of the inflationary coin: increasing supplies of money driving up the prices of goods and services. "Though they wrote as moralists, they were at pains to study the nature of money objectively, and they were not content merely to approve or condemn the monetary system as it functioned in their day, but tried to go deeper and explain it scientifically" [8, p. 42]. In addressing a market phenomenon as men of the cloth from a moral perspective, the Spanish scholastics acted as scientists of markets: economists.

Huerta de Soto [10] correctly contends that the world enjoys the blessings of the Austrian economist today thanks to the contributions of the Spanish scholastics. Building off the work of Rothbard [24] Huerta de Soto [10] demonstrates that the Spanish scholastics conceptualized the free market. Moreover, the modern-day Spanish scholastic professes that the seeds of the Austrian School grew out of Catholic, continental Europe before being transported to Vienna where Carl Menger [18] nurtured the subjectivist approach to economics and therefore receives credit as the godfather of the Austrian school, though its origin is Spanish.

7. A Mutation in Jesuit States of Mind on Interventionism

A great gap in thought played out within the Society of Jesus as its membership rose in the 16th Century during and after the pioneering work of Ignatius. While most of the Jesuits followed the standard path common to most humans and set forth by their founder, others took a more radical tact and ultimately adopted a free market, minority mindset in favor of a *laissez faire* economy and therefore necessarily non-interventionist philosophy.

The non-interventionist ethic even permeated Mariana's relationship with his brothers in Christ. In the posthumously published *Discurso de las enfermedades de la Compania* (A discourse on the sicknesses of the Jesuit order), the irreverent *padre* criticized the rigidity of the religious order to which he had belonged since age 17 [10]. According to Huerta de Soto, In that book, Mariana criticized the military hierarchy established in the Jesuit order, but also developed the pure Austrian insight that it is impossible to endow state commands with a coordinating content due to lack of information. In Mariana's words:

power and command is mad. ...Rome is far away, the general does not know the people or the facts, at least, with all the circumstances that surround them, on which success depends.... It is unavoidable that many serious errors will be committed and the people are displeased thereby and despise such a blind government.... It is a great mistake for the blind to wish to guide the sighted [10, pp. 8-9].

Likely the most radical of the Jesuits, the twice-imprisoned [10] Mariana went so far as to lay out the conditions under which tyrannicide was morally permissible, justifiable under natural law, by any citizen in a pamphlet written for the regent royal of the time: Phillip II as regicidal food for the thought of his heir, Phillip III [11].²⁹ "According to Mariana any individual citizen can justly assassinate a king who imposes taxes without the people's consent, seizes the property of individuals and squanders it, or prevents a meeting of a democratic parliament" [10, p. 2].

8. Conclusion

Interventionism, the common ideological thread running through the life of Ignatius, originates in the genes of the original black robe. The sociobiology of the saint's actions elucidates his life's story and accounts for his genetic predisposition as a rational actor of his times in that he used his available means to achieve his desired ends through his human actions. Whether warring for the state or recruiting for the Papal States, Ignatius stuck with his tribe in keeping with the human genetic predisposition to protect the collective often at the cost of the individual.

As a young, interventionist Ignatius, acting on behalf of the Spanish Crown, might not have imagined that the soldiers of Christ he fathered would go on to proffer ideas consistent with contemporary non-Catholic monarchomachs. Yet in fleeing from the state's control into a religious alternative, a gene-based switcharoo, Ignatius unintentionally unleashed Jesuit philosophical enemies of the state: proto Austro-libertarians of the School of Salamanca epitomized by the learned extremist Mariana.

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Notes

1. A famous saying of St. Ignatius often cited by his fellow Jesuits and lay persons. The depth and quality of information on the life of Ignatius varies according to the sources available. The treatment of this distillation of the saint's early life history pays special attention to the means, ends and actions of Ignatius.
2. For the purposes of this paper, the authors will adhere to the Rothbardian definition of an interventionist. Rothbard wrote that the act of "Intervention is the intrusion of aggressive physical force into society; it means the substitution of coercion for voluntary actions" [25, p. 877]. Accordingly, an interventionist is a person who intrudes on other people or employs aggressive physical force within or outside of his society to replace voluntary actions with coercion.

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3. Ignatius (Latin and English) also known as Ignazio (Euskara) and Ignacio (Spanish), was baptized Iñigo (Castilian). Sometimes speakers of Spanish use Ignacio and Iñigo interchangeably like Jacobo and Jaime [31]. For the sakes of simplicity and consistency the author chooses to use Ignatius throughout the text.
 4. The last name Loyola originates from his aristocratic family, which owned a castle, namely Castle Loyola in the Basque region of Guipúzcoa in northern Spain. The full birth name of Ignatius was Iñigo López de Oñaz y Loyola [26].
 5. Conflicting evidence on whether Ignatius killed the Moor persists today. According to one account, “He (Ignatius) challenged a Moor to a duel to the death for denying the divinity of Christ, duly running him through” [3, p. 58]. Others contend that Ignatius spared the Moor because his donkey directed the future saint to exercise prudence [14], [15], [28].
 6. Disagreement over the details of Ignatius’s interventions in others’ affairs abounds in accounts of his life story. “How far he (Ignatius) went on the downward course is still unproved. The balance of evidence tends to show that his own subsequent humble confessions of having been a great sinner should not be treated as pious exaggerations. But we have no details, not even definite charges” [21].
 7. The author selects the word “defended” here loosely since the Spanish crown had previously annexed Pamplona from the Kingdom of Navarre in 1521 [5]. Thus, the Battle of Pamplona in which Ignatius fought was a means to keep Pamplona under the control of Spain though the previous owners of the city were the Navarrese who returned with French assistance to retake the city in 1521 [5]. Ignatius was defending Pamplona from its previous owners.
 8. Prior to his military career and religious conversion Ignatius intervened regularly as a noble [30]. “He (Ignatius) was a fancy dresser, an expert dancer, a womanizer, sensitive to insult, and a rough punkish swordsman who used his privileged status to escape prosecution for violent crimes committed with his priest brother at carnival time” [30, p 1]. Again, the veracity of the details of these interventions are admittedly debatable though still worthy of inclusion since some regrettable and unspecified actions prior to conversion were admitted by Ignatius himself [21].
 9. The label of Jesuits was not contrived by Ignatius or his fellow Jesuits. Rather, Protestants coined the term “Jesuit” to denigrate the members of the Society of Jesus for their liberal use of the word Jesus and emulation of their namesake in the 16th Century. The name stuck and came to be accepted by its recipients and used by others without value judgment [21].
 10. The conversion of Ignatius from soldier to Catholic devotee is widely documented; [26], [30]. Moreover, Ignatius allegedly conveyed his life’s story to two of his followers toward the end of his life. This so-entitled autobiography includes a depiction of his conversion in the third person [14].
 11. The emphasis on education by Jesuits is a legacy of Ignatius who founded the first Jesuit schools as Superior General of his order as a means of countering the Protestant Reformation of Christianity [14]. “In 1551 Ignatius established the Roman College, which he wanted to be the model for all Jesuit colleges throughout the world. To help counteract the growing influence of the Reformation in Germany, he established in 1552 a college in Rome for German seminarians so they could be properly and thoroughly trained for the work that would be demanded on their return to their homeland” [14, p. 25].
 12. The Papal States consisted of the civil territory which for more than 1,000 years (754-1870) acknowledged the Pope of the given time period as the lands’ temporal ruler [27].
 13. Evidence that popes of the 16th Century ruled over land like their contemporary monarchs exists in historical records of popes bestowing landholdings on their relatives in the form of papally conferred principalities [27].
 14. Most people know this war as World War II or the Good War.
 15. Definitive evidence of the nature of Ignatian interventionism is wanting. Whether the Jesuits led by Ignatius (officially the order’s Superior General) persuaded their converts voluntarily without coercion

remains unclear. The author elects not to speculate either way in spite of the saint's track record as a bona fide mercenary of the state prior to a religious awakening induced by a cannonball.

16. The term "black robe" is defined in the Merriam-Webster's dictionary as "a Roman Catholic priest, especially a Roman Catholic missionary to the American Indians." Amerindians of North America identified would-be spiritual converters according to their attire: black robes. The term is used today as slang to describe Roman Catholic priests who are often Jesuits. A 1991 film depicting the interactions of a Jesuit priest with Huron tribal members is entitled what they called their missionary: *Black Robe*.

17. The full paragraph from which the phrase was extracted from within *Leviathan* reads as follows: "Whatsoever therefore is consequent to a time of war, where every man is enemy to every man, the same consequent to the time wherein men live without other security than what their own strength and their own invention shall furnish them withal. In such condition there is no place for industry, because the fruit thereof is uncertain: and consequently no culture of the earth; no navigation, nor use of the commodities that may be imported by sea; no commodious building; no instrument of moving and removing such things as require much force; no knowledge of the face of the earth; no account of time; no arts; no letters; no society; and which is worst of all, continual fear, and danger of violent death; *and the life of man, solitary, poore (sic), nasty, brutish, and short*, (emphasis added)" [9, p. 78].

18. The term Leviathan was originally used as a name for a sea monster defeated by Yahweh in various scriptural accounts. Hobbes used the metaphor for ever-growing government that threatens citizens who, he believed, were better off submitting to governmental tyranny as opposed to the lawlessness and chaos of an anarchic state. The full quote from which the catchphrase is derived describes life in a state of anarchy.

19. During his life Ignatius traveled outside of Iberia to the Holy Land, where he was unsuccessful in converting people to Catholicism; to France, where he studied later in life; and Rome, where he succeeded in pitching his interventionist order to the Pope with his first followers: the Frenchman Peter Faber and fellow Spaniard Francis Xavier [26], [16].

20. Democratic, socialist and communist forms of government usually do not tolerate the competition religious practice creates for the expected worship of the state by all citizens because state worship becomes the *de facto*, if not *de jure*, religion of the state regime.

21. "Liberty is not the daughter but the mother of order," is a famous quote allegedly originated by anarchist Pierre-Joseph Proudhon, which fellow anarchist Benjamin Tucker attributed to Proudhon and used as the title of his own periodical, *Liberty: Not the Daughter But the Mother of Order* (1881-1908), as an homage to Proudhon [32, p. 1].

22. In 2018 the Jesuit priests numbered 11,389 and the total male membership of the Society of Jesus amounted to 15,842 men across 1,477 parishes across the world [2]. Note that these numbers are unofficial statistics that did not come directly from the Society of Jesus or the Roman Catholic Church.

23. Ironically the 13th Century is known as the "Golden Century of Saint Louis (King Louis IX)," who was regarded as *primus inter pares*, Latin for "first among equals."

24. The School of Salamanca included Dominican and Jesuit priests, principally from Spain, but also hailing from Portugal, Flanders, Italy and beyond. So named the School of Salamanca because the intellectual movement of moral philosophers originated in the University of Salamanca with one Spanish, Dominican, Thomist, and Aristotelian jurist: Francisco de Vitoria (1483–1546). Note that de Vitoria, the godfather of the predominantly non-interventionist School of Salamanca entered the world approximately three years before the birth of Ignatius de Loyola (canonized St. Ignatius Loyola in 1622) [26].

25. Notably, the more modern Jesuits embrace Liberation Theology. "Many Jesuits teach liberation theology, a Marxian social justice theory, despite controversy amongst the religious. The papal encyclicals, which are written by committees but appear over the name of the pope in office when

released, bounce back and forth between mildly denouncing socialism to promoting socialist policy” [6, p. 7-8]. Importantly, the teachings from the Holy See are formed by a committee dispensing the guidance down to the lower-level church leaders who then convey the messages to the parishioners. The traditional approach is from top to bottom.

26. “The learned extremist: Juan de Mariana” precedes the section (4.7) Rothbard wrote about Mariana [24, p. 117].

27. Mariana’s books *De rege* (on Kingship, 1599) and *De monetae mutatione* (on the Alteration of Money, 1609) were collected and burned with by Catholic and Protestant authorities, [7].

28. Evidence that not every Jesuit adhered to a free market ideology is manifested in the due diligence and fidelity of early Jesuits like Ignatius who embraced the ruler of the papal states: the Pope of the day as in charge of market relations under his control. To claim that all Jesuits embraced the free market in hindsight misses the conflict this would have caused all Jesuits who were sworn to be obedient to the Papacy. The deviants like Mariana were the exception to the rule of Jesuits’ being otherwise blindly obedient and faithful to the will of the ruler of the Papal States.

29. Addressing an audience including Catholic leaders of the cloth in the YouTube video, Huerta de Soto states that “Juan de Mariana, as you know, was charged by Phillippe the Second (Phillip II, 1527-1598) with the task of drafting a short manual to educate the future king Phillippe the Third (his heir and son, Phillip III, 1578-1621), which was given the title *De Rege et regis institutione* – ‘About the Monarchy and the royal institution,’ in which Juan de Mariana develops the theory of tyrannicide,” according to the English translation recorded over the Spanish speech [11, min. 15:19-15:40].

Martín de Azpilcueta: The Spanish Scholastic on Usury and Time-Preference

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Abstract:

Martín de Azpilcueta and his fellow Spanish Scholastics writing and teaching at the University of Salamanca during Spain's Golden Age are rightly pointed to by historians of economic thought as being major contributors toward, if not outright founders of modern economic theory. Among these is the theory of time-preference for which Azpilcueta has repeatedly been given the credit for discovering. However, this discovery is a curious one given how the same man, Azpilcueta, condemned usury in general during his whole life. If Azpilcueta did in fact discover this theory and fully understand its implications, we would reasonably expect him to have questioned his support for the ban on charging an interest on a loan. This paper, therefore, challenges the claim that Azpilcueta understood and revived time-preference theory and shows how his understanding was much more nuanced, and, at times, inconsistent.

Keywords: Azpilcueta, Salamanca, usury, time-preference, loan, economics, scholasticism.

1. Introduction

Unearthed in the mid to late-20th century in the works of historians of economic thought by the likes of Joseph Schumpeter, Marjorie Grice-Hutchinson, and Murray N. Rothbard, the 16th century Spanish Scholastics at the University of Salamanca have been credited by these same writers for being the founders of modern economic thought, with some suggesting even that their writings are *proto-Austrian*. Indeed, with the New World and Golden Age Spain as their laboratory, the Salamancas – mostly philosophers, moral theologians, and canon law jurists – were able to make significant inroads in what today we know of as economics. Theories such as the quantity theory of money, purchasing power parity, and subjective value theory are all treated to some extent in their writings [5]. These writings, however, are not textbooks of pure economic theory; rather, they are pastoral in nature: works

which attempt to offer counsel to confessors and their penitents on thorny issues regarding money and trade that are both novel for their time and nuanced for the soul.

One of Salamanca's most celebrated minds is that of Martin de Azpilcueta's, a humble yet brilliant Augustinian priest and professor of canon law. Like his colleagues, Azpilcueta also delved into matters of economic nature, and it is in his writings on usury and exchange which accompany his colossal *Manual de confesores y penitentes* (1556) where Azpilcueta seems to state what economists today know as the theory of time-preference – that a good present and available today is more valuable than that same good available only at a future time, *ceteris paribus*. As we know, from this theory (known also as the time value of money) logically follows the theoretical basis for charging interest – a logical step that economists writing in the following centuries take, but one that Azpilcueta does not take in these texts or in his later writings. Still, some historians have claimed that Azpilcueta understood and wrote definitively on the theory of time-preference, even though, as they admit, he did not take the next logical step since he continued to condemn usury his entire life of 93 years. However, after a close digging and analysis of his writings on usury, including the statements that come nearest to time-preference, we argue that Azpilcueta does *not* in fact arrive at a clear and consistent explanation of the theory of time-preference.

2. Usury

Time-preference theory momentarily aside, a few words must be said, for context, of Azpilcueta's understanding and opinions on usury in general; after all, it is only with in this context that Azpilcueta deals with money and time to begin with. Azpilcueta addresses usury at length in the thirty-page appendix, the *Comentario resolutorio de usuras*, which expands upon Chapter XVII of the *Manual de confesores y penitentes* where he first touches upon the topic. Given the didactic nature of the *Manual* and its appendices, Azpilcueta lays out his thought here with great care, structure, and clarity. Happily for researcher, Azpilcueta defines his terms, draws out distinctions, cites sources, provides historical background, etc. Through these citations, we learn that the Scholastic tradition on usury, which Azpilcueta inherited and constantly alludes to or directly references in his writings, rests primarily on three authoritative texts, representing both the prohibition's biblical and Roman law roots: the *Glossa ordinaria*, the *Decreto Gratiani*, and Peter Lombard's *Sententiae*. Though these three serve as the basis of thought on the subject, together they offer a scarcely cohesive argument for the prohibition, thus forcing later Scholastics like Azpilcueta to continue writing and developing clearer lines of thought [6, p. 207].

As just mentioned, our author's first elaboration on usury comes in the *Comentario resolutorio de usuras* (*Commentary on Usury*), where in section five he defines usury as: "Usura, o logro ilícito, es ganancia estimable de su naturaleza a dinero, que principalmente se toma por razón del empréstito claro o encubierto" [1, p. 8].¹ Interestingly, in the very next sentence, Azpilcueta draws a distinction between usury (as just defined) and the *sin* of usury which he defines as taking or desiring that illicit gain. What we are to make exactly of his distinction Azpilcueta really does not say, but we can at least observe the importance he gives to intention in his analysis. Azpilcueta then continues by breaking down his definition, explaining what he means by each term. For our purposes, we can dwell on his elaboration of "principalmente." By this term, Azpilcueta means to stress that if monetary gain is the *primary* intent of the lender when making a loan, then this is usury or illicit gain. If, however, it is only a secondary intent or consequence, then the gain is not usury, i.e. illicit. In these cases, the borrower might, out of gratitude and friendship, repay more to the lender either out of his own liberality or as a charitable gift [6, p. 227].² Thus, for Azpilcueta, a usurer is anyone who hopes to receive more than what he lent. Thus, the *intention* of receiving more than what was lent is sufficient reason to be a usurer, regardless of whether or not more was in fact received. Furthermore, the nature of what the

usurer receives, be it food, clothing, or whatever, is irrelevant: intentionally receiving more than whatever was lent is usurious [6, p. 219].

In addition to his own definition, Azpilcueta makes reference to and incorporates into his own thinking the traditional definition of usury: the gain that is earned from a loan, the ownership of which was transferred to the borrower when the loan was made. Azpilcueta, thus, as did the Roman law tradition, distinguishes two classes of loans (both of which are gratuitous loans) [6, p. 219]. This first is the *commodatum*, a loan that does *not* transfer the ownership of the property lent to the borrower, and thereby obliges the borrower to return the same property that was lent to him. For example, if a man is lent a mule, he must return that same mule at the agreed upon time. The second class is the *mutuum*, a loan that *does* transfer the ownership of the property lent to the borrower, but still obliges the borrower to return property of the same quantity and specie as that which was lent to him. It is this second class of loans which, naturally, lends itself more to usurious activity. Usury, in the case of the *mutuum*, can be committed either blatantly (“claramente”) or covertly (“encubierta” or “paleada”): blatantly in cases where the good lent is consumed in its use, and thereby the loan is contracted in terms of the good’s weight, count, or measurement, and covertly as in cases where a sum higher than the just price is paid for the postponement of an exchange transaction [1, p. 7].

Explained as such, Azpilcueta leaves little doubt as to the firmness of his thought and support of the usury prohibition. Nevertheless, Azpilcueta and many of the preceding Scholastic thinkers do in fact justify charging interest in the case of what are called “extrinsic titles.” These “extrinsic titles” turn mostly upon the concept of *interesse*, which refers to the compensation justly owed to the lender either for damages incurred (*damnum emergens*) or profits lost (*lucrum cessans*) during the loan term [6, p. 239-240].³ To give an example of each, *damnum emergens* can justify an interest charge when a lender who could use his money to repair the stove of his outdated house, instead lends his money to a neighbor facing a greater need, but then loses his house in a tragic fire. In this situation, the borrower may justly (and charitably) repay the lender more than what was lent to him. Similarly, *lucrum cessans* can justify an interest charge when a lender, who could use his money to buy merchandise and trade it, instead lends it to a neighbor, and loses the opportunity to gain a profit from trading the merchandise. Obviously, these concepts bring with them a lot more nuance than what we simplistically explain here, but at least we note these significant exceptions which Azpilcueta allows for. Moreover, the concept of *interesse* does seem to implicitly contain a consideration of time.

3. Scholarship on Azpilcueta and Time-Preference

Modern scholarship in English has made it seem that Azpilcueta achieved a mature understanding of time-preference, but closer reading and research show that his comprehension was not so neatly and conveniently straightforward. These relatively recent (yet, frankly, sparse) studies which consider Azpilcueta on time-preference depend entirely on one quotation from Azpilcueta’s work which was cited first by John T. Noonan in his *The Scholastic Analysis of Usury*.⁴ To give some context, Azpilcueta’s quotation appears in Noonan’s chapter on the *census* contract where he analyzes in detail the nature and development of this kind of contract. Azpilcueta came down on the side of condemning *census* contracts, and it is in explaining Azpilcueta’s position (which Noonan finds somewhat contradictory) where Noonan inserts the following quotation:

Indeed, Navarrus [Azpilcueta] himself, treating of the sale of debts at a discount, concedes that such sales are lawful, ‘both because a claim on something is worth less than the thing itself, and because it is plain that that which is not usable for a year is less valuable than something of the same quality which is usable at once’ [7, p. 238].⁵

Noonan, however, leaves it at that: neither here nor elsewhere in his work, does he call Azpilcueta's statement the "theory of time-preference," or anything to that effect – he cites it here in support of this specific point, and moves on with his discussion of the *census* contract. Nevertheless, we have to admit that this quoted statement, seen on its own terms, does cogently capture and summarize the essence of the theory. At the very least, implicit is the understanding that a bird in the hand is worth more than two in the bush, as the saying goes.

We will return shortly to the interpretation of this quotation itself; however, for the moment, part of the significance of this quotation arises from the fact that historians of economic thought writing after Noonan have pointed to it as definite proof that Azpilcueta was a pioneer in the development of the theory. The most notable of these is Murray N. Rothbard, the prominent historian of economic thought writing from the perspective of the Austrian school.

In *Economic Thought before Adam Smith*, Rothbard surveys the development of economic thought all the way from Xenophon to Adam Smith [8]. In particular, Rothbard closely traces the thread of usury throughout his survey, so, when covering the School of Salamanca, a major focus of his historical analysis is, naturally, the Salamancan's treatment of usury. Rothbard writes in detail about every major Salamancan thinker chronologically, and covers Azpilcueta at some length. Here is where Noonan's quote surfaces and leads Rothbard to the claim:

One of Azpilcueta's most important contributions was to revive the vital concept of time-preference, perhaps under the influence of the works of its discoverer, San Bernardino of Siena. Azpilcueta pointed out, more clearly than Bernardino, that a present good, such as money, will naturally be worth more on the market than future goods, that is, goods that are now claims to money in the future. As Azpilcueta put it: 'a claim on something...' [8, p. 106-107].⁶

Noonan's quotation of Azpilcueta (shortened above) is the only textual evidence Rothbard draws upon to support his conclusion that Azpilcueta revitalized time-preference theory. Rothbard, therefore, must think that there is a strong enough understanding of time-preference implicit in this quotation alone to justify the conclusion that Azpilcueta "revived" the theory; otherwise, one would think Rothbard would not have concluded so straightforwardly. Interestingly enough, Rothbard immediately adds:

But if a future good is naturally less valuable than a present good on the market, then this insight should automatically justify 'usury' as the charging of interest not on 'time' but on the exchange of present goods (money) for a future claim on that money (an IOU). And yet, this seemingly simple deduction (simple to us who come after) was not made by Azpilcueta Navarrus [8, p. 107].

In terms of time-preference theory and its logical connection to interest, Rothbard's clear explanation makes sound sense. Nevertheless, as is his fashion at times, Rothbard does not immediately cite the quotation; but, given that he cites Noonan elsewhere in the same chapter, it is safe to say that Rothbard quotes Noonan's quotation of Azpilcueta here.

In a similar vein, Thomas E. Woods makes use of the quotation in *The Church and the Market* to make essentially the same point as Rothbard (though Wood's added twist is to champion Azpilcueta as an example of a Catholic clergyman and thinker making inroads in economic theory). Though Woods cites Noonan extensively throughout the chapter in which the Azpilcueta quote appears, he cites Rothbard when he says: "[Azpilcueta] taught that '*a claim on something is...*' Azpilcueta is correct, of course. But as soon as the implications of this point are grasped, the interest prohibition collapses at once" [10, p. 119]. With Azpilcueta's quotation now twice removed from its primary source, it does not come as much of a surprise that Woods comes to a quick and decisive conclusion himself, and, like

Rothbard, does not take into account the significant nuance and development within Azpilcueta's own thinking on usury and time. Nevertheless, given the influence and sometimes popular appeal of these two authors (among a few other authors as well), it will be worth tracing Azpilcueta's quotation back to its original source and context so as to analyze and see whether or not Azpilcueta's thought really went as far as Rothbard and Woods make it seem.

As mentioned, Noonan is the first to cite Azpilcueta's time-preference quotation and the only one who cites the primary text. Nevertheless, given the ambiguity of the bibliographical information which Noonan provides, and the unfortunate error contained in the quotation's footnote, it is understandable that none of these other scholars took the pain of corroborating the quotation in the original text.

4. Time-Preference in Azpilcueta's Works

Noonan's footnote accompanying the quotation in question refers the reader and researcher to "Consilia, V, De usuris, 18" [7, p. 238].⁷ The entry provided in Noonan's bibliography gives the information for Azpilcueta's *Opera omnia*, which he locates and dates to Venice, 1618 [7, p. 414]. The year 1618, however, corresponds to the date of *Opera omnia* as a whole and not to the dates of the works that actually comprise the compilation of Azpilcueta's works that is the *Opera omnia*. Under *Opera omnia*, Noonan lists the well-known *Commentarius de usuris* and *Commentarius resolutivus de cambiis* which are two appendices that follow the *Enchiridion sive Manuale confessoriorum et poenitentium* (*Manual de confesores y penitentes*), also listed in Noonan's entry.

The last remaining text that appears under *Opera omnia* is simply listed as "Consilia," but by this simplistic name Noonan means to cite Azpilcueta's *Consiliorum sive responsorum libri quinque, iuxta ordinem decretalium dispositi*. Of course, the "Consiliorum," as we will refer to it, was not as major of a work as the *Manual*, but here it is worth noting its significance. Published first in Rome in 1590, four years after Azpilcueta's death, the *Consiliorum* is his only work whose first edition was published posthumously. In fact, Azpilcueta did not quite finish organizing its contents, and his nephew, Miguel de Azpilcueta, took it upon himself to tie its loose ends and publish the work [6, p. 110]. As Azpilcueta's last work, culminating his long life of reflection and prolific writing, the *Consiliorum* is a collection of his opinions in response to the many consultations he received over the years regarding moral and canonical questions. Though this systematic compilation of decretals on a wide variety of topics were, as we said, his opinions, they were indeed his *final* opinions, and so they carried with them a great deal of canonical authority [6, p. 110]. Though the *Manual* underwent an impressive eighty-one number of editions, the *Consiliorum's* importance among his works is also attested to by the number of editions that followed the original edition: seventeen editions, ranging from 1590 to 1621 [9, p. 2110].

Returning to the 1618 *Opera omnia* cited by Noonan, the edition of the *Consilia* found inside it is not dated 1618 as would be expected, but 1603. Noonan does not note this discrepancy, and, furthermore, the section *De usuris, Consilium XVIII* in the 1603 edition contains no sentence in Latin that matches or at least resembles Noonan's translation of Azpilcueta's quote. The footnote citation, therefore, is inaccurate. However, the quote does indeed exist, but it is located in *De usuris, Consilium XV*. Interestingly enough, it is in both the 1590 and 1591 editions where the quote does appear in *Consilium XVIII*, written as such: "Tum quia minus valet actio ad rem aliquam, quam ipsa res praesens. Tum quia minoris valet id, quod non est futurum utile intra unum annum, alio eiusdem qualitatis, quod est futurum statim utile, ut palam est" [2, p. 471].

Despite the mistake in Noonan's citation, and the discrepancies between the different editions of the text, to Noonan's credit, he does faithfully translate the quoted Latin sentence. Another more literal rendering of the Latin text contains some minor stylistic differences, but the inherent meaning remains the same: "Both since [a claim] <with a view> to <obtaining> some thing is worth less than

the thing itself <present>, and since that which is not about to be useful within a year is of less value than something else of the same quality that is about to be useful immediately, as is obvious.”⁸

On its own terms, Azpilcueta’s statement does reveal a basic understanding of time-preference; but, since the quotation has been given so much importance, it would be valuable to further understand it in its textual context.

The sentence beginning “Tum quia minus...” forms part of Azpilcueta’s first response (“*Respondeo primo*”) to the question raised at the beginning of *Consilium XVIII*, following the typical format of the Scholastic method. However, Azpilcueta seems to repeat the question which was raised at the beginning of the section, so our focus can be drawn directly to the first “I respond:”

“I respond first, that the resolution of this doubt seems to depend on the resolution of the person who is asked <the question>: ‘Whether a claim at 100 that is to be terminated after a year, or two years, or three years, could be justly bought at less than 100.’ I answered affirmatively to this in *Manual Confess.* chapter 17 n. 230. Then by the authority of [Pope] Innocent, whom no one contradicts in the chapter ‘On the State,’ [in the section] ‘On Usury.’ Tum quia minoris valet actio ad rem aliquam ...” [2, p. 471].⁹ By answering in the affirmative, Azpilcueta seems to approve this particular transaction (that of buying a claim for money for less than the claim’s face value) using the logic of time-preference which follows. However, he implies here that he wrote more extensively on this particular question and, thus, refers his reader to the *Manual*.

If we go, as directed, to Chapter XVII, number 230 of the *Manual de confesores y penitentes*, we discover that Azpilcueta sees a fundamental difference between buying and lending, between *comprar* and *prestar*. As in *Consilium XVIII*, Azpilcueta considers the question of *pagas verdes* (payments not to be made for a year or more) as opposed to *maduras* (present payments), and he affirms that *pagas verdes* are licit. Azpilcueta concludes this on the basis that a claim to a payment in the future is something that is *bought*, not something that is *lent*. Because a claim is bought (transfer of ownership), but, since it is useless until the time of payment, it is worth less in the present, not because it is money (i.e. in a loan), but because it is a *claim* to money. Azpilcueta reasons:

A nosotros...nos parece bien lo que a Cajetano [también le pareció] que las pagas, que llaman verdes, y que no le han de pagar hasta uno, dos, tres o más años, justamente las puede comprar por menos. Porque esto no es prestar, sino comprar. Y no comprar los dineros, que le habrá que pagar, sino el derecho de los cobrar de aquí a un año. Y este derecho por ser inútil [hasta] dentro de un año, vale menos que si desde luego fuese útil...Por esta razón de valer menos, se da menos, y no por sola la anticipación de la paga [3, p. 192].¹⁰

However, as Muñoz de Juana also perceptively points out, Azpilcueta jarringly contradicts his logic in the very next sentence. There he says (in summary) that someone who owes one hundred *ducats* cannot cancel his debt for less than one hundred [3, p. 192]. In other words, someone who has sold a claim for one hundred *ducats* in a year for less than one hundred cannot buy back the claim before the maturity date for less than one hundred. If Azpilcueta were to have reasoned based on his immediately preceding logic, he would have judged that such a discount would be licit.

The contradiction, therefore, raises eyebrows as to Azpilcueta’s consistency in general. Regarding this exact conundrum, Muñoz de Juana points out this passage as one of several examples throughout his works in which the spontaneity with which he writes in response to concrete cases sometimes leads him to contradict general doctrines previously laid out. In this instance, the underlying principle which he holds of equity in exchange does not prevent him from saying that *pagas verdes* are licit [6, p. 232]. In Muñoz de Juana’s words, this example show us “graphically the intellectual acumen of the author, and, at the same time, what on occasions seems to be a lack of expository rigor” [6, p. 232].¹¹ Thus, having started with just the one quotation used by Noonan from the *Consiliorum*, we can

begin to see by this analysis that Azpilcueta did not understand time-preference and its implications as thoroughly as some others have concluded.

To further show the nuance within Azpilcueta's thought, we can move from the *Consiliorum* and the *Manual* to an appendix of the latter: the *Commentarius resolutivus de cambiis* in Latin, *Comentario resolutorio de cambios* in Spanish, or *On Exchange: an Adjudicative Commentary* in the recent English translation. In Chapter XI, subtitled in English, "Exchange by Buying, Bartering, or Innominate Contract," Azpilcueta outlines eight different causes that can explain why money is worth more or less [4, p. 81].¹² The sixth reason Azpilcueta gives is "diversity of time" [4, p. 86]. The initial suspicion of a contemporary reader might be to think that here Azpilcueta will describe the time-preferences of both the buyer and seller that come to play when pricing an exchange transaction. Instead, Azpilcueta means by "diversity of time" something quite different: the value of a certain amount of money may be worth more or less as time passes, not because of the passage of time itself, but because of one or more of the seven other value-altering causes that happen to occur during that passage of time. To illustrate it, Azpilcueta gives the example of one hundred *ducats* which sometimes are worth more, sometimes less. As he explains it: "They would be worth less if there were now an abundance and, in one year's time, there were a scarcity, just as a measure of wheat is not worth as much in August when there is a great abundance of it, as in May when there is a scarcity of wheat, or less of it" [4, p. 86].

Then, as if to crush any lingering appeal to time itself as being a cause in its own right in the mutation of value, Azpilcueta immediately adds: "But money is never said to be worth more or less for giving it before or after, or for a longer or shorter period of time, if any of the other eight reasons that make it increase or decrease is not attached to the time factor, according to almost everyone's opinion" [4, p. 86].

The "time-factor" alone is not sufficient by itself to justify a higher or lower price; change in value over time must be explained in terms of the other causes. Therefore, *ceteris paribus*, one hundred *ducats* to be paid out in one year's time, for example, must have a present value of one hundred *ducats* to be licit. If, however, other factors change over time (as often happens), then the present value can justly be lower than one hundred. Given this argument, Azpilcueta's understanding of the "diversity of time" cause depends more on the quantity theory of money than on time-preference theory. After all, Azpilcueta is best known for his development of quantity theory, and it patently comes to bear in his analysis here.

The last place to look in *de Cambiis* for a potential hint of time-preference is the penultimate chapter: "Money that is Present and Money that is Absent" [4, p. 109]. However, quite on the contrary, Azpilcueta argues that money available in the present is worth more than money that is absent because of the cost and risk associated in making the absent money present. One hundred *ducats* present and available in Salamanca, say, are worth more than one hundred *ducats* in faraway Flanders because "the absence together with the dangers that occur and the expenses incurred are sufficient cause to make it worth less money than the money that is present" [4, p. 110-111]. Clearly then, by "present" and "absent," Azpilcueta refers to *spatial* presence and absence, not to *temporal* presence and absence. Thus, again, time itself remains secondary in these considerations: a mere accidental or incidental characteristic in the determination of value.

5. Conclusion

From these analyses of primary texts, we draw a two-fold conclusion. On the one hand, Azpilcueta sees that the value of money changes when measured at different moments in time, as happens with any good. On the other hand, he understands changes in value to be, not the result of the mere passage of time, but the result of other factors – abundance or scarcity, presence or absence, the quality of the coin, etc. – which can change value during a given passage of time [6, p. 320]. Azpilcueta, thus, does

not absolutely scratch time from the equation, but he rejects using the consideration of time exclusively when determining a just retribution to the lender. This limited consideration of time which Azpilcueta allows for still does not equal a full-fledged understanding of time-preference theory – a theory which holds precisely that, *ceteris paribus*, money present and usable today is worth more than the same amount of money in the future by virtue of the difference in time and, thereby, utility between the two. This said, nevertheless, we saw that an intuition of the theory is evident in the *Consilium XVIII* quotation where Azpilcueta positively affirms, in essence, that a bird in the hand is worth more than two in the bush. Azpilcueta, therefore, comes close to the theory, but does not take it any further.

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Notes

1. “Usury, or illicit profit, is an estimable gain of money, which is principally earned on a loan, whether it be blatantly or covertly taken.” Translation mine.
2. Muñoz de Juana also notes in footnote 67 that this idea can already be found in St. Thomas Aquinas.
3. See also [7].
4. As the title might suggest, Noonan’s *The Scholastic Analysis of Usury* (1957) is perhaps the most exhaustive and detailed survey of the history of usury during the early, middle, and late-Medieval periods. Though the work is indeed regarded as an authority on the subject of usury and its history, it should be noted that Noonan’s works have not been without controversy due to their sometimes unorthodox moral presuppositions and intentions. Muñoz de Juana mentions himself: “Aunque desde presupuestos muy discutibles respecto de aspectos fundantes de la moral, que marcan el proyecto y la estructura de la obra, y que pesan incluso en algunos juicios históricos, ofrece información sobre la cuestión [Noonan]...” [6, p. 206, footnote 9].
5. *Italics* added.
6. *Italics* added.
7. See footnote 23 on p. 238 of [7]
8. Translation by Edward Macierowski, Ph.D., Professor of Philosophy, Benedictine College, Atchison, KS, on 14 February 2018.
9. Translation by Dale Parker, Ph.D. candidate, University of California, Los Angeles, on 16 February 2018.
10. “We agree as did Cajetan also that payments, which are called green, and that are not to be paid until one, two, three, or more years, can justly be bought for less. Because this is not to lend, but to buy. And this is not buying money which ought to be paid [in the future] but [buying] the right to claim

[payment] in a year from now. And this claim, being useless for a year, is worth less than if it were useful [in the present]. For this reason, for being worth less, less is given, and not only for the anticipation of payment.” Translation mine.

11. Translation mine.

12. More on these eight causes in Chapter III.

Rethinking Welfare: The LDS Welfare Program vs Public Welfare

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Abstract:

In his libertarian manifesto, *For a New Liberty*, Murray Rothbard [15] points to the Church of Jesus Christ of Latter-day Saints as an excellent model for what a private welfare program would look like in a free society. In analyzing this same organization, we can see that nearly 50 years later Rothbard's analysis is truer than ever. Unlike the public welfare programs in the U.S., the LDS church has successfully helped lift countless individuals out of poverty and off the welfare rolls by increasing their level of productivity – a point that Henry Hazlitt [7] made in his book, *The Conquest of Poverty*. Public welfare, on the other hand, has continuously failed to increase the standard of living or even lift those it ostensibly seeks to help out of poverty; on the contrary, it is a system that prevents economic independence. The analysis in the present paper seeks to revive, amplify and bring up to date Rothbard's observation and provide further insight on key factors that other private organizations can take from the Church's model. Ultimately, it reveals that the successful journey out of poverty is not a public but rather a private endeavor.

Keywords: welfare, poverty, libertarian, charity, capitalism.

1. Welfare or Charity?

Welfare has various commonly used definitions. One refers to the well-being of an individual, another denotes a form of financial or material aid that an individual receives, and a third depicts an organization or program that works to provide aid. More often than not, welfare is tied to assistance provided by the government. In contrast, what is charity? Merriam-Webster defines it as “generosity and helpfulness especially toward the needy or suffering also: aid given to those in need.”

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Both concepts have strikingly similar meanings that touch on the provision of assistance to those in need. An important difference is that one is often thought of as a disinterested act of goodwill; the other an entitlement – a “right”. We have yet to hear a politician claim that everybody has a right to

receive charity. Leaving aside such political connotations, welfare and charity are almost synonymous. If one is an entitlement while the other is not, it would be difficult to explain where these terms differ so that one becomes a “right” to the individual and the other does not.

Compare the activities of the Church of Jesus Christ of Latter-Day Saints and–government welfare programs. Both organizations refer to their activities as welfare, but only one can be considered charitable, as charity is a *voluntary action*.² Charity ceases to be charity once it is only through coercion, i.e., the threat of violence, that one party is able to receive benefits from the other. This is how the public welfare program operates. It is imperative to distinguish between charitable welfare — welfare that is done through voluntary action — and the type that operates through the confiscation of the donor’s income in order to be redistributed to another individual.

2. The Solution to Poverty

How can poverty be eradicated? American journalist and author Henry Hazlitt addressed this in his book, *The Conquest of Poverty*:

It is fashionable to say today that ‘society’ must solve the problem of poverty. But basically each individual – or at least each family – must solve its own problem of poverty. The overwhelming majority of families must produce more than enough for their own support if there is to be any surplus available for the remaining families that cannot or do not provide enough for their own support [7, p. 230].

The escape from poverty begins on the individual level; nobody can solve somebody else’s poverty until they themselves have met their own needs. How is this achieved at the individual level? Hazlitt [7, p. 232] answers “Work and Saving”. It is through work that we are able to obtain the means for subsistence, and it is through saving – that portion which is withheld from immediate consumption – that allows for either future consumption, or more importantly, investment. The level of productivity in the labor expended is what permits for greater overall consumption and saving.

Woods [35, p. 61] demonstrates the indispensable role of productivity in man’s struggle against poverty: “How can goods be provided in greater abundance? By increasing the productivity of labor...And that can be done by means of technological innovation and investment in capital goods.” If insufficiency is a condition of poverty then abundance would be its antithesis. Hence, in order for the individual to escape his own poverty, he must be productive! It is for that reason it must be recognized that welfare “voluntary or coerced, is never the true solution of poverty, but at best a makeshift, which may mask the disease and mitigate the pain, but provides no basic cure” [7, p. 230].

Let us compare the welfare programs of the Latter-day Saint church and the U.S. government. The main difference is that the former increases the level of productivity of the recipients while the latter simply provides them with the means of subsistence.³

3. Latter-day Saint Welfare

Rothbard [15, p. 180] avers, “The ‘classical’ view of the social worker was to help people to help themselves...to help them get off the welfare rolls as quickly as possible.” This perspective is based on the importance of individual productivity. The welfare program of the LDS church is based on this fundamental principle, and Rothbard [15, p. 183-187] acknowledged the exemplary fashion in which the Church of Jesus Christ of Latter-day Saints applied this in its welfare program.

Since its inception in 1830, many of the principles upon which the Church was founded were based on the importance of hard work and productivity. This can be seen in some of the Church’s early

writings cautioning members against the problem of idleness and encouraging them to work.⁴ Through its nearly 190 years of growth, this message has continued to be promulgated ever more firmly [3], [21], [22], [30]. Even within the structure of its leadership and auxiliaries one can see the emphasis placed on members to be actively engaged in activities such as speaking to a congregation, teaching classes, administering religious services, attending the needs of other LDS members, organizing events, cleaning church facilities, and even devoting one-and-a-half to two years of an individual's life to missionary work. Hard work and self-reliance have always been a backbone of this organization.

That the Church's welfare programs make these teachings their central tenets explain why it has been able to achieve such large-scale success. Russell M. Nelson, the current president of the Mormon Church, recently spoke on some of its more recent accomplishments, "In the year 2018 alone, the Church provided emergency supplies to refugees in 56 countries." In addition to this, "the Church provided vision care for more than 300,000 people in 35 countries, newborn care for thousands of mothers and infants in 39 countries, and wheelchairs for more than 50,000 people living in dozens of countries" [13].

Every dollar and every service or resource that the Church utilizes comes without the use of coercion over its contributors [26]. Besides donations made by its members, this organization also owns farms, orchards, and ranches that all help stock Church run warehouses that are part of its welfare program [22].

Critics of private initiatives claim that efforts like these are still not good enough in the fight against poverty and, therefore, it is necessary that there be a public program to make up for the insufficiency [1], [14]. Such critiques fail to adequately define what counts as poverty or at what point someone should be entitled to benefits. The Heritage Foundation released a report that looked at the living conditions of Americans living in poverty as reported by the Census Bureau [17]; they highlighted that many of those in poorer conditions had commodities like microwaves, air-conditioned houses or apartments, and cable television; compare that to the living conditions of the average person in the U.S. even one hundred years ago.

Williams [33] made a similar observation and went as far as to redefine poverty in the U.S., "What we have in our nation is not material poverty but dependency and poverty of the spirit, with people making unwise choices and leading pathological lives, aided and abetted by the welfare state." With this new image of what it means to be poor by today's standards, a new reflection must be made as to what is "good enough" for welfare.

As important as these questions and points of reflection are, they overlook the more important distinction between LDS and public welfare: production and self-reliance. Economic prosperity – which leads to the overall reduction in levels of those living in poverty – is driven by capital, productivity, and savings; practices that only one of the two welfare systems encourage.

4. Self-Reliance and Productivity

While many of the principles and practices of its welfare program were already being carried out since the religion's founding in the year 1830, the LDS welfare program was officially announced in 1936 under David O. McKay, the president of the Church at that time [36]. Leaders of the faith formally organized their program as a response to the widely-felt effects of the Great Depression, an event that led to large concerns over a "growing disposition among the people to try to get something from the government of the United States with little hope of ever paying it back." [25, p. 5] It was their fear that LDS members (as well as society in general) would become idle and cease to be self-reliant. This led them to develop a new system that sought to "help people to help themselves...to aid them to become independent...rather than to have to depend upon the Church for assistance" [24, p. 103].

Since then, the Church's ability to provide assistance to those in need has grown dramatically. One of the newer initiatives that has been included are the "Self-Reliance Services".⁵ Participants of the initiative take classes that focus on four different areas: employment, education, personal finances, or starting and growing a business [27]. To illustrate the effectiveness of the program, the Church released the following data [29]:

Using a survey to track the progress of graduates six months after they completed a course between January 2016 and June 2018, the Church learned:

- 41 percent improved their ability to provide for the necessities of life for themselves and their families.
- 40 percent increased their income.
- 38 percent increased their savings.
- 59 percent decreased their outstanding consumer debt.

In tracking group-specific results six months after the end of a course between January 2016 and June 2018, the Church found:

- 61 percent started or grew their own business.
- 47 percent got a new or better job.
- 52 percent started a new school or education program.

Another program that the Church utilizes in its efforts to raise people out of poverty is Deseret Industries, a nonprofit enterprise that operates as a thrift store, donation center, vocational rehabilitation and employment center. From felons and recovering addicts to refugees and veterans [28], D.I. offers disadvantaged workers employment opportunities, on-the-job experience, technical training, and business partnerships that provide internships [4], [5]. Furthermore, all employees are assigned a mentor who aids them in accomplishing their goals and reaching milestones.

Although they may have never read Rothbard, Hazlitt or Woods – or any Austrian economist for that matter – the leaders of the LDS church are continually implementing policies that such writers have made about the important link between productivity and man's struggle against poverty. They also recognize that families and individuals who are developing productive skills may still need temporary assistance until they are fully capable of supporting themselves; that is why they address those immediate needs by encouraging followers of the faith to donate any supplies or money to local leaders so that they can ensure it gets into the hands of those in greater need of such aid.

What is important to realize about this privately operated welfare system is that the organization itself must find a way to fund all these endeavors without bankrupting itself. Unlike the government, the Church cannot simply take money away from whomever it decides, nor can it print money or create credit out of thin air through a central banking system; lacking such tools, it cannot engage in the same reckless behavior providing limitless handouts to the disadvantaged. This economic reality forces the organization to develop programs that are effective in getting recipients off welfare and back into the workforce. Because the government's almost limitless source of funding provides no real incentive to operate within its own budget, no real economic calculation can occur which leads to inefficient and ineffective programs. While the Church must carefully decide where to direct its funds, the State simply expands the size of its programs by funneling even more money into them regardless of the possibility that it is inefficiency, rather than funding, that is the problem.

5. The Inefficient State

Contrast the system of the LDS Church to that of the government funded programs in the United States and it becomes apparent that only one truly provides participants an opportunity for escaping poverty. Even the Council of Economic Advisers [32] recognized that federal job training programs "frequently failed to track metrics that allow researchers to evaluate program returns to taxpayer dollars expended.

Many public training programs have not undergone rigorous evaluation...”; the programs that can provide enough data for evaluation are still considered “not effective at securing higher paying jobs for participants.” This 2019 report concludes that “Government job training programs (with the exception of apprenticeships) appear to be largely ineffective.”⁶ Such results have forced them to ask if these programs are worth their costs. Keep in mind that \$18.9 billion was spent on these programs in just 2019. Such large spending on programs that the government itself cannot even confidently verify as effective should serve as a sign that there is a major problem with the public system.

In 2018, the Department of Labor’s own Inspector General made similar conclusions about the failure of federal job training, “Job Corps could not demonstrate the extent to which its training programs helped participants enter meaningful jobs appropriate to their training.” The Inspector General’s report provides a clear example of what this failure looks like:

...one participant worked as a cashier at a retail store before attending Job Corps in 2011, spent 310 days in bricklaying training, and then returned to work at the same retail store as a stock clerk after graduating. Job Corps also reported this as a successful graduation and placement. In 2016, this former participant trained in bricklaying was working for a bottling company [31].

Federal job training programs have proven time and time again that they are simply incapable of responsibly using the money that the government coercively took from the taxpayers. These are lost dollars that would have been put to more productive uses in the economy had they not been funneled into the costly government programs that are repeatedly deemed as ineffective and wasteful. In contrast, the private programs of the Church would be forced to either improve their programs or go bankrupt because they could not continue to operate such expensive programs that didn’t work.

The welfare program run by the government also fails to provide a system that aids individuals in the escape from poverty. On the contrary, it incentivizes its recipients to remain in this abject state. Sowell [20] elaborated on this point:

Even when they have the potential to become productive members of society, the loss of welfare state benefits if they try to do so is an implicit ‘tax’ on what they would earn that often exceeds the explicit tax on a millionaire. If increasing your income by \$10,000 would cause you to lose \$15,000 in government benefits, would you do it?

The logic behind the public welfare system simply does not hold. Failing to adequately train laborers while providing a system that punishes those who seek to improve their situation only succeeds in keeping the vulnerable at a disadvantage. It is a system that discourages productivity while encouraging more consumption. These government programs are counterproductive.

6. Conclusion

The question about how a nation or a society is to escape poverty is really a question about how the individual can escape poverty. This condition, which is the starting point for every economy, can only be addressed through increasing levels of productivity. Such productivity does not come about through handouts and welfare traps, but rather through savings, investment, capital, innovation, and the division of labor. As Rothbard [15] so correctly pointed out, the Church of Jesus Christ of Latter-day Saints is a private organization that has continually showed how an effective welfare program focuses on getting the recipients off welfare rolls through programs that help them to be more productive and self-sufficient. The government run public welfare programs only incentivize consumption and fail to

adequately increase anybody's productivity. On the contrary, they waste countless taxpayer dollars that were forcibly diverted from the marketplace, decreasing the amount of wealth and jobs that would have otherwise been produced, and reinvested into wasteful programs that keep participants trapped in poverty. The solution to reduce those living in poverty is to abolish wasteful government programs as well as taxes or any other policy that discourage productivity⁷, and encourage more programs like the LDS welfare system to be undertaken privately.⁸

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Notes

1. See <https://www.merriam-webster.com/dictionary/charity> for further definitions of the word.
2. Rothbard [14, p. 1319] expounds on this point, “The appeal to ‘charity’ is a truly ironic one. First, it is hardly ‘charity’ to take wealth by force and hand it over to someone else. Indeed, this is the direct opposite of charity, which can only be an unbought, voluntary act of grace. Compulsory confiscation can only deaden charitable desires completely, as the wealthier grumble that there is no point in giving to charity when the State has already taken on the task.”; See also [8]
3. Even worse, all too often it *decreases* their productivity [2], [6], [9], [10], [11], [12], [18].
4. See *Doctrine & Covenants* 42:42; 56:17; 58:27; 60:13; 75:3; 75:29; 88:124.
5. For more information on these services, see <https://www.churchofjesuschrist.org/self-reliance>.
6. They also go as far as to admit that private programs have done a better job than the government. The report suggests that federal initiatives look at these private operations as a way to measure their own efficiency, or work to subsidize or assist private training programs so they can further their reach.
7. This would also include policies like minimum wage laws, rent controls, and price controls, that lead to more shortages, discourage productivity, and simply waste resources on creating more barriers for those trying to get out of poverty.
8. Such a calls for privatization of welfare are often unpopular because they would now require that those who yell the loudest about needing to care for the poor to put their money where their mouth is, rather than simply using the state to coercively take from those who they think the burden should be placed on.

A Rational Theory of the Rights of Children

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Abstract:

Libertarianism has often found itself under attack from those with misplaced maternal instincts, who champion the state as the honorable protector of the vulnerable – and there is no one more in need of protection than a helpless infant. Consequently, much of the vitriol aimed at libertarianism and its laissez-faire attitude has included morbid references to child abuse and exploitation which would supposedly result from its implementation. It is therefore imperative that more work be done on the topic of children’s rights in order to reinforce the philosophical framework developed by Murray Rothbard [9] and expanded on by Walter Block and others [2], [3], [5], [6]. The purpose of this paper is to provide an independent rational foundation for the conclusions drawn by Block and co-authors [2], [5] and to expand on parts that are insufficient.

Keywords: anarcho-capitalism, childhood, children’s rights, libertarian, libertarianism, guardianship, non-aggression principle, self-ownership.

1. Introduction

From its inception, libertarian theory has had an enormous problem standing before it: how to reconcile the existence of developing self-owners within the framework of property rights and non-aggression. It is not at all obvious how the rights of children, or lack thereof, are to be derived from the aforementioned principles. It is all too easy for subjective cultural values concerning children to sneak their way into an otherwise sound argument. In order to develop a rational theory on this topic, these seemingly self-evident attitudes must be identified and dismissed. Similarly, it is imperative to reject the “wisdom of repugnance” which would dismiss a rational theory solely on the grounds that it produces conclusions abhorrent to the popular mores of a given society.

In essence, libertarianism is a philosophy of conflict resolution and can only answer questions in the realm of competing claims, such as: how property is established and transferred, who the rightful claimant of a contested property is, and what the rights of a property holder (and consequently the

obligations of others towards that property) are; i.e., libertarianism has no judgement to bear on a situation in which there is no conflict, other than how it relates to a hypothetical conflict. Given that the sole inquiry for libertarian ethics is what the legitimate use of force in society is [4, p. xiii], this conclusion can be derived from the non-aggression principle, which holds that force can only be justly wielded against an aggressor; since voluntary agreements are by definition non-aggressive, no forceful interference may be levied against them, and thus they need not be addressed in the context of libertarian ethics. Therefore, the primary situations to be covered in this theory are:

1. Conflicts between a child and his guardian over his own autonomy,
2. Conflicts between a guardian and someone he claims to have done harm to his child,
3. Conflicts between a former child and someone he claims to have harmed him,
4. Conflicts between two potential guardians over the claim to a child.

2. Childhood and Autonomy

There is an unchallenged assumption underlying all discourse on this topic: the idea that there is a clear and universal distinction between children and adults, and that once someone has crossed from childhood into adulthood, he should be thenceforth considered a permanent adult for all intents and purposes (other than a few arbitrary exceptions passed into law), with a regression back to childhood being an impossibility. To examine this further, a rationale for the concept of childhood is in order. It shall be demonstrated that it is the lack of the ability to express one's will, not the lack of physical or mental maturity, that creates the necessity for such a concept.

If human beings were somehow born with a fully developed brain and the knowledge required to utilize it, childhood would be utterly unnecessary. These emergent adults would be immediately capable of negotiating for their own care, whether from their biological parents or from anyone else willing to care for them. They would be considered no less of adults than one such as Stephen Hawking late in his life, who, despite having most of his body paralyzed, and thus had to be cared for similarly to a child, was still justly considered an adult in every sense. It would be irrational for them to be denied their adult status on the basis of an inability to command their muscles or to care for themselves, which many regular adults also lack to varying degrees. There is no functional difference between one who was once able to walk and one who has yet to be able to walk that justifies denying autonomy to either. This remains true for all physical characteristics related to human development: lacking senses, speech, locomotion, body mass, reproductive capabilities, secondary sex characteristics, etc. does not disqualify adults from having legal autonomy. Thus, a lack of physiological maturity has no bearing whatsoever on the necessity of childhood. The rationale for the placement of children in a special class must then be related to their lack of psychological maturity.

Next, a situation in which a person regresses from his adult autonomy shall be examined in order to narrow down this rationale. Someone who slips into a coma is temporarily relieved of his consciousness and all of the mental faculties that it entails, so he cannot be considered any more autonomous than an infant, who does not lack consciousness, can; he must be placed into the same category of functionality as a child in order to maintain logical consistency. This becomes evident when one considers the practice of transporting an unconscious person to a hospital without his consent (which would be considered abduction if done to a conscious adult), which is analogous to a parent carrying his child. A malfunction in such mental faculties that enable consciousness thus renders one a temporary child, with one's guardian to be determined by default to be the first person to "homestead" (appropriate) such a role; an act such as bringing him to a hospital would certainly suffice. The caveat to this analogy is that a comatose person has been autonomous previously, and thus has had the opportunity to make his wishes known as to who should care for him and how he should be treated if such a situation were to occur. This is essentially the same as a written will, with the exception that he may yet emerge from the coma.

The peculiar concept of a will isolates the fundamental characteristic of childhood. How can property still be under the control of someone who no longer exists? If postmortem communication were not possible, property would instantly revert to the state of nature upon the death of its owner, belonging to whoever first appropriates it from nature. However, since the ability for a person to have his wishes known transcends his existence, the principle of inheritance was formed. Suppose that people would be subsequently reincarnated into new bodies after their deaths, that they would somehow retain all their memories, which would emerge into consciousness after childhood, and that their past persons could be immediately and easily identified via inspection of their new bodies. In this hypothetical, children would be akin to both the bodies of the comatose and the property of the recently passed – they would be the inheritance of their past selves to be safely delivered to their reincarnated consciousnesses. Of course, no one would be obligated to take that task on himself, but if someone were to voluntarily agree to care for the child (i.e., to become the parent or guardian), he would effectively become the executor of the will of the child's past self, bound to the terms contained within it. This thought experiment reveals that it is nothing other than one's own will that is to govern him, and that a guardian ought to be viewed as the faithful executor of that will, with the period of childhood akin to a regency of oneself, or a stewardship of one's body.

There is a corollary revelation which can be extracted from this thought experiment. An objection can be raised: before the reemergence of the former consciousness, the child is a unique person, and thus, at a certain level of development, should not be subjected to the will of that consciousness. However, this objection is asserting that the child ought to have a higher authority over himself than the testator, who has already been shown to have a higher authority than the guardian. It must therefore be asserting that the child in this thought experiment also has a higher authority over himself than his guardian, so it follows that he should already be considered an adult with the autonomy to govern himself. By extension, it is also asserting that, in the real world, all "children" at or above that given level of development are actually autonomous adults. For the purposes of the thought experiment, that is an impossibility, because the consciousness of the testator would have reemerged at the first moment in which those conditions were true. But in reality, it also shows that anyone who would make that objection holds a much different notion of the nature of childhood than their laws or parenting practices would suggest; notably, that the period of the lack of psychological characteristics in children which bestow adult status upon them is substantially shorter than convention dictates.¹

Now that the principles of childhood have been established, it is necessary to reconcile them with the mundane fact that the will of a child cannot be known prior to his expressing it, at which point he would cease to be a child. An additional complexity presents itself in the continuum problem, i.e. the transition from childhood to adulthood is gradual rather than instantaneous, so there is no singular point in time at which a person graduates from being a child. These issues shall be addressed in the following hypothetical: imagine the scenario of an encrypted last testament (being consequentially analogous to one's premature will), which an interested party agrees to decrypt over time. What is to be done with the estate during that time? It must doubtless not be damaged or consumed until such a time as the will has been entirely decrypted, with its voluntary manager responsible for preserving it in the interim. Should it be damaged or consumed during that period, either by the manager or by a third party, whoever has done such damage or consumption would be held liable, and that person would be disqualified from managing the property in the future, provided that someone else is willing to assume that role. As such, anyone who harms a child should be held liable for the damage done and be forbidden from being the guardian of that child in the future, provided that someone else is willing to assume that role.² As bits and pieces of the will are decrypted, the estate manager would be obligated to follow any instructions which are capable of being understood with the information available at the time. As such, as a child develops, his guardian is obligated to relinquish authority over to the child in domains of behavior which the child can express his informed will on. In a contention between a child and his guardian over such authority, a court can listen to the testimony of the child in order to

determine if he truly understands that which he is saying, or if he is merely blathering on about a decision which he lacks the comprehension necessary to make.^{3,4}

3. Ages of Majority and Consent

These conclusions are in stark contrast with the present laws of most governments, which do not bestow adult status until a person has reached a designated age, usually 18, with various exceptions for activities such as drug use, vehicle operation, employment, sex, etc. While congruence with established law or tradition has no bearing on the validity of a rational theory, it is worth noting that the contemporary view of childhood is not at all the historical norm. As Walter Block and co-authors outline in their paper on children's rights, "Other cultures and polities, ancient and modern, have granted children freedoms not permissible even for adults in much of Europe and the United States. The view that children require constant monitoring on the part of parents, guardians and the state, particularly governmental schools, is a relatively recent phenomenon" [5, p. 87]. In addition to being much too late in most instances, the universality, rigidity, and arbitrariness of the status quo of majority designation makes it intolerable to any rational thinker who can step outside of his culture for a moment and analyze it from a neutral perspective.

The basis for these static and all-encompassing laws is not in science or reason, as many deceive themselves into believing, but rather in social convention [5]. There is no widespread agreement, even among countries with similar cultures and levels of development, as to the proper ages of consent and majority. On average, a person's brain is not fully developed until the age of 25 [1], so if there were any objective age to grant adult status, it would be that. However, no country has adopted this standard, presumably because most people have long stopped visibly growing by that point. As with human fetal development, custom tends to be biased towards physical appearance concerning the recognition of human rights.⁵ Even so, it is not at all necessary for one's psychological development to be complete before adult status is attained. In a nontrivial sense, people never stop developing psychologically, as they gain wisdom from every new experience, reflection, and insight as long as they live.⁶

Apart from these laws being arbitrary, there is no single age that can be justifiably chosen at all, regardless of how strong the evidence was in its favor, since every individual person develops at a different rate. A universally designated age of consent or majority is a consequence of the inflexible and domineering nature of the state apparatus, which enables certain groups of people to impose their own ways of life onto others. Attempts at addressing these issues by passing certain nuanced exceptions, such as "Romeo and Juliet laws" as a response to insufficiencies in the age of consent, are only sloppy attempts at patching up a system of law which is fundamentally unsound; regardless of how it is amended, the present system of using age as a proxy for maturity will continue to result in the oppression of those who are mature for their age and/or the abuse of those who are immature for their age. The only solution to this dilemma is the adoption of a rational theory of children's rights into law as a baseline, which can be built upon in a decentralized manner with families and communities setting their own rules and customs in a voluntary fashion, rather than relying on arbitrary state edict.⁷

4. Child Abuse, Custody, and Punishment

So far, this theory has only addressed child abuse in the context of an analogy to estate management, using the ambiguous language of harm, liability, and disqualification. The reason that a clear and forthright stance on the matter has not hitherto been presented is this: aggression against a child cannot be outright prohibited in the same way it can with adults. Aggression is usually defined in libertarian theory as the initiation of forceful action against another's property without his consent. As a child cannot yet express his will, he is unable to consent to anything, so the concept of aggression becomes

meaningless. The acts of carrying, dressing, cleaning, medicating, etc., which would qualify as aggression if carried out against a nonconsenting adult, are, conversely, essential in providing care for a child. Thus, a different standard must be sought for the incorporation of child abuse into the theory.

It may be tempting to invoke a standard of “best interest of the child” in order to distinguish licit and illicit acts done to him, but this brings with it a baggage of utilitarian calculus that leaves too much room for doubt to be consistent with libertarian ethics. As he is lacking a discernable will, the view of a child as a thing that can be damaged, rather than as a person that can be subjugated, is the proper frame within which to address the problem. It is critical to reiterate that the role of guardian is not as the owner of a child, but as the owner of the exclusive right to raise that child [5]. As such, while any damage done to a child by one other than his guardian still constitutes a violation of the guardian’s right, damage done to him by his guardian now constitutes an abandonment of that right, which requires said guardian to notify any interested parties that the child is available for adoption, or else he would be guilty of forestalling guardianship [2], [3].

Next, a specification of what acts qualify as damaging is required. Since a child’s preferences cannot be known, the proper method of raising him is impossible to determine, so his guardian is largely free to engage in any actions that he wishes to in relation to the child, as long as he does not deprive him of his innate function or form. While refusing to feed (or care for in other ways) a child cannot be understood as an act of harm, since the resources required for such care belong to the guardian and not the child, it still constitutes an abandonment of guardianship rights, but cannot carry a penalty other than one for forestalling. Rather, harm in this context can only be rendered by an active (rather than passive) behavior on the part of an adult against a child. This rules out any form of neglect.

There must be a direct causal link between the action and the effects suffered for it to be considered harmful. For instance, saving photographs of the child in amusing outfits has no plausible benefit and may bring about a negative response from him when he has grown up, but this cannot be considered damaging, as no act within the photoshoot itself deprived him of anything, and any potential maleffects are suffered entirely in retrospect, so they are not relevant to the act itself. In contrast, verifiable psychological damage suffered by a child, which is directly attributable to an act of torment inflicted on him by an adult, deprives him of his natural mental functioning which is innately his. This also applies to physiological damage, of which verification and attribution is considerably easier. Any scarring, maiming, mutilation, or other disfigurement, which deprives a child of his innate body, and was suffered as a result of actions taken against him by an adult, likewise qualifies as damage.

The exception to this would be surgical procedures (or, conceivably, other acts) that treat conditions which pose a greater threat to a child’s innate health than the damage associated with the procedures themselves. A life-threatening cancer, for example, warrants treatments of increasing severity up to the point of death. In contrast, genetic abnormalities (or, in the case of certain ritual practices such as circumcision, normalities) that benefit only the outward appearance of a child may not be corrected via damaging surgery. Similarly, operations which seek to improve the functioning of a child beyond his natural capacity by replacing parts of his body may not be performed, unless such modification is necessary to treat a threatening health condition (such as the amputation of a severely damaged limb). As the preference of a child for these alterations cannot be known, the preservation of his natural form is required by default, giving way only to prevent further damage from occurring.

Contrary to contemporary attitudes, corporal punishment inflicted upon a child does not necessarily constitute damage, as the harm it causes is often temporary. Unless the brutality is great enough to inflict lasting physical or mental damage, the use of corporal punishment can only be considered an alternative method of discipline under libertarian ethics. As in measures of force, the precise degree of damage necessary to be considered illicit cannot be objectively quantified and must thus be judged on a case-by-case basis.

A critical question remains unanswered: without government involvement in childcare, how are children going to be protected from such abuse, and how are abusive guardians going to be held

accountable? Assuming such abuse occurs on the guardian's own property (for otherwise it would be under the jurisdiction of the property owner), the most obvious answer would be a system of mutual responsibility among families and between neighbors. Even in absence of those however, since the damaging of a child constitutes abandonment, any passerby who witnesses such damage is free to claim temporary guardianship until such a time as a permanent guardian can be found, and can call for assistance if it is necessary to rescue the child from the clutches of the previous guardian. If the previous guardian contests the claim of abuse, the dispute can be settled in court. For prosecution of the abuser, the new guardian has sufficient interest, having assumed responsibility for the child's care. Of course, the child himself can pursue prosecution when he is able.

What then is the proper punishment for a perpetrator of child abuse? Adhering to Rothbard's formulations [9, pp. 149-162], punishment is at the sole discretion of the plaintiff, and may not exceed the crime in either kind or degree, lest it become a crime itself. In addition to retribution, the plaintiff may demand restitution, i.e. to force the perpetrator to provide the resources necessary in order to repair the damage done to the child, to the extent that this is possible. The method by which the damage is repaired need not be satisfactory to the plaintiff, so long as it is indeed repaired to its original state. The alternative would lead to the justification of the imposition of bizarrely inefficient means of restitution, such as forcing a vandal to repaint an edifice using a tiny brush meant for fine art. As such, a perpetrator of child abuse may only be forced to pay for years of routine psychotherapy if such a method is proven to be both effective and the most efficient known way to achieve healing. These criteria eliminate the possibility of a convicted child abuser being forced to provide lifelong therapy that may or may not treat the conditions caused by the abuse.

In the course of retribution, the lack of the child's developed will is paramount. It is not as in cases of aggression between adults, where if one person assaults another, the latter may assault him back in the same way. A more fitting comparison would be to the vandal of estate property. While the course of restitution is clear, the extent of retribution is not. Even if the vandal happens to be the manager of another estate, an equivalent vandalism may not be done against such property, as it is not under the ownership of the vandal himself. In addition, the same as was done to the estate may not be done against the body of the vandal, as one's body is a more valuable form of property than most else.⁸

How may the punishment be satisfied then? The subjective attribute of value must be looked to if an objectively equivalent form of property cannot be found in the possession of the vandal. As justice in libertarianism is a descriptive rather than prescriptive theory, a belonging of the vandal that is about as valuable to him as the estate was to its owner need not be sought; retribution of equal magnitude to the crime is only the upper limit of libertarian justice, and is in no sense proper or ideal. Rather, the plaintiff may seek a belonging under ownership of the vandal and describe how he wishes to damage it; a judge need only answer whether such property damage as described exceeds that which was inflicted upon the plaintiff. If not, such retribution may be justly carried out; otherwise, it would constitute a crime itself. In this way, the troublesome question of value equivalency may be avoided entirely.

In application to child abuse, this logic remains unchanged. As guardians do not own their children, reciprocal punishment may not be inflicted upon one's child as punishment for his crime against another. However, in the case of damage against a child, reciprocal punishment against the perpetrator's own body is not illicit. Although, as the owner of a child's body (his own will) is yet to emerge, its value cannot be immediately determined, the objective equivalence of kind between the human body of the child and the human body of the perpetrator is sufficient in the evaluation of reciprocal punishment. So, while the underlying principles of punishment in child abuse are different from those of punishment in aggression against adults, the conclusion turns out to be the same.

The last potential conflict to be resolved is one between two or more potential guardians over their rights to guardianship. Rather than the current convoluted system of judging the parenting merits of the parties involved, libertarian ethics would return to the concept of "homesteading" the child as Rothbard first developed [9, pp. 165-166]. Assuming that the child is not able to choose for himself

(which choice would supersede all else), the person who first provided care for the child and had not since abandoned or transferred the role of guardian would retain the property right.⁹ The biological mother is always the first guardian due to her role in prenatal care (barring a contractual agreement stating otherwise), but if she abandons or gives away her child, the guardianship right is transferred to the next provider, and if that provider abandons or gives away the child, to the next provider, ad infinitum. Thus, it is the objective facts of the case, and not the subjective qualities of the potential guardians, which determines who receives custody in any such dispute.

5. Closing

The current regime of government restrictions against adoption is responsible for a tremendous amount of harm against children who lack exclusive and dutiful caregivers. Apart from the abuse carried out by government agents themselves, in absence of these restrictions, a market facilitating commerce between people with a surplus of children and a deficit of resources, and people with a surplus of resources and a deficit of children, would naturally emerge [9, pp. 170-171]. In addition, the current attitude of entitlement on the part of both parents and children, not the least of which is due to the intrusion of the state and its distortion of rights and privileges, is extremely toxic for their relationship. Parents feel entitled to rule over their children, and children feel entitled to the care and finances provided by their parents. The resentment born from these conflicts, together with the state usurping the role of parent, has broken more than a few homes. A voluntary relationship between the parties as is consistent with libertarianism, and thus the understanding of mutual benefit, would make for much happier, healthier, and more fulfilling outcomes for all.

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Notes

1. Of course, a guardian does not lose *all* authority upon the declaration of his child's will. As long as one wishes to stay with his former guardian and receive his care, he must abide by whatever conditions accompany that agreement. The legal relationship simply morphs into one of landlord and tenant from one of guardian and ward.
2. Libertarianism rejects positive obligations, so no one may be forced to care for a child without his consent, even in the unlikely scenario that there are no other willing guardians. In such a case, the

abusive guardian would usually be preferable to no guardian at all. This issue is explored extensively in [2].

3. As with many conflicts, a court hearing is a last resort, with resolution being more likely to emerge from a discussion between parties. In addition, court precedent on similar issues would embed itself into culture, making such conflicts less frequent to begin with, and providing a convincing argument should they arise.

4. A system of privately funded and operated courts, as is consistent with voluntarist libertarianism, would in all likelihood substantially decrease the waiting times and costs associated with the legal process, especially in matters which require little deliberation such as this. The judicial system is no exception to the economic law that competition spurs the providers of goods and services to offer higher quality products for lower prices. For an overview of the privatization of courts, see [8, pp. 175-195].

5. While the rights of children in utero are derived in exactly the same way as their postnatal counterparts, the political implications of this are not in the scope of this paper but are sufficiently analyzed from a libertarian perspective in [3] and [6].

6. A common objection to early autonomy is the notion that young people could make mistakes that affect them for the rest of their lives. While adolescents do tend to act more recklessly [1], this is not a just reason to deny them autonomy. Mistakes are necessary for them to learn and grow, and debilitating ones cannot be confidently prevented with any measure short of chaining them down. Regulation of the non-aggressive behavior of youngsters is better handled via social stigma and household rules than enslavement on the part of a centralized regime of social control.

7. Libertarianism does not preclude the establishment of rules in addition to the non-aggression principle; provided that they are mutually agreed to by all relevant parties, any rules at all may be established, even ones that libertarians vociferously reject when imposed by states. In this way, a libertarian society would come to resemble the variety of forums, platforms, and servers on the internet, with each one having its own set of rules that must be followed by users, rather than a libertine paradise, where people could engage in any behaviors which are not directly forbidden by the NAP. Hans-Hermann Hoppe expands on this in [7, pp. 204-219].

8. This holds unless the vandal does not care very much for his own body, which, while unlikely, should not be unconsidered.

9. Block and co-authors give a detailed analysis of adverse child possession in [5].

On Huemer on Ethical Veganism

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Abstract:

Huemer [33] argues against the killing of animals. I offer a critical libertarian analysis of his claim.

Keywords: vegetarianism, veganism, libertarianism, rights, justice, suffering, pain.

I am a libertarian. I view most tractates on political economy, of which Huemer [33] is certainly one, through the perspective of this philosophy. I shall be thorough in my examination of this author's support for vegetarianism, but only from that perspective. I do so because this author, too, is a libertarian [30, 31, 32], and my claim shall be that his support for animals is contrary to that overall perspective of his.

This book [33]¹ appears as a dialogue, or a debate, between two college students, M and V. The former, presumably, standing for "meat-eater" or, supporter of meat eating, while the latter articulates the viewpoint of the vegan, vegetarian, or opponent of eating meat. My method shall be to quote elements of their debate, and subject them to a libertarian² analysis.³

Let us begin [33, p. 2].

M: ... So what made you give up meat?

V: I figured out that meat-eating is morally wrong.

M: So if you were stranded on a lifeboat, about to die of starvation, and there was nothing to eat except a chicken, would you eat it?

V: Of course.

M: Aha! So you don't really think meat-eating is wrong.

V: When I say something is wrong, I don't mean it's wrong in every conceivable circumstance. After all, just about anything is okay in some possible circumstance. I just mean that it is wrong in the typical circumstances we are actually in.

How does this compare to libertarianism? First of all, this philosophy does not pertain to all of ethics, in which fits V's (Huemer's) "okay" and "wrong." Rather, it deals with, solely, a small aspect of the freedom viewpoint. As a first approximation, it asks only one question, and gives only one answer. The question: when is the use of force, or violence, or threat, justified? The answer: only in response to a previous rights violation: the prior use of force, or violence, or threat thereof. But we can narrow this down even further: libertarianism is, at bottom, a punishment theory; it offers the proper response to rights violations. It is almost, but not quite, indifferent on whether or not initiatory violence should occur. But it is adamant that if it does, then it is justified to pay back the criminal in kind.⁴ So our two perspectives, Huemer's ethics, and my libertarianism, while to be sure they overlap to some degree, are also quite different. Second, my libertarianism brooks no exceptions. None, zero. His ethics does. I take that as a weakness. Vegetarianism can hardly be a strong ethical principle if even its strongest proponent allows exceptions to it.

Our author's next sally is this [33, p. 4]: "V: Okay. It also seems to me that it's wrong to cause a very large amount of something bad, for the sake of some minor good. Would you agree with that?"

I part company with him on this query for several reasons. First, this, too, has nothing to do with libertarianism. It is a matter, instead, of utilitarianism. Now, of course, the two are not totally unrelated. But they are not synonyms for each other either. And, as I say, my interests are in the former, not the latter. Second, this point is vulnerable to a counter-example. The masochist seeks pain, not instrumentally, but as an explicit goal. As far as libertarianism is concerned, pain is irrelevant. They say that "location, location, location" is the be all and end all of real estate. Well, "rights, rights and rights" play a similar role for laissez faire capitalism, and this example of Huemer's is orthogonal to that concept.

A similar objection pertains to this statement: "I think it's wrong to knowingly inflict a great deal of pain and suffering on others, just for the sake of getting relatively minor benefits for yourself." Joke: the masochist asks the sadist to beat him with a stick. Replies the latter: "NO!" It is not "wrong," an ethical not a "what-should-be-legal" concern of libertarianism, to beat a masochist who relishes that act.

Let us consider another example. A large corporation underbids a small mom and pop operation. The former earns a miniscule profit, relative to its overall balance sheet position (a "some minor good") while the latter goes bankrupt and suffers grievously ("a very large amount of something bad.") Perhaps this is unethical. I don't know, I don't care. My concern is solely with the fact that this is entirely compatible with libertarianism, contrary to Huemer's implicit contention to the contrary. In any case, interpersonal comparisons of utility are intellectually fraught, as even our author himself admits [33, p. 11]: "... we don't have statistics on the quantity of suffering, since there's no established way of measuring suffering."

Huemer then launches into a critique of the claim that we, in libertarian terms, have a right to initiate violence against animals, since we are more intelligent than they are. He rejects the notion that it would be good or proper for us to do so -- on that ground. I entirely agree with him here. Some smart animals, dolphins, chimpanzees, pigs, are smarter than some human beings: the senile, the comatose, babies under the age of two months, etc.

However, that is not the ground on the basis of which I reject animal rights. Instead, it is their inability to homestead them via petition. According to Rothbard [65]:

There is, in fact, rough justice in the common quip that 'we will recognize the rights of animals whenever they petition for them.' The fact that animals can obviously not petition for their 'rights' is part of their nature, and part of the reason why they are clearly not equivalent to, and do not possess the rights of, human beings. And if it be protested that babies can't petition either, the reply of course is that babies are future human adults, whereas animals obviously are not.

Rothbard continues:

Thus, while natural rights, as we have been emphasizing, are absolute, there is one sense in which they are relative: they are relative to the species man. A rights-ethic for mankind is precisely that: for all men, regardless of race, creed, color, or sex, but for the species man alone. The Biblical story was insightful to the effect that man was ‘given’ — or, in natural law, we may say ‘has’ — dominion over all the species of the earth. Natural law is necessarily species-bound.

Why is petitioning so all-important? Because this lies at the very core of libertarianism. This philosophy is predicated upon the non-aggression principle (NAP). It is illicit, unlawful, for anyone to initiate violence against an innocent person or his property, or threaten him thereby, unless permission is given. But the opposite side of the coin of this principle is private property rights. For, if I own your jaw, and I punch it, or, you stole from me the shoes you are now wearing and I repossess it, then, you are the criminal, not I. So, we need a theory of private property rights. According to the libertarian viewpoint, this is based on homesteading, and self-ownership, the “mixing of labor” with virgin land of Locke, and the legitimate title transfer theory of Nozick.⁵ But petitioning is a sort of homesteading of rights. When you petition, you “mix your labor” with, you link to, your rights. Yes, babies, the comatose, the senile, those who are asleep, cannot do so, but we go by species, not individual, membership. If and when chimps or pigs or dolphins learn to earn their rights in this way, libertarians will then indeed have to rethink their rejection of rights for these species.⁶

Huemer attempts, quite successfully, to tug at our heart-strings with this example [33, p.14]: “V: So let’s say you saw a couple of boys pour gasoline on a cat, then light the cat on fire, just for the fun of watching it writhe in agony. They laugh, showing that they got some enjoyment out of it. To you, this seems perfectly alright?”

But, qua libertarians, we are simply not at all interested in what is, or is not, “perfectly alright.” Remember, this philosophy is solely concerned with what constitutes just law. So, the relevant question is whether or not these obviously evil boys should go to jail. We assume that they are the proper owner of the felines in question. And the answer is that these monstrous, abominable youngsters should not be incarcerated. We can return Huemer’s heart-string pulling favor. Suppose these young lads have PhDs in bio chemistry, and are doing equally painful experiments on cats with the view toward curing cancer. Would we then have the same attitude toward them? Presumably not. But the cats, we may stipulate, would be writhing in just the same amount of agony in each case. Heart-strings are now held constant. The cats suffer equally. Therefore, their pain is irrelevant. Their torture is illicit if they have a right not to be molested in this horrific manner; if not, then not. Huemer, with this example, fails to demonstrate that they have a right not to be mistreated in this way. He only asserts it would be wrong to torture these cats for unimportant reasons; such as the sick pleasure these boys enjoy thereby. Presumably, curing cancer would be an important reason, but our author never weighs in on whether or not experiments on them to this end which would be equally painful would be justified. However, there is no metric on the basis of which we can definitively say that curing cancer outweighs sadistic pleasure. Thus this distinction is problematic.

Let us now consider Huemer’s analysis of the nuclear bomb in the basement challenge to libertarianism:

V: Say I want to keep a nuclear bomb in my basement. Every day that I keep the bomb there, let’s say, there is a tiny chance that something will accidentally set off the bomb. This chance is much lower than the probability that I will kill someone in a traffic accident while driving my car. And yet, it’s okay for me to drive the car, but it’s not okay to keep the nuclear bomb in my basement.

M: I agree. No one should have personal nuclear bombs.

V: And that's because the harm of a nuclear bomb accident is much greater than the harm of a traffic accident. If I have a car accident, I might kill someone. But if I accidentally set off the bomb, it'll destroy the entire city. So the acceptable risk level is much lower in the case of the nuke.

M: Sounds reasonable. I would add also that you have good reasons for wanting to drive – like, you need to get to work. But I don't think you have very good reasons for wanting to have the nuclear bomb.

This is not exactly the correct libertarian view on the matter. It is not at all “because the harm of a nuclear bomb accident is much greater than the harm of a traffic accident.” In this perspective, we are allowed to “harm” each other in a myriad of ways, ranging from competing for sexual partners to competition amongst firms, to competing for grades at school, all of which can “harm” the losers thereby. Rather, it is a matter of rights violations, not “harm.” The reason nukes in basements in big cities should be prohibited by law is that there is no way to confine their explosive power to criminals. Innocents, necessarily, will be murdered if the bomb goes off. These devices, then, constitute an illicit threat, which is part and parcel of the libertarian NAP to combat. But suppose we lived on Jupiter, and each of us had holdings of 10,000 square miles. Would an atom bomb then be properly allowed to be placed in the middle of someone's property, in his basement? Yes.⁷

Here is Huemer in his role as mathematician:

V: Now, if Peter Singer is right, then the meat industry is about as bad as a practice that tortured 74 billion people a year would be. If there were such a practice, it would be incredibly bad.

M: Good thing Peter Singer isn't right.

V: But if there is a 1% chance that he's right, then the meat industry is about as wrong as a practice that has a 1% chance of torturing 74 billion people a year. Which is about as wrong as a practice that definitely tortures 740 million people a year.

M: That sounds crazy. 740 million?

V: That's 1% times 74 billion. A thing with a 1% chance of doing the equivalent of harming 74 billion people in some way is 1% as bad as a thing that harms 74 billion people in that way. Which means it is as bad as harming 740 million people.

M: But it's 99% likely that such an action wouldn't harm anyone – then it would be as bad as an action that harms zero people.

V: Sorry, let me rephrase. You have reason to avoid actions that, from your point of view, *might* cause something bad. The strength of this reason is proportional to (i) the probability that the action will cause something bad, and (ii) the magnitude of the bad outcome that might occur. So, if there is a 1% chance that Peter Singer is right, then the reason we have for abolishing the meat industry is about as strong as the reason that we would have for abolishing a practice that tortured 740 million people a year.

Here is a reductio regarding that “calculation”:

There is a .0000000001% chance⁸ that unless Huemer gives up his veganism and engages in meat eating, three times per day, the heavens will fall and we will all die a horrid, painful death. This is relevant? To what? The point is, anyone can make up any “calculation” of this sort to prove a point. For the skeptic, nothing is 100% true. This calculation of his establishes nothing.

Consider this dialogue between M and V [33, p. 21]:

M: ... let me ask you this: if you had to kill either a pig or a person, would you really just flip a coin?

V: Why can't I just not kill anyone?

M: You're driving, your brakes have failed, and you're going to run over a kid, unless you swerve aside and hit a pig.

V: Hit the pig.

M: What if it was ten pigs?

V: Still hit the pigs.

M: What about a hundred pigs?

V: I don't know.

Now, juxtapose that conversation with this one [33, p. 22]:

M: Well, at last you've admitted that humans are more important than animals!

V: You mean that human lives are more valuable than animal lives.

M: Isn't that what I said?

V: I was just clarifying. How does this make it okay to torture animals?

M: Human pleasure or pain matters more than animal pleasure or pain. You just admitted it.

V: No, I don't agree with that. I think that what's bad about pain is what it feels like.

Therefore, how bad a painful experience is, is just a matter of how bad it feels. It doesn't depend on how big your vocabulary is, or how fast you can solve equations, or anything else that doesn't have to do with how it feels.

There seems to be a tension between these two statements. Call the first A, the second, B. According to the latter, since pigs and people feel pain equally, to the same extent given the same degree of violence inflicted upon them, and that is the only relevant consideration – vocabulary size and ability in mathematics count for naught – we should treat members of both species equally, in terms of protecting them from suffering, and not inflicting it on them ourselves. This on its face would appear to be what philosophers consider a “howler.” But statement A is content with having the driver hit 10 pigs rather than one person. Its author only balks at 100 swine. Perhaps his cut-off point, the place in which he becomes indifferent between human and porcine lives and levels of suffering is 20 of the latter and 1 of the former. But, if they suffer equally from the same level of invasion, it is difficult to discern the reason for not treating these two species in the identical manner; that is, we should be indifferent between molesting 10 pigs and 10 members of our fellow species. Nor is this just a slip of our author's pen, well, word processor. He doubles down on his contention [33, p. 23]:

“M: But human pleasure is more important than animal pleasure or pain!

V: I don't see why.”

It is thus difficult to conclude but that Huemer sees pigs and people on a par in terms of the right not to be subjected to suffering, or, at least, that he declines to deny this. Such contention can be made even more pellucidly clear when he writes [33, p. 49]:

“M: But do you agree that human pains are more important than animal pains?

V: I don't know,”

and again [33, p. 51]: “V: ... It may be that a few years of factory farming causes more suffering than all the suffering in human history.”

Let me say that I admire Huemer for saying this. In that regard, he reminds me of Bernie Sanders. The latter didn't run away from “socialism” in 2015, when it was much less popular than at present (2020). A staunch democrat, he applied this concept to extending the vote for felons, even

while still incarcerated, a position which did not garner him many votes. What do the senator from Vermont and the professor from Colorado have in common? They are both rigorously logical, and follow the implications of their basic premises wherever they lead them. I disagree with both sets of premises, and both conclusions, but venerate both men for their logical rigor, and courage of their convictions.⁹

We now arrive at the Killian case [33, pp. 26-28]. This worthy murders innocents and steals their cars. Would it be licit to purchase an automobile from Mr. Killian; to have anything to do with him at all in terms of commercial interactions? Our Colorado University professor offers us a resounding “No!” Killian – a stand-in for factory farms – is evil and the law should prevent us from interacting with him in any way, shape, manner or form (apart from perhaps placing him in jail, which is implicitly approved of). But Huemer proves far too much here. The implication is that we should also eliminate trading relationships with the likes of Cuba, Venezuela, North Korea, China, etc. It is an empirical issue as to whether such a policy will help or hurt the victims of these brutal governments, a question of great import to utilitarians. On the one hand, trade with us will boost the prestige, and hence longevity, of their rulers. On the other hand, with commercial interaction comes greater wealth, less hatred, which will inure to the benefit of the downtrodden. But, assume that the benefits of commercial engagement with these dictatorial regimes outweigh the costs, would Huemer then approve? Not if he adheres to his Killian example. But matters are even worse for his analysis. For the U.S. government, too, is a mass murderer. It cannot be denied that this organization has done away with more innocent people than Killian has ever dreamt of dispatching. So are we to have to truck at all with the denizens of Washington DC? No more paying taxes? No more abiding by their numerous regulations? No more using their currency? No more utilizing their roads, parks, museums? No more working for, or attending, public universities? That would appear to be the logical implication of this example. But this philosopher, himself, does not disengage with the U.S. government in any such manner.

Our author’s analysis, here, is also problematic. He states [33, p. 32]:

M: Wait a minute. If the meat industry reduces its production, then farm animals won’t be better off; there will just be fewer of them. It’s better to have a low-quality life than not to live at all. So we’re doing future generations of animals a favor by eating animals today!⁷

V: Would you accept this argument if it were applied to people? What if a particular race of people were bred solely to serve as slaves? Then you could say that those particular people would not have existed if not for the practice of slavery. Would this make slavery okay?

Not okay. Of course not. But better than the alternative! The economist was asked: “How is your wife?” Came the answer: “compared to what.” V (Huemer) is comparing slavery with non-slavery. But, the correct comparison is, rather, between slavery and non-existence. Where there’s a will there’s a way. Where there’s life, there’s hope. Hope for what? Well, maybe, a rescue? Maybe a successful rebellion? Maybe, a change of heart on the part of our lords and masters? The issue he avoids is, would it be *better* that the alternative? Which would we prefer: all human beings as slaves to their presumably very powerful alien overlords, or no members of our species alive at all? As for me, I am pro-human. Some of my best friends are human beings. I would rather I and my fellows exist in such vile conditions – than not at all. Even if slavery continues forever, life is better than non-existence, in my subjective opinion.

What would happen to cows, pigs, chickens, etc., if every last person on the planet were convinced by this astoundingly provocative and in many ways brilliant book and became a vegan? Presumably, the farm animals would all perish.¹⁰ If I were “King” or “God” of these creatures, charged with the responsibility of protecting them and defending their welfare, my first order of business would be to see to it, if at all possible, that my charges continued to exist. What kind of guardian would I be if

I stood idly by while my dependents all vanished? I would then view vegans as harbingers of the death penalty for all animals, as a genocide threat to those I want to save. You have to say one thing in behalf of animal farmers; none of their charges have the slightest chance of ever going extinct. The same cannot be said for the denizens of non-barnyard creatures: elephants, rhinos, zebras, all face this fate. Huemer, thus, is no real friend to our brothers of field and stream, let alone barn.

Here is what our world-class vegan has to say about promoting morality [33, p. 33]:

V: My view would be that it's wrong to financially reward extremely immoral businesses, regardless of whether you're causing them to do it, or if they've already done it and you're paying them after the fact.

M: If it's not contributing to the amount of immoral behavior, what's wrong with it?

V: Two things: one, you're rewarding wrongful behavior, which is unjust. You're contributing to making it so that immorality pays...

Prostitution, pornography, addictive drugs, gambling, homosexuality, masturbation, fornication, are now, or have long been considered to be, "immoral behavior."¹¹ The implication is that these acts are unjust and should be prohibited by law. But this is profoundly at odds with the libertarianism that this author has long and valiantly espoused. In this philosophy, the only crimes are those with (*human*) victims and these presumably immoral acts all constitute victimless "crimes."

He now addresses the objection that "animals eat each other, so why can't we eat them?"

He continues [33, p. 37]: "V: Okay, chickens eat other species, so it's okay to kill chickens. But people also eat other species, so . . . it's okay to kill people?"

But chickens¹² kill and eat members of their own species. They will peck each other to death if not prevented from doing so by farmers. In contrast, human cannibalism is all but limited to cave spelunkers and marooned sailors who would all otherwise perish. Often, this is done on a voluntary basis, by drawing lots. This is quite a bit different than what occurs in the animal kingdom.

The weakest part of this argument of his is this [33, p. 37]: "You don't blame . . . a hurricane for destroying a city, or a lion for killing a gazelle. Because none of them are capable of regulating their behavior morally."

No, of course we do not "blame" the hurricane or the lion, but we do not grant them, rights, either.¹³ With rights come responsibilities. Hurricanes and lions lack the latter and thus do not deserve the former. We are justified in stopping all the storms we can. Cloud seeding does not violate rights. Ditto for initiating violence against wild and – also -- domesticated animals. They cannot petition for rights, nor do they respect the rights of others. In very sharp contrast indeed, (most) humans can be relied upon to do exactly that.

This response of Huemer's is problematic [33, p. 38]:

"M: Okay, lions can't restrain themselves. But do you think we should stop lions from killing gazelles?"

V: If you can figure out a way of doing that without killing all the lions and disrupting the ecology, then we should consider it."

"Consider it?" Why, merely, "consider it?" Why not, actually, *do* it? After all, our author is on record for opposing animal suffering. He nowhere specifically limits this to barnyard animals, although, to be sure, he waxes eloquent, and very properly so, about their suffering. But, gazelles undoubtedly suffer from the depredations of these monstrous felines.¹⁴ Farmers, presumably, kill their property far more humanely than this occurs in the wild.¹⁵

Huemer explicitly announces that rights play no role whatsoever in his analysis [33, p. 38]:

"V: My case for vegetarianism didn't rely on any claims about 'rights.' Remember that it was all compatible with utilitarianism. I'm only assuming that you shouldn't inflict enormous pain and suffering for minor reasons."

This is more than passing curious for a distinguished contributor to libertarianism. Rights¹⁶ are practically the be-all and end-all of this philosophy. To purposefully eschew them is to take the analysis out of this realm. As for “enormous” and “minor” these are subjective concepts. They exist in the eyes of the beholders. To base a position on them is to build a house on quicksand.

I have a verbal dispute with this author when he writes [33, p. 39]: “V: ... Say you have an adult human who can’t understand morality. Like a mentally disabled person. Can we torture them?”

Of course he realizes full well that singular and plural should match. He was taught this in middle school, if not sooner, like all the rest of us.

This sentence should have read, instead, in any of these ways:

1. “Like a mentally disabled person. Can we torture him?”
2. “Like mentally disabled persons. Can we torture them?”
3. “Like a mentally disabled person. Can we torture him or her?”
4. “Like a mentally disabled person. Can we torture her?”

Why the error in the text which I cannot regard other than purposeful? I speculate that he has gone over to the dark side in terms of obeisance to political correctness. Academics have been inflicted with this virus, and, Huemer, unfortunately, seems to have been infected by it.

Option 1 must be rejected because this bespeaks bias against women, even though “men” includes people of both genders. Option 2 would appear to be compatible with the dictates of PC, but, in refusing to ruin the language concerning singular and plural, points might be taken away from our author. Option 3 is fair game in left wing university writing, but is awkward. Option 4, nowadays, is the preferred alternative, except, that in this case, it would be read as demeaning to females.¹⁷ Not a pretty picture.

Professor Huemer maintains that [33, p. 41] “Primitive tribes make war even more than we do.” He cites Pinker [62] as his source for this finding. For an alternative view, see Block [15].

The Colorado University Professor ventures into the thickets of economics with this statement [33, p. 44]:

Insider trading is a crime wherein individuals buy and sell stocks based on ‘inside information’ not available to the public. For instance, a company executive might buy stock in a company because he knows that his own company is planning to merge with the other company, which will drive up the price. This is prohibited in the US, UK, European Union, and many other countries.

Unhappily, he cites no source on this. He accepts the traditional view of this matter without demur. From the libertarian point of view, however, one which we might expect Huemer to take, this can be a voluntary contractual arrangement, and therefore should be legal.¹⁸

If I had to summarize this book in three words it would be: “stop the suffering.” I acknowledge that I, too, support this plea. Who but a malevolent, malicious person, a sadist, would actually support anguish, whether for humans or non-humans. There is altogether too much misery in the world, and any lessening of it has to be counted on the asset side of the ledger.

However, the reduction of wretchedness cannot be the basic premise of any coherent philosophy. For, surely, some grief is justified. For example, criminals are properly punished and undoubtedly grieve thereby. If the desiderata were to eliminate, or radically reduce, agony, we would in the first instance release all murderers and rapists, kidnappers, thieves, from prison. But that would undoubtedly increase the desolation of their victims, one, who wanted revenge against these perpetrators, and two, who would be fearful of being molested yet again. Even if we could discern which inmates, although guilty of past misdeeds, would never again commit a crime, and free only them, still, this would be problematic in that these criminals *deserve* punishment. There is also the

difficulty of the masochist, who enjoys being made to suffer. We would have to legally prohibit the sadist from doing his “thing,” if a decrease in suffering were a basic aspect of just law.

Suppose we could somehow overcome the interpersonal comparison of utility (ICU) problem; that is, we had a “sufferometer.” That would mean, for example, if a rape victim suffered less from being victimized in this way than the perpetrator suffered from not being allowed to rape her, we would compel not just the one or the other, but both of them, to engage in sexual intercourse. Perhaps, we could get the government to subsidize rape and tax non rapists. This is a powerful *reductio ad absurdum* of a philosophy limited to stopping suffering. In contrast, there is libertarianism, which focuses, instead, on rights. It is certainly more just, and will, I contend, lead to less suffering than a philosophy which explicitly made its avoidance its centerpiece.

Huemer veers perilously close to engaging in an *ad hominem* argument when he avers [33, p. 69]:

V: ...the issue turns on a moral intuition about the badness of animal suffering. This intuition is held by many people who appear to be in general reasonable, smart, and morally sensitive.

M: I guess that’s fair to say.

V: In fact, many of them consider the intuition extremely obvious. The great majority of the literature in ethics on the topic also agrees that meat-eating in our society is generally wrong. Many of these experts consider the case decisive.

Just because a group of self-styled “experts reach a consensus does not mean they are correct. There are many professors of humanities who argue in favor of minimum wage laws, rent control, tariffs, licenses which restrict entry to various professions, typically on the ground that these initiatives will reduce human suffering. They err, here, and they err mightily.¹⁹

Huemer mentions, only to reject, the contention that [33, p. 73] “... maybe the chair you’re sitting on is in great agony. No way to prove it isn’t. But we have no reason to think so, and we have to sit somewhere.”

But based upon his own calculations, there is indeed a teeny, tiny, chance that chairs suffer when we deposit ourselves upon them. How would we like it if a chair sat on us? Not too well. In any case, there are an awful lot of chairs out there. If there is even a small chance that they feel grievously dealt with, perhaps we should reconsider our cavalier treatment of them. Yes, we have to sit somewhere, and stand too, despite possible protests from the floor, and we should give a thought to abusing our beds, too, by lying on them.

Our author continues in this vein [33, p. 74]: “V: ... It is virtually certain that animals feel pain. That’s clearly over 99% probable. But it is also virtually certain that plants don’t. Since plants have no nervous systems, the probability that they feel pain is very much lower than 1%.”

But there are many more plants, trees, blades of grass, etc., than there are animals.²⁰ Can we really be so blasé about this tiny possibility? When this is taken into account, the case for veganism, molesting innocent flora, weakens considerably.

Moreover these sorts of “calculations” are highly problematic. One can apply them to virtually anything, and deduce whatever is desired. A more basic point is that even if we stipulate that animals can suffer, and that we lose little satisfaction by refraining from annihilating them, it still does not follow that we should not do so. That is a matter of rights, about which Huemer is exceedingly skeptical.

What about the possible suffering of insects? We read on this as follows [33, p. 75]: “V: ... the costs of giving up killing insects are much higher than the costs of giving up meat-eating... Virtually all of modern life kills insects. You can’t drive a car without killing some; you can barely walk without killing them.”

But why should costs, of all things, be taken into account? If it is wrong to promote suffering, and there are very many more insects than humans ... Yes, to use a Huemerian calculus, the probability of members of these species feeling pain, or suffering, is exceedingly small [33, pp. 77-78]:

M: Why don't you think insects are sentient? They've got eyes and other sense organs, so they must have sensations.

V: Three reasons. One, they don't have nociceptors –

M: What? “Noss receptors”?

V: Nociceptors. The kind of nerve cells that sense pain. They don't have 'em. Second, they have drastically simpler central nervous systems. Like a hundred thousand times simpler.

M: Maybe you only need a simple nervous system to have pain.

V: But you're going to have a hard time explaining the third point: insects don't show normal pain behavior. An insect with a crushed leg keeps applying the same force to that leg. Insects will keep eating, mating, or whatever they're doing, even when badly injured – even while another creature is eating them.”

But, still, there is a *very* small probability that they do feel pain, in their own unique ways. If we weight each person and each insect equally, and there are so many, many more of the latter, even a small probability might indicate we should take this into account. No more chocolate covered ants for the likes of us!

Huemer is profoundly skeptical about rights [33, pp. 79-80]:

M: ... do you buy humane certified meat?

V: I don't buy it because I don't know if it is ethical. I figure that if I don't know, I shouldn't do it.

M: Why don't you know?

V: Well, I'd have to figure out whether it's permissible to kill animals humanely for food. For that, I'd have to figure out whether they have a right to life. And for that, I guess I'd have to first figure out what's the basis for the right to life in general.

M: Isn't that what we have moral philosophers for?

V: Yeah, but the moral philosophers don't agree.

M: Professor Tooley told me that the right to life is based on one's conception of oneself as a subject of experience continuing through time.

V: That's one theory. Another view is that the right to life rests on one's being the subject of a life that matters to oneself. Or perhaps it rests on one's having the potential for a human-like future. Or perhaps there aren't any such things as rights in the first place.

M: Why don't we just figure out which theory is true?

V: Easier said than done. The leading experts can't agree, so it seems unlikely that we can settle it here. If we start on that, we'll just argue about that forever.

This clearly removes him from the ranks of libertarians, at least on this one issue, since that philosophy involves practically nothing apart from rights. It is also disquieting that this author, one of the world's leading advocates of veganism on ethical principles, does not know if free range farm animals, humane certified meat, is licit or not. Libertarians often disagree with one another, but at least the leaders of this philosophy take strongly held positions.

Huemer also diverges from the freedom philosophy when he states [33, p. 83]:

V: ... what B did was to smash A's car with a sledgehammer, just for fun, causing \$2000 worth of damage. Several witnesses saw it.

M: Sounds like an easy case. A gets \$2000.

V: Not so fast! There are a few philosophers in the jury room: a metaphysician, a political theorist, an epistemologist, and an ethicist. The metaphysician argues that B isn't responsible for his action, because there's no such thing as free will.

M: I guess that could make sense . . .

V: The political theorist says that B's action wasn't wrong because property rights are illegitimate. The epistemologist says that we can't accept the eyewitnesses' testimony until we first prove that the senses are reliable. Finally, the ethicist says that there are no moral facts, so B can't have done anything wrong.

M: I guess this is why they don't usually allow philosophers on the jury.

V: (laughs) No doubt. So how would you vote?

M: If I agreed with one of those philosophers, I'd have to support the defendant.

V: Right. But how would you actually vote? Would you say B did nothing wrong?

M: No. Personally, I'd still vote to award \$2000 to A.

Even though uttered by M, not V, his usual voice, our author accepts the latter without demur. But if the punishment from the crime is merely that you have to pay damages commensurate with the costs you have imposed, or, merely return what you have stolen to extrapolate from this "punishment," then criminal behavior will skyrocket. Suppose you steal \$2000 and there is a 50% chance you will be caught, and the only penalty is that you must return this amount of money to your victim. Then the statistically expected value of your theft, to you, will be \$1000. Unless the alternative costs of your time are greater than that amount, then, barring ethical considerations about private property rights, you will enter the "profession" of stealing. It is also more than a tad unjust to impose such a slight punishment for theft or imposing damages on others.²¹

Let me conclude. I admire Huemer. Greatly so. I join him in opposing suffering, whether for man or beast. The world has far too much misery. Any reduction is to be fervently welcomed. But I cannot think that he has made a successful case for veganism. If he had his 'druthers, I infer he would imprison meat eaters and factory farmers. I cannot think this would be just.

There is one last point to be considered. This author wishes to promote veganism – eschew meat eating – so as to reduce suffering. But if that is the goal, there are *reductio ad absurdum*s galore open to the critic. For example, some fruits and vegetables are doused with pesticides. A consistent Huemerite would banish them all from his diet.²² But this is only the tip of the iceberg. Deep mining is more dangerous – to human life in this case – than is strip mining. The former is replete with cave-ins and black lung disease, not the latter. So, supporters of this anti-pain philosophy would be obligated²³ to boycott coal for that reason. Flooding from dams not only kills human beings, but, also, Huemer's beloved animals. Unless it can be demonstrated that more pain will ensue for lack of these dangerous sources of energy, it would also behoove us to shun fuel derived thereby. Nuclear power plants pose dangers to man and beast, if they fail. There goes that source of energy. Windmills kill birds. Scratch that one too.

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Notes

1. All otherwise unidentified references will be to this one book.
2. For some relevant readings on this philosophy, see Montgomery and Block [47]; Block and Craig [18]; Rothbard [65].
3. Redacted.
4. To a greatly increased degree. Libertarian punishment theory can be very Draconian. In the view of Rothbard [65, p. 88, ft. 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 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 on this: Block [3], [4], [7], [8], [9], [10], [11], [12], [13], [14]; Block, Barnett and Callahan[16]; Gregory and Block[26]; Kinsella [34]; Morris [48]; Nozick [50, pp. 363-373]; Olson [51]; Rothbard [65]; Whitehead and Block [70].

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5. Block [2], [5], [6]; Block and Edelstein [19]; Block and Yeatts [22]; Block vs Epstein [20]; Bylund [24]; Grotius [27]; Hoppe [28], [29]; Kinsella [35], [36], [37], [38]; Locke [39, pp. 17-19], [40, chapter 5]; Paul [60]; Pufendorf [63]; Rothbard [64]; Rozeff [66]; Watner [69]; Nozick [49].
 6. In the movie “The Planet of the Apes” one of the humans attempted to petition for his rights by writing on the ground with a stick. One of the apes erased this message with his foot – a rights violation.
 7. See on this Block and Block [17].
 8. The reader is invited to insert as many zeroes as he wishes.
 9. I aim to emulate them in this regard. Only my premises are different: the NAP and property rights based on homesteading.
 10. Maybe a few would survive and be placed in zoos? No, not if Huemer had this way. Extrapolating from what he writes, this would bring about suffering and therefore not be allowed. Ditto for medical experiments? How about if the animals were allowed to run “wild,” gamboling all the live long day? This difficulty would still remain: what would the lions, tigers and wolves eat? Their natures require meat, but from whence would this come? In Butler [23], a law was passed prohibiting the killing of animals except in self-defense. Amazingly, numerous vicious sheep started attacking people.
 11. Unhappily, he vouchsafes us no definition of immorality.
 12. Also lions and wolves.
 13. Huemer also mentions the fact that we do not blame babies who cry on airplanes, but that is an entirely different matter. Why different? Because we go by the species, not the individual. Rothbard [65] explains: “That the concept of a species ethic is part of the nature of the world may be seen, moreover, by contemplating the activities of other species in nature. It is more than a jest to point out that animals, after all, don’t respect the ‘rights’ of other animals; it is the condition of the world, and of all natural species, that they live by eating other species. Inter-species survival is a matter of tooth and claw. It would surely be absurd to say that the wolf is ‘evil’ because he exists by devouring and ‘aggressing against’ lambs, chickens, etc. The wolf is not an evil being who ‘aggresses against’ other species; he is simply following the natural law of his own survival. Similarly for man. It is just as absurd to say that men ‘aggress against’ cows and wolves as to say that wolves ‘aggress against’ sheep. If, furthermore, a wolf attacks a man and the man kills him, it would be absurd to say either that the wolf was an ‘evil aggressor’ or that the wolf was being ‘punished’ for his ‘crime.’ And yet such would be the implications of extending a natural-rights ethic to animals. Any concept of rights, of criminality, of aggression, can only apply to actions of one man or group of men against other human beings.”
 14. The ordinary house cat goes so far as to actually torture mice, not content with cleanly and relatively painlessly dispatching them. Also “... leopard seals ... kill penguins for fun” [62, p. 448].
 15. There is a humane killer for livestock (<https://search.yahoo.com/yhs/search?hspart=sz&hsimp=yhs-001&type=type7036981-sv7-dGFnUTEyMzI3ODYtbWFwfcw-e8e5314f81450539a54e869508b0e002¶m1=dGFnUTEyMzI3ODYtbWFwfcyxtYXBzLHYyXzI1NDY5MzM0MjY1Yzg5OTA4MzhmMzBhMC4zODI5Mzc0OF9lOTBhMWNmMDM0ZDNmZWZmN0ZGNhNzFlNDI5MzAxZCZxVUyxYSXUzXZcgb3JsZWFucw&p=humane%20killer%20gun¶m2=eyJzZzJwR2VvUmVkljoibm8iLCJleHRUYWdzljbpbInRoZW11X250c19tYXBzMl90aWxlcyJdLCJlcm93c2VyTmFtZSI6IkNocm9tZSI6ImJy3dzZXJWZXJzaW9uIjoiNzQiLCJleHRWZXJzaW9uIjoiG9zdGVkIiwZb2t0cmFtZSI6Ik1hcHMgTm93IiwZb2t0cmFtZSI6IiJ5aHNfc3luIiwZb2t0cmFtZSI6ImVJZCI6ImdpYmtuaWxlZWJhZ2ZvZG9vZmJhY2JiZWJrbWVib2tsIiwic2VsVGhhbWUuOiJ0aGVtZV9udHNfbWFwczJfdGlsZXMiLCJkb21haW4iOiJ3d3cubWFwcz25vdy5jbyIsImF1dG9TdWdnZXN0Q2xrljoiYXBwc19WMSIsIm9yU3JljoibmV3dGFilwianWNNljoimcIsImhmZXciOiI1NGQ0YzQxMi01N2Y2LTRhNmEtM2QyYi00MWFIZTViYWE5MjliLCJyZXZfc3JljoimMSJ9>). Lions boast of no such implement.
 16. Why the scare quotes around this word?

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17. Whaddeya mean, women can be mentally handicapped? That is so sexist!
 18. For a free market defense of insider trading, see Barry [1]; Manne [41], [42], [43], [44]; McGee and Block [46]; Padilla [52], [53], [54],[55], [56], [57], [58]; Padilla and Gardiner [59]; Smith and Block [68].
 19. On the folly of minimum wage laws, rent control and tariffs, see virtually any introductory economics textbook. One of the best essays ever written about restrictive licenses is Friedman [25, ch. 9].
 20. Even including multitudinous insects, I warrant.
 21. Libertarian punishment theory is quite a bit more Draconian. In the view of Rothbard [65, p. 88, ft. 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 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 [3], [4], [7], [8], [9], [10], [11], [12], [13]; Block, Barnett and Callahan [16]; Gregory and Block[26]; Kinsella [36]; Marjanovic [45]; Morris[48]; Nozick[50, pp. 363-373]; Olson [51]; Rothbard [65]; Whitehead and Block [70].
 22. Wealthy people could eat organic fruits and vegetables. But this is beyond the means of many of the poor. They would be placed in a difficult position were they to embrace the type of extended Huemerism I am now employing.
 23. Legally? Our author does not say.

Medical Mask Resellers Punished in Canada

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Abstract:

In times of pandemics or natural catastrophes, prices of commodities, such as water, food and medicines, tend to shoot up, in response to a surge in demand and depleting supplies. The government, in its misguided efforts to maintain “price affordability”, imposes price controls and anti-price-gouging legislation and bans the reselling of food and medical supplies. These interventions in the free market are the exact opposite of what the government should do, if it wants to ensure that enough commodities go to people who need them, that people do not hoard all available goods on grocery shelves, and most importantly, that suppliers have the incentive to produce more goods to meet current and future demand at market prices.

Keywords: medical masks, resellers, middleman, price-gouging, Covid-19, Corona virus, pandemic, shortage of goods, black markets, price controls, profiteering, free market, libertarian.

1. How Authorities React to Covid-19 and the Shortage of Goods

Recently in Vancouver, Canada¹, a family reselling medical masks were caught and slapped with a five-hundred-dollar fine for “operating without a business license”.² This was quickly followed by two undercover sting operations where two N95 mask resellers were caught and fined; treated as if they were thieves or drug traffickers, they had all their inventory seized by police.³ These crackdowns are the exact opposite of what governments should do, if they want to see an increased supply of medical masks to everyone who wants to buy them.

A local mayor, Brad West, has called the acts of the resellers to be “egregious, so irresponsible, so selfish and so motivated by greed at a time when these supplies are needed by the health professionals”.⁴ Unless these resellers acquired those masks in a dishonest fashion, this writer submits

that it is the actions of local authorities which are not only *egregious and irresponsible*, but dangerously misguided.

In saying those dramatic words, Mayor West implies a few things: First, that there it is a limited or finite supply of masks, that “there are only so many which can go around”. Second, that this constrained supply ought to be rationed to health workers first before anyone else; that customers who buy these masks have no legitimate health need for them (at least compared to health workers). Third, that the act of reselling those masks to make some money is morally wrong, akin to criminal behavior.⁵

2. Why the Mayor is Wrong

Point #1: Why Does the Mayor Presume That the Masks Are in Finite Supply?

As any economics major will tell you, supply is not fixed or static and responds to price signals – as well other factors – that occur within the market [13]. Since the Covid-19 outbreak, the government has barred retailers from raising the price of “essential goods” such as toilet and tissue paper, cleaning and medical supplies, wet wipes, etc., pursuant to “anti-price-gouging” laws [11]. Unfortunately, but predictably, what has happened since is a run on all these everyday goods, leading to empty grocery shelves.

During times of pandemics and natural catastrophes, what you see is wholesale panic-buying and hoarding of food, water and other supplies. Putting in place price controls and anti-price-gouging laws, with the noble goal of keeping prices “affordable”, means that customers will buy as much of an item as they can possibly can; this all but guarantees that the commodity will disappear from store shelves [9]. Price controls imposed by government lead to chronic shortages, as well as other costs which are not readily apparent [2]. Allowing prices to naturally rise is the best of way of allocating product to people who need them most and are willing to pay the new market price. Because of higher prices, consumers will conserve and buy only so much of the item that they actually need, leaving more of the grocery items on shelves for others to buy.

Point #2: Why Does the Mayor Presume Health Workers Ought to Get First Priority to Face Masks Over the Rest of Us?

Don’t you and I have a serious need for the masks, at least comparable to healthcare workers? The CDC now states that wearing masks helps reduce the risk of Covid-19 exposure [15]. Months before the CDC announcement, many people, especially in Asia, took to wearing masks as a way of reducing exposure and spreading the corona virus [8]. Now, there are even laws in place which require people to wear face masks when out in public [8].

The average person has as much of a right to face masks as any healthcare worker, in order to protect himself and his loved ones. The less persons he infects, the less burden is placed upon the healthcare system. But one might argue that healthcare worker is *more deserving* because of the special role he plays in saving lives during this pandemic. Let us assume that is correct. Does that mean we should also set aside special rations of food, water and medicine for healthcare workers, in case there is a shortage? What if there is a funding shortage in the healthcare system, should the government seize an additional percentage of our income to be diverted to hospitals and clinics? (The government might say, “Whatever plans you had for your money, it can’t be as important as saving lives.”) To ask these questions is to answer them.

If we are talking about who should be “deserving” of masks, what about truckers, transport workers, and freight operators, who are needed now to ensure vital goods and supplies get transported to market in a time-critical manner; don’t they serve the needs of the rest of the population? What about grocers, retailers and merchandisers, who ensure all of us get to buy goods needed to thrive and live

safely and comfortably? What about plumbers, electricians, auto mechanics, road workers? You get the idea.⁶ On these questions, the government does not get to make that call as to who should get certain commodities. We should let the market decide, and if people want to pay higher than previous prices, then so be it.

Obviously, the subjective value in face masks has shot up in the last several months, leading to a surge in demand; if we allowed the market to take its course, we would see a rise in prices [10]. This *would have been* a good thing. An increase in prices sends a signal to producers to divert more raw materials and factors of production into making more masks, because it is more profitable to do so [17]. It also encourages entrepreneurs in other fields and sectors to re-tool and begin manufacturing the scarce item. As we get existing producers ramping up production, and new producers entering the sector, supply rapidly increases; as demand gets satiated, prices eventually fall. These are the basic laws of economics.⁷

Unfortunately, because of government price controls and anti-price-gouging laws, the market has been hampered; retailers are not legally permitted to raise prices on scarce items, thereby restrained from sending critical price signals to all current and potential producers to make more of the scarce good.

Point #3: Why Does the Mayor Think It Is Morally Wrong to “Make a Buck” Reselling Masks?

These are customers who are voluntarily paying hard earned money – even at “marked up” prices – for items which they genuinely need and desire; according to the news report referenced above, customers were paying about \$40 for a box of masks [7]. Remember, these are free and voluntary transactions; for buyers, the masks are worth \$40 dollars (or more); for the seller, the masks are worth \$40 dollars (or less). These mutually beneficial transactions are a “win-win” for both sellers and buyers [10].

The mayor and the media might think that the resellers are exploiting the pandemic or taking advantage of the helplessness of others, that somehow their profits are undeserved or unearned. This could not be further from the truth. The reseller plays an important role in “the middleman phases of production”, helping to bring a needed product to consumer with efficiency and the least amount of cost [1, p.183].

Let us take a closer look at what the reseller actually does to bring a needed product to market. The reseller, through his resourcefulness and diligence, sources a producer and builds a commercial relationship; he obtains and inspects a sample of the desired product; if it passes muster, he negotiates a price with the producer. He places his order, forecasting that he will be able to fetch a certain price at market which will cover his costs, his time and labour, and other overheads. If he is wrong in his assumptions on price, demand or other variables, he will have to sell at a lower price, suffering a loss.

The reseller also takes certain risks that his merchandise might not arrive in a timely manner, or might be withheld by customs, or otherwise might not be delivered by a deceitful and unscrupulous producer. Once he takes possession of his merchandise, he must find a way to advertise his wares. He must find a place to store them, arrange a store front, and spend time selling the product himself or hiring sales people to sell for him. For all his time, effort and risk, the reseller earns his profit (provided his forecasts are correct). Yet, politicians and the media label these entrepreneurial acts as “profiteering” and “exploitative”, as if profits arise out of thin air through trickery and deceit. In reality, what the entrepreneur does is correct an “imbalance” in the economy, by bringing together mutually beneficial trades [1, pp.191-192]. At the end of the day, the buyer gets what he wants, and so does the seller. The beauty of the free market is that this happens voluntarily and without coercion. What could be better than that?

3. Going From Bad to Worse

To make matters worse, governments, in shutting down the productive activities of resellers, have cut off a channel of revenue for entrepreneurs. Many people are now out of work due the Covid-19 lockdown and unless they can come up with new sources of income, they must now rely on employment insurance, income supplements, interest-free loans and other forms of government welfare [4].

Because all of this puts an even greater strain on government coffers (i.e. our taxpayer money), the government, politicians and the media should be doing all they can to encourage people to become productive and self-sufficient. But these two recent, press-worthy clampdowns by local authorities yield just the opposite effect.

4. Government Interventions “To Do Good”

Many of us do not realize that without middlemen (e.g. resellers, distributors, retailers, wholesalers), needed goods would be in constant short supply, if they were available at all, and the money that would have to be spent to obtain them would dramatically rise [1]. Unfortunately, government interventions “to do good” have made our current supply woes worse.

We have seen this situation time and time again. Banning resellers and imposing price controls have driven the trade in scarce goods further underground. Just a few days ago, five million face masks ordered by a Toronto doctor and her friend were highjacked at an airport in Shanghai [5]. These masks are presumably bound for the black market where they can be sold for prices higher than the government-controlled “market price”. The people who get access to these goods will be those with the right connections and contacts.

It is no surprise that regimes which impose price controls set the stage for lucrative and thriving black market economies. In the former Soviet Union, infamous for imposing a top-down, planned economy on a massive scale, there were always two prices: the official retail price, as posted at government stores, and the “real price”, as evidenced in black markets [3]. Trading at black markets, though illegal and severely punishable, came to play a life-sustaining role during life in Soviet Russia; it was not unusual to see food stocked in a person’s fridge when grocery shelves went bare. There were no blue jeans that could be bought at government stores, but Russian youth still wore them, and paid up to the equivalent of a month’s salary, depending on the brand and style [3].

5. “Oh, It’ll Be Different This Time”

Governments the world over, for reasons of political expediency, choose to ignore the fundamental laws of economics, insisting that *their* style of command-and-control and central planning will be “different this time”. These governments try to fix previous economic disasters with one new decree after the other, gradually imposing more and more controls, until their regimes descend into full-blown socialism [16].

We have seen the results of these failed policies in places like Zimbabwe, N. Korea, Cuba and others. It is heart-breaking to see countries like Venezuela, once one of the wealthiest countries in Latin American with the world’s largest oil reserves [14], mired by a dysfunctional economy, hyper-inflation and high infant mortality rates. Because of its ruinous socialist policies, wealthy Venezuelans and investors have fled the country, and the remaining population now eke out a living at a subsistence level, facing daily shortages of food, medicine, electricity and other necessities. As the great libertarian scholar and economist Murray N. Rothbard stated, it is these socialist regimes where the daily grind of existence with little or no market activity impoverishes the people and deadens the spirit [10].

When will governments ever learn?

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Notes

1. This article, written in April 2020, contains references to date-specific events.
2. Just to be clear, these masks were not “hoarded” from local stores and resold. These masks were sourced in China and sold by a family at their nearby community park. The local mayor was so incensed that he has called for criminal charges to be laid [7].
3. Implausible as it may seem, the police say that the two resellers “voluntarily” relinquished their inventory into their custody! It appears the local police had nothing better to do than to search through online ads and arrest entrepreneurs for reselling face masks. Of all the outstanding cases out there for murder, rape and theft, this is where the police place its priority [18]. The arrest is based on new provincial orders issued pursuant to the *Emergency Program Act (BC)* banning the resale of food, medical supplies, personal protective equipment and cleaning supplies. The government website at <https://news.gov.bc.ca/releases/2020PSSG0020-000568> does not stipulate what types of food, medical supply or protective equipment are prohibited. Presumably, a person selling hotdogs or blueberries by the roadside could get caught and punished.
4. The family of resellers, undeterred by a \$500 fine, went out a second time to sell their masks to needy consumers, only to get caught and fined again. To which the local mayor said: “That's the part that is just jaw-droppingly shocking about this whole thing. It wasn't enough that they did it once and got caught. They actually went back again to the exact same spot to go and do it a second time.” [6] *Jaw-droppingly shocking* is one way of looking at it. The other is that the family considered the province's new orders to be draconian, unproductive, and infringes on a person's civil liberties to sell a product which consumers desire. It gave the family a chance to earn income and put food on the table when so many people have been laid off from work due to the widespread government lockdown of businesses and commercial enterprises.
5. The mayor was quoted as saying, “I am hoping and praying that the RCMP are able to lay criminal charges, because that's what is required here. Criminal accountability will do far more than a fine from a city can ever do” [7].
6. One could argue that anyone whose service is purchased by others serves a societal need and therefore should be able to access and purchase masks. Ones who do not serve any societal need are perhaps the homeless. But couldn't one make the argument that they are also deserving because of their vulnerability and unfortunate circumstances?
7. Socialists, Marxists and assorted “social democrats” don't believe in the laws of supply and demand, suspecting them to be highfalutin theory or “witchcraft”; at this point in time, science has no credible explanation for this mindset.

A Libertarian Perspective on Peace Enforcement by the United Nations

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Abstract:

Most analysts view the United Nations as a positive stabilising force in international affairs. In this paper, I critically assess this opinion of the UN's peace enforcement actions using the case studies of the Korean War and the Gulf War while relying on the non-aggression axiom of libertarian philosophy. In the process, I shed light on some of the moral considerations at play when deciding on UN-sanctioned military intervention.

Keywords: international relations, United Nations, peacekeeping, enforcement, libertarianism.

The direct use of force is such a poor solution to [any] problem, it is generally employed only by small children and large nations.
David Friedman [10, p. 4]

1. Introduction

The United Nations Charter reads like the constitution of a powerful body, almost a world government, charged with policing the world. According to Article 1.1 of the Charter, member states are bound to maintain “international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace”. These sweeping words suggest the UN is to have responsibility for dealing with aggressors, and Article 42 says that the organisation “may take such action by air, sea, or land forces as may be necessary”. Furthermore, Article 43 indicates that the Security Council shall have what amounts to a standing army at its disposal. “When the Council is united,” explains David Bosco [4, p. 3] “its members can wage war, impose blockades, unseat governments, and levy sanctions, all in the name of the international community”.

The Charter, though far-reaching, has rarely been invoked to its fullest extent. Its strongest provisions have only been summoned thrice: during the Korean War (1950-1953), the Persian Gulf War (1990-1991), and in Afghanistan (2001-present). In most other situations, the UN has played a

limited peacekeeping role by observing and collecting data, mediating settlements or patrolling borders where there is already a pre-existing will to peace.

But there is a danger that the UN's coercive power could be abused in future. This is because the orthodox view in the literature maintains that peace enforcement is a desirable tool to prevent the outbreak of another World War. Although advocates of enforcement concede that attempts to resolve disputes peacefully should be tried first, they also think that when negotiations fail the Security Council should step in and enforce the peace.

When it comes to the UN's role, mainstream commentators distinguish between 'peace enforcement' and 'peacekeeping'. Enforcement is authorised under Chapter 7 of the Charter, while peacekeeping falls in the half-way house – or 'Chapter 6 ½' – between pacific settlement of disputes and full-scale collective security. Peacekeeping is a small and focused activity that operates with the consent of all concerned, whereas peace enforcement imposes the will of the Security Council upon the parties. Enforcement is accompanied by rules of engagement that permit UN forces to act offensively on the battlefield. Peacekeeping, on the other hand, is usually restricted to patrolling ceasefire zones and acting in self-defence.

Supporters of peace enforcement emphasise its utility in separating combatants and creating a cease-fire that might not otherwise exist. By forcefully repelling aggression, enforcement aims to protect 'victims' unable to defend themselves. Enforcement is also said to act as a deterrent to aggressors intent on flouting international law. As proof of this effect, proponents argue that there has been a decline in the number of inter-state wars, genocides and human rights abuses since the Cold War, and posit that the UN is partly responsible for this trend. Remarkably, intra-state conflict now accounts for 95 percent of all wars [8].

Initially, most "UN missions were small, innocuous, painstakingly impartial, and unambitious by military standards" [12, p. 111]. Cold War era missions were composed of troops from neutral countries such as Fiji, Austria, Ireland, Canada, Chile and Ghana. Occasionally, "if the political environment was conducive to their use, UN peacekeeping missions even worked" [*Ibid.*]. In 1990, the UN controlled about 10,000 troops and spent \$400 million on eight small missions. Then in 1993, the budget exploded to \$3.6 billion financing 80,000 troops and 18 operations around the globe. The year 2010 was a turning point, when the peacekeeping budget came in at \$7.8 billion – double the regular budget.

The purpose of this paper is to critique the dominant line of thinking from a libertarian perspective. While there are many scholars who are not libertarians that have criticised the notion of UN enforcement, this paper hopes to show that libertarianism provides a useful and logically consistent framework with which to evaluate the organisation's actions. Part 2 explains the libertarian philosophy, with reference to the notion of collective security. The remainder of the paper in parts 3, 4 and 5 is focused on assessing enforcement and examining case studies. Part 6 concludes by noting that UN enforcement is fundamentally problematic.

2. The Libertarian Approach

What, exactly, is libertarianism? The Stanford Encyclopedia of Philosophy defines it as a "family of views in political philosophy" that is "closely related to... the classical liberal tradition, as embodied by John Locke, David Hume, Adam Smith, and Immanuel Kant". Libertarians prefer to practice methodological individualism. As Vossen [1] explains:

[Libertarianism] affirms a strong distinction between the public and the private spheres of life; insists on the status of individuals as morally free and equal, something it interprets as implying a strong requirement of individuals sovereignty; and believes that a respect for this status requires treating people as right-holders, including as holders of rights in property.

As a general statement of what libertarianism is, this definition encompasses a range of thinkers, from moderates like Milton Friedman to radical anarchists like Murray Rothbard. However, there are degrees of support for the full libertarian program. While it is fine to say that private property should be respected, precisely how much interference is too much? Would a 20 percent income tax be too much interference in individual property rights? What about a 10 percent tax? Or should all taxes be abolished? For the sake of analytical clarity, therefore, it is most profitable to adopt the description provided by Rothbard [19, p. 27]:

The 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.” “Aggression” is defined as the initiation of the use or threat of physical violence against the person or property of anyone else. Aggression is therefore synonymous with invasion.

This understanding provides instant moral clarity about what radical libertarians believe. First, libertarians assert that individuals own themselves (“the person”) and the fruits of their labour (“property”). Second, libertarians abhor aggression (“the non-aggression axiom”), whether constituting words threatening violence or actual acts of violence (“threat of physical violence”). It is important to note that this understanding leaves open the possibility of self-defence being justified, since only “the initiation” of violence is precluded.

The basic rule of thumb of non-aggression is typically accepted by mainstream commentators in the domain of interpersonal relations. Yet these non-libertarians generally neglect to apply the principle when dealing with groups of individuals who coercively exercise power over others in a particular territorial area (that is, what are known nowadays as ‘governments’). A variety of libertarian authors have, however, applied their theory to nation-states. Rothbard has, for instance, criticised the philosophical assumptions underlying the concept of collective security as a foreign policy strategy. “The fatal flaw in this seductive concept”, he suggests, ‘is that it treats nation-states by an analogy with individual aggressors, with the world community in the guise of a cop-on-the-corner’ [18, p. 81]. As he explains:

The cop, for example, sees A aggressing against, or stealing the property of, B; the cop naturally rushes to defend B’s private property, in his person or possessions. In the same way, wars between two nations or states are assumed to have a similar aspect: State A invades, or aggresses against, State B; State A is promptly designated the aggressor by the international policeman or his presumptive surrogate, be it the League of Nations, the United Nations, the U.S. President or Secretary of State, or the editorial writer of the *August New York Times*. Then the world police force, whatever it may be, is supposed to swing promptly into action to stop the principle of aggression, or to prevent the aggressor, be it Saddam Hussein or the Serbian guerrillas in Bosnia, from fulfilling their presumed goals of swimming across the Atlantic and murdering every resident of New York or Washington, D.C.

A crucial flaw in this popular line of argument goes deeper than the usual discussion of whether or not American air power or troops can really eradicate Iraqis or Serbs without too much difficulty. The crucial flaw is the implicit assumption of the entire analysis: that every nation-state *owns* its entire geographical area in the same just and proper way that every individual property owner owns his person and the property that he has inherited, worked for, or gained in voluntary exchange. Is the boundary of the typical nation-state really as just or as beyond cavil as your or my house, estate, or factory!

It seems to me that not only the classical liberal or the libertarian, but anyone of good sense who thinks about this problem, must answer a resounding “No.” It is absurd to designate every nation-state, with its self-proclaimed boundary as it exists at any one

time, as somehow right and sacrosanct, each with its "territorial integrity" to remain as spotless and unbreached as your or my bodily person or private property. Invariably, of course, these boundaries have been acquired by force and violence, or by interstate agreement above and beyond the heads of the inhabitants on the spot, and invariably these boundaries shift a great deal over time in ways that make proclamations of territorial integrity truly ludicrous.

Rothbard thus distinguishes between applying the principle of non-aggression at the interpersonal level and misapplying it in a collectivist sense on the vastly scaled up world of international affairs. When groups of people claim that they have been aggressed against, the actions of *each* person in that group counts when assessing the validity of their claim. And since governments are composed of many different individuals, the actions of each must be considered when evaluating the government's moral standing vis-à-vis other nations.

Alex Bellamy and Paul Williams [3, p. 214] have observed that "[t]he issue of peace enforcement has raised several important questions about the UN's role in maintaining international peace and security, not least whether the organisation is capable of using force to preserve its values and, perhaps more fundamentally, whether it should". From a libertarian standpoint the answer to the question posed by Bellamy and Williams is clear: no individual or group should initiate aggression against anyone else in any context or at any place. Only genuine self-defence against an aggressor is permissible. And since the UN and its member-states subsist on coercively acquired revenue from millions of taxpayers, they are from the beginning in violation of the libertarian precept against harmful violent actions. In this way, libertarianism provides a normative ideal against which to interpret events.

3. Drawbacks of Waging War as a Peace Strategy

There are some practical illustrations of the foregoing philosophical discussion. A weakness of collective security lies in distinguishing between the good guys and the bad guys. The UN Security Council is routinely called upon to decide between 'right' and 'wrong', 'good' and 'bad' and 'aggressor' and 'victim'. But collective conflicts are more complex than these categories. Sometimes, the history of a quarrel reveals that members of the Council have a conflict of interest in one or both sides or that the dispute has been the product of resentment over artificial boundaries carved up by a colonial power. Currently, any attempt by a nation to disrupt the prevailing order is classified as 'aggression'; boundaries that exist are often defended without much critical reflection. However, as Carpenter [5, p. 16] observes:

Many regions are still dealing with the legacy of the imperial age in which colonies or client states were established without reference to long-standing linguistic, cultural, and economic patterns. It is not surprising that those imposed artificial political settlements are now being challenged. Iraq's attempted annexation of Kuwait; the turmoil in the former Yugoslavia; the unravelling of Zaire; the Kurdish rebellion (in both Iraq and Turkey); the massive bloodshed in Somalia, Burundi, Rwanda, and Afghanistan; and the disintegration of the last multinational empire, the Soviet Union (which led to subsequent conflicts in Tajikistan, Georgia, and Nagorno-Karabakh) are all examples.

A tendency to eschew deviations from the status quo may be hard to justify considering legitimate historical grievances. The shifting borders that have characterised much of history leads Carpenter to exclaim,

[T]here is nothing sacred – or even fair – about stability, and...policymakers make a serious error when they sign on to a global collective security agenda designed to

protect the status quo. There are many instances in which radical change might produce a result measurably better than the current situation [*Ibid.*, p. 21].

Morally, often the interveners themselves are imperfect. All of the permanent members of the Security Council continue to violate human rights and disregard international law while at the same time demanding other countries respect those norms. America, which invaded Iraq in 2003 without Security Council authorisation, has a worldwide network of secret prisons and torture chambers run by the CIA [15]. The Russians are known for their repressive political system and suppression of free speech, the French have their incidents of police brutality, the Chinese government kills or kidnaps internal dissidents and there are many documented cases of British soldiers engaging in abuses in Iraq and Afghanistan [9].

Second, conflicts are rarely resolved permanently through military intervention, and so interventions are inefficacious from a utilitarian standpoint too. Even if external actors have for the time being separated the combatants, tensions may continue to simmer. Greg Mills and Terence McNamee find that “the abatement of armed conflict within states or between them is a process – uneven, complex, and nearly always reversible” [16, p. 58]. Half of all post-conflict states slide back to warfare within a decade of a settlement [7]. In this regard, Carpenter opines that,

[T]he best policy may be to let a conflict run its course and not attempt to suppress it or orchestrate elaborate political settlements...sometimes when a conflict ends with a definitive victory for one faction, it produces greater stability in the long run than would be the case were a battlefield verdict thwarted by outside parties [5, p. 20].

The main reason why intervention might not work in bringing about the desired objective is that neutrality is a necessary condition for the success of enforcement missions. Achieving this goal is difficult. As Pugh [17, p. 373] explains, “Local leaders manipulate the limitations of peacekeepers in order to get a forceful intervention that will act on their side”. Though large-scale enforcement action is most effective with the support of the permanent members of the Council, their input can politicise a mission. Sometimes enforcement actions are a pretext for imperial objectives: ruling elites formulate their interests and decide on where and how to intervene in order to further those interests. “It is no coincidence,” writes Pugh, “that the targets of enforcement are overwhelmingly from poorer parts of the world” [*Ibid.*, p. 370]. Coercive measures are rarely directed towards allies or client-states of the Great Powers, regardless of how culpable they may be, and instead tend to be aimed at a handful of pariah states that stand in the way of the Great Powers’ geopolitical ambitions.

4. Flashpoint in the Korean Peninsula

Libertarianism provides a normative standard by which to judge whether to intervene. A useful case study in this regard is the UN’s first ever enforcement mission. During June of 1950, the North Korean government invaded the sovereignty of South Korea. American President Harry Truman denounced the assault as “unprovoked aggression” and organised a coalition to repel the territorial ambitions of North Korean leader Kim Il-Sung [11, p. 35.]. To help facilitate such a coalition, the Security Council (minus the Soviet Union, which was boycotting the UN) authorised the use of force to defend against North Korean incursions.

Whether the UN ought to have intervened is a question that has been debated for decades. Some analysts have hypothesised that a Northern victory would have resulted in misery. Carpenter and Bandow [6, p. 1] speculate that “nearly 70 million Koreans today would be living in an impoverished tyranny” had the communists taken over the peninsula.

Though most scholars see North Korea’s attack as a “classic case of aggression as envisioned in the Charter” [13, p. 55], this assertion leaves much to be desired. Libertarianism requires that he who seeks equity must do equity, ergo, those seeking to impose justice must be blame-free from the

perspective of the non-aggression axiom. Yet this factor was ignored in deciding to intervene. Had it been considered then extenuating circumstances would have been taken into account when evaluating North Korea's actions. Consider the fact that the division of Korea into two countries by the Great Powers at the conclusion of World War II proved to be the principal cause of war. Even though most Koreans wanted a united nation, the Americans and Soviets ignored their desires to pursue their Cold War. The resentment thereby created set the scene for events to come [20]. Besides, South Korea was also at fault: its President Rhee had provoked the North by calling for a war even before the invasion, sought coercive reunification even after the US decided to limit its war aims, obstructed peace negotiations and refused to sign the armistice [6]. Moreover, raids (i.e. acts of aggression) across the 38th parallel were carried out by both sides in the lead-up to June 1950 [2]. It is obvious, therefore, that there was no innocent party, and so a libertarian would have weighed this toward favouring non-intervention in the conflict.

This is not to suggest that North Korea was justified in invading South Korea; despite legitimate grievances, modern state-managed wars are a violation of the non-aggression axiom because they cause the deaths of innocent civilians. Rather, my point is that when deciding whether the international community should intervene, the moral calculus should have accounted for the reality that the Great Powers were to blame for the socio-economic factors that led to war and that both sides had engaged in aggression prior to the invasion.

In any case, there are utilitarian arguments against intervening which align with the libertarian position. The assumption underlying the Korean intervention was that the use of force is necessary to fight the ideology of communism. Yet the experience with Vietnam suggests otherwise. After America departed Vietnam in 1975, the country gradually became a democracy and major trading partner. North Korea could likewise be on its way toward economic and political reform if the UN had done nothing, partly because Korean leaders would be unable to shore up support by blaming foreigners for domestic failings. In fact, the ongoing American occupation has angered even many South Koreans. "Many South Koreans," Carpenter [6, p. 20] writes, "have come to view the United States as a spoiler of the inter-Korean reconciliation process". This is because Americans insist on taking a hard-line approach to the North whereas South Koreans are more willing to compromise for peace.

5. Confrontation in the Middle East

The Persian Gulf War (Operation Desert Storm) was the next major UN enforcement action. On August 2, 1990, the Middle Eastern state of Iraq began its invasion of Kuwait by bombing Kuwait City. Just as in the Korean War where artificial boundaries drawn by the Great Powers precipitated a war over reunification, the attempted seizure of Kuwait stemmed partly from Saddam Hussein's belief that Kuwait had originally been part of Iraq before the United Kingdom separated the two entities. Immediately after Iraq's invasion, UN Resolution 660 was passed which demanded that Hussein withdraw his troops. A few months later, UN Resolution 678 authorised member-states to repel Hussein's armies and protect Kuwait.

A libertarian analysis shows that the intervenors were in no position to appoint themselves the judge, jury and executioner of Iraq's government. First, they were hypocrites since the United States had been coercing money from its citizens to arm Iraq throughout the 1980s. As such, many of the weapons used by Hussein against the Kuwaitis were sourced from America [14]. For the US to then extract more money from its citizens to intervene against its former ally whose military build-up it had encouraged seems inconsistent, to say the least. A second point is that since only voluntarily financed conflicts are consistent with the non-aggression axiom, a libertarian should strive to only sanction interventions that command unanimous (or as close to unanimous as is possible given the imperfect world we live in) public support. When compared to international opinion favouring repelling North Korea during the 1950s, the degree of agreement was far less during the Gulf War. Although the enforcement action was cloaked in a multilateral veneer, the cooperative command structure envisioned in Article 47 of the Charter was ignored. Instead,

American commanders made all the important decisions. It was American hegemonic interests that were served by intervening, and the US was able to bribe or bully other members into supporting it [17].

A utilitarian might retort, in spite of these libertarian contentions, that the intervention was successful because it repelled Iraq and deterred it from invading Kuwait again. But an accurate utilitarian accounting of the long-term costs of intervention shows that it has led to increased burdens on UN member-states' citizens that continue to the present day. "[T]he principal result of the 'UN victory' in the gulf war has been to make the entire Persian Gulf War region a US military protectorate," posits Carpenter [5, p. 22]. This regional entrenchment subsequently encouraged the US to invade Iraq in 2003, with that conflict effectively a continuation of the earlier Gulf War. The Iraq war, of course, is infamous as one of mankind's costliest mistakes – in both lives and treasure – in our 200,000-year history.

6. Concluding Thoughts

Peace enforcement has remained part of the UN's apparatus since the organisation's inception. Its two major peace enforcement operations, the Korean War and the Gulf War, resulted in about 2.5 million and 60,000 deaths respectively. In each case, the UN attempted to forcibly separate the parties and enforce a ceasefire. However, since the use of force tends to be a blunt instrument with the potential to inflict civilian casualties – and therefore violate the non-aggression axiom – it is advisable to undertake a comprehensive moral analysis of the stakeholders involved and their respective rights. A moderate libertarian would weigh up the violations of the non-aggression axiom required to finance the war along with investigating the history of the conflict (including whether the intervenors were imperfect in the situation) and compare this to the expected benefits to the cause of peace. In most cases the benefits are speculative and hard to quantify, so a libertarian would be cautious about intervening.

John Hillen [12, p. 122] is persuasive when he says that "By going 'back to basics' in its military ambitions, the UN would restore its credibility and its role as an honest broker in international affairs". What the UN is good at is diplomacy. Large-scale peace enforcement along the lines of Korea or the Persian Gulf War often creates more problems than it solves.

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**Nulla Libertarian Poena Sine NAP:
Reexamination of Libertarian Theories of Punishment**

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Abstract:

Libertarianism deals with what the law should be. In this article, we focus on what the appropriate law to punish criminals should be in a libertarian society; that is, one that respects the Non-Aggression Principle and property rights. We examine various theories of punishment and explain why some are incompatible with libertarianism. We contribute to the latest libertarian theory of punishment suggesting the necessity to take time preference into consideration. We conclude stating a limit and a limitation to libertarian punishment theories.

Keywords: Libertarianism, punishment, law, use of force, violence.

1. Introduction

The aim of this paper is to review the current literature on libertarian punishment theories, contribute to Rothbard and Block's theory, and determine what represents a limit to this theory that future work will have to solve, and a limitation that is inherent to any libertarian punishment theory. Our work is predicated on the praxeological insight that men always act employing goods or means to achieve their most valued ends. As these means are always scarce, conflict amongst men arises to control them. Therefore, we must ask ourselves how we are permitted to act in a world where you cannot not act, and resources are scarce. Libertarianism is a system of what the law ought to be, and it is the only system capable to provide a moral solution to our question [28].

Libertarian ethics are guided by the Non-Aggression Principle (NAP). The NAP prohibits the non-consensual initiation or threat of coercion against somebody else's private property [5, p.

30], [7], [8], [28]. Libertarianism allows for multiple theories of punishment provided that these theories respect the NAP and property rights based on Lockean homesteading principles [5, pp. 30-35], [7], [19], [21], [27, pp. 96-107], [28, pp. 45-50]. In order for a punishment to be libertarian it must be proportional. Anything else will be considered initiation of violence and the victim-turned-criminal will be committing an injustice, and thus the criminal-turned-victim will be able to punish him.

A libertarian punishment theory establishes the limits to what is the maximum use of defensive or retaliatory force that the victim of aggression may use in response to the initiator of violence [28, p. 85], [3, p. 103 n. 1]. It is the victim's decision to punish the wrongdoer up to the extent that the various theories of punishment permit [13, p. 156]. It is also legit for the victim to forgive the offender. Olson states: "[the individual] has the right to bring about justice when any of his above rights have been violated [...] the right to bring about justice does not reside in a court: it rests fully and irrevocable with the victim" [25]. Victims can rely on private defense agencies, arbitrators and any other individual or entity to aid themselves in the pursuit of justice. The State and public defense agencies are necessarily coercive, and thus non-libertarian.

Libertarian theories of punishment should not be confused with theories of liability. Theories of punishment deal with the legitimate force the victim can exert over the criminal once it is incontrovertibly liable and guilty for the victim's harm. For a libertarian theory of liability, we recommend Hoppe and Reinach's, which argues that to establish fault, intent, and causation must both be elements of the crime [11], [26].

First, we review several justifications for punishment. Second, we list the different punishment theories compatible with libertarianism. Subsequently, we suggest an addition to Rothbard and Block's theory. Fourth, we ponder on the role of arbitration. And we conclude stating a limit and a limitation to libertarian punishment theories.

2. Justifications for Punishment

Punishment, or non-initiatory coercion use, can be justified as deterrence, rehabilitation, utilitarian, defensive, restitution, and retribution. The deterrent justification of force prescribes to punish evildoers so as to set an example to the rest. Deterrence is not deontologist, because it uses people, in this case, criminals, as a means to achieve an end, not as ends in themselves. This is perverse and immoral. We punish an individual because the victim deserves justice. Rothbard cites the example that under the deterrence theory it is justified to punish an innocent man if that dissuades future offenders to commit a crime [28, 93]. Long concludes that this is justified, no by itself, but jointly with the retributive justification [22].

Rehabilitative justice or curative punishment aims at punishing people to refine the criminal's character. This is to abolish Justice and substitute it for mercy. As C.S. Lewis said [20]: "Of all tyrannies a tyranny sincerely exercised for the good of its victims may be the most oppressive (...) Those who torment us for our own good will torment us without end for they do so with the approval of their own conscience."

Utilitarian theories of punishment attempt to decide the right punishment by achieving the largest degree of happiness or maximizing wealth by calculating the most efficient use of force [9], [10], [29, pp. 322-325]. To the latter, Kinsella provides a concise and clear rebuttal [15, p. 20]:

Wealth maximization is not the goal of law; rather, the goal is justice—giving each man his due. Even if overall wealth is increased due to IP laws, it does not follow that this allegedly desirable result justifies the unethical violation of some individuals' rights to use their own property as they see fit.

There are also many points to criticize for those seeking happiness maximization. Utilitarians defend punishments if generates a greater good [29, pp. 322-325]. Similar to the deterrent justification, utilitarian theories of punishment also justify using force against one individual; in this

case, if that translates into greater happiness to the rest. Luna describing Randy Barnett's position, a utilitarian, says [1, pp. 184-191], [24, p. 272]

Barnett does allow for preventative detention for those who present a credible threat of future rights violations, although he claims that this is based on an extended version of self-defense rather than punishment. But whatever the label-punishment, defense of property rights, or maybe some hybrid we could call 'propertyment' – the result is the same, incapacitation of the offender, a traditional objective of utilitarian punishment.

Law has to worry about actions, not about future possible scenarios or thoughts. Moreover, who decides what constitutes a "credible threat"? Being punished before initiating any violence goes against any possible moral justification. Those conducting the calculus to decide whom to punish will also possess an incommensurate power over the rest, which will mean that these people will to all intents and purposes run that society. And what happens if you are potentially dangerous according to a credible-threat analysis, but find legitimate ways to exert your violence? What if you decide to practice sports where both parties consent to the use of violence? Utilitarians will be thrilled to punish these people just because they may be statically more likely to commit a crime even before providing them with a chance to their own lives.

Defensive punishment theory, along with restitutive and retributive theories respect the NAP. These justifications along with pacifism – not a punishment theory – are explained below.

3. Libertarian Theories of Punishment

In this section, we will review four possible theories of to what extent you can use force legitimately in a libertarian society [23]. First, the pacifist theory, which argues you can never employ force, even for self-defense. This theory undermines property rights as you reveal a preference over having your rights violated than not [23]. This is a legitimate option for anyone to embrace. Nonetheless, if this principle is adopted as law, it will cause the eradication of private property.

Second, the defensive theory of coercion. This theory states that you can solely exercise force to restrain an attack but for retribution or retaliation. The problem with this theory is that if the criminal succeeds and damages your property regardless of whether you defend it from the attack, you cannot request restitution for your lost right. This means you only have a temporary right to property until that property is damaged or taken from you. This is undesirable as it is unjust you cannot own the property you acquired the title of or homestead as long as you wish. The defensive justification allows defensive force to reject initiatory and retaliatory force. The following two accept retaliatory coercion.

The restitutive theory of punishment is our third theory. This theory contends that you can exercise force to protect your property and to demand restitution for your right, but any punishment other than the restoration of the lost property is unjustified [22], [23]. Your original right is to your property, to nothing else. Therefore, you are entitled to use violence if needed to restore your initial condition. Any other use of force is considered an initiation of force and violates the NAP. The main critique of this view is that when your property is damaged you lose more than the right you formerly had. You also pay the costs to capture the criminal and possible fees to ensure justice, such as hiring an arbitrator to settle the conflict. You, too, suffer from a frightening situation. Imagine that A enters B's house to steal a chair, and B wakes up and finds A in his house. A's intentions are unbeknownst to B, who sees a trespasser in his house and fears for his life. Moreover, A loses the right over his property to the extent that he inflicted damage to yours, and you can rightfully request that forfeited property of his.

Last, the retributive justice theory. Retribution justifies proportional force on two grounds: The victim has suffered more than just to the extent that his right was damaged and should be compensated for that; and the criminal has lost his right to property to the same extent that he

violated someone else's. Rothbard introduced the libertarian retributive theory in his book *The Ethics of Liberty* and Block has advanced it throughout several articles over the years [2]-[4], [6], [8], [28, pp. 85-96]. According to this theory, the maximum amount of force justified to punish crime is summarized in the following formula: Two teeth for a tooth, plus the costs of conducting the punishment and scaring the wrongdoer. The first tooth of the punishment equals restitution for my damaged property – i.e. restitution. The damage for the second tooth is substantiated in the fact that by damaging my property, you reveal you do not value your right to the same extent of your property as you think it is legitimate to use force against it. If A breaks B's computer, A shows that property rights over a computer have no value to him and therefore B is entitled to a new computer and to A's, or some property of the same value. The case is more complicated in non-restitutive crimes, but the same logic applies: B can exercise force against A to obtain compensation for the harm B suffered and coerce A in a similar way or request a compensation equal to that damaged.

Kinsella has developed a comprehensive justification for the retribution of the second tooth, the estoppel approach [14, pp. 612-630], [16], [17, pp. 316-318], [18]. Estoppel means 'not permitted to deny,' and so if A violates B's rights and B tries to exercise a similar force against A, if A opposes it, A will be estopped – i.e. A is not permitted to deny my punishment. Objecting to B's coercion when A initiated the attack means that A entered a dialogical contradiction, and thus A's claim that B's coercion is wrong is false. Therefore, B is able to punish A for a second tooth.

This principle proves more complicated with non-restitutive crimes such as rape. Block ponders that a solution to rape could be raping the wrongdoer with a "wooden broom handle, and with splinters if it was an aggravated rape" [3, p. 105]. Another alternative would be to hire people willing to rape and do so on behalf of the victim. Same with people willing to execute murderers hired by the victim's heirs. If there were such a job as an rapists' rapist or assassins' assassin fewer people would rape or kill innocent people as those with the worst impulses would see their needs legitimately satisfied. The second tooth or estoppel approach does not mean you have to suffer the consequences of your law-breaking, but you lose your right to have your right preserved.

The third and fourth stages of this libertarian punishment theory are "[the compensation to] the victim for the time and the cost of obtaining justice and for the mental anguish caused by the crime" [25]. It is unjustified to demand the victim to be responsible for any costs he paid to recover his initial position. That is why a libertarian punishment theory has to allow the use of violence to recover the expenses incurred during the punishment process [2, p. 434], [6, p. 129]. If the case is decided via arbitration, the convicted party will conceivably have to pay for the arbitrators' salaries. The rights' violator will also have to reimburse the cost of scaring the victim. Block proposes that "[the criminal] would be forced to play Russian roulette, with the number of bullets and chambers proportional to just how badly he frightened the victim" [3, p. 104].

We posit that out of the four theories explained in this section, the retributive punishment theory is the closest one to a libertarian punishment theory, and thus we shall call it the Libertarian Theory of Punishment for now. That said, in the subsequent section we propose a minor addition to it to improve it slightly.

4. Our Addition to the Libertarian Theory of Punishment

Walter Block says his theory "is a four-part penalty, consisting of two 'teeth,' costs of capture, and the imposition of terrifying the evildoer. But that is it! There is no more. Any other penalty would be adventitious, arbitrary, capricious, over and above the call of justice" [3, p. 104]. We, however, do think the wrongdoers should bear another cost to make the punishment fairer. That is a percentage of the first tooth's value from the moment the victim's property rights were violated until the rest of the punishment was completed equal to the interest rate of the currency used by the victim or a penalty equal to the percentage increase in its market price – whichever is higher. When we talk about the first tooth, we do not mean the price of the whole good, only the damaged part.

We posit that a libertarian punishment ought to include this additional cost because man by consuming goods when he has a preference for having more of a valued good demonstrates that he

values more present goods more than later ones [12, p. 319]. If not, man “would invariably choose those production processes which yielded the largest output per input” and never consume any goods, only save [12, p. 319]. This translated to a high time preference for the same good. Therefore, offenders should recompensate their victims for neglecting the opportunity to enjoy their property when they valued it the most.

This penalty should be seen as a compensation for the time lost using two of the best ways, albeit imperfect, to measure value increase over time. For example, if the first tooth’s market value has increased, the wrongdoer should pay a penalty equal to percentage increase of the first tooth’s market price as a compensation because this is a signal that other actors in the market value it more and the victim did not enjoy his good when he would have done so even more or had the opportunity to transfer its property title for other property and obtain more benefit. Conversely, if the interest rate of the victim’s currency is devalued or the first tooth’s market price has decreased, then the criminal has to pay the price before the aggression, as the victim lost the chance to use his property as he would have done had the criminal not damaged the good.

This penalty is more complicated to calculate for non-material damage compensation, but an alternative could be to pay the price of insuring yourself against that crime at the time of the wrongdoing or the current insurance price, whichever is higher.

5. The Case for Arbitration

As we have said, conflicts arise over scarce resources. These involve two or more parties. These parties may hold opposing views on how the dispute ought to be resolved. It is typical to either agree on one arbitrator or that each party chooses one, and then the appointed arbitrators decide on a third one (or nth in case there are more than two parties) during current arbitration settlements. Imagine A stole sixty chickens from B. A and B follow different moral systems; A is a utilitarian atheist and B is a pacifist. B wants A to work for him as he avoids inflicting physical damage on someone else. But A has made an economic analysis and calculates that the libertarian punishment is less restrictive than working as many hours as B requests. They reach no agreement. One way to resolve this dispute is for them to agree on arbitration and let the arbitrators decide a satisfactory decision for both parties.

Arbitration allows parties to conciliate their divergent perspectives and achieve a consensus. It, too, enables people involved in conflicts to resolve them according to their own moral principles or theories of justice distinct to restitution or retribution. Furthermore, arbitrated conflicts will have witnesses and probably their own enforcement mechanism to deal with non-complying aggressors, and make sure the victim does not overreach justice by its own hand [25].

6. Conclusion: A Limit and a Limitation

In this last section, we present two restraints that current libertarian theories of punishment, including ours, face: a limit and a limitation. First, any libertarian punishment theory needs to provide a limit to whom can be held liable for their crimes. We intuitively know we cannot punish a newborn for ruining your favorite shirt, the case is unclear with a ten-year-old, and we would undoubtedly punish a guilty thirty-year-old. We are against a continuum problem. We could set a minimum age limit or test to determine when people can be punished. Setting a specific age remains an arbitrary choice that defies reason and serves as a shortcut to ignore thinking about a more legitimate alternative. Should we seek to be true praxeologists, our solution ought to be predicated on human action, and as libertarians, on property rights and voluntary action. Therefore, we should start by deciding when human beings become self-owners, and thus have responsibilities. Rothbard posits that a human acquires full rights “when he demonstrates that he has them in nature – in sort, when he leaves or ‘runs away’ from home” [28, p. 103]. Another solution is to entrust this decision to the market. Private defense agencies will have incentives to ask for a low standard threshold from other agencies but set a high one for their clients’ children, which could set a market equilibrium of

what the proper answer is. Nonetheless, should children be punished before they attain full rights? Conceivably, we should punish them gradually according to the severity and age of the child. We would, however, fall into a continuum problem again; where do we set the threshold and why? Another question is whether we should punish their parents instead, or as well. Parents – or whoever homesteads the child – are, after all, trustee-owners of their children [28, p. 100]. Arbitrators will also be able to solve this problem on a case-by-case basis taking into consideration the duty of care applied by the guardians.

Second, a limitation to any praxeological libertarian punishment theory: we cannot make interpersonal comparisons of utility and have to in order to apply proportional punishments. The interest of the violated right to retribute and the costs of finding and judging the evildoer are given by the market. The second tooth and the price for scaring the victim, however, will be dissimilar for the criminal and the victim [13, p. 160]. If A steals \$100 from B, it is clear what our first and second tooth should be: B's \$100 (not necessarily the same cash) and A's lost right to \$100 of his. We need to make interpersonal comparisons of utility to decide the retribution except for theft of cash or an unopened good. If A cuts B's hand, how can we calculate its value to B? And how can we make A pay for the second tooth to B? By cutting A's hand, maybe? If B is a renowned pianist, should we cut A's whole arm? We can make certain estimations by looking at how much it would cost a renowned pianist like B to insure his hand, but this valuation would be far from perfect. The same issue arises with the price paid for scaring B, maybe A is a masochist happy to play the Russian roulette. This limitation supposes that other and our libertarian theories of punishment are imperfect, although as just as humanely possible.

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A Review: Digital Archeology of the Modern American Libertarian Movement¹

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Abstract:

The modern American libertarian movement began in the mid-1960s. The surviving written resources from this early era are vanishing, unless converted to digital format. This article provides background for the development of this movement and presents currently available online digital publication platforms. Along with some relevant publications in need of digital preservation.

Keywords: libertarian movement, libertarian history, libertarian publications, PDF, Rothbard, Republican libertarians, Libertarian Party, Ayn Rand.

1. Roots of the Modern American Libertarian Movement

Everyone who identifies as a “libertarian” today, in the American sense, has a different point of origin. This could be family, friends, loved ones, roommates, personal experiences or any number of other exposures. Today there are hundreds if not thousands of published books, magazines and articles. Thousands of Internet websites, blogs, discussion sites, YouTube and other videos. Along with less specific but still inherently libertarian themed works of art, films, poems, novels, plays and artistic or historical works of many different kinds. But 60 years ago, this was far different.

The pre Internet era of contemporary American libertarianism began in 1960, more or less. The exact starting point can’t be pinpointed, but before 1960 there were few self-identified American libertarians of the modern individualist, free market oriented kind. There were people who identified as “civil libertarians” for various reasons. But the American individualist limited government/market anarchist libertarian tradition was nearly extinct.

There were a few individuals, such as Dr. Murray N. Rothbard, (a Ph.D. economist/historian from New York City), who had formed a small circle of students and admirers of Ludwig von Mises and other economists of the “Austrian School” of economics. But this was mainly a study group. Novelist-screenwriter-philosopher Ayn Rand also lived in NYC and by the late 50s Rothbard had joined her Objectivist study circle for regular meetings. However admirers of Rand (Objectivists, Randians, and “Students of Objectivism” as Rand insisted on calling them) were mainly interested in her novels and the ideas and individualist philosophy expressed therein. She later wrote a several books of essays on her philosophy absent a literary context. However

“Miss Rand” didn’t like the term “libertarian.” Later in that decade she repeatedly denounced libertarians as “drug taking anarchists” and “hippies of the right” whose ideas were said to be incompatible with her official philosophy. Nonetheless most early American libertarians were familiar with her work and some, if not all, originally considered themselves Objectivists or Randians to one degree or another. Later the official Objectivist movement suffered a major split. By the late 60s Rand’s movement lost considerable momentum and influence among younger libertarians who disliked Rand’s authoritarian leadership style and culturally conservative personal values.

There was no organized libertarian movement or publications, though articles by libertarians, and sometimes mentioning “libertarians” or “libertarianism” appeared in a few small political magazines, journals or conservative publications.

There were also many other roads to modern American libertarianism. Many of which had no explicit basis in conservative, right-wing or anti-communist movements, trends or intellectual sources. Some individuals came from what might be loosely called the Left or New Left, such as the anti-Vietnam war activism, Quakerism or pacifism. A unique variant of libertarian pacifism, which had surprising and long term influence, arose from Robert LeFevre and his Colorado Springs based Freedom School, which lasted until the mid-70s. After moving to Southern California in the mid-60s this school later expanded to include the unaccredited Rampart College. This consisted of formal classroom study and lectures given by LeFevre at mini courses to young libertarians across America or on audio tape. LeFevre’s main teaching tenet which he termed “autarchism” reflected a radical individualist self-ownership principle along with consistent opposition to the use of physical force, even for self-defense. LeFevre’s personal history included leadership roles in oddball 1940’s southern California based spiritual cults (the Great I AM movement was one). But his later libertarian teachings about non-aggression, completely free markets and ethical and historical foundations of liberty caught on with several very successful entrepreneurs. Including textile manufacturer Roger Milliken and oil & gas entrepreneur Charles Koch Sr. and his family members. Several Freedom School students or teachers became mainstream libertarians and activist leaders. One young student teacher for LeFevre, Dana Rohrabacher, became a long tenured US congressman and champion of Ronald Reagan conservatism, with a distinct libertarian edge. Still other young libertarians emerged from both anti-Vietnam war and anti-draft activism. Some were intellectually and culturally leftist but became disillusioned with all forms of modern Marxism and state socialism. A few even came from “classical anarchism” roots dating back to the pre-communist Marxist European left. Others were disillusioned SDS activists from the American and European student protest movements. Still others, and there was considerable overlap in influences, stemmed from the 50s-60s explosion of imaginative science fiction.

A few very successful SF writers such as Robert Heinlein were explicitly libertarian or even anarchists. Some early libertarians such as L. Neil Smith enjoyed commercial success using future libertarian world themes. The mid 60s debut of ground breaking TV science fiction like Star Trek (though not explicitly very libertarian) made new ways of futurist thinking popular. Likewise the publication of J. R. R. Tolkien’s Lord of the Rings trilogy embodied fantasy tales where heroic Everyman characters seek out and destroy those who lusted after the Ring of Power, a clear metaphor for State Power. While Tolkien isn’t often considered a libertarian forefather, his Meta themes all present libertarian values and morality.

The development of effective cheap female birth control fueled a cultural sexual revolution. The post WWII Baby Boomer demographic, “New Frontier” JFK idealism about civil rights for racial minorities and rejection of colonialism and explicit foreign imperialism requiring military intervention all created the ideal circumstances for a new kind of American libertarianism to slowly emerge. American high school students of the time were routinely assigned George Orwell’s 1984 and Animal Farm and Aldous Huxley’s Brave New World for classroom reading. They thus absorbed some of those anti-state, anti-Stalinist messages and ideological themes.

It should also be noted that the American the First Wave feminist movement had some antecedents in early libertarian activism. Most visibly UC student Sharon Pressley founded and led

the Berkeley Libertarian Alliance, one of the first specifically identified libertarian groups formed. In the 70s she later helped organize the Alliance of Libertarian Feminists (ALF) which was a small caucus in the larger mainly Democrat Women's Political Caucus. It is also worth noting that while the Gay Liberation movement began publicly in the early 70s, many young gay conservatives and right-wingers became explicitly libertarian (or quiet fellow travelers) and no longer considered themselves conservatives. Anti-gay cultural bias was fairly strong in the traditional right/conservative circles, some of whom denounced gays as "unchristian" or immoral. Since libertarianism is about individual rights and personal choice, government persecution of homosexuals and bigotry was ideologically incompatible with libertarian values.

The John Birch Society and its publication *The New American* was more radical and in some areas anti-state, but overall the JBS was tainted with conspiratorial anti-Communist theories which put it inevitably beyond the "respectable conservative" pale. Somewhat surprisingly, the JBS today remains very anti-statist and hostile to federal Leviathan. Several JBS 60s era youth leaders became prominent early libertarian movement activists including Libertarian Party founder David Nolan and libertarian historian Jeffrey Rogers Hummel.

In the 50s the small booklet format *The Freeman* was published by the Foundation for Economic Education (FEE), which is still active. *The New Individualist Review* was initially sponsored by the University of Chicago Chapter of the Intercollegiate Society of Individualists. The word "libertarian" appeared in both of these publications numerous times and some later prominent libertarian scholars and writers were regular contributors. If you wanted to find published libertarian thought in the 1960s, you could usually find it there. However, other than the Republican Barry Goldwater 1964 presidential campaign – whose main speechwriter was Karl Hess, later a major libertarian writer, speaker and activist – libertarianism was seldom encountered in political discourse. Jokes about being them being "librarians" grew very tiresome.

Partly due to the influence of the 1964 Goldwater presidential campaign among young conservatives (including this author) and the related growth of the right-wing youth group Young Americans for Freedom (YAF), more explicitly libertarian writings began to appear. In the *New Guard*, the monthly YAF magazine, articles appeared in the late 60s specifically written from a libertarian viewpoint. In late 1968 a small classified ad in the *New Guard* promoted Murray Rothbard's new monthly newsletter *Libertarian Forum*. This had begun a few months earlier, which he co-edited with Karl Hess and later several others. At the same time the official Objectivist movement was imploding over the scandalous split between Rand's second-in-command, psychologist Nathaniel Brandon (who was Rand's secret lover), and Rand herself. Simultaneously the conservative YAF youth group was undergoing a major split between the "trads" (conventional conservatives in the anti-communist Buckleyite mold) and the much more energetic emerging libertarian wing. (YAF survives to this day under the auspices of the Young America's Foundation.) YAF libertarians were basically forced out at their August 1969 national convention in St. Louis. Many would date the start of the modern American libertarian activist movement to this event. The YAF Libertarian Caucus walked out in a bloc and became the foundation for several other activist young libertarian groups: the Society for Individual Liberty (SIL), the Radical Libertarian Alliance (RLA), along with numerous local libertarian youth groups and fronts.

By the late 60s after the split from YAF, the American libertarian movement largely broke away from any former right-wing or Randian predecessor groups. In many cases activists began small newsletters or magazines. These all were self-published until the Reason Foundation, newly created in the mid 60s, expanded *Reason* magazine into a modern glossy professional format in late 1969.

Published books about the early formation of the modern American libertarian movement include *It Usually Begins with Ayn Rand*, by Jerome Tuccille and *Radicals for Capitalism* by Brian Doherty.

2. Intellectual Artifacts of the Modern American Libertarian Movement

While archeology is usually thought to be the uncovering of physical artifacts of the prehistoric and early historic past, “intellectual artifacts” are much the same with respect to uncovering and preserving information. In modern times of course there are artifacts such as physical books, magazines, newspapers, films, audio and video recordings and others. The bulk of “knowledge” therefore, is contained in these objects. Most of the significant ones of these kinds are preserved in collections, either individual or more carefully, in sponsored institutional libraries.

Associated with the modern American libertarian movement as discussed above, were hundreds of mostly very small newsletters, newspapers, magazines and other printed items. Prior to about the year 2000 the Internet was for most publishers and readers not available as a ready substitute for the printed paper publications then in existence.

Paper publications are subject to deterioration over time. Newsprint fades and crumbles within a few decades. Paper becomes fragile, print fades and depending on storage may also suffer mold, water and insect damage. Without special preservation techniques paper publications will eventually be totally lost.

Paper documents are limited to the physical locations where copies may be found. Since early American libertarian publications are now at least 20-60 years old, other than the few which were originally obtained by libraries or subsequently donated, they are not available unless in the original owners personal possession. Over the decades most have been discarded due to moves, lack of storage, death, etc. Remaining copies, aside from some library collections, are mostly kept in attics, closets or dusty files awaiting eventual disposal. Many have been totally forgotten by their owners.

What we call the Internet wasn't an option prior to 1990. There were predecessors, but these were links among research institutions and not available to the public at large.

In 1995 Microsoft introduced an Internet browser making the still emerging Internet accessible to the general public. The transition of what is now called “social media” to the Internet can be said to have been completed by 2004 when Facebook was launched.

Although websites existed and HTML web markup language was being used, computer modem bandwidth and personal computer processors and storage devices were quite limited. Most were text-only. Publishing software for websites was expensive and individual expertise for small publishers was limited prior to about 2000.

Unlike paper documents and publications, software created “Portable Document Formats” or PDFs of these items that are essentially like photographs. Once digitized they can be placed on computer storage devices, the “cloud” (which is a specially linked group of independent computer storage servers), or on websites with individual local storage. They are essentially permanent so long as the electronic data remains intact and readable. On public websites these PDFs are available, readable and often printable from any digital screen device. No library visits needed.

With this PDF software or similar preservation methodology, effort future students and scholars of libertarian ideas and history will have original documentation produced contemporaneously with the development of this movement. An accurate and encompassing collection of original documents will help ensure that future analysis will be from original sources and encompass a wide variety of viewpoints expressed. The libertarian “mastodon bones” will be found in the PDF stratum.

As the American libertarian movement grows it will be valuable and instructive to learn how these ideas for change first developed and slowly matured. ‘Early adopters’ of libertarian ideas from many different sources argued and debated most of the same ideas, theories, history, philosophical details and applications of libertarian thinking which are debated and discussed today. Traditionally libertarians only agree in broad terms. Disagreement and debate over the details is a hallmark of real honest libertarian thought.

Along with innumerable late night dorm room bull sessions among libertarians and their critics, there have been since the early 1980s some academic literature about serious libertarian

subjects. Particularly in the area of economic theory, ethics, philosophy, “political science” and the study of “political economy” and history. Some but not all of these journals or academic writings are now available online as PDFs as will be shown below.

But a more general problem is one endemic to all serious discourse of important and particularly, new ideas. Ideas such as are embodied in libertarian thought. That is the problem popularly described as “re-inventing the wheel.” What is very evident to people such as this author, and others who were readers and consumers of the earliest creators and exponents of the modern American libertarian thought, is that most of these ideas have been around for a long time. Digging through the earliest sources, some of which featured major and serious academics and later “stars” of libertarian thought, provides nuggets of insights which are still being debated and remain relevant today.

Appendix.

Publications Available Today via PDF or other Online Means

The listings shown here were valid at the time located, most of which were compiled in the summer of 2019. Some listings may have changed, been updated, deleted or have invalid links. However they should provide a useful basic guide for further research.

Hosting institutions are shown which often include a number of early publications. Some of these are primarily libertarian, others may host a variety of other publications.

A. The Mises Institute <https://mises.org/about-mises/what-is-the-mises-Institute>

The Mises Institute, named after pioneering Austrian economist Ludwig von Mises, is an established libertarian organization which focuses on scholarly and educational materials and outreach.

It hosts a robust collection of early American libertarian publications listed below and accessible directly at the link directly above this list. Some of these publications pre-date the 1960s and date back to the post WWII era, when the term “libertarian” was barely used in the American political/ideological context. In most cases included in the listing it appears that complete collections of these publications are available, or nearly so. (One exception is Liberty Magazine, the contemporary one, not the 19th century version, for which only the 2003 issue is available on this site.)

<https://mises.org/library/other-journals>

AMERICAN AFFAIRS 1945-1950
AMERICAN MERCURY 1936–1943
FAITH AND FREEDOM 1951-1960
THE FREEMAN 1950-1953
THE FREEMAN 1950–1999
LEFEVRE'S JOURNAL
LEFT AND RIGHT
LIBERTARIAN FORUM 1969–1984
LIBERTARIAN PAPERS
LIBERTY MAGAZINE
ARTICLES OF INTEREST
PERSUASION 1964–1968
RAMPART JOURNALH AND FREEDOM 1951-1960
RAMPART JOURNAL

B. LPedia.org http://lpedia.org/Category:National_Party_Newsletters

The national Libertarian Party, founded in 1972, maintains an archival website which hosts a number of libertarian and Libertarian Party related publications. It is sponsored by the LP’s national committee and maintained on a volunteer basis. As such it is somewhat difficult to navigate and most materials are not complete sets, though it has a large variety of Party related publications and documents.

It hosts a few, or single copies of many other non-Libertarian Party related publications and libertarian related ephemera.

1) Libertarian Party News - The most important of the hosted publications is the national Party newspaper Libertarian Party News, or LP News. The earliest issue of which was produced in late 1971. This publication, usually produced monthly in newsprint editions, is a complete set. In most years fewer than 12 issues were published, however.

In addition to Libertarian Party News LPedia.org features a few single issues or a small number of other libertarian movement publications:

2) A is A Newsletter – Only a single issue from the late 70s, this newsletter format publication existed only for a brief time (unknown) but seems to focus on current events from a libertarian/Objectivist (Randian) viewpoint, given the title (one of Ayn Rand’s most used philosophical statements.) (Cannot currently locate this on LPedia.org, but seems to have been hosted there once.)

3) Libertarian Vanguard – The sometimes tabloid, sometimes newsletter format publication of the self-described Radical Caucus (RC) of the Libertarian Party. The LPedia.org site has only two issues hosted, February 1979 and March 1984. This publication was erratically produced though originally intended to be a monthly publication. It most often appeared immediately prior to Libertarian Party national or state conventions (particularly California), in order to influence decisions voted upon there. Most of the founders/members/writers were active in the LP and most continued careers in LP or other libertarian movement activism.

Most but not all of the Radical Caucus founders/members were from the San Francisco Bay area in California where the Cato Institute was originally located, along with a few other Koch funded publications at the time. By the late 80s most RC members had dropped out of the LP. Many of the core RC members in the late 80s went on to found the Libertarian Republican Organizing Committee (LROC), the first explicit libertarian group in the GOP, and some later went on in the late 90s to create and operate the still extant website antiwar.com

Libertarian Party News http://lpedia.org/LP_News

Libertarian Vanguard http://lpedia.org/Libertarian_Vanguard

C. The Unz Review <http://www.unz.com/print/>

This link is part of a much larger website mainly devoted to current events and essays along with many other pages devoted to archived books and articles, of which “Libertarian and Free Market” is only one of several categories offered. That is the subhead under “Periodicals” which early libertarian related publications are shown, in a unique “word cloud” format using differing type fonts for each publication.

There are a great many periodicals available; some are from the pre Internet libertarian era. Ron Unz is a former California based entrepreneur who has devoted himself to his extensive website and various political causes and issues, mainly in California. His general thrust on Unz.com is various “banned books” and subjects, often controversial topics not found elsewhere, with a counter Politically Correct thrust. But his extensive digital archives cover material from a large variety of political and ideological viewpoints, not merely his own perspective.

Among the archived pre Internet publications included in this site are:

1) Human Events – a mostly hard right bi-weekly tabloid format published since the 1950s. Some early libertarian writers often appeared, though few contributors were libertarians. Still published today.

2) National Review – This monthly magazine begun in 1955 by William F. Buckley is often said to have been a secretly funded project of the CIA to aid in the “ideological war” against Communism in the 50s. Buckley is now believed by most libertarians to have been a CIA “asset” but mainly

gained fame due to his media presence in NR and later numerous TV and radio appearances, some regular. His family had money, which made his publishing possible. Actual libertarians were nearly all purged from NR by the early 60s.

3) The Abolitionist - This was the initial Radical Libertarian Alliance (RLA) national newsletter, which the Unz site hosts for the period 1970-1971 issues. Remaining issues are scarce. The RLA was one of the initial libertarian splinter groups formed after the 1969 YAF split.

4) Cato Journal – The major publication of the Cato Institute, which was formed with the financial backing of the Koch brothers and originally led (in part) by Murray Rothbard, who was subsequently purged. The Unz site hosts a collection from the mid-80s (when founded) to 2000. Cato still exists as a major “libertarian think tank” based in Washington DC. The Journal mostly contained scholarly articles by a variety of Institute authors and outside academics and contributors.

5) Independent Review – The quarterly academic journal format publication of the Oakland CA based Independent Institute. Unz site hosts issues from 1986-1999, though this publication is still ongoing. Mostly scholarly articles or material about economic and social issues from a libertarian perspective by both Institute scholars and outside contributors. Also features articles of contemporary political issues interest.

6) Journal of Libertarian Studies – Published from 1977-2003, all hosted on the Unz site, this academic style journal featured research and analysis articles by independent libertarian scholars and authors. This was the principal outlet of the NYC based Center for Libertarian Studies.

7) The Libertarian Review – A magazine format publication featuring articles by libertarian writers on contemporary political and economic subjects. The Unz site hosts the entire collection from 1974-1981. This was one of the main Koch brothers financed publications.

8) New Individualist Review – Published by the Chicago chapter of the Intercollegiate Society of Individualists (still extant in a subsequent form), the Unz website hosts a complete collection of issues from 1961-1968. In a scholarly journal type format, this early publication featured articles by early libertarians mostly from academic backgrounds. Covered economic and political policy issues.

9) Persuasion – A very small but early newsletter format publication featuring short articles by libertarians about contemporary subjects and issues. The Unz collection features what are likely all the back issues, from 1964-1968.

10) The Rothbard-Rockwell Report – A complete collection of this well produced monthly newsletter, from 1990-1998 features short essays and articles by the authors in the title, along with a few other libertarian contributors. Focused mainly on current events in American politics and events from what is now deemed the “paleo-libertarian” viewpoint pioneered by the two main authors.

D. The Voluntaryists, Voluntaryist.com

The Voluntaryist 1982-Present

From their Home Page:

Voluntaryists are advocates of non-political, non-violent strategies to achieve a free society.

We reject electoral politics, in theory and in practice, as incompatible with libertarian principles. Governments must cloak their actions in an aura of moral legitimacy in order to sustain their power, and political methods invariably strengthen that legitimacy.

Voluntaryists seek instead to delegitimize the State through education, and we advocate withdrawal of the cooperation and tacit consent on which State power ultimately depends.

This long standing and unique libertarian group organized in the early 1980s shortly after the boom in the Libertarian Party growth following the Ed Clark/David Koch presidential campaign in 1980. David Koch's funding provided the LP with 50 state ballot access for the first time ever and considerable national publicity.

However a small but significant group of libertarians, including Voluntaryists founders Carl Watner and Wendy McElroy joined to create this libertarian group that rejects politics as a means of change. Harkening back to 19th century individualist anarchists like Lysander Spooner, Benjamin Tucker and Josiah Warren, this group instead advocates reliance on education and passive resistance to the State.

Their well-organized website contains all of the past issues of their regular publication (roughly bi-monthly) *The Voluntaryist*, in an online archive. This is linked from the Home Page at "Table of Contents & Archives" from 1982 to the present. In this they are one of the rare libertarian periodicals which is complete and online, hosted by the original organization (now run primarily by co-founder Carl Watner.)

E. The publications shown below are available on the author's aldallc.com

1) American Libertarian

Published from July 1986 to October 1989. This newspaper was intended to be a monthly tabloid but for various reasons sometimes appeared as a bi-monthly "double issue." The complete set is hosted at the indicated website.

One of the few, if not only, libertarian newspapers (other than the *Libertarian Party News*) which had color, regular photos and cartoons. It was intended to focus mostly on news and interviews as opposed to theory, philosophy or opinion. Though at times subject matter varied.

Edited and largely written by (this article's author) Mike Holmes, the financial backer (though not identified as publisher) was Houston cardiologist Dr. Matthew Monroe. Dr. Monroe also served on the Libertarian National Committee (LNC) from 1979 -1989. Holmes was the editor of the *Libertarian Party News* in 1984-1985.

The intention of *American Libertarian* was to take the contemporary libertarian movement seriously. To cover actual developments in a news format. The Libertarian Party's activities were the most visible during this period but AL also made an effort to cover other groups and news objectively. It never had more than 1,000 subscribers, often less, and lost money. Some contributors were paid small amounts but Holmes was unpaid. The publication was typeset and laid out by libertarian Sue Bjornseth, who worked professionally for a large graphics firm.

The newspaper folded shortly after Dr. Monroe's unsuccessful attempt to become Libertarian Party chair in September 1989. Monroe represented the Ron Paul/Murray Rothbard faction, all of whom subsequently left the LP by the end of 1989.

2) Republican Liberty

Republican Liberty was the official newsletter of the Republican Liberty Caucus (newsletter now in electronic format at rlc.org). The RLC and its first newsletter edition created in 1990 as a national umbrella and newsletter of state Caucus chapters. Eric Rittberg of Florida and a small group of mainly Florida libertarians (many ex LP members) were the initial nucleus of the group and Rittberg was the first *Republican Liberty* editor.

Roger MacBride, the renegade Republican 1972 Nixon elector from New Hampshire who cast his electoral vote for the 1972 LP presidential ticket of John Hospers and Theodora (Tonie) Nathan. He was the initial RL publisher and main financier. MacBride was subsequently elected as national RLC chair and served for several years. Mike Holmes became RL Senior/Associate editor and served until 2000.

The RLC exists to recognize state affiliates who are focused on helping to elect libertarian oriented Republicans to political and party offices. Modern American libertarian movement godfather economist/historian Murray Rothbard gave the keynote speech at the inaugural national RLC convention held in conjunction with the 1992 GOP national convention in Houston. Subsequently for the last two months in 1996 Dr. Ron Paul served as national RLC chair prior to his taking office after being elected (again, after a break) as a Texas Congressman. Paul's return to Congress was a major project of the RLC during the early 90s.

Republican Liberty was usually a bi-monthly though sometimes appeared less frequently or in some instances, as a special edition for GOP events. The RLC and its publications focused on practical party and caucus building activities and avoided philosophical debates or rigid definitions of what constitutes a "libertarian Republican." This non-dogmatic approach worked well and unlike during the initial phase, subsequently most RLC members have not been former LP members but are GOP activists from the outset.

Later Republican Liberty editors included Floridians Tom Walls and Phil Blumel. Internal leadership struggles disrupted regular publication of this newsletter in early 2002. Economics & Finance Professor Clifford Thies initiated his annual Liberty Index of the US Congress in 1989 as an early RLC related project, which continues today. (See separate links on www.aldallc.com) This Index, sometimes appearing as a supplement to Republican Liberty, is the only known detailed evaluation of US House and Senate members based upon their recorded votes. The results are based upon broadly defined "Economic" and "Social" issues legislation cast in either the US House or Senate.

3) Other Resources:

For further information about early American libertarian publications which have yet to be preserved via PDF but should be, see listings at www.aldallc.com.

Notes

1. Some of this material was adapted from the American Libertarian Digital Archive LLC website: www.aldallc.com created and hosted by the author.

Libertarianism: A Fifty-Year Personal Retrospective

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Abstract:

This retrospective, covering half a century, is a personal history of modern libertarianism. It provides some historical perspective on the growth of libertarianism and its impact on society, especially for those who were born into an existing libertarian movement, including political and academic paths. As outsiders, Austrians and libertarians can expect more than their share of difficult times and roadblocks, although that situation has improved over time. It also shows the limitations of the political path to liberty and the importance of the Austrian view that society changes via emphasis on sound economic science, its practicality, and its subsequent impact on ideology. Finally, it conveys the importance of solving practical problems and puzzles via the thin, radical version of libertarianism.

Keywords: libertarianism, autobiography, Libertarian Party, Ludwig von Mises Institute, Murray N. Rothbard.

1. Introduction

This personal retrospective, covering half a century, is an extremely thin slice of the history of modern libertarianism. Its purpose is to provide some historical perspective on the growth of libertarianism and its impact on society, especially for those who were born into an existing libertarian movement. As outsiders, Austrians and libertarians can expect more than their share of difficult times and roadblocks, although that situation has improved over time. If you attempt to make a career in these academic areas, you should view it more as a vocation than as a profession [5]. It also shows the limitations of the political path to liberty and the importance of the Austrian view that society changes via emphasis on sound economic science, its practicality, and its subsequent impact on ideology. Finally, I hope it conveys the importance of solving practical problems and puzzles via the thin, radical version of libertarianism, rather than the thick and compromised versions.¹

2. In the Beginning

In 1970 libertarianism did not exist as a coherent term meaning opposition to government coercion. Murray Rothbard (1926–95) would often lament that many of the good terms, such as liberalism and capitalism, had been hijacked by the bad guys. However, it turns out that the term libertarian is one of the few stolen by the good guys from the bad guys.²

At this time there was no significant libertarian social movement or political party to represent libertarianism. Although I was moving toward this political view by the age of eight, I would not hear the word for more than another decade.

The only institutional forms of libertarianism were the Foundation for Economic Education, which was founded in 1946 by Leonard Read, Robert LeFevre's Freedom School, which began in 1956, and the Institute for Humane Studies, founded by F. A. Harper in 1961. The National Libertarian Party in the United States began in 1972, and the Center for Libertarian Studies was founded by Burt Blumert and Murray Rothbard in 1976. However, I never heard of any of these organizations until the early 1980s.

I began listening to an alternative-rock AM radio station at age thirteen. You could only get its signal at night. The program that I listened to was sponsored by the John Birch Society. Its advertisements were long, thoughtful commentaries on events of the day. I rarely disagreed with its views, but I think it avoided airing its most controversial viewpoints. I guess I was a thirteen-year-old Bircher.

3. The Word *Libertarian*

Even though my political views were libertarian by the time I was eighteen years old [9], the encounter between me (on the one hand) and the concept and term of libertarianism (on the other) was still a couple of years away. During my sophomore year at St. Bonaventure University, I declared my major to be economics, acquainted myself with the writings of Milton Friedman, and saw the television advertisement for the Libertarian Party's presidential candidate, Ed Clark.

I was really excited about having a term for my political views and knowing that others out there that held similar views. Some people took a dimmer view of my new political home base. Only a couple of my professors were market oriented, and apparently only one, Scott Sumner, had ever heard of the Austrian school of economics. Even though the Austrian school was minuscule then, I knew that it had been very important in the past and I suspected it still had a lot to offer. Unfortunately, my history-of-economic-thought professor assigned Joseph Schumpeter's *Ten Great Economists: From Marx to Keynes*, and the only chapter that we did not cover was the one on Carl Menger, the founder of the Austrian school. We did cover the chapter on Joseph Schumpeter's professor Eugen von Böhm-Bawerk, but my professor did not discuss the connection to the Austrian school.

The topic I was most interested in was the Austrian business cycle theory, and I was very excited when a special course on business cycles was added in my junior year. The elderly professor who taught the course told us that he was retiring and they needed to put him in some classes, so they resurrected this course from the old curriculum. On day one he told us that Keynesian economics had cured the business cycle, so the course was no longer needed. How he could say such a thing given that the economy was in the worst shape since the Great Depression was beyond my comprehension. Maybe that was why he was being retired. The class and the textbook covered nine business cycle theories, and the Austrian theory was never mentioned – not even in the index!

I decided that I would be a guerrilla student activist. My main outlet was to discuss libertarian ideas and government failure with my friends and my professors in my economics, history, philosophy, and political science classes. I also pinned libertarian pamphlets around campus on billboards.

One day, I found a note attached to my dorm-room door asking for a meeting. It was from the dorm monitor, a position I did not even know existed. It turns out the monitor was the most feared man on campus. He was a former US Marines officer turned Franciscan friar – that is, a monk. He taught calculus and went to class in only his brown robe and leather sandals even if there was two feet of snow on the ground. I was frightened to death, and my roommates and friends would howl in laughter about my predicament.

It turns out that he had discovered my guerrilla activism. He recommended that I stop it because I might be considered either insane or a criminal. It was such a relief! The confusion over the meaning of libertarianism at this time was rampant – anything from communism, to libertinism, to the John Birch Society belief system was suspected – and I eventually developed a good, disarming explanation of what the term really meant.

I mention all this to note, importantly, that these were very dark early days for liberty and libertarianism. The United States had been taken off the gold standard; had experienced Watergate, the Vietnam War, gas lines, and the Great Stagflation (1971–82); and was currently mired in an economic depression. So, however despondent one might become about the libertarian moment now, remember that much progress has been made and that a massive amount of knowledge about libertarianism and the Austrian school is readily available to fuel future progress, thanks largely to Lew Rockwell and the donors to the Mises Institute.

As Murray Rothbard would remind me several times, he was always a pessimist in the short run but an optimist in the long run. Remember, we measure libertarian progress in terms of ideology, not votes, and there is no question that ideological progress of significant proportions has occurred. Most Austrian economists support the idea that ideological change is what causes social change [8].

The next semester, improvements started to take place. I took a course on international economics from a new professor, Scott Sumner, an ABD from the University of Chicago. He was a free market economist, and his course could have been renamed *Why Arguments for Protectionism Are Stupid*. One day before an exam, I went to his office hours to ask a technical question. After we were done with my question, I noticed he had a copy of *Human Action* on his bookshelf.³ I asked him about it, and he said his grandfather had given it to him and it was not part of the University of Chicago curriculum.

I later asked him if he would do a directed-readings class for me on Mises's book *The Theory of Money and Credit*, and he agreed. I think I had bought the book on sale from Laissez Faire Books or Liberty Fund. My performance in trying to understand Mises was less than optimal, but Scott knew Mises's work on business cycles and that kept me on track. I really did not think much about Scott again until 2012, some thirty years later, when I learned that he was ranked fifteenth on *Foreign Policy's* influential list of the top hundred global thinkers. Sumner was tied with Federal Reserve chair Ben Bernanke! I was astonished, but with a little research I confirmed it was the same Scott Sumner. His ideas were circulated through his blog, *Money Illusion*. Apparently, academia was losing its stranglehold on the flow of ideas. Scott's ideas were related to nominal-GDP targeting where the central bank uses monetary policy to achieve an annual increase in nominal GDP, of say for example 5 percent.

Bolstered by the historic performance of Ed Clark's presidential campaign in 1980, I decided to join the political fight, which seemed at the time the most direct path to liberty. I also wanted to learn more about Austrian economics. I joined the Libertarian Party and started doing volunteer work, such as getting signatures that would permit Libertarian Party candidates to get on the ballot. I eventually realized that the combination of ignorance and politics would make the political route to freedom a difficult one.

In terms of ignorance, the vast majority of people had never heard of the Libertarian Party, and of those who had heard of it, most did not know what it really meant. In terms of politics, the one thing that Democrats and Republican could almost completely agree on was keeping third parties off the

ballot by making the number of signatures prohibitively high for small nonprofit organizations – that is, third parties. The combination of these two factors would be toxic to the party’s success and growth.

4. Graduate School

Note that libertarianism at this time was 99 percent based on the idea of limited government, where government would consist of police, courts, and national defense and maybe some local government activities. The idea was to borrow some ideas of the Founding Fathers to assuage people’s fears of society breaking down into chaos. The vast majority of libertarians were minarchists and constitutionalists who supported the ideal of the night-watchman state, an idea popularized by philosopher Robert Nozick in his 1974 book *Anarchy, State, and Utopia* [3]. This was the idea that government should be viewed as a necessary evil. For the minority, the anarcho-capitalists, it was merely a tactic – a way to make political progress. I include myself in the latter group.

I also started applying to graduate schools, I think eleven in all, including New York University’s and George Mason University’s PhD programs in economics and Auburn University’s master’s program in economics. The rest were MBA programs. I was accepted to all these programs, but I chose Auburn because of its low cost and because I had already met Auburn University economist Roger Garrison at an Institute for Humane Studies summer conference in Kentucky. I had also researched the Auburn faculty’s publications, and the faculty all seemed to be writing interesting and practical academic papers, even some on Austrian economics. I was told it was in the top-three master’s-only programs in the country. Things were looking up when I was granted funding as well.

Things did not go well upon arriving at Auburn University. During my first week, one of the professors, upon learning of my interest in Austrian economics, said that Austrian economics is a historical fact but dead as a school of economic thought. He said that there were virtually no Austrian economists working at doctorate-granting universities and even if there was one and you wrote an Austrian dissertation, you would never find a decent job.

However, the next term the esteemed Leland B. Yeager joined the faculty at Auburn University from the University of Virginia. Yeager was a macroeconomist but was also noteworthy in international economics and economic philosophy. Garrison taught first graduate macroeconomics course, and Yeager was scheduled to teach the second and third macro courses. I was told he was a fellow traveler of the Austrian school and that he was translating one of Ludwig von Mises’s books. At the time, I was reading Murray N. Rothbard’s *America’s Great Depression*, a book that had a profound effect on me and my understanding of Austrian business cycle theory as well as the Great Depression in the United States.

I was very excited I could possibly write my master’s thesis on the Great Stagflation of the 1970s using Rothbard’s book as a template under the supervision of Garrison and Yeager. I knew Garrison liked the Austrian business cycle theory, but when I broached the topic with Yeager, he responded that the theory was a “grizzly embarrassment.” I was distraught and without a thesis subject heading into the third term. You write your thesis in the fourth term. I thought of dropping out of the graduate program and made the decision to do so, only to quickly reverse that decision. I got past my first year of graduate school.⁴

I think it was shortly thereafter that Roger Garrison called me into his office and sat me down. He told me that Lew Rockwell was moving the Ludwig von Mises Institute to Auburn University and would be bringing Austrians from around the world to give seminars, publishing books and newsletters, and supporting the economics department’s new doctoral program. Rockwell would be giving me a full scholarship for my next year in graduate school.

This all sounded too good to be true. I had never heard of Rockwell or the Mises Institute and not a word about a new doctoral program. I was naturally very skeptical, as Garrison was a well-known prankster and provocateur. He must have seen the disbelief in my eyes because he pointed to a large

box to my right and behind my chair. He said that Rockwell had sent it and that I should take a book from it. I reached in and pulled out a copy of Rothbard's *Man, Economy, and State*, one of the largest economics books I had ever seen. The only Rothbard book I had was *Power and Market*, and when Garrison said it was originally supposed to be part of *Man, Economy, and State*, I had no idea what to think. I left Garrison's office stunned with disbelief [7].

The Mises Institute showed up in the summer of 1983. It consisted of Lew and Mardi Rockwell, some boxes of pamphlets, and its technology: an electric typewriter. They moved into a tiny office in Thach Hall on Auburn University's campus. It was attached to a small conference room and actually in a very prominent location in the College of Business. Pat Barnett soon joined them, and Lew got to work, with Murray Rothbard running the academic affairs from afar. They were attempting to bring the world true economics and true libertarianism. What the Rockwell, Rothbard, Burt Blumert, and Ron Paul foursome have done is build an enormous worldwide libertarian movement. It all is now centered at the Mises Institute [4].

As the luckiest person in the world, I have had the privilege of seeing Lew and his colleagues build the Mises Institute into a worldwide powerhouse in the realm of ideas. He built the institutional framework, including Mises.org, that has helped support thousands of teachers and maybe millions of students. There are too many details of this tremendous success story to provide in this essay, but it is critical to highlight here that Lew provided the structural home for true economics and true libertarian political theory.

5. My Political Career

Shortly after I arrived in Auburn, I saw the Libertarian Party candidate for governor of Alabama being interviewed on a local TV station. I had never seen a Libertarian politician on television in my hometown of Geneva, New York, so I was pleasantly surprised.

However, I was also overwhelmed by moving to a new city and state and the tougher workload of graduate school. Fortunately, the citizens, students, and professors were all friendly to me. Walking down sidewalks on campus and even around town, total strangers would say hey as an informal greeting. Graduate work was nothing like college. You had to do the readings, you had to do the assignments, and of course you had to come to class under all circumstances. Exams were competitive and often graded on a curve, and a final grade of C was considered failing.

There was simply no time for politics until the end of the spring term. Sometime after my exams were over, I contacted the party's national office and it put me in contact with state headquarters. When I contacted one of the top officers of the state party, he invited me to the next executive-committee meeting in Birmingham – about a two-hour drive – the following Sunday.

I asked myself: an executive-committee meeting on a Sunday at someone's house? The meeting found me sitting on the floor listening to people talking about bylaws and Robert's Rules, but there was no political action until late in the meeting, when several votes were taken about officers and candidates for political office. I thought I was going to be there all night, but fortunately every vote had no candidate or a single candidate, so things went quickly.

Leaving the meeting on time to return to Auburn before dark, I found myself elected as state representative for District 3 (thirteen counties and 750,000 citizens in east-central Alabama). More puzzling, I was elected to be the party's candidate for the district's Alabama House of Representatives seat. As a six-foot, four-inch Yankee, I stuck out like a sore thumb, plus on election day I would only be twenty-four and therefore ineligible for the job.

I would soon learn who my opponent was. Alabama was a solid Democratic state, and the Republican Party was not running a candidate (things have obviously changed). The Democratic candidate was Bill Nicolls, who had been in Congress for twenty-two years, was a football hero at Auburn University, was a vice president of the most important textile factory in the district (an industry

that has now abandoned the district), and was crippled on D-Day on the beaches of Normandy and therefore a war hero.

Fortunately, I could turn to Lew Rockwell, who had some political experience, as an unofficial advisor. He said that given that the probability of winning was zero and given the demands of graduate school, I should run an educational campaign or nothing at all. I decided to give the educational campaign a try. On Sunday afternoons I would write fundraising letters once a month and letters to the editors of the state's newspapers each week. It would be about six hours before everything was enveloped and stamped. The campaign distributed pens, t-shirts, and posters, mostly to Auburn students. I feel like I was successful in getting a very large number of people to learn what libertarianism was, and I got 4 percent of the votes. I also met Jimmy Wales, the founder of Wikipedia, who helped out with the campaign.

This campaign was also successful in getting David Bergman, the 1984 Libertarian Party candidate for president to visit Auburn University and give a speech to students and faculty. That was followed by Ron Paul in 1988, Andre Marrou in 1992, and Harry Browne in 1996 and 2000. These events were well attended by students and often generated interviews in the student newspaper. I was also the faculty advisor to the Auburn University Libertarian Club for many years.

My mother died unexpectedly in 1987, and given that I was editor of the *Austrian Economics Newsletter*, I decided to buckle down and finish my dissertation. No more politics. Then one day, the state-party chairman paid me a surprise visit and begged me to run for Congress. I told him under no circumstance would I do it and gave my reasons. He then suggested I be a line holder and run for constable, which had no duties. I agreed just to get him out of my office.

I did not think I thought about the campaign until months later, when I was rudely awakened early on a Sunday morning. It was the politics editor of the local paper. "Is this Mark Thornton, Libertarian candidate for constable in Lee County?" My response was yes. "Did you know that you are running unopposed and that you will be the first Libertarian Party candidate ever elected in Alabama?" I lied and said, "Yes, of course." His next question was "What is your campaign platform?" I responded that I would abolish the office. That brief interview was apparently enough for his article, which was picked up by the Associated Press and newspapers across the state. I did interviews with all the major newspapers in the state and several smaller ones. My little ten-to fifteen-minute phone calls took no money and little effort, but generated more publicity than any campaign in the state party's history. The fact that I had lied made me realize I was becoming a politician. I knew that I never actually had the power to dissolve the office.

Then 1995 rolled around, and my effort to stay out of politics took a big blow. My libertarian friend on the Birmingham city council called me and told me he was running for US Senate as a Republican and that he wanted me to run for vice chairman of the Alabama Libertarian Party to prevent it from running a candidate for Senate. He said it would be a one-day effort, the position carried no active duties, and I could step down later. I agreed.

The convention was a real ruckus. I was elected vice chairman as planned. However, the elected chair did not want to waste the ballot access the party had earned, so he forced through a candidate for US Senate; mission not accomplished. Worse yet, just as I arrived home, the telephone rang. It was the chairman, who stated that he and the candidate for US Senate had resigned. At that point he informed me that my only duty was activated. I would take over as chairman, and, with no volunteers coming forward, I would also have to take over as the candidate for US Senate as my friend did not get the Republican nomination.

I designed the campaign to be hard-hitting and educational. I never once said that any government function was necessary. I knew more people by now, in and out of libertarian circles. I restricted my campaign time to weekends, Wednesday afternoons, and scheduled interviews and events. I built what I think was one of the first campaign websites and designed and purchased t-shirts and large road signs. I even produced thirty- and sixty-second radio ads, which I peddled to small rural

stations, hoping to get requests for interviews. It worked. I would often be on the air longer than the ad time I purchased! I got the endorsement of the Reform Party, Gun Owners of America, and some local groups, and I almost got the Constitution Party's endorsement until the chairman, Howard Phillips, violated a core belief of his party in order to deny me the endorsement. I came in third place with over 4 percent of the vote.

Then one day not long after the election, the sitting governor of Alabama, Fob James, came to Auburn University, his alma mater, where he had studied engineering and had been a star football player. He was going to give a speech at the brown-bag seminar that I had been running for several years. In his speech he strongly supported the gold standard. After his speech was over, he said: "Now where is that libertarian fellow who ran for Senate?" Sitting next to him, I raised my hand and said: "Governor, welcome to my seminar." The place roared with laughter. Then the governor said that he and his wife had seen me on TV and that he liked what I said and how I said it.

A few days later I was offered the position of assistant superintendent of banking and was told that I would actually be working for the governor's office and investigating all aspects of state government. After leaving this office, I worked briefly for the Alabama attorney general Bill Pryor. Describing those experiences would unnecessarily lengthen this essay, and I am working on a book on that subject that will explain it in detail.

6. Dissertation

My best professor, Robert B. Ekelund Jr., posed a titillating question in class one day. What does prohibition do to the quality of alcohol? I raised my hand and said it would decrease it, and my fellow graduate students agreed. He said no, it would increase it. We were told it was a question on the preliminary exams of the economics department at the University of Chicago. He explained that smugglers would buy expensive whiskey and cross the Detroit River into the United States. Given the high risk, it paid better to make the attempt with high-quality whiskeys and scotches, which commanded a much better price. I knew there was something wrong with the answer and felt like if I could solve it, I might have a dissertation topic.

Eventually I found data that tracked the potency of cannabis – that is, marijuana – and showed that it had increased in line with the money spent on the War on Drugs. Now all I would need was a theory. I remembered an argument in *University Economics*, the famous textbook by Armen Alchian and William Allen, called "shipping the good apples out." The argument is that the fixed cost of shipping lowers the relative price of higher-quality apples to distant consumers and leads to an outflow of high-quality apples.

I reasoned that the risk of smuggling illegal drugs into the United States increased the total cost of transportation and risk by a tremendous amount and that this reduced the relative price of higher-potency cannabis versus lower-potency cannabis. In layman's terms, you get more bang for the buck.

This changed the incentive of smugglers to smuggle higher-potency cannabis, and that in turn altered the incentives of growers to grow higher-potency cannabis in terms of the active ingredient, THC. The smuggled product would be stripped of all of its non-essential attributes and pressed into bricks for shipment. No stems, no seeds, just the medicinal part that has an intoxicating effect, and also no pleasantries like the rolled paper cigarettes with filters like we find in the legal tobacco market. Growers would eventually be able to genetically engineer cannabis to increase THC levels at the expense of CBD. This would change the cultural question "Do you want to get high?" to "Do you want to get stoned?"

I wrote my first paper on the subject, "The Potency of Illegal Drugs," in the mid-1980s and shared it with several friends and colleagues. In 1986 Richard Cowan dubbed my results "the iron law of prohibition." I outlined my dissertation on 3" x 5" cards but could not start my dissertation until after passing all my classes and all my preliminary examinations.

Still, I remained excited at the prospect of a dissertation that was a simple application of basic economic theory, that would be tested not with econometrics, because of a lack of data, but rather by looking back at the history of alcohol prohibition (1920–33) and at other illegal drugs. Plus, it seemed that the main logical argument was that the more you tried to prohibit drugs, the worse the results would be. No need for a cost-benefit analysis because there were no benefits, just costs. There was no trade-off. There was no need for value judgment. Thus I would be staying within the confines of Austrian economics and I would be striking a direct hit for libertarian political economy, against the dreaded War on Drugs.

Eventually, I took my outline for a traditional-format economics dissertation to Professor John Jackson, a man who seemed to know everything. He also seemed to work well with the entire faculty and was very well respected by everyone. He asked who I wanted as readers on my committee. I responded that I wanted Richard Ault and Leland Yeager. Richard Ault was the best microeconomist on a faculty of mostly good microeconomists. Leland Yeager was known more as a macroeconomist, but he actually knew everything, including libertarian political theory. These two men were libertarian from a practical or utilitarian perspective. These three professors were known for being helpful with students, and they deserve a great deal of credit for the success of my dissertation.

In the early stages of the dissertation, I was called in and asked to drop the subject and format of my dissertation. Instead of a dissertation on the economics of prohibition written in the traditional book format, it would instead be on the economics of the 1920s and written in the new three-essay format. It would consist of an essay on the tax cuts of the 1920s that I already had written, an essay on income distribution in the 1920s that I had already done a good deal of work on, and an essay on alcohol prohibition in the 1920s that I had started working on as a chapter of my original dissertation. The committee justified the change by noting correctly that I could finish it quicker and get three papers submitted to academic journals, and it would be better for my job-market prospects once I finished.

I saw the merits of their arguments and complied, but I was crushed that what I thought was a second great dissertation idea was being discarded. I only realized many years later that that dissertation would have been a dangerous one during the pinnacle of Reagan and Bush's War on Drugs. It would have been dangerous for me and my job prospects – and, in terms of things like budgets and grants, the department, the college, and the university.

I assembled an abstract and the work I had completed on the three essays of my proposed dissertation, submitted the result to my committee, and scheduled a time to present my proposal. The presentation took about fifteen minutes and was pretty straightforward. I was excused from the room and asked to sit outside the seminar room so that the committee could discuss the proposal. This discussion seemed to take forever, but the committee finally emerged about forty minutes later. They had rejected my proposal, and they said that I was to proceed on my original proposal on the economics of prohibition!

Many months later, after about six iterations of all of the chapters, an outside reader was appointed and a final oral exam was scheduled. The outside reader had many excellent questions and suggestions, including the suggestion that the entire dissertation should be edited again before being submitted for publication by an academic publisher. I had never thought about doing that, but about eighteen months later it was published by the University of Utah Press and would become one of their best-sellers. I went on to write many articles on this subject, both academic and popular.

7. Academic Career

All this time I was the editor or coeditor of the *Austrian Economics Newsletter* under the stewardship of Murray Rothbard. He emphasized to me that the publication should emphasize things that were controversial within Austrian ranks and not Austrian economics compromised by mainstream

economics and that the publication was rapidly losing its comparative advantage in the presentation of news about Austrian economics.

He also prodded me to write on the economics of antebellum slavery after I took the Austrian stance in an impromptu debate with Robert Higgs at a Mises University conference in which Higgs took the Fogel and Engerman view that capitalism kept slavery profitable, during a question-and-answer session. This resulted in me supervising a master's thesis and dissertation and publishing several academic journal articles in which my coauthors and I showed that it was government intervention that kept slavery economically viable, not capitalism per se.

Reading books about the Civil War had been a hobby of mine, and I included a footnote in my dissertation that the Union blockade was like the War on Drugs in that it radically changed the type of goods that were smuggled. That suggestion would ultimately lead to several academic articles and a book published with Robert B. Ekelund Jr. We showed that the intervention in the economy by the Confederate government was the reason they lost the war.

In the interest of time and space, I will just mention that I have been writing about Richard Cantillon, the first economic theorist and a proto-Austrian [2], for over twenty years, including doing a modern retranslation of his *Essay* with Chantel Saucier. I have also written many articles on how Austrian economists have done much better than mainstream economics at predicting economic crises and articles on the skyscraper curse, which culminated in the publication of a book in 2018 that predicted an economic crisis in 2020.

8. Conclusion

When you see the lowly beginnings of libertarianism in America, with the Austrian school of economics on the brink of extinction, it is hard to believe how much progress has been made. The progress has occurred around the globe. I had never heard the word libertarian until I was an adult, and my discovery of the word led me to discover the Austrian school, which was otherwise not in my college curriculum.

Having the good fortune to graduate from college during the depression of 1982, I moved to Auburn, Alabama, which, in addition to the scholars already mentioned, led me to scholars such as Randy Beard, Don Bellante, Mark Jackson, Bob Hébert, Randy Holcombe, Dave Laband, Dave Kaserman, John Sophocleus, Bob Tollison, and many more. Then, with the arrival of the Mises Institute, I was exposed to several Nobel Prize winners and most of the prominent people in the Austrian school, including especially my colleague Joe Salerno—not to mention all the great students I have had the pleasure of mentoring. These people have taught me the value of practical solutions to social problems and the importance of solving social puzzles. These solutions not only help people, they demonstrate the power of good economics and the free market.

Based on my experience in political campaigns, which are seemingly the most direct path to liberty, I think most of them are of limited value, with the important exception of dealing directly with the general public and engaging in the battle of ideas, especially Ron Paul's campaigns. At some point in the future, possibly the near future, such engagements will bear fruit.

Acknowledgements

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Notes

1. See Walter Block's case that thin libertarianism is libertarianism and thick libertarianism is not [1].
2. The word libertarian was first used to describe a variety of socialists [10].
3. I did not know this at the time, but this book was very important for the development of modern economic theory [6].
4. Otherwise, Yeager was wonderful, and I took four of his courses and participated with him in seminars and festive occasions.

An Interpretative Model of the Evolution of Hoppe’s Argumentation Ethics

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Abstract:

This article intends to be a simple guide to understand how Hoppe built the Argumentation Ethics. In my early studies of libertarian ideas, and of Argumentation Ethics in particular, I could not find a unique text that would explain how Hoppe put the necessary bricks together to build the Ethics. As I was curious about this issue, I assumed others would also like to know it. To write this article, I reviewed the main literature on Argumentation Ethics, starting with Kinsella’s *Concise Guide* [9]. Then, I interviewed Stephan Kinsella and Prof. Walter Block. Finally, I synthesized the main ideas from the literature and the interviews elaborating an interpretative model, presented in this article.

Keywords: Property rights, Argumentation Ethics, Libertarianism.

1. Introduction

One of the main philosophical questions over history was how humans should act with each other so that peaceful interactions could occur. This created the field of ethics that tries to find the universal applicable norm that all humans ought to follow so that conflicts are avoided, peaceful interactions are possible, and justice prevails. Finding such norm, with the use of reason, is necessary because if norms do not fulfill their essential purpose (avoid human conflict) they will produce exact the opposite.

Plato and Aristotle argued that the starting point for ethics was the human telos (purpose). In the Enlightenment, John Locke started the study of ethics from the unalienable rights that are common for all humans. Locke believed that all men were created equal by a Wise Creator that gave their children the rights of life, liberty, and property. Locke, then, concluded that all actions one ought to do should not violate the rights of another individual.

In the 1970s, Rothbard reformulated Locke’s natural rights theory by deducing the norms without using the premise of the Wise Creator. Following an Austrian economics perspective, he found

out how conflicts emerge between two or more individuals, then used human nature to deduce the Non-Aggression Principle, which stated that no one should initiate aggression against another person or property. Rothbard reached a similar conclusion as Locke, but offered a different and more extreme formulation. This is the founding point of Libertarian Ethics.

However, both Locke’s and Rothbard’s justifications for property rights suffer from the “is-ought to” problem. This problem, articulated by David Hume, states that norms (“ought to” statements) cannot be derived from facts (“is” statements) because they exist in different logical realms. This makes both justifications invalid because they derived the property norm (“ought to” statement) from human nature (“is” statement).

Hans-Hermann Hoppe, Rothbard’s student with a background in Austrian economy and philosophy, believed in the conclusion of the Libertarian Ethics and set off to give it a definitive foundation without the “is-ought to” problem. In this article, I will try to show how Hoppe eliminated the “is-ought to” problem by using different philosophical basis and tackling the problem from another perspective, following the path of Figure 1.

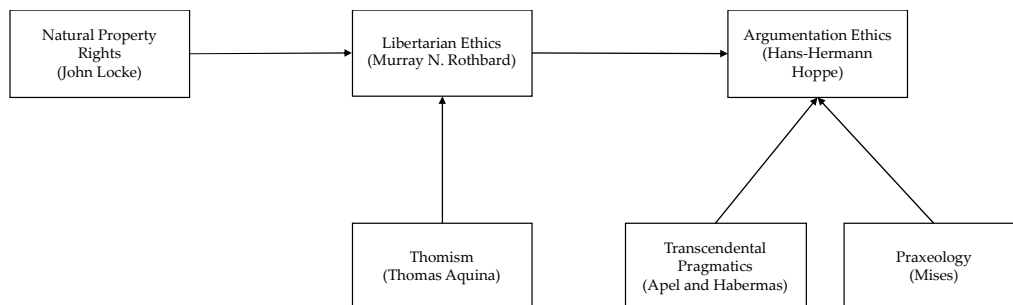


Figure 1: From Locke to Hoppe - A simple interpretative model.

I will start by briefly describing Locke’s Natural Property Rights. I will then discuss why and how Rothbard revised Locke’s work by removing the premise of the Wise Creator. Then, I will show how Hoppe combined his knowledge of Mises’ Praxeology and Apel and Habermas’ Discourse Ethics to build his Argumentation Ethics. Some readers could argue that Hoppe was influenced by Kantian ideas. According to Kinsella, this influence was punctual: “... the influence of Kant on Mises and Hoppe is very, slim... , what Hoppe took from Kant was simply the universalizability idea... the idea of justice” [8].

2. Locke’s Natural Property Rights

Locke developed a natural property rights ethics with laws that are derived from the State of Nature. Locke was responsible for changing the focus of natural law from the nature of the State to the nature of the individual as the most fundamental component for an ethical theory [15, p. 21].

2.1 The State of Nature

In ancient philosophy, the nature of the State (polis) was the fundamental part of ethics and the individuals were supposed to adapted to this nature. Locke, and the libertarians who follow Rothbard’s steps, believe that the nature of the individual is the fundamental part of ethics and the State needs to adapt to human nature.

However, Locke did not believe, like the Aristotelians and the Thomists, that the true nature of things (essence) could be comprehended. He did not believe that human reason was capable of knowing the nature of things, thus he did not have formal or ontological criteria for defining a human.

Classical philosophers did not have this problem because they believed that the nature of things could be known and, with that knowledge, they could deduce an ethical theory that was in accordance with human nature. Locke got around this problem by establishing reason as the ontological criteria for a human being. He also explained that reason could be known to be a fundamental part of the human (essence), because men were created to the image of God.

Locke [10] starts his second treatise with an argument against the divine rights of kings, because this was the main ethical doctrine at his time. Then, Locke develops his own ethical theory and justification for where political power is derived from. The starting point is his notion of *State of Nature*, from which he derives men's natural rights, the origin of political power, and the origin of government, "... a state all men are naturally in, and that is, a state of perfect freedom to order their actions, and dispose of their possessions and persons as they think fit, within the bounds of the Law of Nature, ..." [10, p. 25].

He then adds that it is "a state also of equality, wherein all the power and jurisdiction is reciprocal, no one having more than another ..." [10, p. 25]. At first, the State of Nature looks like a situation where laws are nonexistent and human action has no boundaries, but Locke shows that exists a law of natural preservation.

But though this be a state of liberty, yet it is not a state of license; though man in that state have an uncontrollable liberty ..., yet he has not liberty to destroy himself, or so much as any creature in his possession, but where some nobler use than its bare preservation calls for it. [10, p. 26]

He justifies this law by arguing that men are created as the image of God and therefore they are granted the inalienable right to life, liberty, and property that needs to be preserved [10, p. 26]:

The state of Nature has a law of Nature to govern it, which obliges every one, and reason, which is that law, teaches all mankind who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty or possessions...

With this line of argument, Locke established an ethical doctrine that states that no one has the right over another person, so any use of force against another's rights could not be justifiable. He also states that in order for maintaining these rights, every person has the right to punish those who do not follow the Law of Nature, giving the victim the right to violate the aggressor's rights.

2.2 *State of War*

The situation where one does not follow the laws established by the State of Nature, where one violates the rights of another individual, is defined by Locke as the *State of War* [10, p. 28]:

... a state of enmity and destruction; ... it being reasonable and just I should have a right to destroy that which threatens me with destruction; ... because they are not under the ties of the common law of reason, ... and so may be treated as a beast of prey, ...

Any person who enters this state, by going against the law of nature and violating the unalienable rights of another person, has negated his own rights and would not be able to justify against another member of the community to judge her actions and punish her. Locke is, then, faced with a dilemma, because every person of the community could become a judge of a "state of war situation". Thus, how can a decision be made if the person that is in the trial could be judged by herself? Locke tackles this problem with his social contract theory for a representative government (Section 2.4).

2.3 Property and Homesteading

Now, Locke needs to establish how one can have the right to own things from nature because, in the State of Nature, all men live in a state of equality where the goods that nature provides is common to everyone. However, men not being able to have property over the goods that nature provides (because they are common to all mankind) would go against the law of preservation because no one would be able to use resources to stay alive. “And though all the fruits it naturally produces, and beasts it feeds, belong to mankind in common, ... there must of necessity be a means to appropriate them some way or other before they can be of any use ... to any particular men” [10, p. 30].

He argues that individuals own their own person (self-ownership) and therefore they own their labor. He, then, develops the homesteading principle, which states that someone can mix her/his labor to an object in the state of nature (has no owner) making it an extension of one's person. When labor is mixed with the object, the object leaves the state of nature (common to all men) and becomes the exclusive property of the person who originally appropriated it [10, p. 30]:

Though the earth and all inferior creatures be common to all men, yet every man has a “property” in his own “person.” ... The “labour” of his body and the “work” of his hands, we may say, are properly his. Whatsoever, then, he removes out of the state that Nature hath provided and left it in, he hath mixed his labour with it, and joined to it something that is his own, and thereby makes it his property.

After establishing the natural law of human conservation, establishing that men are gifted with the unalienable rights to life, liberty, and property, and explaining, via the homesteading principle, how one can become the rightful owner of objects in the state of nature, Locke begins his theory about how humans left the state of nature and entered the civil society (origin of government).

2.4 Locke's Political Conclusion

Locke viewed the passage of a community from the state of nature to civil society as voluntary and contractual. The passage was necessary, in Locke's view, because it solves the problem of the aggressor of a crime having the right to judged himself, which was possible in the State of Nature. So, members of a community would make a (social) contract that would establish that only certain individuals would have the right to judge and punish, and from there establish a representative government whose only purpose was to follow the natural law of human conservation, i.e., to protect the citizen's inalienable rights. Because of these views concerning rights and government, Locke is considered one of the fathers of the Classical Liberalism.

3. Rothbard's Libertarian Ethics

Rothbard revisited Locke's natural property rights ethics because he was not satisfied with the direction it had taken, into a positivist type of ethics, and with the fact that Locke's justification was based on theological revelation, not on human reason [13], [15]. Rothbard was influenced by Thomas of Aquinas's philosophy (Thomism). The Thomists believe that all beings (including humans) have a nature and their nature has telos (end) that can be known by human reason. For the Thomists, a universal ethic needs to be compatible and derive from this human nature (why it is called natural law).

3.1 *Natural Law*

Rothbard's [15] begins by presenting and refuting the two main arguments against Natural Law: the ones who believe that only God or mystical elements can reveal man's nature (Augustinian position) and the others who believe that because the only way to know man's nature is by supernatural revelation, man's nature should not be regarded as a valid method for creating ethics (Skeptical position). Rothbard responds to the first group by saying that [15, p. 4]:

... they are reflecting an extreme Augustinian position which held that faith rather than reason was the only legitimate tool for investigating man's nature and man's proper ends ... The statement that there is an order of natural law, in short, leaves open the problem of whether or not God has created that order... The assertion of an order of natural laws discoverable by reason is, by itself, neither pro- nor anti-religious.

Then Rothbard concludes his thoughts [15, p. 6]: "Thus, let there be no mistake: in the Thomistic tradition, natural law is ethical as well as physical law; and the instrument by which man apprehends such law is his reason-not faith, or intuition, or grace, revelation, or anything else."

Therefore, being a Thomist, contrary to Locke, Rothbard created an ethic that the justification of its premises was not dependent on God, because man with his reason alone is able to know what human nature is and from there derive a universal norm.

3.2 *Teleological Ethics*

The other main difference between Locke's and Rothbard's ethics is the purpose of the ethic. Since Rothbard and the Thomist believed that every being has an end that is in accordance with its nature, for them the purpose of ethics is to establish norms that say what actions are good for human nature so this end can be achieved. He explains that "True natural law ethics decrees that for all living things, 'goodness' is the fulfillment of what is best for that type of creature" [15, p. 11]. In the case of Humans "goodness or badness can be determined by what fulfills or thwarts what is best for man's nature" [15, p. 11].

Because of Rothbard's roots in economic science, he explains the difference between what is value in economics (fact-based science) and what is value in ethics (normative-based science) [15, p. 12]:

The natural law, then, elucidates what is best for man-what ends man should pursue that are most harmonious with, and best tend to fulfill, his nature. In a significant sense, then, natural law provides man with a "science of happiness," with the paths which will lead to his real happiness. In contrast, praxeology ... treats "happiness" in the purely formal sense as the fulfillment of those ends which people happen-for whatever reason-to place high on their scales of value.

Rothbard defends that "happiness" and value in economic science are purely subjective to each individual and "happiness" and value in ethics is objective because it is established by the nature of the being and, because the nature of things can be known by reason, objective normative science can be established as well.

This notion of analyzing human nature and finding the ends that are compatible with it, and from there creating norms that help humans to achieve those ends without conflict, is called *teleological ethics* (from telos).

3.3 The Non-aggression Axiom

Rothbard defines the non-aggression axiom as follows [13, p. 27]:

... that no man or group of men may aggress against the person or property of anyone else. This may be called the “non-aggression axiom.” “Aggression” is defined as the initiation of the use or threat of physical violence against the person or property of anyone else.

Then he gives some implication of defending this axiom [13, p. 27]: “If no man may aggress against another; if, in short, everyone has the absolute right to be “free” from aggression, then this at once implies that the libertarian stands foursquare for what are generally known as “civil liberties” ...”

This axiom is the center of Rothbard’s ethical philosophy from which he derives a theory of contracts, interpersonal exchange, and punishment, and a unique view on what the State is (the conclusion that derives from this axiom is called the Libertarian Ethics). Rothbard, thus, argues for a natural rights justification for the non-aggression axiom,

Since men can think, feel, evaluate, and act only as individuals, it becomes vitally necessary for each man’s survival and prosperity that he be free to learn, choose, develop his faculties, and act upon his knowledge and values. ... Violent interference with a man’s learning and choices is therefore profoundly “antihuman”; it violates the natural law of man’s needs [13, p. 33].

In Rothbard’s opinion, this is why the natural law ought to be followed. Then, he explains and justifies the rights to self-ownership [13, p. 33-34]:

The right to self-ownership asserts the absolute right of each man, by virtue of his (or her) being a human being, to “own” his or her own body; that is, to control that body free of coercive interference. Since each individual must think, learn, value, and choose his or her ends and means in order to survive and flourish, the right to self-ownership gives man the right to perform these vital activities without being hampered and restricted by coercive molestation.

Rothbard’s next challenge was to justify the ownership of external objects. He, then, justifies Locke’s Homesteading principle by showing that its negation creates contradiction and therefore agrees with Locke that all individual own their person and therefore their labor, which they can mix with nature resources creating something that has a part of their personality in it, giving it ownership over that thing.

3.4 Rothbard’s Political Conclusions

The other main difference between Locke’s and Rothbard’s social philosophy are their political conclusions. Rothbard concludes that no form of aggression against a non-aggressor is justifiable. Therefore, institutions that commit aggression against a pacific individual are not justifiable. One of the institutions that, contrary to Locke, Rothbard says it is not ethically justifiable is the State [13, p. 29-30]:

The libertarian therefore considers one of his prime educational tasks is to spread the demystification and desanctification of the State among its hapless subjects. His task is to demonstrate repeatedly and in depth that not only the emperor but even the “democratic” State has no clothes; that all governments subsist by exploitive rule over the public...

He continues with an example [13, p. 30]: “If we analyze taxation, we find that, among all the persons and institutions in society, only the government acquires its revenues through coercive violence.”

Rothbard was responsible for the transformation of classical liberalism (statism) into a more extreme and coherent form of political philosophy (anarchism). He does that by using the premises of the classical liberals (property rights) and applying it to the final logical consequences: for any given society to follow the natural law and respect the natural rights of every individual, the State (monopoly of aggression) cannot exist.

4. Hoppe’s Argumentation Ethics

Rothbard’s reformulation of Locke’s natural property rights still fell into Hume’s “is-ought to” problem. Hoppe constructed a new justification, without the “is-ought to” problem, by using *a priori* true is-statements as premise and concluding an *a priori* true *is-statement* (fact), not an *ought to* statement (norm).

Hans Hoppe has managed to establish the case for anarcho-capitalist Lockean rights in an unprecedentedly hardcore manner, one that makes my own natural law/natural rights position seem almost wimpy in comparison [12, p. 44].

Hoppe developed his argument by combining two conceptual bases: transcendental pragmatics from Jürgen Habermas (his German teacher) and Karl-Otto Apel, and Mises’ Praxeology. These two bases are discussed below.

4.1 The Pragmatic Basis

The pragmatic basis will be explained first because is the one that is most often wrongly interpreted. Let us start with the concept of performative contradiction, which is an inconsistency between acting and saying [4] formalized as follows,

A performative contradiction occurs when a constative speech act $k(p)$ rests on noncontingent presuppositions whose propositional content contradicts the asserted proposition p [5, p. 97].

This is not a logical contradiction in the strict sense of Aristotelian logic, thus many believe that this type of contradiction cannot say anything about the truth value of a given proposition. Apel responded to this critic by saying that this contradiction enables a true and solid foundation for philosophy because it reveals transcendental statements that cannot be proven false because the only way to claim that they are false is the claimer already presupposing that they are true [1, p. 42]. Aristotle used performative contradiction to justify his three logical axioms by arguing that for someone to claim that the axioms are false the claimer needs to use the axioms as if they were true to propose the statement [2, p. 48]. Aristotle then concluded that the principle of noncontradiction from logic needs to be justified via a performative contradiction because it is a *sine qua non* condition of the act of arguing and truth-seeking.

According to Apel and Habermas, there are some norms implicit in the act of arguing that if negated would fall into a performative contradiction proving that they were true. These *sine qua non* condition of the act of arguing are called the *a priori* of argumentation. With them, Habermas developed an ethical justification called discourse ethics and because the norms were necessary truths for the act of argumentation, the justification does not fall in Hume’s “is-ought to” problem. However, Hoppe did not agree with the norms that his teachers found in the *a priori* of argumentation (socialist policies). He found other norms that are implicit in the argumentation process, the self-ownership axiom and homesteading, as it will be explained below.

Another main idea that Hoppe inherited from Apel and Habermas was their notion of what argumentation is and, consequently, why norms cannot be justified in the course of a monologue. For them, argumentation is a conflict-free interpersonal exchange of propositions (a person cannot argue

alone) initiated by a disagreement between the parties involved concerning the truth value of a given proposition (Hoppe will add the insight that argumentation is a subtype of human action, explained below).

4.2 The Praxeological Basis

Although Hoppe was influenced by the transcendental pragmatic philosophy, his knowledge of Austrians economics and praxeology lead him to a different route from that of his teachers (socialist ethics). Kinsella mention two important differences between Hoppe and Apel and Habermas.

First, Hans' awareness of Mises's Praxeology. The Austrian economics understanding of the logic of Human action. ... The idea of scarce means of action as key ingredient of human success and prosperity. Second, his understanding of the nature of the State, the nature of violence and aggression which he brought from Rothbard and Libertarian radicalism [8].

Praxeology is the science or study of human action. The name was first used by Mises [14], who defined human actions as [11, p. 11]: "... purposeful behavior. Or we may say: Action is will put into operation and transformed into an agency, is aiming at ends and goals, ... is a person's conscious adjustment to the state of the universe that determines his life."

This science rest upon the Action Axiom that states that *humans act*. Any claim trying to contest this axiom falls into a performative contradiction because the claimer needs to act proving that the axiom is true. From this axiom, Mises deduced a whole field of economics. Hoppe believed that similar deduction could be done for ethics, as it studies the actions of individuals, conflicts between their actions, and the norms need to avoid those conflicts.

An important component of the praxeological basis is Hoppe's notion that conflicts are the praxeological impossibility of two or more individuals to use a scarce mean for excluding ends simultaneously, from which three conclusions can be made. First, an individual cannot enter a conflict alone. Second, conflict only happens because every means is scarce (cannot be allocated to different ends concurrently). Third, conflicts only happen between acting agents (individuals) because they can allocate scarce means to achieve ends [6, p. 333].

4.3 Building the Argumentation Ethics

Finally, let us try to understand what insight that Hoppe possibly had that enabled him to merge these two philosophical bases to create The Argumentation Ethics. In my (possibly not novel) opinion, the insight was the fact that argumentation is a type of human action and therefore is ruled by praxeology laws. Hoppe used the same definition of argumentation as Apel and Habermas, but this insight enabled him to know that argumentation presupposes the utilization of the person's body as the primary means of action. Let us, then, look at Hoppes argument [7]:

- (1) That: All truth-claims – all claims that a given proposition is true, false, indeterminate or undecidable or that an argument is valid and complete or not – are raised, justified and decided upon in the course of an argumentation.
- (2) That: The truth of *this* proposition cannot be disputed without falling into contradiction, as any attempt to do so would itself have to come in the form of an argument. Hence, the *Apriori* of argumentation.
- (3) That: Argumentation is not free-floating sounds but a human *action*, i.e., a purposeful human activity employing physical means – a person's body and various external things – in order to reach a specific end or goal: the attainment of agreement concerning the truth-value of a given proposition or argument.
- (4) That: While motivated by some initial disagreement, dispute or conflict concerning the validity of some truth-claim, every argumentation between a proponent and an opponent is itself a conflict-free –

mutually agreed on, peaceful – form of interaction aimed at resolving the initial disagreement and reaching some mutually agreed-on answer as to the truth-value of a given proposition or argument.

(5) That: The truth or validity of the norms or rules of action that make argumentation between a proponent and an opponent at all possible – the praxeological presuppositions of argumentation – cannot be argumentatively disputed without falling into a pragmatic or performative contradiction.

(6) That: The praxeological presuppositions of argumentation, then, i.e., what makes argumentation as a specific form of truth-seeking activity possible, are twofold: a) each person must be entitled to exclusive control or ownership of his physical body (the very mean that he and only he can control directly, at will) so as to be able to act independently of one another and come to a conclusion on his own, i.e., *autonomously*; and b), for the same reason of mutually independent standing and autonomy, both proponent and opponent must be entitled to their respective prior possessions, i.e., the exclusive control of all other, external means of action appropriated indirectly by them prior to and independent of one another and prior to the on-set of their argumentation.

(7) And that: Any argument to the contrary: that either the proponent or the opponent is not entitled to the exclusive ownership of his body and all prior possessions cannot be defended without falling into a pragmatic or performative contradiction. For by engaging in argumentation, both proponent and opponent demonstrate that they seek a peaceful, conflict-free resolution to whatever disagreement gave rise to their arguments. Yet to deny one person the right to self-ownership and prior possessions is to deny his autonomy and his autonomous standing in a trial of arguments. It affirms instead dependency and conflict, i.e., *heteronomy*, rather than conflict-free and autonomously reached agreement and is thus contrary to the very purpose of argumentation.

Premises (1), (2) and (4) are rooted in Apel and Habermas’s insight about argumentation and their *sine qua non* conditions (pragmatic basis). Premise (3) is rooted in the praxeology basis from which Hoppe had the insight that argumentation is a human action. Premise (5) is a combination of the two bases because Hoppe had another insight that the Appel and Habermas’ presuppositions were praxeological presuppositions because an action is made when a proposition is being claimed. Premise (6) talks about the norms that Hoppe identified in the *a priori* of argumentation and is the most different conclusion from Apel and Habermas: a) how argumentation presupposes an individual control over his/her physical body (self-ownership) and b) how another presupposition of argumentation is the entitlement of the individual prior possessions (it is not explicitly mentioned, but the prior possessions need to be achieved in a peaceful manner either via Homesteading or trading). Finally, Hoppe concludes (7) that anyone who tries to defend a norm that is contrary to self-ownership and Homesteading (Libertarian ethics) will fall into a performative contradiction because the claimer already presupposes the truth of these norms because he/she is in argumentation and, because norms can only be justified in the course of argumentation, the Libertarian Ethics and all norms that derive from it will be logically defensible. As can be seen, the premises (1)-(6) are all is-statements and *a priori* truths that cannot be negated without falling into a performative contradiction. So is the conclusion (7). Therefore, the argument does not fall into Hume’s “is-ought to” problem.

5. Conclusion

My goal was to present and interpretative model of the development of Hoppe’s Argumentation Ethics. I briefly showed the evolution of Lockean property rights ethics starting with the Lockean original formulation. Then, I described Rothbard’s Natural Rights formulation that gave rise to the Libertarian Ethics. Finally, I tried to show how Hoppe developed his Argumentation Ethics by combining Mises’ praxeology and Apel and Habermas’ transcendental pragmatics.

In his interview, Prof. Walter Block described his view of Libertarianism, the non-aggression principle and property rights using a Teepee analogy (Figure 2).

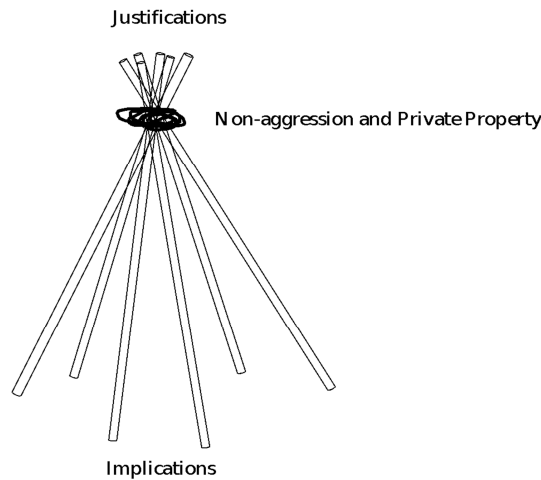


Figure 2: Non-Aggression Principle, Justifications and Consequences (source: [3]).

The place where the sticks cross is the non-aggression principle. Below, we have its implications, “...for example, what is the libertarian view on unions, what is the libertarian view on drugs, what is the libertarian view on whatever...” [3]. Above, we have the justifications for the non-aggression principle and private property rights.

There are many... Ayn Rand says that is due to “A is A”. There is the religious one ‘God says not aggress other people’. Another one is Natural Rights, which Murray, before he met Hans Hoppe, was an advocate of. Another one is utilitarianism or pragmatism ‘we will have a better and happier life; it will increase the GDP...’ [3].

What is then Argumentation Ethics? “... it is the best justification for the non-aggression principle and property rights” [3]. Nevertheless, it has also several critics. Some of them have been replied to by Hoppe himself and others [4], [9]. Other critics still need to be addressed, which seems to me a good direction for future work. Further, I would also like to work on understanding and promoting the consequences, to promote Libertarianism and libertarian ideas. I hope this article inspire others to do the same.

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Is Statism an Amoral Philosophy?

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Abstract:

Thick moral terms – such as theft, fraud, and counterfeiting – are terms whose very use implies a definitionally necessary moral evaluation of their content. In this paper, I shall argue that the philosophy of statism – that is, a philosophy grounded in the belief in the normative justifiability and desirability of monopolistic apparatuses of initiatory violence – is necessarily amoral insofar as it cannot apply thick moral terms in a logically consistent manner. By the same token, I shall argue that libertarianism – i.e., the view that only consensual social relations are morally acceptable – is the only general sociopolitical doctrine capable of accomplishing this task, thus, in contrast to statism, making its prescriptions susceptible to genuine moral evaluation.

Keywords: libertarianism, statism, amoralism, thick moral concepts, metaethics.

In this paper, I shall argue that the philosophy of statism,¹ insofar as its endorsement does not stem from any errors of a broadly cognitive nature,² is normatively grounded in amoral reasons – that is, reasons that, despite seeming to be rooted in moral concepts, cannot employ such concepts in a logically consistent manner, thus falling outside the purview of genuine moral discourse.³ By the same token, I shall argue that libertarianism – that is, the only social philosophy that consistently opposes the initiation or threat of institutionalized violence – is the only general world view that allows for putting forward prescriptive sociopolitical proposals couched in explicitly moral terms.⁴

Let me begin by making a rather uncontroversial assumption that there exist so-called thick moral terms, i.e., terms whose very use implies a definitionally necessary moral evaluation of their content [4], [13]. Think, for instance, of terms such as generosity and charity. It is logically impossible for there to be evil generosity or wicked charity. If one's generosity is excessive, wasteful, or otherwise inefficient, then it no longer merits the name generosity – it turns into profligacy. Likewise, if one's charity is based on giving away goods stolen from others, then it no longer merits the name charity – it turns into fencing.

Analogously, think of terms such as theft, counterfeiting, and Ponzi scheming. It is logically impossible for there to be benevolent theft, praiseworthy counterfeiting, or laudable Ponzi scheming. If one's act of theft consists in reclaiming stolen property, then it no longer merits the name theft – it

turns into an act of repossession. Likewise, if one's act of counterfeiting is not backed by stable value contracts or coercive legal tender laws, then it no longer merits the name counterfeiting – it turns into harmless printing of colored paper tickets or creating virtual bookkeeping entries.

In other words, there exist certain terms whose descriptive content implies a logically necessary moral assessment. Of course, this by itself does not constitute a comprehensive argument for moral objectivity, since we might differ in our application of these terms to specific instances of human action.⁵ This, however, is not directly relevant to my line of thinking here.

Now, let us ask a statist – that is, a believer in the desirability of the state and its institutions, including the ones mentioned in the latter part of this sentence – what conditions would need to hold for him to be able to justifiably accuse the IRS of stealing the money of private individuals, the Fed of counterfeiting money, or the Social Security Administration of engaging in a Ponzi scheme.

It seems to me that the statist can offer two relevant answers to this question, both of which leave him in a very uncomfortable position. First, given that the descriptive content of the above morally negative terms appears to match quite well the nature of the activities performed by the above state institutions,⁶ and assuming that the statist wishes to avoid the conclusion that the institutions whose existence he finds desirable engage in inherently immoral activities, he might suggest that it is definitionally and logically impossible for the IRS to steal, for the Fed to counterfeit, and for the SSA to engage in Ponzi schemes. In other words, he might suggest that the very nature of these institutions logically precludes describing their activities in these thick moral terms.

However, since redefining the terms in question so as to make them morally positive or morally thin whenever they are applied to the institutions of the state and their activities would be a semantically arbitrary move, it logically follows that the statist believes that moral categories do not apply to our judgments regarding at least some of the fundamental institutions of the state and their activities. In other words, the statist is logically compelled to conclude that he finds their existence desirable for reasons that are amoral, that is, immune to considerations of morality.

Alternatively, he might suggest that the thick moral terms mentioned above – theft, counterfeiting, and Ponzi scheming – apply only to illegal activities, while the activities performed by the IRS, the Fed, and the SSA are legal. This, however, implies that the only relevant normative difference here is that the state issued a certain declaration (the declaration of legality) with respect to its institutions and their activities, while it did not issue the same declaration with respect to the selfsame activities of private individuals and private organizations. This, in turn, implies that declaring something as legal (by the state, since, presumably, it is a matter of definition that only the state can issue such declarations) means removing the object of declaration from the realm of moral judgment and thus immunizing it to considerations of morality. In sum, the logical conclusion of this train of thought is that legality is an amoral, or, worse still, an amoralizing concept.

Moreover, it would be futile to claim in this connection that various forms of institutionalized fiat appropriation [12] undertaken by the state can be morally justified on account of the state purportedly being the only institution capable of bringing private property into existence in the first place. After all, contending that the state can override the property rights of individuals because it defines and enforces them would make the rights in question purely conventional. This, in turn, would divorce them altogether from the applicability of thick moral terms, hence once again leading the statist into the domain of amorality.⁷

Neither would it do to suggest that the moral status of specific activities – and thus the issue of whether specific thick moral terms describe them in an accurate way – depends on the number of individuals who morally approve or disapprove of them in any particular case. This is because such case-specific numerical considerations do not in any normatively relevant way alter the descriptive features of the activities in question, especially as regards the individuals who are directly involved in them [27]. In other words, the intentional taking of another person's property without that person's permission or consent is theft, regardless of how many people think that the term ceases to apply when

it is X rather than Y (or 1000 Xs rather than a single X) who does the taking. This, as far as I can tell, disposes of the notion that the statist could avoid the indictment of amorality by appealing to the alleged moral significance of following a democratic consensus.

At this point, a consequentialist-minded statist might suggest that even though he disapproves of the nature of the state activities described in the preceding paragraphs, he nonetheless accepts their existence as a matter of practical necessity or utilitarian calculus.⁸ In other words, he might claim that the state does indeed steal, counterfeit, and engage in Ponzi scheming on a regular basis, while at the same time contending that in the absence of the state there would be even more theft, counterfeiting, and Ponzi scheming. And whilst this last point is highly debatable [5], [6], [7], [10], [14], [16], [17], [19], [24], [26], it cannot be denied, the argument goes, that by making it the statist can escape the accusation of amorality.

However, it seems to me that such a position is logically inconsistent insofar as it employs thick moral concepts. After all, if condoning a given kind of theft is supposed to bring about a greater good in the form of preventing a worse kind of theft, then the former should not be called theft in the first place, since it cannot be classified as an inherently immoral and detrimental type of activity, one designated by a thick moral term. And yet, if its purely descriptive characteristics do not appear to allow for classifying it as anything else, then the whole argument seems to fall apart. Furthermore, if all the supposed statist says is that we should reconcile with the fact of institutionalized theft as something practically unavoidable, then he should not be classified as a statist in the first place, since pointing out the putative inevitability of a given phenomenon does not amount to finding it morally desirable.⁹

Nor can the above train of thought be saved by appealing to the notion that the immoral activities of the state can be justified in virtue of the state's supposedly unique ability to address various "existential emergencies". First of all, it can be plausibly argued on the basis of ample empirical evidence that, far from being uniquely able to resolve existential emergencies, the state is uniquely able to create them [21]. After all, it is exclusively large-scale, institutionalized, ideologically clothed physical violence – the essential hallmark of state operations – that can assume the form of global wars, systemic genocides, and other paradigmatic instances of life-threatening events [28].

Moreover, emergencies are by definition unusual, if not singular, occurrences. Meanwhile, the operations of the Fed, the IRS, and the SSA mentioned earlier, as well as the bulk of other state procedures, are routine activities. Thus, endowing them with a unique moral status on account of their purported ability to provide essential catastrophe insurance is an inadmissible move. Further, it has to be noted that the uniqueness of cataclysmic events makes it impossible to prepare for them in any precise and programmatic manner [25]. From this it follows that such events can be successfully confronted only after they happen, which suggests that the greater the number of individuals who can confront them on their own unique terms, the greater the robustness of their collective pool of responses. In this context, a coercive homogenization of such responses imposed by the state can only be counter-effective.

Finally, insofar as emergency situations can be thought of as a variety of so-called lifeboat scenarios, in which individual rights can supposedly be violated in order to secure a putative greater good, statism can in no way be characterized as a philosophy of dealing with emergencies. This is because violating another's rights in a lifeboat scenario, even though it is supposed to bring about highly desirable consequences, still counts as a moral transgression, which requires a punitive response. Given the exceptional nature of lifeboat scenarios, the victim of rights violation can certainly pardon the violator after the fact, but this only further demonstrates that the violation in question, though a pardonable offense, is nonetheless an offense, that is, an immoral act.

Meanwhile, what the statist claims is not that state activities such as taxation, fiat money creation, coercive redistribution, etc., are criminal-though-pardonable, but that they are non-criminal. Thus, what he claims is not that state activities can be retroactively justified on the basis of their purported unique capacity to deal with existential emergencies, but that they do not need any special

moral justification in the first place. In sum, once again, he either employs thick moral concepts without being able to explain why they do not seem to apply to the realm of state operations, or he rejects their consistent use, hence leaving the purview of genuine moral discourse.

To conclude, regardless of which of the answers discussed in the preceding paragraphs the statist decides to choose, it turns out that the justification of his choice has to be ultimately grounded in amoral reasons. In other words, it turns out that, contrary to some prominent anti-statist arguments [15], [20], [22], the philosophy of statism in its cognitively faultless form seems to be based not so much (or not exclusively) on hypocrisy or general immorality, but on amorality.

By the same token, libertarianism – i.e., the view that only consensual social relations are morally acceptable – emerges as the only general sociopolitical philosophy whose prescriptions are susceptible to moral justification. More specifically, it emerges as the only view that condemns anti-social activities in unambiguous and consistent terms, always applying thick moral concepts in a uniform manner and drawing out their deontological consequences with exceptionless regularity [1], [2]. It should come as no surprise that this philosophy, with its unique ability to treat thick moral concepts as genuinely thick as far as the principles of general social organization are concerned, is simultaneously completely thin with respect to more specific cultural and characterological values. After all, this is only to be expected given the assumption that all such values can be truly pursued only by means of consensual – i.e., truly social – activities. This fact, far from suggesting that libertarianism is itself an amoral doctrine, only further demonstrates that it is the only doctrine that allows social life to escape from the domain of amorality.

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Notes

1. Defined as a philosophy grounded in the belief in the normative justifiability and desirability of monopolistic entities whose operations and revenue are based on “institutionalized interference with or aggression against private property and private property claims” [9, p. 2].
2. I consider such errors to include, e.g., the Stockholm syndrome and Milgram-style obedience to authority, which make their victims accept the dictates of various self-proclaimed power figures not on the basis of any consciously articulated moral justifications, but on the basis of fear-driven rationalizations or resigned acquiescence, see, e.g., [11, ch. 6].
3. It is crucial in this context to distinguish between amorality (falling outside the realm of good and evil) and immorality (siding with evil). Admittedly, it would be more than possible to argue that statism is an immoral philosophy, given its central tenet that institutionalized aggression and the threat thereof are supposed to constitute the foundations of any well-functioning society. This, however, is not my goal here, especially since there are already a sizeable number of papers arguing for that conclusion. My present contention is categorically different: namely, to demonstrate that statism cannot meaningfully utilize moral concepts, regardless of its actual moral status as a normative system. For more on the concept of amorality, see [23, p. 146].
4. It is crucial to realize here that libertarianism, far from being a comprehensive moral doctrine, is actually the only sociopolitical philosophy that is fully compatible with every conceivable comprehensive moral doctrine, provided that the latter respects the principle of non-aggression, see, e.g., [3]. Thus, it would be a categorical error to point out in this connection that other non-violent world views, such as, say, pacifism, are equally capable of formulating prescriptive sociopolitical proposals couched in explicitly moral terms, since pacifism is more than a sociopolitical philosophy, having broader metaphysical and personal dimensions as well. In other words, in terms of the categorical distinctions made here, pacifism is to be regarded as a specific variety of libertarianism rather than as its doctrinal competitor. On the most general level of the taxonomy of sociopolitical world views, statism and libertarianism (i.e., organized initiatory violence and organized protective freedom) seem to be the only available options. Hence, if it can be established that the former is necessarily amoral, then on this most general level only the latter can aspire to being part of genuine moral discourse.

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5. Still, it has to be noted that the existence of thick moral terms constitutes a notable prima facie case for moral objectivity.
 6. The ultimate proof of this contention is the fact that the state would treat as a criminal any private individual who would engage in the same kinds of activities.
 7. In addition, it needs to be pointed out here that it is both logically and factually incorrect to suggest that no private property rights can exist outside of the jurisdiction of the state. The historical record clearly indicates that the emergence of private property precedes the formation of states, which is only to be expected, since, technically speaking, states are parasitic entities that subsist on coercively expropriated resources of productive agents, see, e.g., [18].
 8. This point was brought to my attention by Konrad S. Graf.
 9. For an example of an author who makes precisely this kind of „inevitalist” argument, and to see how much of a stretch it would be to call his views and recommendations “statist” (at least according to the definition adopted in the present paper), see [8].

Problems With the Notion of Freedom and Voluntariness in Right Libertarianism¹

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Abstract:

In this short paper, we investigate the problems with the employment of the notion of *freedom* and *voluntariness* in libertarianism. We pretend to demonstrate that these two, as conceived of by libertarians, figure in as the main issue when it comes to justifying its major institutions, say: bequeathing, gifts, transactions (or what they label as “voluntary transfer”). The difficulty here boils down to the fact that a purely rights-based idea of freedom and voluntariness, the pretensions of Nozick notwithstanding, cannot do alone, since it is the consideration whether we do something (e.g. bequeath, donate etc.) *voluntarily* (or *freely*) (in a non-moralized sense) that could account for the rights redistribution. Therefore, it seems that – at least sometimes – the notion of voluntariness (or freedom) is prior to the notion of rights.

Keywords: freedom, libertarianism, voluntariness.

1. Introduction

To leave no doubt as to the fact that libertarians subscribe to the view that the notion of freedom should be moralized; more specifically, that it should be rights-dependent, let us quote Rothbard to that effect:

We are now in a position to see how the libertarian defines the concept of “freedom” or “liberty.” Freedom is a condition in which a person’s ownership rights in his own body and his legitimate material property are not invaded, are not aggressed against. A man who steals another man’s property is invading and restricting the victim’s freedom, as does the man who beats another over the head. Freedom and unrestricted property right go hand in hand [11, p. 50].

It seems that – let us take Rothbard for granted – there is a relation of equivalence between freedom and rights. If the man beats a man over the head, the former was not *free* to do so simply because he had no right to do so. And apparently the converse also holds true, if he were indeed free to hit the other man over the head, he would have to have a right to do so in the first place (the other could be the former’s slave, or it could be a boxing match wherein the contestants give up their respective

rights not to be hit, thereby enjoying liberties to hit one another). This position is also present in Nozick's *Anarchy, State and Utopia*, who in turn settled the relation between *rights* and *voluntariness*.² This is evidenced by the following citation: "Other people's actions may place limits on one's available opportunities. Whether this makes one's resulting action non-voluntary depends upon whether these others had the right to act as they did [8, p. 262]."

The concept of voluntariness is crucial for Nozick since his agenda is to resort to the idea of *voluntary transfer* to justify free markets with their oftentimes antiegalitarian distributions of income. The underlying intuition serving to justify any arising inequality of income distribution was manifest in his Wilt Chamberlain thought experiment [8]. The point was that it seemed intuitively clear that once a transfer was voluntary (that is, the fans kept paying Chamberlain so that he could continue to entertain them), any resultant income distribution must be just. Hence, liberty was presumed to be *justice-preserving* [3].³ Yet, at first glance, it is not easy to spot that after all justice is about rights distribution and if it is an exercise of our liberty that preserves justice, liberty (or voluntariness of our choices for that matter) must, logically speaking, validate a new rights distribution and not depend on them.⁴ However, Nozick was caught in a conceptual predicament and the reason is that he vigorously argued for *rights-based* notion of *voluntariness*. More specifically, as noted by Cohen, the central tenet of Nozick's libertarianism is the principle of self-ownership and if the Nozickian libertarianism mentions freedom this freedom is rights-dependent [8, p.4]. Hence, as Cohen argues, one cannot informatively (synthetically) argue that there are no unfreedoms on the free market since free markets (with its definitional requirement of no rights violation) necessarily do not recognize any unfreedoms that would be compatible with a free market arrangement [3]. Because freedoms are rights-based, then as long as rights are respected, it is necessarily the case that no unfreedoms can occur, which is a merely conceptual truth. For example, once we adopt the Nozickian rights-based notion of freedom, we are conceptually barred from saying that person A is rendered unfree to enter B's property without B's permission for A's freedom to enter B's premises is non-existent in the first place. Fair enough, but then saying that there are no unfreedoms on the free-market is just trivially true. Moreover, note that the fact that freedoms essentially depend on rights (one is conceptually prohibited from saying that one is unfree to do A when A has no right to do A) bars one from affirming any non-trivial informative relation between libertarian rights and freedom. Additionally, however tempted one may be, one is unable to informatively state that a libertarian society *maximizes* freedom. Or indeed, contrary to Nozick, one cannot make a case for a just distribution of resources based on people's voluntary choices alone (Wilt Chamberlain imaginary case), for voluntariness is defined in terms of rights. To illustrate the above point, let us consider how making a putative moral case for free-market might look like by the light of Nozick's theory. We would like to argue that a free market is the only social arrangement wherein there are no unfreedoms. Superficially, it looks like it is the apparent absence of unfreedoms that *justifies* the institution of free market (with freedoms and unfreedoms being defined – at least *prima facie* – independently of rights. However, freedoms are, in Nozick's view, defined in terms of rights (remember: no unfreedoms occur unless rights are violated). Therefore, it follows from the very definition of free market as the totality of rightful (somewhat pleonastically) exchanges of property titles that no unfreedoms occur. But we wanted to reason in the other direction: we wanted to justify free market *via* the absence of unfreedoms. Now, it turns out that the notion of free-market really assumed it. In short, our apparent case for free market is vacuous. Precisely the same vicious circle haunts the relation between rightfulness and voluntariness. The fact that we can press more or less the same charge substituting 'voluntariness' for 'freedom' aside⁵, it is worthwhile to note that to account for any rights redistribution we must resort to the rights-independent notion of voluntariness (e.g. gift-giving). The argument for this appeals to the Hohfeldian notion of powers [5].

Eventually, we are going to argue that to make sense of the notion of right violation or the threat thereof (which is also illegitimate on libertarian grounds) we must appeal to some sort of rights-independent notion of consent. After this rather lengthy expository section, let us take a closer look at our successive points.

2. Nozick's Failure to Make a Case For Unbridled Markets

As already noted above, Nozick's attempt to make a case for unbridled markets reasoning from the absence of unfreedoms (or from fully voluntary exchanges, which, as presumed by Nozick, are justice-preserving) fails. And it fails instructively. We saw that Nozick resorted to a right-based definition of freedom. Hence, it cannot be the case that one is rendered unfree to do X if one did not enjoy a right to do so in the first place. Or conversely, a perimeter of our freedoms is marked *exclusively* by the rights we hold. Therefore, we are logically barred from saying that person A was rendered *unfree* to exclusively control this house only because person B acquired ownership of it. On the other hand, the only unfreedoms recognized by Nozick would be preventions of these actions which one *had a right* to take. So, if person A had a right to visit person B, then once A is prevented from doing so, A is effectively rendered unfree to do so. This point is sharply put by Olsaretti:

That is: on Nozick's view, whether someone counts as free to do something, or whether he does it freely or *voluntarily* [underlining mine], depends on whether he has a right to act in that way. Conversely, someone who is prevented from doing something he has no right to do, or who finds himself in limited choice circumstances that are the result of others' acting within their rights, does not count as having had his freedom constrained in any way [9, p. 5].

However, as further noted by Olsaretti: "A person's freedom to ramble is undeniably limited by other people's private property rights, on a neutral definition of liberty on which we are unfree to do something if others prevent us from doing that thing or would prevent us from doing it if we attempted it." Olsaretti goes on to argue that:

On such a definition of freedom, there is no relevant difference between the situation of the rambler, or the situation of a propertyless worker who accepts a hazardous job because the alternative is to starve, and that of Wilt Chamberlain and other talented citizens who, by Nozick's own reckoning, would count as having their freedom constrained by being forced to pay redistributive tax [9, p. 6].

It is now clear to see that an argument from freedoms justifying the free-market is (depending on the definition of freedom) either a) mistaken or b) question-begging. Let us analyze the two options:

a) If we adopt a neutral definition of freedom, then, as noted above, unfreedoms haunt free markets as well, for some agents are prevented from acting in certain ways simply because other agents enjoy property rights in some external resources (or in their respective bodies). A property right in a resource by definition entails an incident of exclusive enjoyment or control thereof⁶, unless decided otherwise by the very owner. Hence, it is impermissible for other agents to use a resource in a question, unless its owner gives his consents and thus allows them to do so. Concluding, neutral (not rights-based) definition of freedom enables us to maintain that unfreedoms in a fully right-respecting free-market is a non-empty category.

b) On a rights-based definition of freedom, it is *trivially true* that as long as rights are respected no unfreedoms occur. Yet, this stipulative move (defining freedom in terms of rights) cannot contribute to formulating any significant (non-trivial) view relating free market to freedoms/unfreedoms. To illustrate the point, suppose socialists *stipulate* that only actions that can count as the ones we are free to do are the ones *compatible with socialism*. And then, it simply follows that socialism cannot (in the logical sense of 'cannot') bring about any unfreedoms. For any unfreedoms are (by definition) the ones in which socialist regime is inoperative and conversely: we deal with freedoms only *within socialism*. To conclude, to somehow argue for free-market we cannot simply resort to something (in this case – freedom) that is simply defined in terms of something we are going to argue for (in this case: the Nozickian unbridled free market).

Having established that, Nozick's argument for unbridled free markets from the apparent absence of unfreedoms thereupon, though coherent, is at best circular; and at worst – on a neutral definition of freedom – simply false.

3. Rights-based Voluntariness Alone Cannot Do: the Problem of Bequeathing

Our next point, as promised, is related to the institution of bequeathing (or just plain gift-giving).⁷ Suppose I am an owner of a parcel of land which is no longer of any use to me. I recall that my best friend did me a favour for which I merely expressed my gratitude. Being spiritually elevated at the moment, I decide to open-handedly transfer my ownership of the land to him. Note, before the transfer is effectuated, the right distribution is simple: I am an owner of the land and my friend owes me only the duty of non-interference. Once I transfer my ownership to him, the legal positions swap. He becomes an owner and now it is I who owe him a duty of non-interference with his exclusive control of the land. Which *fact* can account for this redistribution of right? Intuitively speaking, whether this fact is purely natural or normatively-tinted, it had better not be tinted with rights. For if it is, we would be running in a circle yet again, or *regressus ad infinitum* would be looming. Consider, if the explanation of giving up a right would take pointing to another right, then the question might arise: how was the second right acquired? This in turn, would point to a third right, of which we may ask the very same question? How was the third right acquired? Did somebody else transfer it to you? How did he do it? And so on, and so forth. If instead, we can ultimately point to some right-independent fact, the explanation of bequeathing would be complete. Luckily, Hohfeldian powers come in handy at this point [5]. On the will theory of rights⁸ (to which libertarians subscribe), to have a Hohfeldian right is to have a claim against a particular person or people at large demanding their non-interference (as in the case of negative duties) or positive actions (as in the case of positive contractual duties); and, critically for our purposes, a Hohfeldian right also implies *powers* of two sorts: a power of waiver and power of demand. This establishes that it is the right-holder himself that may either absolve a duty-bearer of his duty or demand its performance. The exercise of powers demands an exercise of a voluntary (in a descriptive rights-independent sense) choice on the part of the power-holder. The quote from Olsaretti shall aptly illustrate our point:

Now, we need an account of the circumstances under which an action that seems to consist in the exercise of a power is indeed such. Your full property rights in your computer, for example, consist, among other things, in your having a power to hire it out; in order to know whether a particular transaction in which someone else has come to control and use your computer and you have come to earn £10 weekly in exchange for that respects your property rights, we need to know whether that transaction occurred voluntarily. (We would think it a breach of your property rights if someone removed your computer without your consent and then paid £10 weekly into your bank account.) Similarly with self-ownership. We could not make sense of the idea of full private ownership over something without the idea of what counts as a choice to use or transfer that thing in the relevant sense (so that the use or transfer of that thing is deemed to be rights-respecting), and correspondingly, of what counts as choice-disrupting, and hence rights-breaching, interference. The notion of consent, or that of the power to exercise or waive a right, are integral to all libertarian rights, and any full statement of these notions will implicate some notion of voluntariness, or freedom as a quality of our choices [9, p. 9].

Funnily enough, libertarianism needs a right-independent notion of voluntariness even to make sense of self-ownership. There are libertarians – most notably, Walter Block, who argue, and rightly so, that self-ownership is alienable, that is one can legitimately sell oneself into slavery [2].⁹ How to account for such a dramatic transfer of the most fundamental libertarian right from a former self-

owner to a present master? The answer should be obvious by now: a present slave exercised his power (and voluntarily so in a right-independent sense) and thus effectively gave up his right. It was his voluntary (understood psychologically? or as a felicitous Austinian speech act?) act, whose independence of rights must be affirmed on logical grounds alone, as established above, lest we are going to end up with either circularity or *regressus ad infinitum* [2].

Finally, our attempt to argue for such a *concept* of voluntariness that would be rights-independent tallies well the rather intuitive requirement that moral properties should ultimately rest on natural properties. Even if we put meta-ethical disputes aside and abstract from the question whether a normative property is reducible or irreducible to natural properties¹⁰, it would be indeed a really weird ontology which would allow for free-floating moral properties. After all, it is – in the end – some *natural fact* that count *morally* or *normatively* for that matter. Even such moral philosophers representing mutually inconsistent meta-ethical views as Derek Parfit and Michael S. Moore agree that it is natural facts that count as reasons (of whatever nature, be it moral, egoistic or epistemic) although they express this view in a slightly different language [7], [10]. Parfit says that the fact that “your wine is poisoned” [10, pp. 279-280] has a *normative importance* (which is, in his meta-ethical view, a distinct property attributable to this very fact), which means that it counts in favour of not drinking it; or, in other words, this fact gives a reason not to drink it. Moore, on the other hand, says that moral properties *supervene* on natural properties [7]. The relation of supervenience is that of asymmetrical covariance. That is, if we say that moral properties supervene on natural properties, what we mean is that if there is a change in *the moral*, this implies a change in the natural world broadly conceived¹¹ (another natural fact must account for the change in morality). However, the converse does not hold true. This is reflected in the levels of culpability. When an actor’s culpability is relatively lower, e.g. he negligently (he should have seen to it that the man did not get shot; that is, a reasonable man would have done so) shot another man, this is usually due to the *fact* that he did not intend to shoot the man in the first place (a psychological fact). By contrast, if his level of culpability increases (e.g. criminal law kicks in and our actor is accused of premeditated murder – shooting the victim with cold blood – with the deprivation of his liberty being a possible sanction), this in turn can be accounted for by *another* natural (psychological) *fact* that our actor *caused harm intentionally*. Therefore, a level of culpability appears to be *a function of natural facts*. As we can see then, our agenda of rendering voluntariness independent of rights fits the agenda set by the above-mentioned philosophers occupying highly divergent meta-ethical positions.

4. What Counts As a Right Violation or a Threat Thereof

We believe that as much as giving up a right (transferring ownership in case of bequeathing or gift-giving) requires a *separate* question of whether it was done voluntarily, so does a right violation or a threat thereof. After all, as implied in the previous section appealing to Hohfeldian powers, it is the right-holder who is a sort of sovereign who *exclusively decides* by exercising his powers whether the correlative duty bearer’s duty is *waived* or *demanded* [5]. In other words, on this (will-theory) understanding of having a right, it is the right-holder himself whose decision has a bearing on whether a given action or forbearance (both being able to constitute a content of a right) is permissible or impermissible. In other words, our position is the reverse of the Rothbardian position cited at the beginning of the introduction [11]. We for one believe that it is not the case that we act voluntarily as long as rights are respected. We would rather say that rights are respected as long as we act voluntarily. For if I even implicitly agree to being hit by person A then person A hitting me cannot constitute a right-violating act. Our position, it might be objected, is only trivially true for by this even implicit agreement to being hit, the right was waived and the duty of the would-be hitter was waived, thus leaving a hitter with a liberty to hit me; so, in the end, there was, logically speaking, no way to violate rights because at that time there were no rights to be violated. But this objection actually counts in our favour. This shows, as in the case of gift-giving, that it is voluntary (in a right-independent sense) decisions that can redistribute rights, as opposed to the

claim that *voluntariness/involuntariness* of A's actions is a function of whether rights are respected/violated.

Similar remarks apply to a libertarian notion of threat.¹² As posited by Wertheimer, the rule of a thumb is that a proposal is coercive (but not necessarily it actually coerces¹³) when what is threatened is a right-violating act [13]. But this only postpones our objection and shifts it one step further. For now, the *coercive nature of a proposal* seems to depend on whether the threat – when executed – would constitute a violation of the victim's right. But then again, whether a right-violation would occur can be known only if we know whether this “threat” was welcome. If it was, then it was not a threat at all. But still, our dialectical adversary might object that after all we *assumed* it was a threat in the first place; and so, it is a conceptual impossibility to consent to a proposal which amounts to a threat. And yet again, we concur. We would in response maintain that this apparent “threat” misfired only because it was infelicitous – and mainly for one reason here. The potential victim welcomed the proposal. And it is because of this (implicit?) consent, the proposal cannot count as a threat. So, in the end, it transpires that a threat is consent-dependent and not the other way round. Let us illustrate our point. Consider, an eccentric wrong-doer comes to person A and says: “I will take all your money and donate it to charity if you don't stop trading with my enemy”. *Prima facie*, this would be classified as a wrongful proposal since “taking person A's money” would be presumed to be wrongful (to violate A's property right). And yet, isn't it imaginable that A wanted to donate all his money to charity and was only waiting for an opportunity to arise to do so. Now A wants “the threat” to be executed and she might manipulate the threatening party to carry out his threat. The threatened party may (ironically) say: “I will never ever stop trading with your enemy”. And if the apparent “threat” is carried out, the threatened party is rendered better-off. We might conclude that the threat misfired; or, it was not a threat at all. But why so? Because the proposal was welcomed by the other party. Because the other party *actually wanted* the scenario the threatening party threatened him with to materialize. It is the threatened party (among other things) *preferences* that rendered this threat infelicitous. Also Feinberg, while considering a slight different political problem (that is, the legitimacy of interfering with a person's liberty in the context of soft paternalism) comes up with a similar intuition:

If we can somehow rescue the isolated mountaineer [...] by altering the naturally coercive circumstances in which he finds himself, perhaps by quenching the fire on an escape route that is more safely accessible, or by landing a helicopter to evacuate him, then we implement his free choices rather than interfere with his liberty. But what if he declines our help, having by now set his heart on the more exciting dangerous exploit he had already planned? In that case, provided he does not appear wild-eyed and hysterical, we must concede that his choice, while foolish, is nevertheless truly his, and he must be permitted to act on it, just as he would in the normal cases of dangerously exciting sport [4, p. 155].

As noted above, the context is slightly different but the reason for the invalidity of intervention is precisely the same as ours. That is, it points to the actor's *true preferences* as *premises* in the reasoning about whether an intervention in that case would count as a legitimate intervention or indeed as an infringement of the said actor's rights. Then, Feinberg instructively continues, extrapolating his argument so that it can yield support to the point we were pressing above:

Ironically, his risky act [of the mountaineer] is now clearly voluntary only because we intervened to change the coercive circumstances that had appeared to render his choice of that act considerably less than fully voluntary. It is as if, having been liberated from the gunman A, B calmly reconsiders and decides to do what A was trying to force him to do [4, p. 155].

So, the coercive circumstances only “appeared” to render B’s choice less than fully voluntary. Whether they *actually did so or not* is ultimately contingent upon the actor’s true preferences. The same applies to the gunman case. Whether the gunman’s proposal is coercive is ultimately a function of whether the proposal was welcomed (by the putative victim) or not. If B, after some deliberation, decides to do (which is an expression of his true preferences) what he was apparently “forced” to do, then he was not actually forced to do so; and, as Feinberg would have it: the interference with B’s action (which was only apparently forced) would count as an illegitimate constraint of B’s liberty.

Just to summarize our points in this section:

1) On any non-moralized theory of threat, a proposal cannot be a threat if it cannot render a threatened party (by succumbing to it) worse off than he would otherwise be (in the absence of the proposal). So, if such a proposal cannot count as a threat, it cannot *a fortiori* be an illegitimate threat, which is the one threatening a right-violation, and thus being an instance of a *coercive* proposal itself.

2) We claim that any moralized theory is coherent but it begs the question. For we cannot know whether a proposal is a threat (relative to a moralized benchmark¹⁴) unless *we first establish* that a threatened action is unconsented.¹⁵

5. Conclusion

In this short paper, we were trying to argue that libertarianism conceptually craves for the adoption of right-independent concept of voluntariness. First, we established that libertarians cannot convincingly argue for unbridled free markets once they are confined to right-dependent sense of freedom. More specifically, it cannot be informatively (non-trivially) said that a libertarian society (the one in which private property rights are respected) contains no unfreedoms since unfreedoms are *defines* as incompatible with a libertarian society. Second, we adduced Hohfeldian powers to make a point that it is non-rights-based voluntariness that can explain rights redistribution, which would make again the notion of *voluntariness* more fundamental than the concept of right. Finally, by the same token, we claimed that it is consent that is a determinative factor of whether a right was violated or not. We do not contend that libertarianism is caught in an insuperable predicament but rather that more conceptual work is to be done.

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Notes

1. Just to avoid clumsiness of our prose, we shall henceforth use the word *libertarians* to refer to right libertarians. And, however controversially, we take Nozick and (later on) Rothbard to be the main representatives thereof.
2. Whether the Nozickian notion of *voluntariness* differs from the Rothbardian *freedom* is open to dispute. It can be argued that the distinction between freedom and voluntariness can be linguistically captured by the two phrases, respectively: *being free to act* vs *acting freely*. And so, *freedom* would be about the set of actions open to us, while *voluntariness* would be about the quality of our actual action. However, those fine distinctions are of little importance here, for these two *concepts* would be normatively tinted for both libertarians under consideration herein.
3. Cohen's (1995, p. 23) interpretation of Nozick assumes the following form: "Whatever arises from a just situation as a result of fully voluntary transactions which all transacting agents would still have agreed to if they had known what the results of so transacting were to be is itself just."
4. The troubles that rights-based idea of liberty leads to are going to be analyzed in detail in the next section.
5. This time (after the substitution) one would make a case for free-market based on its purportedly fully voluntary character. Yet, this point would be simply trivial for the only transactions that would count as voluntary would be the ones compatible with free-market by definition. Then, the resort to voluntary transactions in making a case for free market is just an illusion. Free market remains groundless since it appeals to voluntary transactions, which are not independent of free market but are definitionally bound to it.
6. For more on incidents of property rights, see [6].
7. In fact, the same problem applies to any mutual exchange on the market.
8. On the will theory vis-à-vis interest theory of rights, see [8].
9. Notably, Nozick [8] also argued in favour of voluntary slavery.
10. For an excellent overview of possible meta-ethical standpoints, see [10].
11. More specifically, Moore [7] argues that it is especially *causation* (an actor causing a prohibited state of affairs) that matters for the ascription of moral blameworthiness, which in turn allows us to ascribe to the actor legal liability.
12. For a comprehensive review of moralized and non-moralized theories of threats and offers, see [4]. On a moralized theory of coercion, see [13].
13. More specifically, Wertheimer [13] maintains that a sufficient condition for a proposal to be *coercive* is that it threatens (in case a victim does not succumb to a threat) a violation of the victim's right. For a proposal to *actually coerce* the above condition (which is now only a necessary condition) and additionally a choice prong (the victim should not have a reasonable alternative but to succumb to a threat) must be satisfied.
14. See [13].
15. Certainly, our position is also vulnerable to criticism. It may be argued that certain proposals necessarily constitute threats and so they automatically vitiate any consent. However, such an argument cannot be considered universal. Pragmatically speaking, it may turn out that there are certain proposals to which nobody of a right mind would give a rational consent. This would enable the law in question to serve some useful purposes and to make some well-grounded verdicts. Yet, this is only an approximation (especially in the eyes of libertarians) to the ideal evidence wherein it could be established beyond reasonable doubt that a right was in fact not violated simply because a purported victim wanted the very state of affairs "prohibited" to actually occur.

**Peter Singer’s “Famine, Affluence, and Morality”:
Three Libertarian Refutations**

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Abstract:

Peter Singer’s famous and influential article is criticised in three main ways that can be considered libertarian, although many non-libertarians could also accept them: 1) the relevant moral principle is more plausibly about upholding an implicit contract rather than globalising a moral intuition that had local evolutionary origins; 2) its principle of the immorality of not stopping bad things is paradoxical, as it overlooks the converse aspect that would be the positive morality of not starting bad things and also thereby conceptually eliminates innocence; and 3) free markets – especially international free trade – have been cogently explained to be the real solution to the global “major evils” of “poverty” and “pollution”, while “overpopulation” does not exist in free-market frameworks; hence charity is a relatively minor alleviant to the problem of insufficiently free markets. There are also various subsidiary arguments throughout.

Keywords: Peter Singer, libertarianism, effective altruism, “Famine, Affluence, and Morality”.

1. Introduction

This essay is a response to the famous and influential article that is Singer 1972 [13] (hereafter S72). It applies (at 2.2) an argument developed on first reading this, and other texts on morals, at university: in short, that moral neutrality must be logically possible.¹ But there are now additional arguments that further undermine S72. Criticisms that have similarities to those here have appeared

in various places. The arguments here appear to be sufficiently different to be worth expounding. However, it would be too digressive to attempt comparisons and contrasts.

2. Moral Obligations

2.1 The First Refutation: the Relevant Principle is Implicitly Contractual

S72 is quoted at appropriate junctures and replies then follow.

“I begin with the assumption that suffering and death from lack of food, shelter, and medical care are bad” [13, p. 231]. Agreed.

“if it is in our power to prevent something bad from happening, without thereby sacrificing anything of comparable moral importance, we ought, morally, to do it” [13, p. 231]. It might be morally good, but there need be no moral obligation. As we shall see, it will usually be supererogatory.

“This principle seems almost as uncontroversial as the last one” [13, p. 231]. In the final analysis, at least, it cannot be philosophically relevant whether a principle is “uncontroversial”. Some uncontroversial principles might be mistaken and some controversial principles might be correct. In any case, however, it can hardly be “almost as uncontroversial” that we have, by implication, such a general and huge obligation to prevent any and all bad things from happening around the whole world (even allowing for the caveat “without thereby sacrificing anything of comparable moral importance”²).

“It requires us only to prevent what is bad, and not to promote what is good” [13, p. 231]. As the implied obligation is immense (to prevent any “lack of food, shelter, and medical care” around the entire world is only a small part of it), the “only” is a limit that will never be reachable (at least, until free-market progress eventually eradicates such bad things) except via the caveat. There is also the problem of whether, or how far, “to prevent what is bad, and not to promote what is good” is a clear or even coherent distinction. Isn’t “lack of food” a bad thing and having food a good thing? And to the extent that Augustine is right, a bad thing is never a real presence but only the absence of a good thing; and we cannot all have every good thing.³ However, the clarity and coherence of this distinction need not be explored here.⁴

“and it requires this of us only when we can do it without sacrificing anything that is, from the moral point of view, comparably important” [13, p. 231]. In other words, apparently, we have to strive to alleviate all of the bad things in the world “only” up to the point where we are in almost as bad a condition ourselves. That is, we “only” have a moral obligation to behave as a virtual saint (no religious meaning is intended). This is clearly interpretable as a type of *reductio ad absurdum*; although not in the strict logical sense of deriving a contradiction. It thereby naturally suggests that another principle altogether might be the correct one. However, it is sometimes possible to embrace an apparent absurdity and interpret such a, non-contradictory, *reductio* as a genuine and remarkable insight. And that is what S72 mistakenly does.

S72 then puts the central and famous argument that is still much used and cited today:

An application of this principle would be as follows: if I am walking past a shallow pond and see a child drowning in it, I ought to wade in and pull the child out. This will

mean getting my clothes muddy, but this is insignificant, while the death of the child would presumably be a very bad thing [13, p. 231].

This does indeed apply S72's principle. And it applies it to a very persuasive example of where there seems to be a moral obligation. However, this is entirely misleading. Just because a principle (or theory) fits the circumstances (or data) and seems plausible – or even “uncontroversial” – does not mean that it is the correct principle. For the explanation of a moral obligation here does not need to use that general and, in the modern globally-knowable-and-accessible world, extremely demanding principle. Admittedly, that principle – or possibly one covering dire situations, at least – might well be something like the one that Homo sapiens evolved to have: it would have protected likely relatives or at least valuable allies. And it still fits our existing moral intuitions: we have not lived long enough in market societies for our moral intuitions to have evolved to fit them.⁵ However, the real moral obligation is better explained today in terms of, implicit or explicit, local rules and contracts.

In all modern neighbourhoods, whether solely based on private property or with some political institutions, there are rules as to what is permitted and what is obligatory. By occupying or voluntarily entering these neighbourhoods a person implicitly contracts into accepting those rules. Some of those rules will be explicit (probably written somewhere but widely understood as well) and some will be implicit (relying on common-sense standards of acceptable behaviour). Such rules often include an obligation either to help directly or, more likely, to call for assistance – if no one else has already done so – in the event of certain temporary, extreme, emergencies: buildings on fire, serious road accidents, criminal activities in progress, etc. (the rules never include an obligation to assist people in an area of general and sustained emergency, such as a famine or deadly disease; as that would keep people away and result in less assistance). A drowning child would constitute one such temporary, extreme, emergency. Thus, the moral obligation here is more plausibly explained by an implicit local contract and not by S72's global and very general principle. If we experience lesser examples of bad things in the neighbourhood, then it will be both widely understood and morally accepted that there is no obligation to assist. But if S72's principle were the correct one, then people would expect and feel such obligations even for lesser examples. This, then, explains one serious mistake in S72 and is the first libertarian refutation: that is, a refutation using some libertarian-type assumptions and arguments.⁶

2.2 The Second Refutation: the Suggested Principle is Paradoxical

The principle stated and defended in S72 also has implications that allow for another reductio, and one that is at least close to implying a contradiction. To simplify matters, we can ignore the possible problem of a clear distinction between good things and bad things and only speak in terms of bad things.⁷ If not stopping bad things that exist when we easily could is inherently immoral (not doing what “we ought, morally, to do”), then – conversely – not starting bad things when we easily could is inherently positively moral (doing what “we ought, morally, to do”). However, there is usually a far greater balance of bad things that we omit to do (and could easily have done) than bad things that we omit to stop (and could easily have stopped): e.g., personally engaging in theft/vandalism/arson/etc. versus stopping other people engaging in these things. Consequently, overall, we omit to start more bad things than we omit to stop bad things. Therefore, by simply

omitting to do either we are either both moral and immoral at the same time or on balance positively extremely moral.⁸ It is paradoxical to describe mere inaction as either ‘moral and immoral’ or ‘on balance positively moral’.⁹ The paradox is easily avoided if we make something like the following three more-conventional distinctions, which libertarians qua libertarians hold more consistently than most people. To proactively and altruistically stop bad things is positively moral. To proactively inflict bad things is immoral.¹⁰ And to omit to do either is morally neutral. S72 argues for a position that implies a paradox and leaves no conceptual room for the possibility of moral neutrality, otherwise known as ‘innocence’. This is the second libertarian refutation.

S72 goes on to say, “If we accept any principle of impartiality, universalizability, equality, or whatever, we cannot discriminate against someone merely because he is far away from us ...” [13, p. 232]. There are common confusions in ethics concerning all of these three entirely different things, “impartiality, universalizability, equality” (and probably “or whatever” too). Any “impartiality” is always contextual. We can only be impartial in the application of the rules or principles towards which we are first partial, or at least somehow obligated. So, in the drowning child (or temporary, extreme, emergency) case, we are contractually obligated to act with “impartiality” in the sense of taking no account of the identity of the child (or of the specific people or nature of any other relevant emergencies). Similarly, “universalizability” is always contextual. An obligation ‘universally’ covers all the people and situations cited in the relevant principle and not people and situations that are outside it. As for “equality”, that only applies here in the sense that all contractual obligations are prima facie equally binding (unless some hierarchy is stated or implied, perhaps). None of these three specified terms necessarily imply considering all of the people in the world. And even if they were to do so, then that would still leave the question, ‘With respect to what principle?’¹¹ Consequently, we can – and even must – “discriminate” in favour of people who are covered by any relevant contractual principle (at least until any contractual obligations have been met).¹²

2.3 The Third Refutation: Free Markets Best Solve Real “Major Evils” Problems

S72 then asserts that “most of the major evils – poverty, overpopulation, pollution – are problems in which everyone is almost equally involved” [13, p. 233]. Global poverty and pollution are, on average, reducing all the time thanks to the economic growth that markets create. With more libertarian-like property rights and thereby greater growth, they would be reducing even faster. It is a myth that there is global “overpopulation”. A spontaneously growing global population – based on individual reproductive choices in the specific circumstances – aids economic growth due to the greater division of labour.¹³ Popular books – for instance, Simon [12], Lomborg [6], Pinker [9], and Rosling [11] – now more or less explain these things (the highly detailed evidence and arguments cannot be rehearsed here). However, libertarian explanations are also needed to add clarity and cogency; none of those popular books are libertarian. Therefore, to the extent that “everyone is almost equally involved” it is not in terms of proactive culpability but, rather, the unintended beneficial effects of free markets within countries and free trade between the residents of different countries (insofar as politics, or each state, allows this to happen). The solution to real “major evils” is not “effective altruism” – as the movement¹⁴ associated with S72’s arguments has become called – but laissez-faire economies (in the sense that protects people and their libertarian property).

If there were to be genuine free trade around the world, then capital would be likely to make its way to employ the cheap labour where it is; and this would soon raise living standards in those areas to approach a new global norm. Anti-free-traders hold that free trade can proactively impose on some of the existing population. But I do not proactively impose on you if I buy imported foreign products. And you proactively impose on me if, via politics, you can prevent me from doing so. The boost to the economy that free trade allows ultimately raises the general living standards of the country, and any wage falls or structural unemployment are temporary. If trade barriers really were liberal and economic, then we should impose them within countries just as much as between any two countries.

Into the foreseeable future there will always be room for charity that can do real good around the world. But, as we have seen, that charity is supererogatory. And charity at most puts the cherry on the cake. The free market – which strictly must include international free trade – creates the ever-growing cake. Those people giving charitable donations to help the worst-off in the world might do better in the long term to spend at least some of their time and money campaigning for more free trade with needy areas. S72 does not recognise that free markets are far and away the best solution to any real “major evils” problems. Therefore, this is the third libertarian refutation. The rest of S72 raises no more issues that this triple refutation needs to address.¹⁵

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Notes

1. The argument is also applied, along with others, to abortion and infanticide in another essay.
2. An anonymous review asserts that “Singer’s ‘comparable moral importance’ need not be interpreted the way Singer wants. Someone might hold that a person’s own life and well-being have great moral importance. In that case, Singer’s principle wouldn’t be very demanding.” It seems unremarkable to assert that *every* “person’s own life and well-being have great moral importance”. Hence, this criticism would only appear to be cogent if “great” is interpreted as vastly more “moral importance” for a particular person. It is hard to see how an impartial observer could reach that conclusion.
3. “For what is that which we call evil but the absence of good? In the bodies of animals, disease and wounds mean nothing but the absence of health; for when a cure is effected, that does not mean that the evils which were present – namely, the diseases and wounds – go away from the body and dwell elsewhere: they altogether cease to exist; for the wound or disease is not a substance, but a defect in the fleshly substance, – the flesh itself being a substance, and therefore something good, of which those evils – that is, privations of the good which we call health – are accidents.” Augustine of Hippo, *Enchiridion*, Chap. 11.
4. An anonymous review asserts that the “discussion of Augustine’s view of evil as privation is off topic.” But it is only a short point rather than a “discussion”, and some response does seem relevant given S72’s emphasis on the importance of the principle being about preventing what is bad and not promoting what is good.
5. As Hayek [1] explains, in the “great society” (or what Adam Smith called the “commercial society”) we sometimes have to leave such evolved moral instincts behind. For a more-recent and sophisticated account of this thesis see Levendis, Eckhardt, & Block [5].
6. An anonymous review asserts: “The author is right that implicit rules or contracts in a neighborhood can explain the duty to rescue the drowning child. But he needs to add an argument that we are under a moral obligation not to violate such implicit contracts.” However, this appears to fall into the error of justificationism (requiring epistemological support). If such an argument were added, then it would itself have various assumptions that could themselves be held to be in need of similar ‘support’, ad infinitum. As critical rationalism (see, for instance Popper [10] and Miller [8]) explains, all attempts at support appear to fall to this ad infinitum criticism, or they are implicitly circular, or they ultimately rest on some dogmatic assumption held to be “self-evident” (in effect, “evident” to the “self” propounding the argument). Conjectural explanations are all that we have. And these require potentially refuting criticisms, not demands for ‘support’.
7. As an anonymous review helpfully illustrates, it introduces unnecessary complications and confusion to do this in terms that mention both bad and good things.

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8. An anonymous review makes the following assertion: “For an argument about net moral balance to work here, we would need reason to think that it is easier not to start a bad thing than to fail to stop a bad thing.” It is true that merely not doing things is, usually, equally easy whatever they are. But S72’s argument is that it is immoral not to prevent a bad thing when this could easily be done. And this appears to imply the converse argument that it is moral not to cause a bad thing when this could easily be done. That it is equally easy to do nothing in both cases is not relevant.
 9. An anonymous review asks, “why should we be concerned with someone’s net moral balance, i.e., his overall moral ranking? It is sufficient for Singer’s argument that someone who fails to prevent certain evils has acted immorally.” We should be concerned because S72’s central argument implies a paradox, by parallel reasoning, and a paradox requires a solution (or a sound explanation of why it must be accepted despite the appearance of paradox).
 10. And thereby flouts liberty to the extent that it interferes with self-ownership and property as derivable from an abstract theory of interpersonal liberty (see Lester [2], [3], [4]).
 11. There is a background assumption in S72 of some sort of utilitarianism. But that is best left in the background and the text’s arguments taken at face value.
 12. An anonymous review comments thus: “The author fails to show that impartiality and universalizability are contextual, if this means that these standards could not mandate obligations to all human beings. The fact that all rules separate those covered by the rule from those who aren’t doesn’t entail that there aren’t rules that cover everybody.” This is a misunderstanding. Of course, there can be principles that require impartiality or universalisability among “all human beings” (or all persons of whatever species, or all sentient entities, or all plants, or all whatever you like). The point is, there is no such thing as pure impartiality or universalisability. Someone cannot simply be required to behave impartially or universalisably. There has to be a principle that explains the type of behaviour and the domain of entities to which it applies. S72 appears to make the common mistake that impartiality and universalisability as such must necessarily refer to all human beings (at least). This is not even the case, a priori, with moral principles.
 13. A good recent article explaining this is Whitmore [15].
 14. See, for instance, Singer [14] and MacAskill [7].
 15. An anonymous review comments: “The author’s argument that a growing free market economy is the best way to alleviate global poverty is a good one, but he just briefly mentions people who have claimed this and fails to develop the point.” This appears again to be an illegitimate demand for more ‘support’ for the argument. It would, of course, be possible to add much by way of explanation of this point. But that would still not support the basic argument and it would, in any case, be a digression in being largely about economics and empirical matters when this essay is primarily philosophical. However, it would surely have been remiss to have left this issue entirely unaddressed given that it is the practical solution to the real problems that S72 seeks to solve. In fact, economics is probably far more important here than philosophy. Economics is usually more important than philosophy. But only in the sense that sewerage is more important than economics.

A Proletariat of One: Libertarianism and the Psychosis of Authority

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Abstract:

Libertarianism has a problem, perhaps an insurmountable one, and its problem lies squarely in the domain from which it is sourced: the intellectual and political elite of the West. As such, it rests on an ontological viewpoint far outside the purview and experience of quotidian man. Furthermore, it rests on an epistemology of the person as sovereign, Natural Law, which requires a concomitant education or understanding of the Classics, or at least self-awareness and the ability to think logically. Many non-intellectuals are either uninterested or incapable of following the Libertarian arguments of personal sovereignty and instead submit. This unconscious submission to the authority of a government, father figure, or other self-appointed “authority” relieves the individual of the psychological pain of breaking out of the herd. C. G. Jung (1875-1961) was adamant that to be an individual is a radical act: “To develop one’s own personality is indeed an unpopular undertaking, a deviation that is highly uncongenial to the herd, an eccentricity smelling of the cenobite, as it seems to the outsider [11, Para. 298]. Further, Alexander Hamilton (1755 or 1747-1804) noted that the elite are more than happy to have the masses submit to their authority without question as it advances their control: “a fondness for power is implanted in most men, and it is natural to abuse it when acquired” [9]. The rest of this article explores this psychosis of authority and how Libertarianism suffers in popularity as a result.

Keywords: libertarianism, depth psychology, political authority, natural law.

1. Introduction

Libertarianism has a problem, perhaps an insurmountable one, and its problem lies squarely in the domain from which it is sourced: the intellectual and religious elite of the West. As such, it rests on an ontological viewpoint far outside the purview and experience of quotidian man. Furthermore, it rests on

the person as sovereign, Natural Law. Though Libertarian intellectual antecedents precede the official formation of the Libertarian party in 1971, this article accepts the formation of the party on that date as a marker for its official existence and as a yardstick to examine its appeal to the body politic of the United States. Throughout its 48 years of existence as a cogent political movement, it has never reached the groundswell necessary to break into the mainstream. Its recent surge under Ron Paul's run for the presidency was co-opted by the Tea Party movement within the Republican party, effectively sounding its death knell in the wider public imagination. This is the closest the Libertarian party has come to a mainstream movement. This co-opting aside, why does Libertarianism as an idea and movement have such a hard time capturing the American public's attention? I posit that there is a psychosis of authority in the modern American polis. What is meant by a "psychosis of authority?" To set the context, the first move is a review of the ashlar of Libertarianism: Natural Law. From there, a depth psychological lens is used to frame an understanding of what authority means to the human psyche.

2. Unspoken Assumptions of Libertarianism

To begin, two unspoken assumptions of Libertarianism must be brought into the light and examined with an unblinking eye: namely the notion of the primacy of the individual and the self-reflectivity of the average individual.

First, let us explore the notion of individual primacy. Though this concept seems self-evident to many Libertarians, they forget what a radical act it was during the American revolution – what an absolute act of defiance to the authorities of both Church and king to declare: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator, with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness" [21]. A little over a century later Lysander Spooner (1808-1887) echoes the "self-evident" sentiment of the *Declaration*: "honesty, justice, natural law, is usually a very plain and simple matter, easily understood by common minds" [22, p. 9]. Influential theologians also asserted the primacy of the individual – at least in respect to the authority of secular ruler and Church, specifically St. Thomas Aquinas (1274-1323) and Martin Luther (1483-1546). The rise of Communism in the early part of the 20th century and the resurgence of socialism in the imagination today's youth belie the notion that the American polis understands and internalizes the individualism inherent in the notion of Natural Law.

Another undeclared assumption is that people are generally self-reflective and self-governing. That, as Spooner asserts: "Children learn the fundamental principles of natural law at a very early age... that one child must not assume any arbitrary control or domination over another." Though outside the scope of this essay, it is probably safe to assume that children today do not learn the fundamentals of Natural Law at an early age and especially not in public schools. Abraham Maslow's (1908-1970) hierarchy of needs would also challenge the assumption that children (or adults) are naturally self-reflective. In his seminal paper "A Theory of Human Motivation" [16] he posited that a pyramid of needs exists and that the needs near the top are built on the foundation of other a priori needs that must be satisfied. Thus, the lowest foundation of physiological needs such as food and water must be met before safety (both physical and psychological) needs can be met. Frederic Bastiat (1801-1850) made the same observation 170 years earlier: "Thanks to the non-intervention of the state in private affairs, our wants and their satisfactions would develop themselves in a logical manner. We would not see poor families seeking literary instruction before they have bread" [3, p. 3]) The top of Maslow's hierarchy, self-actualization, is dependent on all physiological and lesser psychological needs being met first. Therefore, in Maslow's formulation people are not naturally self-reflective. C. G. Jung (1875-1961) would concur about the relative lack of reflexivity in modern man: "A rather more pessimistic view would not be unjustified either, since the gift of reason and critical reflection is not

one of man's outstanding peculiarities, and even where it exists it proves to be wavering and inconstant, the more so, as a rule, the bigger the political groups are" [13, p. 4].

To this point the focus has been to show that there are unconscious assumptions that many Libertarians take as a given. In fact, the point has been to challenge these assumptions that Natural Law is naturally understood by quotidian man. The focus now pivots to a short review of Natural Law and its antecedents.

3. Natural Law

What differentiates Natural Law and law? To answer this question, one first must have a definition of law. Law, in its generic sense, is a body of rule of action or conduct prescribed by controlling authority and having binding legal force. That which must be obeyed and followed by citizens subject to sanctions or legal consequences is a law [8, p. 884].

Of import to this inquiry, this widely accepted definition of law takes the ontological stance that there is a controlling authority yet what is this ethereal controlling authority? It is not evident from this definition and so a look to antiquity is in order.

In the Greek tradition, Socrates, Plato and Aristotle argued that there is a distinction between *physis* and *nomos*. Thus, law or custom (*nomos*) differs from place to place or culture to culture but nature (*physis*) is universal. Aristotle makes the universality claim explicit in *On Rhetoric*: "[aside from] particular laws that each people has set up for itself, there is a 'common law' or 'higher law' that is according to nature" [2, 1373b2-8]. Nature in this context was ascribed to transcendent forces or the Greek pantheon. Turning to Jewish, Christian, and Islamic traditions the answer is that God is the law giver, that we are "endowed by our Creator." St. Thomas Aquinas dedicated considerable attention to developing Natural Law moral theory which he posited is derived from the rationality of humans: "the rule and measure of human acts is the reason, which is the first principle of human action" [1, Q. 90].

From these principles is derived a universal moral code, applicable to all humans. This moral Natural Law is held separate from law in the jurisprudence context; Spooner asks and answers what is law: "What then is legislation? It is an assumption by one man, or body of men, of absolute, irresponsible dominion over all other men whom they can subject to their power" [22 p. 27]. Spooner's analysis of law comports with the Bolshevik formulation of "who, whom." Bastiat (1850/2012) views 'law' much as the framers of the U.S. Constitution: as a negation of legalized plunder, or the right to self-defense: "What, then, is law? It is the collective organization of the individual right to lawful defense" and "Life, liberty, and property do not exist because men have made laws. On the contrary, it was the fact that life, liberty, and property existed beforehand that caused men to make laws in the first place" [3, p. 2].

Natural Law derived from theological reasoning posits that the only submission to outside authority is to God. This comports with *physis* in the Greek formulation for it points to a creator of our rational consciousness with an innate, universal formulation. This ontology can be worked out individually if only one puts one's mind to the task. Yet, here is another implicit assumption: people are educated and introspective enough to even begin thinking about themselves and the problems of human interaction and organization at any level, much less engaging with understanding themselves and their own individual stance towards authority. Does the average individual possess the concomitant education or understanding of the Classics, or at least self-awareness and the ability to think logically? Given the state of education in the United States today, with 1 out of 7 adults functionally illiterate [15], it is questionable to affirm the hypothesis that the average person possesses the wherewithal to understand or engage with arguments regarding the sovereignty of the individual, as this has always been the domain of the educated elites in the Western tradition. Logically then, most people are either incapable or uninterested in following the Libertarian arguments on personal sovereignty. Instead, they submit consciously or unconsciously to some arbitrary authority. This submission to the authority of a

government, father-figure, or other self-appointed “authority” relieves the individual from the psychological pain of breaking out of the herd. C. G. Jung (1875-1961) was adamant that to be an individual is a radical act: “To develop one’s own personality is indeed an unpopular undertaking, a deviation that is highly uncongenial to the herd, an eccentricity smelling of the cenobite, as it seems to the outsider” [11, Para. 298].

This pivot to the psychological forms the crux of this paper’s argument: that because questioning others’ claims of authority over oneself is psychologically painful, it is easier to go along with the status quo. Joseph Campbell (1904-1987) described it as the tension between *amor* and *Roma*: The man under the influence of the Lover does not want to stop at socially created boundaries. He stands against the artificiality of such things. His life is often unconventional and “messy” – the artist’s studio, the creative scholar’s study, the “go for it” boss’s desk. Consequently, because he is opposed to “law” in this broad sense, we see enacted in his life of confrontation with the conventional, the old tension between sensuality and morality, between love and duty, between as Joseph Campbell poetically describes it, “amor and Roma” – “amor” standing for passionate experience and “Roma” standing for duty and responsibility to law and order. [17, pp. 125-126]

An understanding of how difficult it is for the individual to separate from the masses requires a turn towards depth psychology, particularly what it has to say about the individual and authority. This is what I call a psychosis of authority.

4. A Pivot to Depth Psychology

Depth psychology is grounded in the roots of psychoanalysis and analytical psychology. Already mentioned is a giant of analytical psychology, C. G. Jung. The other is Sigmund Freud (1856-1939). Freud and Jung had different conceptions on the nature and purpose of human consciousness and thus divergent views on the authority question. This question of authority in psychoanalysis is obliquely addressed by Thomas Szasz (1920-2012). Libertarians have been generally skeptical of psychiatry, particularly psychoanalytic psychology for years, for which there are some fundamentally good reasons. Szasz delineated how psychiatry became a weapon of first the moneyed classes in England and eventually the State in general [24]. In his seminal essay *The Myth of Mental Illness* [25] he questioned the notion of mental illness in its entirety. Given the continued abuse that psychiatry enables every day as a tool of the state’s monopoly on force, it is not hard to understand why. Enabled by legislation, police (among other armed state actors) can involuntarily commit any individual under state law, the model example being California’s section 5150 of the *Welfare and Institutions Code* [23]. For an especially egregious, contemporary involuntary commitment, see the case of Brandon Raub [20]. Other abuses include the Veterans Administration putting 34,500 on New York’s no-guns list [10]. Then there is the so-called Frankfurt School (for a perspective on the history of the Frankfurt School, see Rolf Wiggerhaus’ *The Frankfurt School: Its History, Theories, and Political Significance* [26]). The School was started with the express purpose of developing Marxist theory and the application of psychology to shape the masses. Herbert Marcuse (1898-1979) shifted from pure Marxist theory to today’s more famous Critical Theory as a tool to bring about world Marxism. Today he is the most remembered thinker of the school and his Critical Theory is at the forefront of many humanities curricula. Critical Theory is the bedrock of today’s social justice warriors. Given this sordid application of psychiatry in service to the state, how does depth psychology differ from psychiatry and what does it have to say about the individual and the individual *vis a vis* outside authority?

To begin the investigation, it is instructive to turn to the father of psychoanalysis, Sigmund Freud and his signature theory: The Oedipus complex. To put the Oedipus complex into context requires a review of Freud’s conception of the structure of the human psyche. He posited a tripartite view composed of the id, ego and super-ego [5]. The id was Freud’s nomenclature for the archaic instincts of biological life, such as sex and aggression and conceptually sits under the ego, though there

are parts of the ego submerged into the id. Stated differently the id is moderated by the ego. In Freud's view:

The functional importance of the ego is manifested in the fact that normally control over the approaches to motility devolves from it. Thus in its relationship to the id it is like a man on horseback, who has to hold in check the superior strength of the horse; with this difference, that the rider tries to do so with his own strength while the ego uses borrowed forces. The analogy may be carried further. Often a rider, if he is not to be parted from his horse, is obliged to guide it where it wants to go; so in the same way the ego is in the habit of transforming the id's will into action as if it were its own [5, pp. 10-11].

Framed differently, the ego frustrates the id but is not morally developed – this is the job of the super-ego. To use another analogy, the id functions much as the bad angel on one shoulder while the super-ego functions as the good angel on the other. In Freud's conception, the super-ego has a component of morality to it "A differentiation within the ego, which may be called the ego ideal or super-ego" [5, p. 12].

This model of the psyche is foundational to Freud's Oedipus complex. As a tragic figure in Greek mythology, Oedipus ends up unwittingly killing his father and marrying his mother. Viewing the psyche through this lens, Freud hypothesized that normal development involves a sexual tension between a male child, mother, and father in a triangle:

In its simplified form the case of a male child may be described as follows. At a very early age the little boy develops an object-cathexis for his mother, which originally related to the mother's breast and is the prototype of an object choice on the anaclitic model; the boy deals with his father by identifying himself with him. For a time these two relationships proceed side by side, until the boy's sexual wishes in regard to his mother become more intense and his father is perceived as an obstacle to them; from this the Oedipus complex originates. His identification with his father then takes on a hostile coloring and changes into a wish to get rid of his father in order to take his place with his mother [5, pp. 14-15].

For Freud then, the male child must initially submit to the authority of his father. Similarly, female children must submit to the authority of the mother's claim on the father's sexual attention. Thus, she must transition her relationship to her father from one rooted in sexuality to affection. What is clear here is that in Freud's view, the strong person wins; the parents are in a position of authority until such time as the child becomes sexually aware, transitions into adulthood, and accepts the responsibility to stand on their own freed from the bonds of parental authority. This freedom from parental authority comes with the new burden that non-neurotic adults must now submit to the authority of civilization. In *Civilization and its Discontents* Freud makes this explicit "Human life in communities only becomes possible when a number of men unite together in strength to any single individual and remain united against all single individuals" [6, p. 72]. Here we see civilization conceptualized a mob arrogating a monopoly on violence. This comports with the Libertarian concept of the State. Freud was also contemptuous of a transcendent authority such as God, where moral authority is derived. His view on religion:

I was concerned [in *The Future of an Illusion*] much less with the deepest sources of the religious feeling than with what the common man understands by his religion – with the system of doctrines and promises which on the one hand explains to him the riddles of this world with enviable completeness, and, on the other, assures him that a careful Providence will watch over his life and will compensate him in a future existence for any frustrations he suffers here. The common man cannot imagine this Providence otherwise than in the

figure of an enormously exalted father...the whole thing is so patently infantile, so foreign to reality, that to anyone whose attitude to humanity is friendly it is painful to think that the great majority of mortals will never be able to rise above this view of life [7, p. 22].

From this it is possible to adduce that Freud is neither a friend of Natural Law, nor a friend of the Libertarian principle of non-aggression, for it is obvious that Freud felt the child first must submit to the authority of his or her parents and then later in life to a mob that keeps the strong man individual in check thus reifying the primacy of the State over the individual negating Natural Law. However, while Freud may be considered the father of psychoanalysis, but C. G. Jung greatly expanded, amplified and eventually split from his mentor. The next section therefore turns to two of Jung's central tenants: the notion of individuation and the religious function of the psyche.

Jung contra Freud postulated that the individual psyche was oriented towards solving its dilemma of "why am I here" in a religious way. By this he did not mean that the individual had to subscribe to any particular religion or conception of God, rather, that it is incumbent upon the individual to recognize an internal submission to the nature of their own being. This is different from Freud's theory, where psychological submission was self-evidently a submission to an external authority. Jung describes the call to vocation, or in his lexicon, the setting onto the path of individuation as an individual submitting to his own nature. He explains:

There are not a few who are called awake by the summons of the voice, whereupon they are at once set apart from the others, feeling themselves confronted with a problem about which the others know nothing. In most cases it is impossible to explain to the others what has happened, for any understanding is walled off by impenetrable prejudices. "You are no different from anybody else," they will chorus or, "there's no such thing," and even if there is such a thing, it is immediately branded as 'morbid' [11, para. 308].

Those called however face backlash from the authority of the mob State: "He is at once set apart and isolated, as he has resolved to obey the law that commands him from within. 'His own law!' everybody will cry. But he knows better: it is the law" [11, Para. 304]. Here, we see a profound difference between Freud and Jung. Whether consciously or not, Jung has invoked the specter of Natural Law and placed it firmly within the individual's psyche. This process of awakening and hearing the call of one's psyche is what Jung referred to as individuation. Not coincidentally, in Jung's conception it is imperative that individuals individuate – that is to say enact a lifetime process of those who hear the clarion call of breaking from the herd. "To the extent that a man is untrue to the law of his being he has failed to realize his own life's meaning" [11, para. 314].

Jung advanced the primacy of the individual as counterbalance to the herd, for example, specifically responding to the ascension of Hitler arising from groupthink. "Insofar as society is itself composed of de-individualized human beings, it is completely at the mercy of ruthless individualists. Let it band together into groups and organizations as much as it likes – it is just this banding together and the resultant extinction of the individual personality that makes it succumb so readily to a dictator. A million zeros joined together do not, unfortunately, add up to one" [12, p. 301].

From this brief survey it is clear that Jung not only fervently believed in the primacy of the individual, he felt it was an imperative to civilization for individuals to individuate – to answer the call of vocation while separating from the mass of humanity. "This apparently unique life [Christ] became a sacred symbol because it is the psychological prototype of the only meaningful life, that is, of a life that strives for the individual realization – absolute and unconditional – of its own particular law. Well may we exclaim with Tertullian: *anima naturaliter christiana!*" [12, p. 204]

Pythagoras would agree. "No one is free who has not obtained the empire of himself. No man is free who cannot command himself" [18]. However, as Jung makes clear, very few obtain the empire of

themselves. Instead, the psychosis of authority rears its head in the average persons' submission to the state. This consent was the central conundrum Etienne de La Boettie (1530-1563) addressed in *The Politics of Obedience: A Discourse on Voluntary Servitude*:

I should like merely to understand how it happens that so many men, so many villages, so many cities, so many nations, sometimes suffer under a single tyrant who has no other power than the power they give; who is able to harm them only to the extent to which they have the willingness to bear with him; who could do them absolutely no injury unless they preferred to put up with him rather than contradict him. Surely a striking situation! Yet is so common that one must grieve the more and wonder the less at the spectacle of a million men serving in wretchedness, their necks under the yoke, not constrained by a greater multitude than they [4, pp. 40-41].

Bastiat's offered this incisive paragraph:

Man can live and satisfy his wants only by ceaseless labor; by the ceaseless application of his faculties to natural resources. This process is the origin of property. But it is also true that a man may live and satisfy his wants by seizing and consuming the products of the labor of others. This process is the origin of plunder. Now since man is naturally inclined to avoid pain – and since labor is pain in itself – it follows that men will resort to plunder whenever plunder is easier than work [3, p. 5].

He observes further that legal [State] plunder becomes irresistible to the masses. “Sometimes the law defends plunder and participates in it. Thus the beneficiaries are spared the shame, danger, and scruple which acts would otherwise involve” [3, p. 13].

5. Conclusion

This examination has now come full circle. The problem with Libertarianism's appeal to the masses is what Freud outlined in *Beyond the Pleasure Principle*: that man is basically psychologically lazy and seeks the least resistant path to pleasure. Every political philosopher cited concurs in some way with this conclusion. If people are being plundered, not only do they consent to it, they aspire to be the plunderer in concordance with Freud, Bastiat, and de La Boeite. C. G. Jung frames the diagnosis differently yet has the same observation. Namely, it is rare for a person to separate himself from the masses and sustain the mental energy necessary to be true to himself, to individuate. Further, he points out that modern man no longer lives a philosophical life. “Today, our basic convictions have become increasingly rationalistic. Our philosophy is no longer a way of life, as it was in antiquity; it has turned into an exclusively intellectual and academic affair” [14, p. 72]. He concludes,

Far too little attention has been paid to the fact that our age, for all its irreligiousness, is hereditarily burdened with the specific achievement of the Christian epoch: *the supremacy of the word*, of the Logos, which stands for the central figure of our Christian faith. The word has literally become our god and so it has remained, even if we know of Christianity only from hearsay. Words like “society” and “State” are so concretized that they are almost personified. In the opinion of the man in the street, the “State,” far more than any king in history, is the inexhaustible giver of all good; the “State” is invoked, made responsible, grumbled at, and so on and so forth. Society is elevated to the rank of a supreme ethical principle; indeed, it is credited with positively creative capacities [14, p. 75].

This then, is the problem facing Libertarianism: resisting arbitrary authority and taking responsibility for oneself is psychologically exhausting to the many. This psychosis of authority makes it psychologically easier to submit to the State, especially as we have moved away from living our philosophy. The masses have been placated with their breads, circuses, and the promises to spend other people's money for their benefit. I wish I were as optimistic as Murray Rothbard (1926-1995) who felt that the prime directive of Libertarians was to “*debamboozle the public on the entire nature and procedures of the despotic State*” [emphasis in the original] [19, p. 35]. The fact that the masses have been bamboozled throughout history and very rarely show any sign of withdrawing consent to the authority of the State leaves me slightly pessimistic. However, the fight against statism must be fought: *Dum Spiro, pugnare!*

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